

**IN THE INCOME TAX APPELLATE TRIBUNAL
“I” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

ITA No.874/Mum/2023

(A.Y. 2015-16)

Shabbir Rajabali Vakil 701, Silver View, Chimbai Road, Bandra West, Mumbai – 400050	Vs.	ITO (Int. Tax) Ward 4(3)(1), Room No. 1625, 16 th Floor, Air India Building, Nariman Point, Mumbai – 400021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ABVPV6524C		
Appellant	..	Respondent

Appellant by :	Abhishek Samdani
Respondent by :	Soumendu Kumar Dash

Date of Hearing	07.06.2023
Date of Pronouncement	13.06.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal is filed by the assessee against the order passed by the DRP-2, Mumbai, dated 15.012.2022 for A.Y. 2015-16. The assessee has raised the following grounds before us:

- “1. *The Id. DRP erred in confirming the action of the AO in proposing addition of Rs.14,14,000/- u/s 56(2)(vii)(b) of the Act.*
2. *The Id. DRP in doing so erred in not appreciating that the jurisdiction assumed by the AO u/s 147 of the Act based on reasons recorded was not valid.*
3. *The Id. DRP further did not appreciate that the notice issued u/s 148 of the Act was not in conformity with para-2 and para-3 of the CBDT Circular No. 19/2019 dt. 14.08.2019 & therefore, the said notice was not deemed to have been issued and in absence of the said notice, the assessment proceedings & the consequent assessment order is void & illegal and, therefore, bad in law.*

4. *Without prejudice to the above grounds, the ld. DRP did not appreciate that the flats were agreed to be purchased in the F.Y. 2013-14 on payments made through account payee cheques and, therefore, for the purpose of sec. 56(2)(vii)(b) of the Act, the stamp duty value prevailing in the said year was to be considered and not the stamp duty value prevailing in the year of registration of the agreements.*
5. *The ld. DRP erred in not appreciating that difference between stamp duty value & agreement value is between 3.63% to 5.97% which is within the tolerance limit of 10% laid down by the ITAT benches throughout the country based on the Apex Court decision in the case of C. B. Gautam Vs. UOI (199 ITR 530(SC)).*
6. *The Id. DRP further erred in not appreciating that the Hon. Tribunal, Mumbai Bench in its order dt. 14.09.2021 in the case of Joseph Mudaliar Vs. DCIT in ITA No. 6912/Mum/2019 has held that amendment in sec. 56(2)(x) of the Act brought out by the Finance Act, 2018 w.ef 01.04.2019 allowing tolerance limit up to 5% and by the Finance Act 2020 enhancing such limit to 10% w.ef. 01.04.2021 has retrospective effect and in that view of the matter no addition was called for.*
7. *The ld. DRP further erred in not appreciating that provisions of sec. 56(2)(vii)(b) are in the nature of anti-abuse measure aimed at preventing malafide transactions intended to avoid tax liability and to tackle the problem of black money and were never intended to be made applicable to genuine & bonafide transaction as held in various judicial pronouncements.*

Your appellant, therefore, submits that the order under appeal be quashed and in the alternative due relief be allowed.

Your appellant craves leave to add to, delete, amend or alter all or any of the grounds of appeal at or before the date of hearing.”

2. Fact in brief is that assessee has filed return of income for the assessment year under consideration on 30.03.2016 declaring total income of Rs.19,96,690/-. The case was reopened u/s 147 of the Act and notice u/s 148 of the Act was issued on 31.03.2021. The draft assessment order u/s 144C r.w.s 147 of the Act was passed on 27.03.2022 proposing assessment of the total income at Rs.34,10,690/- after adding Rs.14,14,000/- being the difference between the consideration paid for purchase of property and market value of the property. During the year under consideration the assessee purchased 3 properties in Mumbai, the detail of property purchased along with market value is reproduced as under:

<i>Details of Property</i>	<i>Date of agreement Registration</i>	<i>Consideration as per agreement</i>	<i>Market Value</i>
<i>1103 B Wing, Rizvi Oak.</i>	<i>31.05.2014</i>	<i>104,00,000/-</i>	<i>Rs.107,77,000/-</i>
<i>1103 B Wing, Rizvi, Oak.</i>	<i>31.05.2014</i>	<i>104,00,000/-</i>	<i>Rs.110,21,000/-</i>
<i>1103 B Wing, Rizvi Oak</i>	<i>31.05.2014</i>	<i>104,00,000/-</i>	<i>Rs.108,16,000/-</i>
<i>Total</i>		<i>Rs.312,00,000/-</i>	<i>Rs.326,14,000/-</i>

The difference between the consideration paid for purchase of property and market value of the property was Rs.14,14,000/-. The AO stated that during the course of draft assessment proceedings the assessee has not filed any explanation in response to the notices issued showing the above referred differences in the consideration as per the agreement and the market value determined by the stamp duty valuing authority. Therefore, the AO treated the difference of Rs.14,14,000/- as income u/s 56(2)(vii)(b) of the Act as per the draft assessment order passed on 27.03.2022.

3. The assessee filed objection before the Dispute Resolution Panel. The Dispute Resolution Panel has dismissed the objection filed by the assessee vide direction u/s 144C(5) of the Act dated 26.09.2022.

4. During the course of appellate proceedings before us the Id. Counsel filed paper book comprising copies of documents and detail furnished before the lower authorities. The Id. Counsel referred page no. 42 to 80 of the paper book comprising agreement of sale deed of confirmation of the 3 flat purchased. The Id. Counsel submitted that zerox copies of the agreement were also submitted before the Id. DRP as categorically referred at para 4 of the DRP order and submitted that since the payment was made by August 2013 therefore, the value of the property purchased should be determined as per stamp duty rate prevailing at that time. The Id. Counsel further submitted that in the case of the assessee the variation falls within the range of 10% as difference in valuation between the value determined by the stamp duty

authority and the value declared in the sale consideration therefore no addition can be made u/s 56(2)(vii)(b)(ii) and referred the judicial pronouncements of ITAT on this issue decided in favour of the assessee.

On the other hand, the ld. D.R supported the order of lower authorities.

5. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above during the course of assessment the Assessing Officer found that there was a difference of Rs.14,14,000/- between market value as per the stamp duty valuation and the registered agreement in respect of 3 flats purchased by the assessee during the year under consideration. After perusal of the copies of the purchased agreement placed in the paper book it is noticed that the assessee has made substantial payment for purchasing of the said flats in F.Y. 2013-14. The detail of such payment are given as under:

Flat No	Date Agreement	of Consideration as per Agreement	as Advance Amount Paid by Cheque	Date Payment	of Market Value
1101-B	31/05/2014 1109 sq. ft.	area 10400000	3000000	29/06/2013	10816000
			2500000	29/06/2013	
			3000000	30/07/2013	
1102-B	31/05/2014 1130 sq. ft.	area 10400000	4500000	10/07/2013	11021000
			2000000	30/08/2013	
			2000000	18/06/2013	
1103-B	31/05/2014 1105 sq. ft.	area 10400000	5200000	12/08/2013	10777000
			3300000	28/09/2013	
		31200000	25500000		32614000

In this regard, we have also perused the proviso of Sec. 56(2)(vii)(b) of the Act which are reproduced as under:

“Provided further that where the date of the agreement fixing the amount of consideration for the transfer of immoveable 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 purpose of this sub-clause”.

“Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof has been paid by any mode other than cash on or before the date of agreement for the transfer of such immoveable property.”

After perusal of the directions of the DRP we find that the assessee has also furnished copies of agreement for purchase of three properties before the DRP as categorically referred at page no. 5 of the order of the DRP, however, without any valid reasons the DRP has rejected the objection filed by the assessee stating that assessee had not filed any prior agreement to substantiate that the payments were made in the FY 2013-14. Therefore, we don't find any justification in the finding of DRP and after applying the proviso of Sec. 56(2)(vii)(b) of the Act we find force in the submission of the assessee that market value of the purchased flats was Rs.93,28,830/- against value arrived as per agreement of Rs.1,40,00,000/-. Therefore, no addition is warranted in the case of the assessee. Further we find that it is undisputed fact that in the case of the assessee difference between the stamp duty value and the agreement value was between 3.63% to 5.97% which was less 10%, therefore, following the decision of coordinate bench of the ITAT Mumbai in the case of Joseph Mudaliar Vs. DCIT, CC-4(3) vide ITA No. 6912/Mum/2019 dated 14.09.2021, the addition cannot be made because the difference in valuation between the value determined by the stamp duty authority and the sale consideration was less than 10%. Therefore, ground of appeal No. 1, 4 to 7 are allowed.

6. Ground No. 2 & 3 pertaining to reopening of the assessment was not discussed by the Id. Counsel therefore the same become infructuous and dismissed.

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

Order pronounced in the open court on 13.06.2023

Sd/-

(Sandeep Singh Karhail)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 13.06.2023

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.