

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI S. RIFAUR RAHMAN (ACCOUNTANT MEMBER)**

**ITA No. 6531/MUM/2019
Assessment Year: 2014-15**

Shri Vasanth Damodar Shetty,
CTS-1178, Tiled Bunglow
Bhandarwada, Marol Village,
Andheri East,
Mumbai-400054.

PAN No. AAOPS 6790 H

Appellant

ITO-25(1)(4),
Vs. Pratyakshkar Bhavan, BKC,
Bandra,
Mumbai-400051.

Respondent

Assessee by : None
Revenue by : Ms. Usha Gaikwad, DR

Date of Hearing : 18/08/2021
Date of pronouncement : 27/10/2021

ORDER

PER S. RIFAUR RAHMAN, A.M.

The present appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-37, Mumbai [in short 'CIT(A)'] for the assessment year 2014-15 dated 29.08.2019 and arises out of assessment completed u/s 143(3) of the Income Tax Act, 1961 (in short the Act).

2. At the outset, it is noticed that none appeared on behalf of assessee in spite of calls and even no application for adjournment was moved. On the other hand, Ld. DR is present in the court and is ready with arguments. Therefore, we have

decided to proceed with the hearing of the case ex-parte with the assistance of the Ld. DR and the material placed on record.

3. The brief facts of the case are, in the assessment proceedings, the Assessing Officer observed from the submissions of the assessee and AIR information that the assessee has purchased a property which was registered on 13.12.2016 for consideration of ₹3,16,666/- and stamp duty valuation of the said property was ₹1,13,13,000/-. The assessee was asked to explain as to why provisions of section 56(2)(vii)(b) of the Income Tax Act, 1961 (in short Act) should not be invoked in his case as stamp valuation was higher than the purchased price on the date of registration. Since not satisfied with the explanation offered by the assessee and Assessing Officer completed the assessment u/s 143(3) by invoking provision of section 56(2)(vii)(b) of the Act and made an addition of ₹1,09,96,334/-.

4. Aggrieved with the above order, the assessee preferred an appeal before the Ld. CIT(A) and made detailed submission before him. For sake of clarity it is reproduced below:

1. *Section 56(2) (vi)(b) of the Income Tax Act, 1961 is not applicable in the case of the assessee as finance Act 2013 cannot have a retrospective effect and can have only prospective effect and thus the said section shall not be levied on this transaction.*
2. *Finance Act, 2013 has substituted clause (b) of section 56(2) (vi) w.e.f. 1.4.2014 providing, inter alia, that where an individual or Hindu Undivided Family receives, in any previous year, from any person or persons any immovable property-*
 - i. *Without consideration, the stamp duty value of which exceeds fifty thousand rupees (50,000/-), 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 (50,000/-), the stamp duty value of such property as exceeds such consideration.*
3. *We hereby further submit that;*
 1. *The assessee and his family are in Possession of Property since 1958. The Father of Assessee, Mr. Damodar Shetty had executed Tenancy Agreement*

for the said property on 29th July, 1960. The same has been attached in Annexure - 2.

- A. As per the Tenancy Agreement the monthly rent was agreed for Rs. 40/- per month.
- B. As per the clause 3 of the said Tenancy Agreement- "the landlady shall not be entitled to evict the tenant from the said premises until the tenant pays the rent regularly"
- C. As per the clause 4 of the said Tenancy Agreement- "all other incidence of tenancy shall follow and shall be governed by the enactments in force in respect thereof.

The above referred clause in the said Tenancy Agreement clearly gives all rights of the Tenancy to the Assessee and was effective from the date of the said Agreement.

2. Further, an Affidavit duly notarised was made by Mr. Damodar shetty stating that Mr. Vasant Shetty, the assessee, Son of Mr. Damodar Shetty, (Refer Annexure- 3 (a) and (B)) was in possession of the said property since January 1990. Also the Affidavit states that Ration card bearing name of the assessee and his family and the same is showing address of the said property since a very long time (since 1990. The Affidavit was made so that utility bills could be issued in name of assessee. Thereafter, on submission of said Affidavit, even utility bills like electricity bills, telephone bills etc. were transferred in the name of assessee by the Respective Authorities. The photocopies of the said Affidavit, Ration Card and utility bills- like Electricity Bill and Telephone - MTNL Bill, mentioned above has been attached in Annexure - 4(a), (b), (c), (d).
3. On 7th May, 2011, A "Deed of Conveyance" was made by the assessee in good faith with inherits of the property wherein the Deed itself clearly mentioned the assessee as the Pagdi Tenants since 1958. Also, the assessee in good faith paid a sum of Rs. 4,75,000/- to the mere title holders of the property and also paid the Stamp Duty of Rs. 2,12,925/- to execute the said deed on 16.03.2011 vide challan No. 18. The same has been attached in Annexure - 5
4. As referred above Conveyance Deed which was already registered on 07/05/2011, it is clearly understood that the said property was transferred in all respect in favour of the Assessee in F.Y. 2011-12 only. The Possession of the said property was with the assessee since very long time. Payment had been done and also the final legal formality had been completed in F.Y.2011-12.
5. There was a typographical error was observed in the Conveyance deed dated 07 in May, 2011, in respect of the names of inherent (Vendors) of the said property which needs to be rectified. Accordingly, fresh Conveyance Deed was again made on 30/05/2012, with the corrections of the said names of the inherent (Vendors). The deed could not be registered with the Registrar Office as the whereabouts of one of the inherent of the property could not be

known. However, a Power of Attorney was signed by the correct inherent of the property and all the rights were transferred to assessee through the said power of attorney. The said Deed of Conveyance (Annexure -6) and the said Power of Attorney (Annexure-7) is attached herewith.

6. The Assessee need to register the said Conveyance Deed with the Registrar office and accordingly his advocate had suggested a way out and both the parties had decided to go ahead with the Registration formalities and out of the Total Property-2/3 ownership inherent's were available for the registration and the assessee had decided to go ahead with the said ownership title and again Fresh Deed of Conveyance was executed on 13/12/2013 and paid differential stamp duty as per latest provisions to the tune of Rs. 5,65,650/- on 22/08/2013 (Vide Adjudication order dt. 29/11/2013) and got the said document registered with the Registrar of Stamps on 16/12/2013 vide Registration No. 12363/2013. (Refer Annexure-8).
7. The assessee, has to only rectify the typographical error in the deed, again made a Conveyance Deed on 13th of December, 2013 wherein clause 'j' to 'm' clearly states the facts of error.
8. **But the same was mere a correction of error. Extract of Clause 'j' to 'm' of the agreement dated 13th of December, 2013 is given below:**
 - "j. The name of the Vendor No. 2 herein was correctly recorded, but due to inadvertence & typographical mistake at the place of Mrs. Rena Dorothy and Mrs. Melleza Fernandes, the name of daughter & son of Vendor No. 2 herein namely Miss. Jennifer Christopher Verma & Mr. Julius Christopher Verma was mentioned, which ought have borne exactly the name of Mrs. Rena Dorothy and Mrs. Melleza Fernandes as Vendors.
 - k. The attention of no one concerned was drawn towards said typographical mistake and the said Deed of Conveyance was submitted for adjudication under Case No. Adj./A 1571/2011 on 04/02/2011 and after levy of proper stamp duty, the purchaser had paid and deposited a sum of Rs. 2,12,925/- with Collector of Stamps, Andheri under Challan No. 18 dated 16/03/2011.
 - l. With a view to get corrected & ratified the aforesaid mistake and to get mentioned the correct name of the Vendors in the Conveyance Deed, the Purchasers had requested the Vendors herein as well as to said Mrs. Melleza Fernandes to execute fresh deed of Conveyance on 30/05/2012. The copy of the same is attached herewith.
 - m. The day fresh Deed of Conveyance was executed, since then the whereabouts of Mrs. Melleza Fernandes is not known as she had left the place & area where she was residing previously.
9. The conveyance deed made on 13' of December, 2013, did not give a better title to assessee, as the assessee had become the owner of the property well before 13th December, 2013 and it was only in good faith the conveyance deed was again made.
10. Further, The Hon'ble Supreme Court recently in the STATE OF ANDHRA PRADESH & ORS Vs B. RANGA REDDY (D) BY LRs & ORS,

The top court referred to the "doctrine of adverse possession", under which a person who is not the original owner becomes the owner because of the fact that he has been in possession of the property for a minimum of 12-years, within which the real owner did not seek legal recourse to oust him. The court held that a person, who is not a title holder (original owner) but gets right over the property under the doctrine of adverse possession, is empowered to file law suits to reclaim possession in case he is dispossessed by others. "We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/ owner as the case may be against whom he has prescribed," the bench said. It said that consequence of the ruling is that "once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Limitation Act (law Which deals with maintainability of law suit on the basis of time limit) and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession'

Hence as per the above judgement of Apex court, the assessee had become the owner of the Property well before 2011; as they were resident of property since 1958.

11. *Even if the conversion of tenancy rights is considered, the same has taken place in A.Y. 2012-13. Hence, section 56(vii)(2)(b) does not apply in this case as the assessee has not transferred asset in the said Assessment Year.*

4. *The assessee have relied on the following case laws:*

a. Income Tax Officer, Dausa. Vs Satya Narain Rawat (ITAT Jaipur)

The Appeal was filed by revenue department against order of CIT (A) for A. Y. 2014- 15. The only issue involved in the appeal is that CIT(A) deleted the addition of ₹42,50,012/-made by the Assessing Officer on account of difference amount of stamp duty value and purchase value U/s 56(2) (vii)(b) of the Income Tax Act, 1981 (in short the Act). In the mentioned case, The learned CIT(A) had held that the amended provision of Section 56(2) (vi) (b) of the Act shall not be applicable in assessee's case as the assessee had taken over the possession of property on 23/3/2013, it was prior to application of above section. The assessee had claimed that he had received the property prior to 31/3/2013 by way of an agreement and substantial amount of consideration was paid by cheque, therefore, in the assessment year 2014-15, the provisions are not attracted.

b. Income-tax Officer, Wd-31(4), Kolkata. Vs Smt. Sancheta Adhikary (ITAT Kolkata)

The provisions of Section 56(2) (vi) (b)(li) of the Act are not retrospective and would apply prospectively from AY 2014-15. This was endorsed by the decision of the larger bench of the Apex Court in the case of Vatika Township Pvt. Ltd. (2014) 49 taxmann.com 249. Therefore, the amendment and

inserting of provisions of Section 56(2)(vii)(b)(ii) of the Act was prospective and would apply from AY 2014-15 and will not cover the transaction of the appellant as the same was concluded in AY 2013-14.

c. Babulal Shambhubhai Rakholia Vs Asstt. Commr. Of Income Tax, Morbi (ITAT Rajkot)

The Tribunal have relied on judgement of Gujarat High Court in case of CIT Vs. Mormasji Mancharji Vaid wherein it has been held by the Hon'ble High Court. "Capital gains-- Accrual- Transfer vis-a-vis registration of immovable property-Capital gains are deemed to be the income of the previous year in which the transfer of capital asset is effected-- Expression "effected" in this context refers to the stage when the transfer of asset becomes complete or operative in the sense that the title of the transferor is extinguished and the title of the transferee is created-Word "transfer" as defined in the Act is to be given the simple meaning as indicated-In respect of transfer of leasehold rights, transferee was put in possession and was enjoying the property as a lease-holder- Transfer could be said to have been effected on the date of execution of the conveyance document- It cannot be held that the transfer was effected on the date on which the document was copied out in the books of Registrar. "Tribunal also found that Undisputedly, Section 56(2) (vii)(b) was brought by amendment in Finance Act, 2013 which was to be made effect from 01.04.2014 and appellant contended that the date of sale is not 01.04.2013 but 30.03.2013 and in support of its contention. Appellant filed copy of sale deed on which transferor and transferee has put their signature along with dated 30.03.2013. But same sale deed was registered in the record of sub-registrar on 01.04.2014.

d. Mr. Jamil Akhtar, Kolkata Vs ACIT(IT) (TAT Kolkata)

The main contention raised by the learned counsel for the assessee before us is that the property in question was purchased by the assessee on 28.01.2011 and therefore the provisions of section 56(2) (vi)(b)(li) inserted in the statute with effect from 01.04.2014 were not applicable. He has also filed a copy of the memorandum of understanding made on 28th January, 2011 duly notarised and contended that the impugned addition made by the A.O. and sustained by the Ld. CIT(A) by relying on the provisions of section 56(2) (vi) (b)(li) is not maintainable. Also, the fact that the property in question was agreed to be purchased by the assessee on 28.01.2011 thus was accepted by the authorities below and this being so, we find merit in the contention of the learned counsel for the assessee that the impugned addition made by the A.O. and sustained by the Ld. CIT(A) by relying on section 56(2) (vi) (b)(in) cannot be sustained as the said provision was inserted with effect from 01.04.2014. We, therefore, delete the said addition and allow this appeal of the assessee.

