

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1868/MUM/2022
(Assessment Year: 2018-19)**

Smt. Mohini Bharat Kumar Ludhani,
13, Sahilesh CHS Ltd., Linking Road,
Santacruz (West), Mumbai - 400054
[PAN: ACQPL2272F]

.....

Appellant

**National E-Assessment Centre,
Delhi**

Vs

.....

Respondent

Appearance

For the Appellant/Assessee : Shri Rahul Hakani
For the Respondent/Department : Shri Ujjawal Kumar Chavan

Date

Conclusion of hearing : 21.12.2023
Pronouncement of order : 31.01.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 24/05/2022, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2018-19, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 12/04/2021, passed under Section 143(3) read with Sections 143(3A) & 143(3B) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
 - 1.1. There was a delay of 2 days in filing the present appeal. It was submitted that the Appellant is a senior citizen (around 77 years of age), who was facing health issues at the relevant time. The delay of

2 days in filing the appeal cause on account of health issues faced by the Appellant is condoned.

2. Accordingly, we proceed to adjudicate the appeal on merits taking into the consideration the revised grounds of appeal filed by the Appellant vide letter dated 12/01/2023 which read as under:

- "1. The learned CIT(A) erred in confirming the order of Assessing Officer making addition of Rs 56,00,002/- u/s 56(2)(x) by not considering the Allotment letter dated 18/5/2010 (as modified by endorsement in 2014) as an Agreement without appreciating that said Allotment letter is also an Agreement for the purposes of first proviso to Section 56(2)(x)(b) and thus the learned A.O. erred in making addition by taking stamp value prevailing on the date of registration and hence the addition of Rs 56,00,002/- may be deleted.*
- 2. The learned CIT(A) erred in confirming the order of Assessing Officer making addition of Rs 56,00,002/- u/s 56(2)(x) by taking share of Assessee in the property at 69.7 % on the basis of investment without appreciating that investment of both the co-owners is 50% and hence the entire addition of Rs 56,00,002/- cannot be sustained.*
- 3. The learned CIT(A) erred in confirming the order of Assessing Officer making addition of Rs 56,00,002/- u/s 56(2)(x) without appreciating that Section 56(2)(x) will not apply in A.Y. 2018-2019 as the immovable property was purchased in A.Y. 2011-2012 and hence the addition of Rs 56,00,002/- may be deleted.*
- 4. The learned CIT(A) erred in confirming the order of Assessing Officer making addition of Rs 56,00,002/- u/s 56(2)(x) without appreciating that that Section 56(2)(x) will not apply in A.Y. 2018-2019 as the immovable property was under construction in A.Y. 2018-2019 and the possession was received on 31/12/2021 and hence the addition of Rs 56,00,002/- may be deleted."*

All the revised grounds of appeal are directed against the solitary addition of INR 56,00,022/- made by the Assessing Officer under

Section 56(2)(x) of the Act which was confirmed by the CIT(A) and are, therefore, taken up together hereinafter.

3. The relevant facts in brief are that during the assessment proceedings the Assessing Officer noted that the Appellant had purchased an immovable property along with Shri Pritam Ludhani from M/s Lotus Grah Nirman Private Limited by way of Agreement for Sale, dated 12/08/2017, which was registered on 07/12/2017 [hereinafter referred to as '**the Agreement**'). The Assessing Officer further noted that as per the Agreement the consideration for purchase of immovable property was INR 81,49,250/- whereas the stamp duty valuation stood at INR 1,61,55,000/-. Therefore, the Assessing Officer concluded that purchase consideration for acquisition of the aforesaid immovable property was less than the stamp duty value by INR 80,05,750/- and out of the same Appellant's share, as computed by the Assessing Officer on the basis of actual payments made, was at 69.95%. Therefore, invoking the provisions of Section 56(2)(x) of the Act, the Assessing Officer made addition of INR 56,00,022/- [69.95% of INR 80,05,750/-] in the hands of the Appellant.
4. Being aggrieved, the Appellant carried the issue in appeal before the CIT(A). Before the CIT(A) the Appellant submitted that vide Allotment, letter dated 18/05/2010, [herein after referred to as '**the Allotment Letter**'] Unit No. 902 on the 9th Floor in the proposed building 'Lotus Link Square, Andheri' being constructed on Survey No. 106/A bearing CTS No. 195 at D N Nagar, Andheri (West), Mumbai [hereinafter referred to as '**the Immoveable Property**'] was allotted to Sh. Pritam Ludhani and Smt. Vimla Ludhani. The Immoveable Property had area of around 545 sq.ft., and was allotted by the Developer for a consideration of INR 64,86,000/- on making

advance payment of INR 4,63,000/- by way of account payee cheque. In 2010 itself, it was mutually agreed between the parties concerned that the Appellant shall step into the shoes of Smt. Vimla Ludhani. A confirmation to this effect was issued by the developer vide endorsement letter issued by the developer in response to request letter, dated 03/05/2014, sent by the Appellant. The Appellant along with Mr. Pritam Ludhani starting making payments by way of cheque towards the purchase of Immovable Property in 2010. In support, the Appellant provided the details of various payments made to the developer towards purchase of the Immovable Property between 21/05/2010 and 20/07/2017 along with copy of bank statements and copy of the ledger account of the developer. It was submitted on behalf of the Appellant that tax at source was also duly deducted from the payments made for the purchase of Immovable Property in terms of Section 194IA of the Act. On the basis of the aforesaid, it was contended before CIT(A) that since the consideration for purchase of Immovable Property was agreed upon and fixed in 2010, the Assessing Officer erred in adopting the stamp duty value as on the date of registration of the Agreement. As per the Allotment Letter and the Agreement Shri Pritam Ludhani and the Appellant were co-owners with each holding 50% ownership of the Immovable Property. Therefore, the Assessing Officer erred in holding that the Appellant held 69.95% in the Immovable Property. However, the aforesaid submission did not find favour with the CIT(A) who agreed with the Assessing Officer and confirmed the addition made by the Assessing Officer under Section 56(2)(x) of the Act reiterating the findings returned by the Assessing Officer that the terms of the Agreement were different from the Allotment Letter and that the Allotment Letter cannot be regarded as agreement fixing the consideration for the purpose of Section

56(2)(x) of the Act.

5. Being aggrieved by order dated 24/05/2022, passed by the CIT(A) dismissing the appeal, the Appellant is now in appeal before the Tribunal.
6. The Ld. Authorised Representative for the Appellant appearing before us reiterated the submissions made before Assessing Officer and the CIT(A) and took us through the documents forming part of the paper-book which included Allotment Letter, endorsement letter issued by the developer replacing the name of the Appellant in place of Smt. Vimla Ludhani, copy of bank statement of the Appellant, Agreement and the submissions filed before CIT(A). Per contra, the Ld. Departmental Representative supported the order passed by the CIT(A) and relied upon the findings returned by the Assessing Officer in the assessment order which were also reiterated by the CIT(A).
7. We have heard the rival submissions and perused the material on record. On perusal of Allotment Letter and the Agreement, we find that there is no change in the description of the unit sold by the developer as both the aforesaid documents pertain to the sale of the Immovable Property only. There is no difference in the area of the unit as both the documents specify area of 545 Sq.ft. Further, in our view, while returning the finding that area/consideration stated in the Allotment Letter differs from the Agreement, the Assessing Officer has failed to appreciate that as per paragraph 8 of the Allotment Letter the Appellant had agreed to make additional payment for the car parking. The Allotment Letter not only contained the description of the unit but also the attached terms and conditions which included the purchase consideration and timelines for making the payments. Therefore, in our view the Allotment Letter, which fixes the

consideration for the purchase of the Immovable Property, is to be regarded as an agreement for the purpose of Section 56(2)(x) of the Act read with first and second proviso thereto. The Allotment Letter also acknowledged the receipt of INR 4,63,000/- as advance/part payment towards the purchase of the Immovable Property. It is also not disputed by the Revenue that payments to the developer towards purchase of the Immovable Property by way of account payee cheques were made by Shri Pritam Ludhani and the Appellant. In fact, the Assessing Officer has returned a finding that 69.95% of the purchase consideration was paid by the Appellant while balance consideration was paid by the Shri Pritam Ludhani. In the aforesaid facts and circumstances, we are of the view that the Appellant is entitled to claim benefit First and Second Proviso to Section 56(2)(x) of the Act. Our view draws strength from the decision of Mumbai Bench of the Tribunal in the case of **Sulochana Saijan Modi Vs. Income Tax Officer : [2023] 152 taxmann.com 56 (Mumbai-Trib)**, cited by the Authorised Representative for the Appellant during the course of hearing, wherein, while dealing with similar facts and circumstances, the Mumbai Bench of the Tribunal had held as under:

"10. We have heard the rival contentions on the issue in dispute and perused the material available on record. In the case, the assessee is claiming, stamp duty valuation of the flat as on the date of the agreement as deemed sale consideration for the purpose of section 56(2)(x)(b) of the Act, invoking the first & second proviso to the said section. For ready reference, the relevant provision along with proviso is reproduced as under:

"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:

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 2[or through such other electronic mode as may be prescribed"], on or before the date of agreement for transfer of such immovable property:

Provided also that where the stamp duty value of immovable co property is disputed by the assessee on grounds mentioned in - sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of this sub-clause as they apply for valuation of capital asset under those sections: [Provided also that in case of property being referred to in the second proviso to sub-section (1) of section 43CA,

the provisions of sub-item (ii) of item (B) shall have effect as if for the words "ten per cent", the words "twenty per cent" had been substituted]."

11. Thus, the section prescribe that when the property has been purchased for inadequate consideration, as compared to the stamp duty value, same is liable to be addition for income under the head "income from other sources". However, under the proviso if prior to registration of the property , the assessee has entered into purchase agreement fixing the amount of consideration and also partly paid the amount of consideration by way of account payee cheque/draft etc, then for the purpose of section 56(2)(x) of the Act, the stamp duty value as on the date of the agreement may be taken for the purpose of the working out deemed sale consideration. In the instant case, the son of the assessee, Shri Ashish Modi has been allotted the concerned flat on 22.11.2010 and the assessee has become co-owner of the said property. The assessee has filed copy of the registered Deed which indicates that a cheque of Rs.2,00,000/- was paid in respect of the allotment of the property on 11.11.2010. The assessee has also filed a copy of bank statement of Shri Ashish Modi from which it is seen that the said payment of Rs.2,00,000/- has been withdrawn from his bank account on 23.11.2010. Thus, as far as the condition of part payment is considered, it is not in dispute. However, Ld.CIT(A) and the AO has disputed the allotment letter. According to the AO and Ld.CIT(A), the allotment letter is not in the nature of the agreement for sale. However, we find that the Tribunal in the case of Parth Dasrath Gandhi vs Addl./Deputy/Asst. CIT order dated 31.01.2023 for AY 2018-19 held that "the allotment letter should be considered as agreement for sale." The relevant finding of the Tribunal (supra) is reproduced as under: -

6. "We heard the parties and perused the record. We notice that the AO has considered the stamp duty value as on the date of registration of the agreement to sell for the purpose of determining the applicability of sec.56(2)(x) of the Act. However, the facts that the assessee had been allotted both the properties by way of allotment letters and further, the assessee has also paid instalments as per that letter are not disputed. Hence, the question that arises is whether the allotment letter can be considered as "agreement to sale" within the meaning of the provisos to sec. 56(2)(x) of the Act, which states that the stamp duty valuation as on the sale of sale agreement should be taken into consideration for the purpose of sec.56(2)(x), provided that

amount of consideration or part thereof had been paid as per the mod prescribed on or before the date of agreement for transfer of such immovable property.

7. Before us, the Ld A.R placed reliance on the decision rendered by the coordinate bench in the case of Mr. Sajjanraj Mehta vs. ITO (ITANo.56/Mum/2021 dated 05-09-2022), wherein it was held that the date of allotment letter can be taken as date of agreement of sale for the purposes of sec.56(2)(x) of the Act. On the contrary, the Ld D.R placed his reliance on the decision rendered by another co-ordinate bench, which was relied upon by AO & CIT(A), viz., Sujauddian Kasimsab (supra).

8. With regard to the decision rendered in the case of Sujauddian Kasimsab (supra), the Ld A.R submitted that the said decision has been rendered on the basis of facts prevailing in that case. The assessee, in the above said case, had paid Rs.3.00 lakhs before the date of agreement, but the same was described as "earnest money deposit" in the Agreement, meaning thereby, the assessee did not fulfill the condition prescribed in sec.56(2)(x) of the Act. The Ld A.R further submitted that the Tribunal did not consider the effect of second proviso to sec.56(2)(x) of the Act in the above said case. We agree with the submissions of Ld A.R with regard to the distinguishing features pointed out in the decision rendered by the co-ordinate bench in the case of Sujauddian Kasimsab (supra). Hence, we are of the view that the above said decision could not lend support to the case of the revenue.

9. On the contrary, we are of the view that the decision rendered by another co-ordinate bench in the case of Mr Sajjanraj Mehta (supra) is applicable to the facts of the present case. The decision rendered in the case of Mr Sajjanraj Mehta by the co-ordinate bench is extracted below, for the sake of convenience:-

"10. We have gone through the order of the A.O, Ld. CIT(A) and various submissions of assessee dated 06-10-2021. Vide pg no-23 to 27 of paperbook we have observed the payment made by the assessee to the developer on 17-10-2011 amounting to Rs 14 lacs vide cheque no 906740, Bank of Maharashtra to enter into an agreement cum acknowledgement of payment made and other terms and conditions about the property. This agreement

between assessee and developer clearly confirms the amount of consideration along with other terms and conditions relating to levy of stamp duty, service tax and other charges to be paid by the assessee.

11. The finding of the A.O vide pg no-4, para-2.6 wherein he observed that assessee has deposited Rs 14 lacs with the developer to year mark the said premises for Rs 70 lacs. Even if for the time being it is assumed that this agreement is merely a letter of intent, still amount mentioned in this so called letter of intent can't be changed by either of the party. At the max the parties involved may opt for exit from the transaction but amount of consideration can't be changed. This transaction of the assessee has to be analysed in commercial parlance, without finalisation of consideration nobody will deposit 20% of the final consideration. The vitality of the agreement further found force from the behaviour of the assessee as confirmed by the A.O also that assessee paid further Rs 34.5 lacs till financial year 2012-13. Assessee also paid Rs 1,00,285/- vs VAT, Rs1,35,187/- as service tax, Rs 5,02,000/- as stamp duty and Rs 30,000/- as registration charges.

12. The chronology of the events confirms that the finding of the A.O treating the agreement of the assessee as letter of intent is not correct. In this matter treating the said agreement as letter of intent shows an over thinking and hyper technical interpretation at the end of the A.O. assessee's case clearly falls in the proviso to Section 56(2)(vii)(b). For sake of clarity we are reproducing herein below the relevant portion of proviso 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 subclause:

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”.

13. We further relied on following judicial pronouncement of coordinated benches of ITAT, Hon’ble High Court and Apex Court as under:

xx xx

14-15 xx xx

10. Accordingly, following the above said decision, we hold that the respective allotment letters issued to the assessee should be considered as "Agreement to sell" for the purposes of sec.56(2)(x) of the Act. Since the assessee has paid the parts of consideration as per the terms and conditions of allotment through banking channels prior to the execution of Sale agreement, we are of the view that the provisos to sec.56(2)(x) shall apply to the facts of the present case. Accordingly, the stamp duty valuation as on the date of respective Allotment letters should be considered for the purposes of sec.56(2)(x) of the Act. Hence the AO was not justified in considering the stamp duty valuation as on the date of execution of agreement to sell.

11. On a perusal of record, we notice that the details of stamp duty value as on the date of respective allotment letters was not brought on record. Since we have held that the stamp duty valuation as on the date of respective allotment letters should be considered for the purpose of sec.56(2)(x) of the Act, it is imperative on the part of the assessee to show that the actual consideration was equal or less than the stamp duty valuation as on the date of issue of respective allotment letters. Accordingly, we are restoring this issue to the file of AO for the limited purpose of comparing the actual sale consideration with the stamp duty valuation as on the date of respective allotment letters. In the limited set aside, the AO shall take appropriate decision in accordance with law after affording adequate opportunity of being heard.”

8. In our view, the above decision shall apply to the facts and circumstances of the present case stated in paragraph 7 above. Thus, taking a view consistent with the view taken by the Tribunal in the above decision, we hold that in the facts and circumstances of

the present case, Allotment Letter should be considered as Agreement fixing consideration for the transfer of the Immovable Property. The substantial terms and condition as contained in the Allotment Letter (read along with the endorsement by the developer) stand reiterated in the Sale Agreement. It is not disputed that INR 4,63,000/- was paid as advance/ part payment towards consideration for the purchase of the Immovable Property at the time of allotment through account payee cheque. Therefore, we hold that the Appellant is entitled to the benefit of the provisos to Section 56(2)(x) of the Act in the present case. Accordingly, the stamp duty valuation as on the date of Allotment letter should be considered for the purposes of Section 56(2)(x) of the Act. Hence the AO was not justified in considering the stamp duty valuation as on the Sale Agreement. Accordingly, addition of INR 56,00,022/- made under Section 56(2)(x) of the Act is set aside with the directions to the Assessing Officer to compare the sale consideration of the Immovable Property as per the sale agreement with the stamp duty valuation as on the date of the Allotment Letter and thereafter, take appropriate decision as per law after granting Appellant adequate opportunity of being heard.

9. Before parting we would like to observe that we also find merit in the contention advanced on behalf of the Appellant that as per the Allotment Letter and the Sale Agreement, Mr. Pritam Ludhani and the Appellant are co-owners. Since the aforesaid documents do not specify the ownership percentage, each co-owner, would have 50% ownership of the property.
10. In view of above, revised Grounds of Appeal No. 1 and 2 are allowed for statistical purposes while Ground No. 3 and 4 are dismissed as being infructuous.

11. In result, the present appeal preferred by the Assessee is partly allowed.

Order pronounced on 31.01.2024.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 31.01.2024
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai