

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

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

**ITA No.148/Mum/2021  
(Assessment Year :2014-15)**

M/s. Pinky Dilip Mehta 1501, 15 <sup>th</sup> Floor Deshmukh Building Dr. Nanasaheb Deshmukh Lane, Girgaon Mumbai – 400 004	Vs.	Income Tax Officer – 19(2)(4) 217, 2 <sup>nd</sup> Floor Matru Mandir Tardeo Road Mumbai- 400 007
<b>PAN/GIR No.AFFPM6895R</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Akash Kumar & Shri Poojan Mehta
Revenue by	Shri Pratap Sharma
<b>Date of Hearing</b>	<b>27/10/2022</b>
<b>Date of Pronouncement</b>	<b>31/10/2022</b>

**आदेश / O R D E R**

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

This appeal in ITA No.148/Mum/2021 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-54, Mumbai in appeal No.CIT(A)-30/IT-155/ITO-19(2)(5)2014-15 dated 24/08/2018 (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) by the Id. Income Tax Officer-19(2)(5), Mumbai (hereinafter referred to as Id. AO).

2. At the outset, there is a delay in filing of appeal by 840 days by the assessee in the instant case. The Id. DR vehemently objected to the condonation of the said appeal. I have gone through the condonation

petition filed by the assessee wherein it has been stated that the Accountant of the assessee had left the job and since he was the person who was conversant with the income tax matters and assessee as an individual was fully dependent on him, it had escaped completely the attention of the assessee. In any case, I find that this is a recalled matter by this Tribunal wherein, this Tribunal in MA No.116/Mum/2022 vide order dated 12/07/2022 had recalled the exparte order passed by this Tribunal on 14/02/2022. Since the delay has already been condoned by this tribunal while adjudicating the main appeal , which has been subsequently recalled, I am inclined to condone the delay and admit the appeal of the assessee for adjudication.

3. 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.38,31,000/- being the difference between the sale consideration and the value determined by the stamp duty authority for the purpose of stamp duty as per Section 56(2)(vii)(b) of the Act.

3.1. I have heard rival submissions and perused the materials available on record. The assessee is an individual and had filed the return of income for A.Y.2014-15 on 20/10/2018 declaring total income of Rs.88,440/-. In the scrutiny assessment proceedings, Shri Nilesh Shah, General Manager-Accounts and Finance from NEO Infracon Limited appeared as authorised representative on behalf of the assessee. The assessee purchased two flats during the year under consideration wherein the total agreement value was agreed at Rs.1,50,00,000/-. The corresponding stamp duty value determined by the stamp authorities for the purpose of levy of stamp duty was fixed at 1,88,31,000/-. Accordingly, the Id. AO show-caused the assessee as to why the

difference in consideration of Rs.38,31,000/- being not brought to tax in terms of Section 56(2)(vii)(b) of the Act being the year under consideration. The details of property purchased by the assessee are as under:-

<b>Details of property</b>	<b>Date of Purchase</b>	<b>Agreement value</b>	<b>Stamp duty value</b>	<b>Difference</b>
Flat No.802, on 8 <sup>th</sup> Floor Neo Galaxy	01.03.2014	82,00,000	1,02,71,500	20,71,500
Flat No.802, on 8 <sup>th</sup> Floor Neo Galaxy	01.03.2014	68,00,000	85,60,500	17,60,500
	Total	1,50,00,000	1,88,31,000	38,31,000

3.2. The Id. AO observed that assessee did not make any submission to this effect and accordingly, proceeded to treat the difference of Rs.38,31,000/- as income of the assessee while completing the assessment.

3.3. I find from the statement of facts mentioned before the Id. CIT(A) that assessee had registered agreement for purchase of flats in F.Y.2013-14 relevant to A.Y.2014-15. Assessee had entered into Memorandum of Understanding (MOU) on 31/12/2019 with seller at the time of re-development of society for purchase of flats. As per the MOU, once possession of new flats were handed over to the seller by the builder, agreement for registration of said flats in the name of the assessee would be entered into between assessee and seller. It was vehemently submitted by the Id. AR that MOU fixed the amount of consideration for transfer of immovable property at Rs 1,50,00,000/- and

the date of MOU and date of registration were falling in different years, the stamp duty value as on the date of entering into MOU is required to be taken into consideration and not the value on the date of registration of property. In the instant case, I find that the Revenue had disbelieved the existence of MOU and proceeded to treat difference in consideration of Rs.38,31,000/- to be the income of the assessee pursuant to deeming fiction provided in Section 56(2)(vii)(b) of the Act as it stood at the time of registration of the flat.

3.4. I find from para 5.1. of the order of the Id. CIT(A) that assessee had furnished the copy of MOU dated 31/12/2009 before him in the form of additional evidence which was duly admitted by him and even the same was forwarded to the Id.AO for his comments and report. The Id. AO had reported that the MOU does not have any legal value and does not give any reason why the value was less than stamp duty valuation. Based on this, the Id. CIT(A) upheld the addition of the Id. AO. At the outset what is to be seen here is whether the provisions of Section 56(2)(vii)(b) of the Act contained a clause for making any addition to make it applicable in the year of entering the MOU i.e A.Y. 2010-11. In this regard, we find that this is a case of inadequate consideration and the provisions of Section 56(2)(vii)(b) of the Act for inadequate consideration has been inserted in the statute only from 01/04/2014 and hence, the same cannot be made applicable to A.Y.2010-11. When at the time of entering MOU in A.Y.2010-11, the stamp duty value prescribed by the stamp authorities need not be looked into at all, the assessee cannot be expected to give any explanation as to why the consideration agreed between the parties is less than the value fixed by the stamp authorities. Hence, the applicability of provisions of Section 56(2)(vii)(b) of the Act cannot be made in the instant case. In any case, it is not the case of the Revenue

that the assessee had paid over and above the agreed consideration to the seller. No evidence has been brought on record by the Revenue with regard to any consequential action taken in the hands of the seller for taxing the differential amount of Rs.38,31,000/- either u/s.50C or u/s.43CA of the Act. In view of the aforesaid observations, I direct the Id. AO to delete the addition made in the sum of Rs.38,31,000/- Accordingly, the grounds raised by the assessee are allowed.

**4. In the result appeal of the assessee is allowed.**

Order pronounced on 31/10/2022 by way of proper mentioning in the notice board.

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

Mumbai; Dated 31/10/2022  
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,

(Sr. Private Secretary / Asstt. Registrar)  
ITAT, Mumbai