

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**" C " BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**And**

**Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 1011/AHD/2019

निर्धारण वर्ष/Asstt. Year: 2015-2016

Satischkumar Asamal Mehta, 3, Saras Society, Nr. Sindhi High School, Usmanpura, Ahmedabad-380013.  <b>PAN: ABIPM7789B</b>	Vs.	I.T.O., Ward-1(2)(4), Ahmedabad.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Shri P.B. Parmar, A.R
Revenue by :	Shri V.K. Singh, Sr. DR

सुनवाई की तारीख / **Date of Hearing** : **25/04/2022**  
घोषणा की तारीख / **Date of Pronouncement**: **27/05/2022**

**आदेश / O R D E R**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-10, Ahmedabad, dated 08/05/2019 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2015-2016.

2. The assessee has raised following grounds of appeal:

1. *The learned CIT(A) has erred in law and on facts in confirming the action of AO of making an addition of Rs.73,40,545/- u/s.56(2)(vii)(b) of the Act.*
2. *Alternatively and without prejudice, both the lower authorities erred in law and on facts in considering amount of part payment of sale consideration to make the addition as against the agreement amounts.*
3. *Both the lower authorities erred in stepping into the shoes of the seller by holding that such a sale is against standard practice.*
4. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*
5. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest u/s.234A7B/C of the Act.*
6. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in initiating penalty u/s.271(l)(c) of the Act.*
7. *The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.*

3. The inter connected issue raised by the assessee in ground Nos. 1 to 4 of the appeal is that the learned CIT-A erred in confirming the addition of Rs. 73,40,545/- under section 56(2)(vii) of the Act.

4. The brief fact are that the assessee is an individual and derived income from Salary, House Property, Capital Gain and other sources. The assessee during the year purchased 4 properties from M/s Jinal Properties Pvt. Ltd. The details of property, deed executed, purchase consideration, stamp value of the property stands as under:

Sr. No.	Property	Deed / Dale	Sale Consideration (Rs.)	Jantri Valuation (Rs.)	Stamp Duly Paid(Rs.)
1	Shed Ho. K-15 to K-18	KAL- 1490/20 15 04/03/2018	41,00,000/-	38,67,226/-	2,01,000/-

2	Shed No. K-01 to K-04	KAL-1485/2015 04/03/2015	41,00,000/-	42,55,674/-	2,08,600/-
3	Shed No. K-11 to K-14	KAL-1487/2015 04/03/2016	41,00,000/-	38,67,226/-	2,01,000/-
4	Shed No. L-12 to L-14	KAL-1489/2015 04/03/2015	30,75,000/-	29,00,419/-	1,05,700/-

4.1 The assessee during the assessment proceeding submitted that the payment for property purchased vide deed number 1490/50/2015 for Rs. 41 Lacs is pending. Likewise payment for property purchase vide deed number 1489/50/2015 and 1485/51/2015 were made in part only. In aggregate out of total amount of Rs 153.75 Lacs only an amount of Rs. 75.5 Lacs was paid whereas amount of Rs. 78.25 Lacs was pending in the year under consideration. The details of purchase consideration and amount paid during the year stand as under:

No.	Deed No.	Purchase Amt.	Payment	Date of payment	Source of payment	Stamp duty paid
1	1487/50/2015	41,00,000/-	41,00,000/-	04/03/2015		201,000/-
2	1489/50/2015	30,75,000/-	14,00,000/-	04/03/2015		150,700/-
3	1485/51/2015	41,00,000/-	20,50,000/-	17/03/2015		201,000/-
4	1490/50/2015	41,00,000/-	Pending	N.A	N.A	201,000/-

4.2 The reason of pending payment and part payment is on account of some dispute relating to construction work which were incomplete. Accordingly it was agreed that pending payment will be made after completion of pending work. The assessee in support his contention filed the confirmation from M/s Jinal Properties Pvt Ltd. stating that the construction of the properties were not completed, hence payment is pending and copy of bank statement showing part payments.

4.3 The assessee with regard to sources of payment submitted that the same was financed by way of unsecured loan received from Shri Sawaliya Traders and submitted copy of loan confirmation from lender.

4.4 Further, with respect to difference in stamp valuation viz-a-viz value as per deed, the assessee submitted that there were marginal difference of 3% in case of one property only. Therefore, in view of judgment of Hon'ble SC in case of C.B. Gautam v. Union of India reported in 199 ITR 530 where it was held that 'variation up-to 15% is with tolerable limit', no adverse inference should be drawn.

4.5 However the AO disbelieved the submission of the assessee by observing that in order to carry out the cross verification, notices were issued under section 133(6) of the Act to the vendors namely Jinal Properties Pvt. Ltd through post and email, but the same were returned as unserved. Inspector was also deputed and it was found that at the given address some other concerns were working. As such the vender Jinal Properties left the place one year ago. The assessee was asked to produce the director or key person of Vender Company but he failed to do so. Therefore, in the absence of cross verification, the contention of the assessee is not acceptable that deed was executed without making whole amount of consideration. Accordingly the AO held that these 4 properties was transferred to the assessee for consideration of 75.5 Lacs only whereas the Jantari value of the same stand at Rs. 1,48,90,545/- only. Thus the AO treated the difference amount of Rs. 73,40,545/- as income of the assessee under the provision of section 56(2)(vii)(b) of the Act and added to the total income of the assessee.

5. On appeal, the learned CIT-A confirmed the order of the AO.

6. Being aggrieved by the order of the learned CIT-A the assessee is in appeal before us.

7. The learned AR before us with regard to difference in value of property as per deed and value adopted for the purpose of stamp duty reiterated his submissions as made during the assessment proceeding. In addition the learned AR submitted the entire basis of addition was based on the presumption of the AO that

the pending amount were not paid to the Vender Company thus the actual consideration was only the amount paid during the year under consideration. However, the outstanding amount was paid in the subsequent assessment year. The learned AR in support of his contention before us submitted additional document in form of copy of certificate from vendor, ledger copy of subsequent year, ledger copy of the assessee in the book vendor and bank statement. Accordingly the Id. AR claimed that the basis of making addition itself do not stand. Therefore, the order of the authorities below need to be quashed.

8. On the other hand learned DR vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the assessee has not paid the full consideration against the purchases of the properties. Therefore, the difference between the amount agreed for the purchase consideration and the actual payment was treated as income from other sources of the assessee under the provisions of section 56(2)(vii)(b) of the Act. However, we note that learned AR for the assessee before us has filed the additional evidences demonstrating that the payment has been made to the vendor of the property in the subsequent year. According to the assessee, the delay has occurred in making the payment due to some dispute as well property was incomplete at the relevant point of time. These are the additional evidences filed before us 1<sup>st</sup> time which requires to be considered at the level of the AO. According to us, these additional documents go to the root of the matter and therefore we admit the same in terms of Rule 29 of ITAT Rules. However, in the interest of justice and fair play we are setting aside the issue to the file of the AO for fresh adjudication as per the provisions of law and in the light of the additional document filed by the assessee. Hence the ground of appeal of the assessee is allowed for the statistical purposes.

9.1 Other issue raised by the assessee are either consequential, premature to decide or general in nature. Hence the same are dismissed accordingly.

10. In the result appeal of the assessee is partly allowed.

**Order pronounced in the Court on 27/05/2022 at Ahmedabad.**

**Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated **(True Copy)**  
27/05/2022  
*Manish*