

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

**BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER) AND
SHRI PRADIP KUMAR KEDIA (ACCOUNTANT MEMBER)**

**ITA No. 580/MUM/2021
Assessment Year: 2015-16**

Parasmal Champalal Bamboli,
C/o Sarvodaya Vastra Bhandar,
Ramgiri Building, Near Natraj
Cinema Chembur,
Mumbai-400071.

PAN No. AAFPB 2058 Q
Appellant

Pr. Commissioner of Income Tax-27
Room No. 401, 4th floor, Tower No.
Vs. 6, Vashi Railway Station,
Commercial complex, Vashi,
Navi Mumbai-400703.

Respondent

Assessee by : Mr. Ajay Singh, Advocate
Revenue by : Ms. Jacinta, CIT-DR

Date of Hearing : 24/01/2022
Date of pronouncement : 27/01/2022

ORDER

PER PRADIP KUMAR KEDIA, AM

The captioned appeal has been filed at the instance of the assessee seeking to impugn the revisional order dated 17.03.2021 passed u/s 263 of the Act by the Pr. Commissioner of Income Tax-27, Mumbai (in short 'Pr. CIT') whereby the assessment order dated 31.07.2017 passed u/s 143(3) is brought to be revised.

2. The assessee is an individual and a partner in some partnership firms. The return filed by the assessee for assessment year 2015-16 was assessed u/s

143(3) of the Act vide order dated 13.01.2017 whereby the total income of the assessee was assessed at ₹11,56,959/- as against return income of ₹9,58,920/. After the completion of assessment, the Revisional Commissioner/Pr. CIT called for the assessment records and opined that the impugned assessment order so passed is erroneous in so far as prejudicial to the interest of the Revenue. The Pr. CIT accordingly issued show cause notice dated 04.03.2021 to the assessee which is extracted as under:

“On perusal of case records, it was noticed that, you have purchased a property for a consideration of Rs.1,41,00,000/- where as the market value of the same was Rs.1.98,60,000/-. Since you have purchased the property in a lesser value adopted by the Stamp Duty Authorities violating the provisions of section 56(2) (vii) (b) of Income Tax act, 1961 (the "Act"). Further you have made advance payment of Rs.30,00,000/- to the builder in F.Y. 2011-12. However, the preamble of the purchase deed shows that the building plan of the project wherein you have made investment was sanctioned vide IOD No. CE/6607/BPES/AM/ dta.06.03.2013 and commencement certificate was issued only on 06.03.2013. Since the permission to develop the property was given in F.Y 2012-13, your claim of advance payment to acquire the property is incorrect. These issues remained unverified.

Further it was noticed that, you have purchased immovable property being Flat No. 3001, Srinivas, Plot No. 433, R.C. Marg, Chembur, Mumbai-71 for a consideration of Rs.1,41,00,000/- and paid stamp duty, registration charges, etc. of Rs.10,24,460/- for the aforesaid property. Thus the total investment comes to Rs.1,51,24,460/-. As regards the sources of this investment, you have submitted that you have sold your old property for a consideration of Rs. 80,00,000/-. However, no documentary evidences is provided for remaining investment of Rs.71,24,460/- (Rs.1,51,24,600/- less Rs.80,00,000/-). For want of any documentary evidences regarding sources of investment, the same remained unexplained and thus required to taxed as per applicable provisions of the Act.

Therefore, it is considered that the order passed is erroneous in so far as it is prejudicial to the interest of revenue within the meaning of section 263 of the Income Tax Act 1961.

You are therefore, allowed an opportunity of being heard and show-cause as to why an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment within the meaning section 263 of the Income Tax Act may not be passed in your case.

In this connection you are required to furnish your explanation on or before 10.03.2021 through ITBA/e-mail along with complete details and documentary evidences. In case of non-compliance to this notice, it will be presumed that you have no objection to the proposed revision of the assessment order passed by the Assessing Officer as discussed above."

2.1 The assessee filed reply in response to the show cause notice which is quoted in the revisional order. The Pr. CIT however, did not find merit in the defense raised on behalf of the assessee to the assessment order. The Pr. CIT concluded that no inquiry has been made by the Assessing Officer with reference to the applicability of section 56(2)(vii)(b) of the Act and the income has been assessed in violation of section 56(2)(vii)(b) of the Act. It was further alleged that the source of investment in the property to the extent of ₹10,24,460/- has remained un-explained in the course of the assessment for which requisite inquiries were not carried out by the Assessing Officer. On these broader reckonings, the Pr. CIT concluded that the assessment order passed is erroneous in so far as prejudicial to the interest of the Revenue and thus liable to be set aside to the Assessing Officer. The Pr. CIT accordingly set aside the assessment order with a direction to pass fresh assessment order in terms of directions issued in the revisional order after giving opportunity to the assessee.

3. Aggrieved, the assessee preferred an appeal before the Tribunal.

4. When the matter was called for hearing, the Ld. counsel for the assessee submitted at the outset that the relevant facts pertaining to issues raised in revisional order were fully disclosed in the course of the assessment proceedings and requisite inquiries were made as required in the context and hence the allegation of the Pr. CIT that the assessee order is erroneous in so far

as prejudicial to the interest of the Revenue is wholly incorrect and without any sound basis. The Ld. counsel to begin with, took us through the Paper Book and submitted that the assessee in the instant case has purchased residential property for consideration of ₹1,41,00,000/- for which stamp duty and registration charges to the tune of ₹10,10,100/- was paid during the financial year 2014-15 relevant to assessment year 2015-16 in question. However, the payment of ₹80,00,000/- was made way back in financial year 2011-12 & 2012-13 source of which was sale of residential flat in FY 2011-12. A loan of ₹61,00,000/- was also availed from State Bank of India Chembur Branch for this purpose. Remaining amount at ₹10,24,460/- was sourced out of Andhra Bank Chembur Branch belonging to partnership firm Chaurang Developers. The Ld. counsel pointed out that as per letter dated 21.03.2017 (page No. 24 of the Paper Book), the relevant facts were brought to the notice of the AO in pursuance of inquiries made towards purchase of property as per notice dated 29.07.2016 and 03.03.2017.

4.1 The Ld. counsel pointed out that the Assessing Officer in the 'limited scrutiny' in the instant case was *inter alia* concerned about purchases of property and inquiries towards source of payment of purchases have been naturally carried out. The Ld. counsel for the assessee further pointed out that the substantial payments have been made in the financial year 2011-12 in pursuance of letter of intent dated 27.09.2012 and allotment letter dated 28.09.2012. The allotment was thus carried out in FY 2012-12. The Registration however was deferred and has been carried out in financial year 2014-15 relevant assessment year 2015-16. It would thus not be correct to compare the purchase consideration with the corresponding market value applicable to

assessment year 2015-16 in question when the payments have been made in financial year 2011-12 when the market value was substantial lower at ₹1,30,32,332/- as against the market value of ₹1,98,60,000/- prevailing in financial year 2014-15 adopted by the Pr. CIT. It was contended that provisions of section 56(2)(vii)(b) has no application in the facts of the case where the actual purchase consideration of ₹1,41,00,000/- is higher than the deemed consideration of ₹1,30,32,332/- with reference to financial year 2012-13 when the substantial payment was already made and the allotment of the property in favour of the assessee was obtained.

4.2 It was thus contended that in the absence of the applicability of section 56(2)(vii)(b) in the facts of the case, no error *per se* in the order of the AO can be perceived in the light of the decision of Co-ordinate Benches in (i) *Siraj Ahmed Jamalbhai Bora v. ITO Ward-1(3)(1)* [ITA No. 1886/M/2019 dated 28.10.2020, (Mum) (Trib.), (ii) *Radha Kishan Kungwani v. ITO Ward-1(2)*, ITA No. 1106/JP/2018 dated 19.08.202, 185 ITD 433 (Jaipur-Trib.) and (iii) *Sanjay Dattatraya Dapodikar v. ITO Ward 6(2)*, Pune, ITA No. 1747/PN/2018 dated 30.04.2019 (Pune) (Trib.).

4.3 The Ld. counsel asserted that the action of the Pr. CIT, on the contrary, suffered from error of law in as much as he has adopted the market value of the property with reference to financial year 2014-15 when the purchase document were registered instead of financial year 2011-12 when the substantial payment were actually carried out and allotment of the property was made in favour of the assessee. The Ld. counsel thus submitted that in the

absence of any error committed by the AO, the action of the Pr. CIT under section 263 is devoid of any sound basis and thus bad in law.

5. Per contra, the Ld. CIT-DR for the Revenue pointed out that the inquiries made by the AO does not show any reference to the provisions of section 56(2)(vii)(b) of the Act and the value of purchase consideration shown by the assessee has not been tested on the touch stone of the aforesaid provision. No inquiry in this regard has been made by the AO. The Assessing Officer has summarily adopted the purchase consideration as declared by the assessee without comparing it with the corresponding stamp duty value as expected u/s 56(2)(vii)(b) of the Act. In the absence of inquiry, the order of the AO did suffer from the vice of error which is sought to be rectified by the Pr. CIT u/s 263 of the Act and thus such revisional action cannot be faulted. It was next submitted that source of funds purportedly received from partnership firm has not been explained in the course of the assessment proceedings and therefore, the assessment order passed was rightly set aside for making required inquiries in terms of powers vested u/s 263 of the Act read with Explanation 2 thereto.

6. We have carefully considered the rival submissions and perused the revisional order and material placed on record. On a perusal of the facts and circumstances of the case as well as case laws referred on behalf of the assessee, we firstly observe that AO has carried out specific inquiry with regard to source of funds invested in purchase of property under question. The replies of the assessee suggests that the relevant facts towards the source of purchase of the property were placed before the AO in response to the specific inquiries. It is also a matter of record that the property in question was booked for

purchase/acquisition in assessment year 2012-13 and substantial payment were made in that year. The assessee vide letter dated 17.08.2016 and 21.03.2017 is stated to have filed the complete details purchase agreement, schedule of payments, source of investment, details of AY 2012-13 position etc. It is the case of the assessee that the purchase consideration of ₹1,41,00,000/- exceeds the stamp duty value of ₹1,30,32,332/- when seen with reference to the financial year 2011-12 when the allotment was actually carried out and certain rights were vested with the assessee. It is further case of the assessee that the stamp duty value of ₹1,98,60,000/- adopted by Pr. CIT with reference to FY 2014-15 (AY 2015-16) for the purposes of applicability of section 56(2)(vii)(b) is wholly incorrect, having regard to the fact that the allotment of the property was made in favour of the assessee in financial year 2011-12 and substantial payments were also made in that year. It is thus the conclusion of the assessee that the Pr. CIT has invoked the provisions of section 56(2)(vii)(b) of the Act for making additions of differential amount between stamp duty valuation and purchase consideration paid by the assessee ignoring the fact that the allotment was made much earlier to the actual registration in the assessment year 2015-16 in question and hence comparison of the value need to be carried out with reference to AY 2012-13.

6.1 It may be pertinent to note here that the proviso to section 56(2)(vii)(b) of the Act provides that where the date of agreement fixing the amount of consideration for transfer of immovable property is prior to date of registration and where consideration or part thereof is paid by the cheque, in such a situation, the stamp duty value on the date of agreement may be taken. In

essence, the date of allotment, in such cases, shall prevail over the date of actual registration.

6.2 The case of the assessee for any inapplicability of section 56(2)(vii)(b) with reference to AY 2012-13 instead of AY 2015-16 in the factual matrix is vindicated by the judicial endorsement in the case of *Siraj Ahmed Jamalbhai Bora* (supra), *Radha Kishan Kungwani* (supra) and *Sanjay Dattatraya Dapodikar* (supra). Therefore, where the action of the AO is in tune with law, the specific inquiry or otherwise in this regard would be irrelevant.

7. It is manifest that the Pr. CIT proceeded to allege under-assessment with reference to section 56(2)(vii)(b) on the misconception of law in the given set of facts. It is demonstrated on behalf of the assessee that there is no scope for making additions with reference to deeming provisions of section 56(2)(vii)(b) when the stamp duty value is lower *qua* the actual consideration determined at the time of allotment of property in question. In our view, the Pr. CIT has proceeded to disturb the assessment on totally irrelevant consideration and without showing any error in the assessment order *per se*.

8. Similarly, the source of fund to the extent of ₹10,24,460/- is also relatable to the money transferred from partnership firm for which the explanation was furnished by way of replies in the course of the assessment. The justification propounded on behalf of the assessee is thus supportable by facts before us too. Thus, cumulative conditions of existence of error and prejudice to the Revenue are clearly not satisfied in the instant case. The assumption of jurisdiction u/s 263 by the Pr. CIT is thus found to be without authority of law and hence bad in

law. Consequently, the impugned revisional order passed u/s 263 is set aside and quashed.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 27/01/2022.

**Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER**

**Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 27/01/2022

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,

(Sr. Private Secretary)
ITAT, Mumbai