

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT “SMC” BENCH,
SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

आ.अ.सं./ITA No.315/SRT/2023 (AY 2014-15)

(Hearing in Physical Court)

Shailesh Mohanbhai Patel AT & PO: Sarsana, Khajod, Surat-395007 PAN No: AQAPP 7701 P	Vs	Income Tax Officer, Ward-2(3)(4), Surat, Aayakar Bhavan, Room No.613, Majura Gate, Surat-395001
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से /Assessee by	Shri Akshay M. Modi, CA
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
अपील पंजीकरण/Appeal instituted on	04.05.2023
सुनवाई की तारीख/Date of hearing	02.08.2023
उद्घोषणा की तारीख/Date of pronouncement	02.08.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as “Ld. NFAC/Ld.CIT(A)”] dated 15.03.2023 for assessment year 2014-15, which in turn arises from the addition made by the Income Tax Officer, Ward-2(3)(4) Surat /Assessing Officer in assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 24.11.2016. The assessee has raised the following ground of appeal:-

“1. On the facts and in the circumstances of the case as well in law, the learned CIT(Appeals) has erred in confirming the AO's action making addition of Rs.4,43,366/- u/s 56(2)(vii) of the Act on account of the alleged income under the head “Income from other sources” being under gross misconception, misconstruction and misapplication of the provisions of the law, is without jurisdiction, bad in law, illegal, invalid, arbitrary, void ab initio, and hence, liable to be quashed.

2. On the facts and in the circumstances of the case as well in law, both the lower authorities have grievously failed to appreciate in the right, lawful and proper perspectives the entire correspondences made in the course of appeal and/or assessment proceedings, already been supplied with the appeal memo forming part of the statement of facts, including cogent explanations and submissions made in writing by the appellant on various dates along with the various enclosures attached with the said submission and hence, not justified.

3. Your appellant further reserves its right to add, alter, amend or modify any of the aforesaid grounds before or at the time of hearing of the appeal.”

2. Rival submission of both the parties heard and record perused. The learned authorized representative (Ld. AR) for the assessee submits that Assessing Officer passed the assessment order without giving opportunity to assessee and passed assessment order by making addition of Rs.4,43,3,66/- under section 56(2)(vii) of the Act. The addition was made on account of difference in sale consideration paid by assessee on purchase of plots of lands and the value determined by Stamp Valuation Authority. The show cause notice dated 15.11.2016 about

the proposed additions, as mentioned in the assessment order was despatched on 19.11.2016, which was received by assessee only on 02.12.2016, that is after passing the assessment order on 24.11.2016. The ld AR for the assessee has shown original of the said show cause notice with original envelope, which clearly shows that the said notice was dispatched through postal authorities only on 19.11.2016, copy of the notice with envelope is filed on record. The ld AR submits that the said show cause notice was served only on 02.12.2016 as recorded by receipt on the said notice. The ld AR for the assessee submits that before Ld. CIT(A), the assessee raised specific objection about not serving such notice in time, in his submission filed on 12.01.2021, however, the ld. CIT(A) has not considered such fact and conveniently ignored such facts without making any comment. The ld AR for the assessee invited my attention to the submissions of assessee, as recorded by ld CIT(A) in para-4 of his order, where all such submissions of the assessee are recorded. The Ld. AR for the assessee further submits that during appellate stage, the assessee also filed an application for making reference

to Department Valuation Officer (DVO) to assess the Fair Market Value of the assets purchased by the assessee alongwith other co-owners, however, the NFAC/Ld. CIT(A) has not waited for the report of DVO. Even before DVO, the assessee filed certain objections by way of detailed written submission. The Ld. AR for the assessee submits that both the lower authorities passed order without giving opportunity of hearing, therefore the assessment order as well as First Appellate Authority may be quashed.

3. In alternative submission, Ld. AR for the assessee submits that matter may be restored back to the file of Assessing Officer to give assessee fair and reasonable opportunity for *de novo* assessment order on the issue of addition under section 56(2)(vii) of the Act.
4. On the other hand, learned departmental representative (Ld. Sr-DR) for the Revenue supported the order of lower authorities. Ld. Sr-DR for the Revenue submits that as per alternative plea raised by Ld. AR for the assessee that the matter may be restored back to the file of Assessing Officer for *de novo* assessment in accordance with law. On merit of

the additions the ld Sr DR for the revenue supported the orders of lower authorities.

5. I have considered the submission of both the parties and perused the order of lower authorities carefully. I find that assessee filed his return of income for assessment year 2014-15 on 21.03.2016 declaring income of Rs.4,16,500/-. The case was selected for scrutiny. During assessment, the Assessing Officer noted that assessee has purchased a land at Moje: Mahuver, Survey No. 89, Block No.230, Jalalpure, Dist. Navsari along with a co-owner for a consideration of Rs.2.00 lakh. The assessee was having $\frac{1}{2}$ share thus, paid Rs.1,00,000/-. The assessee also purchased one more land at Block No.359/1, Moje: Sandalpure, Tal: Jalalpure, Dist. Navsari for a consideration of Rs.8.50 lakh along with two co-owners and assessee's share in this deal $\frac{1}{3}$ share thereby paid Rs.2.80 lakh. The assessee was asked to furnish copy of sale deed of the land in question. The assessee vide reply dated 24.10.2016 furnished copy of purchase deed. On perusal of purchase deed, Assessing Officer noted that assessee has paid stamp duty @ 4.9% of the value of consideration shown on the documents. In

order to ascertain the jantri rate as determined on Stamp Valuation Authority, the Assessing Officer issued notice under section 133(6) to the Sub-Registrar, Navsari vide his reply dated 11.11.2016. in reply to such notice the Sub-Registrar furnished certified copy of registered document along with calculation sheet of the Stamp Valuation. The value as determined by Stamp Valuation Authority for land in Survey No. 89 Block No.230 Khata No.27 at Rs.6,99,200/- and valued for land at Block No.3591, Moje : Sandalpore, Tal: Jalalpore, Dist. Navsari at Rs.17,40,200/-, whereas assessee along with co-owners has shown the value on documents at Rs.2.00 lakh and Rs.8.50 lakh respectively. The Assessing Officer on the basis of the difference in the value shown by the assessee and his co-owners in the sale deeds *vis-a vis* the value determined by worked out difference of share of assessee of Rs. 4,43,366/- and issued show cause notice issue to assessee vide show cause notice dated 15.11.2016 in proposing the addition of Rs.4,43,366/-. The Assessing Officer recorded that assessee was given time to file his reply up to 24.11.2016, however, no reply was received by Assessing Officer.

Accordingly, Assessing Officer made addition as per show cause notice under section 56(2)(vii) of Rs. 4,43,366/- in the assessment order dated 24.11.2016. I find that feeling dissatisfied with the addition in the assessment order, the assessee filed appeal before Ld. CIT(A). Before NFAC/Ld. CIT(A) assessee specifically submitted that Assessing Officer failed to serve any show cause notice before passing assessment order. The Assessing Officer violated the principle of natural justice.

6. The assessee in his without prejudice submissions also objected about the addition made by Assessing Officer submitted that the assessee has actually paid the consideration more than the consideration shown on the sale deed. The jantri value is fixed for the purpose of levy of stamp duty on the transaction of land. It can never be presumed that assessee paid inadequate consideration from his "income from other sources" as has been held by Assessing Officer. The stamp valuation adopted by Stamp Duty Authority are general rate or circle rate which cannot be straightway to be applied for whichever land even if it falls within the particular circle or block as prescribed by

Stamp Duty Valuation Authority. The assessee also submitted that as per section 56(2)(vii) (b), it was the duty of the Assessing Officer to refer the value to the Departmental Valuation Officer (DVO) where assessee claimed that value determined by Stamp Valuation Authority is in excess of fair market value as on the date of transfer. The assessee also referred various provision of Section 50C as well as 56(2)(vii)(b) and submitted that Assessing Officer was required to refer the matter before DVO for ascertain the value of capital assets. The assessee submitted that Assessing Officer made addition solely on the basis of valuation of Stamp Duty Authority and straightway invoking under section 56(2)(vii)(b) and failed to matter for valuation for correct and fair market value to DVO in view of proviso below to sub-clause-(b) of clause-(vii) of Section 56(2) and the assessment order is passed arbitrarily and liable to be quashed. The NFAC/Ld. CIT(A) after considering the submission of assessee straightway upheld the order of Assessing Officer.

7. I find that the Assessing Officer made addition under section 56(2)(vii) (b) by taking view that the assessee was

served show cause notice dated 15.11.2016 and the assessee was allowed time up to 22.11.2016 to file his reply, but no reply is filed by the assessee. And according to the Assessing Officer made addition of Rs. 4,43,366/- in the assessment order. At the time of making submissions, the ld AR for the assessee has shown copy of show cause notice dated 15.11.2016, which was sent through Speed Post was despatched only on 19.11.2016 and it was received on 02.12.2016. thus, the said show cause notice was served after passing of the assessment order. Further I find that before Ld. CIT(A) assessee made specific submission that assessment order was passed without giving opportunity to file reply in respect of show cause notice dated 15.11.2016, which was received by assessee after passing assessment order. The Ld. CIT(A) despite recording the contention of assessee in para-4 of his order has neither given his finding nor any liberty to assessee to file reply of such show cause notice nor have sought any comment of Assessing Officer, and conveniently ignored such contention. I further find that assessee also made prayer for referring the matter to DVO to ascertain fair market value as first proviso to

clause-(vii) to sub-section 56(2). I find that despite sending the matter to DVO, Ld. CIT(A) has not waited for his report. Thus, I find that neither the Assessing Officer has given opportunity to assessee before making addition under section 56(2)(vii) of the Act nor the Ld. CIT(A) considered such objection raised by assessee during appellate stage nor waited for the report of DVO. Thus, I find that the assessment order was passed in utter violation of principle of naturel justice, which is not justifiable. Therefore, the addition made in the assessment order and confirmed by Ld. CIT(A) in the order impugned before me, is set aside. The Assessing Officer is directed to delete the addition under section 56(2)(vii). In the result, the grounds of appeal raised by assessee are allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in open court on 02/08/2023.

Sd/-
(PAWAN SINGH)
[न्यायिक सदस्य JUDICIAL MEMBER]

सूरत/Surat, Dated: 02/08/2023
Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

// True Copy //

By order

Senior Private Secretary/ Private
Secretary/Assistant Registrar, ITAT,
Surat