

**THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 1057/KOL/2024
Assessment Year: 2015-2016**

***Sandip Kumar Agarwal,.....Appellant
P-19/1, VIP Road,
Scheme-VII M,
Kolkata-700054
[PAN:ADMPA3225G]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-45(2), Kolkata***

Appearances by:

*Shri Jitendra Kumar Jain, A.R., appeared on behalf of the
assessee*

*Shri Manoj Kumar Pati, Addl. CIT, appeared on behalf
of the Revenue*

**Date of concluding the hearing : August 08, 2024
Date of pronouncing the order : August 08, 2024**

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 13th March, 2024 passed for Assessment Year 2015-16.

2. The issue involved in this appeal is whether any deemed gift deserves to be assessable in the hands of the assessee under section 56(2)(vii)(b)(ii) of the Income Tax Act or not.

3. With the assistance of Id. Representatives, we have gone through the record carefully. The assessee has filed his return of income on 31.08.2015 declaring total income of Rs.4,80,340/-. During scrutiny assessment, it revealed that the assessee had purchased a property whose value for the purpose of stamp duty valuation was determined at Rs.1,20,78,000/-. The assessee has disclosed the purchase price at Rs.61,97,768/-. The Id. Assessing Officer took the purchase value equivalent to the amount on which stamp duty was paid. Hence the difference between the stamp duty valuation, (namely Rs.1,20,78,000/- minus actual purchase consideration of Rs.61,97,768/-) has been added to the total income of the assessee amounting to Rs.58,80,232/-.

4. The Id. 1st Appellate Authority has observed that the option before the assessee was to get the proper value through DVO, but since he has not availed during the assessment proceeding, therefore, no option left and accordingly confirmed the finding of the Id. Assessing Officer.

5. On due consideration of the above facts and circumstances, we are of the view that 3rd proviso to section 56(2)(vii)(b)(ii) contemplates that in case, an assessee disputes the valuation of the property for the purpose of charging stamp duty, then, as

contemplated in sub-section (2) of section 50C, ld. Assessing Officer will make a reference to the DVO for determining the fair market value of the property. This proviso reads as under:-

“Provided that where the stamp duty value of immovable property as referred to in sub-clause (b) is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of sub-clause (b) as they apply for valuation of capital asset under those sections:...”

6. We are of the view that once assessee is disputing to the alleged deeming purchase consideration for the purpose of treating as a gift under section 56(2)(vii)(b)(ii), then, it was incumbent upon the ld. 1st Appellate Authority to construe that even if assessee has not made a prayer before the ld. Assessing Officer, he should make a reference to the DVO for the just decision of the appeal. The objective of the ld. Commissioner in the first appeal ought to have been to resolve the controversy in a fair manner according to the position of law and not to legalize injustice on technical issues. The ld. CIT(Appeals) when realized that the fair market value of the property ought to be determined for the purpose of determining its purchase cost in the hands of assessee, then, the reference to the DVO ought to have been made. Considering the above, we deem it appropriate to set aside both the impugned orders and restore this issue to the file of ld. Assessing Officer for re-adjudication. The ld. Assessing Officer shall call for a report from the DVO and thereafter determine the alleged purchase consideration in the hands of the assessee for the purpose of section 56(2)(vii)(b)(ii) of the Income Tax Act.

7. In view of the above, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 08/08/2024.

Sd/-

**(Rajesh Kumar)
Accountant Member**

Sd/-

**(Rajpal Yadav)
Vice-President (KZ)**

Kolkata, the 8th day of August, 2024

*Copies to : (1) Sandip Kumar Agarwal,
P-19/1, VIP Road,
Scheme-VII M, Kolkata-700054*

*(2) Income Tax Officer,
Ward-45(2), Kolkata*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi;*

(4) CIT - , Kolkata;

(5) The Departmental Representative;

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.