We hereby conclude that, Also, from above case laws, inference can drawn that section 56(vi)(2)(b) being introduced through Finance Act 2013 cannot have a retrospective

effect and can have only prospective effect and thus the said section shall not be levied on this transaction for above mentioned facts.

2. Without prejudice to whatever stated above, we also state that the Provisions of the Section 48 of the Income Tax Act was not applicable since the transfer of the Tenancy Rights does not come under the purview of the said section. If we consider the same, section 50C and resultant section 56(2) (vi) (b) was not applicable to the assessee.

3. The relevant case laws has been attached herewith:

a. The Hon'ble ITAT (Mumbai) in case of Mahesh Conbuild P. Ltd has held that the application of section 50C for the transfer of tenancy rights may not be applicable and therefore directed the A.O. to delete the addition made of Rs. 98.88 000/-

b. DCIT v Tejinder Singh (2012) (50 SOT 391) (Kol) - Transfer of leasehold rights in a building do not attract provisions of S. 50C.

c. Atul G. Puranik Puranik v. ITO (132 ITD 499) (Mum) - Leasehold rights in plot of land is not land or building or both'

We humbly submit that the assessee should be granted justice and should not be penalized and the applicability of the section 56(2) (vi)(b) should be deleted."

5. After considering the submissions of the assessee, the Ld. CIT(A) sustained the addition made by the Assessing Officer with the observation that the amendment made in section 56 of the Act by inserted provisions of section 56(2)(vii)(b) of the Act was prospective and is applicable to the present assessment year. The copy of the registered deed of conveyance clearly mentions that the deed was effective from 13.12.2013 which falls within this assessment year and hence the AO has correctly applied the law.

6. Aggrieved, the assessee is in appeal before us raising following grounds of appeal :

- 1. On the facts and circumstances of the case and in law the learned Commissioner of Income Tax - Appeals (CITA) erred in not adjudicating the ground raised by the Appellant in his appeal that "the learned AO has passed the order without considering the submissions made by the Appellant vide letter dated 8.12.2016.*

WITHOUT PREJUDICE TO ABOVE

2. *On the facts and circumstances of the case and in law the learned CITA erred in not appreciating a fact that while finalising the assessment order, the learned Assessing Officer had not considered the reply to Show Cause Notice given by the Appellant vide letter dated 7.12.2016 and 8.12.2016. The action of the learned AO is in violation of principles of natural justice.*
3. *On the facts and circumstances of the case and in law the learned CITA erred in not appreciating a fact that the rented property was purchased during the F.Y. 2011-12 for an agreed consideration and the amended provisions of Sec. 56(2) (vi) (b) were applicable w.e.f. 1.4.2014. The addition made is bad in law and be deleted.*
4. *On the facts and circumstances of the case and in law the learned CITA erred in not appreciating a fact that the date of fixing the amount of consideration for transfer of right, title and interest was 7th May, 2011, which period is outside the purview of amended section.*
5. *On the facts and circumstances of the case and in law the learned CITA erred in not appreciating a fact that the valuation considered by the Stamp Authorities for the purpose of charging Stamp Duty was by ignoring following important factors;*
 - *The right of tenants protected under Maharashtra Rent Control Act, 1999*
 - *encroachment on the land*
 - *unbuildable size of the plot*
 - *adjoining Nallah and*
 - *no direct road access to the property*

WITHOUT PREJUDICE TO ABOVE

6. *On the facts and circumstances of the case and in law the Learned Assessing Officer [AO] has erred in making the entire addition in the name of the Appellant without appreciating a fact that the property was jointly purchased by the Appellant and his wife. The entire addition made in the name of the Appellant is bad in law and is liable to be deleted.*
7. Considered the material submitted before us in the appeal memo, we noticed that the Ld. CIT(A) and the Assessing Officer treated the transactions entered by the assessee to register the property as purchase transactions overlooking complete facts in this case. Further, we noticed from the record that the assessee and family are in possession of this property since 1958 and the deed of conveyance was made by the assessee in good faith with inheritance of the property wherein the deed itself it clearly mentioned that the assessee as “the Pagdi Tenants” since 1958. From the facts on record, we noticed that the tax authorities have not appreciated the facts on record properly and made the addition without proper verification. Therefore, we deem it fit and appropriate

to remit this issue back to the file of Assessing Officer to make the assessment *de novo*. Accordingly, grounds raised by the assessee is allowed for statistical purposes.

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

Order pronounced in the open Court on 27/10/2021.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 27/10/2021

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai