

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

श्री गिरीश अग्रवाल, लेखा सदस्य

के समक्ष

Before

SRI RAJPAL YADAV, VICE PRESIDENT

&

SRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

I.T.A. No.: 1211/KOL/2023

Assessment Year: 2018-19

Bijay Kumar Agarwal.....Appellant
[PAN: ADCPA 8417 G]

Vs.

ITO, Ward-34(1), Kolkata.....Respondent

Appearances:

Assessee represented by: Sh. Vikash Surana, A/R.

Department represented by: Sh. Avijit Adhikari, JCIT.

Date of concluding the hearing : January 11th, 2024

Date of pronouncing the order : January 22nd, 2024

ORDER

Per Rajpal Yadav, Vice-President (KZ):

The assessee is in appeal before the Tribunal against the order of the Commissioner of Income Tax (Appeals), NFAC, Delhi [in short ld. 'CIT(A)'] dated 18.09.2023 passed for AY 2018-19.

2. The assessee has taken four grounds of appeal, out of which ground nos. 3 & 4 are general grounds of appeal which do not call for recording of any specific finding, hence, rejected.

3. Ground nos. 1 & 2 revolve around a single issue namely whether ld. CIT(A) is justified to confirm the addition of Rs. 32,93,730/- which was added

by the Assessing Officer (in short ld. 'AO') u/s 56(2)(x) of the Act whereas the flat was booked by the assessee in FY 2014-15 and all payments were made through banking channel.

4. The brief facts of the case are that the assessee has filed his return of income on 07.08.2018 declaring total income at Rs. 5,40,120/-. The case of the assessee was selected for scrutiny assessment and a notice u/s 143(2) of the Act was issued and served upon the assessee. During the course of assessment proceeding, it revealed to the AO that this case has been selected for scrutiny on the basis of information received from the DIT(I&CI), Mumbai whereby it was informed that assessee has purchased one immovable property on 17.11.2017 for a consideration of Rs. 32,93,730/- whose value was assessed by the Stamp Valuation Authority at Rs. 39,96,440/-. Thus, the AO was of the view that difference of Rs. 7,02,710/- is required to be added. The AO further, observed that he issued a notice u/s 142(1) of the Act on 19.01.2021 but the assessee did not details of the transaction. Hence, he made the addition of the total investment alleged to have been made by the assessee. The finding of the AO read as under:

“7. The assessee has categorically denied the transaction of purchase of immovable property. However, the case has been selected on the basis of information regarding such transaction from the DIT(I&CI), Mumbai vide letter No. DIT(I&CI)/Sharing of information/2019-20/670, dated 29.07.2019 mentioning therein that the Directorate has collected data from Sub-Registrar Offices (SROs) of Mumbai for F.Y. 2016-17 & 2017-18 and come across many instances of possible infringement of Section 50C/43CA and section 56(2)(x). Therefore, in the assessee’s case the said transaction is reported by the Registration Authority itself i.e. Joint Sub Registration Office (M.S.D) Borivali -4. It seen that the details of the transactions are appearing in assessee's Form 26AS(downloaded from traces) as well.

8. Since the assessee has refused to acknowledge the transaction itself and not submitting any details/ documentary evidence with respect to the same, the entire amount invested in the immovable property amounting to Rs. 32,93,730/- is taxable u/s 69 of the I.T Act, 1961 as unexplained investments. A show cause notice was issued to the assessee on 07.04.2021 for explanation on or before with regard to the above mentioned addition in the computation of Income for the A.Y- 2018-19.

The assessee submitted the reply as under:

.....The transaction of purchase of one Immovable property of Rs. 32,93,730/- Sir as I have already informed earlier vide my letter dated 18.02.2021 submitted to you on 18.02.2021 vide acknowledgement No 18022114204385 that this transaction of purchase/sale of property does not pertain to me. It has been inaccurately uploaded by the concerned Department. Hence there is no question of addition of Rs. 32,93,730/- as unexplained investments u/s 69”

The Reply of the assessee has been considered. It may be mentioned here that this reply has already been submitted by the assessee in response of notice u/s 142(1) and also this time the assessee has not submitted any new supporting documentary evidence. The details of the transactions are appearing in assessee’s Form 26AS (downloaded from traces) as well. Therefore, the assessee’s claim that he is not aware of any such transactions is not justified. In view of this, the reply of the assessee is not acceptable.

9. In view of the above, the entire amount invested in the immovable property amounting to Rs. 32,93,730/- is added back to the total income of the assessee u/s 69 of the I.T Act, 1961 as unexplained investments and requires to be taxed u/s 115BBE of the Act. Penalty show cause notice under section 271AAC r.w.s. 274 of the Act is being initiated separately for unexplained investments.

(Addition: Rs. 32,93,730/-)”

5. Appeal to the ld. CIT(A) did not bring any relief to the assessee.
6. Before us, ld. Counsel for the assessee has filed a paperbook running into 73 pages. He first of all submitted that finding of ld. CIT(A) is incorrect to the extent that the assessee has not filed anything and against column no. 46A it is mentioned as ‘No’. He submitted that there is no additional evidence filed by the assessee but paperbook were filed before the AO as well as before ld. CIT(A). On page no. 72-73 the assessee has submitted as to how written submission along with documents have been placed before the Income Tax Authority by way of several letters. He further, drew our attention to page no. 1 and submitted that this flat was allotted to the assessee on 11.05.2015. The assessee has placed on record copy of the allotment letter issued by Shree Ganesh Vaishno Developers. In this letter it has been mentioned that the said flat is booked for Rs. 32,93,730/- and the assessee had made payment of Rs. 5,01,000/- through account payee cheque dated 12.02.2015. Thereafter, the assessee has been making the payments through instalments and ultimately

purchased the flat. The details of instalments have been summarized by the assessee whose copies are also available in the paperbook. The details read as under:

“A. The appellant had booked a residential flat (Flat No.: 104, Floor- 1st, Mantri Wadi, C.T.S No.605, Malad (west), Mumbai-400064) in the F.Y.:2014-15 for a total consideration of Rs.32,93,730/- vide allotment letter dated 11.05.2015 (Enclosed herewith).

B. The payments were made as follows:

Debit as per Bank A/c	Amount (Rs.)	Bank Name	Account Holder's Name
27.02.2015	5,01,000	Corporation Bank	Bijay Kumar Agarwal
24.07.2015	7,50,000	Corporation Bank	Bijay Kumar Agarwal
17.05.2016	5,00,000	Corporation Bank	Bijay Kumar Agarwal
10.10.2016	5,00,000	Corporation Bank	Binod Kumar Agarwal (Father)
17.02.2017	5,00,000	Corporation Bank	Binod Kumar Agarwal(Father)
20.06.2018	5,00,000	Corporation Bank	Bijay Kumar Agarwal
19.07.2018	42,730	Corporation Bank	Bijay Kumar Agarwal
Total	32,93,730		

Out of these, a sum of Rs. 10,00,000 was paid by appellant's father Mr. Binod Kumar Agarwal. All the relevant Bank statements mentioning the said payments are enclosed herewith.”

7. The Id. AO has made the addition with the help of Section 56(2)(x) of the Act which provides as under:

“Section 56(2)(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.”

8. A perusal of the above provision would reveal that proviso to the Section provides that if 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. The value determined by the valuation authority for the purpose of charging stamp duty as the value of the property and after deducting the purchase consideration shown by the assessee the remaining part is being considered as a deemed gift within the meaning of this Section. But in this case it is hit by the proviso. Assessee has booked the flat in 2015 and the AO has not taken the stamp duty valuation on 11.05.2015 which is less than the value considered by the AO.

9. In view of the above consideration, the orders of both the lower authorities are not sustainable because the assessee has demonstrated that it has made payment for purchase of this property through account payee cheque in instalments on different dates. Therefore, as far as Rs. 32,93,730/- is concerned, it cannot be added and this addition is deleted. What the AO can add with the help of Section 56(2)(x) of the Act is the amount which is the difference between Rs. 32,93,730/- *vis-à-vis* stamp duty value for the purpose of charging stamp duty on 11.05.2015. Therefore, we deem it appropriate to set aside this issue to the file of the AO with the following directions:

a) The ld. AO first find out the stamp duty valuation of the property as on 11.05.2015 and if it is more than Rs. 32,93,730/- then that amount is to be worked out for the purpose of considering it as deemed fit.

b) In case a positive difference is found which is required to be considered as deemed gift in the hands of the assessee then ld. AO shall call for the report of DVO for determining the fair market value of the flat as on 11.05.2015.

c) The AO shall consider the fair market value determined by the DVO as well as the value of Stamp Valuation Authority and whichever is the lower is to be adopted for considering the value of the property as on 11.05.2015. From that amount sum of Rs. 32,93,730/- is to be debited and the balance could be considered as deemed gift in the hands of the assessee.

10. With the above directions, the appeal of the assessee is allowed and the impugned orders are set aside.

11. In the result, the appeal filed by the assessee is allowed.

Kolkata, the 22nd January, 2024.

Sd/-

[Girish Agrawal]

Accountant Member

Sd/-

[Rajpal Yadav]

Vice-President

Dated: 22.01.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Bijay Kumar Agarwal, 1st Floor, Rampuria Market, 86, Canning Street, Burrabazar, Kolkata-700 001.**
- 2. ITO, Ward-34(1), Kolkata.**
- CIT(A)-NFAC, Delhi.
- CIT-
- CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata