

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.14/M/2022
Assessment Year: 2018-19

Mr. Karan Pravinkumar Jain, 1802, A Wing, Chandra Darshan Heights, Lalbaug, Mumbai – 400 013 PAN: AKDPJ6321L	Vs.	Income Tax Officer- 20(1)(1), Piramal Chambers, Mumbai - 400012
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Viraj Mehta, A.R.
Revenue by : Shri Azhar Zain Vayal Parambath, D.R.

Date of Hearing : 15 . 09 . 2022
Date of Pronouncement : 29 . 09 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Mr. Karan Pravinkumar Jain (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 17.11.2021 passed by National Faceless Appeal Centre (NFAC) Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] qua the assessment year 2018-19 on the grounds inter alia that :-

“1. On the facts and circumstances and judicial pronouncements; Hon. CIT(A) erred in confirming the part addition of Rs.2,89,667/- (being 1/3rd of total addition of Rs.8,69,000/- in the assessment order) on account of section 56(2)(x) of the Income Tax Act, 1961 made by Ld. AO with regards to the difference between market value as per stamp valuation and consideration as mentioned in the 'agreement

for sale'. Such addition is bad in law & erroneous in facts and therefore should be deleted.

2. The Appellant craves leave to add, alter, rescind or amend any of the above grounds of appeal.”

2. Briefly stated facts necessary for adjudication of the controversy at hand are: during the scrutiny proceedings Assessing Officer (AO) noticed from the information reported by Joint Sub-Registrar Office (MSD), Borivali that assessee has purchased immovable property for a consideration less than the stamp duty value of the property. The assessee brought on record agreement for sale dated 30.06.2017 registered with the office of Sub Registrar, Mumbai city-2. AO by declining the contentions raised by the assessee proceeded to compute the profits and gains from the transfer of immovable property by taking into account the stamp duty value to be the full value of consideration and thereby treated the difference of Rs.8,69,000/- as income of the assessee for the year under consideration under section 56(2)(x) of the Income Tax Act, 1961 (for short 'the Act') and made addition thereof to the total income of the assessee.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the appeal by restricting the addition to Rs.2,89,667/- as against Rs.8,69,000/- made by the AO. Feeling aggrieved assessee has come up before the Tribunal by way of filing present appeal.

4. I have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light

of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly, assessee has purchased flat for a consideration of Rs.81,70,600/- (Rs.75,00,000/- is for basic value of the flat + Rs.6,70,600/- being the statutory payments and fees). It is also not in dispute that stamp duty value of the property in question was Rs.83,69,000/-. It is also not in dispute that the AO by invoking the provisions contained under section 56(2)(10) of the Act made an addition on account of difference between amount of Rs.83,69,000/- and Rs.75,00,000/- by excluding the amount of Rs.6,70,600/- paid by the assessee against the statutory payment and fees qua the flat in question. It is also not in dispute that Ld. CIT(A) by invoking the provisions contained under section 50C confirmed the addition on the point of difference.

6. At the very outset, we are of the considered view that section 50C is not at all applicable in this case because the assessee has purchased the property and section 50C is attracted only when the property is sold by the assessee. Under section 56(2)(x) of the Act difference between the stamp value and consideration paid has to be added only if difference exceeds 10%. However, in the instant case difference is less than 5% when we take the value of the flat at Rs.81,70,600/- (Rs.75,00,000/- is for basic value of the flat + Rs.6,70,600/- being the statutory payments and fees). The AO as well as Ld. CIT(A) have erred in excluding the amount of Rs.6,70,600/- paid by the assessee on account of various statutory payments and fees.

7. Agreement qua the property in question dated 30.06.2017 brought on record by the assessee categorically shows that the basic value of the flat in question was Rs.75,00,000/- and also paid an amount of Rs.6,70,600/- as detailed in para 26 of the agreement which is certainly part and parcel of the price of the flat in question.

8. In view of what has been discussed above, we are of the considered view that since the difference between the market value as per stamp duty valuation and consideration paid by the assessee is less than 5% addition made by the AO and sustained by the Ld. CIT(A) is not sustainable in the eyes of law, hence ordered to be deleted. Resultantly, appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 29.09.2022.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 29.09.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.