

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI
BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER
AND
SMT RENU JAUHRI, ACCOUNTANT MEMBER
ITA No.3062/M/2024
Assessment Year: 2018-19**

Rohan Santosh Yadav Flat No. 7, Alhad Co. op. Hsg. Soc. Ltd., Agashi Road, Portugese Church, Dadar West, Mumbai- 400028. PAN: ADGPY2523B	Vs.	Income Tax Officer National E- Assessment Centre, Mumbai.
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Satyaprakash Singh

Revenue by : Shri R. R. Makwana, SR. D.R.

Date of Hearing : 06.11.2024

Date of Pronouncement : 16.12.2024

ORDER

Per Beena Pillai, JM:

Present penalty appeal is filed by the assessee against order dated 14/05/2024 passed by Ld.CIT(A)/ NFAC for Assessment Year 2018-19 on following grounds of appeal:



1. “ The order dated 14/05/2024 bearing No.ITBA/NFAC /S/250/2024-25/1064856842(1) passed under section 250 of the Income Tax Act, 1961 by the Hon'ble CIT(Appeals), National Faceless Appeal Centre (NFAC), Delhi, is excessive, unreasonable, arbitrary, against the provisions of Income Tax Act, 1961 and therefore liable to be quashed.
2. On facts and circumstances of the case, and in law, the Hon'ble CIT Appeal (NFAC), DELHI has erred in confirming the action of the Assessing Officer in making the addition of Rs.42,41,500/- under section 56(2)(x) of the Income Tax Act, 1961, even though the initial agreement for purchases was made in the year 2012 when the Appellant had acquired the right in the property.
3. On facts and circumstances of the case, and in law, the Hon'ble CIT Appeal (NFAC), DELHI has erred in not considering the fact that the advance payment of purchases was made by banking channel in the year 2010 when section 56(2)(x) was not there in the Income Tax Act.
4. The Appellant craves to alter, add, delete, substitute, or modify and other grounds of appeal.”

Brief facts of the case are as under:

2. The assessee is an individual and filed his return of income for the year under consideration on 14/08/2018 declaring total income of Rs.10,06,150/-. The Ld.AO noted that assessee was 50% Co-owner along with his wife in a commercial property situated being Unit No.201, in a building known as Paras Gopal Plot F.P.No.543, T.P.S.IV Mahim Division, V.S.Matkar Marg, Dadar for total consideration at Rs.75,00,000/- vide an agreement dated 24/04/2012.

2.1. The Ld.AO noted that agreement was registered on 17/10/2017 and the guidance value as on the date of registration was Rs.1,59,83,000/- The Ld.AO sought to add the difference being Rs.84,83,000/- under section 56(2)(x) of the Act. The assessee being

50% share holder made addition in the hands of the assessee at Rs.42,41,500/-.

Aggrieved by the order of the Ld.AO, the assessee preferred appeal before the Ld.CIT(A).

3. The Ld.CIT(A) dismissed the appeal for the assessee by observing as under:

6. Examination of the issue and decision:

6.1 I have gone through the facts of the case, in the assessment order. This appellate order addresses the appeal filed by Mr. Rohan Santosh Yadav against the assessment carried out by the National e-Assessment Centre, Delhi, which resulted in an additional income assessment of 42,41,500 attributed to the difference between the stamp duty value and the purchase price of a property, assessed under section 56(2)(x) of the Income Tax Act, 1961.

The assessment was based on a discrepancy between the stamp duty value and the purchase price of a property, resulting in an addition of 42,41,500 to the appellant's income. The property in question, a commercial flat, was initially acquired through rights transferred in 2012, but the formal registration occurred in 2017.

The appellant contended that the initial agreement in 2012, which set the purchase price at 75,00,000, should be recognized as the effective date of property transfer, not the 2017 registration date. He argued that substantial payments were made long before the formal registration, which supports his claim under the first proviso to section 56(2)(x)(b).

The Income Tax Act clearly stipulates that in cases where there is a discrepancy between the agreement price and the stamp duty value, and the registration occurs later than the agreement, the stamp duty value at the time of registration is considered unless the consideration or part thereof was paid by modes specified in the Act before the agreement date. In this case, the evidence of compliance with these requirements (payment modes and timing) was insufficient to overturn the assessment officer's application of section 56(2)(x).

The appellant alleges that the assessment was conducted without a proper opportunity for a hearing, which was complicated by technical issues and procedural errors during the scheduled video conference.



The appellant claims that his request for a video conferencing session to present his case was not adequately addressed, which resulted in a denial of the opportunity to be heard.

While there were logistical and technical issues that prevented the initial video conference from proceeding as planned, there was no sufficient evidence that these issues materially affected the outcome of the assessment or that they were not remediable through other means of communication provided in the assessment process.

Based on a thorough review of the facts, documents submitted, and the laws applicable, the appeal by the appellant is dismissed. The assessment made by the Income Tax Department under section 56(2)(x) is upheld, and the procedural concerns raised by the appellant do not warrant a reversal of the assessment order.

7. In the result, appeal of the appellant is dismissed.”

Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this *Tribunal*.

4. The Ld.AR submitted that only issue alleged by the assessee is in respect of disallowance made by the Ld.AO by invoking provisions of section 56(2)(x).

4.1. The Ld.AR submitted that assessee had entered into a Deed of Transfer on 24/04/2012 , a copy of which is placed at page 16 -25 of the paper book. It is submitted that the assessee had also paid stamp duty of Rs.4,09,000/- for registration of the property in the joint names of assessee and his wife. It is also submitted that a further amount towards stamp duty was paid on 30/08/2012 amounting to Rs.39,080/- being the shortfall.

4.2. It is submitted that the assessee had made part payment in following manner:



Date	Particulars	Rs.
15/06/2010	Vide Cheque no.640921 drawn on Cosmos Co.op.Bank Ltd. Dadar Branch paid to Vijay C. Ranka	9,00,000/-
15/06/2010	Vide Cheque no.640922 drawn on Cosmos Co.op.Bank Ltd. Dadar Branch paid to Santosh C. Ranka	9,00,000/-
15/06/2010	Vide Cheque no.640923 drawn on Cosmos Co.op.Bank Ltd. Dadar Branch paid to Sachin C. Ranka	9,00,000/-
11/06/2010	Vide Cheque no.640121 drawn on Cosmos Co.op.Bank Ltd. paid Dadar Branch to Santosh C. Ranka	9,00,000/-
11/06/2010	Vide Cheque no.640122 drawn on Cosmos Co.op.Bank Ltd. Dadar Branch paid to Vijay C. Ranka	9,00,000/-
11/06/2010	Vide Cheque no.976100 drawn on Cosmos Co.op.Bank Ltd. Dadar Branch paid to Sachin C. Ranka	9,00,000/-
11/06/2010	Vide Cheque no.005934 drawn on State Bank of Hyderabad, Dadar Branch paid to Vijay C. Ranka	7,00,000/-
11/06/2010	Vide Cheque no.014156 drawn on State Bank of Hyderabad, Dadar Branch paid to Santosh C. Ranka	7,00,000/-
11/06/2010	Vide Cheque no.014157 drawn on State Bank of Hyderabad, Dadar Branch paid to	3,50,000/-



	Sachin C. Ranka	
11/06/2010	Vide Cheque no.005933 drawn on State Bank of Hyderabad, Dadar Branch paid to Sachin C. Ranka	3,50,000/-

4.3. The Ld.AR submitted that, the provision of section 56(2)(X) is therefore not applicable to the present facts of the case, as it is an undisputed fact that the assessee and his wife made total payment towards the purchase of the property as during the financial year 2010-11 much prior to the date of registration. The Ld.AO therefore cannot invoke provision of section 56(2)(X)b merely because the stamp duty authority determined by the value of the immovable property at Rs.1,59,83,000/- which was more than the purchase value as per the Deed of Transfer.

4.4. It is submission of the Ld.AR that the receipt placed at page 26 of the paper book reveals total payments was made much prior to the date of registration of the agreement, and therefore, the value as on the date of making the first payment is to be considered for the purpose of computation of income u/s. 56(2)(X)b of the Act. It is submitted by the Ld.AR that, the authorities duly have not considered these documents including the allotment letter and receipt of the first booking amount. He place reliance on following decisions in support of this contentions.



4.5. On the contrary the Ld.DR placed reliance on the orders passed by the authorities below.

We have heard both parties and also relevant findings given in the impugned orders and material on record.

5. Admittedly the assessee purchased a commercial property along with his wife from 8 vendors who were the cowoners of the property for total consideration of Rs.75,00,000/- . The agreement value was fixed at Rs. 75,00,000/-, whereas the ready reckoner rate as on the date of agreement was Rs.1,59,83,000/-.

5.1. All the vendors have acknowledged the receipt of the amount as per the payment scheduled reproduced herein above. However due to some litigation between the assessee his wife and the developer before Small Causes Court (the details of which are placed at page 29 to 45) the said property was registered in financial year 2017-18 relevant to assessment year under consideration. And that time, the ready reckoner rate as on date of registration was Rs.1,59,83,000/-. The Ld.AO invoked deeming provisions of Section56(2)(x) of the Act. The Ld.AR referred to relevant portion of section56(2)(x) reads as under:-

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

(a).

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

5.2. Thus, when on the date of agreement, the amount of consideration is fixed for the transfer of immovable property and the date of registration is not the same, then the stamp duty value on the date of agreement is to be taken. The section further provides that the value as on date of agreement can be taken only when the amount of consideration in the agreement has been paid by way of account payee cheque or by the electronic clearing system through a bank account on or before the date of agreement transfer of such immovable property. Thus, the aforesaid provisos carve out exception by taking the stamp duty value as on the date of agreement when the payments have been made through banking channels.



First of all, when developer gives an allotment letter with terms and conditions and all the rights and the value of purchase is agreed upon and assessee has acted upon by accepting the terms and conditions and starts making the agreed payment, then it is clearly covered under aforesaid proviso to section 56(2)(x) of the Act. The assessee has agreed to purchase in the year 2016 in terms of allotment letter and also made the payments before the sale was registered. Therefore, based on the above discussions and the decisions relied by the Ld.AR on this issue. We are of the opinion that, the value as on date of allotment has to be treated as stamp duty value for the purpose of aforesaid provision of section 56(2)(x) of the Act and since at that time payment made was more than the stamp duty value therefore, no addition can be made in the facts of the assessee or his wife.

Ground No.2 to 3 raises by the assessee stands allowed.

Ground No. 1 & 4 are general in nature therefore do not require adjudication.

Accordingly, the grounds raised by the assessee stands allowed.

In the result the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 16-12-2024.

Sd/-
RENU JAUHRI
ACCOUNTANT MEMBER

Sd/-
BEENA PILLAI
JUDICIAL MEMBER



Mumbai, Dated: 16.12.2024.
Snehal C. Ayare, Stenographer/ Dragon

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)

ITAT, Mumbai