

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.3816/Mum/2023  
(Assessment Year :2018-19)**

Deputy Commissioner of Income Tax-23(1) Room No.511, 5 <sup>th</sup> Floor Piramal Chambers Lalbaugh, Parel Mumbai-400 012	Vs.	Omprakash Gopaldas Agarwal Flat No.22, 2 <sup>nd</sup> Floor Dhram Jyot, 1 <sup>st</sup> Alexious Road Bandra West Mumbai - 400 050
<b>PAN/GIR No.AAAPA4704F</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Sanjay Muthe
Revenue by	Shri H.M Bhatt
<b>Date of Hearing</b>	<b>01/05/2024</b>
<b>Date of Pronouncement</b>	<b>08/05/2024</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the Revenue against order dated 26/08/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) for the A.Y.2018-19.

2. In the grounds of appeal, the Revenue has raised following grounds:-

1. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO u/s 69 r.w.s. 115BBE of the I.T. Act, 1961 on account of unexplained investment for purchase of property to the tune of Rs. 1,04,00,200/-?" Ground*
2. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO, u/s 69 r.w.s 115BBE of the I.T.Act, 1961 on account of un- explained investment for purchase of property to the tune of Rs. 1,04,00,200/-" not considering the observation of the Apex Court in the case of R. Mallika (2017) 79 Taxmann.com 117(SC), wherein it is held that the assessee had not discharged burden as regards source from which investment and same was rightly added to income of assessee?"*
3. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the action taken by the AO for making this addition of Rs. 1,04,00,200/-, due to the fact that the assessee failed to file substantiate evidence including details regarding sources of funds with relevant Bank Statement, instead the assessee has simply given a vague reply without any supporting evidence?"*
4. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO as per the provisions of Section 56(2)(x) of the I.T.Act, 1961 of Rs. 3,39,800/- being a difference of the stamp value of the property purchases is Rs.1,07,40,000/- as against transaction value of Rs.1,04,00,200/-?"*
5. *"Whether on the facts and circumstances of the case and in law the CIT(A), has erred in not appreciating the fact that in invoking the provisions of section 56(2)(x) of the I.T.Act, 1961. by the A.O., wherein it is stated that when stamp value of property exceeds sale consideration then the difference shall be regarded as income from other sources of the purchaser?"*
6. *"The Appellant prays that the order of the Hon'ble CIT(A) on the above grounds be set-aside and that of the Assessing Officer be restored?"*

3. The brief facts are that assessee has filed return of income declaring total income of Rs.78,53,870/-. The ld. AO based on data on record (SFT-12) noticed that assessee had purchased immovable properties on 27/06/2017 as per the following details:-

<b>Description of property</b>	<b>Transaction Value (Rs.)</b>	<b>Stamp value (Rs.)</b>
607, 6th Floor, Tulsi Chambers, Mumbai-400071	1,04,00,200/-	1,07,40,000/-

4. On verification of ITR, ld. AO noted that there is no such transaction / property which were reflected in return. In response to the notice issued by the ld.AO, assessee contended that an office premises situated at 607, Tulsi Chamber, CTS No.385, Shivaji Nagar, Chembur, Mumbai-400071, was booked jointly with one, Sri Satish C. Agarwal, vide allotment letter dated 30.04.2013 for Rs.1,04,00,200/- and that payment of Rs.61,46,982/- has been made so far in installment as per the terms agreed. It is further stated that later the assessee took full control of the property by paying Rs. 23,41,207/- to Satish C Agarwal. Regarding source of funds for the purchase of property, assessee contended that it is out of internal accruals. However, the ld. AO treated the entire investment of Rs.1,04,00,200/- as unexplained investment to be added and taxed u/s.69 r.w.s. 115BBE. AO further added difference of Rs.3,39,800/- being the

difference between the property purchase as per the stamp value which was Rs.1,07,40,000/- as against transaction value of Rs.1,04,00,200/-.

5. Before the Id. CIT(A), assessee submitted that assessee had made booking in the earlier years and assessee has paid only Rs. 61,46,982/- to builder so far including Rs. 2,40,040/- towards service tax; Rs. 1,04,002/- towards VAT and Rs. 5,67,540/- towards Stamp Duty and Registration. Thus, net of these charges, payment made to builder against office was Rs. 52,35,400/- against the agreement value of Rs. 1,04,00,000/-. Assessee did not made any payment further as work on the said project has been stalled/halted. Though the value as per Index 2 was Rs. 1,07,40,000/- in the year 2017, against agreement value of Rs 1,04,00,000/-, because this office was booked in 2012-13, whereas registration was done in year 2017-18.

5. The Id. CIT(A) called for remand report from the Id. AO which Id. AO did not submit despite 14 reminders to the Id. AO on various dates as per the chart submitted from pages 3-5 of the order. The facts which were stated before the Id. CIT(A) were as under:-

*1. That on 17-11-2012, the appellant has booked a commercial property no. Office no. 607, 6th Floor, Tulsi Chember, Shivaji Nagar, Chembur, Mumbai, 400071 under construction link plan.*

*2. That on 27-06-2017, the appellant has entered into an agreement for executing an agreement to sell in respect to the above mentioned property with M/s Surana Construction (Chembur) for a total purchase price of Rs. 1,04,00,200/- and builder agreed to deliver the said property by December, 2019.*

3. That till AY-2018-19, the appellant has made total payment of Rs.61,46,982/- and this amount include payment to builder M/s Surana Construction (Chembur), stamp duty charges etc.

4. That in support of documentary evidence for investment and sources of payment, the appellant has submitted copy of agreement to sell dt. 27-06-2017, payment receipts acknowledgement, bank statement and Balance Sheet for the period from FY-2012-13 to FY-2017-18.

5. That further, the appellant has not made total payment of Rs. 1,04,00,200/-, in this regard, a copy of ledger of M/s Surana Construction (Chembur) is enclosed and complete breakup of total payment of Rs.61,46,982/- is also enclosed

6. That the Ld. Assessing Officer has made the addition without any evidence and relied upon information received from SFT portal. As per the SFT record, "the assessee has purchased an immovable property on 27-06-2017" In this regard, it is important to mention here that the Ld. Assessing Officer has never examined the said record and made the addition on the basis of presumptions.

7 That furthermore, the builder has defaulted in giving the possession of the said property and as on date, project is under litigation.

8. That appellant has also clarified the said details before the Ld. Assessing Officer during the course of assessment proceeding. In this regard, kindly refer para 4.2.1 at page 3 of the Assessment Order

In view of above facts and submissions, you are requested to kindly delete the addition of Rs. 1,04,00,200/- made uls 69 r.ws. 1158BE of the Income Tax Act, 1961 as unexplained investment on account of investment made by the assessee in purchase of the immovable property.

6. Regarding addition of Rs.3,39,800/-, assessee's submissions were as under:-

1. *That as mentioned above in written submission of ground no.1, the appellant has booked the said property in year 2012 and entered into an agreement to sell in the year 2017.*
2. *That in the said agreement to sell, the appellant has agreed with builder M/s Surana Construction (Chembur) with various terms and conditions including possession of property in December, 2019.*
3. *That the builder has defaulted in giving the possession of the said property and as on date, project is under litigation. Therefore, final sale deed has not been executed in favour of the appellant till date.*
4. *That provision of section 56(2)(x) of the Income Tax Act, 1961 apply only when assessee purchased a immovable property i.e. said section shall not apply on booking of property and on execution of agreement to sell.*

*In view of above facts and submissions, you are requested to kindly delete the addition of Rs. 3,39,800/- made u/s 56(2)(x) of the Income Tax Act, 1961 on account of difference in the stamp value of the property purchased ie Rs. 1,07,40,000/- as against transaction value of Rs. 1,04,00,200/-.*

7. The Id. CIT(A) after perusing the records, noted that assessee had made booking of a commercial property on 17/11/2012 which was under construction and the payment was linked with construction plan. Later on, assessee had entered into agreement for executing the agreement to sale in respect of above mentioned property from M/s. Surana Construction (builder) for total purchase price of Rs.1,04,00,200/-. However, assessee had only made payment of Rs.61,46,982/- till A.Y.2018-19. In support of

this payment assessee had filed copy of ledger account break-up of the said payment in supporting documents and also source of payment may be reflected in the balance sheet from F.Y.2012-13 to 2017-18. Based on these facts, ld. CIT(A) has deleted the addition after observing and holding as under:-

*I have carefully considered the appellant submissions and Assessment Order. In this case the Ld. Assessing Officer has considered entire investment of Rs.1,04,00,200/-made by the assessee in the purchase of the said immovable property as unexplained investment u/s 69 r.w.s. 115BBE of the Act and added to the total income of the assessee. In this regard, the appellant has contended that on 17-11-2012, he has booked a commercial property no. Office no. 607, 6th Floor, Tulsi Chember, Shivaji Nagar, Chembur, Mumbai, 400071 under construction link plan. Further on 27-06-2017 the appellant has entered into an agreement for executing an "agreement to sell" in respect to the above mentioned property with M/s Surana Construction (Chembur) for a total purchase price of Rs.1,04,00,200/- But the appellant has made total payment of Rs. Rs 61,46,982/ till AY-2018-19 i.e. during the relevant year.*

*In support of his contention regarding payment of Rs. 61,46,982/-, the appellant has submitted copy of ledger of M/s Surana Construction (Chembur), copy of Agreement to sell dated 27-06-2017 and a breakup of said payment alongwith supporting documents.*

*Furthermore, in support of source of payment of Rs.61,46,982/-, the appellant has submitted Balance Sheet from FY-2012-13 to FY-2017-18, payment receipts, details of stamp duty paid on execution of agreement to sell and Bank statement showing the payment against the purchase of said property.*

*In this regard, the various documents submitted by the appellant during the course of appellate proceeding was carefully considered From the perusal of balance sheet filed for various years including relevant year, it is evident that the appellant have substantial amount being reflected in the*

*balance sheet in the shape of namely Fixed Deposit, Bank Balance, investment in share, investment in business of proprietary firm and advance to builder showing that appellant have high net worth. Further, appellant is the regular income tax assessee and filing income tax return regularly each year including current ITR of Rs. 78,53,870/-*

*Further, from the ITR, it is clear that the appellant is director in M/s Om Chemical Industries and drawing salary from said business which lent to the creditworthiness & capacity of the assessee.*

*Further, the appellant has furnished bank statement of saving bank account from where payment has been given to the builder. From the careful perusal of the deposits and subsequent withdrawal, it was found that deposits are mainly arising out of frequent maturity proceeds of various fixed deposits and salary as director from the business.*

*Further, the careful perusal of bank statement, reveals that there is no cash deposit in the bank statement and any substantial credit/deposit entry appearing in the bank account whose origin/sources is not explained/or cryptic. Therefore on the basis of the above fact & circumstance emanating from the material filed by the appellant during the appellate proceeding it is evident that Appellant has capacity/creditworthiness for payment made to the builder*

*In this case, the Ld. Assessing Officer has just relied upon the information received from SFT portal and as per said report, "the assessee has purchased an immovable property of Rs. 1,04,00,200/- on 27-06-2017" i.e. information received from Office of Registrar on execution of agreement to sell. The Ld. Assessing Office has not verified the said report and made the addition of Rs. 1,04,00,200/-. Thus making addition u/s 69 of the Income Tax Act, 1961 on the basis of information received from Office of Registrar without any enquiry and verification is not tenable.*

8. After hearing both the parties and on perusal of the impugned orders, we find that that ld. AO, simply based on certain information that assessee had undertaken transaction value of purchase of property of Rs.1,04,00,200/- has made addition despite assessee submitted that he has only made payment of Rs.61,46,982/- till date and the project was still incomplete and got stalled and in fact went into litigation and till date he could not get the property. Before the ld. CIT(A) all these facts were brought on record as noted above which was also confronted to the ld. AO to submit the remand report. However, the same was not responded by the ld. AO despite 14 opportunities given by the ld. CIT(A). Be that as may be, once it is a fact that assessee had booked a property way back on 17/11/2012 and the payment was to be made on the basis of stage of construction, that is, payment was linked with progress of construction. Till A.Y. 2018-19 assessee has paid Rs.61,46,982/- as per the following details in various years:-

Date of Receipt	Amount	Name of Bank	Cheque No.	Cheque clearing date as per Bank pass Book
17/11/2012	11,00,000.00	Bank of India	040574	15-11-2012
17/11/2012	34,100.00	Bank of India	040575	15-11-2012
27/11/2012	6,50,000.00	Bank of India	040577	30-11-2012
29/12/2012	20,150.00	Bank of India	040582	31-12-2012

17/12/2013	3,68,980.00	Bank of India	040599	19-12-2013
19/12/2013	13,689,00	Bank of India	040600	21-12-2013
08/11/2014	1,58,924.00	Bank of India	040614	10-11-2014
08/11/2014	5,896.00	Bank of India	040615	10-11-2014
17/03/2015	1,88,668.00	Bank of India	040624	18-03-2015
17/03/2015	7,000.00	Bank of India	040625	18-03-2015
24-06-2015	3,46,826.00	Bank of India	040635	25-06-2015
21-06-2017	5,67,500.00	Bank of India	094290	21-06-2017 towards Stamp Duty Rs. 5,37,500/- and Registration Charges Rs. 30,000/-
22/06/2017	1,04,002.00	Bank of India	094288	22-06-2017 Towards Vat1%
22/06/2017	2,40,040.00	Bank of India	094287	22-06-2017 Towards Service Tax® 4.50%
Total	38,05,675.00			

08/02/2016	23,41,207.00			Paid through Satish Agarwal (As per Letter enclosed)
Total	61,46,982.00			

9. Alongwith the said details, the receipts of payment had also been furnished alongwith bank statement before us, in the paper book which was also filed before the ld. CIT(A). Even in the balance sheet as on 31/03/2018, assessee had shown advances of Rs.61,46,982/- to M/s. Surana Constructions. In the agreement to sale the total purchase price which was agreed in the year 2012 has been mentioned, however, assessee till date had only made payments of Rs.61.47 lakhs and no further payment was made for the reason that project office was not still completely constructed or handed over to the assessee and project is under litigation till date. Under these facts and also when the source of funds have been examined by the ld. CIT(A) which was paid in the earlier years from the books duly reflected in the bank, we do not find any infirmity while deleting the said addition by the ld. CIT(A). Ld. AO has not even verified the report nor did he applied his mind as to whether assessee had actually purchased the property and has made the said payment. It is also not the case made out by the AO that assessee has made some cash payment over and above the amount paid till A.Y.2018-19 of Rs.61.47 lakhs. Therefore, blindly relying on the information, without verifying the records no addition can be

made. Accordingly, this ground raised by the Revenue is dismissed.

10. In so far as addition of Rs.3,39,800/- made u/s.56(2)(x) on account of difference of stamp value and the transaction value, it is an undisputed fact that assessee has purchased the property in the year 2012 which was also allotted to him at then market value and stamp value and entered into agreement to sale in the year 2017. Till date builder has not given the possession of the property and conveyance deed has not been executed in favour of the assessee till date. Once assessee has not received the property, then there is no question of adding the difference under deeming provisions. The finding of Id. CIT(A) in this regard is as under:-

*I have carefully considered the appellant submissions, Judicial pronouncement quoted by the Appellant and Assessment Order. In this case, the Ld. Assessing Officer has made the addition of Rs.3,39,800/- u/s 56(2)(x) of the Income Tax Act, 1961 on account of difference in the stamp value of the property purchased i.e. Rs.1,07,40,000/- as against transaction value of Rs.1,04,00,200/-. In this regard, the appellant has contended that appellant has booked the said property in year 2012 and entered into an agreement to sell in the year 2017 but till date builder has not given possession of property. The appellant has further contended that project is under litigation and therefore, final sale deed has not been executed in favour of the appellant neither in the relevant year nor, even till date.*

*Furthermore, the appellant has contended that the provision of section 56(2)(x) of the Income Tax Act, 1961 apply only when assessee purchase an immovable property i.e said section shall not apply on booking of property and on execution of agreement to sell. In this regard, provision of section 56(2)(x) of the Income Tax Act, 1961 was carefully perused and it was found that the*

*provision are applicable or become operational only when property stand received without consideration or Inadequate consideration. The First proviso of the same clause was gone through where it has been laid down that where the date of agreement fixing the amount of consideration for transfer of immovable property and date of registration/execution are not same/different then the stamp duty value on the date of agreement will be taken for the purpose of this clause, Therefore implied meaning/legislative intent of the statute is that the relevant provision of section 56(2)(x) will come into the force once the date of registration/execution of purchase/conveyance deed is available i.e. execution of purchase deed is the pre-requisite or condition precedent for invoking the said provision. Therefore, since the execution of purchase/conveyance deed has yet to be executed in the instant case hence said provision shall not be applicable in this case.*

*Therefore, after careful consideration of the above narrated facts, circumstances of the case, Assessment Order, statutory provision given in Section 56(2)(x) of the Income Tax Act, 1961 and the submissions of the Appellant, the ground of the appellant is allowed and the addition made by the Ld. Assessing Officer on account of difference of Rs.3,39,800/- between stamp duty and transaction value is being deleted accordingly.*

11. Thus, in view of the facts and the provision of law, the aforesaid finding of the ld. CIT(A) is confirmed and the grounds raised by the Revenue are dismissed.

**12. In the result, appeal of the Revenue is dismissed.**

Order pronounced on 8<sup>th</sup> May, 2024.

**Sd/-**  
**(RENU JAUHRI)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai; Dated 08/05/2024  
KARUNA, sr.ps

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**