

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
MISS. PADMAVATHY S., ACCOUNTANT MEMBER

I.T.A No. 457/Mum/2024
(Assessment Year: 2018-19)

Sangeeta Ravindra Chanadan Room No.10, 1 st Floor, 138, Sonarika Building, CP Tank, Mumabi-400 004 PAN : AEGPB9912C	vs	ITO 19(3)(1), Mumbai Piramal Chamber, Mumbai.
APPELLANT		RESPONDENT

Assessee by : Ms. Asifa Khan
Respondent by : Ms. Rajeshwari Menon SRDR

Date of hearing : 26/09/2024
Date of pronouncement : 27/ 09/2024

ORDER

PER ANIKESH BANERJEE, J.M:

The instant appeal of the assessee was filed against the order of the Learned National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2018-19, date of order 23.06.2023. The impugned order was emanated from the order of the Learned National e-Assessment Centre, Delhi (in short, 'the Ld.AO') order passed under section 143(3) r.w.s. 143(3A) & 143(3B) of the Act, date of order 13/04/2021.

2. The assessee has taken the following grounds: -

“ADDITION OF RS 54,08,000/- US, 56(2)(x) OF THE INCOME TAX ACT, 1961 AS INCOME FROM OTHER SOURCES

1.1. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income tax (Appeals) (hereinafter referred to as "the CIT(A)") erred in confirming the addition of Rs. 54,08,000/- under section 56(2)(x) of the Income tax Act, 1961 (hereinafter referred to as "the Act") being 50% of the stamp duty valuation in respect of the tenancy right.

1.2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that:

(i) the transfer of the tenancy rights in the name of the Appellant is akin to the transfer of ownership rights in the said immoveable property and

(ii) the provisions of section 56(2)(x) of the Act includes the transfer of tenancy rights in the said immoveable property and therefore, it is applicable in the case of the Appellant.

13 On the facts and in the circumstances of the case and in law, the CIT(A) failed to appreciate that the provisions of section 56(2)(x) can only be applied in respect of transfer of any sum of money, any immoveable property and any other property other than immoveable property as defined in clause (d) of the Explanation to clause (vii) of 56(2) of the Act.

14 On the facts and in the circumstances of the case and in law, the provisions of section 56(2)(x) of the Act cannot be applied in case where merely permission is granted by the landlord to the Appellant to occupy his premises on tenancy basis.

The Appellant craves leave to add, alter, amend, modify or delete any of the above grounds of appeal.”

3. The brief facts of the case are that the assessee, in her individual capacity filed the return under section 139(1) of the Act. The assessee, with another co-owner, entered into an agreement of tenancy dated 17/07/2017 and acquired the tenancy rights through agreement from landlord M/s Sonarika Estate Development Pvt Ltd, the landlord and Mr. Pankaj Ochhavlal Modi, the outgoing tenant with a monthly rent amount of Rs.700/- per month for the property at Room No.10, Floor 3, 138A, Tabela Chawl, CP Tank, Mumbai-400 004. The said agreement was duly registered, and the stamp duty value was ascertained amount to Rs.1,08,16,000/-. The case was selected for scrutiny and the assessment was completed with an addition of 50% of the stamp duty value for contravening provisions of section 56(2)(x) of the Act amount to Rs.54,08,000/-. The aggrieved assessee filed an appeal before the Ld.CIT(A). The Ld.CIT(A), considering the submission of the assessee dismissed the appeal. Being aggrieved on the appeal order, the assessee filed an appeal before us.

4. The Ld.AR vehemently argued and filed written submission, which are kept in the record(APB). The Ld.AR invited our attention in the copies of agreement in **APB pages 1 to 31** which is executed on 17/07/2017 with the landlord and the outgoing tenant. The Ld.AR stated that there is no transfer of the property and assessee has no right to sell the property. But it is only rental agreement for paying monthly rent of Rs.700/- pm to the landlord. So the section 56(2)(x) is not applicable as there is no transfer of the property as per the Transfer of Property Act, 1882. The question is also raised that no time limit has been mentioned relating to the tenure of the tenancy agreement.

4.1 The Ld.AR respectfully relied on the order of Hon'ble **High Court of Bombay** in the case of **CIT, C-2, Mumbai vs Greenfield Hotels & Estates (P.) Ltd (2017) 77 taxmann.com 308 (Bombay)**. The relevant paragraphs 3 & 4 are reproduced as below:-

"3. The impugned order of the Tribunal has dismissed the Revenue's appeal from the order dated 15 June 2012 passed by the Commissioner of Income Tax (Appeals). The issue before the Tribunal Act would be applicable to transfer of leasehold rights in land and buildings. The impugned order Tribunal followed its decision in Atul G. Puranik v. ITO (2011 132 ITD 499/11 taxmann.com 92(Mum) which held that Section 50C is not applicable while computing capital gains on transfer of leasehold rights in land and buildings.

4. MrKotangale, learned Counsel for the Revenue, states that the Revenue has not preferred any appeal against the decision of the Tribunal in the case of Atul G. Puranik (supra). Thus, it could be inferred that it has been accepted. Our Court in DIT v. Credit Agricole Indosuez (2015) 377 ITR 102/120161.69 pxmmm.com.255 (Dom) (dealing with Tribunal order) and the Apex Court in UOI v. Satish P. Shah [2001 249 ITR 221/117 Taxman 373 (SC) (dealing with High Court order) has laid down the salutary principle that where the Revenue has accepted the decision of the Court/Tribunal on an issue of law and not challenged it in appeal, then a subsequent decision following the earlier decision cannot be challenged. Further, it is not the Revenue's case before us that there are any distinguishing features either in facts or in law in the present appeal from that arising in the case of Atul G. Puranik (supra)."

4.2 She further respectfully relied on the order of the order of Coordinate **Bench-B of ITAT Mumbai, The Bombay Drug Distributors Vs ACIT [ITA**

no.3619/M/2023, date of pronouncement **19/02/2024** where the Tribunal has taken the view in favour of the assessee.

5. The Ld.DR relied on the orders of the revenue authorities and argued that there is no specific tenure for the rent agreement, and it is nature of perpetual rent. But the Id. DR has not challenged the decisions cited by the Id.AR.

6. We heard the rival submission and considered the documents available in the record. The addition was made for contravening section 56(2)(x) considering the transfer of tenancy right. The revenue has agitated the issue on the ground that there is no tenure mentioned in the agreement related to the transfer of tenancy right. But in fact, the assessee is purely a tenant under the landlord and paying rent of Rs.700/- pm. In exchange of the rent, the assessee is only getting the right to stay or some modification in the property, but there is no ownership right is vested with the assessee, which attracts provisions of section 56(2)(x) of the Act. The transfer of property is guided by the Transfer of Property Act, 1882. Section 56 of the Transfer of Property Act deals with the rights of a buyer who purchases one or more properties from an owner who has mortgaged two or more properties to one person¹. In the absence of a contract to the contrary, the buyer is entitled to have the mortgaged-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so as to prejudice the rights of the mortgagee or persons claiming under him or of any other person who has for consideration acquired an interest in any of the properties. The right of transfer is vested with selling right and right to mortgage of the property. Factually, the revenue was not able to bring any such evidence for transfer of property as per guided by the Transfer of Property Act, 1882.

The Id. AR respectfully relied on the decisions pertaining to Section 50C of the Act. However, we, with due respect, rely on the findings in the orders of **Greenfield Hotels & Estates (P.) Ltd** (supra) and **The Bombay Drug Distributors** (supra). We find that the addition is unjustified on the basis of the tenancy right. We set aside the impugned appeal order and the addition amount to Rs.54,08,000/- is deleted.

7. In the result, appeal of the assessee bearing **ITA 457/Mum/2024** is allowed.

Order pronounced in the open court on 26th day of September, 2024.

Sd/-

(PADMAVATHY S)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 26/09/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

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.

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BY ORDER,

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