

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

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA No.5927/M/2024
Assessment Year: 2017-18**

Ms. Lila Tejpal Jain, 13, Ground Floor, Gandhar Tower, Barkut Wadi, Sayani Road, Prabhadevi SO Mumbai, Maharashtra – 400 025 PAN: ATLPJ0769P	Vs.	Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC) Delhi
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Kiran Unavekar, Ld. Sr. D.R.

Date of Hearing : 15.01.2025
Date of Pronouncement : 30.01.2025

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 27.09.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2017-18.

2. The notice sent to the Assessee at the address mentioned in Form No.36 has been returned back by the Postal Department with the remarks "left", meaning thereby the Assessee is not situated at the address mentioned in Form No.36 and therefore in the constrained circumstances, this Court is inclined to decide this appeal while hearing the Ld. D.R. and considering the orders passed by the authorities below and the material available on record.

3. From the orders passed by the authorities below, it appears that the case of the Assessee was reopened u/s 147 of the Act after receiving the information about the alleged significant transaction done by the Assessee as under:

<i>Nature of transaction</i>	<i>Consideration amount</i>	<i>Stamp value</i>	<i>Difference</i>
<i>Purchase of immovable property</i>	<i>Rs.47,00,000/-</i>	<i>Rs.57,88,862/-</i>	<i>Rs.10,88,862/-</i>

4. Though the Assessing Officer (in short "the AO") has issued various statutory notices to the Assessee, however, the Assessee except responding in part on one occasion, eventually made no compliance. Therefore, considering the case of the Assessee and perusing the information gathered from insight portal, it was observed by the AO that the Assessee had purchased an immovable property for a consideration of Rs.47,00,000/-, whereas the value of the said property as per stamp value is Rs.57,88,862/-.

Therefore, the transaction attracts scrutiny u/s 56(2)(vii)(b)(ii) of the Act. The Assessee failed to file its return of income for the relevant assessment year, due to which the differential amount of Rs.10,88,862/- has escaped taxation. As the Assessee has not submitted any reply with regard to the above, except filing bank statement and computation of income, therefore it was presumed by the AO that the Assessee has nothing to say. The AO ultimately made the addition of Rs.10,88,862/- u/s 56(2) of the Act (being difference between stamp duty value of Rs.57,88,862/- and the purchase price of Rs.47,00,000/-).

5. The Assessee, being aggrieved, challenged the said addition by filing first appeal before the Ld. Commissioner and except filing the following grounds of appeal challenging the order dated 06.05.2023 passed by the AO u/s 147 of the Act, eventually filed no additional evidence.

“1. The case involved is about differences in market rate/value and because of differences in value comes under section 50C for seller and section 56(2) (vii) (b) for purchaser.

2. Assessee is holding a property in the area having normal property value comes to amount of Rs 57, 88,862. Explanation for differences in value adopted by assessee:-

- 1. The property in which assessee is holding property is not at par with the other property in the same area.*
- 2. This is how property is different with other property in same locality.*
 - a. Construction was of old time.*

- b. No parking was available.*
- c. Condition of build was not good but it was worst.*

Because of above shortcomings, the demand for such property is in not at par with other standard properties. The reason for such difference in value of property is explained above and in actual it is used as office and not shop. So there should be no reason for invocation of section 56(2)(vii) (b) of Income Tax Act.

2) Property for which notice was served is a joint property. Notice was served to both the person and at the end same income is taxed fully in the hands of both the person. When income is known and who have earned it is also known how protective assessment can be made?

When it is a joint property income should be taxed in its proportion of share in such property or fully in hands of Primary joint holder only.

Addition to income under section 56(2)(vii)(b) of Rs 10,88,862 cannot be separately made to both the joint holder of property and it will amounts to double taxation.”

5.1 The Ld. Commissioner therefore by observing “*that during the course of appellate proceedings, no additional ground(s) of appeal was/were taken by the Assessee and no additional evidence was filed*”, ultimately affirmed the aforesaid addition of Rs.10,88,862/- made by the AO, by dismissing the appeal of the Assessee. The Assessee being aggrieved is in appeal before this Court.

6. Having heard the Ld. D.R. and perused the material available on record, this Court has observed that the Assessee before the Ld. Commissioner has claimed as under:

“With reference to the above captioned reference & subject and in continuation of our earlier submission, we hereby beg to submit grounds of Appeal against the order passed u/s 147 dated 06/05/2023 as under:

1) Location of the office: -. The Location in which assessee is holding property is not at par with the other property in the same area.

2) Normal Valuation not applicable to every single property: - Value of property as calculated by ready reckoner is not applicable to every single property. The value of property under scrutiny is not matched with the rate of ready reckoner because of following reasons:-

- Construction was of old time.

- No parking was available - Condition of build was not good but it was worst. (Same could be confirmed through Picture attached)

Because of above shortcomings, the demand for such property is in not at par with other standard properties hence the valuation is below the standard.

3) Double taxation: - Property for which notice was served is a joint property. Notice was served to both the person and at the end same income is taxed fully in the hands of both the person.

When income is known and who have earned it is also known how protective assessment can be made? When it is a joint property income should be taxed in its proportion of share in such property or fully in hands of Primary joint holder only. Addition to income under section 56(2)(vii)(b) of Rs 10,88,862 cannot be separately made to both the joint holder of property and it will amounts to double taxation.”

6.1 The Ld. Commissioner, by considering the aforesaid reasons given by the Assessee for difference in valuation, observed that the reasons given by the Assessee for the difference in stamp duty valuation and purchase consideration, is not tenable as the Assessee has not given any other reasons/documents to substantiate its claim, except a photograph, which also does not justify the iteration for explaining the difference.

7. This Court has given thoughtful considerations to the findings of the authorities below and the claim of the Assessee as observed above. The Assessee by mentioning the facts, has tried to contend that the location/property is not at par with the other property in the same area. Construction of the property is of old time, no parking is available and condition of the building is not good but the same is worst. On the aforesaid shortcomings, the demand for such property is not at par with other standard properties. Hence, the valuation is below the standards.

7.1 The Assessee further claimed that even otherwise the property is a joint property. Though the notice was served to both the joint owners, however at the end, the differential amount was taxed fully in the hands of Assessee only. When income is known and who have earned is known, then how protective assessment can be made. The Assessee further claimed that when the property is a joint property then the income should be taxed in its proportion of shares in such property but not fully in the hands of primary joint holder only. Even the same addition u/s 56(2)(vii)(b) of the Act, cannot be made separately in the hands of both the joint holders of the property, as it will amount to double taxation.

7.2 From that above, it is clear that admittedly, the authorities below have not considered the aforesaid contentions vis-à-vis reasons for low price of property and the property was purchased and held in joint ownership and therefore, if any differential amount is to be taxed then the same is required to be taxed proportionately in the hands of both the joint owners but not in one hand entirely. Thus, this Court for the just and proper decision of the case and in the interest of substantial justice, is inclined to remand the instant case to the file of the AO for determination afresh by considering the aforesaid contentions raised by the Assessee as well as calling for the valuation report from the DVO, if desires so. Thus, the case is accordingly remanded to the file of the AO.

8. In the result, the appeal filed by the Assessee stands allowed for statistical purposes.

Order pronounced in the open court on 30.01.2025.

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.
Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench
//True Copy//

By Order

Dy./Asstt. Registrar, ITAT, Mumbai.