

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

**BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No. 5472/Mum/2024
Assessment Year : 2017-18

Dharmesh Ramesh Jhaveri, 1 & 2, Bhagyodaya Building, Sarojini Road, Vile Parle (West), Mumbai. PAN : AACPJ6530G	vs.	The Asst./Dy. Commissioner of Income Tax, Circle-2(2)(1), Room No. 545, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai.
(Appellant)		(Respondent)

For Assessee :	Shri Lalchand Choudhary,
For Revenue :	Shri R.R. Makwana, Sr.DR

Date of Hearing :	04-12-2024
Date of Pronouncement :	04-12-2024

ORDER

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dt. 28-08-2024 passed by the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’] and it relates to AY. 2017-18. The assessee is aggrieved by the decision of the Ld.CIT(A) in confirming the addition of Rs.50.06 lakhs made by the AO u/s. 56(2)(vii)(b)(ii) of the Income Tax Act, 1961 (‘the Act’).

2. The facts relating to the case are stated in brief. The AO noticed that the assessee has purchased a Flat No. A-1002 in the apartment, named, Harmony, located at Mahavir Nagar, Kandivli (West), Mumbai from M/s. Saroj Sales Organisation on 01-09-2016. The AO noticed that

the stamp duty value of the flat on the date of registration was Rs. 1,05,42,000/-, while the purchase consideration was shown as Rs. 55,35,750/-. Hence, the AO proposed to assess the difference between the stamp duty value and purchase consideration as income of the assessee u/s. 56(2)(vii)(b)(ii) of the Act. The assessee explained that the above said flat was allotted to him on 29-11-2010 and the assessee had paid an advance of Rs. 1 lakh on 16-05-2010. Accordingly, by placing reliance on the proviso to section 56(2)(vii)(b)(ii) of the Act, the assessee contended that the stamp duty value as on the date of allotment should be considered for the purpose of section 56(2)(vii)(b)(ii) of the Act. The assessee submitted that the stamp duty value as on the date of allotment was Rs.40,34,880/- and it was less than the purchase consideration. Accordingly, the assessee contended that no addition u/s 56(2)(vii)(b) is called for. The AO did not accept the same, as he was of the view that the allotment letter cannot be considered as agreement mentioned in the proviso to section 56(2)(vii)(b)(ii) of the Act. Accordingly, he assessed the difference amount of Rs.50,06,250/- (1,05,42,000/- (-) 55,35,750/-) as income of the assessee. The Ld.CIT(A) confirmed the addition. Hence, the assessee has filed this appeal before the Tribunal.

3. The Ld.AR submitted that the Fair Market Value (FMV) as on the date of allotment of the flat was lower than the purchase consideration and further, the assessee has paid a sum of Rs.1.00 lakh by way of cheque prior to the allotment of flat. Accordingly, he submitted the proviso to sec.56(2)(vii)(b) will be applicable and accordingly, the stamp duty value as on the date of allotment should be compared with the purchase consideration. Since the stamp duty value is lower, no addition u/s 56(2)(vii)(b) is called for. Even though the stamp duty value was Rs. 1,05,42,000/- as on the date of registration of the purchase agreement, the same should not be considered in the facts of

the case, as the assessee would be covered by the provisos to the above said section. The Ld.AR submitted that the allotment letter specifies the terms and conditions of purchase of the flat and hence the same should be considered as the agreement mentioned in the proviso to section 56(2)(vii)(b)(ii) of the Act. He submitted that the Co-ordinate Benches of the Tribunal, in the following cases, have held that the allotment letter should be considered as agreement referred to in first and second proviso to section 56(2)(vii)(b)(ii) of the Act and accordingly, the stamp duty value as on the date of allotment letter should be compared with purchase consideration for the purpose of determining any addition u/s. 56(2)(vii)(b)(ii) of the Act.

- a. Mr. Sajjanraj Mehta vs. ITO in ITA No.56/Mum/2021 (AY. 2014-15), dt. 05-09-2022;
- b. Parth Dashrath Gandhi vs. Addl./Deputy/Asst. Commissioner of Income Tax in ITA No.1990/Mum/2022 (AY. 2018-19), dt. 31-01-2023;

4. We heard the Ld.DR and perused the record. We notice the Co-ordinate Benches of the Tribunal in the above said cases have held that allotment letter should be considered as agreement referred to in section 56(2)(vii)(b)(ii) of the Act. Section 56(2)(vii)(b)(ii) of the Act, reads as under:

- “56. (1)**
- (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 :—*
- (i)* ;
-;
- (vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009 but before 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,—
- (i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;
 - (ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

Provided that where the date of the 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 the agreement may be taken for the purposes of this sub-clause:

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;”

Even though the provisions of sec.56(2)(vii)(b) of the Act creates a deeming fiction for assessing the difference between the stamp duty value and the consideration, if the consideration is less than the stamp duty value, an exception is provided in the two provisos below it. If the date of agreement fixing the amount of consideration was not the same as the date of registration, then the stamp duty value as on the date of fixing the consideration should be considered for the purposes of this section, provided the assessee had paid a part of consideration by any mode other than cash on or before the date of the agreement for the transfer of such immovable property.

4.1. In the instant case, the purchase consideration on the date of allotment was more than stamp duty value and further, the assessee has paid a sum of Rs. 1 lakh by way of cheque prior to the date of allotment. Accordingly, for the purpose of section 56(2)(vii)(b)(ii) of the Act, the stamp duty value as on the date of allotment should be

recognized in determining any addition u/s. 56(2)(vii)(b)(ii) of the Act. We notice that the tax authorities have taken the view that the letter of allotment cannot be considered to be the agreement mentioned in the provisos to sec. 56(2)(vii)(b) of the Act. However, we notice that the coordinate benches of Tribunal has held in the two cases relied upon by the assessee (referred supra) that the letter of allotment or letter of intent can be considered as the agreement mentioned in the proviso to the above said section. Following the above said decisions of the coordinate benches, we hold that the allotment letters should be considered as the agreement referred to in the provisos to sec. 56(2)(vii)(b) of the Act. We noticed earlier that the stamp duty value as on the date of allotment of flat, in the instant case, was lower than the consideration determined between the parties. Hence, there is no question of making any addition u/s 56(2)(vii)(b) of the Act.

4.2. In view of the above, we set aside the order passed by the Ld.CIT(A) and direct the AO to delete the addition made u/s. 56(2)(vii)(b)(ii) of the Act in the hands of the assessee during the year under consideration.

5. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 04-12-2024

Sd/-

(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai, Date: 04-12-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "D" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai