

आयकर अपीलिय अधिकरण, कोलकाता

पीठ 'सी-एसएमसी', कोलकाता

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH "C-SMC" KOLKATA**

समक्ष : श्री राजपाल यादव, उपाध्यक्ष(कोलकाता क्षेत्र) एवं
श्री मनीष बोरड, लेखा सदस्य

**Before: Shri Rajpal Yadav, Vice President (KZ) and
Shri Manish Borad, Accountant Member**

आयकर अपील सं.य/
ITA No. 433/ कोल/2021
निर्धारण वर्ष:
Assessment Year: 2014-15

Vijay Kumar Bagaria 7A Anand Banerjee Lane, 2nd Fl., Kolkata- 700 020	बनाम V/s.	I.T.O., Ward 31(4), 10B Middleton Row, Kolkata
PAN: ADZPB7763R		
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent
अपीलार्थी की ओर से/ By Appellant/Assessee		Shri Sudip Paul, Ld. AR
प्रत्यर्थी की ओर से/ By Respondent/Department		Shri Anindya Kumar Bandopadhyay, Addl. CIT/Ld.DR
सुनवाई की तारीख/Date of Hearing		19-07-2022
घोषणा की तारीख/ Date of Pronouncement		04-08 -2022

आदेश / O R D E R

PER MANISH BORAD, AM.

This appeal of the assessee for the assessment years 2014-15 is directed against the order dt. 25-08-2021 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter, referred to as 'the Act'] by the Id. Commissioner of Income-tax, Appeals [in short, hereafter referred to as 'the 'Id. CIT(A), National Faceless Appeal Centre(NFAC), Delhi, which are arisen from the assessment order dt. 21-11-2016 passed u/s. 143(3) of the Income-tax Act by the Assessing Officer (AO), I.T.O, Ward 31(4), Kolkata.

2. The assessee has raised the following common grounds of appeal for the AY 2014-15:-

1. THAT The Id Commissioner of Income Tax (Appeals) erred in sustaining addition of Rs. 11,78,985/- u/s 56(2)(vii)(b) being the difference between the stamp duty value and agreement value of the property without recognizing the fact that the applied section is applicable to the properties purchased in and after A.Y 2014-15. The applied section is not applicable in case of appellant assessee.

2. THAT the Ld. Commissioner of Income Tax (Appeals) erred in not recognizing the documents submitted with respect to the fair market value of the property adjacent to impugned property of the assessee.

3. The Appellant prays the honour that the addition of Rs 11,78,895/- made in respect of sec 56(2)(vii)(b) be deleted.

4. The Appellant craves leave to add to, alter, to delete from or substantiate the above grounds of appeal.

3. Brief facts of the case are that the assessee is an individual and earns income from salary, dividend and other sources. Income at Rs.1,21,900/- declared in e-return filed on 16.03.2015 for the AY 2014-15. Case selected for scrutiny through CASS(Computer Assisted Scrutiny Selection) for the reason "*Purchase consideration of property is less than the value as per stamp authority*". Ld. AO observed that assessee has entered into an agreement of purchase with Ideal Real Estates Private Limited on 01-09-2011 showing consideration of Rs.39,05,550/-. The said property was transferred in the name of the assessee on 28-10-2013 showing sale consideration at Rs.39,05,550/-. The value of the said property as per stamp valuation authority is at Rs. 62,63,520/-. The said flat is jointly owned in the name of assessee and his wife. Submissions were filed by the assessee stating that value of the property as per stamp valuing authority as on 01-09-2011 should be considered and not the one on 28-08-2013. The Id.AO was not satisfied and he made addition u/s. 56(2)(vii)(b) of the Act at Rs.11,78,985/- being 50% of the differential amount of stamp duty value and the actual purchase consideration. Income assessed at Rs.13,00,890/-.

4. Aggrieved, the assessee preferred an appeal before the Id. CIT(A) and reiterated the submissions, but failed to succeed. Now assessee is in appeal before this Tribunal.

5. The Ld. Counsel for the assessee vehemently argued referring to the written submissions filed before the Id. CIT(A) and also took us through the paper book containing 102 pages stating that allotment letter dated 21.3.2011 and Agreement dated 01-09-2011 prove that

the flat was booked and purchase consideration was agreed by both the parties(seller/purchaser) on 01.09.2011 itself and the flat was handed over vide deed of conveyance dt. 25.10.2013 and therefore, the stamp duty value of the property as on 01-09-2011 should be accepted/adopted. Reference was also given to the deed of conveyance dt. 14.6.2011 evidencing the fair market value(FMV) of the adjacent property so as to prove that the fair market value of the property purchased in question is at par with fair market value of other properties in the immediate vicinity.

6. Per contra, Ld. DR vehemently argued supporting the orders of both the lower authorities.

7. We have heard the rival contentions and perused the material placed before us including the paper book details. The sole grievance of the assessee through the three grounds raised in the instant appeal is that the Id. CIT(A) erred in confirming the addition of Rs.11,78,985/- made u/s.56(2)(vii)(b) of the Act and without recognizing the documents submitted for consideration of fair market value of the property adjacent to the impugned property of the assessee. The Id. AO has made the addition referring to provisions of section 56(2)(vii)(b) of the Act. For better understanding of the issue the same is reproduced herein below:-

Section 56(2)(vii)(b)

Section 56(2): In particular and without prejudice to the generally of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head 'Income from other sources'.

vii(b): any immovable property,-

(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, 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, the stamp duty value of such property as exceeds such consideration:

Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause:

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before date of the agreement for the transfer of such immovable property;]

8. From perusal of proviso to section 56(2)(vii)(b) of the Act, we find that in case the date of agreement fixing amount for consideration for the transfer of immovable property and the actual date of registration of the property are not the same, then the stamp duty value on the date of agreement may be taken for the purpose of the valuation of the impugned property if total or part of the consideration referred in such agreement is paid in a mode other than cash on or before the date of such agreement.

9. Now examining the facts and circumstances of the instant case in the light of the above stated provision, which has been brought into effect w.e.f 1.4.2014, we find that the assessee approached the builder showing his interest to purchase a flat and thereafter, on 21-

03-2011 allotment letter was issued to the assessee for Flat No.5B. Block-C at Ideal Residency, Kolkata for a total consideration of Rs.40,07,905/-, which included the price of flat of Rs. 39,05,550/- and the remaining amount towards miscellaneous charges. The assessee was also provided a payment schedule and thereafter on 1.9.2011 the said agreement took place between M/s. Ideal Real Estate P.Ltd & others and assessee showing sale consideration of Rs. 39,05,550/-. As per payment schedule the assessee made first payment on 24-3-2011 through bank by a/c payee cheque of Rs. 1 lakh and subsequently payment was made on various occasions during the financial years 2011-12, 2012-13 and 2013-14. Therefore, it remains an uncontroverted fact that the immovable property in question was agreed to be purchased vide agreement dt. 01-09-2011 and part consideration was paid by account payee cheque before the date of agreement, and, therefore, the value as per stamp valuation authority as on the date of agreement (01.09.2011) should have been taken for the purpose of computing the fair market value(FMV) of the property as contemplated in section 56(2)(vii)(b) of the Act. Since it is not in dispute before us that as on 1.9.2011 the value of said property as per stamp valuation authority is not more than the purchase consideration shown in the agreement at Rs. 39,05,550/-, we are of the view that no addition should have been made by the Id.AO in the hands of the assessee u/s. 56(2)(vii)(b) of the Act. We, therefore, reverse the finding of the Id.CIT(A) and delete the addition of Rs.11,78,985/-. . Thus, effective grounds raised by the assessee are allowed.

परिणामतः निर्धारिती की अपील मंजूर की जाती है।

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

आदेश खुले न्यायपीठ में दिनांक -08- 2022 को उद्घोषित।

The order pronounced in the open Court on 04 .08.2022

Sd/-

Sd/-

राजपाल यादव, उपाध्यक्ष
(RAJPAL YADAV)
VICE PRESIDENT(KZ)

मनीष बोरड, लेखा सदस्य
(MANISH BORAD)
ACCOUNTANT MEMBER

Dated :04 -08-2022

**PP/SPS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

- 1.अपीलार्थी/Appellant/Assessee: Vijay Kumar Bagaria
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2. प्रत्यर्थी/Respondent/Department: I.T.O., Ward 31(4), 10B
Middleton Row, Kolkata
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT,
Kolkata
- 6.गार्डफाइल/Guardfile.

By order/आदेश से, /True Copy/

Assistant Registrar
ITAT, Kolkata