



**IN THE INCOME TAX APPELLATE TRIBUNAL,
RANCHI BENCH, RANCHI**

**BEFORE S/SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER AND
LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.238/Ran/2018
Assessment Year: 2014-2015

Hemant kumar Verma, near Mission Chowk, Lohardaga- 835302	Vs.	ITO, Ward 2(4), Ranchi
PAN/GIR No.AAWPV 5625 L		
(Appellant)	..	(Respondent)

Assessee by : Shri S.N.Rajgarhia, FCA
Revenue by : Shri P.K.Mondal, Addl. CIT(DR)

Date of Hearing : 29/08/2019
Date of Pronouncement : 30 /10/2019

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Commissioner of Income Tax(Appeals)- Ranchi dated 23.5.2018 for the assessment year 2014-15.

2. The sole effective ground taken by the assessee in this appeal is that the CIT(A) was not justified in confirming the addition of Rs.18,76,000/- under section 56(2)(vii)(b) of the Act.

3. We have heard the rival submissions, carefully perused the materials available in the record of the Tribunal, inter alia, assessment order as well as the first appellate order.

4. The facts in brief are that the assessee had purchased the following immovable properties, wherein, the Assessing Officer found difference in the purchase price and stamp duty valuation, as under:

Sl.No.	Description of the immovable property	Date of registration	Purchase price	Stamp duty value	Difference
1.	Flat No.2A, Ram Sakhi Apartment, Misirgonds, Ranchi	24.2.2014	21,00,000	21,40,000	40,000
2.	Commercial Space at Suryamani complex Chadri, Sandanand Road, Ranchi	30.7.2013	5,00,000	12,36,000	7,36,000
3.	Duplex No.D-12, Damodar of River Dale City, Kanke Road, Ranchi	30.7.2013	13,00,000	24,00,000	11,00,000
				Total:	18,76,000

5. Therefore, the Assessing Officer invoked the provisions of section 56(2)(vii)(b) of the Act and made the addition of Rs.26,02,680/- being the difference between the purchase price and stamp duty valuation.

6. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

7. At the time of hearing, Id A.R. of the assessee submitted that the agreement for purchase of commercial space at Suryamani complex was made on 31.7.2012 and registration was executed on 30.7.2013 and also agreement for Duplex No.D-12, Damodar of River Dale City was made on 16.8.2010 and registration was done on 30.7.2013. As regards to Flat No.2A, he submitted that the date of payment was 4.12.2013 and registration was made on 24.2.2014. He submitted that the amendment to Section 56(2)(vii)(b)(ii) was made w.e.f 1.4.2014 and, therefore, this section will be applicable if the immovable property is transferred and transaction is completed on or after 1.4.2014 in assessment year 2014-15.

8. Ld A.R. produced a decision of ITAT Ranchi in the case of Sanjay Kumar Jain vs ITO in ITA No.212/Ran/2018 for A.Y. 2014-15 and submitted that the case of the assessee is identical to this case, therefore, squarely covered in favour of the assessee.

9. Ld D.R. supported the assessment order as well as the first appellate order. He submitted that payments and execution of sale deed in the case of flat at Ram Sakhi Apartment, Misirgonda, Ranchi has been made during financial year 2013-14 pertaining to assessment year 2014-15, thus addition of Rs.40,000/- is sustainable.

10. On a careful consideration of the decision of the Tribunal in the case of Sanjay Kumar Jain (supra), we find that the Tribunal, on the similar facts, has observed as under:



“7. On careful consideration of the above rival submissions of both the sides, I may point out that undisputedly and admittedly the AO applied first proviso to sub-clause(b) of clause (vii) of subsection (2) of Section 56 of the Act, where he picked up the stamp duty value on the date of agreement, which was 01.04.2011, for fixing the amount of consideration for transfer of immovable property in favour of the assessee, for the purpose of said provision. Consequently, the stamp duty value of Rs.39,57,818/- on the date of agreement was taken by him for the purpose of said sub-clause (b).

8. Now, the main and sole question for adjudication posed to me is that whether the amended provision of sub-clause (b) of clause (vii) of sub-section (2) to Section 56 of the Act, which is effective from 01.04.2014 would apply to the present case or not. Undisputedly, the agreement was executed on 01.04'2011 and in the sale consideration of Rs.31 lakhs as per possession letter available at page 58 of the paper book of the assessee, the assessee got possession on 20.01.2013 and upto 30.03.2013 the payment of Rs.28,01,000/- had been made to the developer by the assessee which is more than 90% of total sale consideration. In these circumstances and uncontroverted facts noted as above, I have no hesitation to hold that the assessee made payments of more than 90% of the total consideration and also took possession of purchased flat on 20.01.2013 during the financial year 2012-2013 pertaining to A.Y.2013-2014. When the assessee has paid major part of more than 90% of total sale consideration and has taken possession of the purchased property then merely because the sale deed could not be registered during said assessment year due to some legal compliances required to be made by the developer prior to execution of sale deed, it cannot be held that the completion of transaction was not completed during A.Y.2013-2014. It is a well established proposition that execution of sale deed is a paper compliance and payment of consideration and taking over possession are two main ingredients and requirements for completion of transaction of transfer of immovable property. Therefore, in the totality of facts and circumstances of the case, I have no hesitation to hold that the transaction of transfer of property and possession in favour of assessee was completed during F.Y.2012-2013 pertaining to A.Y.2013-2014, therefore, amended provision of section 56(2)(vii)(b)(ii) cannot be triggered or invoked by the revenue authorities against the assessee 'which is effective from 01.04.2014 i.e. from A.Y.2014-2015.

9. So far as execution of registered sale deed in favour of the assessee is concerned, undisputedly the sale deed was registered on 29.03.2014 which falls within the financial year 2013-2014 pertaining to A.Y.2014-2015. But, as in the earlier part of this order



considering the totality of peculiar facts and circumstances of the present case I have held that completion of transaction of transfer of property including transfer of possession as completed during previous F.Y.2012-2013 pertaining to A.Y.2013-2014, therefore, merely because paper compliance was made by the developer belatedly during A.Y.2014-2015 due to the reasons beyond control of the assessee, the assessee cannot be penalized by applying amended provision of section 56(2)(vii)(b) of the Act.”

11. From the table reproduced by the Id CIT(A) at page 4 of his, it is clear that the payments and registration of the sale deed in respect at Ram Sakhi Apartment, Misirgonda, Ranchi has been done during financial year 2013-14 relevant to assessment year 2014-15, thus provision of section 56(2)(vii)(b) is applicable and the observation of the AO and findings of the CIT(A) are correct upto this extent and the addition of Rs.40,000/- is confirmed.

12. So far as transaction for purchase of commercial space at Suryamani Complex, Chadri, Sardhanand Road, Ranchi (Property No.2) is concerned, from the said table at page 4, we note that agreement was made on 31.7.2012 and entire payment was made by cheque of Rs.5,00,000/- during financial year 2012-13 part to A.Y. 2013-14 and only sale deed was registered on 30.7.2013 during assessment year 2014-15. Thus, in view of these facts, we have no hesitation to hold that when the entire payment was made during previous assessment year 2013-14, then merely because sale deed was registered during assessment year 2014-15, the rigour of provisions of section 56(2)(vii)(b) of the Act cannot be triggered against the assessee. Hence, this contention of the assessee is accepted and addition

of Rs.7,36,000/- is directed to be deleted following the order of Ranchi Bench in the case of Sanjay Kumar Jain (supra).

13. Regarding third property i.e. Duplex No.D-12, Damodar of River Dale City, Kanke Road from the said table, it is also discernible that agreement was made on 16.8.2010 for Rs.13,00,000/- and payment of substantial amount of Rs.10,00,000/- has been made on 19.11.2012 during assessment year 2013-14. Only receiving of amount of Rs.3 lakhs has been paid on 30.7.2013 and sale deed was registered on the same date. Looking to the dispute arising out of the immovable property transactions, we are in agreement with the contention of Id A.R. that due to some required permissions for execution of sale deed, the remaining amount of Rs.3 lac was retained for payment on the date of registration, thus provision of section 56(2)(vii)(b) is not applicable to this transaction as per order of ITAT, Ranchi 'SMC' bench in the case of Sanjay Kumar Jain (supra). Hence, this addition is also directed to be deleted.

14. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 on 30 / 10/2019.

Sd/-

(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Ranchi; Dated 30 /10/2019
B.K.Parida, SPS

sd/-

(Chandra Mohan Garg)
JUDICIALMEMBER

Copy of the Order forwarded to :

1. The Appellant : Hemant kumar Verma, near
Mission Chowk, Lohardaga-835302
2. ITO, Ward 2(4), Ranchi
3. The CIT(A)-Ranchi
4. Pr.CIT- Ranchi
5. DR, ITAT, Ranchi
6. Guard file.
//True Copy//

By order

Sr. Pvt. Secretary,
ITAT,