

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM, &  
SHRI SANDEEP SINGH KARHAIL, JM**

**I.T.A. No.3849/Mum/2024  
(Assessment Year: 2018-19)**

<b>ITO-16(3)(1), Room No. 447, 4<sup>th</sup> Floor, Aayakar Bhawan, M. K. Road, Mumbai-400020.</b>	<b>Vs.</b>	<b>Ms. Shabnam Laiq Ahmed Khan Flat No. 608 / A Killedar Apts CHS Ltd., S.V. Road, Jogeshwari (West), Mumbai-400102. PAN : AWDPK5214B</b>
<b>Appellant)</b>	<b>:</b>	<b>Respondent)</b>

**Revenue/ Appellant by : Shri Swapnil Savant, Sr. DR**

**Respondent /Assessee by : Shri Bhupendra Shah / Manmohan  
Agrawal, AR**

**Date of Hearing : 12.09.2024**

**Date of Pronouncement : 17.09.2024**

**ORDER**

**Per Padmavathy S, AM:**

This appeal by the Revenue is against the order of Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [in short 'the CIT(A)'] dated 20.06.2024 for Assessment Year (AY) 2018-19. The Revenue has raised the following grounds:

*“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that there is nothing wrong or illegal for the*

*buyer to purchase as many flats as possible with the cumulative payment by a single cheque and thereby treated the impugned additions as suspicions, surmises and conjectures, without appreciating the fact that the assessee has failed to substantiate the sources of the payment made for purchases of these properties with supporting documentary evidences.*

*2. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the AO is not justified to invoke the provisions of Section 69 against the appellant in the absence of any evidence to the contrary. without appreciating the fact that the assessee has failed to discharge the onus lies on her of providing proof for sources for making investment in the properties reported in her case for the year under consideration.*

*3. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deciding the addition made u/s 56(2)(vii)(B) in the appellants favour without appreciating the fact that the assessee has failed to substantiate the difference arises between the value of consideration paid for purchases of the properties and value as per Section 50C of the IT Act with supporting documentary evidences.*

*4. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deciding the addition made towards short term capital gain in the assessee's favour without appreciating the fact that the assessee has sold the property in question in the month of March 2018 which was get registered in the month of December 2017 i.e. within a period of 3 months only.*

*5. "The Ld. CIT(A) is contrary in law and on the facts deserves to be set aside."*

*6. "The appellant prays that the order of the Ld. CIT(A) on the above ground be set aside and that of the AO restored. The appellant craves leave to amend or alter any ground or add a new ground that may be necessary at the time of hearing."*

2. The assessee is an individual and the medical practitioner in Unani Integrated Medicine. The assessee filed the return of income for AY 2018-19 on 29.08.2018 declaring a total income of Rs. 4,30,650/-. The case was selected for scrutiny and statutory notices were duly served on the assessee. The Assessing Officer (AO) as per the information available on records noticed that during the year under consideration, the assessee has purchased property where the purchase

consideration is less than stamp duty. The AO called on the assessee to furnish various details pertaining to the property purchased including the details of source of investments etc. The assessee submitted before the AO that the property was purchased by her father Mr. Laiq Ahmad Rafiq Shaikh and that the assessee was added in Agreement of Sale for namesake only. The assessee submitted that her father has paid the advance towards purchase of 7 flats during the Financial Year (FY) 2012-13 and that the registration of the said flats were carried out during the FY 2017-18. The assessee further submitted that her father being 90 years old added his children including the assessee as beneficial owners at the time of registration of the property and that the assessee has not invested any money towards purchase of the property. The assessee submitted evidence of advance payment made by the assessee's father to the builder in the FY 2012-13, the allotment letters and the registered Agreement of Sale. The Assessing Officer (AO) did not accept the submissions of the assessee and held that the assessee has tried to colour an old transaction of her father to explain her undisclosed investment. Accordingly, the AO added  $1/4^{\text{th}}$  share of the purchase value of Rs. 4,93,43,822/- i.e. Rs. 1,23,35,955/- as unexplained investment under section 69 of the Act. The AO further held that the value of the property on the date of registration was at Rs. 8,14,59,743/- and since the registration happened for a value of Rs. 4,93,43,822/- an addition under section 56(2)(vii)(b) of the Act is warranted. Therefore, the AO made addition towards  $1/4^{\text{th}}$  share of the difference amount being Rs.80,33,935/- under section 56(2)(vii)(b) of the Act. The AO also noticed that out of the 7 flats one flat has been sold for a consideration of Rs. 1,30,00,000/- and that the assessee has not declared the Capital Gain arising out of the said transaction. The AO computed the Capital Gain on the sale of the said flat and attributed  $1/4^{\text{th}}$  share of the gain to assessee in order to make an addition of Rs. 14,88,700/-.

3. Aggrieved the assessee filed appeal before the CIT(A). The assessee submitted various facts pertaining to the impugned additions made by the AO before the CIT(A) as below:

*“3.4. The appellant's father Mr. Laiq Ahmed Shaikh had booked 7 flats in Mis Atul Projects India Ltd for which a single payment vide cheque 059521 dated 17.09.2012 was made of Rs. 4,93,24,000/- Allotment letters in the favour of Mr. Laiq Ahmed Shaikh were issued by the builder by the builder on 11.09.2012. The registration of the flats was done on 26.12.2017. At the time of registration of the flats name of three children were added for sake of convenience as the father of the assessee is 90 years old. It is to bring to your notice that the appellant's name is added in the agreement only for the namesake and no investment has been made by her for these properties.*

*3.5. During the course of assessment proceedings, the appellant had submitted bank statement from 07.09.12 to 06.10.2012 and 21.01.2016 to 25.03.2018 along with balance sheet for the year ending 31.03.2013 and 31.03.2018 of Mr. Laiq Ahmed Shaikh. From the bank statement it is clear that Mr. Laiq Ahmed Shaikh has made 100% payment towards purchase of property. Further, the appellant had also submitted allotment letter issued in the name of Laiq Ahmed Shaikh by the builder M/s Atul Projects India Ltd Thus, the contention of the AO that the appellant's share is 1/4th is hypothetical and incorrect.*

*3.6. The appellant's father has made full payment of Rs. 4,93,24,000/- in AY 2013- 14 for purchase of 7 flats, the allotment letter of which were issued on 11.09.2012. These agreements were registered on 26.12.2017 relevant to AY 2018-19. Thus, the stamp duty value of the property of AY 2013-14 will be considered.*

*3.7. The appellant's father sold one flat out of 7 flats on 31.03.2018, which was registered on 02.04.2018 and the possession of the flat was handed over on 05.04.2018 after the receipt of full sale consideration from the buyer. The said payment was received by the Appellant's father and declared income from LTCG in AY 2019-20.*

*3.8. Rent received from remaining 6 flats were offered for tax in AY 2019-20 and subsequent year by the Appellant's father.*

*3.9. The department has accepted the contention in other two cases, whose name was added in the agreement.”*

4. The assessee also submitted the documentary evidences pertaining to the above submissions. After considering the submissions the CIT(A) deleted all the three additions made by the AO and allowed the appeal in favour of the assessee. The Revenue is in appeal before the Tribunal against the order of the CIT(A).

5. The Id. DR submitted that the claim of the assessee that the flats registered in her name are originally booked by her father and the payments were made by her father is not substantiated properly. The Id. DR further submitted that there was no agreement to sale between assessee's father and the builder in support of the claim that it is her father who has booked the flats originally from the builder. Therefore, the Id. DR argued that assessee was included in the sale document only for namesake cannot be accepted. The Id. DR also submitted that the CIT(A) while allowing the appeal in favour of the assessee has simply relied on the submissions of the assessee and has not recorded any independent finding. Therefore, the Id. DR argued that the additions made by the AO be sustained.

6. The Id. AR on the other hand vehemently argued that assessee has submitted all the relevant documents to substantiate that her father has purchased the 7 flats. The Id AR drew our attention to the bank statement of assessee's father where the payment made to the builder in FY 2012-13 is reflected (page 11 of PB) and the letters of allotments all dated 11.09.2012 issued by the builder in the name of assessee's father (page no. 41 to 52 of PB). The Id AR further drew our attention to the financial statement of the father for FY 2012-13 in which the advance payment to the builder is reflected (page no. 175 of PB) to submit that all the aforesaid documents were submitted before the AO to substantiate the claim that assessee's

father is the real purchaser of the flats. The ld. AR submitted that in the case of other co-owners whose name were part of the sale-deed entered into on 26.12.2017, the department has accepted the submissions and made no additions and in this regard our attention was drawn to the assessment orders (page 186 to 189 of PB).

7. With regard to the addition made under section 56(2)(vii)(b) the ld. AR submitted that the assessee is not a purchaser and therefore the said section cannot be invoked in assessee's case. Without prejudice to the said submissions, the ld. AR further submitted that even otherwise as per proviso to section 56(vii)(b)(ii) the date of allotment i.e.11.09.2012 should be considered for the purpose of the said section and therefore the addition made based on stamp duty value in the year in which the sale-deed was executed is not tenable. The ld. AR drew our attention to the valuation of the impugned flat in FY 2012-13 (page 55 of PB) to submit that if the value on the date of allotment which is less than the registered value is considered, then no addition under section 56(2)(vii)(b) is warranted.

8. On the addition made by the AO towards STCG on sale of one of the flats the ld. AR drew our attention to the computation statement of assessee's father for AY 2019-20 (page 185 of PB) where the capital gain on sale of the flat has been offered to tax. The ld. AR also drew our attention to the fact that the rental income from the 7 flats have been offered to tax in the hands of assessee's father in the statement of computation (page 179 of PB). The ld. AR submitted that this would also substantiate the fact that assessee's father is the real owner and assessee is included in the sale-deed only for namesake.

9. We heard the parties and perused the material on record. During the year under consideration Mr. Laiq Ahmed Rafiq Shaikh (assessee's father) has entered into agreement of sale with the developer M/s Atul Projects India Pvt. Ltd. towards purchase of 7 flats namely flat Nos. 501, 506 on 5<sup>th</sup> floor, 601 in 5<sup>th</sup> floor, 701 & 702 in 7<sup>th</sup> floor, and 801 & 802 in 8<sup>th</sup> floor in building "Blue Fortuna" dated 26.12.2017. In the said agreement besides Mr. Laiq Ahmed Rafiq Shaikh the names of the assessee, Mr. Ubaidullah Laiq Shaikh and Mr. Amjad Laiq Shaikh have also been included. On the basis of information that the assessee has purchased certain flats during the year under consideration, the AO called on the assessee to furnish the relevant information with regard to the purchase of flat. The assessee claimed before the AO that the flat was originally booked by her father during FY 2012-13 and that the payments were made out of her father's account. The assessee further submitted that she is included in the agreement for sale only for namesake since her father is 90 years old. Accordingly, the assessee has submitted that she is not a purchaser of the property and therefore the source for purchase of flat by her father is not out of her income. The AO however did not accept the submissions of the assessee and held that the claim of the assessee that it is her father who has purchased the flats is not substantiated. The AO made addition towards unexplained investments, under section 56(2)(vii)(b) and also STCG. The CIT(A) deleted the additions based on the submissions made by the assessee before him. The assessee submitted the below listed documents to substantiate that it is assessee's father who has actually purchased the 7 flats out of his funds –

- (i) *Bank statement of assessee's father evidencing the payment towards purchase of flats to the builder - page 11 of PB.*
- (ii) *Allotment letter dated 11.09.2012 issued by M/s Autl Projects India Ltd. to assessee's father - page 41 to 52 of PB.*

- (iii) *The computation statement of assessee's father for AY 2012-13, 2018-19 & 2019-20 – page 171 to 185 of PB.*
- (iv) *The financial statement of assessee's father for FY 2012-13 in which the payment made to M/s Atul Projects India Ltd. is reflected under Schedule of loan and advances – page 175 of PB.*
- (v) *The ledger account of assessee's father as per Abode Builders where he is a partner to substantiate the source for purchase of flats – page 177 of PB.*

10. A combined perusal of all the above documents clearly establishes the fact that it is the assessee's father who has purchased the 7 flats out of funds transferred from his bank account to the builders. It is further noticed that assessee's father has been offering the rental income from the 7 flats in the statement of computation. It is also noticed that during the AY 2019-20 the assessee's father has offered the capital gains on transfer of flat no. 701 which was sold for a considered of Rs. 1.3 crores to tax. In our considered view the AO is not correct in making addition towards 1/4<sup>th</sup> of the purchase cost as unexplained investments in the hands of the assessee since the consideration is entirely paid by the father and the same is reflected in his financial statements. Further the addition made by the AO under section 56(2)(vii)(b) is also not tenable for the reason that it is not the assessee who has purchased the flats but her father. Even assuming that the said provisions are applicable for the impugned transaction the addition can be done only in the hands of assessee's father and not in assessee's and the proviso to section 56(vii)(b)(ii) has to be kept in mind while invoking the said section. With regard to the addition made by the AO towards STCG on sale of flat, from the perusal of the documents as listed above it is clear that the assessee's father has already offered to capital gains to tax he being the real owner of the flat and therefore the same cannot be sustained in the hands of the assessee. It is also relevant to mention that the assessee's father has been offering the rental income from the flats to tax. Further

we notice that in the case of others who are included in the Agreement of sale along with assessee's father, the revenue has accepted the submissions and assessment have been completed u/s. 143(3) without making any addition. In view of these discussions and considering the facts of the case, we are of the view that the additions made by the AO in the hands of the assessee are not sustainable and therefore we see no infirmity in the order of CIT(A) in deleting the additions.

11. In the result, the appeal of the revenue is dismissed.

*Order pronounced in the open court on 17-09-2024.*

**Sd/-**  
**(SANDEEP SINGH KARHAIL)**  
**Judicial Member**

*\*SK, Sr. PS*

**Sd/-**  
**(PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

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