

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "F", MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

**ITA No. 1606/MUM/2020
Assessment Year: 2014-15**

Virchand Lakhamshi Gada, 501, Ajay Shopping Centre, T.H. Kataris Marg, Matunga (West), Mumbai - 400016 PAN: AAEPG5432C	Vs.	Income Tax Officer 21(3)(5), Piramal Chambers, Lalbaug, Parel, Mubmai - 400012
(Appellant)		(Respondent)

Assessee by : Shri Dinit Karania (AR)

Revenue by : Shri S.N. Kabra (DR)

Date of Hearing : 11/11/2021

Date of Pronouncement: 24/11/2021

ORDER

PER SAKTIJIT DEY, JM

This is an appeal by the assessee against order dated 09.03.2020 of learned Commissioner of Income Tax (Appeals)-33, Mumbai for the assessment year 2014-15.

2. Though, the Registry has pointed out the delay of 46 days in filing the appeal. However, due to extension of period of limitation because of pandemic situation, there is no delay, as such, in filing the appeal. In view of the aforesaid, we admit the appeal for adjudication on merit.

3. The dispute in the present appeal is confined to addition made of Rs. 58,33,000/- under section 56(2)(vii)(b) of the Act.

4. Briefly the facts are, the assessee is a resident individual. For the assessment year under dispute, assessee had filed his return of income on 31.12.2014 declaring total income of Rs. 2,09,470/-. In course of assessment proceedings, based on AIR information the Assessing Officer (AO) noticed that the assessee has sold an immovable property. Thus, he called upon the assessee to furnish the details of such transaction. On verifying the sale agreement, he found that though the property was purchased at declared consideration of Rs. 16,00,000/-, however, for the purpose of stamp duty, the stamp duty authority has valued the property at Rs. 1,18,33,000/-. Thus, he called upon the assessee to explain why the difference between the declared sale consideration and the value determined by stamp duty authority should not be added under section 56(2)(vii)(b) of the Act. Though, the assessee objected to the proposed addition, however, rejecting the submissions of the assessee, learned AO added back the differential value of Rs. 58,33,000/- to the income of the assessee. The addition so made was also sustained by learned Commissioner (Appeals) while deciding assessee's appeal. While doing so he relied upon a decision of the Tribunal as referred to in the order.

5 Learned Counsel for the assessee submitted, the assessee has received the allotment letter of the property in the year 2009 and at that point of time marketing value of the property was Rs. 60,00,000/-. He submitted, a major part of the purchase cost amounting to Rs. 40,00,000/- was paid in the year 2009. Thus, he submitted, only because the sale of property was registered in 2013 after a gap of 5 years, the value as on the date of registration cannot be considered for making the addition. He submitted, the decision relied upon by

learned Commissioner (Appeals) is factually distinguishable hence, not applicable to assessee's case.

6. Learned Departmental Representative strongly relied upon the observations of the Departmental Authorities.

7. We have considered rival submissions and perused the materials on record. The fact that the assessee has booked the flat in the year 2009 and has paid a major part of the purchase cost has neither been disputed nor denied by the departmental authorities. It is a fact that registration of the flat was made in the financial year relevant to the assessment year under dispute, which is more than 5 years from the date of booking of the flats. Therefore, there must be enhancement in the market value of the property due to lapse of time between the date of booking and date of registration of the property. As per the first proviso to section 56(2)(vii)(b) of the Act, where there is a delay in registration of the property qua the date of agreement, the value of the property on the date of agreement has to be considered. In the facts of the present appeal, though, there is no sale agreement earlier, however, the fact that the assessee has booked the property earlier and has paid a major part of the purchase cost remains undisputed. That being the case, it would be covered under the first proviso to section 56(2)(vii)(b). As regards, the decision relied upon by learned Commissioner (Appeals), on careful examination, we have found it to be factually distinguishable as in the said case, the assessee had paid a very normal amount on the date of booking/allotment of the property. Therefore, the said decision would not be applicable. Thus, in view of

the aforesaid, we delete the addition made by the AO and sustained by learned Commissioner (Appeals). Grounds are allowed.

7. In the result, appeal is allowed.

Order pronounced in the open court on 24th November, 2021.

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 24/11/2021

Alindra, PS

आदेश 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,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai