

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND SHRI SOUNDARARAJAN K, JUDICIAL MEMBER**

ITA Nos. and Assessment Year	Appellant	Respondent
ITA No.1463/Bang/2024 2018-19	DCIT, Central Circle, Hubballi.	Shri. Gowdara M. Lingaraju, Partner : Sri Prasanna Traders, APMC Yard, Bheemsamudra, Chitradurga, Karnataka – 577 520. PAN : AEYPM 5850 Q
ITA No.1464/Bang/2024 2018-19	-do-	Smt. Sheela Prasannakumar M/s. Sri Prasanna traders, APMC Yard, Bheemsamudra, Chitradurga, Chitradurga – 577 520, Karnataka. PAN : ACXPP4532 B

Revenue by	:	Ms. Nandini Das, CIT(DR)(ITAT), Bengaluru.
Assessee by	:	Shri. Ramana Gouda S Goudar, Advcoate.

Date of hearing	:	04.12.2024
Date of Pronouncement	:	20.12.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

These two appeals filed by the Revenue against two separate Orders passed by CIT(A) vide Order DIN:ITBA/APL/M/250/2024-25/1065244703(1) DATED 30.05.2024 AND DIN:ITBA/APL/M/250/2024-25/1065139947(1) DATED 27.05.2024. The grounds taken by the Revenue are common except the figures mentioned. Since the issues are common in

nature, for the sake of convenience and brevity, we are taking appeal in ITA No.1463/Bang/2024 and the decision taken in ITA No.1463/Bang/2024 shall apply mutatis mutandis to appeal in ITA No.1464/Bang/2024.

2. Briefly stated, the facts of the case are that assessee is an individual and one of the Directors of M/s. Shailendra Techno Park (P) Ltd., Bangalore. Assessee filed return of income on 31.10.2018 declaring total income of Rs.9,50,020/-. A search action under section 132 of the Act was initiated in the case of the assessee on 18.05.2017 at the residential premises of the assessee. Consequent to search action under section 132 of the Act on 18.05.2017 being the previous year relevant to the Assessment Year 2018-19, the provisions of section 153B of the Act were applicable in the case of the assessee and the case was selected for scrutiny and notice under section 143(2) of the Act was issued to the assessee on 23.09.2019 and other statutory notices were issued to the assessee. The authorized representative of the assessee appeared and attended the case and filed submissions as called for. The AO disputed only on the share transactions on the transfer of shares of M/s. Shailendra Techno Park (P) Ltd. vide agreement dated 18.01.2017. From the documents found, it was noticed that M/s. Shailendra Techno Park (P) Ltd., is a private limited company in which Shri. Somasekhar Reddy, Smt. G. Vijaya and Shri. G. Veerasekhar Reddy were the shareholders upto Financial Year 2016-17. The said company owns land and building at Whitefield Industrial Area, Krishnarajapuram, Bengaluru East, Bengaluru. The shares of the said company were purchased from Shri Somasekhar Reddy and others by the assessee along with Shri. G. M. Prasanna Kumar, Shri. G. S. Anith Kumar and Smt. Shiela Prasanna Kumar. During the course of search in the office premises of GEM

International (P) Ltd., and GEM Laboratories (P) Ltd., at No.22, Pamadi towers Gandhinagar, Bangalore, a file marked as A/GEML/03/T4 was found and seized, which at Page Nos.12 to 17 contains a share purchase agreement about the aforesaid purchase of shares with others for a sum of Rs.28 crores and the assessee had purchased 28.5% of the total shares. It was noticed that for arriving the fair market value for which the shares are to be transferred, it was seen that a valuation of the land and building was done from a Government Approved Valuer and the document was marked as A/GEML/01/T4 shows that the property at plot No.116, AT: EPIP 1st Stage, Whitefield, Industrial Area, Krishnarajpuram Hobali, Bengaluru-East, Bengaluru, belonged to M/s. Shailendra Techno Park Pvt. Ltd., was valued at Rs.28,04,24,000/-. The valuation report is dated 10.05.2017 by Engineer D Nagaraja, BE (Civil), Approved Valuer. As per the valuation report, the commercial building was valued at Rs.15,95,19,000/- and site (Land) was valued at Rs.12,09,05,190/- resultantly the total value was arrived at Rs.28,04,24,000/-. The land which has been transferred is of 4,055/- sq.mtrs and the fair market of the land which has been transferred amounting to Rs.20,15,33,500/- as against Rs.12,09,190/- which has been determined by the valuer in the valuation report. Accordingly, there is under valuation to the extent of Rs.8,06,28,310/- and consequently the new shareholder of the company Shri. G. S. Anith Kumar, Shri. G. M. Prasanna Kumar, Shri. G. M. Lingaraju and Smt. Sheila Prasanna Kumar have received property from erstwhile shareholders of M/s. Shaileendra Techno Park (P) Ltd., Bangalore, for a consideration which is less than the fair market value by an amount of Rs.8,06,28,310/- which is more than 50,000/-. Therefore, the provisions of section 56(2)(x) of the Act are attracted. The share of the assessee is 28.%.

Accordingly, as per provisions of section 56(2)(x) of the Act, the assessee has received Rs.2,29,09,768/- the value of the property without consideration as per provisions of section 56(2)(x) of the Act. In this regard, a show cause notice was issued to the assessee and assessee has filed detailed written submissions which is reflecting in the Assessment Order. As per the detailed written submissions, the AO noted that the valuer has adopted the value of the land as per the guidance value of the Sub-Registrar and has allowed a further rebate @40% on the value of the land. It is the claim by the assessee that the rebate is on account of the fact that the land is being used for commercial purpose and not for residential purpose and this argument of the assessee was rejected by the AO. The AO further observed that although the property transferred is the shares of the company, the underlying assets transferred are the land and building and the value of the shares are dependent upon the underlying assets. Accordingly, the land transferred is for a value which is less than its guidance value fixed by the State Government authorities and the assessee's share is Rs.2,29,09,768/- and the same was added under section 56(2)(x) of the Act and the AO assessed income after adding two other additions and assessed at Rs.2,44,83,286/-.

3. Aggrieved from the above Order, assessee filed appeal before the CIT(A) raising various grounds. The assessee has also filed detailed submissions. The Id. CIT (A) has allowed the appeal of the assessee after considering the submissions, alternative grounds and relying on the case law as under:

“5.0 I have considered the findings in the assessment order and the arguments of the appellant. Firstly, having conducted search and survey action in the case of appellant and his related parties. the AO ought to have brought on record solid evidences to conclude the search assessment in this case. On the contrary, no iota of evidence or documentary material have been brought on record to make the addition. The only evidence relied upon was the valuation report by a Govt Approved valuer seized during the search. It is not the case where some incriminating material relating to on-money paid for the purchase of property was found. In fact, the said Valuer provided the justification for discounting the valuation of the land from the Guideline value. The AO had not disputed the considerations relied upon except stating without basis that the commercial land fetches more price than residential land. The other circumstantial factors pointed out by the appellant were also not considered by the AO. It is also not the case where, having caught, the appellant tried to obtain a valuation report matching the purchase value. The valuation report was part of the materials seized from the search premises and this evidence cannot be refuted or disregarded except that the AO ought to have countered with proper facts and evidences.

5.1 If the AO's only reliance is section 56(2)(x) of the Act for making addition on notional income, then the AO ought to have followed the rules and procedures prescribed under that section. The AO had not applied Rule 11UA of the Income tax Rules, 1962 for calculating the fair market value of the unquoted equity shares transferred to the appellant. Instead, the AO considered the aforesaid transfer as transfer of immovable property separately and applied the stamp duty value of the land as provided by the SRO. In such case, the third proviso to section 56(2)(x)(b) of the Act states as follows:

Provided also that where the stamp duty value of immovable property is disputed by the assessee on grounds mentioned in sub-section (2) of section the Assessing Officer may refer the valuation of such property to a Valuation Officer. And the provisions of section 50C and sub-section (15) of section 155 shall, as far may be. Apply in relation to the stamp duty value of such property for the purpose of this sub-clause as they apply for valuation of capital asset under those sections”.

5.2 In this case, the AO had reproduced in the assessment order, the detailed objections raised by the appellant during the assessment

proceedings for adopting the stamp duty value of the land under consideration. For the sake of clarity, section 50C(2) is reproduced below:

"50(2) Without prejudice to the provisions of sub-section (I), where—

the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority under sub-section (1) exceeds the, fitir market value of the properly as on the date of transfer:

the value so adopted or assessed or assessable hi the stamp valuation authority under sub-section (1) has not been. disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court.

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34,4A,, section 35 and section 37 of the Wealth-tax Act. 1957 (27 of 1957). shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16/1 of that Act.-

5.3 Therefore, it is quite clear that upon receipt of objection from the appellant, the AO ought to have referred the valuation issue to the Valuation Officer in accordance with the provisions of the income tax Act specified above. The appellant had categorically objected to the adoption of stamp duty valuation since, according to him, the stamp duty was much more than the fair market value. Failing to refer to the Valuation Officer and imposing the stamp duty value on the land is a grievous mistake on the part of the AO and this action cannot be condonable. This view was upheld in the case of Assistant Commissioner of Income Tax, Circle-1(1) Agra vs Tarun Agarwal (2018) 97 taxmann.com 346 (agra-Lib)/(2018) 173 ITD 107 (Agra-Trib.) 20.08.2018, as

Where assessee claims that value adopted or assessed or assessable by stump valuation authority exceeds fair market value of property as on date of transfer and assessee raised specific dispute and claim

before Assessing Officer that stamp valuation of property sold was not its fair market value', it is bounden duty of Assessing Officer to have referred matter to Valuation Officer.

Section 50C of the Income-tax Act, 1961-Capital gains-Special provision for computation of full value consideration (General) - Assessment year 2013-14. Whether where assessee claims that value adopted or assessed or assessable by stamp valuation authority exceeds fair market value of property and has raised specific dispute before Assessing Officer that stamp valuation of property sold was not its "fair market value, it is, bounden duty of Assessing Officer to have referred matter to Valuation Officer - Held, yes — During assessment year, assessee had sold his factory building Since total sale consideration fell short by a certain sum in comparison to values adopted for stamp value purposes, Assessing Officer added same to income of assessee under deeming provision of section 50C- Assessee submitted that stamp valuation adopted for property sold was not its ,fair market value, but Assessing Officer without disputing any of reasons given by assessee made addition under section SOC in a cryptic manner and further he had not referred matter to DVO-Whether, on facts, Assessing Officer had not only passed a cryptic order without disputing any of grounds of dispute raised by assessee but also failed to follow procedure prescribed in law, we, making of a reference to DVO as mandated by section 5000, and, thus, addition made by Assessing Officer could not be approved - Held, yes 'Farm 10 to 17] [in favour of assessee]."

5.4 Thus, Sub-section (2) of Section 50C clearly mandates that where the assessee claims that the value adopted or assessed or assessable by the stamp valuation authority exceeds the fair market value of the property as on the date of transfer the AO would refer the valuation of such property to the Valuation Officer.

5.5 Hon'ble Calcutta High Court, in the case of Simi I Kumar Agarwal v. CIT/(2014) 47 taxmann.com 158/225 Taxman 211/372 ITR 83 has clearly held that the AO, discharging quasi-judicial function, has the bounden duty to act fairly and to follow the course provided by law, which in that case, was the reference to the valuation officer. In the present case, in view of the assessee's specific dispute and claim before the AO that stamp valuation of the property sold was not its "fair market value", it was the bounden duty of the AO to have

referred to the Valuation Officer which, for the reasons not borne on records, was not made.

5.6 On the similar facts and circumstances, the ITAT, Delhi Bench in the case of ITO vs Aditya Narain Verma (HUF) (2017) 88 Taxmann.com 840, upheld the order passed by the Ld. CIT (Appeals), who annulled the assessment order where assessee stated before the AO that the stamp valuation cannot be applied as the sale was made under distressing circumstances. The revenue challenged the action of the Ld. CIT(Appeals) but the same was dismissed by the Hon'ble [TAT, which held that the very purpose of the legislature behind the provisions laid down under sub-section (2) of Section 50C of the Act was that a Valuation Officer is an expert of the subject for such valuation and is certainly in a better position than the AO to determine the valuation. Thus, noncompliance of the provisions laid down under Sub.s (2) by the AO cannot be held valid and justified. The Hon'ble jurisdictional High Court of Allahabad in case of Shashi Kant Garg has been pleased to hold that it is well settled that if under the provisions of the Act an authority is required to exercise the powers or to do an act in a particular manner, then the power has to be exercised and the act to be performed in that manner alone and not in any other manner.

5.7 Hon'ble Allahabad High Court in the case of CIT v. Chandra Narain Chaudhri (2013) 38 taXmann.com275/219 Taxman 60 held that "whenever objection is taken or claim is made before AO, that the value adopted or assessed or assessable by the Stamp Valuation Authority under sub-section(1) of Section 50-C exceeds the fair market value of the property on the date of transfer, the AO has to apply his mind on the validity of the objection of the assessee. He may either accept the valuation of the property on the basis of the report of the approved valuer filed by the assessee, or invite objection from the department and refer the question of valuation of the capital asset to DVO in accordance with Section 55-A of the Act. In all these events, the AO has to record valid reasons, which are justifiable in law. He is not required to adopt an evasive approach of applying deeming provision without deciding the objection or to refer the matter to the DVO under Section 55-A of the Act as a matter of course, without considering the report of approved valuer submitted by the assessee."

