

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

श्री राजेश कुमार, लेखा सदस्य
के समक्ष

Before

SRI RAJPAL YADAV, VICE PRESIDENT

&

SRI RAJESH KUMAR, ACCOUNTANT MEMBER

I.T.A. No.: 401/KOL/2023

Assessment Year: 2015-16

Asha Vijay.....Appellant
[PAN: ACGPV 8710 N]

Vs.

ITO, Ward-28(2), Kolkata.....Respondent

Appearances by:

Sh. P.R. Kothari, A/R, appeared on behalf of the Assessee.

Sh. P.P. Barman, Addl. CIT, Sr. D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : June 7th, 2023

Date of pronouncing the order : June 9th, 2023

ORDER

Per Rajpal Yadav, Vice-President (KZ):

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi [in short 'Id. CIT(A)'] dated 02.03.2023 passed for assessment year 2015-16. The assessee has taken two grounds of appeal. However, her grievance relates to a

solitary issue namely, whether a sum of Rs. 9,74,950/- deserves to be added in her hand u/s 56(2)(vii) of the Income Tax Act, 1961 (in short the 'Act') on the ground that difference between the valuation (for the stamp duty purpose) *vis-à-vis* purchase cost disclosed by the assessee in the deed deserves to be deemed as income of the assessee or not.

2. The brief facts of the case are that the assessee has filed her return of income on 19.01.2016 for AY 2015-16. She disclosed a total income of Rs. 5,48,510/-. The case of the assessee was selected for scrutiny assessment and a notice u/s 143(2) of the Act was issued and served upon the assessee. The Assessing Officer (in short ld. 'AO') found that the assessee has purchased a flat from Pansari Developers Pvt. Ltd. at "Purti Flower", Unit No. 11E, Type-Standard containing a total built-up area of 860 square feet (Super built-up area of 1147 square feet). The initial booking was done in 2010 and all payments were made up to in 2013. The developer has delivered possession to the assessee. The sale deed has been executed in the accounting year relevant to AY 2015-16. Ld. AO construed the difference between the sale value disclosed in the sale deed *vis-à-vis* determined by the Stamp Duty Valuation Authority as deemed gift in the hands of the assessee and brought it to tax u/s 56(2)(vii) of the Act.

3. The appeal to ld. CIT(A) did not bring any relief to the assessee.

4. Before us, ld. Counsel for the assessee has placed on record certain dates and events in a tabulated form which read as under:

<i>Date</i>	<i>Description</i>
27.11.2010	<i>Date of first payments made by cheques to the promoter- Pansari Developers P. Ltd.</i>
07.05.2011	<i>Date of formal agreement for purchase/sale of flat between appellant and promoter.</i>
10.10.2012	<i>Date of last payment by cheque amounting Rs. 146905/- to promoter being final payment against total consideration of flat purchased debited by bank on 12.10.2012.</i>
09.01.2013	<i>Date of getting physical possession of flat from promoter.</i>
05.03.2013	<i>Date of first electric bill in the name of appellant being for February, 2013.</i>
09.07.2014	<i>Date of registration of Conveyance Deed in respect of flat purchased for which first payment was made on 27.11.2010, formal agreement for purchase/sale of which was executed on 07.05.2011 last and final payment for which was made on 10.10.2012 and physical possession of which was taken on 09.01.2013 as mentioned above.</i>

5. In order to buttress the contentions raised in the events of above details, ld. Counsel for the assessee took us through page no. 33 and demonstrated that physical possession was delivered on 09.01.2013. He also placed on record electricity bill for the month of February, 2013 in the name of the assessee to support that physical possession was with the assessee and electric meter was installed in her name. Ld. Counsel for the assessee further, demonstrated the details of payments through account payee cheque to the builder. He also demonstrated the full and final settlement with the builder. According to ld. Counsel for the assessee all these events have happened prior to accounting year 2014-15. Section 56(2)(vii) of the Act has become operative from FY 2014-15, in other words, in AY 2015-16. If it is construed that the assessee has possessed the house before accounting year 2014-15 then no income could be deemed on account of lower payment of purchase price. In support of his contention, he filed a

paperbook and placed on record six decisions. According to him, in all these decisions it has been laid down that if transfer has taken place prior to accounting year 2014-15 then Section 56(2)(vii)(b) of the Act will not be applicable upon the purchasers.

6. On the other hand, ld. D/R relied upon the orders of lower authorities.

7. We have duly considered the rival contentions and gone through the records carefully. The assessee has put reliance upon the judgment of Hon'ble Allahabad High Court in the case of *CIT vs. Shimbhu Mehra* reported in [2016] 236 Taxmann.com 561 (Allahabad). In this judgment an identical issue was considered by the Hon'ble Allahabad High Court. The question is what is the point of time it is to be construed that transfer has taken place within the meaning of Section 2(47) of the Act. According to the Hon'ble High Court if possession of a property is being taken then, it is to be construed that transfer has taken place for the purpose of Income Tax Act. In the case in hand, the possession was taken by the assessee on 09.01.2013. It means transfer has taken place prior to accounting year 2014-15 and if that be so then no deemed gift is taxable in the hands of the assessee. Before adverting to the other decisions referred by ld. Counsel for the assessee, we deem it appropriate to note following observation of the Hon'ble High Court:

“12. Sub-clause (ii) of Section 2(47) of the Act states that the transfer, in relation to a capital asset, includes the extinguishment of any rights therein. In Sanjeev Lal v. CIT [2014] 365 1TR 389/225 Taxman 239/46 taxmann.com 300 (SC), the Supreme Court considered the question as to whether the date on which the agreement for sale was executed could be considered the date on which the property was

transferred. The Supreme Court held that when an agreement to sell in respect of immovable property is executed, a right in personam is created in favour of the vendee and when such a right is created in favour of the vendee, the vendor is restrained from selling the said property to someone else because the vendee gets a legitimate right to enforce a specific performance of the agreement. The Supreme Court, while considering the provisions of Section 2(47)(ii) of the Act held that if a right in respect of any capital asset is extinguished and that right is transferred to someone else, it would amount to transfer of a capital asset. The Supreme Court held that once an agreement to sell is executed in favour of some person, the said person gets a right to get the property 'transferred in his favour and, consequently, some right of the vendor is extinguished.

13. Explanation 2 to Section 2(47) of the Act was added by Finance Act, 2012 with retrospective effect on 1.4.1962 and, consequently, the said provision would be applicable. The said explanation clearly provides that transfer of an asset includes disposing of or parting with an asset by way of an agreement.

14. In the light of the aforesaid provision, it is apparently clear that the moment an agreement to sell is executed between the parties and part consideration is received, the transfer for the purpose of Section 50C of the Act takes place and computation under Section 48 of the Act will start accordingly, for the purpose of calculating the capital gains under Section 45 of the Act. From the aforesaid, it is apparently clear that the transfer of the property took place in the year 2001 when the provision of Section 50C of the Act was not in existence. Consequently, the Assessing Officer was not justified in making the reassessment and computing the capital gains by invoking the provision of Section 50C of the Act, which was clearly not applicable in the assessee's case."

8. The similar issue has been considered by ITAT Ranchi Bench in the case of *Bajrang Lal Naredi vs. ITO* in ITA No. 327/RAN/2018 order dated 20.01.2020. The finding of the Tribunal in paragraph no. 6 to 7 is worth to note which read as under:

"6. We have carefully considered the rival submissions on the issue. In the instant appeal, the applicability of Section 56(2)(vii)(b) of the Act as amended by Finance Act, 2013 and applicable to AY 2014-15 in question. On a perusal of pre-amended provisions of Section

56(2)(vii)(b) of the Act, we gather that where an individual or HUF receives from any person any immovable property without consideration, the provisions of pre-amended Section 56(2)(vii)(b) of the Act would apply. The aforesaid provisions was however substituted by Finance Act, 2013 and made applicable to AY 2014-15 onwards. As per the amended provisions, the scope of substituted provision was expanded to cover purchase of immovable property for inadequate consideration as well. It is alleged on behalf of the Revenue that the amended provision will apply in view of the fact that registration has been carried out during the FY 2013-14 concerning AY 2014-15 where the amended law came into force. The assessee, on the other hand, seeks to claim that his case would be covered by pre-amended provision in view of the fact that agreement for purchase of the property was entered into with the prospective seller in FY 2011-12 relevant to AY 2012-13 at which time the new law did not come into play. It was claimed that the purchase consideration was duly paid at the time of agreement in FY 2011-12 and the purchase was de facto completed except for the formality of registration. It was thus submitted that the transactions entered prior to the FY 2013-14 would be governed by the pre-amended provision which triggers the applicability of such provision only where there is a total lack of consideration and does not cover a case of inadequacy in purchase consideration.

7. We find merit in such plea advanced on behalf of the assessee. It is not in dispute that purchase transactions of immovable property were carried out in FY 2011-12 for which full consideration was also parted with the seller. Mere registration at later date would not cover a transaction already executed in the earlier years and substantial obligations have already been discharged and a substantive right has accrued to the assessee therefrom. The pre-amended provisions will thus apply and therefore the Revenue is debarred to cover the transactions where inadequacy in purchase consideration is alleged. We thus find merit in the issue raised on behalf of the assessee. The order of the CIT(A) is accordingly set aside and the AO is directed to delete the additions made under s. 56(2)(vii)(b) of the Act and restore the position claimed by the assessee.”

9. In the light of the above, if we peruse the facts of the present case then it would reveal that originally the assessee has entered into agreement for purchase of the above flat with the developer in

2010. She has made complete payments up to October 2012, thereafter, she got the possession on 09.01.2013. She installed her electricity connection in her name. All these factors would indicate that transfer within the meaning of Section 2(47) of the Act had completed. Only Conveyance Deed has been registered during the accounting period relevant to AY 2015-16. Once it is construed that transfer has been completed in the year 2013 itself then no deemed gift u/s 56(2)(vii)(b) of the Act is to be determined in the hands of the assessee. Accordingly, we allow the appeal of the assessee and delete the addition.

10. In the result, the appeal filed by the assessee is allowed.

Kolkata, the 9th June, 2023

Sd/-

[Rajesh Kumar]
Accountant Member

Sd/-

[Rajpal Yadav]
Vice-President

Dated: 09.06.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Asha Vijay, 100, Diamond Harbour Road, Khidderpore, Kolkata – 700 023.**
- 2. ITO, Ward-28(2), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata