

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC " BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, HON'BLE JUDICIAL MEMBER

I.T.A. No. 4450/Mum/2023
(Assessment Year: 2015-16)

Syed Kalbay Rizvi, 103, Jahangir Mansion, Cinema Lane, Behind Metro Cinema, Mumbai [PAN: AADPR7737C]	Vs	Dy. Commissioner of Income Tax, 10(2)(2), Mumbai
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Haridas Bhat
Revenue by :	Shri R. R. Makwana, Sr. DR

सुनवाई की तारीख/Date of Hearing : 03.09.2024
घोषणा की तारीख /Date of Pronouncement: 05.09.2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM

This appeal by the assessee is preferred against the order dated 12.10.2023 of Id. NFAC, Delhi pertaining to Assessment Year 2015-16.

2. The grievance of the assessee reads as under:-

"A. On the facts and circumstances of the case, and in Law, the CITA erred in confirming the addition of Rs. 30,17,500/- u/s 56(2)(vii) of the Act.

B. On the facts and circumstances of the case, and in Law, the AO and CIT(A) failed to appreciate that:

1. *The CITA passed the order ignoring the assessee request to refer the matter to Valuation Officer (DVO) for a fair valuation without giving any justification.*

ii. *The difference in purchase value vis-à-vis stamp duty valuation was on account of niche and passage area being included in area in the agreement which should have been excluded from stamp duty valuation.*

iii. *The assessee has paid for usable area on 523.70 sq ft area only out of total area of 783.40 sq ft, differential area being Passage area 185.83 sq. ft. and niche area 73.93 sq ft as per the approved building plan to support his claim.*

C. *The Appellant therefore prays that the disallowance addition of Rs. 30,17,500/- u/s 56(2)(vii) of the Act may please be deleted."*

3. briefly stated the facts are that the assessee filed his return of income on 22.11.2015 declaring income of Rs. 8,97,080/-. The return was processed u/s 143(1) of the Act and subsequently selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee.

3. While scrutinizing the return of income the AO noticed that the assessee has purchased immovable property for a consideration of Rs. 2,00,17,500/-. The assessee was asked to explain and furnish the source of purchase of the said immovable property. In its reply, the assessee explained that he had purchased the immovable property at Andheri (West) for a consideration of Rs. 1.70 crores and submitted the source of fund utilized for acquiring the said immovable property.

4. On perusal of the copy of the purchase agreement the AO noticed that the Stamp Valuation Officer for the purpose of stamp duty valuation valued the property at Rs. 2,00,17,500/-. Invoking the

provisions of Section 56(2)(vii) of the Act, the AO sought clarification from the assessee why the stamp duty value should not be taken as a consideration of the said immovable property.

5. In his reply the assessee stated that he has entered to purchase of 523.70 sq ft. of actual usable carpet area for a consideration of Rs. 1.70 crores. It was pointed out that the stamp duty value of Rs. 2,00,17,500/- is calculated at 783.4 sq ft which includes non-usable area of passage and areas of niche. It was strongly contended that the passage and niche are not usable for office purpose therefore the stamp duty valuation should be reduced proportionately. The reply of the assessee did not find any favour with the AO who completed the assessment by making addition of Rs. 30,17,500/- being the difference in value of property and treated as income u/s 56(2)(vii) of the Act.

6. The assessee agitated the matter before the Id. CIT(A) but without any success.

7. Before us the counsel for the assessee reiterated what has been stated before the lower authorities. Drawing our attention to the map of the property the Id. counsel pointed out that the assessee has actually agreed to purchase 523.70 sq ft being the usable area but the builder registered the property of an area of 783.4 sq ft and stamp duty has been paid on this area which has not been purchased by the assessee. Therefore, the stamp duty value should not have been considered. The counsel further point out that the matter should have been referred to

the Valuation Officer as prayed before the Id. CIT(A) but the Id. CIT(A) choose not to adjudicate on the same. Per contra the Id. DR strongly supported the findings of the AO and vehemently contended that no such request was made during the assessment proceedings.

8. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that the said immovable property was registered with Sub-Registrar Andheri (West), Mumbai and if the carpet area mentioned in the agreement was incorrect then nothing prevented the assessee to get it corrected from the Sub-Registrar, Andheri (West), Mumbai. The assessee has paid stamp duty and registration charges on an area of 783.4 sq ft therefore, it cannot be said that the assessee has not purchased the said immovable property having 783.4 sq ft of area. The question is not whether certain area was usable or not usable, the question for our adjudication is whether the stamp duty value should be taken as full value of consideration for the purpose of Section 56(2)(vii) of the Act and as per provision of Section 56(2)(vii) of the Act any immovable property purchased for a consideration which is less than stamp duty value of the property the stamp duty value of such property as exceeds such consideration shall be taken for consideration. In the instant case, the value of the property adopted by the revenue authorities for stamp duty valuation is Rs. 2,00,17,500/- whereas the consideration value of the property mentioned in sale deed is Rs. 1.70 crores, therefore, as per the provision of Section 56(2)(vii) of the Act of Rs. 30,17,500/- being the difference in

value of property is the income of the assessee. We, therefore, do not find any error or infirmity in the findings of the Id. CIT(A).

9. Appeal of the assessee is accordingly dismissed.

Order pronounced in the Court on 5th September, 2024 at Mumbai.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated: 05/09/2024
**AK. KEDIT, Sr. PS*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
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Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai