

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 515/Kol/2023
Assessment Year: 2016-17

Tarun Kumar Saha 91G, Kalighat Road Kolkata- 700026 [PAN : AMEPS7859P]	Vs	Income Tax Officer, Ward - 29(1), Kolkata [previously ITO Ward-29(3)]
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri R. Chowdhury, Advocate
Revenue by :	Shri Nicholas Murmu, Addl. CIT D/R

सुनवाई की तारीख/Date of Hearing : 10/07/2023
घोषणा की तारीख /Date of Pronouncement: 25/07/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter the "Id. CIT(A)") dated 31/03/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act"), for Assessment Year 2016-17.

2. The sole issue for our consideration is that whether the Id. CIT(A) erred in confirming the addition of Rs.17,70,300/- on account of difference in stamp value and consideration paid for property purchased without considering the proviso to section 56(2)(vii)(b) of the Act.

3. At the outset, the Id. Counsel for the assessee submitted that though the immovable property (Flat) was registered in the name of the assessee and his wife during FY 2015-16, but the Flat allotment letter was issued on 13/09/2010 in favour of the assessee and his wife (joint owner) and consideration for the purchase of the property was

also passed during the FY 2010-11 itself and to support his contention, reference made to the bank statement exhibiting the details of payments made during FY 2010-11 and also copy of the allotment letter dt. 13/09/2010. On the strength of these documents it was contended that the case of the assessee falls under proviso to Section 56(2)(vii)(b) of the Act and the stamp duty value on the date of allotment of the flat should have been considered and in that case no addition could have been made on account of difference in stamp value and consideration paid for property purchases as the purchase consideration as on the date of allotment of flat was more than the stamp duty value.

On the other hand, the ld. D/R vehemently argued supporting the orders of both the lower authorities.

4. We have heard rival contentions and perused the record placed before us. We notice that the assessee is an individual and declared income of Rs.13,22,510/- in the e-return filed on 06/10/2016. Case selected for limited scrutiny through CASS for the reason “whether investment and income relating to properties are duly disclosed”. The same was followed by serving of statutory notices 143(2) and 142(1) of the Act. During the course of assessment proceedings, the ld. Assessing Officer noticed that during the year under consideration, assessee had purchased a flat at Eden City, Maheshtala, District - 24 Parganas (S), for total consideration of Rs.19,09,620/-. The market value of the said property as on 29/07/2015 is Rs.36,79,920/-. The

assessee was asked to explain the source, to which in e-reply dt. 17/12/2018, was filed explaining the source of investment but on the issue of difference in market value of the property to that of the total consideration paid, there was no submission. Accordingly, the Id. Assessing Officer made addition of Rs.17,70,300/-. The assessee challenged the said addition before the Id. CIT(A) mentioning the details that the said property is jointly owned with his wife and the flat was allotted on 13/09/2010, and consideration has been passed on during FY 2010-11 itself. However, Id. CIT(A) immediately directed the Assessing Officer to examine the registered sale deed and whether the above property is under joint ownership and also directed the Assessing Officer to examine the case of the assessee's wife Smt. Manisha Saha, as per the appropriate remedial measures available u/s 147 of the Act.

5. Before us, detailed paper books containing 21 pages has been filed. Eden Real Estate Pvt. Ltd., issued an allotment letter dt. 13/09/2010 for Flat No. 1203 at Tower C-1 at Eden City, Maheshtala and the sum payable towards the said allotment was Rs.19,58,791/- (in 10 instalments) and annexure is also enclosed towards payment schedule. This allotment letter has been issued in the joint name of assessee i.e., Tarun Kumar Saha and Manisha Saha. Further we notice that the payment against purchase consideration was paid by the assessee at Rs.9,94,832/- and Rs.48,275/- vide cheque no. 336934 dated 29/09/2010 and cheque no. 459983 dated 29/09/2010, drawn at

Allahabad Bank and the same were cleared from Bank on 01/10/2010. Remaining sum of Rs.8,66,513/- was paid by assessee's wife Ms. Manish Saha through her bank account held with State Bank of India. All the payment details are duly verifiable from the bank statement. Now, the Flat was finally registered in the name of the assessee and his wife during the year under consideration. Under these fact and circumstances, we have to examine the applicability of provisions of Section 56(2)(vii)(b) of the Act, which reads as follows:-

“(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 ⁶¹[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;

⁶²*[(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:

Provided that 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 the agreement may be taken for the purposes 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 the agreement for the transfer of such immovable property;]”

6. From perusal of the above section and more specifically in the first proviso wherein it is stated that *“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 the agreement may be taken for the purposes of this sub-clause...”*.

6.1. On going through the facts of the instant case, the said proviso is squarely applicable in the case of the assessee as the date of registration i.e., allotment letter is dated 13/09/2010 and total purchase consideration has been given through banking channel during FY 2010-11 and, therefore, the stamp duty value on the date of allotment of flat needs to be adopted for the purpose of applicability of provisions of section 56(2)(vii)(b) of the Act.

7. Under these given facts and circumstances of the case we are of the considered opinion that firstly the property in question is jointly owned by the assessee and his wife and, therefore, the Id. Assessing Officer has erred in making total additions in the hands of the assessee and secondly we hold that for examining that whether the consideration passed by the assessee for the purchase of immovable property is less than the stamp duty value of the property, the Id. Assessing Officer needs to examine this aspect by adopting the stamp duty value applicable during FY 2010-11 i.e., on the date of allotment of flat i.e., 13/09/2010. Though, it is contended before us by the Id. Counsel for the assessee that the stamp duty value is less than the

purchase consideration appearing in the allotment letter but still an opportunity is granted to the Assessing Officer to examine the same and if the contention of the assessee is found to be correct then no addition is called for and in case it is not found to be correct then the calculation of addition under section 56(2)(vii)(b) of the Act has to be made considering the stamp duty value of the said flat applicable for financial year 2010-11.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 25th July, 2023 at Kolkata.

Sd/-

(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 25/07/2023

Tarun Kumar Saha

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata