

आयकर अपीलिय अधिकरण "C" न्यायपीठ मुंबई में

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

श्री विकास अवस्थी, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
BEFORE SHRI VIKAS AWASTHY, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./ ITA No. 2252/Mum/2019

(निर्धारण वर्ष / Assessment Year 2014-15)

Poonam Ramesh Sahajwani 12, Ram Janki, 356, linking Road, Khar West, Mumbai-400 052	बनाम/ Vs.	The Income Tax Officer (IT) Ward 4(2)(1) Mumbai
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AALPS8477L		

अपीलार्थी की ओर से/ Appellant by	:	Ms. Rutaja N. Pawar, AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Vodan Raj Singh, DR

सुनवाई की तारीख / Date of hearing:	14.10.2020
घोषणा की तारीख / Date of pronouncement:	23.11.2020

आदेश / ORDER

श्री विकास अवस्थी, न्यायिक सदस्य के द्वारा

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-58, Mumbai [in short 'the CIT(A)'] dated 07.03.2019 for the Assessment year 2014-15.

2. Ms. Rutuja N. Pawar appearing on behalf of the assessee narrating the facts submitted that the assessee had booked a residential flat in a housing project "Royal Accord" developed by M/s Anuradha Real Estate Developers Pvt. Ltd during the financial year



2012-13. The total consideration at the time of booking of the flat was fixed at ₹1,05,60,000/-. The assessee paid ₹5 lacs on the date of booking vide cheque dated 14.07.2012 and paid another sum of ₹22,50,000/- by way of cheque dated 17.08.2012. To support her contentions, the learned AR referred to letter dated 2nd August 2012 from M/s Anuradha Real Estate Developers Pvt. Ltd. at page 117 of the paper book. The learned AR pointed that a perusal of allotment letter would show that the developer has acknowledged receipt of ₹27,50,000/- paid by the assessee in 2012 and has reiterated total consideration of the flat at ₹1,05,60,000/- as mentioned in the initial letter dated 2nd August, 2012. The allotment letter alongwith payment schedule for the aforesaid flat dated 9th December 2013 is at page 98-102 of the paper book. The learned AR further referred to Agreement for Sale of the flat at page 12 to 97 of the paper book. The learned AR pointed that on page 85, the developer has again acknowledged that two cheques dated 14/07/2012 & 17/8/2012 were received from the assessee. The learned AR submitted that the sale agreement was executed on 07/02/2014, the consideration was fixed during the Financial Year 2012-13 when the flat was booked. The learned AR submitted that the stamp duty valuation in August 2012 when the flat was booked was ₹98,68,000/-. The learned AR referred to the report of Registered Valuer at page 119 of the paper book. The learned AR submitted that the proviso to sub clause (b) to section 56(2)(vii) of the Income-tax Act, 1961 (hereinafter 'the Act') provides that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for



the purpose of sub clause (b). In the present case, the consideration for purchase of flat was mutually agree in August, 2012 when the assessee had booked the flat. The flat number and the total consideration was specified in the booking letter. Thus, the case of the assessee is squarely covered by the proviso to section 56(2)(vii)(b) of the Act.

3. Per contra, Shri Uodal Raj Singh, representing the Department vehemently defined the impugned order and prayed for dismissing the appeal of the assessee. The learned Departmental Representative submitted that the allotment letter of the flat was issued to the assessee in December 2003 and the registered sale agreement was executed on 7th February 2014. Thus, both the documents were executed in favour of the assessee during the financial year 2013-14 relevant to the Assessment Year 2014-15. The ownership of the flat was passed on to the assessee in the period relevant to Assessment Year 2014-15. By merely making advance payment, the assessee does not get the ownership right in the flat.

4. We have heard the submissions made by rival sides and have examined the orders of lower authorities and the documents on which the learned AR has placed reliance. The solitary issue raised by the assessee in present appeal is against invoking of the provisions of section 56(2)(vii)(b)(ii) of the Act to make the addition of ₹7,91,500/-.

5. Undisputedly, the assessee booked a flat in building 'Royal Accord' developed by M/s Anuradha Real Estate Developers (P) Ltd. in August, 2012 and paid the booking amount. This fact is evident from

the booking letter dated 2nd August, 2012 at page 117 of the paper book. A perusal of the said letter also reveals that the Flat No. 1803 on 18th Floor was proposed to be allotted to the assessee. The total purchase consideration for the flat was agreed at ₹1,05,60,000/-. Thus, consideration amount for purchase of flat was mutually agreed between the parties at the time of booking of the flat itself. The Assessing Officer invoked the provisions of section 56(2)(vii)(b)(ii) of the Act to make addition of ₹7,91,500/- i.e. the difference between the market value and purchase consideration on the date of registration of sale. Before proceeding further, it would be relevant to refer to the relevant provisions of Section 56(2) of the Act. The same are reproduced herein below: -

Income from other sources

"56. XXXXXXXX.

(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: —

(i) XXXXX

(ia) XXXXX

(ib) XXXXX

(ic) XXXXX

(id) XXXXX



(ii) XXXXX

(iii) XXXXX

(iv) XXXXX

(v) XXXXX

(vi) XXXXX

(vii) *where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009 but before the 1st day of April, 2017, —*

(a) XXXXX

(b) *any immovable property, —*

(i) XXXXX

(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:*

Provided *that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause:*

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;”

6. A bare perusal of first proviso to sub-clause (b) mandates that where the date of agreement fixing the amount of consideration of immovable property and the date of registration is not the same, the stamp duty value on the date of agreement shall be taken for the purpose of sub clause (b).

In the present case, the sale consideration of the flat was agreed on 2nd August, 2012. It is pertinent to mention here that the term ‘agreement’ used in proviso to sub-clause (b) does not necessarily mean a document with the title agreement. This would also include a first document by whatever name called, that reflects the intention of the parties mutually agreeing to fix amount of consideration. In our considered view, in the instant case the Proviso to sub clause (b) of section 56(2)(vii) of the Act gets attracted and the Stamp Duty value as on the date of booking the flat wherein the consideration was mutually agreed between the parties was fixed shall be taken for the purpose of sub clause (b). The assessee has also filed a report from the registered valuer, (page 119 of the paper book) according to which the stamp duty value of the flat in August, 2012 has been determined at ₹98,68,000/. We find merit in the contentions raised by the assessee.



7. The learned Departmental Representative has contended that the ownership of flat was transferred in Assessment Year 2014-15 upon execution of registered Agreement to sell, therefore the market value on the date of transfer of ownership should be considered. We do not concur with this submission of the learned Departmental Representative. The provision of Section 56(2)(vii)(b) of the Act does not envisage transfer of ownership for determination of stamp duty value. The determination of stamp duty value hinges on the date of agreement fixing the amount of consideration for transfer of immovable property. In the present case, the date is August 2, 2012. i.e. the date of booking the flat. At the time of booking flat the total amount of consideration was fixed between the parties. The date of transfer of title in immovable property has no significance under the provisions of Section 56(2)(vii)(b) of the Act.

8. In the result, impugned order is set aside and appeal of the assessee is allowed.

Order pronounced in the open court on Monday the 23rd day of November 2020.

Sd/-

(राजेश कुमार / RAJESH KUMAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated:23.11.2020

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS

Sd/-

(विकास अवस्थी / VIKAS AWASTHY)

(न्यायिक सदस्य / JUDICIAL MEMBER)



आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**