

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

**BEFORE SHRI R.C.SHARMA, AM**

**ITA No.5279/Mum/2018  
(Assessment Year:2012-13)**

Dr. Shelley Jain 603, Bhairav Darshan CHS C.S.No.802, J.B. Marg Elphinstone (W) Mumbai – 400 013	Vs.	Dy. CIT CC-5(1) Air India Building 19 <sup>th</sup> Floor, Nariman Point Mumbai – 400 013
<b>PAN/GIR No. AESPJ7894K</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**ITA No.5280/Mum/2018  
(Assessment Year:2012-13)**

Shri Rahul Mangilal Porwal 603, Bhairav Darshan CHS C.S.No.802, J.B. Marg Elphinstone (W) Mumbai – 400 013	Vs.	Dy. CIT CC-5(1) Air India Building 19 <sup>th</sup> Floor, Nariman Point Mumbai – 400 013
<b>PAN/GIR No. AGVPP8319C</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Pramod K Parida & Ms. Sanjukta Choudhary
Revenue by	Shri Akhtar H Ansari
<b>Date of Hearing</b>	<b>11/11/2019</b>
<b>Date of Pronouncement</b>	<b>16/12/2019</b>

**आदेश / O R D E R**

PER: R.C. SHARMA, A.M.

These appeals are filed by assessee against the order of CIT(A) for A.Y.2012-13 in the matter of order passed u/s.143(3) /153 A of the Income Tax Act.

2. Both the assesses Shri Rahul Mangilal Porwal and Dr. Shelley Jain are husband and wife, and are having common grievance for the addition made by the AO u/s.56(2)(viib) of the Income Tax Act.

3. Rival contentions have been heard and record perused. Facts in brief are that a search & seizure action u/s. 132(1) of the Act was conducted in the case of Anand Rathi Group and related persons on 24-09-2013. Notice u/s.153A was issued and served on the assessee on 02-02-2015. In response to notice U/S.153A, the assessee Smt. Shelley Jain filed her return of income declaring total income of Rs.1,87,312/- on 21/04/2015. Smt. Shelley Jain is the wife of Shri Rahul Porwal, an employee of Anand Rathi Group. vide assessment order dated 10-03-2016, the income was assessed u/s. 153A r.w.s.143(3) at Rs.48,83,060/- . In the course of assessment, AO observed that Shri Rahul Porwal jointly with his wife held tenancy rights of Shop No.7, Sita Sadan, S.B. Marg, Elphinstone (W), Mumbai. The tenancy agreement was entered into on 25-01-2012 between Mr. Vijay Kunverji Shah and others as landlords and Shri Rahul Porwal and Smt. Shelly Jain as tenants. The market value for the purpose of stamp duty payment was Rs.93,91,500/- and stamp duty was paid amounting to Rs.4,69,600/- based on the market value. Questions were asked regarding this transaction in the course of search to Shri Rahul Porwal which was recorded in the statement u/s 132(4) dated 24/09/2013. In reply, Shri Rahul Porwal stated that the tenancy right was acquired from the landlord without any consideration as per the tenancy agreement. In the course of assessment proceedings, this aspect was again examined and the assessee submitted that the rent of the shop was fixed in accordance with the provision of the Maharashtra Rent Control Act, 1999. It was

further stated that there was no question of purchase of any tenancy right without consideration. The Assessing Officer did not find the explanation of the assessee to be convincing. The AO observed that the fair market value of the tenancy right as per the stamp duty value was Rs.93,91,500/- whereas as per the assessee, the six-landlords had entered into this agreement for receiving an amount of Rs.225/- per month. The AO invoked the provision of section 56(2)(vii) and brought to tax the value of the property in excess of the stated consideration. Since the property was co-owned between Shri Rahul Porwal and his wife Smt. Shelley Jain, 50% of the value was assessed in the hands of both the assessee amounting to Rs. 46,95, 750/-.

4. By the impugned order CIT(A) confirmed the action of the AO against which both the assessee are in further appeal before the Tribunal.

5. I have considered rival contentions and carefully gone through the orders of the authorities below. I had also carefully gone through the terms and conditions of the tenancy agreement entered into between assessee and the landlord which have the following clauses:-

- (i) *Vacating the premises in one month notice,*
- (ii) *Periodic payment of rent paid month wise.*
- (iii) *No power to sublet*
- (iv) *Permission required to make alteration or repair of rented premise.*

6. However, no consideration of whatsoever nature passed except payment of monthly rent to use the tenanted premises as medical clinic. Rent receipts were issued to the assessee. The stamp duty is paid based

on the lease rent as defined under the Tenancy Agreement as per Maharashtra Rent Control Act. Since, the landlords denied to bear their part of official cost, the assessee being the tenant who was in need of premises had no option but to pay from his own pocket so that his wife (the 2<sup>nd</sup> assessee) could start her practice. The said pagdi building had 8 shops. Similar payments had been made by other tenants as well. Therefore, it is not a case of receipt of immovable property free of cost as occupied by the tenant. In fact, periodic monthly rent had been paid by the tenant to the Landlords. Hence, section 56(2)(vii)(b) is not applicable under the present facts and circumstances of the case. Moreover, the rent payable in fact increased year after year.

7. Since the provisions of Section 56(2)(viib) are of deeming nature, the same should be construed strictly. Since, there was no transfer or any immovable property or rights therein, mere tenancy agreement will not give rise any right to the assessee so as to receive the said immovable property free of cost.

8. From the record I find that the rent of the shop was fixed in accordance with the provisions of the Maharashtra Rent Control Act, 1999 and there was no question of purchase of any tenancy rights without consideration. The rent per month upto May, 2013 was Rs.225/- per month and from June, 2013, it was increased to Rs.500/- per month. Section 56(2)(vii)(b) has no application as this is not a case of ownership transfer. This section seeks to restrict particular transactions which are given free of cost by related/known persons or with less consideration or without consideration which is below the market price. This is not a case of transfer of immovable property. There is no

transfer of any ownership. It was simpliciter a tenancy agreement wherein assessee was paying monthly rent for the premises as per terms of tenancy agreement. The addition was made by AO on the presumption that cash must have been paid for tenancy rights whereas no incriminating material to support this was found in the course of search nor AO has referred any evidence in support of his assuming that assessee had paid anything. It is not a case of simple assessment u/s.143(3) but it is a case of search and seizer wherein assessment was framed u/s.153A r.w.s. 143(3). However, no incriminating document was found even during search to suggest that assessee had paid any cash for obtaining ownership rights over the premises. As per records the assessee had entered into a tenancy agreement to start medical practice for Dr. Shelly Jain and to start a dental clinic. The AO has adopted circle rate for determining deemed value of consideration within the meaning of section 50C. The AO has invoked section 56(2)(vii)(b) on deemed basis. The ownership remains with the landlord, therefore, provisions of Sec.56(2)(vii)(b) is not applicable. The decision of the Assessing Officer/ is not correct since –

- (i) The assessee is not the owner of the assets nor he has received, any income even on deemed basis either u/s,45 or u/s.56.
- (ii) The tenancy agreement is not a doubtful agreement, the onus shifts on the Revenue to prove the same.
- (iii) The assessee is a salaried individual and his wife is a doctor.
- (iv) Monthly rent regularly paid has been treated as revenue payment.
- (v) After certain period, the premise will have to be vacated for handing over to land lord.

9. Moreover nothing incriminating material was found during the course of search to indicate that assessee had paid any amount to the landlord for obtaining the ownership right over the building. Accordingly,

I do not find any merit in the action of the lower authorities for invoking provisions of Section 56(2)(viib).

**10. In the result, both the appeals of the assessee are allowed.**

Order pronounced in the open court on 16/12/2019.

**Sd/-  
(R.C.SHARMA)  
ACCOUNTANT MEMBER**

Mumbai; Dated 16/12/2019  
Karuna, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**