

**IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 3282/MUM/2024
(Assessment Year: 2018-19)**

Harvinder Singh Marwah

A/301, Oberoi Splendor, JVLR,
Jogeshwari East,
Mumbai – 400060, Maharashtra
[PAN: AAGPM9962R]

..... **Appellant**

Vs

**National E-Assessment Centre,
Delhi.**

..... **Respondent**

Appearance

For the Appellant/Assessee : Smt. Balbir Singh Marwah
For the Respondent/Department : Shri P.D.Chougule

Date

Conclusion of hearing : 12.08.2024
Pronouncement of order : 24.10.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Assessee is directed against the order, dated 06/05/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had dismissed the appeal against the Assessment Order, dated 24/03/2024, passed under Section 143(3) read with Section 143(3A) and 143(3B) of the Act for the Assessment Year 2018-19.

2. The Appellant has raised following grounds of appeal:

"1. *The Ld. CIT Appeal has grossly erred in confirming the assessment passed by the Ld. ITO.*

2. *The Ld. CIT Appeal ought to have considered the facts of the case Agreement, payments made along with date of allotment of flat which is F.Y. 2014-15 and the valuation report of registered valuer Kanti Karamsey & Co. (report attached here with for ready reference and records of this hon. ITAT bench).*
3. *In my brother's case with same details and facts the Assessment has been done with no additions (copy of the Assessment Order is attached for ready reference and record of this hon. ITAT bench). The same valuation applies to my case.*
4. *Your appellant prays for allowing FMV of Rs.35316964.03/- as per valuation report dated 15.03.2021 for the valuation date 31.03.2015.*

Your appellant prays for deletion of additions made on the basis of SDV adopted by Ld. A.O. and confirmed by the Ld. CIT(A) in view of the facts and grounds of appeal and as your Hon. deems fit and proper in my case as per Law"

3. All the grounds of appeal are directed against the solitary addition of INR 1,01,36,346/- made by the Assessing Officer under Section 56(2)(x) of the Act which was confirmed by the CIT(A) and are, therefore, taken up together hereinafter.
4. The relevant facts in brief are that the Appellant, a professional dermatologist, filed return of income for the Assessment Year 2018-19 which was selected for regular scrutiny. During the assessment proceedings the Assessing Officer noted that during the relevant previous year the Appellant had entered into a Agreement for Sale which was registered on 20/09/2017 in respect of immovable property, being Flat at Prisma 3001 – 1, 30th Floor, Prisma, Next to Oberoi Splendor, bearing CTS No.1B of Village Majas, Andheri, Mumbai Suburban [hereinafter referred to as 'the **Flat**'] with Oberoi Construction Limited for a consideration of INR.4,92,25,154/-. According to the Assessing Officer the sale consideration stated in the aforesaid Agreement for Sale was less than the market value of INR.5,93,61,500/- (as on 20/09/2017) by INR.1,01,36,346/-. The

Assessing Officer, therefore made addition of INR 1,01,36,346/- under Section 56(2)(x) of the Act vide Assessment Order, dated 24/03/2021, passed under Section 143(3) read with Section 143(3A/3B) of the Act.

5. Being aggrieved, the Appellant carried the issue in appeal before the CIT(A). Before the CIT(A) it was contended on behalf of the Appellant that the Flat was booked by the Appellant on 31/12/2014. The Appellant was issued Allotment Letter on 31/03/2015 wherein the total consideration for the Flat was stated as INR 5 Crores and out of the same the Appellant had made payment of INR.77,87,085.77/- as the earnest money and the service tax thereon through banking channel. Therefore, even though the agreement to sale was registered on 20/09/2017, stamp duty value as on the date of allotment (i.e. 31/03/2015) should be taken into consideration for the purpose of Section 56(2)(x)(b)(B) of the Act read with first and second proviso thereto. It was submitted that the Appellant had filed copy of the Allotment Letter, dated 31/03/2015, alongwith accounts statement and details of payment made before the Assessing Officer. It was further submitted that the Assessing Officer had while framing assessment on Smt. Paramjit Kaur Marwah, sister-in-law of the Appellant had accepted identical submissions made by her and accepted the returned income without making any additions under Section 56(2)(x) of the Act. However, the aforesaid submissions did not find favour with the CIT(A) and therefore the appeal was dismissed vide order dated 03/05/2024.
6. Being aggrieved by order, dated 03/05/2024, passed by the CIT(A) dismissing the appeal, the Appellant is now in appeal before the Tribunal.
7. We have heard the rival submissions and perused the material on record. The Authorised Representative for the Appellant reiterated

the stand taken before the authorities below while the Learned Departmental Representative relied upon the order passed by the Assessing Officer.

8. In the present case the Appellant is claiming that the stamp duty valuation of the Flat as on the date of the Allotment Letter should be taken into consideration for the purpose of Section 56(2)(x)(b)(B) of the Act, by invoking the first & second proviso to the said section. For ready reference, the relevant provision along with proviso are reproduced as under:

"56(2)(x) "where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,-

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

(b) any immovable property,-

(A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(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:-

(i) the amount of fifty thousand rupees; and

(ii) the amount equal to [ten] per cent of the consideration:]

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 2[or through such other electronic mode as may be prescribed"], on or before the date of agreement for transfer of such immovable property" (Emphasis Supplied)

9. On perusal of Allotment Letter and the Agreement, we find that the Allotment Letter, dated 31/03/2015, contained the description of the Flat and the applicable terms and conditions which included the purchase consideration and timelines for making the payments. Therefore, in our view, the Allotment Letter, which clearly fixed the consideration for the purchase of the Flat, is to be regarded as an agreement fixing the amount of consideration for the transfer of Flat for the purpose of Section 56(2)(x) of the Act read with first and second proviso thereto. The Allotment Letter also acknowledged the receipt of INR.77,87,085.77/- as the earnest money (plus applicable service tax thereon) through banking channel by the Oberio Constructions Limited. The Appellant has placed on record copy of the assessment order passed in the case of Smt. Paramjit Kaur Marwah, sister-in-law of the Appellant, for the Assessment Year 2018-19. On perusal of the aforesaid assessment order, dated 07/04/2021, we note that she had also purchased Flat at Prisma 2901 - 1, 29th Floor, Prisma, Next to Oberoi Splendor, bearing CTS No.1B of Village Majas, Andheri, Mumbai Suburban. She had also booked the aforesaid flat in December 2014; Allotment Letter was issued to her on 31/03/2015; and the Agreement for Sale was registered on 12/09/2017. The Assessing Officer accepted the date of allotment letter issued to her as the date of the agreement for the purpose of determining stamp value for the purpose of Section 56(2)(x) of the Act. After taking note of the fact the stamp value as on 31/03/2015, the assessing officer in the case of the sister-in-law of the Appellant concluded that the same was less than the sale consideration stated in the agreement for sale and accordingly, concluded that no addition under Section 56(2)(x) of the Act could be made. It is not the case of the Revenue that the stamp duty value of the Flat as on 31/03/2015 was more than the sale consideration stated in the Allotment Letter, dated 31/03/2015 and/or Agreement for Sale, dated 12/09/2017, executed by the

Appellant.

10. In view of the above, accepting the contention of the Appellant we hold that in the facts and circumstances of the present case, Allotment Letter, dated 31/03/2015, should be considered as agreement fixing consideration for the transfer of the Flat, and that the Appellant is entitled to the benefit of the provisos to Section 56(2)(x)(b)(B) of the Act in the present case. Accordingly, the stamp duty valuation as on the date of Allotment letter (i.e. 31/03/2015) should be considered for the purposes of Section 56(2)(x)(b)(B) of the Act. Hence the AO was not justified in considering the stamp duty valuation as on the Agreement for Sale (12/09/2017). Since the stamp duty value of the Flat as on 31/03/2015 was less than the sale consideration, we hold that no addition could have been made in the hands of the Appellant by invoking provisions contained in Section 56(2)(x)(b)(B) of the Act read with first and second proviso thereto. Accordingly, the addition of INR 1,01,36,346/- made under Section 56(2)(x)(b)(B) of the Act is deleted.
11. Our view draws strength from the decision of Mumbai Bench of the Tribunal in the case of Sulochana Saijan Modi Vs. Income Tax Officer: [2023] 152 taxmann.com 56 (Mumbai-Trib).
12. In view of above, Grounds of Appeal No. 1 to 3 are allowed Ground No. 4 are dismissed as being infructuous.

In result, the present appeal preferred by the Assessee is allowed.

Order pronounced on 24.10.2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 24.10.2024

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai