

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 293/M/2024
Assessment Year: 2015-16**

Shri Pravin V. Vora HUF Neelkunj Bunglow, Deepak Nagar, 90 Feet Road, Bhayander (West), Thane- 401101. PAN: AAHHP4556K	Vs.	Income Tax Officer, Ward- 2(2) Ashar I. T. Park, 6 th Floor, "B" Wing, Room No. 26, Road No.1 & 2, Wagle Industrial Estate Thane (W.)- 400604.
(Appellant)		(Respondent)

Present for :

Assessee by : Shri Sanjay Parikh, A.R.

Revenue by : Ms. Kakoli Ghosh, SR. D.R.

Date of Hearing : 26 . 06 . 2024

Date of Pronouncement : 25 . 07 . 2024

O R D E R

Per : Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short]

vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1058180244(1)

Dated 23/11/2023 for the Assessment Year 2015-16.

2. Following grounds of appeal have been raised by the appellant:

“A) Addition u/s.56(2)(vii)(b) - Rs.35,03,000/-

1. *The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [CIT(A)] erred on facts and in law in confirming the addition made by the Income Tax Officer, Ward 2(2), Thane (AO) of Rs.35,03,000/- u/s. 56(2)(vii)(b) of the Income Tax Act.*
2. *The learned CIT(A) erred in not appreciating that the appellant had disputed the value as per Stamp Authorities and that no addition could have been made without referring the matter to the Valuation Officer. Hence, the addition of Rs.35,03,000/- made by the AO and affirmed by the CIT(A) needs to be deleted.*
3. *Appellant prays that the addition made by the AO u/s. 56(2)(vii)(b) of Rs.35,03,000/- and confirmed by the Ld. CIT(A), may be deleted.*
4. *Without prejudice to the above, the learned CIT(A) erred in not considering the argument of the appellant that flat no. 103 was purchased in F.Y. 2013-14 and had been shown as purchase by the appellant in F.Y. 2014-15 by mistake and hence while computing the addition u/s.56(2)(vii)(b) with respect to the said flat, the stamp duty value for F.Y. 2013-14 should have been considered.*

B) General

5. *The above grounds of appeal are without prejudice to one another and the appellant craves leave to add, alter, amend, delete or modify any of the above grounds of appeal.”*

3. The facts of the case, in brief, are that the appellant is an HUF carrying on business of Builders & Developers. The appellant has purchased two flats on 24/5/2014 out of which one flat No.202 was purchased from Arc Con Realty for a consideration of Rs.75,25,000/- whereas the Market Value of that flat was Rs.90,21,000/- Another Flat No. 103 purchased from Preeti S. Chavan, for a consideration of Rs.85,75,000/- whereas the market value of that flat was Rs.1,05,82,000/-. The Ld. AO, therefore, added a sum of Rs.35,03,000/- being a difference in market price of the flat and the actual price paid against the said two flats u/s.56(2) of the Income Tax Act as 'income from other sources.'
4. Aggrieved by the order of the Ld. AO, the appellant filed appeal before the Ld. CIT(A) who dismissed the appeal of the assessee on the ground that the appellant has already admitted that there was a difference in market value and the amount of consideration paid for the said flats. through provision of section 56(2) (VII) (b) of the Income Tax Act.
5. Aggrieved by the order of the Ld. CIT(A), the present appeal has been filed. During the appellate proceedings before us, the appellant submitted a paper book in which he has enclosed a written submission which was made before the Ld. CIT(A) on 16/01/2018 and is reproduced as under: -

“Addition of Rs.35,03,000/- U- 43CA

On the facts and circumstances of the case and in law the Learned Assessing Officer erred the addition of Rs.35,03,000/- on the ground that

the assessee fail to offer for taxation as per the provision of section 43CA of the Income Tax Act.1961

The Appellants Co-partner is a partner in that firm namely M/s. Arch Con Realty. He has purchased a flat No.103 and registered in the F.V.13-14 whereas he has shown the purchases in the FY 14-15 by mistake.

However Assessing officer has made wrong figure of Market Value of Flat No. 103, he has taken the market value of Rs. 1,05.82,000/- whereas actual Market Value was Rs.88.17,000/- and Agreement Value was Rs.85,75,000/- There is a difference of Rs.2.40.000/- can be added.

*Appellant has purchased and Registered a Flat No.202 on 29.05.2014 having area of Rs.755 Sq Ft and the Market Valuation have been made accordingly but in the year 2014 there was a difference in Market Valuation the Assessing officer has taken the Market value (@ Rs.11,948/- per Sq Ft and the valuation comes out to Rs.90,21,000/- whereas the Market Value in the Year 2014 was Rs.9800/- + Rs.6,73,750/- other charges and Valuation comes out to Rs.80,72,750/- (Rs.9800/- * 755 = 73,99,000/- + 6,73,750/-). This Calculation is on the basis of Valuation Report have been taken from the approved Valuer on 01.05.2014 by one of the partner of Arch Con Realty (Copy of Valuation Report is enclosed herewith for your reference)*

The difference of Rs.5,47,750/- only between Market Value Rs.80,72,750/-minus Rs.75,25,000/- can be added.

Hence this is our humble request you to please delete the addition of Rs.27,15,250/- (Rs.35,03,000/- Rs.2,40,000/- Rs 5,47,750/-).”

However, the Ld. CIT(A) did not consider the above submission and therefore, erred in confirming the order of the Ld. AO. According to the appellant, there is difference in the market value of the flats and the actual consideration paid for purchase of said flats. The difference, after all, comes to only Rs.5,47,750/- and this cannot be added considering the the difference of less than 5%. The appellant also submitted that the provision of section 56(2) (vii) (b) of the Income Tax Act have been amended from financial year 2014-15 and thus, application of section 56(2) (VIII) (b) is not applicable in his case as the agreement for sale was effected on 26/12/2013 i.e. the financial year 2013-14 which has wrongly been shown as purchase by the appellant in financial year 2014-15 by mistake. The appellant then submitted that if there was a difference in market value and the actual value- one valued by the assessee and another assessed by the AO, then the matter should have been referred to the valuation cell of the department to determine the actual value of the flats which has not been done in this case and therefore, the said property be sent to valuation cell to determine the market value of the said flats.

6. The D.R., on the other hand, relied on the order of the Ld. CIT(A). We have considered the rival submissions and found that the provision of section 50 r.w.s.56 (vii) (b) has come into being with effect from

01/04/2014 whereas the agreement, in question, was effected on 26/12/2013 before the provision came into being. Further, considering the working given by the appellant for the difference in market value and the considerations actually paid, we think it proper to remand the matter back to the Ld. AO to make a reference to the valuation cell of the department for determination of the actual market price of the said flats.

7. In the result, the appeal is allowed for statistical purpose.

Order pronounced in the open court on 25.07.2024.

**Sd/-
AMIT SHUKLA
JUDICIAL MEMBER**

**Sd/-
RATNESH NANDAN SAHAY
ACCOUNTANT MEMBER**

Mumbai, Dated: 25.07.2024.
Snehal C. Ayare, Stenographer

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.