

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.3987/M/2023
Assessment Year: 2015-16**

Shri Savji Karsan Chowdhary, 1104, Building-1C, Versova Adarsh CHS, New Mhada High Complex, Near Lokhandwala Circle, Andheri (West), Mumbai - 400 053 PAN: AFRPC1750R	vs	Income Tax Officer- 25(1)(1), Current JAO-31(1)(1), Kautilya Bhavan, Bandra Kurla Complex, Mumbai - 400051
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vinayak R. Pandya, A.R.

Revenue by : Shri Prashant Mahajan, D.R.

Date of Hearing : 16 . 04 . 2024

Date of Pronouncement : 30.04.2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order dated 09.09.2023, impugned herein, passed by the Ld. National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2015-16.

2. In the instant case, as per Assessing Officer (AO) the assessee had purchased immovable property (residential flat) No.1104, 11th floor, Building No.1-C, Versova Adarsh CHS Ltd., Andheri (West), Mumbai on 18.11.2009 for a consideration of Rs.49,00,000/- from Mr. Dilip J. Sawant (seller). As per allotment made by MHADA Authority and its regulations the said flat was allotted to Mr. Dilip J. Sawant and according to the regulations the allottees were not allowed to transfer these flats for a period of 5 years from the date of allotment. However, due to some personal reason, Mr. Dilip J. Sawant/seller sold his flat to the assessee. While entering into a sale deed dated 18.11.2009 on a stamp paper of Rs.100/- wherein it was mutually agreed between the parties that the said sale deed shall be registered after completion of the lock in period of five years. The entire consideration amount for the flat of Rs.49,00,000/- was paid by the assessee during the financial year 2009-10 itself, vide account payee cheques and the details of the same are as follow:

Date of cheque	Bank	Cheque No.	Amount in Rs.
21.10.2009	State Bank of India	054180	Rs.10,00,000/-
21.10.2009	State Bank of India	054181	Rs.39,00,000/-

3. On payment of entire consideration amount , the seller/vendor immediately handed over the possession of the said flat to the assessee vide possession letter dated 18.11.2019. Except registering the sale deed all the other obligations qua sale transaction got undertaken by both the parties during the assessment year 2010-11 itself. The

assessee also capitalized the said residential flat in his balance sheet for the assessment year 2010-11. Since then, the assessee is residing in the said flat along with his family and all the society due goings are borne by the assessee. On completion of lock in period of five years, the sale deed was duly registered and necessary stamp duty as applicable on the date of registration was paid by the assessee. The registration of the property was delayed only to comply with the regulations laid down by MHADA and the assessee had no intention to violate any law. The claim of the assessee was not found tenable/acceptable by the AO mainly on the reason that the assessee has submitted a sale deed which has been entered on a stamp paper of Rs.100/-. It has neither been registered nor notarized. No stamp duty has been paid on the same. Secondly, the assessee has furnished copies of two cheques amounting to Rs.49,00,000/- dated 21.10.2009, however, no documentary evidence has been furnished that the said cheques have actually been cleared in that period. Thirdly, the assessee himself had mentioned that the property is a MHADA flat which cannot be transferred before 10 years. Since in 2010 the seller could not complete 10 years holding period, therefore he could not have sold it to the assessee. Since the property could not have been transferred in 2009 the assessee claimed that he has purchased the property in 2009 is baseless and cannot be accepted. The AO also reproduced the provision of section 56(2)(vii)(b)(ii) of the Act which enumerates that where an individual receives any immovable property after 01.10.2009 for a consideration which is less than the stamp duty value of the property by an amount exceeding Rs.50,000/- then the stamp duty value of

such property as exceeded by the consideration amount shall be liable to be added to the total income of the assessee as income from other sources. The AO further observed that from the above discussion it is clear that the provisions of section 56(2)(vii)(b)(ii) of the Act apply to the case of the assessee as the stamp duty value in case of the assessee is Rs.1,15,96,500/- as against the agreement value of Rs.49,00,000/-. The assessee is only trying to cover up the situation by submitting a sale deed entered into on stamp paper of Rs.100/- to show purchase of the property in 2009 instead of actual purchase in 2014. Consequently, the assessee was given an opportunity, as to why the difference between the stamp duty value and the consideration amounting to Rs.66,96,500/- is not added to the income of the assessee under the head "income from other sources" as per the provisions of section 56(2)(vii)(b)(ii) of the Act on or before 07.11.2017. However, the assessee neither appeared nor filed any submission or reply or any adjournment and therefore the AO by presuming that the assessee does not have anything to say, ultimately added the difference amount of Rs.66,96,500/- in the income of the assessee, as income from other sources under section 56(2)(vii)(b)(ii) of the Act.

4. The assessee being aggrieved, challenged the addition of Rs.66,96,500/- before the Ld. Commissioner, who by impugned order affirmed the said addition by dismissing the appeal of the assessee, against which the assessee is in appeal before us.

5. We have given thoughtful considerations to the peculiar facts and circumstances of the case. No doubt as per

provisions of section 56(2)(vii)(b)(ii) of the Act as considered and reproduced by the AO in the assessment order wherein the consideration is less than the stamp duty value of the property by an amount of exceeding Rs.50,000/- the stamp duty value of such property as exceeds such consideration is liable to be considered for valuation of immovable property. However, according to first proviso to section 56(2)(vii)(b)(ii) of the Act which prescribes 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 then the stamp duty value on the date of agreement may be taken for the purposes of this sub clause, which goes to show that if any amount of consideration for transfer of immovable property, if any fixed on the date of agreement and the date of registration are not the same then the stamp duty value on the date of agreement may be taken for the purposes of the Act. In the instant case, no doubt the assessee has executed an agreement to sale qua the property under consideration on a stamp paper of Rs.100/- which at all is not a valid document, however, mandate of the provisions of section 56(2)(vii)(b)(ii) of the Act is clear that if any consideration amount is fixed on the date of agreement and the date of registration is not the same, the stamp duty value on the date of agreement may be taken for the purposes of this sub clause i.e. section 56(2)(vii)(b)(ii) of the Act.

6. We have perused the documents filed by the assessee vis-à-vis the sale deed dated 18.11.2009 executed on stamp paper of Rs.100/- coupled with the receipt of Rs.49,00,000/- and the copy of the cheques Nos.054180 & 054181 both dated 21.10.2009 for the amount of Rs.10,00,000/- and

Rs.39,00,000/- respectively of State Bank of India issued by the assessee in favour of the seller, no objection letter dated 18.11.2009 issued by seller, acknowledgment by the Assessee for taking possession vide letter 18.11.2009 issued by seller and affirmed by the assessee qua taking physical and peaceful possession of the property under consideration. Further the extract of the bank account statement of seller (pages 11 of paper book) clearly reflects that cheques issued by the assessee for the amounts of Rs.10,000/- and Rs.39,00,000/- got cleared on 23.10.2009 itself. From the said documents it goes to show that the assessee has not only fixed the consideration amount by making an agreement with the seller but also, in fact, completed the transaction itself. May be the transaction was done in the absence of permission/clear title of property, as the seller was not empowered to execute the sale deed/transfer the property within a prescribed period, however, the conduct of the parties goes to show that they have fixed the consideration amount by making mutual agreement on 18.11.2009 and paid/received the consideration amount immediately thereafter and on the very same day i.e. on 18.11.2009 itself has handed over/taken over the physical possession of the property and therefore the stamp duty value as on the date of fixing the consideration amount i.e. on 18.11.2009 is liable to be considered but not on the date of sale deed which is dated 31.12.2014. Hence, we direct the AO to consider first proviso to 56(2)(vii)(b)(ii) of the Act and/or the date of agreement for deciding the claim of the assessee and recompute the income/liability accordingly.

7. Consequently, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 30.04.2024.

**Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.