

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.207/PUN/2024
निर्धारण वर्ष / Assessment Year : 2016-17

Shree Ganesh Builders, H. No. 15 1126 Adarsha Nagar, Beed - 431122 PAN : ABYFS2021A	Vs.	ITO, Ward - 1(5), Aurangabad
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

Assessee by :	Shri Girish Ladda
Department by :	Shri Ramnath P. Murkude
Date of hearing :	06-06-2024
Date of Pronouncement :	19-06-2024

आदेश / ORDER

PER S.S. GODARA, JM :

This assessee's appeal for assessment year 2016-17 arises against the National Faceless Appeal Centre (NFAC), Delhi's order dated 18.10.2023, passed in DIN & Order No. ITBA/NFAC/S/250/2023-24/1057161512(1), in proceedings u/s. 250 of the Income Tax Act, 1961; in short "the Act".

Heard both the parties at length. Case file perused.

2. The assessee raises the following substantive grounds in the instant appeal :

- "1. The ld. CIT (A) erred in confirming the addition Rs.51,20,000 made by the AO u/s 69 of Income Tax Act being difference in Stamp duty valuation and actual purchase cost of immovable property.

2. *The Id CIT(A) also failed to appreciate that the section 56(2)(viii) was applicable only for Individual/HUF and not to the partnership firm and section 56(2)(x) was inserted w.e.f. 1/04/2017 thus not applicable for AY 2016-17. It is prayed that addition of Rs5120000 may please be deleted.*
3. *The Id. CIT (A) failed to appreciate that the law that neither section 69 of Income tax Act nor section 56(2)(x)/6(2)(vii) was applicable for the difference of Rs5120000 in Stamp duty valuation and actual purchase cost of the immovable property.*
4. *The Id CIT (A) further erred .in confirming the applicability of tax at higher rates prescribed u/s 115BBE and section 69 of Income tax Act on the addition of Rs5120000 being difference in Stamp duty valuation and actual purchase cost of immovable property. This action of the CIT(A) may please be overturned.*
5. *Without prejudice to above grounds, the Id CIT(A) erred in confirming the addition of Rs5120000 without refereeing the mandatory valuation to the DVO even after the objection of the appellant.*
6. *The Appellant seeks leave to add, alter, amend or drop any of the grounds taken above.”*

3. Both the learned representatives next invited our attention to the CIT(A)'s detailed discussion claiming the impugned addition of Rs.51.20 lacs made in the assessment herein dated 19.03.2022, as under :

“DECISION OF THE APPELLATE AUTHORITY ON GROUND NO.3: DIFFERENCE AS PER SALE DEED AND STAMP DUTY VALUATION AMOUNTING TO Rs 51,20,000/-

The Appellant Assessee in its submissions in point no.-2.4 states that, the "Difference in value as per sale deed and Stamp duty valuation: Regarding the difference Rs 51,20,000/- in valuation as per ready recknor and actual consideration, it is submitted here, section 56(2) (viii) was applicable only for Individual and HUF and not to partnership firm. Further, Section 56(2)(x) was inserted to apply for any person but it is effective from 01/04/2017 and thus not applicable for AY 2016-17. Hence, this difference is not taxable under any section of Income tax Act".

The Appellant Assessee contends that, the difference of value as per sale deed and stamp duty valuation comes out to Rs 51,20,000/-, which is not chargeable to tax under Section 56(2)(x) as this section of income tax is effective from 01.04.2017 and thus not applicable for AY 2016-17.

In point no.- 2.4 of its submission the Appellant assessee has submitted that, the valuation of Rs.2,26,20,000/- is absurd as the value has been taken at the rate of 23650 per square meter which is prescribed rate of ground floor and thus the rate for first, second and third floor are considerably lower than the value of ground floor.

The Appellant assessee had just made a vague statement and disputed the stamp duty value on the face of the duly registered purchase deed of the property. The Appellant Assessee has not provided any proof or documents like floor wise stamp duty valuation chart of the area, charts of collector rate

of the area etc. Hence, this Appellate authority does not find any weightage in this contention of the Appellant Assessee.

Further, the Appellant Assessee also states that, the "Section 69 is not applicable on difference Rs 51,20,000/- as it is not an investment at all and consequently section 115BBE is also not applicable".

To decide this contention of the Appellant assessee this appellate authority would like to discuss the language of section 69 of the income tax act 1961:-

"69. Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year".

In the present case appellant assessee has made following investment in land and building

1. Investment in building Rs2,26,20,000/-
(stamp duty valuation as given in purchase deed Sub registrar office)
2. Amount recorded in books of account out of above Rs.1,75,00,000/-
3. Balance unrecorded amount of investment in building Rs.51,20,000/-

In the eyes of this Appellate authority all the conditions of section 69 are satisfied for the assessing officer to make an addition on this issue, as the Assessee has made an investment of Rs 51,20,000/- in the building which has not being recorded in its books of accounts and the assessee has not provided any explanation regarding the source of this unrecorded investment i.e. neither before the Assessing Officer nor to this Appellate Authority, despite being provided ample opportunity to do so.

Hence, this Appellate Authority finds no weightage in the submissions of the Appellant Assessee on this issue and disallows its ground of appeal no.3. Therefore, the addition made by the AD on this issue of un-explained investment u/s 69 r.w.s 115BBE of the IT Act, 1961 (i.e. w.r.t the difference in value as per sale deed and stamp duty valuation) amounting to Rs.51,20,000/- is hereby up-held.

In the result, the appeal of the assessee is partly allowed."

4. We have given our thoughtful consideration to vehement rival submissions against and in support of the impugned addition. We see no reason to sustain the learned lower authorities' action making section 69 addition in question. This is for the precise reason that this amount of Rs.51.20 lacs represents difference between assessee's actual purchase price of Rs.1,75,00,000/- and stamp value of Rs.2,26,20,000/-, respectively wherein the latter sum stands treated as an instance of

unexplained investment. We wish to make it clear that there is not even an iota of evidence indicating the assessee to have actually paid the impugned sum to the vendor(s) concerned before or at the time or after the registration of sale deed. Section 69 of the Act stipulating such an addition of unexplained investment is applicable only when an investment is actually made than which is considered for the purpose of stamp collection only. We accordingly conclude that the learned lower authorities have erred in facts in law in making the impugned addition of Rs.51.20 lacs; which is also not taxable in case of a partnership firm u/s. 56(2)(x) for the assessment year 2016-17 since inserted w.e.f. 01.04.2017 carrying prospective effect. Faced with this situation, we accept the assessee's sole substantive ground in very terms.

5. This assessee's appeal is allowed.

Order pronounced in the open court on 19th June, 2024.

Sd/-
(R.K. Panda)
VICE PRESIDENT

Sd/-
(Satbeer Singh Godara)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 19th June, 2024.

रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune