

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

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.475/Mum/2024  
Assessment Year: 2021-21**

Tarun Mohan Jani  Flat No. 402, Plot No. 371/E-2, Flora Avenue, Sandhu Garden Junction, 10 <sup>th</sup> Road, Chembur, Mumbai-400071.  <b>PAN: AAIPJ 4691 C</b>	Vs.	To The ACIT Circle (22) (1) Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Bharat B Raichandani and Bhagrati Sahu  
Revenue by : Shri R.R. Makwana, SR. DR

Date of Hearing : 12.06.2024

Date of Pronouncement : 16.08.2024

**ORDER**

**PER PRASHANT MAHARISHI, ACCOUNTANT MEMBER:**

1. ITA 475/Mum/2024 is filed by Shri Tarun Mohan Jani ('Appellant Assessee') for A.Y. 2021-22 against the appellate order passed by the National Faceless Appeal Centre, Delhi ('Id. CIT(A)') dated 06.12.2023 wherein the appeal filed by the assessee against the assessment order passed u/s 143(3) r.w.s. 144B of the Income-tax Act, 1961 ('the Act') dated 29.09.2022 passed by the National Faceless Appeal Centre was dismissed. The assessee is aggrieved and is in appeal before us.
2. The brief fact of the case is that assessee has filed his return of income on 29.08.2020 at Rs. 43,97,100/- which was selected for limited scrutiny for the reason that purchase value of property is less than the value of stamp authority. The assessee was granted opportunity of hearing.

3. The Transaction in dispute is that Assessee has purchased an immovable property at Industrial Warehouse Gala at Govandi, Mumbai on 18.04.2019 for consideration of Rs. 1,20,00,000/- whereas the stamp value of the said property is Rs. 1,64,99,934/-. Notice u/s 143(2) of the Act was issued on 29.06.2021.
4. Assessee submits that difference in the property value compared to stamp duty valuation is because of distress sale and in the absence of any Co-op Housing Society as well as the location. It is the claim of the assessee that nobody was ready to buy the property as the property is in low lying water logging area. The assessee also submitted that identically in the case of wife of the assessee, AO has referred the matter for valuation cell.
5. Ld. AO referred to the Valuation Officer u/s 55A of the Act on 29.03.2022 wherein the market value of the property is determined at Rs. 1,23,92,000/-. Subsequently that assessee submits that ld. DVO valued property at Rs. 1,23,92,000/- which is within the tolerance limit of 5% therefore no addition is required to be made.
6. The ld. Assessing Officer rejected the contention of the assessee and made the addition of Rs. 3,92,000/- u/s 56(2)(x) of the Act.
7. The assessment order was passed u/s 143(3) r.w.s. 144B of the Act on 29.09.2022 at the total income of Rs. 43,97,100/-.
8. Assessee aggrieved with the same preferred appeal before the ld. CIT(A). The assessee reiterated his submissions before the ld. CIT(A). The ld. CIT(A) rejected the contention of the assessee stating that tolerance is prescribed u/s 50C(2) of the Act but

does not apply to section 56(2)(x) of the Act. Accordingly, the appeal of the assessee was dismissed.

9. The assessee aggrieved with that preferred appeal before us. The ld. Authorized Representative relied on the decision of [1] Chennai Bench in ITA No. 377/Chny/2021 dated 22.07.2022 wherein the benefit of tolerance limit was granted u/s 56(2)(x) of the Act, [2] in the case of Maria Fernandes Cheryl vs ITO dated 15.01.2021 and [3] decision of the Kolkata Bench in the case of Dulari Devi Hetamsaria (L/H of Shyam Sundar Hetamsaria) vs ACIT in ITA No. 1290/Kol/2018. The claim of the assessee is that assessee should be granted the benefit of tolerance limit. If the same is granted the addition does not survive.
10. The ld. Departmental Representative vehemently supported the orders of the ld. lower authorities.
11. We have carefully considered the rival contentions and perused the orders of ld. lower authorities. We find that where any person receives any immovable property for a consideration less than the stamp duty value of such property, then the said excess consideration is the income of the assessee. However, as per clause (ii) of that sub-section amount equal to 10% of the consideration is not chargeable to tax.
12. In the present case, the amount of difference between the value determined by the ld. DVO and the transaction value is less than 10% of the consideration. Therefore, no addition is required to be made in the hands of the assessee.
13. The various judicial precedents cited by the ld. Authorized Representative also supports the case of the assessee.

14. Accordingly, we direct the ld. Assessing Officer to delete the addition of Rs. 3,92,000/- made in the hands of the assessee. Accordingly, the appeal of the assessee is allowed.
15. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 16.08.2024.

**Sd/-**  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated:16.08.2024  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar  
ITAT, Mumbai Benches, Mumbai