

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “SMC-B”, BANGALORE**

Before Shri George George K, Judicial Member

ITA No.702/Bang/2020 : Asst.Year 2017-2018

Sri.Bhoopal Shanthi Proprietor of M/s.Om Shakthi Enterprises, No.5/1 Agarwal Bhavan, 2 nd Floor, 18 th Cross, Malleshwaram Bangalore – 560 055. PAN : AYAPS2830C.	v.	The Income Tax Officer Ward 2(2)(8) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.B.T.Shetty, CA

Respondent by : Sri.Ganesh B.Ghale, Standing Counsel

Date of Hearing : 16.03.2021	Date of Pronouncement : 17.03.2021
-------------------------------------	---

ORDER

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 27.08.2020. The relevant assessment year is 2017-2018.

2. The solitary issue that is raised is regarding the addition of Rs.18,96,000 as income from other sources u/s 56(2)(vii)(b)(ii) of the I.T.Act.

3. The brief facts of the case are as follow:

The assessee is proprietor of M/s.Om Shakthi Enterprises, which is wholesaler and retailer of cement. For the assessment year 2017-2018, the return of income was filed on 31.10.2017 declaring total income of Rs.11,04,580. The assessment was taken up for scrutiny by issuance of notice u/s 143(2) of the I.T.Act. The assessment was completed u/s 143(3) of the I.T.Act vide order dated 16.12.2019 on a total income of

Rs.31,01,592. The Assessing Officer made an addition of Rs.18,96,000 u/s 56(2)(vii)(b)(ii) of the I.T.Act. The A.O. was of the view that the assessee had received immovable property (flat) for a consideration, which is less than stamp duty value of the property by an amount exceeding Rs.50,000, hence, the provisions of section 56(2)(vii)(b)(ii) of the I.T.Act has application. According to the A.O., the assessee has not been able to prove the payment of Rs.18,96,000 (Rs.8,96,000 + Rs.10,00,000) for purchase of flat from Sri.S.Babu and Sri.A.Kumar. Therefore, the same needs to be assessed in assessee's hands under the head "income from other sources", as per provisions of section 56(2)(vii)(b)(ii) of the I.T.Act.

4. Aggrieved, the assessee preferred an appeal to the first appellate authority. The CIT(A) sustained the addition made by the Assessing Officer. The the CIT(A) rejected the submissions of ledger extracts of M/s.Sunshine Metals and of sellers of Flat sellers stating that *"the ledger extract of M/s.Sunshine Metals and of sellers of Flat (Sri.S.Babu and Sri.A.Kumar) is internal documents without any supporting or corroborative data of the corresponding party, in absence of which, it cannot be considered as conclusive evidence for the claim of the appellant."* The CIT(A) also did not consider the confirmations from the builders, which was annexed in the written submission filed before him. The CIT(A) also rejected the sale of cement and TMT bar supplied based on the vehicle capacity.

5. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal. The learned Counsel for the assessee has filed a paper book *inter alia* enclosing the ledger

account of the builders, ledger account of M/s.Sunshine Metal agencies, invoices towards the supply of cement, confirmation from the builders, purchase invoices in support of sales etc. The learned AR has also filed a brief written submission which reads as follow:-

“The Appellant submit the mode of settlement of Sale Consideration to the Builders: Copy of Sale deed is attached for your perusal. Annexure A.

<i>Particulars of payment made for property (Jointly purchased)</i>	<i>Amount in Rs.</i>
<i>Amount payable towards purchase of flat adjusted against receivable from M/s Sunshine Metals (Share of Bhoopal Shanthi) – ledger account copy is enclosed Annexure B.</i>	<i>13,51,000</i>
<i>Supplied cement to the builder (flat seller) S Babu and A Kumar (share of Bhoopal Shanthi)- (Invoice and Ledger account copy is enclosed) Annexure C and Annexure D.</i>	<i>5,45,000</i>
<i>Amount paid by P Bhoopal (Assessee’s Husband) through Cheque No.927596 ‘Tamilnadu Mercantile Bank’ dated 29.11.2016 Annexure E</i>	<i>10,00,000</i>
<i>Total</i>	<i>28,96,000</i>

The appellant has sold cement to M/s. Sunshine Metals over the period of time, the appellant's receivable from M/s. Sunshine Metals was Rs. Rs,49,39,510/-. Even after several efforts of recovery of receivables failed. Hence, the appellant tried to take one of his property against the receivables. Initially the owner of M/s. Sunshine Metals agreed to give one of his flat, but later he arranged a flat at Balaji Paradise owned by Mr. S Babu and A Kumar. Initially he agreed to pay the entire consideration against our receivable and later he did not fulfill his commitments. Hence my husband Mr. P Bhoopal paid Rs.Rs.10,00,000/- vide cheque no 927596 and Rs. 8,96,000/- cheque issued by M/s Sunshine Metals on our behalf to the builders and the balance consideration of Rs.10,00,000/- was adjusted against the dues of M/s. Sunshine Metals outstanding as agreed by the builders of the flat (S Babu and A Kumar) as the flat owners owe money to M/s Sunshine Metals.

The above cheque of Rs. 8,96,000/- given by M/s.Sunshine Metals to the builder was not honored. Later to avoid the litigation, we supplied cement to the builders amounting of Rs. 5,45,000/- and

balance amount of Rs.3,51,000/- was adjusted to the M/s.Sunshine Metals receivable account in our books. Accordingly, the receivable of Rs. 13,51,000/- was reduced from M/s Sunshine Metals towards the purchase of flat.

Further, the appellant submits the Confirmation from Mr.S Babu and Mr. A Kumar (Builders, who sold the Flat to the Appellant) regarding the discharge of Sale Consideration of Flat. Annexure F.

With regard to supply of cement and steel to the builder against the sale consideration, the appellant submits that, they have sold the cements and steel from vendors and the same was directly delivered to the Builder, for whom we owe amount on account of sales and the same was adjusted by the customer against the Sale consideration. Summary Table along with Purchases and Sales Invoices in support of the sales made. Annexure G.”

6. The learned Standing Counsel supported the orders of the Income Tax Authorities.

7. I have heard rival submission and perused the material on record. The solitary issue for my consideration is the addition of Rs.18,96,000 under the head “income from other sources” by invoking the provisions of section 56(2)(vii)(b)(ii) of the I.T.Act. The assessee has produced the sale deed of the flat at pages 5 to 19 of the paper book filed by the assessee. In the said sale deed, it is clear that the total sale consideration is Rs.28,96,000. Out of Rs.28,96,000, there is no dispute with regard to the amount paid by the assessee’s husband to the builders of the flat (Sri.S.Babu and Sri.A.Kumar). The balance consideration of Rs.18,96,000 was subjected to the addition by invoking the provisions of section 56(2)(vii)(b)(ii) of the I.T.Act. It is the claim of the assessee that the assessee was supplying cement to M/s.Sunshine Metals and there was receivables outstanding from M/s.Sunshine Metals amounting to Rs.49,39,510. Out of the said receivables, M/s.Sunshine

Metals had paid Rs.13,51,000 directly to the builder and the balance amount of Rs.5,45,000 to the builder was made good by supply of cement by the assessee. A confirmation to this effect has been made by the builder and the same is placed at page 31 of the paper book. The confirmation of the builder reads as follow:-

To whomsoever it may concern

This is to confirm that, We Mr.S.Babu and Mr.A.Kumar have sold a Flat to Mrs.Bhoopal Shanthi to Mr.P.Bhoopal for Rs.28,96,000/- on 2nd December, 2016 and the consideration was received by us as mentioned below:

<i>Particulars</i>	<i>Amount in Rs.</i>
<i>Consideration from M/s.Sunshile Metals towards Flat on behalf of Mrs.Bhoopal Shanthi, since M/s.Sunshine Metals had payable to Mrs.Bhoopal Shanthi.</i>	<i>13,51,000</i>
<i>Consideration received by way of supply of cement by Mrs.Bhoopal Shanthi</i>	<i>5,45,000</i>
<i>Consideration received Mr.P.Bhoopal through Cheque No.927596 'Tamilnadu Mercantile Bank' dated 29.11.2016</i>	<i>10,00,000</i>
<i>Total</i>	<i>28,96,000</i>

Details of Flat: Sri Balaji Paradise, Flat No.402, Abbalah Reddy Layout, Kaggadasapura, KR Puram Hobli, Bangalore.

Further, we confirm that there is no due from Mrs.Bhoopal Shanthi and Mr.P.Bhoopal towards the sale of flat. Copy of sale deed is attached for your reference.

Thanking you,

*Sd/-
S.Babu (PAN:AJLPB2344J)
No.72/1, 8th Cross
New Extension, Kaggadasapura
C V Raman Nagar Post
Bangalore – 560 093.*

*Sd/-
A.Kumar (PAN:ADVTK5545L)
No.3, Abbayya Reddy Layout
4th Cross, Kaggadasapura
C V Raman Nagar Post
Bangalore – 560 093.*

Dated : 19th March, 2020.

Place : Bangalore.

7.1 From the above confirmation of the builder, it is clear that the builder was made good of the total sale consideration of Rs.28,96,000. The assessee has also produced the ledger account of the builders as well as M/s.Sunshine Metals. These documents, it is claimed by the assessee, were furnished before the CIT(A), however, they were not taken into consideration while rejecting the appeal of the assessee. When the builder has confirmed the receipt of Rs.28,96,000, the provisions of section 56(2)(vii)(b)(ii) of the I.T.Act will not have application. Since this crucial piece of evidence was never subject matter of examination by the A.O. nor the CIT(A), I am of the view that the matter needs *de novo* consideration by the A.O. Accordingly, the issue raised in this appeal is restored to the files of the A.O. The A.O. is directed to afford a reasonable opportunity of hearing to the assessee and shall dispose of the matter in accordance with law. The assessee is directed to place on record the necessary evidences in support of his case and shall not seek unnecessary adjournment in this matter. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 17th day of March, 2021.

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 17th March, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-2, Bangalore.
4. The Pr.CIT-2, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore