IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1551/PUN/2024

निर्धारण वर्ष / Assessment Year : 2018-19

along with

Stay Application 06/PUN/2024

(Arising out of ITA No.1551/PUN/2024)

Vipinchandra M. Chokhawala, Old Station Road, Dal Mill, Nandurbar, Navapur-425418 Maharashtra PAN : ADNPC8588M	Vs.	ITO, Ward-1, Dhule
Appellant		Respondent

Assessee by	:	Shri Amit Khatiwala and Shri Jitendra Sanghavi
Revenue by	:	Shri Arvind Desai
Date of hearing	:	24.09.2024
Date of pronouncement	:	25.09.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM :

The assessee filed the present appeal against the order of National Faceless Appeal Centre, Delhi dated 09.07.2024 passed u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') for the assessment year 2018-19.

2. Briefly, the facts of the case are that the appellant is an individual deriving income under the head "House Property, Income from

Partnership firms, Capital Gains and Income from Other sources. The Return of Income for the A.Y. 2018-19 was filed on 04.10.2018 declaring total income of Rs.78,24,250/-. Against the said return of income, the assessment was completed by the Assessing Officer (AO) vide order dated 03.02.2021 passed u/s.143(3) r.w.s.143(3A) & 143(3B) at a total income of Rs.2,47,55,960/-. While doing so, the AO made addition of Rs.1,69,31,706/- invoking the provisions of section 56(2)(x)(b) of the Act.

3. The factual background leading to the above addition is as under :

During the previous year relevant to the assessment year under consideration, the appellant purchased an immovable property being Flat No.1103, Tower-C, Oberoi Esquire, Goregaon (East), Mumbai–400 063 for a consideration of Rs.2,49,30,830/-. The said flat was booked with the builder on 16.09.2011 by making Earnest Money of Rs.25,16,450 + Rs.78,83,152. Subsequently, the payments were made based on the milestone achieved in the development of the project in terms of the letter of allotment dated 16.09.2011. Agreement for Sale of the said flat was registered on 08.09.2017 and the entire purchase consideration was made and possession of the flat was taken over by the appellant. The stamp duty of the said flat as on the date of registration was Rs.4,18,62,535/- and the stamp duty paid is Rs.20,94,000/-. The AO was of the opinion that the difference between the purchase consideration of Rs.2,49,30,830/- and stamp duty of the said flat of Rs.4,18,62,535/- which comes to Rs.1,69,31,706/-, should be treated as 'Income from Other Sources' interms of provisions of section 56(2)(x)(b) of the Act. Accordingly, he brought to tax the said sum

rejecting the contention of the appellant that the stamp duty value as on the date of letter of allotment, i.e. 16.09.2011 should be considered.

4. Being aggrieved by the above addition, an appeal was filed before the NFAC who vide impugned order confirmed the action of the AO by holding that the Agreement to Sale dated 08.09.2017 was the only agreement entered into by the Builder and the appellant and the value on the said date alone should be considered, rejecting the contention of the appellant that the letter of allotment dated 16.09.2011 issued by the builder should be considered as an agreement as envisaged in the first proviso to section 56(2)(x)(b) of the Act.

5. Being aggrieved, the appellant is in appeal before the Tribunal in the present appeal.

6. The ld. Authorised Representative for the appellant submits that the allotment letter dated 16.09.2011 constitute an 'Agreement' and therefore the stamp duty value of the flat as on the date of allotment letter should be considered in terms of the first proviso to section 56(2)(x)(b) of the Act. He submits that the allotment letter is nothing but an agreement reached between the builder and the appellant as the sale consideration was paid through banking channel. He also placed reliance on the decision of Hon'ble Bombay High Court in the case of *PCIT Vs. Vembu Vaidyanathan 413 ITR 248 (Bombay)* in support of the contention that the date of allotment letter would be relevant date for computing the date of acquisition of the flat. He also relied on the decision of Mumbai bench of the Tribunal in the case of *ITO Vs. Narendra Kumar Jain (2024) 165 taxmann.com 797 (Mumbai-Trib.)* in

support of the contention that stamp duty as on date of allotment letter has to be considered for the purpose of section 56(2)(x)(b) of the Act.

7. On the other hand, the ld. Sr. DR supporting the order of the NFAC submits that no interference is called for.

8. We heard the rival submissions and perused the material on record. The issue that arises for our consideration in the present appeal is with regard to applicability of provisions of section 56(2)(x)(b) of the Act. The provisions of section 56(2)(x)(b) as they stood at relevant point of time read as under :

> **"56.** (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items *A* to *E*.
>
> (2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—
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> . . . . . .
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> (*x*) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,—
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> (*a*) . . . . . .;
>
> (*b*) any immovable property,—
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> (*A*) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;
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> (*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:—
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> (*i*) the amount of fifty thousand rupees; and
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> (*ii*) the amount equal to Five per cent of the consideration:
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> *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:
>
> *Provided also* that where the stamp duty value of immovable property is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of this sub-clause as they apply for valuation of capital asset under those sections"

9. On mere perusal of the above provision, it would reveal that if any person receives from anyone any property for a consideration, the stamp duty value of such property exceeds such consideration, if the amount of excess is Rs.50,000/- and an amount equal to 5% during the relevant previous year, such differential amount shall be assessable to tax as 'Income from Other sources. The First proviso was inserted to section 56(2)(x)(b) to carve out an exception where the date of agreement fixing the amount of consideration for transfer of immovable property and the date of registration is not the same, the stamp duty value as on the date of agreement may be taken for the purpose of section 56(2)(x)(b) of the Act.

The Second proviso further states that the First proviso shall apply only when in case the amount of consideration or part thereof had been paid by Account Payee Cheque or through Banking channels on or before the Date of Agreement to Sale of the property. Therefore, the issue that is required to be determined in the present case is whether in the facts of the present case, the First proviso to section 56(2)(x)(b) is applicable or not. Undisputedly, the letter of allotment was issued on 16.09.2011 and the part consideration was also paid through banking

channels. Admittedly, no other agreement between the builder and the appellant was entered on 16.09.2011. There is no provision of law mandating that the agreement envisaged under First proviso to section 56(2)(x)(b) should be in writing. An agreement has been defined to mean "*An agreement, as the courts have said is nothing more than a manifestation of mutual assent by two or more parties legally competent persons to one another. Agreement is in some respects a broader term than contract, or even than bargain or promise. It covers executed sales, gifts, and other transfers of property*". The terms of agreement are reflected in the letter of allotment, as both the parties, i.e. builder and the appellant signed and agreed to sell/buy the flat. Thus, the letter of allotment is nothing but an agreement as envisaged under the First proviso to section 56(2)(x)(b) of the Act.

10. In this connection, it is significant to note the ratio of decision of Hon'ble Bombay High Court in the case *PCIT Vs. Vembu Vaidyanathan (supra)* wherein it was held that the letter of allotment should be reckoned for the purpose of computing the period of holding of immovable property which means that the letter of allotment has got more significance than the agreement. The Agreement to Sale registered on 08.09.2017 is nothing but execution of the agreement entered on 16.09.2011 by way of allotment letter. The reasoning of the NFAC that it is the first agreement, therefore, the letter of allotment cannot be taken cognizance does not stand to any reason, it is illogical. If we are to accept the reasoning adopted by NFAC, that the Agreement of Sale registered on 08.09.2017 is to be construed as Agreement, then the question of invocation of provisions of section 56(2)(x)(b) does not arise

as the transaction of purchase of immovable property is not complete. Therefore, we are of the considered opinion that the letter of allotment issued on 16.09.2011 is nothing but an agreement as envisaged under First proviso to section 56(2)(x)(b) of the Act. The AO was not justified in making addition of Rs.1,69,31,706/- invoking the provisions of section 56(2)(x)(b) of the Act. The orders of the lower authorities are hereby set-aside and the appeal filed by the appellant stands allowed.

11. Since we have disposed of the appeal, the Stay Application filed by the appellant becomes infructuous and therefore the same is dismissed as such.

12. In the result, the appeal filed by the assessee is allowed and the Stay Application filed by the assessee is dismissed.

Order pronounced on this 25th day of September, 2024.

Sd/-	**Sd/-**
(VINAY BHAMORE)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 25th September, 2024.
Satish

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The PCIT concerned
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**B**" बेंच, पुणे / DR, ITAT, "**B**" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.