

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 856/Ahd/2023
(निर्धारण वर्ष / Assessment Year : 2012-13)

Pooja Dipen Joshi 1, Greenpark Society, Jalaram Mandir Road, Deesa, Gujarat - 385535	बनाम/ Vs.	The Income Tax Officer Ward - 2, (Formerly Ward- 4, Palanpur) Palanpur
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AHWPJ8431D		
(Appellant)	..	(Respondent)

&

आयकर अपील सं./I.T.A. No. 696/Ahd/2023
(निर्धारण वर्ष / Assessment Year : 2012-13)

Ashokkumar C Joshi 1, Rajhans Complex, Jalaram Mandir Road, Deesa, Gujarat - 385535	बनाम/ Vs.	The Income Tax Officer Ward - 2, Palanpur
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ADVPJ3309B		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri A. K. Khandelwal, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri V. K. Mangla, Sr. DR

Date of Hearing	29/04/2024
Date of Pronouncement	15/05/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

These two appeals are filed by two different assessees against the separate orders of the National Faceless Appeal

Centre (NFAC), Delhi, (in short ‘the CIT(A)’) Nos. ITBA/NFAC/S/250/2023-24/1056063797(1) & ITBA/NFAC/S/250/2023-24/1055194154(1), dated 14.09.2023 & 17.08.2023; respectively, both for the Assessment Year 2012-13.

2. The issue involved in the two appeals is identical. Both parties are co-owners of the same property acquired and their shares in the property is also identical. Therefore, these two appeals were heard together and are being disposed of vide this common order for the sake of convenience.

3. The case of Pooja Dipen Joshi in ITA No. 856/Ahd/2023 is taken as lead case. The brief facts of the case are that the assessee had filed the return of income for A.Y. 2012-13 on 26.08.2012 declaring total income of Rs.8,41,950/-. Subsequently, an information was received by the AO from the Directorate of I&CI, Ahmedabad that the assessee had purchased a property jointly with 8 persons. The value of this property shown in the transfer document was Rs.1,35,00,000/- whereas jantri value of the property was Rs.4,03,07,857/-. On the basis of this information, the case was reopened u/s. 147 of the Income Tax Act, 1961 (hereinafter referred as ‘the Act’). In the course of re-assessment proceeding, no compliance was made by the assessee. The AO had made enquiry from the Sub-Registrar in respect to the property purchased by the assessee who had confirmed that though the documentary value of property was Rs.1.35 Crores, the jantri value was Rs.4,03,07,857/-. As the assessee was having 11.11% share in the property, the assessee’s

contribution to the property was Rs.44,78,650/- which was considered as full value of consideration under the provision of Section 50C of the Act. The AO invoked the provision of Section 50C r.w.s. 56(2)(vii)(b) of the Act and treated the jantri value of the property purchased, amounting to Rs.44,78,650/- as 'income from other sources' and accordingly made the addition, which was confirmed by the Id. CIT(A).

4. Aggrieved with the order of the CIT(A), the assessee is in appeal before us and has raised the following grounds of appeal:

1. *In law, on the facts and in the circumstances of the case, the Ld.CIT(A) is not justified confirming the addition of Rs. 44,78,650/- U/S 50C r.w.s. 56(2)(vii) (b) of the I.T.Act, 1961.*
2. *The Ld.CIT(A) has erred in confirming the entire addition of Rs. 44,78,650/- despite of the facts that the assessee has already shown her share in purchase cost of Rs. 15,00,000/- in return of income filed which required to be allowed.*
3. *The Ld. CIT(A) has erred in confirming the addition of Rs. 44,78,650/- made u/s 56(2)(vii) (b) of the I.T.Act, despite of fact that provision of section 56(2)(vii) (b) brought in to statue book by the Finance Act 2013 w.e.f. 01.04.2014 hence not applicable to A.Y.2012-13.*
4. *The appellant craves to leave to add, alter, amend or withdraw any ground/s of appeal on or before hearing of the appeal."*

5. Shri A. K. Khandelwal, Id. AR for the assessee submitted that no proper compliance was made before the AO, hence, the order was passed ex parte u/s. 144 of the Act. However, the matter was properly represented before the Id. CIT(A) who has not appreciated the correct provisions of law. According to the Id. AR, no addition could have been made u/s. 50C of the Act as the said provision is applicable for computation of capital gains.

