

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Shri Prashant Maharishi (AM)

I.T.A. No. 372/Mum/2024 (A.Y. 2018-19)

Sureshkumar Laxmichand Jain Shop No. 3, Rehmatbee Chawl, Datta Mandir Road, Vakola, Santacruz East Mumbai-400 055. PAN : AABPC7815J	Vs.	ITO, Ward 22(3)(1) Piramal Chamber Lalbaug Lower Parel Mumbai-400 012.
(Appellant)		(Respondent)

Assessee by	Shri Sumit Mantri
Department by	Shri R.R. Makwana
Date of Hearing	11.06.2024
Date of Pronouncement	29.07.2024

ORDER

1. This appeal is filed by the assessee against the appellate order passed by the National faceless appeal Centre Delhi (the learned CIT – A) for assessment year 2018 – 19 dated 27/12/2023 wherein the appeal filed by the assessee against the assessment order passed under section 143 (3) of the income tax act, 1961 dated 16/4/2021 was dismissed. Therefore the assessee is in appeal before us.
2. The brief facts of the case shows that assessee is an individual who filed his return of income on 5/7/2018 declaring total income of ₹ 558,410/-. The case was selected for scrutiny with specific reason about information of tax evasion. Notice under section 143 (2) was issued on

28/9/2019 and further notice under section 142 (1) was also issued.

3. As per the information of the Department the assessee has made transaction for purchasing of flat amounting to ₹ 90 lakhs and has paid the stem duty value amounting to ₹ 9,748,000 and therefore the difference of ₹ 748,000 was established in transaction amount and stem duty value. Therefore the differential amount was required to be added under section 56 (2) (x) of the act. In the submission before the AO, the assessee has accepted the above difference and therefore the assessment order under section 143 (3) of the act was passed determining the total income of the assessee at ₹ 1,306,410.
4. The aggrieved assessee preferred an appeal before the learned CIT – A wherein it was stated that the differences within 10% of the tolerance range and therefore those such amendment is made under section with effect from 1/4/2021 but it applies retrospectively. The learned CIT – A the same and confirmed the addition.
5. Therefore the appeal is made on this issue. We have carefully considered the rival contention and perused the orders of the learned lower authorities. Undisputedly in this case the difference is only of ₹ 748,000 on the transaction value of ₹ 90 lakhs. Therefore the above difference. In the 10% of the tolerance limit. Whether such tolerance limit applies to the assessment year 2018 – 19 or though it is made with effect from 1/4/2021. The assessee has submitted several judicial

precedents wherein it has been held that such tolerance limit applies with retrospective effect. Therefore respectfully following the decision of the coordinate bench we find that as the difference between the stamp duty value and the transaction value is less than 10% of the transaction value, the addition under section 56 (2) (x) cannot be made in the hands of the assessee. Therefore the learned AO is directed to delete the addition. Accordingly we allow the appeal of the assessee reversing the orders of the learned lower authorities.

6. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 29th July, 2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Mumbai : 29. 07 .2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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