

IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE "A" BENCH : PUNE

[THROUGH VIRTUAL HEARING]

BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT
AND
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.No.953/PUN./2023
Assessment Year 2018-2019

Shri Akshay Dilip Nahar, Gut No.141/3, Watur- Partur Road, Near Saibaba Temple, JALNA. PIN - 431 203. PAN AOXP7898G	vs.	The Income Tax Officer, Ward-1, Aaykar Bhavan, Siraswadi Road, Near TV Centre, JALNA - 431 213. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Smt. Deepa Khare
For Revenue :	Shri Ramnath P Murkude

Date of Hearing :	25.04.2024
Date of Pronouncement :	07.05.2024

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal for assessment year 2018-19, arises against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No.ITBA/NFAC/S/250/2023-24/1054771223(1), dated 01.08.2023, involving proceedings u/s.143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. Coming to the assessee's sole substantive grievance challenging correctness of both the learned lower authorities

action making addition of Rs.53.75 lakhs; Smt. Khare invited our attention to the CIT(A)'s detailed discussion affirming assessment findings to this effect as under :

4.1 Ground No. 1 to 4 relates to addition at Rs. 53,75,000/- on account of unexplained investment u/s 56(2) of the Act: In these grounds of appeal, the appellant contended that the assessment order passed by AO u/s 143(3) of the Act is not sustainable as it is framed contrary to the provision under clause (2) of section 56 of the I.T. Act and ignoring it's rational connectivity to the transaction for the transfer of the land property of 1,699.81 Sq. Mtrs. (18,290 Sq. Fts.) by executing originally the purchase/sale deed bearing no. 931/2017 on 31st March, 2017 (during the previous year for the relevant A.Y. 2017-18). The appellant further stated that the AO erred in

charging the shortfall in the declared purchase consideration with that of the corresponding stamp duty to tax under the head "Income from other sources contrary to amendment made to the provision of sec. 56 by inserting new clause (x) in subsection (2) of the section 56 w.e.f. 01.04.2017.

In this regard, the appellant has submitted the written submission, copy of purchase deed, stamp duty challan, copy of Ledger, Balance sheet, letter relates to Municipal Corporation, correction deed dated 14.07.2017, correction deed stamp duty challan, Land purchase ledger during the appellate proceedings. On verification of the relevant details/documents, it reveals that the appellant had purchased a property bearing survey no. 261 at Rs. 8,50,000/- vide registration No. 2366/2017 dated 31.03.2017 and paid stamp duty of Rs. 42,500/- (Rs. 8,50,000/- @ 5%). Later on, the appellant found mistake in the survey number and the appellant registered a correction deed on 15.07.2017 wherein the stamp duty value of the corrected Survey No. 310 (Old)/ 249/2(New) falls within the municipal corporation was determined at Rs. 74,80,000/- instead of Rs. 8,50,000/- based on the wrong Survey Number. This clearly shows that the registration authority had adopted a market value at Rs. 8,50,000/- in the registered deed dated 31.03.2017 on the basis of the old Survey No. 261 and revised the market value at Rs. 74,80,000/- based on the correct Survey No. 310(Old)/ 249/2(New).

4.1.2 Now, the appellant had contended on two counts. Firstly, the later registered deed dated 15.07.2017 was corrected deed and the stamp duty value was paid as per correction deed. Secondly, the appellant contended that if there is any addition is to be made on account of difference between purchase price & stamp duty value, it has to be made in the A.Y. 2017-18 because the property was originally purchased on 31.03.2017.

The issue has been examined and it is seen that the appellant had purchased a property vide registration no. 2366/2017 for a consideration of Rs. 8,50,000/- in which the survey number was wrongly mentioned. The correction in the purchase deed was made on 15.07.2017 in which the market value was determined by the registration authority at Rs. 74,80,000/-. This enhancement in the market value was due to change in the survey number. Accordingly, the appellant paid the additional stamp duty of Rs. 3,31,500/- (Rs. 74,80,000/- - Rs. 8,50,000/- = Rs. 66,30,000/- @ 5%) on the difference between the market value of the property in corrected deed and the market value declared in the original purchase deed. Thus, the appellant tried to mislead the appellate authority by stating that the amount of Rs. 3,53,400/- (Rs. 3,31,500/- being a stamp duty + Rs. 21,900/- being a registration fee was paid on account of conversion charges of the property.

So far, as the addition on a/c of difference u/s 56(2)(x) of the Act is concerned, it is now clarified that there was difference of the purchase price & stamp duty value of the property and therefore, the said provision clearly attracts in the present case. Since, the last corrected agreement dated 15.07.2017 is the correct/valid registered deed with correct property survey number, the addition on account of difference shall fall in the present assessment year only. Thus, I do not find any infirmity in the making addition in the assessment order u/s 143(3) of the Act. Hence, AO's action for addition u/s 56(2) is hereby confirmed. Thus, this ground of appeal is **dismissed**.

3. We have given our thoughtful consideration to rival submissions against and in support of the impugned addition. The Revenue vehemently argued in light of the assessment findings that the Assessing Officer has rightly made sec.69 unexplained investment(s) addition in light of the actual purchase price of Rs.12.55 lakhs as against the stamp value taken of Rs.66.30 lakhs, of the 'capital asset' concerned. It is in this factual backdrop that we do not see any dispute on facts regarding the foregoing two crucial aspects herein i.e., the assessee having paid the actual purchase price of Rs.12.55 lakhs regarding the 'capital asset' i.e., S.No.310 (Old) and 249/2 (New). There is again no quarrel that the state government's registration department had adopted stamp value thereof of Rs.66.30 lakhs. Suffice to say, the department's stand is that the impugned differential sum ought to be assessed as assessee's unexplained investment money by the Assessing Officer's reasoning. We find no merit in Revenue's instant arguments since there is not even an iota of allegation either in the assessment order or in the CIT(A)'s detailed discussion that the assessee had actually paid any

on-money over and above the purchase price of Rs.12.55 lakhs or conversion charges of Rs.3,53,000/- in the relevant previous year. This is indeed coupled with the corresponding clinching statutory provision in sec.56(2)(vii)(b)(ii) treating such a difference as “income from other sources” had nowhere been invoked in the assessment findings.

4. Learned DR at this state quoted sec.251(1)(a) of the Act that the CIT(A)'s herein enjoys co-terminus powers with that of the Assessing Officer wherein he has duly invoked sec.56(2) (supra) in the lower appellate discussion. We find no merit in the Revenue's instant arguments in light of CIT vs. Sardarilal & Co. [2001] 251 ITR 864 (Del.); CIT vs. Shapoorji Pallonji Mistry [1962] 44 ITR 891 (SC); Union Tyres [1999] 240 ITR 556 (Del.) that the CIT(A) does not have jurisdiction to change any head of income during the course of lower appellate proceedings. We thus reject the Revenue's vehement contentions in very terms.

4.1. It has further come on record that the assessee had in fact purchased the 'capital asset' in issue vide registered deed dated 31.03.2017 followed by its correction/rectification deed finalised by the registration authorities on 15.07.2017. The said rectification was only to the limited extent of change in correction of the survey number from 261 to 310 (old) and 249/2 (New) which also involved payment of extra conversion

charges. The Revenue's case is that once this correction deed was finalised in F.Y. 2017-2018 relevant to assessment year 2018-2019; both the learned lower authorities have rightly made the impugned addition. We find no merit in the Revenue's instant latter arguments as well as the purchase deed herein stood duly executed on 31.03.2017 relevant to assessment year 2017-2018 and both the lower authorities could not have made the impugned addition merely going by some rectification hereinabove initiated for recovery of stamp charges only. We thus accept the assessee's corresponding grounds challenging the impugned addition in very terms. Ordered accordingly.

5. This assessee's appeal is allowed in above terms.

Order pronounced in the open Court on 07.05.2024.

Sd/-
[RAMA KANTA PANDA]
VICE PRESIDENT
Pune, Dated 07th May, 2024
VBP/-
Copy to

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "A" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.