IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM &DR. A.L.SAINI, AM

आयकरअपील सं./**ITA No.356/SRT/2022**

(निर्धारण वर्ष / **Assessment Year: (2015-16)**

(Virtual Court Hearing)

Rekha Ajaykumar Agrawal 229-230, Ashoka Tower, Ring Road,Surat-395002	**Vs.**	Assistant Commissioner of Income-tax, Circle-1(2), Aayakar Bhavan, N. Majura Gate, Opp. New Civil Hospital, Surat-395001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AASPA 2993 A**		
(Assessee)		**(Respondent)**

निर्धारिती की ओर से /Assessee by : Shri Rajesh C Shah, C.A

राजस्व की ओर से /Respondent by : Shri Vinod Kuamr, Sr-D.R

सुनवाई की तारीख/ **Date of Hearing : 23/01/2023**

घोषणा की तारीख/**Date of Pronouncement : 30/01/2023**

आदेश / **O R D E R**

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the assessee, pertaining to assessment year 2015-16, is directed against the order passed by the Learned National Faceless Appeal Centre ('NFAC' for short"/Ld. CIT(A) dated 14.10.2022, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as the "Act"] dated 29.12.2017.

2. Grounds of appeal raised by the assessee are as follows:

"1. The Hon'ble CIT(Appeals) has erred in applying section 56(2)(vii)(b), though the transaction was commenced at a time when the such provision was not in the statute.

2. The Hon'ble CIT(Appeals) was not justified in confirming in addition of Rs.1,89,000/- made u/s 23(4) of the Act on account of Deemed Rental Income.

3. The Hon'ble CIT(Appeals) was not justified in confirming in addition of Rs.6,09,500/- made u/s 56(2)(vii)(b) of the Act.

4. The assessee reserves the right to add, alter, amend or withdraw any grounds of appeal."

3.First we take assessee's Ground No.2 which relates to addition of Rs.1,89,000/- made u/s 23(4) of the Act on account of deemed rental income.

Brief facts *qua* the issue are that during the assessment proceedings, the Assessing Officer observed that assessee has two residential properties other than the one shown in the computation of income. The assessee is having residential flats at Sangam and Prayag (1/2 share). As such, the assessee is required to show the rental income on these residential flats. But assessee has not offered any income in this regard. To ascertain the actual rent in the vicinity of the properties, the Inspector was deputed by Assessing Officer, who after conducting enquiry submitted that a monthly rent at Sangam is Rs.15000/- and at Prayag is also of Rs.15,000/- In this regard, Assessing Officer issued show cause notice dated 15.12.2017, wherein the assessee was requested to show cause, as to why the annual let out value of the properties should not be estimated at Rs.2,70,000/- (15000*12 = 180,000 and 15000 x 12 = 180000/2 = 90,000) under the head "income from house property".

In this regard, the assessee has not submitted any reply regarding show cause notice. Therefore, the rent income has been estimated by Assessing Officer after taking into the report of the Inspector who was deputed for this task. Therefore the annual let out value of the property is estimated at Rs.2,70,000/- (15000*12 = 180000 and 15000 x 12 = 180000/2 = 90000). The estimated let out income of Rs.2,70,000/- is subjected to deduction u/s 24(a) of the Act. Therefore, the net annual let-out value of the property comes to Rs.1,89,000/- (270000 – 81000 being 30% of 270000). Therefore, the net annual let out value of the property is determined at Rs.1,89,000/- and was added to the total income of assessee under the head "income from house property.

4. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has confirmed the addition made by the Assessing Officer. Aggrieved, the assessee is in further appeal before us.

5. Learned Counsel contended before us that making addition of Rs.1,89,000/- on account of Deemed Rental Income u/s 23(4) of the I.T. Act, 1961 is not justified. The ld Counsel stated that assessee is owner of two residential flats located at Sangam and Prayag respectively owned by her and having 50% share in the residence at Prayag. These flats have been laying vacant for the assessment year under consideration. The Ld. Counsel submitted that Assessing Officer has deputed Inspector and who reported the estimate rent to the Assessing Officer but it is not mentioned on what basis he has estimated rent in that area. The Ld. Counsel submitted that assessee was trying to give the property on rent basis but he could not get customer for taking property on rent basis. The assessee had taken the assistance of brokers even then he could not get customer. Therefore, ld Counsel argued that no addition should be made. Without prejudice to the above arguments, the ld Counsel submitted that vacancy allowance under section 23(2) of the Act may be allowed to the assessee.

6. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

7. We have heard both the parties and perused the materials available on record. We note that as per par- 3 of the assessment order, the Assessing Officer noticed that assessee has two residential properties at Sangam and Prayag (wherein assessee share is half with regard to Prayag) other than the one shown in the computation of income. As the assessee has not offered any income in this regard, the Inspector was deputed to ascertain the actual rent of such properties in the vicinity. On the basis of the Inspector's report, the monthly rent of flat at Sangam and at Prayag is taken at Rs.15,000/- each. After issuing show cause notice to the assessee which was not replied by the assessee, rental income from the said properties was estimated by Assessing Officer at Rs.2,70,000/- [15,000*12 = 1,80,000) and (15,000*12 = 1,80,000//2 = 90,000/-) = 2,70,000/-].
We note that assessee was unable to find any tenant to rent the said properties during the year relevant to the assessment year under consideration and for that ld Counsel submitted that assessee was ready to submit the confirmation from the

brokers who were trying to search customers to give property on rent basis. We note that assessee could not fetch customer during the year but she used to rent the properties in past whenever she got customer. Therefore, we are of the view that no addition should be made based on deeming provisions, hence the addition so made by the Assessing Officer is directed to be deleted. This ground No.2 raised by the assessee is allowed.

8. Coming to assessee's inter-connected Ground Nos.1 and 3, which relate to addition of Rs.6,09,500/- u/s56(2)(vii)(2) of the Act. Brief facts *qua* the inter-connected issue are that during the course of assessment proceedings, and on verification of the details submitted by assessee it was noticed by Assessing Officer that the assessee along with other individual, has purchased a property at Flat No.303, Om Palace, Rundh, Surat for a sale consideration of Rs.70,00,000/- In this regard, Assessing Officer, obtained copy of sale deed from Sub-Registrar, City-1, Athwa, Surat. On perusal of the said deed, it was noticed by Assessing Officer that the purchase parties have entered into an agreement with the sale party on 22.02.2012 and have paid an amount of Rs.5,00,000/- on 30.01.2012. On further perusal of the said deed, it was noticed that the purchase parties have paid stamp duty of Rs.4,37,000/-. As per the Stamp Duty Authorities, the value of the property comes to Rs.89,07,000/-. As there is difference in sale consideration and the value adopted by the Stamp Duty Authorities, therefore, the Assessing Officer was of the view that provision of Section 56(2)(vii)(b) of the Act would attract. Therefore, a show cause letter dated 15.12.2017 was issued to the assessee and requested to show cause as to why an amount of Rs.9,53,500/- (Rs.89,07,000-Rs.70,00,000)/2 should not be treated as her income from other sources as the assessee is having 50% share in the said property.

9. In reply to the show cause, the assessee submitted that with respect to purchase of this property, an agreement was made with the sale party on 22.02.2012. The assessee contended that the amendment to section 56(2)(vii)(b)

came by Finance Bill 2013 w.e.f. 01.04.2014 i.e. from A.Y. 2014-15. The assessee submitted as follows:

> *"(b) any immovable property, without consideration, the stamp duty value of which exceed fifty thousand rupees, the stamp duty value of such property"*
> *The assessee has purchased the property in January 2012 by paying the account cheque and agreement for sale was also registered on 22.02.2012 means the clause 56(2)(vii)(b) will be which in force on the date of agreement i.e. 22.12.2012 and not as mentioned in your show cause notice.*
>
> *There was no such clause, particularly when the property was agreed to purchase and accordingly no addition can be made for properties purchased before 31.03.2013 and the assessee has agreed to purchase on 22.02.2012.*
>
> *Without prejudice to above referred facts, the stamp valuation can be challenge as per proviso of Section 56(2)(vii(b). The proviso Section 56(2)(vii)(b) states that*
>
> *"where the stamp value of immovable property as referred to in sub clause (b) is disputed by the assessee on the grounds mentioned in sub-section (2) of Section 50C, the Assessing Officer may refer valuation of such property to a Valuation Officer. The assessee invoke the relevant section that the jantri value of assessee is not more than shown in the agreement."*

10. However, the assessing officer has rejected the contention of the assessee and held as follows:

> (a) the assessee has entered into an agreement with the ale party on 22.02.2012 and has paid an amount of Rs.,5,00,000/- on 30.01.2012 which is prior to the sale registration. Therefore, to ascertain the jantri value of the said property as on the date of agreement.i.e.22.02.2012, a letter has been issued to the Sub-Registrar, Surat City-1, Athwa, Surat. The Sub-Registrar, Surat City-1, Athwa, Surat vide his reply dated 15.12.2017 submitted that the jantri rates have been revised by the State Government on 18.04.2011 and from that date the same jantri rates are in force.
>
> (b)The Stamp Duty Authorities have levied stamp duty of Rs.4,37,000/- as per the Stamp Duty Authorities, the value of the said property comes to Rs.89,07,000/-.

(c) If the contention of the assessee is accepted also, the value of the property at the time of agreement was to be consider as per section 56(2)(vii)(b) of the Act, states that ……

> **Provided** that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date 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**;

(d) The Sub-Registrar, Surat City-1,Athwa, Surat further submitted that there is no change in jantri rates from 18.04.2011 and the stamp duty is being calculated from 18.04.2011 on these jantri rates only.

(e) Therefore, the jantri rates at the time of agreement were same as the jantri rate at the time of registration of the said property.

As there is difference in sale consideration amount of Rs.70,00,000/- and the value adopted by the stamp Duty Authorities of Rs.89,07,000/- and from the clarification given by the Sub-Registrar, City-1, Athwa, Surat, the difference amount of Rs.19,07,000/- was to be treated as income from other sources u/s 56(2)(vii)(b) of the Act. Therefore, Assessing Officer held that the amount treated as income from other sources as the assessee is having 50% share in the said property was added to the total income of assessee.

11. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before ld CIT(A), who has partly allowed the appeal of the assessee observing as follows:

> *"7.5.3 I have attentively perused the submission of the assessee with reference to the discussion on the issue of the Assessing Officer brought out in the assessment order with reference to the provisions of Section 56(2)(vii)(b) of the Income Tax Act, 1961. The stand of the assessee is that purchase of the property was agreed upon with sale party on 22.02.2012 and so the statue of Section 56(2)(vii)(b) of the Income Tax Act, 1961 which came into force later is not applicable. This view is untenable since the*

registration was executed on 13.05.2014 after the statue was enacted by the finance Act 2013 and is a law w.e.f.01.04.2014. However, since the date of agreement and date of registration are different, the proviso of the Section requires to be considered in this regard. I find, the Assessing Officer has ascertained from the authority concerned and found that the jantri rate revised since 18.04.2011 is the same as on the date of registration of purchase of the impugned property and has accordingly adopted the stamp duty value for imposing the provisions of section 56(2)(vii)(b) of the Income Tax Act, 1961. At this stage it is pertinent to take note of the fact that at the request of the assessee, the jantri rate to be adopted for the purpose of arriving at the fair market value of the property as on the date of registration was referred to the concerned Valuation Officer. Hence, in the given facts and circumstances of the case, in my considered opinion the fair market value determined at Rs.82,19,000/- by the Valuation Office in his report dated 23.02.2018 has to be considered to work out the difference and addition thereof u/s 56(2)(vii)(b). Consequently, the Assessing Officer is directed to take the fair market value of the property at Rs.82,19,000/- and recompute the difference and add the same. Accordingly, Ground No.2 is partly. Allowed."

12. Aggrieved by the order of NFAC/Ld. CIT(A) the assessee is in appeal before us.

13. The Ld. Counsel for the assessee submitted that the issue under consideration is squarely covered in favour of the assessee by the order of the Co-ordinate Bench of this Tribunal in the case of Kantibhai Bhikhusha Chaute vs. ITO Ward-1(2)(2), Surat in ITANo.383/SRT/2017 A.Y. 2014-15 dated 31.02.2022, wherein it was held as follows:-

"*15.We have considered the rival submissions of the parties and have gone through the orders of the lower authorities carefully. We have also deliberated on the various case laws relied by the ld AR for the assessee. The AO made addition of Rs.18,50,000/- by taking view that before the execution of sale deed, there was no transfer of possession of or any right of the land and that provision of section 56(2)(vii)(b)(ii) of the Income Tax Act is clearly applicable in case of assessee. The assessee has received the possession of property, vide sale deed dated 17.09.2013 which is much after the operation of section 56(2)(vii)(b)(ii) of the Income Tax Act. Before the execution of sale deed, no rights of property was transferred to the assessee, thus, the assessee cannot claim that assessee has received immovable property prior to 17.09.2013. On the first agreement, the AO raised the objection that the same is not notarized and has no legal sanctity etc., On second agreement dated 26.01.2013, the AO raised his doubt that stamp paper is not purchased in the name of purchaser or seller and that signature of parties are not on each and every page. The ld. CIT(A) confirmed the action by identifying certain anomalies on the transaction, which we have recorded in para 6 above. We find that there is no dispute that the assessee entered into agreement initially with the original*

owner, and on his death, second agreement to sale/ supplementary agreement to sale was executed by legal heirs of owner and the purchaser [Assessee's Group]. The lower authorities have not investigated with the legal heirs about the validity or execution of agreement to sale. It is also a matter of fact that in the conveyance deed, the legal heirs of original owner accepted the payment of Rs.1.00 lakhs in cash at the time of execution of initial agreement on 23.01.2008, Rs. 1,17,98,000/- on 25.03.2013, Rs.10,00,000/-on 02.09.2013, Rs.10,00,000/- on 04.09.2013 and Rs.9,02,000/- on 06.09.2013. We find that Rs. 1,17,98,000/- was paid by assessee and his group by way of cheque in the office of Collector Tenancy. As per the agreement with the original owner, which was ratified by his legal heirs, the amount Rs. 1,17,98,000/- was paid as a part of consideration. The AO has not brought any evidence on record that the amount paid on account of conversions charges was not part of sale consideration, except presuming the fact that it was not executed in proper way. Further, neither the AO nor ld CIT(A) investigated about the validity of the agreement from the legal heir of the original owner of the land. Moreover, the legal heirs of the original owner acknowledged the act of their predecessor in interest before the Sub Registrar. So, the lower authorities is not entitled to raise questions on the first and the second agreement in question. Now, in our considered view, the short question which is left for our adjudication is whether the amended provision of section 56(2)(vii)(b)(ii) are applicable on the transaction or not or that the assessee is eligible for the benefit of the second proviso of 56(2)(vii)(b)(ii). The ld.AR of the assessee vehemently submitted that more than 80% of sale consideration was paid by assessee and his group before the amendment in section came into effect and that the assessee is eligible of benefit of second proviso of section 56(2)(vii)(b)(ii), and that the grounds of appeal raised by assessee are covered by the decision of Tribunal in case of Moole Rami Reddy vs. ITO (supra) and Lahiri Promoters vs. ACIT (supra), which was followed by this Bench in Parinda Bhaveshkumar vs. ITO (supra). We find that more than 80% of the sale consideration was paid by the assessee and the assessee is eligible of benefit of second proviso of section 56(2)(vii)(b)(ii). The revenue has not disputed the quantum of sale consideration nor bring on record that the assessee and his group paid any other amount except the sale consideration shown in the final sale deed. On careful comparison of facts, we find that facts of the present case are similar as in Parinda Bhaveshkumar vs. ITO (supra). This Bench in case of Parinda Bhaveshkumar vs. ITO(supra) by following the earlier decision of coordinate Bench in Moole Rami Reddy vs. ITO (supra) and Lahiri Promoters vs. ACIT (supra) passed the following order:

> *"6. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities carefully. We have also seen the various document placed on record, which consist of written submissions before ld CIT(A), reply to the show cause notice before AO, copy of registered sale deed dated 10.09.2013, copy of the agreement to sale dated 28.03.2013, copies of the bank statement of purchaser showing the payments through cheques. We have also deliberated on the various case laws relied by the ld. AR for the assessee. During the assessment the AO made addition of Rs.10,35,918/- by taking view that the assessee along with her co-owners have shown sale consideration at Rs.1.16 Crore, however, the SVA at the time of registration of sale deed valued the property at Rs. 2.9 Crore. The assessee is having 1/10 share in the said property, thereby the difference thereof (to the extent of assessee's share) was added under section 56(2)(vii)(ii) of the Income-tax Act. As recorded above the assessee filed detailed written submissions before ld CIT(A). We find that the ld CIT(A) concurred with the finding of the AO by holding that that Finance Bill, 2013 was introduced in February, 2013 and the same was amended to include cases of inadequate consideration. The amendment was widely known in February, 2013 itself. It was also held that the contention of the assessee that agreement executed prior to March 2013 will not be covered under section 56(2)(vii)(b)(ii), the agreement appears made in March, 2013 is not registered,*

the date cannot be independently verified and probably the agreement composition being anti date too. We find that neither the AO nor the ld CIT(A) investigated about the non-genuineness of the agreement. No notice to the seller was issued by ld CIT(A) before taking view that 'probably the agreement composition being anti date too'. The ld CIT(A) took his view only on his presumption and assumption. The AO invoked the provision of section 56(2)(vii)(b)(ii), without having any evidence of excess consideration over and above the sale deed, in addition to the sale consideration. We further find that the assessee entered into agreement with the seller on 28.03.2013. The substantial part of the sale consideration was also paid to the seller, which is about 80% of the total sale consideration. Though, ultimately the sale deed was registered on 10.09.2013. The details of sale consideration is also mentioned in the registered sale deed, which strengthen the claim of the assessee that substantial part of consideration was paid on the day of execution of the initial agreement. The assessee claimed that the possession of the land was also obtained by them at the time of agreement. This fact is not disputed by the AO.

7. Before us, the ld AR for the assessee vehemently submitted that when the assessee entered in agreement with the seller, paid substantial consideration and obtained possession, the sub-clause-(ii) of clause (vii) of sub-section (2) of section 56 was not on the statue book and it was brought by way of amendment in Finance Act-2013 w.e.f. 01.04.2014 and relied on the decision of Tribunal in ACIT Vs Anala Anjibabu (supra). We find the coordinate bench of tribunal in ACIT Vs Anala Anjibabu (supra), while considering almost similar facts held as under; "

> *6.2. ----------. Thus where any individual or Hindu Undivided Family receives any immovable property without consideration, the stamp duty value of such property required to be considered as the consideration paid and the said amount to be taxed u/s 56(2)(vii)(b) of the Act. In the instant case, as discussed earlier the assessee has paid the consideration and there was no evidence from the department to show that the assessee has paid the excess consideration over and above the sale deed. With effect from 01.04.2014, the Act has been amended and the new sub clause (ii) has been introduced to section 56(2)(vii)(b) in the statute which reads as under :*
>
> *(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009 but before the 1st day of April, 2017,—*
>
> *(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;*
>
> *(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:*
>
> *As per the provisions the Act from the A.Y.2014-15 sub clause (ii) has been introduced so as to enable the AO to tax the difference*

> *consideration if the consideration paid is less than the stamp duty value. The AO is not permitted to invoke the provisions of section 56(2)(vii)(b)(ii) in the absence of sub clause (ii) in the Act as on the date of agreement."*
>
> *8. Thus, in view of the aforesaid factual and legal discussions, we find that in absence of sub-clause (ii) in the statue book as on the date of agreement to sale of the property, the AO was not entitle to invoke the said provision. Hence, the ground of appeal raised by the assessee is allowed. The AO is directed to delete the entire addition under section 56(2)(vii)(b)(ii).*
>
> *9. In the result, the appeal of the assessee is **allowed**.*
>
> 16.In view of the aforesaid factual and legal discussions, we find that the ratio of the aforesaid decision is squarely applicable on the facts of the present case and the assessee is eligible of benefit of second proviso of section 56(2)(vii)(b)(ii) . Hence, the sole ground of appeal raised by the assessee is allowed.
>
> 17. In the result, the appeal filed by the assessee is ***allowed***."

14. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

15. We have heard both the partis and perused the materials available on record and case law cited by the parties. We note that issue is squarely covered in favour of assessee by the order of this Tribunal in the case of Kantibhai Bhikhusha Chaute (supra) and there is no change in facts and law and Ld. DR for the Revenue did not bring any cogent evidence to distinguish the order of this Tribunal in the case of Kantibhai Bhikhusha Chaute (supra), therefore respectfully following the binding precedent, we allow the assessee's inter-connected ground No.1 and 3.

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

Order is pronounced on 30/01/2023 by placing the result on the Notice Board.

Sd/-	**Sd/-**
(PAWAN SINGH)	**(Dr. A.L. SAINI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Surat/दिनांक/ Date: 30/01/2023
Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// True Copy //

Senior Private Secretary/ Private Secretary /Assistant Registrar, ITAT, Surat