5.8 The Hon'ble High Court further held that Section 50-C of the Act is a rule of evidence in assessing the valuation of property for calculating the capital gain. The deeming provision under Section 50

C (1) of the Act is rebuttable. It is well known that an immovable property may have various attributes, charges, encumbrances, limitations and conditions. The Stamp Valuation Authority does not take into consideration the attributes of the property for determining the fair market value in the condition, the property is offered for sale and is purchased. He is required to value the property in accordance with the circle rates fixed by the Collector. The object of the valuation by the Stamp Valuation Authority is to secure revenue on such sale and not to determine the true, correct and fair market value on which it may be purchased by a willing purchaser subject to and taking into consideration its situation, condition and other attributes such as its occupation by tenant, any charge or legal encumbrances.

5.9 In the present case, as discussed above, the AO not only passed a cryptic order without disputing any of the grounds of dispute raised by the appellant but also failed to follow the procedure prescribed in law i.e., making of a reference to the DVO as mandated by section 50C (2) of the Act. Therefore, the addition made by the AO cannot be sustained. Therefore, the relevant grounds of appeal of the appellant are allowed.

5.10 The appellant also filed an alternative ground as follows:

"Alternatively, as mentioned in the share purchase agreement the appellant group has entered into a share purchase agreement with the shareholders of the Shailendra Techno Projects Pvt. Ltd. on 18.01.2017 which is before the insertion of clause x of section 56(2) of the Act. This section came into effect only from A.Y 2018-19 but the transactions and agreement entered between the shareholders and appellant group is on 18.01.2017 which part of the seized records and substantial purchase price is paid before 31.03.2017. Hence, invoking provisions of section 56(2)(x) of the Act is not warranted."

5.11 It is a fact that clause x of section 56(2) of the Act came into effect from A.Y 2018-19. The AO had not produced any evidence to support his assertion OK the said transaction was held in FY 2017-18 except relying on the date of valuation report by the valuer on the property i.e., 10/05/2017. The said valuation itself clarified that the purpose of the valuation was to determine the value of the property for SEBI purpose. Obviously, this date cannot be a basis to determine the year of transaction.

5.12 On the other hand, the Share Purchase agreement was signed and executed between the parties on 18th January 2017. Part of the shares were transferred on the same day as specified in the said agreement as part of the sale consideration was paid on that day. Only Rs. 7,81,48,726/- was to be paid to the seller of the shares upon transfer of the remaining shares. Further, the rents from the month of January 2017 were collected by the purchasers of shares. This shows that the possession of the property was handed over to the purchasers in January 2017, which tantamounts to Transfer of Property under Section 53A of Transfer of Property Act, 1882. All these factors have not been examined or considered by the Investigation team or the AO in arriving at a conclusion.

5.13 Without establishing but presuming that the appellant purchased shares in FY 2017-18, the AO invoked section 56(2)(x) of the Act. Hence, the said action is unwarranted and unjust. Therefore, on the alternative ground of appeal too, the appellant's claim is found to be acceptable and therefore allowed accordingly."

4. Aggrieved from the Order of the CIT(A), the Revenue has filed appeal before the Tribunal.

5. The learned DR relied on the Order of the AO and in this regard submitted that the CIT(A) has wrongly allowed the appeal of the assessee. During the course of search proceedings, an agreement was found and valuation report was also found in which the valuer has given 40% rebate which is lower than the market value adopted by the Sub-Registrar. Accordingly, the assessee got benefitted to the extent of his share valued at Rs.2,29,09,768/-. The value adopted by the AO is on the basis of report of Sub-Registrar of the State Government authorities and who is a competent authority to value the property as per procedure under the Act. The assessee and others have entered into agreement on 18.01.2017 and made only part payment of Rs. 3,00,00,000/- as per the agreement and the sellers have

agreed to transfer the shares equal to the above payment to the purchaser immediately on signing the agreement. Full and final settlement of shares have not happened as on 18.01.2017 or before the end of the financial year. On going through the financial statement of M/s. Shailendra Techno Park (P) Ltd., it has owns no asset other than land and building during the year. Therefore, the value adopted by the AO on the basis of assets owned by the assessee for the shares are correct. The CIT(A) has wrongly considered that the shares have been purchased in the financial year 2016-17 relevant to the Assessment Year 2017-18. Accordingly, she requested that the Order of the AO may be restored.

6. On the other hand, the learned Council for the assessee relied on the Order of the CIT(A) and strongly submitted that the Order of the CIT(A) is correct as per law. The CIT(A) has rightly allowed the appeal of the assessee after considering the various judgments and alternative grounds of appeal as per para 5.10 of the CIT(A)'s Order. He further submitted that the agreement was made on 18.01.2017 and valuation of the property was made on 10.05.2017 for the purpose of SEBI guidelines. The property was allotted by KIADB and registered to the previous year shareholders of the company only on 22.03.2014 for a meagre amount of Rs.45,09,041/- and AO valued the property at Rs.20 Crores within a short span of 4 years. The property to be used only for the purpose of technical park which indirectly had a restriction on the usage of land and the value of the property is always for lesser than the market price and this aspect was not considered in the proposition. The present assessee and others had paid the substantial amount by 31.03.2017. During the course of hearing, he further submitted that appellate proceedings before the CIT(A) as an alternative ground was

taken by the assessee which is incorporated in the CIT(A)'s Order in paragraphs 5 to 10 and contested that the agreement for purchase of shares were made on 18.01.2017 and immediately all the payers of shares paid Rs.1 Crore and substantial amount was paid by 31.03.2017 which is before the insertion of clause x of section 56(2)(x) of the Act and this section came into effect only from Assessment Year 2018-19 but the transactions and agreement entered into between the shareholders and appellant group is on 18.01.2017. Hence, invoking of section 56(2)(x) of the Act by the AO is completely beyond the provisions of Income Tax Act and the CIT(A) has also considered this aspect and he has also allowed on the basis of the alternative grounds.

7. We have considered the rival submissions and perused the material available on record and the Orders of the authorities below. We notice that the a search proceedings were conducted under section 132 of the Act, the documents found during the course of search is marked as A/GEML/01/T4 and A/GEML/03/T4 has been utilized by the AO for determining the value of the property and computed the value on the basis of information received from the SRO at Rs.20,15,33,500/- of the land measuring 4,055 sq.mtrs. at the fair market value at Rs.49,700/- per sq.mtr resultantly there was a difference of Rs.8,06,28,310/- (20,15,33,500-12,09,05,190). The agreement was made for transfer of shares by the assessee and others on 18.01.2017 at a purchase price of Rs.28 Crores and immediately they have paid Rs.3 Crores by cheque towards advance consideration as under:

- i. *Rs 1,00,00000/- (Rupees One Crore only) paid vide Cheque bearing No 149250 Dated 18-01-2017 drawn on Axis Bank.*

Chitradurga, to the First Seller from the Account of First Purchaser

- ii. *Rs 1,00,00,000/- (Rupees One Crore only) paid vide Cheque bearing No. 121811 Dated 18-01-2017, drawn on Axis Bank, Chitradurga, to the First Seller from the Account of Third Purchaser*
- iii. *Rs. 1,00,00,000/- (Rupees One Crore only) paid vide Cheque bearing No 157343 Dated 18-01-2017 drawn on ICICI Bank, Davanagere Branch to the Third Seller from the Account of Second Purchaser.*

All these cheques have been withdrawn before 31.03.2017 which is clear from the bank statements produced before us. AS per the details submitted the entire payments were also made as under:-

Statement of shares allotment Particulars	Amount (Rs)	Amount paid (Rs)	No. of Shares	Amount to be paid (Rs)	Excess paid for payment to unsecured loan	
Total Sale consideration As per the share purchase agreement dated 18/01/2017.	28,00,00,000					
Liability to be discharged	17,18,51,274					
Balance to be paid to Share holders	10,81,48,726					
GM Ungaraju						
21-01-2017	1,00,00,000					
15-03-2017	1,00,00,000					
18-05-2017	8,00,000					
05-06-2017				1,08,00,000		
		3,16,00,000	570	3,07,80,000	8,20,000	refunded on 18/05/2017
Sheela Prasanna Kumar						
18-05-2017	4,48,20,000					
		4,48,20,000	830	4,48,20,000	-	
G M Prasanna Kumar						
20-01-2017	1,00,00,000					
20-06-2017	1,00,00,000					
07-03-2018	16,00,000					
		2,16,00,000	400	2,16,00,000	-	
G S Anith Kumar						
23-01-2017	1,00,00,000					
07-03-2018	8,00,000					
		1,08,00,000	200	1,08,00,000	-	

Total		10,88,20,000	2,000	10,80,00,000	8,20,000	
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8. As per the agreement the bank loan liabilities have also been taken by the purchaser of shares which is clear from the clause 2 of the Agreement. The substantial part were paid before the year end only balance of Rs. 7,81,48,726 was remained and later it was paid as above mentioned in the table . The AO has added that assessee has got benefited as per section 56(2)(x) of the Act. The CIT(A) has considered the arguments and documents submitted by the assessee and alternative ground taken by the assessee has also been accepted by the CIT(A) observing that the provision of section 56(2)(x) of the Act is applicable from 01.04.2017 and the case is related to the Financial Year 2016-17, the assessee has made part (substantial) payment before 31.03.2017 and at that time the charging section was not in force in the statute book. Therefore, the addition made by the AO is beyond the provision of the Income Tax Act. Our this view is supported by the judgment of the Co-ordinate Bench of the Tribunal in the case of Benudhar Gokulanand Biswal vs National E Assessment Center in ITA NO. 202/MUM/2023 order dated 29.05.2023 reported in [2023] 153 taxmann.com 112 (Mumbai- Trib) in which it has been held as under:

2. The brief facts of the case are that, the assessee is engaged in the business of manufacturing of transformers and electrical intermediate items. The assessee has filed the return of income for the A.Y 2018-19 on 28-10-2018 disclosing a total income of Rs. 9,50,340/- and the return of income was processed u/s 143(1) of the Act. Subsequently the Assessing Officer (AO) has received the information that the assessee has purchased property on 14-7-2017 for a consideration of Rs. 32,97,500/-, whereas the stamp valuation of the property is Rs. 52,74,186/-, therefore the AO invoked the provisions of Sec. 56(2)(x) of the Act as the assessee has failed to disclose fully material facts to the extent of Rs. 19,76,686/-. Subsequently, the AO has issued notice u/s 143(2) and 142(1) of the Ac along with the questionnaire. In compliance to the notice, the Ld. AR of the assessee has filed

the details on 12-2-2021 and furnished copy of purchase deed and some copies of payment proofs and the assessee has not filed other details as per the questioner.

3. Further, the AO has issued a show cause notice and it was duly complied by the assessee. The AO on perusal of details and purchase agreement found that the assessee has purchased a property from HDIL at an agreed price of Rs. 32,97,500/- and got registered in the year 2017 at market value of Rs. 52,74,186/- and the stamp valuation and registration fee of Rs. 2,94,000/- was paid. Further the AO has observed that the assessee has not furnished bank account details including the foreign bank account highlighting the payments relating to purchase of property and also the initial agreement with the seller was not produced. Finally the AO has made an addition u/s 56(2)(x) of the Act being the difference in value of property which worked out to Rs. 19,76,686/- and assessed the total income of Rs. 29,27,030/- and passed order u/s 143(3) r.w.s 143(3A)&143(3B) of the Act dated 18-3-2021.

4. Aggrieved by the order, the assessee has filed an appeal with the CIT(A), whereas the CIT(A) has considered the grounds of appeal, findings of the A.O and the assessee submissions which could not be filed in the assessee proceedings referred at page 7 to 9 of the order and CIT(A) has granted partial relief to the assessee and observed at Para 7 of the order read as under:

1 The purchase agreement is clearly stating that the assessee is the part owner of the property. But the officer has included entire additional income and interest in the assessee income In fact, assessee owns only 50% of the property. Copy of agreement is attached.

2 All the documents pertaining to co-owner Brajakishore Madan Panigrahi that were asked by the officer at the time of assessment which consists of Income-tax Return, Computation Sheet and Balance Sheet, Profit and Loss were submitted on February 23, 2021 We are attaching again for your ready reference.

3 The original purchase agreement date was 13th July, 2009 which is mentioned on the agreement but for the purpose of registration the M/s Housing Development and Infrastructure Limited (HDIL) (seller) had changed the year of purchase manually from 2009 to 2017. HDIL is currently under investigation in Mumbai for various frauds with Banks and other legal agencies. Copy of purchase agreement is attached.

4 The M/s HDIL (seller) had changed the agreement date to 2017 from 2009 on the top page of the agreement However, on page 18 at clause 10 of the purchase agreement, it is mentioned that all the payment for the property has to be done till 30-6-2011. Hence, it is proved that the property is purchased in 2009 Also, major payments for the property were made starting from 2009 and copies of receipts were submitted to the learned assessing officer on February 12, 2021. Copies of receipts are attached for ready reference.

5 The assessee and his co-owner had made payments for the said property as mentioned below:

Sl. No.	Date of Payment	Receipt No.	Cheque No.	Amount
1.	22.10.09	HDILKPRB2009Oct00106	288227	90,000
2.	22-10-2009	HDILKPRB2009OCT00105	675380	2,90,000
3.	8-10-2009	HDILKPRB2009OCT00023	288218	2,00,000
4.	20-10-2012	1100/2021/1600007117	100023	5,00,000
5.	20-10-2012	1100/2012/1600007120	300145	50,000
6.	20-10-2012	1100/2012/16000007119	200031	50,000
7.	18-5-2013	1100/2013/1600003584	100033	52,078
8.	18-5-2013	1100/2013/1600003581	100035	15,400
9.	18-5-2013	1100/2013/1600003580	633690	67,477
10.	09-9-2017	1100/2017/160005070	207446	36,600
11.	09-9-2017	1100/2017/1600005069	207446	22,247
12.	09-9-2017	1100/2017/1600005068	033930	14,353
13.	09-9-2017	1100/2017/1600005066	033930	37,906
14.	09-9-2017	1100/2017/1600005067	033930	6,588
		Total		14,32,649

The above receipts were duly submitted to the learned assessing officer.

As Ms/HDIL (seller) is under liquidation and its owners are in judicial/police custody and not available we are trying to arrange more receipts for payments made.

1. The officer has issued order under section 56(2)(x) the Income-tax Act, 1961 which is effective from 1-4-2017, as the property is purchased in 2009 the aforesaid section does not apply to the assessee. Since the initial transaction started in 2009.

2. Screen shot of submissions made as per the e-filing website is attached for ready reference.

3. In view of the above, we kindly pray that kindly delete the additions made by the Learned Assessing officer and also consequential interest and initiation of penalty proceedings.

7. I have considered the facts of the case, assessment order and assessee purchased a property from HDIL on 14-07-2017 for total consideration of Rs. 32,97,500/value of which was determined at Rs. 52,74,186/by the stamp authority for stamp duty purpose. The AO was of the view that this transaction attracted the provisions of sec. 56(2)(x) of the Act and the assessee did not disclose fully and

truly all the material facts relating to the income of Rs. 19,76,686/- during the relevant year. The AO being not satisfied with the assessee's reply, made the addition of Rs. 19,76,686/- u/s. 56(2)(x) of the Act. In the written submissions uploaded on the ITBA Portal, the appellant has submitted that he had furnished all requisite documents before the AO to prove that he was the part owner (50%) of the property and other 50% was owned by co-owner Sh. Brajkishore Madan Panigrahi. The appellant has submitted that the original purchase agreement was executed on 13-7-2009 but the HDIL had changed the year of purchase manually from 2009 to 2017, but on page no 18 at clause 10 of the agreement it was mentioned that all the payment for the property had to be done till 30-06-2011. The appellant has provided the details of payments in tabular form to emphasize that major payment towards purchase of property was made prior to the AY 2018-19. The appellant has contended that since transaction started in 2009, therefore, provisions of section 56(2)(x) of the Act are not applicable to the AY 2018-19. Considering the facts of the case, am inclined to agree with the appellant's claim. I have gone through registered purchase deed dated 14-07-2017 and upon perusal of the same, find that the said document contains names of two persons as purchasers, first is Sh. Benudhar Gokulanand and second is Sh. Brajakishore Panigrahi. This fact is further strengthened from the payment receipts towards purchase from the HDIL which are duly acknowledged by HDIL wherein also name of the appellant and name of Brajakishore Panigrahi are clearly reflecting. Thus, there remains no doubt that the property in question was purchased by two persons and the appellant was not the only owner/purchaser of said property. Therefore, it is wrong on the part of the AO to hold that the assessee was the only owner of the said property.

Further, in the instant case, the AO invoked the provisions of section 56(2)(x) of the Act, therefore, it is imperative to refer to the provisions of sec. 56(2)(x) which read as under:

Income from other sources.

4356. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.

(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:-

(x) on or after the 1st day of April 2017,-

any sum of money, without consideration the aggregate value of which (a) 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;

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: (B)

Following item (B) shall be substituted for the existing item (B) of sub-clause (b) of clause (x) of sub-section (2) of section 56 by the Finance Act, 2018, w.e.f. 1-4-2019:

for a consideration, the stamp duty value of such property as (B) exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:-

(1) the amount of fifty thousand rupees; and

(ii) the amount equal to five 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, on or before the date of agreement for transfer of such immovable property:

Provided also that where the stamp duty value of immovable property is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C the Assessing Officer may refer the valuation of such property to a Valuation Officer and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of this sub-clause as they apply for valuation sections;

*From the plain reading of section, it is clear that provisions of section 56(2)(x) apply to any person who receive any sum of the money or property having value exceeding the specified amount on or after 1-4-2017 from any person or persons during the previous year. Further, the first proviso to section 56(2)(x)(b) of the Act provides 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 considered. The first proviso only comes into play if the assessee satisfies condition mentioned in second proviso to sub clause of 9(x) of clause (2) of section 56 of the Act which provides that **THENT** 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, on or before the date of agreement for transfer of such immovable property.*

In the instant case, it is noted that 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 date of agreement as submitted by the appellant is 13-07-2009 whereas purchase deed was registered on 14-07-2017. However, from the details of payments given in a tabular Form in para 6 (supra) it is seen that the first payment of Rs2,00,000/- by way of cheque has been made on 8-10-2009 vide cheque no. 288218. This date i.e. 8-10-2009 is subsequent to the date of agreement i.e. 13-07-2009 therefore as per second proviso to section 56(2)(x) of the Act, the appellant's claim is not allowable.

However, as the appellant is only 50% owner of the property purchased, only 50% of the difference in the stamp duty value and purchase consideration is to be added in the hands of the appellant. Thus, the addition of Rs. 19,76,686/- made by the AO is reduced to 50% of this amount the appellant gets partial relief. The ground raised by the appellant regarding this issue is partly allowed."

Finally the CIT(A) has partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in granting partial relief and sustaining the addition to the extent of 50% difference of stamp duty value as per SRO and purchase consideration as the agreement overlooking the material facts that the purchase agreement is dated 13-7-2009 and it was registered on 14-7-2017. Whereas the purchase agreement was entered much prior to 1-4-2017 and the provisions of Sec. 56(2)(x) of the Act are incorporated from Finance Act 2017 and is applicable prospectively from 1-4-2017. The Ld. AR substantiated the Submissions with the factual paper book, judicial decisions and prayed for allowing the appeal. Per contra, the Ld. DR relied on the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue envisaged by the Ld. AR that, the CIT(A) has erred in sustaining addition to the extent of 50% of difference in stamp duty value of the flat as per SRO and purchase consideration as per agreement overlooking the various facts and the evidences. We find that the purchase agreement is dated 13-7-2009 and it was registered on 14-7-2017 placed at page 1 to 37 of the paper book and the purchase agreement was entered much prior to 1-4-2017 and the provisions of Sec. 56(2)(x) of the Act are incorporated from Finance Act 2017 and is applicable prospectively from 1-4-2017. The Ld. AR submitted that the date of agreement was inadvertently mentioned as entered on 13-7-2019 instead of 8-10-2009. Further, the first/initial payment of Rs. 2 Lakhs was made by cheque by the assessee, Whereas the date of agreement and date of initial cheque payment are prior to the incorporation of Sec. 56(2)(x) of the Act in the Finance Act 2017 effective from A.Y 2017-18. The Ld. AR has relied on the following judicial decisions. (i) Pr. CIT v. Naina Saraf [2022] 142 taxmann.com 147 (Rajasthan) (ii) Rajib Rathindra Saha v. ITO (International Taxation) [2022] 139 taxmann.com 211 (Mumbai Trib) and (iii) Ashutosh Jha v. ITO [IT Appeal No. 188 (Ran.) of 2019 dated 30-4-2021] [2021] 129 taxmann.com 204/190 ITD 450 (Kol. - Trib.).

7. We find that the assessee has purchased the flat vide agreement dated 13-7-2009 and the section 56(2)(x) of the Act was not in the statute book, and also it is well settled principle of Law that a charging section cannot be pressed into service retrospectively unless it is specifically provided for by the legislature. The provisions of Sec. 56(2)(x) of the Act are incorporated in the Finance Act 2017 with the prospective applicability from A.Y.2017-18 and the transactions entered into prior to 1-4-2017 would not suffer any implications of the section. Whereas in the present case, the transaction of purchase of flat is vide agreement dated 13-7-2009 and it was registered on 14-7-2017 in the F.Y.2018-19. Further, merely because the first payment of Rs. 2 lakhs was made on 8-10-2009 subsequently after date of agreement, the revenue cannot rely on the second proviso to section 56(2)(x) of the Act and tax the difference in stamp duty value of flat as per SRO and purchase consideration as per agreement. Since the section 56(2)(x) of the Act is not applicable to the assessee, as the agreement was entered prior to 1-04-2017, hence the second proviso cannot be made applicable and the assessee cannot be fastened the liability in the light of second proviso to section 56(2)(x) of the Act. We considering the facts, circumstances, submissions, ratio of the judicial decisions set-aside the order of the CIT(A) and direct the Assessing officer to delete the addition and allow the grounds of appeal in favour of the assessee.

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

9. The facts of the case of the assessee are similar to the facts noted as per the above judgment. Considering the above judgment and findings recorded by the CIT (A) as noted above we do not find any infirmity in the order of the CIT (A), Accordingly, respectfully following the above judgment, we dismiss the appeal of the Revenue.

10. Since we have dismissed the appeal of the Revenue, therefore following the above, we also dismiss the Revenue's appeal in ITA No.1464/Bang/2024.

11. In the result, the appeals of the Revenue are dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(SOUNDARARAJAN K.)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated : 20.12.2024.
/NS/*

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.