



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI N.K. PRADHAN, ACCOUNTANT MEMBER**

ITA no.6180/Mum./2018  
(Assessment Year : 2014-15)

Shri Rajnikant Jasraj Shah  
M/s. Raman S. Shah & Associates  
A-102, Inder Darshan CHSL  
Next to Jain Temple, Jambli Gully  
Borivali (W), Mumbai 400 092  
PAN – AEBPS7793H

..... Appellant

v/s

Income Tax Officer  
Ward-3, Palghar

..... Respondent

Assessee by : Ms. Hiral D. Sejpal  
Revenue by : Shri Bhera Ram

Date of Hearing – 20.11.2019

Date of Order – 28.11.2019

**ORDER**

**PER SAKTIJIT DEY. J.M.**

The aforesaid appeal has been filed by the assessee challenging the order dated 24<sup>th</sup> August 2018, passed by the learned Commissioner of Income Tax (Appeals)-3, Thane, for the assessment year 2014-15.

2. The dispute in the present appeal is confined to the addition of ₹ 16,13,362, under section 56(2)(vii)(b)(ii) of the Income Tax Act, 1961 (for short "*the Act*").

3. Brief facts are, the assessee, an individual, filed his return of income for the impugned assessment year on 28<sup>th</sup> September 2014, declaring total income of ₹ 9,27,403. During the assessment proceedings, on the basis of information received from the Sub-Registrar (Andheri) no.1, Mumbai, the Assessing Officer found that the assessee along with his wife Smt. Mamta Rajnikant Shah, has purchased a property being flat no.703, B-Wing, Platinum Building, Juhu Galli, CTS no.512, Andheri (West), Mumbai, from Om Sai Ekta Enterprises, vide registered agreement dated 1<sup>st</sup> July 2013, for declared sale consideration of ₹ 1.30 lakh. Whereas, the stamp duty authority has determined the market value of the property for stamp duty purpose at ₹ 1,62,26,724. On the basis of the aforesaid information, the Assessing Officer called upon the assessee as to why the difference of ₹ 32,26,724, between the declared sale consideration and value determined by the stamp valuation authority should not be treated as income from other sources as per section 56(2)(vii)(b)(ii) of the Act. In response to the query raised by the Assessing Officer, though, the assessee furnished his explanation stating that the total amount of ₹ 1,43,41,573, including stamp duty and all expenses were

paid to the builder towards sale consideration of the flat, however, the Assessing Officer was not convinced with the explanation of the assessee. Considering the fact that the flat was jointly purchased by the assessee along with his wife, 50% of the differential amount of ₹ 32,26,724, working out to ₹ 16,32,362, was added to the income of the assessee. Though, the assessee challenged the aforesaid addition before the first appellate authority, however, he was unsuccessful.

4. The learned Authorised Representative submitted, on the basis of value determined by the stamp duty authority in respect of the subject property, the Assessing Officer proposed to make addition of the differential amount under section 50C of the Act in case of the developer/seller of the property. However, on the objections of the developer/seller, the Assessing Officer made a reference to the District Valuation Officer (DVO) to determine the value of the property and the DVO determined the value of the property at the declared sale consideration of ₹ 1.30 lakh. In this context, the learned Authorised Representative drew our attention to the order dated 28<sup>th</sup> April 2017, passed under section 50C of the Act and the final valuation report accompanying such order. The learned Authorised Representative submitted, on the basis of DVO's report, no addition under section 50C of the Act was made in case of developer/seller of the property. Further, she submitted, though, in case of assessee's wife Smt. Mamta

R. Shah, similar addition under section 56(2)(vii)(b)(ii) of the Act was contemplated by the Assessing Officer, however, after perusing the DVO's report determining the value of the property sold at ₹ 1.30 crore, the Assessing Officer ultimately completed the assessment under section 143(3) r/w section 147 of the Act without making any addition of the balance 50% of the differential amount. Thus, she submitted, the addition made should be deleted.

5. The learned Departmental Representative submitted, the DVO's report in case of the developer/seller as well as the assessment order passed in case of assessee's wife were neither available before the Assessing Officer nor before learned Commissioner (Appeals). Therefore, assessee's claim requires factual verification by the Assessing Officer.

6. We have considered rival submissions and perused the material on record. Undisputedly, the addition of ₹ 16,13,362, under section 56(2)(vii)(b)(ii) of the Act was made simply on the basis of the value determined by the stamp duty authority in respect of the flat purchased by the assessee along with his wife. As could be seen from the facts on record, as against the declared sale consideration of ₹ 1.30 crore, the stamp duty authority determined the value of the property at ₹ 1,62,26,724. However, subsequently, a reference was

made under section 50C(2) of the Act to the DVO for determining the value of the property and on a perusal of the order passed by the DVO and the final valuation report by him as placed in the paper book, it is very much clear that the declared sale consideration of ₹ 1.30 crore has been accepted as the market value of the property as on 29<sup>th</sup> June 2013. In fact, in case of assessee's wife Smt. Mamta R. Shah, assessment was re-opened under section 147 of the Act for assessing the differential amount as per the valuation done by the stamp duty authority under section 56(2)(vii)(b)(ii) of the Act. However, in the course of re-assessment proceedings, the Assessing Officer having noticed that the DVO has determined the value of the property at ₹ 1.30 crore, he completed the assessment under section 143(3) r/w section 147 of the Act vide order dated 24<sup>th</sup> October 2019, without making any addition under section 56(2)(vii)(b)(ii) of the Act. Thus, from the aforesaid facts and material on record, we are convinced that no addition under section 56(2)(vii)(b)(ii) of the Act can be made at the hands of the assessee. Therefore, the Assessing Officer is directed to delete the addition of ₹ 16,13,362, after verifying the DVO's report as well as the assessment order passed in case of assessee's wife as submitted before us. Ground raised is allowed.

7. In the result, assessee's appeal is allowed.

Order pronounced in the open Court on 28.11.2019

**Sd/-**  
**N.K. PRADHAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 28.11.2019**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai