

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAIBEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

I.T.A No.3156/Mum/2024

(Assessment Year : 2018-19)

Mitra Tushar Bhanushali A/103, Ashapura Estate, Agra Road, New Maneklal Estate, Ghatkopar West, Mumbai-400 086 PAN : ALBPB9598A	vs	Income Tax Officer, Warde-27(2)(1), Mumbai Income Tax Office, 4 th Floor, Tower No.6, Vashi Railway Station Building, Navi Mumbai- 400 703
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Assessee Represented by	Shri Rashmi Modi, Ms. Kewtki Rajeshirke
Department represented by	Smt. Mahita Nair, Sr.DR.

Date of hearing	07/08/2024
Date of Pronouncement	17/09/2024

ORDER**PER O.P. KANT (AM):**

This appeal by the assessee is directed against order dated 13/04/2024 passed by the Learned Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi (in short, 'the Ld.CIT(A)') for Assessment Year 2018-19, raising following grounds:-

"1. On the facts and in the circumstances of the case, the Appellant submits that she was prevented by the circumstances beyond his control to reply to the various notices issued and upload responses for the submission during the assessment proceedings and appeal proceedings.

The Appellant submits that an opportunity of being heard be given as a matter of natural justice.

2. On the facts and in the circumstances of the case, the Appellant submits that the Hon'ble National Faceless Appeal Centre, Delhi erred in upholding the Assessing Officer's view of adopting the Stamp Duty Value u/s 50C of the year of registration i.e. 2017 without considering the fact that the booking of the residential flat was made in 2013.

On the facts and in the circumstances of the case, the Appellant submits that the Stamp Duty Value u/s 50C for the year of booking i.e. 2013 is to be adopted.

The Appellant submits that the Stamp Duty Value as per Section 50C of the year 2017 should not be adopted to compute the differential amount u/s 56(2)(x)(b), if any.

3. On the facts and in the circumstances of the case, the Appellant submit that the Hon'ble National Faceless Appeal Centre, Delhi erred in upholding the addition of made u/s 56(2)(x)(b) of The Income Tax Act, 1961 by the Assessing Officer The Appellant submits that the addition of Rs. 50,50,127)-made u/s 56 (2)(x)(b) The Income Tax Act, 1961 be deleted.

4. The Appellant craves leave to reserve to itself the right to add, after amend or annul any of the grounds of appeal at or before the time of hearing and to produce such further evidences, documents and papers as may be necessary."

2. Briefly stated facts of the case are that the return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income-tax Act, 1961 (in short, 'the Act') were issued and served. During the course of the assessment proceedings, the Assessing Officer observed that the assessee purchased a property through registered sale deed dated 15th May, 2017 for amounting to Rs.71,98,363/- which was lower than stamp duty value of Rs.1,22,38,500/-. Accordingly, the Assessing Officer asked the assessee as to why the difference of Rs.50,50,137/- between the transaction value and the stamp duty value should be treated as income of the assessee from 'Other sources' in terms of section 56(2)(x) of the Act. The assessee intimated that said property, i.e. Flat No.801, A-Wing, Omkar Ananta, Shrikrishna Nagar, General Arun Kumar Vaidya Marg, Near Film City, Goregaon (East), Mumbai-400 097 was agreed for purchase at a value of Rs.71,91,363/- in the name of the assessee and Ms. Bhakti Rishi Shivji Bhanushali jointly on 16/09/2013 by paying booking amount of Rs.1 lakh. The balance payment was made in instalments as and when demanded by

the builder, VGS Realty Construction Pvt Ltd. The Assessing Officer noted that there was no registered agreement at the time of purchase in the year 2013. Therefore, he rejected the contention of the assessee and treated the amount of Rs.50,50,137/- as "Income from other sources" under section 56(2)(x) of the Act. The assessee filed further appeal to Ld.CIT(A). However, could not comply with the various notices issued by the Ld.CIT(A) and accordingly the Ld.CIT(A) upheld the addition, observing as under:-

"6.1 Despite affording the appellant with numerous opportunities to provide written submissions, no such document has been received by this authority. Therefore, arm decision taken in this regard must be based solely on the information and document available on record. As per the assessment order, the appellant along with other co owner had purchased property on May 15, 2017 for a total consideration Rs.71,98,363/. The sale agreement for the said property by Mi/ VGS Reality construction to the appellant was registered in the year 2017 and stamp duty value existing on that date was Rs 1.22.38,500/-, Since the appellant had registered the property for a value of Rs 71,98,363, the difference of Rs 50,50,137/- was added the income of the appellant u/s.56(2)(x) of the Act under the head Income from other sources.

6.2 In the statement of fact, the appellant has stated that she along with other owner had purchased the under construction property on 16/09/2013 by pay booking amount of Rs. 100,000/- on 13.09.2013 and paid the balance installment and when demand notice received from builder. Therefore, stamp duty value of property as per section 540C of the Act should be adopted in the year of booking 2013 not in the year of registration ie. 2017. The contention of the appellate considered but the same is not found to be tenable. The appellant has failed to provide any registered agreement or agreement for sale executed with the builder the year 2013, which would have indicated the fixing of amount of consideration the property. The appellant has not furnished any documentary

evidences to establish that she had entered into the agreement for purchase of flat in the year 2013. Further, no proof of payment in the year 2013 has been filed by the appellant.

6.3 Based on the facts and legal positions discussed above, despite being provided with multiple opportunities, the appellant has remained non-compliant, Therefore, it is presumed that the appellant is not interested in pursuing the appeal and does not have any documents, explanation and evidence to substantiate the grounds of appeal. Therefore in absence of any documentary evidences I do not find any merit in the grounds of appeal. In view of the above no relief can be granted to the appellant. Accordingly, all grounds of appeal are dismissed.”

3. Before us, the Ld.Counsel for the assessee submitted that notices issued by th Ld.CIT(A) could not be complied with by the Tax Consultant of the assessee. Before us, the assessee has filed an affidavit in this regard. Further before us, the assessee has filed additional evidences comprising of a copy of the allotment letter for the said flat in the year 2013 alongwith copy of the bank statement indicating booking amount and various instalments. In view of the above facts, the Ld.Counsel for the assessee requested that the order of the Ld.CIT(A) may be set aside and matter may be restored back to him for deciding afresh after considering the additional evidence of the assessee.

4. The addition al evidence filed by the assessee is crucial for determination of applicability of section 56(2)(x) in the case. Therefore, in view of the facts and circumstances of the case and in the interest of the substantial justice, we feel it appropriate to set aside the findings of the Ld.CIT(A) and restore the matter back to him for deciding afresh after considering the additional evidences and any other documents in support of its claim. It is needless to mention that the

assessee as well as the Assessing Officer shall be afforded with adequate opportunity of being heard. Accordingly, ground No.1 of the assessee is allowed.

5. Since we have already restored the matter back to the file of the Ld.CIT(A), ground Nos.2 & 3 of the appeal are not required to be adjudicated at this stage and are accordingly dismissed as infructuous.

6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 17th of September, 2024.

Sd/-

sd/-

SUNIL KUMAR SINGH	OM PRAKASH KANT
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 17/09/2024
Pavanan

Copy of the Order forwarded to:

1. अपीलार्थी/ The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai