

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.926/Bang/2023
Assessment year : 2017-18

Shobha Jain, 133, 134, G Floor, Rajhans Golden Mall, Nagarathpet Main Road, Bangalore South, Bangaluru – 560 002. <b>PAN : AFSPD 0633B</b>	Vs.	The Income Tax Officer, Ward 5(2)(5), Bangaluru.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Suman Lunkar, CA
Respondent by	:	Shri Parthivel, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	21.02.2024
Date of Pronouncement	:	23.02.2024

**ORDER**

*Per Laxmi Prasad Sahu, Accountant Member*

This appeal is filed by the assessee against the DIN & Order No.ITBA/NFAC/S/250/2023-24/1056421768(1) dated 22.09.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2017-18.

2. The only issue arising in this appeal is the addition of Rs.61,34,725 u/s. 56(2)(vii)(b) of the Act made by the AO and confirmed by the CIT(Appeals).

3. The brief facts of the case are that the assessee filed return of income on 09.08.2017 declaring total income of Rs.8,05,000. Subsequently the case was selected for scrutiny under CASS for the reason “investment in immovable property and cash deposit during the demonetisation period”. Accordingly statutory notices were issued to the assessee.

4. During the course of assessment proceedings, the AO noted that the assessee along with her husband had decided to acquire a flat in project One Bangalore West. One Mr. Kusuma R Muniraju had agreed to acquire apartment No.1242 on 24<sup>th</sup> floor and for the purpose of such acquisition, Kusuma R Muniraju had entered into two agreements with the developer of the property. One agreement was agreement to sell dated 21.01.2013 in respect of undivided interest in the land on which property was being developed and the other agreement on the same date was in respect of construction of the apartment on the said land. By a deed of assignment dated 13.11.2015 Kusuma R. Muniraj assigned all his rights under these 2 agreements in favour of the assessee and her husband and accordingly the appellant and her husband acquired all the rights in those 2 agreements in their favour. The sale deed was executed on 21.11.2016 in favour of the assessee and her husband. The details of sale deed were sought from the Senior Sub-Registrar, Rajajinagar, Bangalore and the same was received on 30.11.2019 by the AO. As per the document, the stamp duty value of property is Rs.2,07,55,000. However on perusal of sale deed the AO noted that the sale consideration paid as per sale deed is Rs.84,85,550.

Since the assessee is a co-owner and has claimed to have 50% share in the property and the assessee has purchased the property for a consideration which is less than the stamp duty value, the provisions of section 56(2)(vii)(b) are very much applicable and after giving final opportunity to the assessee, the difference value was calculated by the AO as per para 6 of his order at Rs.61,34,725 which was treated as income from other sources u/s. 56(2)(vii)(b) and added the same to the total income and assessed total income at Rs.89,39,725.

5. Aggrieved from the above order, the assessee filed appeal before the CIT(Appeals), to which the CIT(Appeals) upheld the addition made by the AO u/s. 56(2)(vii)(b) of the Act. Against this, the assessee has filed appeal before the ITAT.

6. The Id. AR reiterated the submissions made before the lower authorities and has filed written synopsis which is as under:-

“1. The only disputed issue before the honourable ITAT is the addition made u/s 56(2)(viib) of the Act amounting to Rs. 61,34,725/-.

2. The appellant along with her husband had decided to acquire a flat in project One Bangalore West. Earlier, one Mr. Kusuma R Muniraju had agreed to acquire apartment No.1242 on 24th floor and for the purpose of such acquisition, Kusuma R Muniraju had entered into 2 agreements with the developer of the property. One agreement was Agreement to sell dated 21.01.2013 in respect of undivided interest in the land on which property was being developed (page no. 62-86 of the paperbook filed) and the other agreement on the same date was in respect of construction of the apartment on the said land. (page nos. 87-107 of the paperbook filed)

3. As per the agreement to sell, the consideration for sale of undivided share of land (Schedule B) was Rs. 84,85,550/- (page no.86 of paper book) and the cost of construction as per the construction agreement was Rs. 1,21,66,951/- (page no. 102 of the paper book) With respect to above property, Sri. Kusuma R Muniraju had made payment of Rs. 89,42,955/- to the developers via banking channel. Subsequently, the appellant along with her husband and Sri. Kusuma R Muniraju had entered into deed of assignment on 13.11.2015 ( copy available at page no. 108-117 of the paper book filed) As per this deed of assignment, the consideration of the residential flat was Rs. 2,16,80,397!- (page no. 112). The details of break up of the said consideration is also available at page no. 112 and 113 of the deed of assignment. This sum of Rs. 2,16,80,397/- interalia included an additional sum of Rs. 10,00,000/- to be payable to Mrs. Kusuma R Muniraju towards assignment of rights in the property apart from reimbursement of amounts already paid by Sri. Kusuma R. Muniraju i.e., Rs. 89,42,955/- The appellant alongwith her husband made payment of Rs.99,42,955/- (Rs. 89,42,955 + 10,00,000) on 16/11/2015. Copy of the Bank account statement highlighting the payments made by the appellant to Kusuma R. Muniraju is available at page no. 168-169 of the paper book filed. On obtaining the rights in deed of assignment, the appellant and her husband made balance payments to the Vendors through banking channel only. Later, the sale deed was executed on 21.11.2016. As per the sale deed under the head and now this deed of sale witnesseth, it is stated that sale consideration of Rs. 84,85,550/- is for the transfer of all the properties prescribed in Schedule B herein and a perusal of Schedule B would show that it is only for undivided share, right of title in land only. (para 9 of sale deed page no. 132 of the paper book) In fact, para 10 of the sale deed refers to the completion of the construction of the flat as described in Schedule C as per the specifications detailed in the construction agreement. Though, there is a reference to the construction of the flat in the sale deed, the amounts paid towards construction of the property were not specifically mentioned in the sale deed.

4. However, while registering the sale deed, the appellant paid stamp duty of Rs. 11,62,320/- and Rs.2,07,550/- towards registration fee. The Stamp duty for immovable property in the

state of Karnataka is 5.6% of the guidance value and registration fee is 1%. Considering the stamp duty and registration fee paid, the guidance value of the entire residential flat works out to Rs. 2,07,55,000/- It is reiterated that the stamp duty and registration fee were paid on the guidance value of entire residential flat and not only on the undivided share of land. However, in the

sale deed, the value with respect to undivided share of land only mentioned. The Assessing officer in para 5 of the assessment order also stated that as per the letter of the Senior Sub Registrar, the stamp duty value of the property is Rs. 2,07,55,000/-.

5. It is also to be noted that the vendor had given a breakup of cost of the flat (page no. 171 of the paperbook) as per which the total cost of the residential flat was RS. 2,06,85,205/- and the cost of undivided share of land was Rs. 84,85,550/- As per this statement, the appellant alongwith her husband had already made a payment of Rs. 89,42,955/- and the balance sum of Rs. 1,17,42,250/- was due to be paid. With respect to this, the appellant alongwith her husband made the following payments through banking channel only.

DATE	AMOUNT
11-12-2015	Rs. 79,70,621/-
14-01-2016	Rs. 9,87,726/-
27/04/2016	Rs. 9,18,524/-
21/11/2016	Rs. 19,64,108/-
	<u>Rs. 1,18,40,979/-</u>

6. Copy of receipts issued by the vendor acknowledging the above payments are available at page nos. 172 to 175 of the paperbook filed. Thus, it is clear that the total cost of the residential property excluding the assignment fee of Rs. 10,00,000/- was Rs. 2,06,85,205/- In fact, the Assessing officer himself in the show cause notice issued, (Copy enclosed) states that the value of the property was Rs. 2,06,80,397/-. Having accepted the cost of the immovable property as Rs. 2,06,80,397/-, the assessing officer in the assessment order at para 5 page 3 of the assessment order stated that the stamp duty value of the residential flat was Rs. 2,07,55,000/- and the sale consideration as per the sale deed was Rs. 84,85,500/- and worked out the addition u/s 56(2)(viib) of the Act as under:

A-	<i>Stamp value of the property-</i>	<i>Rs. 2,07,55,000/-</i>
B-	<i>Stamp duty of 50% of property-</i>	<i>Rs. 1,03,77,500/-</i>
C-	<i>Consideration paid for the property -</i>	<i>Rs. 84,85,550/-</i>
D-	<i>Consideration paid for 50% of the Property</i>	<i>Rs. 42,42,775/-</i>
	<i>B-D</i>	<i>Rs. 61,34,725/-</i>

7. Being aggrieved, the appellant preferred an appeal before the CIT(A) and filed a detailed submissions explaining the facts of the case. However, the CIT(A) in para 8.6 page 19 of the appellate order, upheld the addition made by the Assessing officer stating that the appellant had not mentioned anything about the roundabout modus operandi of composite purchase of assets and treated it as an afterthought to explain the difference between valuation.

8. It is pertinent to note that the Assessing officer in para 2, page 2 of the assessment order mentioned that the appellant had in response to the show cause notice, submitted copy of the sale deed, loan certificate from HDFC bank and bank pass book etc. It is also interesting to note that if the appellant had not submitted the details with respect to composite purchase of assets, how did the Assessing officer get to know about the cost of the residential flat was Rs. 2,06,80,397/- (as mentioned in the show cause notice). The appellant submitted all the details before the Assessing officer as well as the CIT(A) and explained that the stamp duty of the entire residential flat was compared with the value of undivided share of land only. (Schedule "B" property) If the construction cost of the flat alongwith assignment fee of Rs. 10,00,000/- paid to mrs. Kusuma R. Muniraju is considered alongwith the value of undivided share of land, then there will not be any under valuation of property at all. Even, assuming without accepting, if the assignment fee paid to Kusuma R. Muniraju is ignored, then also, the value of the residential flat was Rs. 2,06,80,397/- which is covered under 5% bandwidth available u/s 56(2)(Viib) of the Act. For this proposition of law, the appellant relied upon the order of the co-ordinate bench, in the case of Sri Sandeep Patil vs The Income Tax Officer ITA no. 924/Bang/2019. Copy of the case law is enclosed.

9. The appellant also would like to rely upon the order of coordinate bench in the case of S. Tejraj Ranka , ITA no. 82/Bang/2014 (Copy enclosed) wherein for the purposes of deduction u/s 54F of the Act, actual payment made to the developer was considered for granting the deduction u/s 54F of the Act though, the amount mentioned in the sale deed was less. Applying the same analogy, in the instant case, the total payments made for the residential flat is to be considered and such value to be compared with the guidance value of the property to invoke the provisions of section 56(2)(viib) of the Act.

10. In view of the above, the appellant demonstrated with documentary evidences that the difference in actual consideration paid for the residential flat and the guidance value of the property being covered by 5% bandwidth (amendment retrospective in nature) the addition as made by the Assessing officer and as confirmed by the CIT(A) is bad in law and same is to be deleted.”

7. The assessee has also filed paperbook containing pages 49 to 175 and referred to construction agreement dated 21.01.2013, copy of deed of assignment dated 13.11.2015, copy of sale deed dated 21/11/2016, copy of tripartite agreement, bank statement of assessee, letter issued by One Bangalore West Housing Development Finance Corporation Ltd., copy of cost break-up of the flat issued by One Bangalore West, and copy of receipt issued by One Bangalore West. The Id. AR submitted that the Id. CIT(Appeals) has not appreciated the documents submitted by the assessee during the appellate proceedings properly and decided the appeal in a vague manner. He has just upheld the order of the AO without going into the documents as referred above.

8. On the other hand, the Id. DR relied on the orders of lower authorities.

9. Considering the rival submissions, we note that the AO has made addition on the difference value as per document received from the Senior Sub-Registrar, Rajajinagar, Bangalore to the extent of assessee's share @ 50%. During the course of appellate proceedings before the CIT(Appeals) the assessee has filed documents as noted above and the CIT(Appeals) has not considered the documents which is clear from the order and dismissed the appeal of the assessee without referring to the above documents. Therefore, in the interest of justice, we remit the matter to the CIT(Appeals) for fresh consideration and decision as per law after reasonable opportunity to the assessee. The assessee will produce all necessary documents to substantiate her case and not seek unnecessary adjournment for early disposal of the case.

10. In the result, the appeal by the assessee is allowed for statistical purposes.

Pronounced in the open court on this 23<sup>rd</sup> day of February, 2024, as per Rule 34 of the Income Tax (Appellate Tribunal) Rule 1963.

Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER

Sd/-  
(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 23<sup>rd</sup> February, 2024.

*/Desai S Murthy /*

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.