

IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE SMC BENCH, INDORE

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.673/Ind/2019**  
**Assessment Year: 2015-16**

Shri Jaykishan Parchani S/o Shri Arjun Parchani, 123, B.K. Sindhi Colony, Indore (Appellant)	<u>बनाम/</u> Vs.	ITO-5(5) Indore (Revenue )
P.A. No.AIHPP0129L		
Appellant by	Shri Rajesh Mehta, CA	
Respondent by	Shri R.P. Mourya, Sr. DR	
<b>Date of Hearing:</b>	<b>03.03.2020</b>	
<b>Date of Pronouncement:</b>	<b>06.03.2020</b>	

**आदेश / O R D E R**

This appeal by the assessee is directed against order of the CIT(A)-I, Indore dated 06.03.2019 pertaining to the assessment year 2015-16. The assessee has raised following grounds of appeal:

- “1 . That the Ld. A.O. erred in making addition of Rs. 1,19,900/- and CIT appeals erred in confirming the same which is against the law and against the facts of the case hence needs to be deleted.*
- 2. Thai the addition made by the Ld. AO and confirmed by CIT*

*Appeals was without jurisdiction, without making reference to valuation officer and the difference between transaction value and stamp authority value was not more than 5% of transactions value hence the order passed and addition confirmed is against the law and against the facts of the case hence the addition of Rs. 119900/- needs to be deleted.*

*3. That the appellant craves leave to add, amend or withdraw any of the ground of appeal, either before or during the course of hearing of the appeal.”*

2. The only effective ground is against sustaining the addition of Rs.1,19,900/- in respect of the difference between the actual sale consideration and the stamp valuation of immovable property.

3. The facts in brief are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act 1961(hereinafter called as ‘the Act’) was passed vide order dated 23.11.2017. The assessing officer while framing the assessment observed that the assessee had purchased immovable property from Smt. Sushma Gandhe w/o Anil Gandhe, resident of 10,

R.K. Puram, Colony, Indore. The said immovable property is situated at 58, Shanti Niketan Colony, Gram Niranjapur Jila, Indore, the property was purchased at Rs. 1,60,10,100/- but the stamp valuation authority have adopted the value at Rs.1,61,30,000/-. Therefore, the assessing officer called upon the assessee as why the difference of Rs.1,19,900/- should not be treated as deemed income u/s 56(2)(ii)(b) of the Act and same may not be added. The Assessing Officer did not accept the explanation of the assessee and treated the difference as deemed income and added in the income of the assessee. Thus, assessed income at Rs.10,33,270/- as against returned income at Rs.9,13,370/-.

4. Aggrieved by this, the assessee preferred an appeal before Ld. CIT(A), who dismissed the appeal. Now the assessee is in appeal before this Tribunal.

5. Ld. counsel for the assessee reiterated submission as made in the written submission. The submissions of the assessee are reproduced as under:

*That the assessee in an individual deriving income from brokerage and rental income and declaring total income of Rs.9,13,370/- in his income tax return filed on 08/08/2015 vide acknowledgement no. 652524630080815 for AY 2015-16 (Copy of ITR-V & Computation of Income is enclosed herewith as "Annexure - A") . That the assessment of assessee was completed on 23/11/2017 for AY 2015-16 u/s 143(3) of the act and assessment was made by making addition as under:-*

<i>Particulars</i>	<i>Amounts in Rs.</i>
<i>Retuned income:</i>	<i>Rs.9,13,370/-</i>
<i>Addition to income u/s 56(2)(vii)(b)</i>	<i><u>Rs.1,19,900/-</u></i>
<i>Assessed Income</i>	<i>Rs.10,33,270/-</i>
<i>Tax demanded with interest</i>	<i>Rs.44,760/-</i>

*Against this, the assessee filed an appeal before CIT (A), Indore- 1 vide Ack No. 340893480211217 dated 21.12.2017 and the same also got dismissed vide order dated 05.03.2019. Assessee the filed an appeal before Ho,ble ITAT, Indore Bench, Indore on 04.06.2019, in regards to this assessee submits the following.*

*1. Addition on account of income u/s 56(2)(vii)(b)*

*That the assessee had purchased a property situated at 58, Shanti Niketan Colony, Gram Niranjapur Jila, Indore on 28/11/2014 from Smt. Sushma Gandhe w/o Anil Gandhe for a purchase consideration of Rs.1,60,10,100/- whereas stamp duty value mentioned on purchase deed was Rs.1,61,30,000/-. (Copy of Purchase deed is enclosed herewith as "Annexure-B")*

*That the Ld. AO during assessment proceeding treated the difference of stamp value of property and purchase value of property amounting to Rs.1,19,000/- as deemed income u/s 56(2)(vii)(b) of the Act for AY 2015-16. The said section states as under :-*

*“any immovable property,—*

*(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;*

*(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:”*

*That the section 56(2)(vii)(b) of the act is substituted by section 56(2)(x)(b) of the act by Finance Act, 2018, w.e.f. 1-4-2019 which states that :*

*“(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—*

*(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,—*

*(B) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:—*

*(i) the amount of fifty thousand rupees; and*

*(ii) the amount equal to five per cent of the consideration:]”*

*The amount which has been added to the income of assessee is merely 0.75% (Rs.1,19,900 / Rs.1,60,10,100) of the net consideration and this difference amount is negligible in amount as compared to purchase consideration amount.*

*In respect to the above section and looking at the present case the difference amount of stamp duty value and consideration was lower of second condition stated under*

section 56(2)(x)(B), that results the assessee was not liable to be taxed. Hence the wrong addition made by Ld. AO needs to be deleted.

That the amendment made under the said section 56(2)(x)(b) is beneficial to the assessee hence the said amendment is curative in nature and there are various judgement in favour of assessee in which it is held that if any amendment is curative in nature then the said amendment has retrospective effect. The reliance can be placed on the case laws as cited below:

i. Supreme Court of India in the case of Commissioner of Income-tax, Kolkata v. Calcutta Export Company [2018] 93 taxmann.com 51 (SC) held that

“, we are of the view that the amended provision of Sec 40(a)(ia) of the IT Act should be interpreted liberally and equitable and applies retrospectively from the date when Section 40(a)(ia) was inserted i.e., with effect from the Assessment Year 2005-2006 so that an assessee should not suffer unintended and deleterious consequences beyond what the object and purpose of the provision mandates. As the developments with regard to the Section recorded above shows that the amendment was curative in nature, it should be given retrospective operation as if the amended provision existed even at the time of its insertion.”

ii. Supreme Court of India in the case of Commissioner of Income-tax, v. Alom Extrusions Ltd.[2009] 185 Taxman 416 (SC) held that :

“For the afore-stated reasons, we hold that Finance Act, 2003, to the extent indicated above, is curative in nature, hence, it is retrospective and it would operate with effect from 1-4-1988 [when the first proviso came to be inserted]. For the above reasons, we find no merit in this batch of civil appeals filed by the Department which are hereby dismissed with no order as to costs.”

iii. *Supreme Court of India in the case of Allied Motors (P.) Ltd.v.Commissioner of Income-tax[1997] 91 Taxman 205 (SC) held that:*

*“Looking to the curative nature of the amendment made by the Finance Act, 1987 it can be said that the proviso which is inserted by the amending Finance Act, 1987 should be given retrospective effect and be read as forming a part of section 43B from its inception.”*

iv. *High court of Karnatak in the case of Commissioner of Income-tax, Mangalore v. Santosh Kumar Shetty[2014] 49 taxmann.com 47 held that:*

*“We are in the respectful agreement with the view expressed by the Gujarat High Court in giving retrospective operation to the said amendment notwithstanding that the parliament has expressly stated that it comes into effect from 01.04.2010. The said amendment is curative in nature. The tribunal committed an error in holding it as prospective. The substantial questions of law is answered in favour of the assessee and against the revenue.”*

*The Ld. AO also passed assessment order without obtaining valuation report from any authority for valuation of such property, which is against the law. The Ld. AO should have referred Valuation to Valuation officer (DVO) for valuation of property but Ld. AO did not do so, it is also stated under section 56(2)(vii)(b) and amended section 56(2)(x)(B), that:*

*“Provided also that where the stamp duty value of immovable property is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of this*

*sub-clause as they apply for valuation of capital asset under those sections;”*

*The said provision is also substantial as mentioned in cases mentioned below:-*

*i. High Court of Allahabad in case of Commissioner of Income-tax v. Dr. Indra Swaroop Bhatnagar [2013] 30 taxmann.com 293 (Allahabad) held that:*

*“It is further provided that where the assessee claims that the value adopted or assessed for stamp duty purposes exceeds the fair market value of the property as on the date of transfer, the Assessing Officer may refer the valuation of the relevant asset to a Valuation Officer in accordance with section 55A of the Income-tax Act.”*

*That the Ld. AO passed assessment order without considering the fact that the difference amount is negligible in amount as compare to purchase consideration amount. The said addition was confirmed by the CIT(A)-1, Indore. Hence the addition made by Ld. AO of negligible amount on face of purchased property and taxed the same needs to be deleted.*

6. Ld. D.R. opposed these submissions and supported the orders of the authorities below.

7. He submitted that the law is clear, there is no ambiguity under the law and the assessee is required to raise objections applying the guideline rates by the Stamp Valuation Authority. He should have raised such objection before assessing officer but no such objection was raised

before the assessing officer, therefore, the authorities below were justified in making the addition.

8. I have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that assessee had purchased immovable property and there was a difference of value as disclosed by the assessee and adopted by the Stamp Valuation Authority. It is also not a case where the assessee objected before the AO regarding valuation adopted by the Stamp Valuation Authority. The assessee first time made objection before the Ld. CIT(A) regarding valuation of the property. Since the Ld. CIT(A) has coterminous powers with the assessee officer, I ought to have referred the matter for valuation to the Departmental Valuation Officer( in short DVO). I, therefore, set aside this issue to the file of Ld. CIT(A) for deciding afresh after referring the matter to the DVO. The assessee

would also be at liberty to file a valuation report if so advised. Grounds raised in this appeal are allowed for statistical purposes.

9. The appeal filed by the assessee is allowed for statistical purposes.

*Order was pronounced in the open court on 06.03.2020.*

**Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER**

Indore; दिनांक Dated : 06/03/2020

*Patel/PS*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

**Assistant Registrar, Indore**