

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.1732/M/2024
Assessment Year: 2014-15**

Ms. Lalita Narendra Kothari, 275, Mapla Mahal, J.S.S. Road, Thakurdwar, Girgaum, Mumbai – 400 004 PAN: ACGPK7383L	Vs.	Income Tax Officer, Ward 19(3)(1), Room No.169, Piramal Chamber, Lal Baug, Parel, Mumbai – 400 012
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Tanzil Padvekar, A.R.
Revenue by : Ms. Dhivya Ruth J., Sr. D.R.

Date of Hearing : 16 . 07 . 2024
Date of Pronouncement : 29 . 08 . 2024

O R D E R

Per : Satbeer Singh Godara, Judicial Member:

This assessee's appeal for assessment year 2014-15 arises against the National Faceless Appeal Centre(NFAC) Delhi's DIN & order No.ITBA/NFAC/S/250/2023-24/1060589358(1) dated 07.02.2024, in proceedings under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. Heard both the parties at length. Case file perused.
3. The assessee pleads the following substantive grounds in the instant appeal:

“1. On the facts and in law, Ld. Assessing Officer erred in making addition of Rs.35,38,000/- which is bad in law and is liable to be quashed.

2. On the facts and in law, Ld. Assessing Officer erred in applying provision of Section 56(2)(viib) in retrospective manner, to a transaction, which was carried on before introduction or Section 56(2)(viib) in Income Tax Act, 1961.

3. On the facts and in law, the provisions of Section 56(2)(viib) shall not be applicable to the facts of the case of the Appellant, as the transaction in question, took place on 10/03/2014, whereas provision of Section 56(2)(viib) was introduced w.e.f. 01/04/2014, hence, Ld. Assessing Officer has seriously erred in applying provision of Section 56(2)(viib) of the Act to transaction which took place prior to it's introduction in the Income Tax Act, 1961.

4. On the facts and in law, Ld. Assessing Officer erred by failing to appreciate that the Appellant was merely added as second owner, however, entire payments had been made by the husband of the Appellant, through housing loan taken from Bank of India.

5. On the facts and in law, Ld. Assessing Officer erred by failing to appreciate that date of agreement and date of registration is not the same, hence, market value on date of agreement shall be considered and not as on date of registration.

6. The appellant craves, leave to add to alter, modify, revise, or delete any ground (s) in the interest of justice.”

4. It emerges at the outset that there is hardly much a need for us to dwell in the factual matrix at length so far as the assessee's sole substantive grievance raised herein challenging both the lower authorities action making section 56(2)(viib) addition of Rs.35.38 lakhs is concerned. This amount admittedly represents the difference between actual purchase consideration and stamp value of the corresponding capital asset jointly acquired at the assessee's behest in the relevant previous year. Learned Assessing Officer invoked the impugned statutory provision thereby treating the said differential sum as assessee's income from "other" sources which has been confirmed in the lower appellate discussion.

5. We now come to the fundamental issue of validity of the impugned addition which has admittedly been made in

assessee's hands on "protective" basis only. Learned Assessing Officer's detailed discussion in paragraphs 4 to 4.1 in his assessment dated 26.12.2016 adds the impugned sum on protective addition in assessee's hands as under:

"4. In view of the above, the assessee being owner as per agreement is liable to be taxed as per section 56(2) (vii) (b) of the IT Act on transfer of property in her name. However, since the interarrangement of ownership of share of property and payment of consideration is not determined as the amount has not been paid directly by the assessee but has been paid through M/s Model Sales Agency where assessee's spouse is having interest, hence the amount on account of difference of stamp duty value and Agreement price is added in the hands of the assessee on protective basis. The information is being sent to the respective jurisdiction for necessary action where spouse of the assessee is assessed as the payment has been made by his company and firm from his credit balance.

4.1 Subject to above, the difference in the amount of stamp duty value and the consideration paid for purchasing the property is hereby added to the total income of the

assessee u/s 56 (2) (vii) (b) of the IT Act on protective basis under the head Income from Other Sources. The difference is worked out at Rs.35,38,000/-. It is to mentioned here if the assessee pays the demand as raised in this order within stipulated period, the assessment will be treated as assessed on the assessee on substantive basis and no liability of tax will further be fixed is one of the owners of the property. 271 (1) (c) of the Act are initiated on assessee's spouse who Penalty proceedings u/s for furnishing wrong particulars of income and for concealment of income.”

6. It is thus clear that both the learned lower authorities have made the impugned addition on “protective” basis without framing any substantive assessment to this clinching effect in the alleged other person/husband’s hands. The question as to whether such a course of action making protective addition on “ex ascendant cautela” basis, in absence of a substantive addition, came up for consideration before this tribunal’s learned co-ordinate bench in Suresh K. Jajoo vs. ACIT (2010) 39 SOT 514 (Mum) wherein the Revenue’s contentions stood rejected as follows:

“24. The Tribunal firstly explained the concept of Protective assessment, which was judicially recognized in the case of [Lalji Haridas Vs. ITO](#), 43 ITR 387 (SC). The Hon'ble Supreme Court held that where it appears to the IT authorities that certain income has been received during the relevant assessment year; but it is not clear who has received that income and prima facie, it appears that income may have been received either by the A or B or by both together, it would be open to the relevant IT authority to determine the said question by taking appropriate proceedings both against A and B. The Supreme Court, however observed that in the proceedings taken against the one or the other, an exhaustive enquiry should be made and the question as to who is liable to pay the tax in question should be determined after hearing objections and that the proceedings against the other person may also continue and be concluded but until proceedings against the one has been finally determined, no assessment order should be passed. A final determination had therefore to be made in one of the proceedings.

25. The Tribunal thereafter opined that a Protective Assessment is not confined to making assessment of same income in the hands of two different persons; but can also be made in the case of income of one person where the Assessing Officer is uncertain as to the year in which the income had been earned. The Tribunal thereafter held that protective assessment cannot be independent of substantive assessment but always has to be later in pint of time to the substantive assessment.”

7. Faced with this situation, we conclude that the impugned protective addition made on standalone basis in absence of a substantive assessment, is not sustainable in law. The same is directed to be deleted in very terms. Ordered accordingly.

8. This assessee’s appeal is allowed in above terms.

Order pronounced in the open court on 29.08.2024.

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

* Kishore, Sr. P.S.

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

The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.