

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI AMIT SHUKLA (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 1902/MUM/2020
Assessment Year: 2014-15**

Ranjit Shivram Raut,
B-301, Dasrath Singh Nagar,
Devashi Road, Bhaji Market,
Palghar-401404

**PAN No. AJHPR 0430 R
Appellant**

ITO, Ward 3,
Aayakar Bhavan,
Vs. BIDCO Road, Palghar (W),
Tal. & Dist. Palghar-401404.

Respondent

Assessee by : Mr. Subodh Ratnaparkhi, AR
Revenue by : Smt. Mahita Nair, CIT- DR
Mr. T. Shankar, CIT-DR

Date of Hearing : 06/09/2022
Date of pronouncement : 16/11/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal by assessee is directed against order dated 02/03/2020 passed by the Learned Commissioner of Income-tax (Appeals)-3, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2014-15, raising following grounds:

- 1. The Hon. CIT(A) erred in confirming the addition to the extent of Rs.1,16,51,000/-made W/s 56(2)(vii)(b)(i) of the I.*



T. Act 1961, due to difference between the actual purchase consideration of 3 N.A. plots of land situated at village Naughar, Taluka Vasai, Dist. Palghar and market value as per stamp valuation authorities, not appreciating that the lands purchased were not capital assets and therefore the provisions of section 56(2)(vii)(b)(i) were not attracted and the addition was not justified.

2. *The Hon. CIT(A) erred in confirming the addition to the extent of Rs.1,16.51,000/- made u/s 56(2)(vii)(b)(i) of the I. T. Act 1961, due to difference between the actual purchase consideration of 3 N.A. plots of land situated at village Naughar, Taluka Vasai, Dist. Palghar, by adopting the value determined by the Asst. Valuation officer, Thane, vide order dt. 31.10.2017, which substantially ignored the various reasons. determining the actual purchase consideration and therefore the addition was not justified.*
3. *The Hon. CIT(A) erred in not considering the sum of Rs.66,00,000/- paid in cash for purchase of plots at village Naughar, Taluka Vasai, Dist. Palghar, as part of actual purchase consideration for working out the addition us 56(2)(vi)(b)(i) of the I.T. Act 1961 and therefore the addition to that extent was not appropriate.*

2. Briefly stated facts of the case that the assessee, an individual, was engaged in the business of undertaking small civil construction work. For the year under consideration, the assessee filed return of income on 16/11/2015, declaring total income of ₹11,43,220/-. The Ld. CIT(A) has noted that the assessee had shown to have income



from salary and income from house property. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. During assessment proceeding, the Ld. Assessing Officer observed that as per the Annual Information Return (AIR) filed by the office of the Sub-Registrar, Vasai, the assessee purchased three plots of land, at Navghar, Talika Vasai, District Vasai (Maharashtra) for total consideration of ₹9 lakh (₹3 lakh for each plot) against the fair market value of ₹1,70,91,000/- (₹56,97,000/- for each plot). According to the Assessing Officer, the difference amount of ₹1,61,91,000/- was taxable under section 56(2)(vii)(b) of the Act. The contention of the assessee that Section 56(2)(vii)(b) of the Act was not applicable being plots purchased were not capital asset, was rejected by the Assessing Officer. The Assessing Officer also rejected the contention of the assessee that payments of ₹66 lakh was paid by one Sh Rajeev Patil to the seller of the property i.e. M/s United in cash, should be considered as payment made in cash by the assessee for purchase of the property. However, on the request of the assessee, the Assessing Officer made



a reference to the Departmental Valuation Officer for ascertaining the fair market value of the properties as per the proviso to section 56(2)(vii)(b) of the Act. Till the finalization of the assessment, valuation report was not received from the Departmental Valuation Officer and therefore the Ld. Assessing Officer assessed the difference between the value of the properties as per stamp duty authorities and value declared by the assessee in the registered agreement, amounting to ₹1,61,91,000/- in assessment order dated 23/12/2016, passed under section 143(3) of the Act. Before, the Ld. CIT(A) the assessee contested the addition made under section 56(2)(vii)(b) of the Act and also challenged the merit of the addition. It was submitted by the assessee that there were a lot of unauthorized encroachment on the plot of land therefore market value of the plots was lower and Ld. Departmental Valuation Officer did not take those factors into account while determining the fair market value of the three plots at ₹1,25,51,000/-. It was also reiterated before the Ld. CIT(A) to give credit of ₹66 lakh paid in cash by Sh Rajeev Patil to the seller. The Ld. CIT(A), after calling for the remand report from the Assessing Officer rejected the



contention of the assessee of non-applicability of section 56(2)(vii)(b) of the Act. The Ld. CIT(A) considered the fair market value of the plots determined by the Departmental Valuation Officer (DVO) at ₹1,25,51,000/- and after subtracting the value of ₹9 lakh declared by the assessee in the registered agreement, sustained the difference amount of ₹1,16,51,000/- as a addition u/s 56(2)(vii)(b) of the Act. The contention of giving credit of ₹66 lakhs while determining addition under section 56(2)(vii)(b) was also rejected by the Ld. CIT(A). Aggrieved, the assessee is in appeal before the Income-tax Appellate Tribunal (ITAT), raising the grounds as reproduced above.

3. Before us the assessee filed a paper book containing pages 1 to 205 *inter alia*, copy of submissions filed before the Ld. CIT(A), copy of remand report, copy of purchase deed etc.

4. We have heard rival submissions of the parties on the issue in dispute and perused the relevant material on record.



4.1 In ground No. 1, the assessee has challenged applicability of section 56(2)(vii)(b) of the Act, claiming that provision is not applicable because the three slum occupied Non-agriculture (NA) plots were purchased for the purpose of subsequent sale and therefore such plots were held as stock in trade and section 56(2) is applicable on capital asset only. The section 56(2)(vii)(b) refers to deeming the difference of stamp duty value of immovable property and consideration paid/payable of any immovable property by any individual or Hindu Undivided Family (HUF) as income wherever the stamp duty value of the property exceeds ₹50,000/-. The term “property” has been further defined in explanation below the section 56(2)(vii)(b) of the Act, which reads as under:

“Explanation.- For the purpose of this clause-

- (a)
- (b)
- (c)



(d) “property” means the following capital asset of the assessee, namely :-

(i) immovable property being land or building or both;

(ii) to (ix)

4.2 Thus, according to the provisions of the Act the section 56(2)(vii)(b) is applicable where the property is capital asset in the hand of the recipient. The explanatory notes to the provisions of the Finance Act, 2010 issued by the CBDT by way of circular No. 01/2011 also explained “property” for the purpose of the section 56(2)(vii)(b) of the Act should be in the nature of capital asset in the hands of the recipient. The relevant part of the Circular (supra) is reproduced as under :

“13.4 The provisions of section 56(2) (vii) were introduced as a counter evasion mechanism to prevent laundering of unaccounted income. The provisions were intended to extend the tax net to such transactions in kind. The intent is not to tax the transactions entered into in the normal course of business or trade, the profits of which are taxable under specific head of income. Therefore, the definition of property has been amended to provide that section 56(2vii) will have application to the property' which is in the nature



of a capital asset of the recipient and therefore would not apply to stock-in-trade, raw material and consumable stores of any business of such recipient.”

4.3 The Ld. CIT(A) has also concurred with the contention of the assessee that provision of section 56(2)(vii)(b) of the Act are applicable on transfer of property being capital asset in the hand of the recipient, however, the Ld. CIT(A) rejected the contention of the assessee that the 3 NA plots received by the assessee were stock in trade and thus upheld the action of Assessing Officer of property being capital asset in the hands of the assessee.

4.4 Before us, though the assessee contested that plots were purchased for further sale to Sh Rajeev Y Patil, and therefore same were stock in trade in the hands of the assessee. The facts of the case of the assessee, shows that prior to this transaction of purchase, he was never engaged in trading of plots of land. This was an isolated transaction of purchase. Whether any transaction of sale (purchase) will fall under the head ‘profit and gains’ of the business of profession or under the head ‘capital gain’, depends on overall appreciation of multiple factors including intention of



holding, frequency of transactions, volume of transactions, treatment in books of accounts etc. The Hon'ble Supreme Court in the case of **CIT (Central), Calcutta v. Associated Industrial Development Company (P) Ltd. (82 ITR 586)** observed that whether a particular holding of shares is by way of investment or forms part of the stock-in-trade, is a matter within the knowledge of the assessee, when holds the share and it should, in normal circumstances, be in position to produce evidence from its record as to whether it has maintained any distinction between those shares which are its stock-in-trade and those which are held by way of investment. The assessee has not demonstrated before us that whether he fulfils the criteria for treating the purchase of three plots as a stock in trade of his business. Merely presumption by the assessee that those three plots were intended for further sale and therefore those were stock in trade, is not sufficient and it has to be proved by way of evidences, which the assessee has failed, therefore, we do not find any error in the order of the Ld. CIT(A) on the issue in dispute in upholding the applicability of section



56(2)(vii)(b) of the Act in the case of the assessee. Accordingly, we dismiss the ground No. 1 of the appeal of the assessee.

5. The Ground No. 2 in respect of challenge to valuation report of Departmental Valuation Officer.

6. Brief facts qua the issue in dispute are that the Assessing Officer referred the valuation of the plots purchased to the Departmental Valuation Officer, who valued the properties *vide* order dated 31/10/2017, as under:

Sr. No.	Date of Transaction/Registration No.	F.Y.	Description of the property (i.e. land at Navghar)	Name of the Vendor	Amount Paid as per agreement (₹)	Market Value as per stamp valuation authorities	Value determined by Valuation Officer, Thane
1.	<u>21.01.2014</u> 440/2014	2013-14	S. No. 17A/4, plot No. 34, Area 392.89 sq. Mtrs. (1/3 rd share)	M/s Maa United	3,00,000/-	56,97,000/-	41,70,000/-
2.	<u>28.01.2014</u> 618/2014	2013-14	S. No. 17A/4, S. 17B, S. No. 17A/5 plot No. 34, Area 392.89 sq. Mtrs. (1/3 rd share)	M/s Maa United	3,00,000/-	56,97,000/-	41,70,000/-
3.	<u>04.02.2014</u> 784/2014	2013-14	S. No. 17A/4, S. 17B, S. No. 17A/5 plot No. 34, Area 392.89 sq. Mtrs. (1/3 rd share)	M/s Maa United	3,00,000/-	56,97,000/-	41,70,000/-
Total							1,25,10,000/-

6.1 The assessee filed copy of valuation report by registered valuer M/s Apte associates, Virar (a copy of which has been placed on paper book page 183 to 199. The Ld. CIT(A) adopted the value of the property for the purpose of section 56(2)(vii)(b) as determined by the



departmental valuer as against the stamp duty value adopted by the Assessing Officer and reduced the amount of addition accordingly.

7. Before us the Ld. counsel of the assessee assailed that the sale instances relied upon by the Ld. Departmental Valuer for determining the fair market value of plots are not correct, in view of following:

- (a) the plot in reference were encroached by slum dwellers and unauthorized '*chawls*' (hutments) were constructed on the land including a "Sulabh Toilet" and for vacating of those unauthorised encroacher and demolishing the illegal construction of '*chawls*', the assessee would be required to incur substantial expenditure, and therefore valuation based on sale instances are not comparable with the lands acquired by the assessee.
- (b) The concerned plots had incumbrance of one 'Juhi Vikas Vartak', whose name is recorded in the column 'other rights' of the 7/12 extracts, which forms part of the registered



purchase agreement, but the Departmental Valuation Officer did not take into consideration this incumbrance of the property.

- (c) The stamp duty ready recknor rates does not denote the correct market value of the area because the ready recknor rates of the plots in reference have gone up more than twice from calendar year 2011 to 2014 whereas capital gain index has changed from 711 in 2011 to 939 in 2014.

7.1 The Ld. counsel of the assessee submitted that the assessee contested the valuation report of the Departmental Valuation Report before the Ld. CIT(A) but he did not any cognizance to those submission of the assessee.

7.2 Before us the assessee has filed an application dated 06/09/2022 for admitting following documents as additional evidences, to show the existence of unauthorized encroachment on the plot of the land:

- i. *Photography of the plots (4) showing construction of unauthorised chawls on the plots.*



- ii. *Colour print of Google Map (1) showing existence of structures on the plots.*
- iii. *Response letter dt 25.08.2022 from appropriate authority of Vasai - Virar Municipal Corporation, stating that the chawl constructed on the concerned plots is unauthorised. Copies of application and response to information sought under the Right to Information Act, 2005 in Marathi and its English Translation thereof are submitted at pg. no's 206 to 209.*

7.3 The Ld. counsel submitted that above evidences could be gathered only after completion of the assessment/appellate proceedings and therefore could not be placed before the lower authorities.

8. The Ld. DR on the other hand objected to the arguments of the Ld. counsel of the assessee on the ground that no such objections were raised before the Ld. Departmental Valuer during valuation proceedings. He also referred to the relevant part of purchase deed (PB-117) where description of the property is mentioned and submitted that the land had been shown as without any encumbrance. Therefore assessee should not be allowed to further delay adjudication on the issue in dispute.



9. We have heard rival submission of the party on the issue in dispute and perused the relevant material on record. On perusal of Departmental Valuation Report, a copy of which is placed on paper book pages 177 to 182, we find that Ld. DVO has taken into consideration the fact of encroachment and construction of Sulabh toilet on the land, which is evident from specifications of the property under description, which reads as under:

“3.3. Specification All the three properties are situated at Mauje- Navghar. Dist. Palghar about 3KM away from Vasai Road Railway station. Chawls are constructed on the entire plot. There is no boundary wall defining the actual position of the subject property. The subject property is surrounded by Flats and Buildings i.e. Eastern side by Vartak College and Andy Burger building. Western side by Vartak Engineering College. Northern side by Sulabh toilet etc. and Southern side by Engineering College road. All requisite amenities are available in the vicinity of the subject property and is located in developed location.”

9.1 The Ld. Departmental Valuer has relied on for instances of the sale happened in the proximate period, but there is no remark, whether those lands were also subjected to encroachment. If those lands were not subjected to encroachment, then he is required to



consider impact of adverse possession by the encroacher on the land of the assessee and corresponding impact on the value of the property. During the course of the hearing, the Ld. DR also expressed his inability to verify or confirm this fact readily. In the circumstances, we feel it appropriate to restore this issue back to the file of the Ld. Assessing Officer for verification from the Ld. Departmental Valuation Officer and consider the impact of encroachment on the land, if not already considered in the valuation report dated 31/10/2017. The ground of the appeal of the assessee is accordingly allowed for the statistical purposes.

10. The Ground No. 3 relates to considering amount of ₹ 66 lakh as paid in cash by Sh Rajeev Y Patil towards the consideration for purchase of property.

11. The Ld. counsel submitted that the assessee purchased those three plots for recorded consideration of ₹9 lakh excluding stamp duty and registration charges, out of funds directly received from one Mr. Rajeev Y Patil. He submitted that during the course of search action under section 132 of the Act at the premises of Mr.



Rajeev Y Patil, it was revealed that apart from ₹ 3.50 lakhs per plot by cheque, he paid ₹22 lakh in cash for purchase of each plot of land. He submitted that evidences in this regard were vouchers of ₹22 lakh each plot, which have been seized from the premises of Sh Rajeev Y Patil along with relevant purchase agreements. Accordingly, the Ld. counsel submitted that total consideration towards plots of the land should be taken at ₹76,43,800/- as under:

NA Plots acquired from M/s Maa United

(i)	Agreement Value as well as stamp duty and registration charges for 3 plots	₹10,43,800/-
(ii)	Amount paid in cash	₹66,00,000/-
	Total	<u>₹76,43,800/-</u>

12. We find that the Ld. CIT(A) rejected the similar contention of the assessee before him observing as under:

“9.1 I have perused the facts of the case. I find that the appellant is asking for payment of cash of Rs.66 lacs by one Shri Rajeev Patil to the seller of the land. However, there is no specific documentary evidence to authenticate contention that the cash paid by Shri Rajeev Patil is for and on behalf of the appellant. In appellate proceedings, nothing has been brought on record to establish that cash has been paid on behalf of the appellant. Therefore, this contention of the appellant deserves to be rejected. The Third Ground of Appeal is therefore dismissed.”



13. Before us also the Ld. counsel of the assessee failed to substantiate whether those payments made by Rajeev Y Patil have been made to the seller of the land on behalf of the assessee. The assessee did not produce Mr Rajeev Y Patil or the seller of the land before the lower authorities to support his contention that those cash amounts were paid on behalf of the assessee. In such circumstances, we do not find any error in the order of the Ld. CIT(A) on the issue in dispute and accordingly, we uphold the same. The Ground of the appeal of the assessee is accordingly dismissed.

14. In the result, the appeal of the assessee is partly allowed for the statistical purposes.

Order pronounced in the open Court in 16/11/2022.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated:16/11/2022
Dragon Legal/Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-



4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Sr. Private Secretary)
ITAT, Mumbai