

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU “A” BENCH, BENGALURU**

**Before Shri Chandra Poojari, Accountant Member
and
Shri Keshav Dubey, Judicial Member**

ITA No. 550/Bang/2024 (Assessment Year: 2015-16)		
Nagesh Kanaiyalal Thakkar Lovely Sweets, Baradan saal Hubli Sarafkatta S.O. Hubli 580020 PAN – AAUPT7785P (Appellant)	vs.	The Income Tax Officer Ward - 2(1), Hubli (Respondent)
Assessee by:	Shri Vinay K. Kulkarni, CA	
Revenue by:	Shri Guru Kumar S. Addl CIT-DR	
Date of hearing:	28.05.2024	
Date of pronouncement:	11.07.2024	

ORDER

Per: Keshav Dubey, J.M.

This appeal at the instance of the assessee is directed against DIN & Order No. ITBA/NFAC/S/250/2023-24/1060678544(1) dated 08.02.2024 passed by the National Faceless Appeal Centre, Delhi / CIT(A) under Section 250 of the Income Tax Act, 1961 (the Act) for Assessment Year (AY) 2015-16.

2. The assessee has raised the following grounds of appeal: -

- “1. *The learned commissioner of Income Tax (Appeals) confirmed the additions made under section 56(2)(Vii) which is against the facts.*
2. *The addition confirmed is against the provisions of the Income Tax Act*
3. *The beneficial provision is read in a too rigid way so as to deny the benefit conferred by the Income Tax Act.*

4. *The learned CIT (Appeals) should have taken the date of payment as date of agreement instead of rejecting the appeal.”*

3. The brief facts of the case are that the assessee files his return of income for AY 2015-16 on 22.09.2015 declaring total income of Rs.35,77,520/-. As per the information received – provisions of s. 56(2)(vii) of the Act is to apply on the transaction for purchase of residential plot made on 14.07.2015 – based on which the cases was reopened vide notice under Section 148 of the Act dated 31.03.2021. During the course of assessment proceedings the assessee has produced the agreement /MOU dated 31st day of July, 2008 along with the details of payment made. Thus, from the above it is inferred that only the assessee had entered into an agreement to purchase a plot from Shejwadkar Builders Pvt. Ltd. on 31.07.2008 and an amount of Rs. 1,00,000/- was paid by way of cheque on 11.05.2009 whereas the final sale deed for the said plot was executed on 14.07.2014 jointly with his son for Rs. 11,94,000/- as against the market value for stamp duty purposes at Rs.41,12,500/-. The assessee's share being 50% worked out to Rs,14,56,750/- (41,12,500 – 11,99,000/2) has been added as per the provisions of s. 56(2)(vii) of the Act by taking the contention that as the date of entering into an agreement being 31.07.2008 but the assessee has not paid any payment by any mode other than cash on before the date of agreement. The AO observed that the assessee paid Rs. 1,00,000/- as advance on 11.05.2009 which is very later than the date of agreement. Therefore the market value of the plot amounting to Rs.41,12,500/- is adopted for the purpose of stamp duty prevailing on the date of sale deed, i.e., 14.07.2014 & was considered for the purpose of computing income. Aggrieved by the assessment completed under Section 147 r.w.s. 144B of the Act vide order dated 30.03.2022 the assessee preferred appeal before the CIT(A).

4. The CIT(A) dismissed the appeal with the following observations: -

“6. The only issue in this appeal is addition of Rs. 14,56,750 u/s 56(2)(vii)(b) of the Act. As per the facts on record, the assessee, along with one other person (his son), purchased land measuring 9 acres and 12 guntas at Unkal village, Hubli taluka, district Dharwad for Rs. 11,99,000. The purchase deed was registered on 14.07.2014. The stamp duty valuation of the property was Rs. 41,12,500. Thus, there was difference of Rs. 29,13,500. Subsequently, assessee filed his Income Tax Return (ITR). The ITR was not subjected to scrutiny assessment. Later on, on the basis of the information of difference of Rs. 29,13,500 (assessee's share was 50%) between stamp duty valuation and purchase consideration disclosed by the assessee, AO issued notice u/s 148 after following the due process of law. During the course of scrutiny assessment, assessee filed one unregistered /unnotarized Agreement/MOU, claimed to have been entered on 31.07.2008, between assessee & others And Shejawadkar Builders Pvt. Ltd., Hubli for sale/purchase of plots to be developed by the builder at Akshay Nagar, Unkal village, Hubli. As per the so-called Agreement, the cost of the plot was shown at Rs. 11,99,000 and it was also shown in the Agreement/MOU that the builder had received Rs. 1,00,000 vide cheque no. 621285 dated 31.07.2008 of Indian Bank, Hubli. The so called one page Agreement/MOU stands reproduced on page 2 of the assessment order. AO found out that the first payment was made on 11.05.2009 and it was of Rs. 1,00,000 and it was made to one Suresh Enterprises. There was no payment made to Shejawadkar Builders Pvt. Ltd. on 31.07.2008, even though it was claimed in the Agreement/MOU that Rs. 1,00,000 was paid by cheque no. 621285 dated 31.07.2008 of Indian Bank, Hubli AO considered all these facts and reached the finding that the date of agreement was 31.07.2008 but no payment was made on or before 31.07.2008. The payment made on 11.05.2009 was more than 9 months after the date of agreement. In view of clear provisions of second proviso to section 56(2)(vii)(b) that "first proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of agreement for the transfer of such immovable property." AO held that assessee's contention was incorrect and brought to tax the income of Rs. 14,56,750 (50% of 29,13,500). Hence this appeal.

7. Regarding ground no. 1, I find that the contention of assessee is incorrect because the date of purchase of the property, through a registered deed, was 14.07.2014. In view of this fact, the contention is rejected and ground no. 1 is dismissed.

7.1. Regarding ground no. 2, I find that AO has correctly interpreted the terms "date of agreement". As a result, I do not find any merit in assessee's contention. Accordingly ground no. 2 is dismissed.

8. In the result, the appeal is dismissed."

Aggrieved, assessee filed appeal before the Tribunal.

5. The assessee has filed a paper book comprising 20 pages enclosing therein copies of the followings: -

1. Written submission before Hon'ble ITAT
2. Agreement with Builders dated 31.07.2008
3. Sale deed dated 14.07.2014
4. Assessment order of Sri Akshay Nagesh Thakkar for AY 2015-16
5. Notice u/s. 142(2) dated 29.06.21 issued to Akshay Thakkar
6. Notice u/s. 142(2) dated 29.06.2021 issued to Nagesh Thakkar

6. Before us the learned A.R. of the assessee submitted that the assessee along with his son Akshay Thakkar booked a piece of land on 31.07.2008 with Shejwadkar Builders Pvt. Ltd. for a consideration of Rs. 11,99,000/-. An amount of Rs.1,00,000/- was paid by account payee cheque on the date of agreement and the sale deed for the same was executed on 14.07.2014 on which the stamp duty value of the property was Rs. 41,12,500/-. As the property was purchased jointly along with his son, both assessee and his son received notice under Section 148 of the Act proposing to add 50% of the difference between the value of Rs. 41,12,500 and the actual consideration value of Rs.11,99,000/- which comes to Rs.14,56,750/- to each of the assessee under Section 56(2)(vii) of the Act. The learned A.R. of the assessee drew our attention to pages 13 to 16 of the paper book i.e. the assessment order of Shri Akshay Thakkar (son of the assessee), in which the AO has considered the contention of the son of the assessee and accepted the returned income where as in the case of the assessee the same AO has added Rs.14,56,750/- 50% of (41,12,500 – 11,99,000) under Section 56(2)(vii) of the Act.

7. The learned D.R., on the other hand, supported the orders of the authorities below and submitted that the order passed in the case of the assessee and in the case of his son are different. Further, he submitted that the first payment of Rs. 1,00,000/- was made on 11.05.2009 and it was made to one Suresh Enterprises. Further, there was no payment made to Shejwadkar Builders Pvt. Ltd. on 31.07.2008 even though it was claimed in the agreement/MOU that Rs. 1,00,000/- was paid through cheque No. 621285 of Indian Bank, Hubli dated 31.07.2008. Therefore, the authorities below are justified in adding Rs. 14,56,750/- under the provisions contained in s. 56(2)(vii)(b) of the Act.

8. We have heard the rival contentions and perused the material on record. The solitary issue that is to be decided is whether the addition of Rs. 14,56,750/- under Section 56(2)(vii) of the Act is justified under the facts and circumstances specially when the assessment order of one of the joint owner, being the son of the assessee, has been passed by department accepting the contentions.

9. Before proceeding further, it is appropriate to take note of the relevant section 56(2)(vii)(b) of the I Tax Act, 1961 applicable for the Asst. Year 2015-16 which reads as under-

[(vii) where an individual or a Hindu Hundi divided 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],-

[(b) any immovable property,-

(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(ii) 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:

Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of agreement may be taken for the purposes of this sub-clause:

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;]

Thus on plain reading of the above it is clear that first where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of agreement may be taken. Secondly, the amount of consideration or part thereof has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property.

10. In the present case we found that Agreement /MOU for sale of Plot were entered on 31/07/2008 which is placed on page-3 of the Paper book. This agreement/MOU is also not disputed by the Authorities below. On going through the Agreement/MOU we also found that Advance of Rs. 1,00,000/- claimed to have received by the Shejawadkar Builders Pvt. Ltd. (Seller) vide Cheque No. 62185 dated 31/07/2008 of Indian Bank , Hubli. The Revenue contention is that the first payment of Rs. 1,00,000/- was only made on 11.05.2009 by the assessee and that to one Suresh Enterprises. The AR on the other hand submitted that the amount was actually paid by the Akshay Thakkar's bank account (Son of the assessee) on 02/08/2008 who is also the joint purchaser even though he was not a party to the Agreement/ MOU for Sale of Plot on dated 31/07/2008.

11. We are of the opinion that since in the case of the assessee's son the assessment order under Section 147 of the Act dated 23.03.2022 was passed accepting the contentions of one of the joint purchaser of the property, then the same needs to be extended to other purchaser (the assessee) also. The revenue

cannot take different view for different parties involved in the same transaction. Therefore, we remit the issue to the file of the AO to take decision on the basis of the assessment order dated 23/03/2022 passed in the case of his son Mr. Akshay Nagesh Thakkar vide DIN & Order No. ITBA/AST/S/147/2021-22/1041355604(1).

12. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 11th July, 2024.

Sd/-
(Chandra Poojari)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bengaluru, Dated: 11th July, 2024
n.p.

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bengaluru*
5. *Guard File*

By Order

//True Copy//

Assistant Registrar
ITAT, Bengaluru