

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.811/Kol/2023
Assessment Year: 2016-17**

Harshavardhan Saraf Flat No. 1, 6 th Floor, Ashoka Road, Alipore, Kolkata-700027 (PAN : BHUPS8704D)	Vs.	Assistant Commissioner of Income Tax, Circle-29, Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Manoj Kataruka, Advocate
Respondent by: Shri B. K. Singh, JCIT, Sr. DR

Date of Hearing : 12.10.2023
Date of Pronouncement : 28.11.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), NFAC, Delhi vide order no. ITBA/NFAC/S/250/2023-24/1053790489(1) dated 19.06.2023 passed against the assessment order by ACIT, Circle-29, Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 13.12.2018, for AY 2016-17.

2. Grounds taken by the assessee are reproduced as under:

"1. That on the facts and in the circumstances of the case the action of the CIT(A) to confirm the addition made by the AO u/s 56(2)(vii) of Rs.1,19,76,350/- on account of difference in the market value of the flat is contrary to provisions of law and the addition is arbitrary, excessive and illegal.

2. That on the facts and in the circumstances of the case the action of the CIT(A) to confirm the addition made by the AO of Rs.1,19,76,350/- is without considering the material evidences on record and the addition is arbitrary, excessive and illegal and bad in law.

3. That the order of the Ld. CIT(A) confirming the action of the A.O. is arbitrary, excessive and illegal.

4. That the above grounds of appeal will be argued in details at the time of hearing and the appellant craves leaves to submit additional grounds of appeal if any and or alter, vary, modify or rectify the statement of facts and grounds of appeal at or before the time of hearing.”

3. Brief facts of the case are that assessee filed his return of income on 22.07.2016 reporting total income of Rs.37,79,530/- consisting of salary, house property income, capital gains, interest, dividend etc.

3.1. Assessment was completed by making an addition of Rs.1,19,76,350/- on account of difference in actual cost of flat purchased by the assessee in the year 2011 and the value adopted in the year 2015 for the purpose of stamp duty by invoking the provisions of section 56(2)(vii) of the Act. Assessee vide agreement dated 15.07.2011 had jointly with his mother Smt. Darshana Saraf, purchased an under-construction residential flat bearing flat no. 6A, 6th Floor at 1, Asoka Road, Alipore, Kolkata for a consideration of Rs.4,06,89,316/- plus costs of three car parking space for Rs.14,40,000/-, thus totalling to Rs.4,21,29,360/-. Share of assessee being half at Rs.2,10,64,680/-.

3.2. On the execution of the said agreement, payments were made through Account Payee cheques, both by the assessee and his mother, from the FY 2010-11 to 2012-13. On completion of construction, conveyance deed of the said flat was registered on 15.12.2015 whereupon the stamp duty

valuation of the same flat was assessed by the Registrar of Assurance at the prevailing market rate of Rs.6,36,83,200/- and for car parking space at Rs.26,48,700/-, totalling to Rs.6,63,31,900/-. This resulted in a difference of Rs.2,39,52,700/- in the valuation for which Ld. AO issued a show cause notice as to why share of the assessee on this difference be added to the total income u/s. 56(2)(vii) of the Act.

3.3. In response, assessee had submitted a certified copy of conveyance deed dated 24.11.2011 of one Smt. Premlata Dalmia in respect of similar type of transaction for the flat located at 11, Asoke Road, Kolkata, by giving it as a comparative evidence. According to the assessee, the comparative transaction was done at an effective rate per sft. of Rs.4,500/- including car parking space against which Ld. AO had proposed to take the rate of Rs.11,200/- per sft. excluding the car parking, which is unjustified. Further, Ld. AO had issued notice u/s. 133(6) of the Act to the Additional Registrar of Assurance (ARA-1), 5, Govt. Place, Red Cross Building, B.B.D Bag, Kolkata calling for information on the impugned purchase transaction undertaken by the assessee and to provide the market value of the said property as on 15.07.2011 i.e. the date of agreement initially signed by the assessee with the Vendor.

3.4. However, no other cognizance was taken to the notice issued by the Ld. AO and the assessment was completed by making the addition. In the course of assessment, assessee had also claimed that since the payments were made by the

assessee and his mother through banking channel during the FY 2010-11 to 2012-13, proviso to section 56(2)(vii)(b) comes into play which provides that where the date of agreement fixing the amount of consideration for transaction of immovable property and registration are not the same then stamp duty value on the date of agreement may be taken for the purpose of this sub-clause.

3.5. According to the assessee, since he has complied with this requirement, he is entitled to the benefit available in the said first proviso to have the stamp duty value of the property on the date of agreement i.e. 15.07.2011 and not on the date of conveyance i.e. 14.12.2015 which the Ld. AO has considered. According to the Ld. AO, since no supporting evidence was made available to demonstrate the valuation of the impugned property as on 15.07.2011, no benefit can be given to the assessee for his claim. Aggrieved, assessee preferred appeal before the Ld. CIT(A) who sustained the addition. Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, Ld. Counsel for the assessee reiterated the submission so made in order to demonstrate the compliance of the first proviso to section 56(2)(vii)(b). Ld. Counsel referred to the details of payment made towards purchase of the said residential flat in the joint ownership with his mother vide agreement dated 15.07.2011 whereby certain payments had already been made in the year 2011 by cheque. The said details are tabulated as under:

Date of payment	Paid to	Mode of payment	Amount
15/07/2011	Sita Devi Khaitan	Cheque	1,053,000.00
09/08/2011	Sita Devi Khaitan	Cheque	565,130.00
09/08/2011	Sita Devi Khaitan	Cheque	7,208,800.00
13/10/2011	Sita Devi Khaitan	Cheque	2,000,000.00
14/12/2011	Sita Devi Khaitan	Cheque	2,318,000.00
01/01/2013	Sita Devi Khaitan	Cheque	3,500,000.00
15/01/2013	Sita Devi Khaitan	Cheque	1,363,832.00
04/11/2015	Registration Fee		729,739.00
04/11/2015	Stamp Duty		4,643,253.00
31/03/2016	Paid to Smt. Darshna Saraf towards reimbursment of amount paid by her (equalisation of contribution)	Cheque	1,993,258.50
			25,375,012.50

4.1. Ld. Counsel further submitted that Ld. AO had failed to analyse the comparative and effective rate per sft. which comes only to Rs.4,544/- including car park based on sample deed of conveyance of one Smt. Premlata Dalmia which is dated 24.11.2011 and closely resembles to the agreement for purchase of flat dated 15.07.2011 undertaken by the assessee jointly with his mother. In the said agreement the effective rate per sft. for the purchase is arrived at Rs.7,200/- excluding car park which is already on a higher side than the comparative conveyance deed. In spite of all these submissions, Ld. AO has taken the stamp duty valuation by considering the date of conveyance i.e. 14.12.2015 with effective rate of Rs.11,200/- per sft. excluding car park. According to the Ld. Counsel, Ld. AO has not taken into cognizance of any other steps on the notice issued by him u/s. 133(6) of the Act to the Registrar for obtaining the market value of the impugned property as on 15.07.2011. He pointed out the notice u/s. 133(6) dated 17.11.2018 issued by the Ld. AO which reproduced as under:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE 29, KOLKATA

To,
ADDITIONAL REGISTRAR OF ASSURANCE
OFFICE OF THE A.R.A.-1, 5, GOVT. PLACE,
RED CROSS BUILDING, B.B.D.BAG,
KOLKATA, West Bengal India 700001

PAN:	Assessment Year:	Notice No : ITBA/AST/S/133(6)/2018-19/1013671158(1)/374	Dated: 17/11/2018
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Notice under sub section (6) of section 133 of the Income Tax Act, 1961

Sir/ Madam/ M/s,

Subject: Calling for information u/s 133(6) of the Income Tax Act, 1961 in the case of HARSHVARDHAN SARAF for A.Y. 2016-17

In this connection, your kind attention is invited to the provisions of section 133(6) of the Income Tax Act, 1961, which empowers the undersigned to call for the information which is considered relevant or necessary for the proceedings under the Income Tax Act, 1961.

You are, therefore, requested to furnish the following details.

Sub: Furnishing of Information U/s 133(6) of the I. T. Act' 1961 in the case of Shri Harshvardhan Saraf [PAN: BHUPS8704D] for the F.Y. 2015-16 relevant to the A.Y. 2016-17 – reg.

During the course of assessment proceedings in the case of Shri Harshvardhan Saraf [PAN: BHUPS8704D] for the F.Y. 2015-16 relevant to the A.Y. 2016-17 it is seen that the above assessee purchased a Flat with Garage situated at 1, Ashoka Road, Alipore, Kolkata- 700 027. The above properties were registered on 10.12.2015 at your good office at a certified market value of Rs. 6,36,83,200/- for the Flat and Rs. 26,48,700/- for the Garage totaling the certified market value of the property at Rs. 6,63,31,900/- against the actual purchase consideration of Rs. 4,23,79,200/- (including Garage) as per agreement for the purchase dt. 15.07.2011.

You are hereby requested to provide the market value of the above property as on F.Y. 15.07.2011.

You are requested to furnish the reply to the undersigned as early as possible to facilitate this office to complete the time barring assessment U/s 143(3) of the Income Tax Act' 1961 as the time to pass the order U/s 143(3) of the I. T. Act' 1961 will be barred by limitation as on,31.12.2018.

The requisite information may be furnished to this office by 26/11/2018 either by post or through an authorized representative. Please note that your personal attendance is not required in the matter. Please note that failure to furnish the required information may invite invocation of penal provisions under section 272A(2)(c) of Income Tax Act, 1961, envisaging penalty Rs. 100/- for each day default.

5. Per contra, Ld. Sr. DR placed reliance on the orders of the authorities below and submitted that in absence of supporting evidences of market value as on the date of

agreement i.e. 15.07.2011, addition has rightly been made in the hands of the assessee.

6. We have given our thoughtful consideration to the submissions made before us by both the authorities below. The relevant provisions under the Act i.e. 56(2)(vii)(b) under which the addition has been made and challenged by the assessee is reproduced as under:

“56. Income from other sources

(1)

(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 :—

[(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 [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;

[(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;]”*

6.1. From the above provision, we note that the first proviso provides that where there is difference between the date of agreement and the date of registration for the transaction of an immovable property then the stamp duty value as on the date of agreement may be taken provided part of

consideration has been paid by any mode other than cash on or before the date of the said agreement.

6.2. In the present case before us, the date of agreement is 15.07.2011 and the date of registration of the conveyance deed is 10.12.2015. Also Ld. Counsel has placed on record details of payment made by cheque in the year 2011 details of which is already tabulated above. We also take note of the fact that Ld. AO had initiated steps to obtain market value of the impugned property on the date of agreement i.e. 15.07.2011 from ARA-1, Kolkata by issuing notice u/s. 133(6) of the Act but did not bring it to logical conclusion. Also, assessee had furnished details of similar transaction in the neighbouring of his property to substantiate the claim. Thus, under all these facts and circumstances, it is evidently clear that the stamp duty value as on the date of agreement i.e. 15.07.2011 is to be taken into consideration as per the provisions of section 56(2)(vii)(b) referred above. The said stamp duty value is not readily available on records except for half-hearted steps taken by both the sides, namely by the Ld. AO as well as by the assessee.

6.3. In these facts and circumstances of the case, we find it proper to remit the matter back to the file of Ld. AO to obtain market value of the impugned property as on the date of agreement i.e. 15.07.2011 and thereafter make any addition if so required, in accordance with the provisions of section 56(2)(vii)(b) of the Act. We also direct the assessee to assist in making available the market value on the date of agreement so that Ld. AO can complete the proceeding

expeditiously. Accordingly, ground taken by the assessee is allowed for statistical purposes.

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

Order is pronounced in the open court on 28th November, 2023.

Sd/-

(Rajpal Yadav)
Vice President

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 28th November, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:.
 3. CIT(A), NFAC, Delhi
 4. CIT
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata