

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH  
MUMBAI**

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

**ITA No.3422/Mum/2024  
(Assessment Year :2020-21)**

Income Tax Officer- 24(3)(1) Room No. 616, 6 <sup>th</sup> Floor, Chambers, Lalbaug, Parel, Mumbai 400012	Vs.	Narendra Kumar Jain A-603, City Scape Behind Hotel Kohinoor, Opp J.B. Nagar, Andheri (E) Mumbai 400059
<b>PAN/GIR No.AACPJ5929M</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri. Ajay R. Singh & Shri. Akshay R. Pawar
Revenue by	Shri. Sunil Shinde
<b>Date of Hearing</b>	<b>13/08/2024</b>
<b>Date of Pronouncement</b>	<b>22/08/2024</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA JUDICIAL MEMBER:**

1. The aforesaid appeals have been filed by the revenue against the order dated 09.05.2024, passed by NFAC Delhi for the quantum

of assessment passed u/s 143(3) of the Act for the assessment year 2020-21.

2. The grounds of appeal raised by the department are reproduced as under:-

*1 "Whether on the facts & the circumstances of the case and in law the Ld. CIT(A) erred in not appreciating the fact that addition of Rs. 1,88,75,500/- was made towards difference in purchase consideration as per section 56(2)(x) under the head of "Income from other Sources" of the Act by the AO and the addition of Rs. 1,88,75,500/- was deleted by CIT(A)."*

*2 "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the Ld. CIT(A) has not considered the section 269AB of the Income Tax Act as mandates the registration of the certain transactions which involves transactions of Immovable property".*

*3 "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the Ld. CIT(A) has stated that the assessee has deducted TDS on payments made after 01.06.2013. But it is seen from the Para 13 of Assessment order, the TDS was deducted on or after 20.04.2018 only not before that".*

3. The assessee has filed as return of income on 30.11.2020 declaring total income of Rs. 41,98,960/-. Brief facts relating to the issue involved is that, assessee has entered into transactions with M.D. Globus Reality Pvt Ltd for purchase of a flat No. 801/ Eighth floor, Andheri on 10.09.2012. As agreed between the Builder and assessee the Sales consideration to be paid by the assessee was Rs. 1,75,00,000/- on that date which was more than the ready reckoner date. But at the time of registering the sale deed on

15.01.2020 the Fair Market Value of the said property as per Stamp Duty Valuation Authority was Rs. 3,63,75,500/-. Accordingly, the AO asked the assessee as to why an amount of Rs. 1,88,75,500/- [Rs. 3,63,75,500/- value of the property as determined by the Stamp Duty Valuation Authority (-) Rs. 1,75,00,000/- consideration paid by the assessee for the said property] should not be added to the total income of the assessee as per the provisions of Section 56(2)(x) of the Income Tax Act.

4. In response, assessee submitted that he has registered the agreement on 15.01.2020 i.e. in FY 2019-20 but on the terms of transaction and price agreed in F.Y. 2012-13 and not in F.Y. 2019-20. The assessee also submitted a copy of Allotment letter dated 10.09.2012 of the said property allotted by M.D. Globus Reality Pvt. Ltd which was duly signed by one of the Directors of M.D. Globus Reality Pvt. Ltd. Thereafter, AO further required the assessee to submit documents registered for the propose agreement and further details. The assessee submitted that the agreement for purchase of property under construction though was registered in financial year 2019-20 but was in terms of agreement entered in financial year 2012-13. Thus, the assessee has entered into purchase transaction in the year 2012. Assessee also relied upon the decision of Hon'ble Bombay High Court in the case of PCIT vs. Vembu Vaidyanathan. However, AO rejected the assessee's contention holding that; (i) the agreement for Sale dated 15.01.2020 does not mentions any allotment letter; (ii) Assessee has not registered the agreement or document for allotment from the competent authority as required

by provisions of Section 269AB of the Act; (iii) AO prepared chart of payment made on to the seller at page 9 of his order and noted that there is shortfall in the amount of TDS; (iv) the assessee has neither shown cumulative payment in (immovable assets nor shown “Loan and advances given” and also not deducted tax in view of section 194-IA of the Act.

5. Accordingly, AO made the addition after observing as under:-

*After carefully and thoughtfully consideration of submission and on the basis of foregoing discussion, I came to conclusion that the Agreement for Sale of the said property was executed on 15/01/2020. Since, the sale agreement was made during the F.Y.2019-20, the transaction is to be considered for the year F.Y. 2019-20 only. Therefore, the difference amount of Rs.1,88,75,500/- (Rs.3,63,75,500/- value of the property as determined by the Stamp Duty Valuation Authority Rs. 1,75,00,000/- consideration paid by the assessee for the said property] is added to the total income of the assessee as per the provisions of Section 56(2)(x) of the Income-tax Act, 1961.*

6. Ld. CIT (A) has deleted the addition holding as under:-

*I have carefully considered the submissions made by the Appellant, It is observed that the Appellant had purchased an immovable property i.e., flat No. D-801, Express Enclave, Andheri - East, Mumbai by Making an Initial payment of Rs 10,00,000/- by Account Payee Cheque dated 10/09/2012 drawn on Bank of Maharashtra at an agreement value of Rs 1,75,00,000/-. The stamp duty value as on the date of agreement was Rs 1,68,28,907/- . The said property was registered in F.Y. 2019-20 and the stamp duty value as on the date of Registration was Rs 3,63,75,500/-, All these details alongwith proof of payment through banking channel and bank statements were furnished before the AO during the course of scrutiny assessment proceedings. The Appellant had also furnished the allotment letter issued by the builder, namely M/s M.D. Globus Realty Pvt. Ltd. encapsulating all the terms, conditions and payment*

*schedules pertaining to the purchase of the property, effectively constituting a binding agreement between the involved parties, which were fully adhered to by the Appellant. The Applicable TDS was also deducted on payments made after 01-06-2013. As the agreement to buy the property was entered into by the appellant on 10/09/2012, i.e., prior to 01-04-2017, the provisions of section 55(2)(x) are not applicable in the case of the Appellant. **The decisions of the Jurisdictional Hon'ble Bombay High Court in the case of PCIT-3 vs. Vembu Vaidyanathan in ITA No 1459 of 2016 and the Hon'ble Mumbai ITAT in Benudhar Gokulanand Biswal vs. National E Assessment Centre [2023] 153 taxmann.com 112 (Mumbai - Trib.)** are squarely covered in favour of the Appellant and the additions made by the Appellant are hereby deleted. These grounds are allowed.*

7. We have heard both parties and also relevant findings given in the impugned orders and material on record. The assessee had booked Flat with the builders M/s. M.D. Globus Reality Pvt Ltd and got an allotment letter by making an initial payment of Rs. 10,00,000/- on 10.09.2012. The agreement value was fixed at Rs. 1,75,00,000/-, whereas the read reckoner rate as on the date of agreement/ allotment was Rs. 1,68,00,000/-. Thereafter the assessee made payments to the builder as per the schedule starting from 10.09.2012 till 21.09.2020, the details of which are as under:-

<b>Annexure No.</b>	<b>Date</b>	<b>Amount (In Rs.)</b>	<b>(+) GST (-) TDS</b>	<b>Chq Amount</b>
	10.09.2012	10,00,000	46,350	10,46,350
1	13.02.2013	5,00,000	15,450	5,15,450
2	24.05.2013	25,00,000	92,750	25,92,750
3	29.12.2017	10,00,000	80,000	10,80,000
4	09.02.2018	15,00,000	52,500	15,52,500

5	12.03.2018	15,00,000	52,500	15,52,500
6	19.03.2018	5,00,000	40,000	5,40,000
7	20.04.2018	15,00,000	52,500	15,52,500
8	19.05.2018	15,00,000	1,20,000	16,20,000
9	28.06.2018	15,00,000	1,20,000	16,20,000
10	28.09.2018	11,00,000	88,000	11,88,000
11	29.03.2019	5,00,000	0	5,00,000
12	29.03.2019	10,00,000	0	10,00,000
12	30.03.2019	9,00,000	-24,000	8,76,000
13	21.09.2020	10,00,000	-7500	9,92,500
	<b>Total</b>	<b>1,75,00,000</b>	<b>7,28,550</b>	<b>1,82,28,550</b>

8. The builder also acknowledged the receipt towards payment received for Rs. 1,75,00,000/- for the allotted flat. The said property was registered in financial year 2019-20 and that time read reckoner rate as on date of registration was Rs. 3,63,75,500/-. The AO invoke the deemed provisions of Section 56(2)(x) of the Act the relevant portion of section 56(2)(x) reads as under:-

*[(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017)*

*(a) .....*

*(b) any immovable property, -*

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

*(B) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:-*

*(i) the amount of fifty thousand rupees; and*

*(ii) the amount equal to [ten] per cent of the consideration:]*

***Provided that where the date of 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 provisions of the first proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed], on or before the date of agreement for transfer of such immovable property:*

10. Thus, when on the date of agreement amount of consideration is fixed for the transfer of immovable property and the date of registration is not the same, then the Stamp duty Value on the date of agreement is to be taken. The section further provides that the value as on date of agreement can be taken only when the amount of consideration in the agreement has been paid by way of account payee cheque or by the electronic clearing system through a bank account on or before the date of agreement transfer of such immovable property. Thus, the aforesaid provisos carve out exception by taking the stamp duty value as on the date of agreement when the payments have been made through banking channels. The Ld. AO has stated that allotment letter is not a registered agreement, therefore, the value of the property has to be taken as on the date of sale registration. First of all, when builder gives an allotment letter with terms and conditions and all the rights and the value of purchase is agreed upon and assessee has acted upon by accepting the terms and conditions and starts making the agreed payment, then it is clearly covered under aforesaid proviso to section 56(2)(x) of the Act. The assessee has

agreed to purchase in the year 2012 in terms of allotment letter and also made the payments before the sale was registered. Therefore, the value as on date of allotment has to be treated as stamp duty value for the purpose of aforesaid provision of section 56(2)(x) of the Act and since at that time payment made was more than the stamp duty value therefore, no addition can be made. Thus, the aforesaid finding of the Hon'ble CIT (A), which is in consonance with the provisions of the Act and the judgment of Hon'ble Bombay High Court, is upheld. Accordingly, the revenue appeal is dismissed.

11. In the result, appeal of the Revenue is dismissed.

Order pronounced on 22<sup>nd</sup> August, 2024

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

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai; Dated 22/08/2024  
*Shubham P.Lohar*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**