The capital gain arises in the hands of the seller and not in the hands of buyer. Therefore, the provision of Section 50C of the Act to determine the full value of consideration can be invoked only in the case of sellers. As regarding applicability of provision of Section 56(2)(vii)(b) of the Act, it was submitted that the said provision was applicable only if the property was acquired without consideration. In the instant case, as the property was not acquired without consideration the said provision was not applicable at all. It was submitted that the assessee also had an option to dispute the stamp duty valuation and this plea taken before the Id. CIT(A) was only a secondary plea. The Id. AR further submitted that the CIT(A) had confirmed addition of Rs.44,78,650/- u/s. 50C r.w.s. 69 of the Act as unexplained investment of the assessee, which was not correct as the assessee was never given any show cause notice for treating the investment as unexplained investment u/s. 69 of the Act.

6. The Id. DR, on the other hand, submitted that the assessee had not made any compliance before the AO in the course of assessment proceeding. The CIT(A) after examining the issue and considering the submissions of the assessee had confirmed the addition. The Id. DR further submitted that the provision of Section 56(2)(vii)(b) of the Act was amended w.e.f. 01.04.2014 and as per the amended provision the difference between the stamp duty value and the actual consideration was liable to be treated as 'income from other sources' w.e.f. 01.04.2014. He contended that though this amendment was effective from A.Y. 2014-15, this was clarificatory in nature and had retrospective

effect. As regarding addition u/s. 69 of the Act, the ld. DR submitted that the matter may be set aside to the file of the CIT(A) for allowing another opportunity to the assessee to explain the source of investment.

7. We have considered the submissions made by the assessee and the department. The case was reopened by the AO to examine the difference between the purchase price as per sale deed and the jantri value of the property on which the stamp duty was paid. As the assessee was a buyer of the property, no capital gain could have arisen in her hand, therefore, the provision of Section 50C of the Act was not applicable at all in this case. Therefore, we have to examine as to whether this difference could have been added in the hands of the assessee under the provisions of Section 56(2)(vii)(b) of the Act. The provision of Section 56(2)(vii)(b) of the Act as applicable for this year is found to be as under:

“(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009 [but before the 1st day of April, 2017],—

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

(b) any immovable property, without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;”

8. It is, thus, clear from the above provision that an addition could have been made under this Section only if any immovable property, with stamp duty value exceeding Rs.50,000/-, was acquired without consideration. In this case, the property was not acquired without consideration. Therefore, the provision of

Section 56(2)(vii)(b) of the Act is not found applicable in this case. This provision was amended by the Finance Act, 2013 w.e.f. 01.04.2014 whereby the difference between the stamp duty value and the actual sale consideration was made liable for addition as 'income from other sources'. The Ld. DR has contended that this amendment was clarificatory in nature and, therefore, it should be made applicable for this preceding year as well. It is found from the Memorandum explaining the provision in Finance Act, 2013 that the amendment to Section 56(2)(vii)(b) of the Act was not clarificatory in nature. The said memorandum reads as under:

“The existing provisions of sub clause (b) of clause (vii) of sub-section (2) of section 56 of the Income-tax Act, inter alia, provide that where any immovable property is received by an individual or HUF without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property would be charged to tax in the hands of the individual or HUF as income from other sources.

The existing provision does not cover a situation where the immovable property has been received by an individual or HUF for inadequate consideration. It is proposed to amend the provisions of clause (vii) of sub-section (2) of section 56 so as to provide that where any immovable property is received for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration, shall be chargeable to tax in the hands of the individual or HUF as income from other sources.

Considering the fact that there may be a time gap between the date of agreement and the date of registration, it is proposed to provide that where the date of the agreement fixing the amount of consideration for the transfer of the immovable property and the date of registration are not the same, the stamp duty value may be taken as on the date of the agreement, instead of that on the date of registration. This exception shall, however, apply only in a case where the amount of consideration, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement fixing the amount of consideration for the transfer of such immovable property.

This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

[Clause 9]”

9. It has been explicitly mentioned in the Memorandum that the existing provision was applicable to immovable property received without consideration only and that it did not cover cases of inadequate consideration. In order to include the cases of inadequate consideration, the provision of Section 56(2)(vii)(b) of the Act was amended with effect from 01.04.2014. It is categorically mentioned that this amendment was effective from 01.04.2014 onwards and applicable to A.Y. 2014-15 and subsequent years. Therefore, this amendment cannot be extended to past years. Accordingly, no addition u/s. 56(2)(vii)(b) of the Act could have been made in A.Y. 2012-13 u/s. 56(2)(vii)(b) of the Act in the case of inadequate consideration. Therefore, the addition as made by the AO cannot be sustained.

10. The CIT(A) was also wrong in confirming the addition u/s. 50C r.w.s. 69 of the Act. As already discussed earlier, the provision of Section 50C of the Act is not applicable in the case of buyer and the department never had any case of making any addition u/s. 69C of the Act. Further, the addition u/s. 69C could have been made only in respect of actual investment of Rs.1,35,00,000/- as made by the assessee in the property and not in respect of jantri value. The addition u/s 69 also can't be sustained for the reason that case was reopened to consider the difference between jantri value and actual purchase value. When the addition on the issue on which the case was reopened is not

sustained, no other addition is permissible. The CIT(A) had also not issued any show cause notice to the assessee for making the addition u/s. 69C of the Act. Therefore, the order of the CIT(A) is cancelled.

11. In the result, appeal preferred by the assessee is allowed.

ITA No. 696/Ahd/2023 (Ashokkumar C. Joshi)

12. The grounds of appeal taken by the assessee in this case are as under:

“1. In law, on the facts and in the circumstances of the case, the Ld. CIT(A) is not justified confirming the addition of Rs.29,78,650/- U/S 50C r.w.s. 56(2)(vii)(b) of the I.T. Act, 1961.

2. The Ld. CIT(A) has erred in confirming the addition of Rs.29,78,650/- made u/s 56(2)(vii)(b) of the I.T.Act, despite of fact that provision of section 56(2)(vii)(b) brought in to statue book by the Finance Act 2013 w.e.f. 01.04.2014 hence not applicable to A.Y. 2012-13.

3. The appellant craves to leave to add, alter, amend or withdraw any ground/s of appeal on or before hearing of the appeal.”

13. The issue involved in the case of Ashokkumar C. Joshi is exactly identical with the case of Pooja Dipen Joshi. Sh. Ashokkumar C. Joshi is also the co-owner having 11.11% share in the same property acquired at Rs.1.35 Crores as against the jantri value of Rs.4,03,07,857/-. The assessee's share in the jantri value was Rs.44,78,650/- which was treated as 'income from other sources' u/s. 50C r.w.s. 56(2)(vii)(b) of the Act by the AO, which has been upheld by the ld. CIT(A). As already discussed elaborately in ITA No. 856/Ahd/2023, the provision of

Section 56(2)(vii)(b) of the Act was not applicable in respect of inadequate consideration in the current year. Therefore, the addition as made by the AO is deleted. In this case, the CIT(A) had merely upheld the addition u/s. 50C r.w.s. 56(2)(vii)(b) of the Act and no separate addition was made u/s. 69C of the Act as in the case of Pooja Dipen Joshi. As the addition u/s.69C is not involved in the case of Ashokkumar C. Joshi, this issue is not required to be considered in this case.

14. In the result, appeal filed by the assessee is allowed.

15. In the combined result, the appeals filed by both the assessees are allowed.

This Order pronounced on 15 /05/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER *True Copy*
Ahmedabad; Dated 15/05/2024
S. K. SINHA

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad