



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK
(Through virtual hearing)**

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND RAJESH KUMAR, ACCOUNTANT MEMBER**

ITA No.149/CTK/2023
Assessment Year : 2014-15

Anil KumarThakkar, NH-18, Prafulla Nagar, Baripada, Mayurbhanj	Vs.	Income Tax Officer,Ward-2, Baripada
PAN/GIR No.ACFPT 6131 Q		
(Appellant)	..	(Respondent)

Assessee by : Shri Mohit Sheth, Advocate
Revenue by : Shri S.C.Mohanty, Sr DR

Date of Hearing : 28 /06/2023
Date of Pronouncement : 28 /06/2023

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 24.3.2023 in Appeal No. ITBA/NFAC/S/250/2022-23//1051253996(1) for the assessment year 2014-15.

2. Shri Mohit Sheth, Id AR appeared for the assessee and Shri S.C.Mohanty, Id Sr DR appeared for the revenue.

3. It was submitted by Id AR that the assessee is an individual, who derives income from wholesale trading in biscuit. It was the submission that the assessee had entered into an agreement for purchase of flat at Netaji Nagar, Kolkata on 24.11.2011 for a consideration of Rs.9,80,000/-. The assessee had also paid Rs.8,50,000/- in 2012 as advance. In the year 2014 for the impugned assessment year on 21.2.2014, the flat was registered in the name of the assessee and his wife. It was the submission that the Assessing Officer has taken a view that the stamp duty value was Rs.15,82,000/- and on the ground that the difference in the consideration was more than Rs.50,000/-, invoked the provisions of section 56(2)(vii)(b)(ii) of the Act and brought to tax 50% of the difference between Rs 15,82,000 – Rs.9,88,750/-. It was the submission that in respect of assessment of the assessee's wife, no addition has been made. It was the further submission that no addition has also been made in the hands of the seller of the flat. It was the submission that the District Sub-Registrar before whom the property was registered has also not seized the document for undervaluation of the stamp duty. The stamp duty has been paid for a consideration of Rs.9,88,750/-. It was the submission that the assessment order is also silent as to how the stamp duty valuation of the property has been determined at Rs.15,82,000/-. It was the submission that the addition as made by the Assessing Officer and as confirmed by the Id CIT(A) is liable to be deleted. It was the submission by Id AR that on

appeal, the Id CIT(A) in page 5 of his order at last paragraph has put the responsibility of determination of the stamp duty valuation on the assessee by holding that the assessee has failed to submit evidence/documents in support of the stamp valuation from the registering authority of said flat. It was the submission that the fact that the assessee is in a possession of the original sale deed and the same has not been seized by the Stamp Valuation Authority shows that same valuation as done by the assessee in the sale deed was correct. It was the submission that it was the AO who has adopted the figure of Rs.15,82,000/, same is not supported by any valuation.

4. In reply, Id Sr DR vehemently supported the orders of lower authorities.

5. We have considered the rival submissions. A perusal of the deed of conveyance shows that the assessee and his wife has purchased the said flat from the vendor for a total consideration of Rs.9,88,750/- and the sale deed has been registered on 21.2.2014 and the said document has not been seized by the registered authority being the District Sub-Registrar-1, South 24 Praganas. This shows that the valuation disclosed in the sale deed is the consideration. The consideration agreed upon by the agreement dated 24.11.2011 has been paid. The sale deed also mentions the same consideration. No addition has been made in the hands of the joint owner nor in the hands of the vendor. The property has also not been

referred for valuation by the DVO. On this ground, the addition as made by the AO and confirmed by the Id CIT(A) is liable to be deleted and we do so.

6. Further, it is noticed that the provisions of sub-clause((b) to sub-section (vii), said clause (b) to section 56 was substituted by the Finance Act, w.e.f. 1.4.2014 relevant to assessment year 2015-16. The registration of this property has taken place on 21.2.2014 before substitution of sub-clause(b) read as " any immovable property, without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property". If the original provisions of sub-clause (b) is considered, then the property has been transferred for consideration, the sub-clause(b) as applicable for the relevant assessment year also would not apply. Hence, the addition as made by the AO and confirmed by the Id CIT(A) stands deleted on this ground also.

7. In the result, appeal of the assessee stands allowed.

Order dictated and pronounced in the open court on 28/06/2023.

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 28/06/2023
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Anil KumarThakkar, NH-18,
Prafulla Nagar, Baripada, Mayurbhanj
2. The Respondent: Income Tax Officer,Ward-
2, Baripada
3. The CIT(A)-,NFAC, Delhi
4. Pr.CIT-, Cuttack
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack