

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH  
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
&**

**SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.5535/Mum/2019  
(Assessment Year : 2014-15)**

Shri Devsharan Shivnath Sharma Shop No.01, R.K.Compound Opp. Kajupada New Link Road, Behram Baug Jogeshwari (W) Mumbai – 400 102	Vs.	ITO 31(1)(4) Income Tax Office Kautilya Bhavan Bandra-Kurla Complex Bandra (E) Mumbai – 400 051
<b>PAN/GIR No.AZPPS8045P</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	None
Revenue by	Shri T. Shankar
<b>Date of Hearing</b>	<b>19/05/2022</b>
<b>Date of Pronouncement</b>	<b>19/05/2022</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.5535/Mum/2019 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-42, Mumbai in appeal No.CIT(A)-42, Mumbai/10006/2017-18 dated 13/03/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 29/12/2016 by the Id. Income Tax Officer 31(1)(4) (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the addition made by the Id. AO in the sum of Rs.60,91,500/- u/s.56(2)(vii)(b) of the Act.

3. None appeared on behalf of the assessee. Notice issued to the assessee had been returned unserved with remarks "left" by the postal authorities. Hence, we proceed to dispose of this appeal by hearing the Id. DR after perusing the materials available on record. We find that assessee is an individual earning income from business and profession and income from other sources. We find that assessee had purchased two immovable properties at Rs.40,00,000/- each on 18/03/2014 during the year under consideration whereas, the stamp duty value of those two properties were Rs.71,94,000/- and Rs.68,77,500/- respectively. Since the value determined by the stamp duty authorities were higher than the actual consideration disclosed in the purchase document, the Id. AO proceeded to make addition u/s.56(2)(vii)(b) of the Act in the sum of Rs.60,71,500/- (Rs.71,94,000 + 68,77,500/- - Rs.40,00,000/- - 40,00,000/-). The assessee pleaded that the property which is bought by the assessee is located in a slum area and the property was bought on "as is where is basis" and hence, the normal guideline value as is fixed by the stamp duty authorities could not be fetched for the said property and accordingly, it had the benefit of buying it at a lesser price. By this submission, the assessee had disputed the value determined by the stamp duty authorities. The same point was reiterated by the assessee before the Id. CIT(A). The assessee alternatively pleaded before the Id. CIT(A) that in order to determine the fair market value of the properties, the Id. AO ought to have made reference to the Id. Departmental Valuation Officer (DVO) in accordance with the proviso to Section 56(2)(vii)(b) of the Act. We find that the Id. CIT(A) had held that

assessee had not made any request to the Id. AO to refer the matter to the Id. DVO. This, in our considered opinion, is incorrect in view of the fact that even if the assessee had not requested the Id. AO to refer the matter to the Id. DVO for the purpose of determination of fair market value of the property, still the Id. AO is duty bound to refer the matter to the Id. DVO, the moment, the stamp duty value is disputed by the assessee in the capacity of purchaser. Reliance in this regard is placed on the decision of the Hon'ble Calcutta High Court in the case of Sunil Kumar Agarwal vs. CIT reported in 225 Taxman 211 wherein the operative portion is reproduced hereunder:-

*“7. We have already set out hereinabove the recital appearing in the Deeds of Conveyance upon which the assessee was relying. Presumably, the case of the assessee was that price offered by the buyer was the highest prevailing price in the market. If this is his case then it is difficult to accept the proposition that the assessee had accepted that the price fixed by the District Sub Registrar was the fair market value of the property. No such inference can be made as against the assessee because he had nothing to do in the matter. Stamp duty was payable by the purchaser. It was for the purchaser to either accept it or dispute it. The assessee could not, on the basis of the price fixed by the Sub-Registrar, have claimed anything more than the agreed consideration of a sum of Rs.10 lakhs which, according to the assessee, was the highest prevailing market price. It would follow automatically that his case was that the fair market value of the property could not be Rs.35 lakhs as assessed by the District Sub Registrar. In a case of this nature the assessing officer should, in fairness, have given an option to the assessee to have the valuation made by the departmental valuation officer contemplated under Section 50C. As a matter of course, in all such cases the assessing officer should give an option to the assessee to have the valuation made by the departmental valuation officer.*

*8. For the aforesaid reasons, we are of the opinion that the valuation by the departmental valuation officer, contemplated under Section 50C, is required to avoid miscarriage of justice. The legislature did not intend that the capital gain should be fixed merely on the basis of the valuation to be made by the District Sub Registrar for the purpose of stamp duty. The legislature has taken care to provide adequate machinery to give a fair treatment to the citizen/taxpayer. There is no reason why the machinery provided by the legislature should not be used and the benefit thereof should be refused. Even in a case where no such prayer is made by the learned advocate representing the assessee, who may not have been properly instructed in law, the assessing officer, discharging a quasi judicial function, has the bounden duty to act fairly and to give a fair treatment by giving him an option to follow the course provided by law.*

9. For the aforesaid reasons, the order under challenge is set aside.

10. The impugned order including orders passed by the CIT(A) and the assessing officer are all set aside. The matter is remanded to the assessing officer. He shall refer the matter to the departmental valuation officer in accordance with law. After such valuation is made, the assessment shall be made de novo in accordance with law.”

3.1. Though the aforesaid decision is rendered in the context of Section 50C of the Act i.e. from the perspective of seller of property, the same analogy would apply to proviso to Section 56(2)(vii)(b) also which is from the perspective of the purchaser. Hence, respectfully following the aforesaid decision, we deem it fit and appropriate to remand this issue to the file of the Id. AO with a direction to refer the matter to the Id. DVO for determination of fair market value of the property purchased by the assessee and decide the issue in accordance with law. Accordingly, the ground raised by the assessee is allowed for statistical purposes.

**4. In the result, appeal of the assessee is allowed for statistical purposes.**

Order pronounced in open Court on 19/05/2022.

**Sd/-**  
**(PAVAN KUMAR GADALE)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 19/05/2022  
KARUNA, sr.ps

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**