

आयकर अपीलीय अधिकरण  
मुंबई पीठ "एस.एम.सी", मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री एस. रिफौर रहमान, लेखाकार सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER

आअसं.2067/मुं/2021 (नि.व. 2018-19)  
ITA NO.2067/MUM/2021 (A.Y.2018-19)

Qamruddin Raffiuddin Siddiqui,  
E-102, 1<sup>st</sup> Floor, Ansa "E" Inds. Premises  
Co.Op. Soc. Ltd. Sakinaka,  
Andheri (E), Mumbai – 400 072  
PAN: BAQPS-6109-F

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer, Ward 26(2)(1),  
Kautilaya Bhavan, Bandra Kurla Complex,  
Bandra (East), Mumbai – 400 051

.....प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Ketan Vajani

प्रतिवादी द्वारा/Respondent by : Ms. Vranda U Matkari

सुनवाई की तिथि/ Date of hearing : 16/12/2022

घोषणा की तिथि/ Date of pronouncement : 09/03/2023

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [ in short 'the CIT(A)'] dated 16/09/2021 for the Assessment Year 2018-19.

2. The solitary issue in appeal is against the addition of Rs.15,58,041/- u/s. 56(2)(x) of the Income Tax Act, 1961 [in short 'the Act'] confirmed by the CIT(A).

3. The brief facts of the case as emanating from records are: The assessee along with his brother Kutbuddin Siddiqui had jointly booked a residential flat No.701, 7<sup>th</sup> Floor, Wing –B, Building Sky Heights, Saki Naka, Mumbai, measuring 665 sq.ft. Allotment letter dated 14/12/2011 in the joint names of the assessee and his brother was issued by the Developer. The registered Agreement for Sale was executed on 08/12/2017. The Assessing Officer in scrutiny assessment proceedings in assessee's case made addition of the difference between stamp duty value and the agreed purchase value. Since, the assessee was having 50% share in the property, addition of Rs.15,50,041/- was made by the Assessing Officer. While making the addition, the Assessing Officer raised doubt over the date of allotment letter. Aggrieved by the assessment order dated 16/03/2021 passed u/s. 143(3) r.w.s. 143(3A) and 143(3B) of the Act, the assessee filed appeal before the CIT(A). The CIT(A) upheld the findings of Assessing Officer and dismissed appeal of the assessee. Hence, the present appeal.

4. Shri Ketan Vajani appearing on behalf of the assessee made two fold submissions: He submitted that the flat booked by the assessee against allotment letter dated 14/12/2011 (at page 45 of the paper book) is still under construction and hence, the possession of the flat has not been handed over to the assessee till date. The provisions of section 56(2)(x) of the Act are not attracted as the requirement of clause (x) is, "where any person receives", the immovable property, in other words, the property should be 'received in the

previous year, whereas, in the present case immovable property i.e. the Flat has not been received by the assessee till date. Since, the immovable property was not received in Assessment Year 2018-19, clause (x) of section 56(2) of the Act is not attracted. The Id. Authorized Representative for the assessee pointed that the fact that immovable property was not received by the assessee was brought to the notice of Assessing Officer and the CIT(A), but, the argument that the provisions of section 56(2)(x) are not attracted was not raised before the Assessing Officer or the CIT(A).

4.1 Without prejudice to first proposition, the Id. Authorized Representative for the assessee submitted that the Assessing Officer and the CIT(A) have erred in not allowing the benefit of first proviso to section 56(2)(x) of the Act. The Id. Authorized Representative for the assessee submits that a perusal of letter of allotment dated 17/12/2011 would show that the immovable property (Flat) is identifiable, the total consideration is mentioned, the area of Flat is specified and the allotment letter is in the joint named of the assessee and his brother. The details of the property and the consideration settled between the parties matches with the details in the registered agreement dated 08/12/2017. The assessee and his brother had paid Rs.5.00 lacs vide two different cheques at the time of booking of Flat. The details of the payment made by the assessee are given in the registered Sale Agreement. The Id. Authorized Representative for the assessee points that the authorities below have raised suspicion over the date of letter of allotment merely for the reason that in the allotment letter the promoter has mentioned that the value of Flat excludes GST or any other Government levies. According to the Assessing Officer the GST was introduced by the Government of India w.e.f. 1/07/2017, whereas the allotment letter was issued much prior i.e. on 14/12/2011. Therefore, the

Assessing Officer the allotment letter to be fake. While coming to such a conclusion, the Assessing Officer failed to consider the fact that the assessee had made initial payment to the Developer vide cheque. The Developer had issued receipt against the cheque, which is at page 46 and 47 of the Paper Book and the fact of receipt of payment through those cheques of Rs.4.00 lacs and Rs.1.00 lakh have also been acknowledged in the registered agreement for sale. The assessee has thereafter, made payments at regular interval towards the agreed cost of flat from Financial Year 2012-13 to 2017-18. Till the time of execution of registered Sale Agreement the assessee had paid Rs. 30,08,360/-.

The Id. Authorized Representative for the assessee submits that though provisions of section 56(2)(x) of the Act are not attracted in the instant case, assuming but not admitting that even if the provisions of section 56(2)(x) are applied, the assessee is protected by 1<sup>st</sup> proviso to section 56(2)(x) of the Act. The Id. Authorized Representative for the assessee further submits that the Tribunal in the case of Radha Kishan Kungwani vs. ITO, 185 ITD 433 (Jaipur - Trib) has held that where assessee entered into an agreement for purchase of flat and had made payment at the time of booking of flat, stamp duty valuation or fair market value of immovable property is to be considered as on the date of payment made at the time of booking of flat.

5. Ms. Vranda U Matkari representing the Department vehemently defended the impugned order. The Id. Departmental Representative submits that the Assessing Officer raised doubt over the validity of allotment letter as there was reference of GST in the allotment letter issued in 2011, whereas, GST was introduced in the year 2017. The Assessing Officer had issued notice u/s.133(6) of the Act to the Developer for confirmation, but the notice

remained unanswered, hence, genuineness of allotment letter remained in question.

6. We have heard the submissions made rival sides and have examined the orders of authorities below. The issue before us is in narrow compass i.e. for the purpose of determining stamp duty value; Whether the date of Allotment letter or the date of Registered Sale Agreement, is to be considered?

7. The letter of allotment dated 14/12/2011 is at 45 of the Paper Book. A perusal of the same shows, that it is an irrevocable letter of allotment in the joint name of assessee and his brother. The description of the flat giving the specific number, area and the total agreed consideration is mentioned in the letter of allotment. The amount paid by the assessee and the balance amount payable is also mentioned in the letter of allotment. The allotment letter is duly signed on behalf of the Developer and has also been signed by the assessee and his brother as confirmation of allotment. The details given in the letter of allotment viz. details of immovable property, purchase consideration, etc. matches with the details given in Registered Agreement for Sale dated 08/12/2017. The Registered Agreement also mentions the details of the payment made by the assessee and his brother. The payments have been made by way of cheque. The receipt of amounts paid by the assessee and his brother have been duly acknowledged by the vendor. A perusal of details of the payment in the Agreement for Sale would show that the first payment of Rs.5.00 lacs vide two cheques of Rs.1.00 lakh and Rs.4.00 lakhs dated 14/12/2011, was received by the Developer. Thereafter, the payments were made on various dates in the year 2012 onwards till September, 2017.

8. The Revenue has raised doubt over the genuineness of letter of allotment for the reason that there is reference to GST in the letter of allotment dated 14/12/2011, whereas the GST was introduced by the Government of India in 2017. A reference to GST in letter of allotment has been made in the following manner:

*“ \*The above value of Flat excludes G.S.T & any other Government Levies. You will be required to pay these taxes as and when applicable at the Government determined rates.”*

A perusal of the above would show that the reference to GST and other Government levies is in anticipation. The expression used in the context is “*as and when applicable*”. Though, the GST was introduced in 2017 but the proposal for introducing GST embarked when the first discussion paper on GST was released in November, 2009. Merely for the reason that there is reference to GST in the letter of allotment cannot be a valid basis for suspecting and rejecting letter of allotment. The Assessing Officer and the CIT(A) failed to take cognizance of the fact that at the time of booking of the flat, the assessee had made payment by way of cheques and the Developer had issued receipts with the details of cheques. Thereafter, the Developer/vendor acknowledged the receipt of amount against those cheques in registered Sale Agreement. Hence, we are of considered view that the reason for discarding letter of allotment is unsustainable.

9. The Assessing Officer has invoked the provisions of section 56(2)(x) of the Act without referring to the proviso to the said section. The first proviso of clause(x) to section 56(2) reads as under:-

*“ **Provided** that where the date of 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 agreement may be taken for the purpose of this sub-clause.”*

The aforesaid proviso makes it unambiguous that where the date of agreement fixing the amount of consideration and the date of registration are not the same, the stamp duty value on the date of agreement may be taken for the purpose of clause (x). Thus, what is paramount for activating proviso is, fixing of consideration at the time of agreement.

10. In the facts of the case, we hold that no addition under section 56(2)(x) of the Act can be made as the consideration for purchase of flat was settled at the time of booking the flat and the same is reflected in the Letter of Allotment signed by the vendor and the vendee. Hence, the addition is deleted.

11. In the result, appeal by the assessee is allowed.

Order pronounced in the open court on Thursday the 09<sup>th</sup> day of March, 2023.

Sd./-

(SHRI S.RIFAUR RAHMAN)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 09/03/2023

Vm, Sr. PS(O/S)

Sd./-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्तCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
- 5.. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt.Registrar)  
ITAT, Mumbai