

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

Before Smt. Kavitha Rajagopal (JM) & Shri Omkareshwar Chidara (AM)

ITA No. 3651/MUM/2023 (Assessment Year : 2014-15)

Prasad Jaykar Shetty A-43, Building No. 2 Vishram Tower Wagle Estate Thane West-400 604.	Vs.	ITO, Ward-3(2) Ashar I.T. Park 6 th Floor, Room No. 04, Ambika Nagar, Wagle Estate Thane-400 604.
PAN : AOZPS2736L		
Appellant		Respondent

Assessee by	:	Shri Jagdish Shetty
Revenue by	:	Shri P.D. Chougule
Date of Hearing	:	18/02/2025
Date of pronouncement	:	24/02/2025

ORDER

Per Omkareshwar Chidara (AM) :-

The appellant took the following grounds of appeal in this case before the ITAT :

1. The Ld. Assessing Officer has erred in assessing the income of the appellant at Rs. 37,50,470/- instead of Rs.5,79,970/- returned. As such Aggregate additions of Rs.31,70,500/- may please be deleted
2. The Ld. CIT (A) has erred in law and on facts in not considering the additional evidence without observing the principles of natural justice.
3. The Ld. CIT (A) has erred on facts in not considering the existence of agency relationship in the oral partnership.
4. The aforesaid grounds of appeal are without prejudice to each other.
5. The Appellant craves leave to add, amend, alter vary and/or withdraw any or all the above grounds of Appeal

2. The Ld. AO made an addition of Rs. 31,70,500/- under section 56(2)(vii)(b)(ii) of the I.T. Act by stating as follows while completing the assessment under section 143(3) of the Act :-

“Therefore by virtue of provision of section 56(2)(vii)(b)(ii) of the I.T.Act,1961, the amount of Rs. 31,70,500/- is liable to be treated as income of the assessee. The provision of section 56(2)(vii)(b)(ii) of the I.T.Act,1961 says that, "Where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1 day of October 2009 any immovable 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 shall be chargeable to Income Tax under the head Income from other sources."

3. Aggrieved by the addition, the appellant filed an appeal before Ld. CIT(A), and certain additional evidences were filed for the first time, like copy of Development agreement with Shri Developers dated 18.11.2015 and agreement of transfer of flats to legal heirs and requested the Ld. CIT(A) to consider the total actual consideration paid Rs. 86,92,000/-. The Ld. CIT(A) at page 16, paragraph 7.5 and 7.6 held that the corroborative documents to these additional evidences were not filed before him and hence the appeal of the appellant was dismissed, as the appellant failed to invoke any exception provided under sub-Rule(1) of Rule 46A of I.T. Rules.

4. The appellant escalated the appeal to ITAT and filed an appeal by taking Grounds of Appeal as mentioned in page No. 1 of this order.

5. During the appellate proceedings before the Bench, it was argued by Ld. AR of the appellant that he was never asked to produce any additional documents and without giving any opportunity to appellant, the appeal was dismissed.

6. The Ld. DR relied on the orders of Ld. AO and Ld. CIT(A).

7. Heard both sides. After perusing the orders of lower authorities, it is decided to give an opportunity to the appellant to produce relevant documents before Ld. CIT(A). The Ld. CIT(A) is directed to take all relevant documents and pass an appeal order on merits. The appeal is remitted to the file of Ld. CIT(A) with the above direction.

8. The appeal of appellant is allowed for statistical purposes.

Order pronounced in the open Court on 24/02/2025.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Mumbai; Dated: 24/02/2025

Copy of the Order forwarded to :

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

//True Copy//

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BY ORDER,
(Assistant Registrar)
ITAT, Mumbai