

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'SMC': NEW DELHI**

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.3718/DEL/2023
[Assessment Year: 2016-17]**

Nutan Sarin, E-206, Sector-21, Noida, Uttar Pradesh- 201301	Vs	ITO, Ward-5(2)(1), Noida, Uttar Pradesh-201301
PAN-AWKPS4984R		
Assessee		Revenue

Assessee by	Ms. Sumangla Saxena, Adv. and Shri Rajeev Saxena, Adv.
Revenue by	Sh. Om Prakash, Sr. DR

Date of Hearing	05.02.2024
Date of Pronouncement	09.02.2024

ORDER

This appeal by the assessee is directed against the order of National Faceless Appeal Centre (NFAC), New Delhi, dated 20.11.2023 pertaining to Assessment Year 2016-17.

2. The grounds of appeal reads as under:-

1. That Ld. CIT(A), NFAC has grossly erred in law as well as on facts in not holding that assessment made is bad in law as the assessing officer has reopened the assessment without making any independent enquiry or application of mind and merely on the basis of information received.

2. That Ld. CIT(A), NFAC has erred in law as well as on facts in confirming the addition made by Ld. AO of Rs. 5,26,400/- on account of difference of purchase price and circle rate of the property u/s 56(2)(vii)(b) of the Income-tax Act, 1961 without noticing that assessee has already

invested for the amenities and so cost of the property is much higher.

3 3. That on facts and circumstances of the case, Ld. CIT(A), NFAC erred in upholding the order of assessment without appreciating: a. That the actual consideration paid by assessee was Rs. 35,42,352/-.

b. That all payment have been made through account payee cheques.

4 4. That the Ld. AO has erred in law as well as on facts in initiating the penalty proceeding u/s 271(1)(c) of the Act.

5 The above grounds of appeals are independent of, and without prejudice to each other. That the appellant craves leave to add, alter, amend or withdraw all or any grounds herein or add any further grounds as may be considered necessary either before or during the hearing of these grounds.”

3. Brief facts of the case are that in this case, the Assessing Officer made addition of Rs.5,26,400/- on account of difference of purchase price and circle rate of the property u/s 56(2)(vii)(b) of the Income Tax Act, 1961.

4. Upon assessee's appeal, the Ld. CIT(A) confirmed the addition.

5. Before me, the ld. Counsel for the assessee gave a chart and submitted that actually the assessee has paid more than that noticed by the Assessing Officer. In this regard, the chart submitted by the assessee is as under:-

Chart depicting payments made as per Payment Schedule provided by the Builder (PB 103 – 105 at Pg 104) for purchase of property bearing no.1501, Tower -F, Exotica Fresco, Plot No. GH-05/A, Sector 137, Noida, Uttar Pradesh

SR NO	Cheque Date	Cheque No.	Bank Name	AMOUNT (In INR)
1	14-08-2010	962390	Corporation Bank	2,98,412
2	17-08-2010	962398	Corporation Bank	3,13,780
3	10-11-2010	254621	Corporation Bank	6,12,192
4	24-12-2010	254624	Corporation Bank	3,06,096
5	05-09-2011	254634	Corporation Bank	4,28,567
6	28-12-2011	254639	Corporation Bank	3,06,567
7	05-03-2012	400401	Corporation Bank	3,06,567
8	10-04-2012	400403	Corporation Bank	3,15,980
9	18-02-2013	400415	Corporation Bank	1,54,651
10	12-01-2015	026661	Corporation Bank	4,99,540
			Total	35,42,352

Total consideration paid for buying the property

As per Allotment letter dt.10-11-2010 PB 23 – 25 total consideration agreed	Rs.31,36,620/-
Finally, payment made and received by Builder as per payment schedule @PB Pg 104 during 14-08-2010 to 12-01-2015	Rs. 35,42,352/-
Stamp duty paid during registration of property on 31-08-2015	Rs. 2,98,000/-
Total consideration of the property to the assessee	Rs. 38,40,352/-
Circle rate as per Registration Authority at the time of booking of flat i.e. for 2010 as per Assessing officer (Para 1 Pg 6 of AO)	Rs.35,83,900/-
As per 56(2)(vii)(b) of IT Act, 1961, consideration was much more than noticed by AO ignoring payments received by the builder. Since, consideration paid was much more than the consideration noticed by the AO of Rs.30,57,500/-, such addition made is bad in law.	

6. Referring to the chart above, the ld. Counsel for the assessee contended that there is no case of shortage of amount paid to the circle rate, therefore, he prayed that an opportunity may be granted to the assessee.

7. Per contra, the Ld. DR did not have any objection if the matter is remanded back to the file of the Assessing Officer to examine the factual veracity in the submission of the assessee.

8. Upon careful consideration, I find that in this case, the interest of the justice will be served, if the issue is remanded to the file of the Assessing Officer. The Assessing Officer shall examine the chart reproduced hereinabove and veracity of the submission of the assessee. Needless to add, the assessee be given reasonable opportunity of being heard.

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

Order pronounced in the open court on 09th February, 2024.

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Delhi; 09.02.2023.

Shekhar,

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi