

आयकर अपीलिय अधिकरण
मुंबई पीठ "एस.एम.सी.", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एस. रिफौर रहमान, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER

आअसं. 2056/मुं/2023 (नि.व. 2018-19)
ITA NO.2056/MUM/2023 (A.Y.2018-19)

Imran Mohamed Ali Kapadia,
1702/1703 Sumer Park, Bldg. No.1,
Seth Motishah Cross Lane,
Byculla, Mumbai 400 008
PAN: AUPK-9074-A

..... अपीलार्थी/ Appellant

बनाम Vs.

ITO, Ward 20(1)(1),
Piramal Chamber, G.B.Road,
Lalbaug, Parel,
Mumbai – 400 012

..... प्रतिवादी/ Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Pratik Mehta
प्रतिवादी द्वारा/ Respondent by : Shri H.M.Bhatt
सुनवाई की तिथि/ Date of hearing : 12/09/2023
घोषणा की तिथि/ Date of pronouncement : 12/09/2023

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Center, Delhi [hereinafter referred to as 'the CIT(A)'] dated 06.04.2023, for assessment year 2018-19.

2. Shri. Pratik Mehta appearing on behalf of the assessee submitted that the solitary issue in present appeal is against the addition of ₹30,47,000/- u/s 56(2)(x) of the Income Tax Act, 1961

[hereinafter referred to as 'the Act']. Narrating fact of the case he submitted that, the assessee along with his brother purchased a flat in building known as Modern Enclave. Mahanagar Construction Pvt. Ltd. the developer of said residential building issued allotment letter dated 29.03.2012 in the joint names of the assessee and his brother Shri. Haji Ahmed Mohammed Ali Kapadia in respect of flat No. 1101 on 11th floor of the aforesaid building. The allotment letter specifies total consideration i.e. ₹ 80 lakhs. Out of the total consideration ₹ 30 lacs were paid in two instalments by way of cheques on 28.02.2012 (₹20 lacs) and 22.03.2012 (₹10 lacs) before issuance of allotment letter. This fact has been mentioned in the allotment letter. The assessee and his brother had 50% each share in the flat. The Ld. AR submitted that the flat was registered in the joint names of assessee and his brother vide Agreement for Sale dated 17.02.2018 (at Page No. 148 of the Paper Book). By the time Sale Agreement was registered, the stamp duty value of flat had considerably increased to ₹ 1,30,94,000/-. In scrutiny assessment proceedings the AO invoked the provisions of section 56(2)(x) of the Act and made addition of difference between the stamp duty value and total consideration. Since, share of the assessee in flat is 50%, the AO made addition of 50% of total difference, u/s 56(2)(x) of the Act in hands of the assessee

2.1. The Ld. AR made two fold submissions. First, the allotment letter was issued in the name of assessee and his brother on 29.03.2012, the said allotment letter clearly mention the flat no. and the total consideration. The part consideration was laid by way of cheque and the same has been admitted by the builder in allotment letter, hence the date of allotment letter should be considered for the purpose of

determination of Fair Market Value (FMA) of immovable property. He referred to the proviso to section 56(2)(x)(b) of the Act.

2.2. Without prejudice to his primary submission, the Ld. AR submits that in the case of assessee's brother Shri. Haji Ahmed Mohammed Ali Kapadia having 50% share in the flat, the AO had called for DVO's report. The said report is at page no. 298 of the paper book. The DVO has determined the FMV of said of property at ₹ 83,51,107/-. Therefore, the said value should be accepted.

3. Per contra, Shri. H. M. Bhatt representing the department vehemently defended the impugned order and prayed for dismissing appeal of the assessee. The ld. DR submitted that a perusal of impugned order would show that the CIT(A) has rejected DVO's report, as there were flaws in the report. The DVO had determined the value as on 29.03.2012 instead of the date of registration of the Sale deed in February 2018. The Ld. DR prayed for upholding the impugned order.

4. We have heard the submission made by rival sides and have examined the orders of lower authorities. In so far as the facts of the case viz. the date of allotment letter, the consideration mentioned therein and payment of part consideration by the assessee by way of cheque at the time of issuance of allotment letter, etc. they are not disputed by the department. The short issue in appeal before us is; Whether the total consideration as agreed between the assessee and developer as mentioned in allotment letter should be considered or stamp duty value on the date of registration of the agreement should be considered as FMV under of the Act.

5. Before we proceed further, it would be imperative to refer to the provisions of section 56(2)(x) of the Act. The relevant extract of the said section is reproduced here in below.

“56. (2) In particular, and without prejudice to the generality of the provisions of sub- section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely:-

(i) xxxxxxxxxx

(ii) xxxxxxxxxx

(x) where any person receives, in any previous year, from any person or persons on or after 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;

(b) any immovable property,—

(A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(B) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:-

(i) the amount of fifty thousand rupees; and

(ii) the amount equal to ten per cent of the consideration:

Provided that where the date of 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 agreement may be taken for the purposes of this sub- clause:

Provided further that the provisions of the first proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account 88 [or through such other electronic mode as may be prescribed⁸⁹], on or before the date of agreement for transfer of such immovable property”

A bare perusal of first proviso to clause (x) would make it clear that where the date of agreement fixing the amount of consideration for the

transfer of immovable properties and the date of registration are different, the stamp duty value on the date of agreement shall be taken into consideration for the purpose of section 56(2)(x) of the Act. The second proviso to clause (x) further clarifies that the first proviso shall apply where the assessee had paid part consideration by way of cheque or bank draft or through electronic clearing system of on or before the date of agreement.

In the instant case, the allotment letter dated 29.03.2012 (at page No. 199 of paper book) clearly specifies the total consideration agreed between the parties and also the fact that out of total consideration of Rs.80 lakhs, Rs 30 lacs has been paid by way of cheque (2 cheques) before the issuance of allotment letter. Thus, case of the assessee falls within the first proviso to section 56(2)(x) of the Act. Hence, we are in agreement with the primary contention of the assessee to the extent that the date of allotment letter is relevant for determining FMV of asset/flat.

6. The assessee has also placed on record valuation report of the DVO sought in case of assessee's brother Haji Ahmed Mohammed Ali Kapadia who is co-owner of the flat having 50% share. The DVO in report determined FMV of flat on the date of letter of allotment as ₹83,51,107/-. Although, in assessment proceedings the assessee has not asked for DVO's report, nevertheless, in the case of brother of assessee DVO's report was sought. The case of assessee is pari-materia to that of his brother. There cannot be two FMV for the same property on a given date. Therefore, we direct the Assessing Officer to

adopt the Fair Market Value of the property` determined by the DVO as in the case of assessee's brother.

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

Order pronounced in the open court on Tuesday the 12th day of September, 2023.

Sd/-

(S.RIFAUR RAHMAN)

लेखाकार सदस्य/ACCOUNTANT MEMBER
मुंबई/ Mumbai, दिनांक/Dated 12/09/2023
Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्तCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि. , मुंबई/DR, ITAT, Mumbai
- 5.. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai