

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
ITA No. 203/Mum/2023
(A.Y.2015-16)

Mrs. Ruchita Jindal 1701, A Wing, Sumer Trinity Tower, New Prabhadevi, Prabhadevi Mumbai – 400025	Vs.	DCIT, Central Circle 3(3) 1923, 19 th Air India Building, Nariman Point, Mumbai - 400021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ADKPJ5564H		
Appellant	..	Respondent

Appellant by :	Bhupendra Shah
Respondent by :	C.T. Mathews

Date of Hearing	23.03.2023
Date of Pronouncement	17.05.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order passed by the Id. CIT(A)-51, Mumbai, dated 26.12.2022 for A.Y. 2015-16. The assessee has raised the following grounds before us:

1. *In the facts and circumstances of the case and in law, the learned AO erred in adding Rs.9,37,033/- u's 56(2)(vii)(b) of Income Tax Act*
2. *In the facts and circumstances of the case and in law, the learned AO erred in adding Rs.9,37,033/- on the basis of market value for stamp duty purposes on the date of registration of agreement*
3. *In the facts and circumstances of the case and in law, the learned AO erred in not appreciating that the case of the appellant was covered by the proviso to section 56(2)(vii)(b).*
4. *In the facts and circumstances of the case and in law, the learned AO erred in making addition in AY 2015-16 instead of AY 2014-15.*

5. *In the facts and circumstances of the case and in law, the learned AO didn't accept the ratio of the decision in the case of Naina Saraf vs PCIT 2, Jaipur, ITA No 271/JP/2020 and Smt. Cheryl Maria Fernandes vs ITO (FT) 2(3)(1), Mumbai, ITA No 4850/MUM/2019.*
6. *In the facts and circumstances of the case and in law, the learned AO erred in charging interest u/s 234A.B & C and initiating penalty u/s 271(1)(c).*
7. *In the facts and circumstances of the case and in law, the AO erred in charging interest u/s 234A of Rs. 2,895/- Although, the assessee has filed the return of income in response to notice u/s 148 within 30 days from the date of notice.”*

2. The grounds of appeal 1 to 5 as listed supra are interconnected therefore for the sake of convenience these grounds of appeal are adjudicated together. The fact in brief is that return of income declaring total income of Rs.18,05,670/- was filed on 30.08.2015 for the year under consideration. Thereafter the assessment was reopened by issuing of notice dated 30.03.2021 u/s 148 of the Act. A notice u/s 143(2) was issued to the assessee on 25.01.2022. During the year under consideration the assessee has purchased a property on 23.06.2014 being Flat No. 3102, India Bulls Sky, S.V. Marg, Lower Parel, Mumbai for the consideration of Rs. 7 crores. However, the value of the said flat as per valuation of stamp authorities was Rs.7,61,57,000/-. On the request of the assessee reference was made to the Departmental Valuation Officer for valuation of the said property u/s 142A of the Act on 09.03.2022. The District Valuation Officer, Mumbai vide valuation report dated 20.04.2022 determined the fair market value of the said purchased property at Rs.7,09,37,033/- on the date agreement as on 23.06.2014. The DVO has also determined value of the said property on the date of booking allotment as on 01.01.2013 at Rs. 7,05,66,565/- . During the course of assessment proceedings the assessee submitted that for the purpose of Sec. 56(2)(vii)(b) the date of allotment i.e be considered as relevant date. However, the A.O has not agreed with the submission of the assessee and added the difference between the

purchase price and fair market value of the property determined by the DVO as on the date of agreement and added the amount of Rs.9,37,033/- to the total income of the assessee.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

4. Heard both the sides and perused the material on record. The assessee has purchased Flat No. 3102 at India Bulls Sky 882 S.V. Marg Lower Parel, Mumbai for Rs.7 crores as per purchase deed dated 23.06.2014. The value of the purchased property as per stamp duty authorities valuation was Rs.7,61,57,000/-. A reference was made to DVO u/s 142A of the Act on 09.03.2022. The DVO on 20.04.2022 determined the fair market value at Rs.7,09,37,033/- on the date of agreement as on 23.06.2014 and on the date of allotment of flat as on 01.11.2013 at Rs.7,05,66,565/-. Before the ld.CIT(A) the assessee submitted that A.O should apply the valuation of Rs.7,05,66,565/- as on 01.11.2013 made by the DVO as against making addition of Rs.9,37,033/- made by the AO on the basis of market value of Rs.7,09,37,033/- determined by the DVO as on 23.06.2014. The ld. Counsel submitted that the case of the assessee is covered by the provision of Sec. 56(2)(vii)(b) of the Act.

5. As per first proviso to Sec. 56(2)(vii)(b) where the date of the 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 allotment may be taken for the purpose of Sec. 56(2)(vii)(b) of the Act. The second proviso laid down that the first proviso shall be applicable only when at least part payment made on or before the due date of agreement fixing the amount of consideration for transfer of such immovable property through account payee cheque/electronic system. He also relied on the decision of ITAT Jaipur

in the case of Naina Shroff Vs. PCIT, Jaipur ITA 271/Jp/2020 assessment year 2015-16 wherein held that date of allotment would be treated as valid date and not the date of agreement. The Id. Counsel also relied upon the decision of ITAT, Mumbai in the case of Mr. Sajan Rai Mehta Vs. ITO, vide ITA No. 56/Mum/2021 (assessment year 2014-15) and other case laws.

6. I have also perused the copies of document placed in the paper book i.e application form comprising 26 pages of different clauses and allotment of the above referred Flat No.3102 at 31st Floor for seven crores. The assessee has made part of the payment of Rs. 51 lac on 01.11.2013 vide cheque no. 620130 drawn of the corporation bank claiming as date of allotment. The payment plan was also referred at page no. 6 of the document comprising of 26 pages placed in the paper book. The DVO as per annexure 1(A) of the valuation report has also determined the valuation of the flat as on 01.11.2013 at Rs.7,05,66,565/- on the date of allotment. In the light of the above facts and after considering the provisions of Sec. 56(2)(vii)(b) and the judicial pronouncements referred by the Id. Counsel I direct the assessing officer to restrict the addition to the extent of Rs.5,66,565/- after taking into consideration the value determined on the date of allotment by the DVO as on 01.11.2013. Therefore, ground of appeal no. 1 to 5 are partly allowed.

7. Ground no. 6 is dismissed since charging of interest u/s 234ABC is consequential and initiating of penalty u/s 271(1)(c) is premature at this stage.

8. Regarding ground no. 7 that assessing officer erred in charging interest u/s 234A of Rs.2,895/- on the reason that assessee has filed the return of income in response to notice u/s 148 within 30 days from the date of notice is restored to the file of the A.O for deciding the same

as per law after verification of the claim made by the assessee. Therefore, this ground of appeal of the assessee is allowed for statistical purposes.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 17.05.2023

Sd/-

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- 3. In the facts and circumstances of the case and in law, the learned AO erred in not appreciating that the case of the appellant was covered by the proviso to section 56(2)(vii)(b).*
- 4. In the facts and circumstances of the case and in law, the learned AO erred in making addition in AY 2015-16 instead of AY 2014-15.*

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 17.05.2023

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR,
ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ **ITAT, Bench,
Mumbai.**