

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "D" Bench, Mumbai.

Before Shri Anikesh Banerjee (JM)
& Shri Omkareshwar Chidara (AM)

I.T.A. No. 2797/Mum/2023 (A.Y. 2016-17)

Income Tax Officer 2 ND Floor Rani Mansion Murbad Road Kalyan West Maharashtra-421301.	Vs.	Ritu Manish Pokar B 604, Ambika Tower CHS, Ayodya Nagari, Manpada Cross Road, Dombivali Maharashtra-421201.
(Appellant)		(Respondent)

C.O. No. 12/Mum/2024 (A.Y. 2016-17)

Ritu Manish Pokar B 604, Ambika Tower CHS, Ayodya Nagari, Manpada Cross Road, Dombivali Maharashtra-421201.	Vs.	Income Tax Officer 2 ND Floor Rani Mansion Murbad Road Kalyan West Maharashtra- 421301.
(Appellant)		(Respondent)

PAN : BDXPP6986M

Assessee by	Shri Hiten Chande
Department by	Shri Sunny Kachhwaha
Date of Hearing	07.10.2024
Date of Pronouncement	11.11.2024

O R D E R

Per Omkareshwar Chidara (AM) :-

ITA No. 2797/Mum/2023

During the proceedings before the Bench, the Ld. AR of the appellant has pointed out that as per recent CBDT Circular, the Revenue cannot file an appeal if the tax effect of addition is less than Rs. 60 lakhs. Earlier, the monitory limit was Rs. 50 lakhs and now it was enhanced to Rs. 60 lakhs

and the CBDT Circular also says that the enhanced monetary limit of Rs. 60 lakhs is applicable to all pending appeals. Hence, the Ld. AR of the appellant pleaded that the Departmental appeal is not maintainable due to monetary limits. It was argued that Hon'ble Finance Ministry has announced in Parliament during Budget session of 2024 that they are enhancing the monetary limits to file the departmental appeals and accordingly a CBDT's circular No. 9 of 2024 dated 17.9.2024 was released which says that the same is effective from 17th September 2024 and it is applicable for all pending appeals before the ITAT, High Court and Supreme Court as on this date. The Ld. DR relied on grounds of appeal.

2. After hearing both sides and perusing the CBDT's Circular, it is decided that the contention of Ld. AR of the appellant is correct and the Department appeal is dismissed as not maintainable due to monetary limits.

C.O. 12/Mum/2024

3. The above cross objection was filed by the appellant for A.Y. 2016-17 and the sole ground taken is "the addition of Rs. 23,17,000/- made to total income under section 56(2) is incorrect and bad in law". This issue was dealt with by learned Assessing Officer (Ld. AO for short) in paragraph 5 of the assessment order and para 5.2, page 6 of the learned Commissioner of Income Tax Act (Appeals) [the Ld. CIT(A) for short] order.

4. The Ld. AO at page 3, paragraph 5 has mentioned that the appellant has purchased the flat at Rs. 3,07,60,000/- against the market value of Rs. 3,53,94,000/- which attracts the provisions of section 56(2)(vii)(b) of the Income Tax Act (the Act for short). It was mentioned by Ld. AO that despite several opportunities, the appellant did not explain the discrepancy and hence the same was added under the head, "income from other sources" as per the above provisions of section 56(2)(vii)(b) of the Act, while passing the assessment order.

5. Aggrieved by the order of Ld. AO, the appellant filed an appeal before the Ld. CIT(A). At paragraph 5.2, page 6 of the Ld. CIT(A)'s order, this issue was discussed and the Ld. CIT(A) held that the addition is valid and legal as the provisions of law were correctly applied.

6. As mentioned above, the appellant filed Cross objection before the ITAT, and it was stated that the addition under section 56(2)(vii)(b) of the Act is incorrect and bad in law. Before the Ld. CIT(A) also, the same ground is taken stating that section 56(2)(vii)(b) is not applicable to the appellant. But, as mentioned above, the Ld. CIT(A) confirmed the addition of Ld. AO by adjudicating that there is no infirmity in the order of Ld. AO.

7. During the hearing before the ITAT, Ld. AR of the appellant has argued that it is a limited scrutiny (CASS) case and the issue of addition under section 56(2)(vii)(b) of the Act is out of the purview of Ld. AO to make addition and relied on the decision of PCIT Vs. Rakesh Kumar 152 taxman.com 398 (P&H). In response to this argument, Ld. DR has said the issue of addition is covered in the limited scrutiny, paragraph 2 of the assessment order under the head "Investment and Income relating to property are duly disclosed" i.e. Ld. AO had to scrutinize the investment in the house and income earned thereon are properly disclosed as per law.

8. Heard both sides and it is decided that section 56(2)(vii)(b) of the Act is applicable in the circumstances of this case and hence the addition is upheld for the following reasons :-

- a) The difference in purchase price of flat shown in the documents is more than the market value exceeding Rs. 50,000/- i.e. the difference between Rs. 3,53,94,000/- and Rs. 3,07,60,000/- is Rs. 46,34,000/-.

- b) This aspect is covered by the reason mentioned in the limited scrutiny of CASS as clarified by Ld. DR by showing Question No. (iii) of CASS reasons in paragraph 2 of assessment order.
- c) The appellant did not mention any reason for the difference between the price mentioned in the document and market value before the Ld. AO or the Ld. CIT(A) or ITAT.
- d) Before the Ld. CIT(A) also, the appellant took the same ground stating that the addition under section 56(2)(vii)(b) of the Act is incorrect but could not substantiate as to why the section is not applicable.
- e) Appellant's simple argument that the section is not applicable without giving any reason in the "grounds of appeal" is not tenable.
- f) The appellant has taken an additional ground of appeal stating that CBDT instructions forbid the Ld. AO from exceeding the purview of reasons mentioned in the CASS to make any addition. It was mentioned that as this is a legal ground affecting jurisdiction, the same can be taken at any time and hence taken now. This additional ground of appeal is entertained and adjudicated against the appellant because the Ld. DR has shown in paragraph 2 of the assessment order that one of the scrutiny reason is "whether investment and income in property is properly disclosed" and hence the appellant cannot dispute the issue on this technical ground. In our considered view also, the issue is covered under CASS, and hence the Ld. AO is empowered to adjudicate this issue in limited scrutiny and the reliance placed by Ld. AR of the appellant on CBDT Instruction No. 20/2015 dated 29.12.2015 is not applicable in the present case. Accordingly, the case relied on by Ld. AR of the appellant in PCIT Vs. Rakesh Kumar (supra) is not applicable to the facts of the present case. It is pertinent to note that the Ld. AO has added judiciously 50% of excess money i.e., Rs. 23,17,100/- (50% share of Rs. 46,34,000) only here as the appellant holds 50% share and other 50% of share was held by the spouse. The Ld. AR of the appellant was asked whether

similar addition was made in the spouse's case for which it was stated that his case was completed u/s. 143(1)(a) of the Act and no addition was made. Secondly, the Ld. AO has correctly added the amount of Rs. 23,17,000/- on account of difference in consideration paid (Rs. 3,07,60,000/-) against the market value under section 56(2)(vii)(b) of the Act (Rs. 3,53,94,000/-) minus Rs. 46,34,000/- and appellant's half share is Rs. 23,17,000/-. This section comes into play in case of an individual receives an immovable property for a consideration which is having difference of more than Rs. 50,000/- compared to the stamp value thereof. Hence, the addition made by the Ld. AO in this regard is correct and upheld.

8. In view of the above, the Cross Objection filed by the appellant is dismissed.

9. In the result, the appeal of the Department, ITA No. 2797/Mum/2023 is dismissed and Cross objection of the appellant C.O. No. 12/Mum/2024 is also dismissed.

Order pronounced in the open court on 11th November, 2024.

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Omkareshwar Chidara)
Accountant Member

Mumbai : 11.11.2024

Copy of the Order forwarded to :

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

//True Copy//

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BY ORDER,
(Assistant Registrar)
ITAT, Mumbai