

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.3730/M/2023
Assessment Year: 2018-19**

Shri Mohd. Maaz Ismail Patel, D-601, White Tower, FDC Road, Jogeshwari (W), Mumbai - 400 102 PAN: AABPP3903A	Vs.	Income Tax Officer, Ward No.41(4)(2), Kautilya, Bandra (E), Mumbai - 400102
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vimal Punmiya, C.A.
Revenue by : Smt. Mahita Nair, Sr. D.R.

Date of Hearing : 02 . 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 25.08.2023 impugned herein passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2018-19.

2. In the instant case, the assessee had declared its total income of Rs.9,32,570/- by filing its return of income on dated 29.10.2018, which was selected for scrutiny through CASS for examination "investment in immovable property" as the purchase value of the property along with income disclosed under section 56(2)(x) of the Act was substantially less than the value as per stamp valuation. It was observed by the Assessing Officer (AO) that the assessee had purchased an immovable property i.e. flat No.2302, 23rd Floor along with terrace, Building No.2, AL Margin, Jogeshwari (West), Mumbai on 31st May 2017, value of the same as per stamp value authority was shown at Rs.1,25,71,000/- as mentioned in the sale receipt of SRO, whereas the assessee has paid Rs.82,00,000/- as consideration for the same. Therefore, the assessee was show caused as to why the difference between the stamp duty value of the property and purchase value should not be brought to tax in accordance with the provisions of section 56(2)(x) of the Act. In response, the assessee furnished the copy of the purchase deed along with the stamp duty documents of the property.

2.1 Thereafter, another show cause notice dated 12.02.2021 was also issued to the assessee by which the assessee was asked as to why the excess stamp duty value over the purchase consideration viz. Rs.43,71,000/- (Rs.1,25,71,000/- – Rs.82,00,000/-) should not be added to the income and taxed accordingly. The assessee in reply to the said show cause notice claimed that the assessee had booked the said flat vide allotment letter dated 26.10.2011 {page 46 of the paper book}, issued by the builder and paid the amount as per schedule mentioned in the agreement {page 47 of the paper book}, itself and the same is reproduced hereunder:

Sr.no	Date	Amount	Remarks
1	28/10/2011	8,00,000	Chq No : 005126
2	28/10/2011	2,00,000	Chq No : 005127
3	29/10/2011	1,00,000	Chq No: 005128
4	03/01/2012	7,00,000	Chq No:005133
6	23/01/2012	1,00,000	Chq No: 005135
7	08/10/2015	5,00,000	Chq No: 727183
8	13/10/2015	5,00,000	Chq No : 727184
9	13/10/2015	5,00,000	Chq No: 727185
10	19/11/2015	5,00,000	Chq No: 727188
11	09/12/2015	7,00,000	Chq No : 727189
12	17/12/2015	5,00,000	Chq No : 727190
13	19/12/2015	5,00,000	Chq No : 790126
14	23/12/2015	5,00,000	Chq No : 790127
15	29/12/2015	5,00,000	Chq No: 790128
16	29/01/2016	10,00,000	Chq No : 790130
17	09/02/2016	6,00,000	Chq No : 790131
18	19/05/2017	6,59,000	Stamp Duty
		88,59,000	

2.2 Though the AO considered the claim of the assessee, however, while perusing and reproducing the provisions of section 56(2)(x) of the Act in the assessment order, not accepted the claim of the assessee mainly on the reason that the issue in the scrutiny, is purchase value of the property which is less than the value as per stamp valuation under section 56(2)(x) of the Act or any other relevant section. Since the assessee's contention that the date of

agreement with the builder should be taken for the purpose of calculation of value of property (i.e. allotment letter dated 26.10.2011) is not acceptable as per the amendment made in the Income Tax Act, the value as on the date of registration of property with the Registration Authority is taken as the correct value and the difference is treated as income from other sources. The AO ultimately treated the excess stamp duty value over the purchase consideration of Rs.43,71,000/- (Rs.1,25,71,000/- – Rs.82,00,000/-) as income from other sources of the assessee during the year within the meaning of provisions of section 56(2)(x) of the Act and consequently added the same in the total income of the assessee.

3. The assessee being aggrieved, challenged the said addition before the Ld. Commissioner by filing first appeal, however, could not get succeeded as the Ld. Commissioner affirmed the action of the AO by dismissing the appeal of the assessee.

4. We have heard the parties and perused the material available on record. Admittedly, the purchase of property under consideration is not in controversy. The only controversy relates to the difference between the consideration amount fixed as per agreement to sell and the value determined as per stamp valuation. Though the assessee has claimed before the authorities below that the assessee had purchased the said property on 26.10.2011 and paid the consideration amount as per schedule mentioned in the agreement, however, the authorities below not accepted the claim of the assessee and ultimately added the differential amount of Rs.43,71,000/- (Rs.1,25,71,000/- – Rs.82,00,000/-) in the income of the assessee. The assessee drew our attention to the provisions of section 56(2)(x) of the Act and emphasized that according to the

proviso where the date of an agreement fixing the value of the consideration for the transfer of asset and the date of registration of the transfer of the asset are not same, then the stamp duty value may be taken, as on the date of the agreement and not as on the date of registration for such transfer of property. The assessee also drew our attention to the confirmation letter dated 18.10.2011, {page 45 of the paper book}, whereby builder i.e. Town Developers confirmed the deal for sale of flat No.2302 for a consideration amount of Rs.82,00,000/-. The Ld. AR also drew our attention to the allotment letter and payment receipt dated 26.10.2011 whereby the said flat/property under consideration was allotted on receipt of Rs.11,00,000/- by cheque numbers (State Bank of India) viz. 005126, 005127 & 005128 issued on 24.10.2011, 25.10.2011 & 26.10.2011 for the amounts of Rs.8,00,000/-, Rs.2,00,000/- & Rs.1,00,000/- respectively. Further, the assessee also drew our attention to the schedule of payment, according to which the assessee has paid the respective amounts in 17 installments started from 28.10.2011 to 09.02.2016. The assessee further drew our attention to page No.48 to 55 of the paper book, wherefrom the installments agreed as mentioned in the schedule have been credited in the account of the builder, as debited from the account of the assessee.

5. On the contrary the Ld. D.R. refuted the claim of the assessee by specifically submitting that confirmation letter dated 18.10.2011 does not have any confirmation/signature of the assessee and therefore it can be construed as afterthought document. Further, in the allotment letter dated 26.10.2011, the complete terms and conditions of the allotment of the house/property under consideration have not been mentioned, therefore, the same can

only be construed as sham/afterthought document. In cumulative effects, the claim of the assessee is liable to be dismissed.

6. We have given thoughtful consideration to the peculiar facts and circumstances of the case. We are in agreement with the Ld. D.R. that allotment/confirmation letter dated 18.10.2011, no doubt seems to be ingenuine, however, if we consider the allotment letter and payment receipt dated 26.10.2011 conjointly, wherein the acknowledgment of payment of Rs.11,00,000/- by way of three cheques as mentioned above has been given and further from the schedule of payment (page 47 coupled with bank statements) enumerated above, goes to show that the assessee had purchased the property on 26.10.2011 as the same has been acknowledged by the builder by issuing allotment letter and payment receipt and in pursuance to the allotment letter and payment schedule, the assessee has paid the installments in due times and on completion of the house and the payment as prescribed in schedule, ultimately got registered the house/property in his name vide agreement dated 31.05.2017 which is duly registered with Registration Authority, Government of Maharashtra and therefore as the proviso provides under section 56(2)(x) of the Act: where the date of an agreement fixing the value of the consideration for the transfer of asset and the date of registration of the transfer of the asset are not same, then the stamp duty value may be taken as on the date of the allotment letter/agreement and not as on the date of registration for such transfer, consequently the claim of the assessee is liable to be allowed as covered under the 1st proviso to section 56(2)(x) of the Act. Hence the AO is directed to take into consideration the date of allotment letter/Agreement and recompute the income accordingly.

7. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 30.04.2024.

**Sd/-
(MS. PADMAVATHY S)
ACCOUNTANT MEMBER**

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

Mumbai, Dated: 30.04.2024.

* 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.