

IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGARAO, JUDICIAL MEMBER

SMC MATTER

ITA no.564/Nag./2024

(Assessment Year : 2014-15)

Nitin Narayan Kadamdhad
116-B, Shiv Nagar, Nandanvan
Nagpur 440 008 PAN – AHBPK8374R

..... Appellant

v/s

Income Tax Officer
Ward-4(5), Nagpur

..... Respondent

Assessee by : Shri Ritesh Mehta
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 10/02/2025

Date of Order – 05/03/2025

ORDER

This appeal by the assessee is against the impugned order dated 18/09/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2014-15.

2. The assessee has raised following grounds:-

"1. That the learned A. O has wrongly applied the provision of Sec. 56(2)(vii)(b)(ii) which was inserted wef 1st April 2014 prospectively.

2. That the learned A. O has hurriedly made the addition without giving any reasonable opportunity to the assessee for proving the market value.

3. That the learned A. O has not been fair in getting the opinion form the valuation officer regarding the market value of the said property.

4. That the learned A. O has failed to prove that an additional amount over and above the agreement value has been paid by the appellant to the seller thereby causing any loss to the revenue.

5. That the learned A. O has failed to give benefit of the 1st provision of Sec. 56(2)(vii) to the appellant.

6. That the learned A. O has failed to acknowledge the fact that the property was situated in a lower-class area and hence fetched low price.

7. Any other ground of appeal that may be raised from time to time in course of appellate proceedings.

PRAYER: To grant the stay against the demand and recovery action to be taken by the jurisdictional assessing officer as the appellant has preferred an appeal before this Hon'ble Income Tax Appellate Tribunal and is confident of getting justice."

3. At the outset, I need to mention here that the assessee has filed an application for grant of stay against the demand raised by the Assessing Officer for the assessment year 2014-15 for ₹ 2,98,040. The said stay application is hereby rejected, as I am proceeding to dispose off the corresponding appeal filed by the assessee on merits.

4. Facts in Brief:- The assessee is an Individual and is engaged in the business of civil contractor involved in the construction of civil structures and building. During the year under consideration, the assessee purchased an immovable property for a consideration of ₹ 60,00,000 from M/s. Shri Gurukrupa Builders and Developers, vide sale agreement dated 01/06/2012, and received possession on the same day by executing the documents which were registered on 27/06/2013. The market value as per stamp duty reckoner of the said property was ₹ 69,76,000, on the date of registration i.e., on 27/06/2013. It is pertinent to mention here that the said property was purchased by the assessee during the financial year 2012-13 relevant to the assessment year 2013-14 vide agreement dated 01/06/2012 and the

possession was taken on the very same date while making part payments of the consideration on various dated during the financial year 2012–13 relevant to the assessment year 2013–14. Out of ₹ 60 lakh consideration value, the assessee paid ₹ 27 lakh by account payee cheque during the financial year 2012–13 relevant to the assessment year 2013–14. The Assessing Officer, however, held that the assessee could not prove the land is in stock-in-trade. He further observed that the assessee had paid stamp duty of ₹ 4,55,000, on the value adopted for stamp duty purpose. Hence, the difference of purchase consideration of ₹ 60,00,000 and the market value of ₹ 69,76,000, aggregating to ₹ 9,76,000 was proposed to be treated as "Income From Other Sources" by invoking provisions of section 56(2)(vii)(b)(ii) of the Act. Consequent upon issuance of assessment order passed by the Assessing Officer, the assessee being aggrieved filed appeal before the first appellate authority agitating the addition made by the Assessing Officer.

5. On appeal, the learned CIT(A) dismissed the appeal filed by the assessee by observing as under:–

"4. Decision:

4.1 The present appeal is against the AO's Order u/s 143(3) of the I.T. Act, 1961 dated 29.12.2016 for the AY2014-15. The assessee is a civil contractor involved in construction of civil structures and building, filed his return of income for the AY 2014-15 on 30.03.2015 admitting total income of Rs 10,76,980/-. The case was selected for scrutiny under CASS.

4.2 During the assessment proceedings, AO has observed that the assessee purchased an immovable property consisting of Plot no.165, Nagpur. He observed a variance between the purchase consideration of the property which was shown at Rs.60,00,00/- and the stamp duty value of the property which was at Rs.69,76,000/-. The appellant had paid the stamp duty of Rs. 4,45,000/- on the stamp duty valuation of the property vide sale deed dated: 27.06.2013. Therefore, given this difference, the AO considered applying the provisions of section 56(2)(vii)(b)(ii) of the IT Act and made the addition of Rs. 9,76,000/- as an income from other sources and assessed total income to

the tune of Rs. 20,52,980/-, raised the demand of Rs. 4,84,660/-. Aggrieved by this decision of AO, the Appellant has filed the current appeal with 06 Grounds, of which Grounds 1 to 5 refer to the above addition and Ground 6 is general in nature.

4.3 During the appellate proceedings, appellant has submitted that the property was registered in the F.Y. 2013-14 on 27.06.2013 for a consideration of Rs.60,00,000/- whereas the agreement to sale was entered in F.Y 2012-13. The initial payments were also made in F.Y. 2012-13 through account payee cheque only. He further submitted that the Learned A.O has wrongly applied the Provision of Sec. 56(2) (Vii)(b). which was inserted wef 1st April, 2014 prospectively. In the case of assessee, the assessee has already purchased the property in FY 2012-13 and has also made payment through cheque before 1st April, 2014. Hence, the said transaction was squarely not covered under erstwhile Sec. 56(2)(Vii)(b).

4.4 The averments of the appellant and facts of the case have been duly considered. It is evident from submission that the appellant has made agreement vide dated 01.06.2012, and the land was registered vide sale deed on 27-06-2013. The part payments for the property were made from 26.02.2013 onwards. The question to be decided in the instant case is whether in the facts and circumstances of the case, provision of section 56(2)(vii)(b)(ii) are applicable or not. The Provision of Sec. 56(2)(vii)(b)(ii) has been inserted in the Income tax Act w.e.f 1.4.2014 and before that Sec. 56(2)(vii)(b) was read as any immovable property, without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property". The plain reading of Sec 56(2)(vii)(b) is as follows:

[(b) any immovable property,-

(1)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.]

As per the above Proviso, if the date of agreement and the date of registration are not the same, the stamp value duty on the date of agreement may be taken up for the purposes of that section provided the amount of consideration or part thereof was paid on or before the date of agreement. In the instant case, the date of agreement is 01.06.2012 whereas the part payment of the consideration was paid from 26.02.2013 onwards. Hence, the

proviso to Sec 56(2)(vii)(b) is not applicable and the benefit for considering the stamp value duty as on the date of agreement is also not applicable.

So, it is clear from the provisions of the Act that the appellant entered into transaction by registering the sale deed on 27.06.2013 where there was an existence of Section 56(2)(vii)(b)(ii) of the Act and AO is right in invoking the provision for inadequate consideration, which is in existence at the time of transaction.

4.5 In the light of the above facts and findings, it is held that the provisions of Sec. 56(2)(vii)(b)(ii) are squarely applicable to this transaction of the appellant and the addition is sustained."

The assessee being still aggrieved is in further appeal before the Tribunal.

6. The learned Authorised Representative for the assessee submitted that the learned CIT(A) has dismissed assessee's appeal on the ground that on the date of registering the sale deed on 27/06/2013, the provisions of section 56(2)(vii)(b)(ii) of the Act was in force and hence upheld the view of the Assessing Officer. The assessing officer has made this arbitrary addition of ₹ 9,76,000, as the agreement for transfer of this property were entered on 01/06/2012 (during the financial year 2012-13) and substantial part payment has also been already made during the financial year 2012-13 as well the possession was also received on the same date i.e., 01/06/2012 while the provision of section 56(2)(vii)(b)(ii) were not a part of law at that time i.e., during the financial year 2012-13 relevant to the assessment year 2013-14. He thus prayed that the addition be deleted accordingly.

7. The learned Departmental Representative, Shri Abhay Y. Marathe, appearing on behalf of the Revenue argued that in the absence of proper explanation with valid supporting evidences to prove the source, the

arguments / submissions of the assessee cannot be accepted and hence, failure of the assessee to explain her case with proper supporting documents and evidences, invoking of provisions of section 56(2)(vii)(b)(ii) of the Act by the Assessing Officer is justified and the appeal filed by the assessee be dismissed.

8. I have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. The addition under section 56(2)(vii)(b)(ii) of the Act is concerned, there is no dispute with regard to the fact that assessee had purchased immovable property and there was a difference of value as disclosed by the assessee and adopted by the Stamp Valuation Authority. The Assessing Officer, by invoking provisions of section 56(2)(vii)(b)(ii) of the Act, made addition of ₹ 9,76,000, which is the difference of purchase consideration of ₹ 60,00,000 and stamp duty valuation of ₹ 69,76,000. I find that the Revenue's action in invoking provisions of section 56(2)(vii)(b)(ii) is not sustainable in the eyes of law for the reason that the agreement executed on 01/06/2012, between the purchaser and the seller which fall during the financial year 2012-13 relevant to the assessment year 2013-14. The possession was also took place on the same date i.e., on 01/06/2012. Moreover, substantial part of payment has also been made during the financial year 2012-13 relevant to the assessment year 2013-14, while the provisions of section 56(2)(vii)(b)(ii) of the Act was not in existence during this period of transaction and the date of taking over the possession. In fact, the provisions of section 56(2)(vii)(b)(ii) of the Act have been inserted in the statute w.e.f. 01/04/2014 i.e., during the assessment year

2014-15 and not before that while the assessee has already executed agreement during the assessment year 2013-14 itself and hence the provisions of section 56(2)(vii)(b)(ii) are not applicable to the said transaction per se. Thus, consequent upon such amendment inserted in the statute, the addition made by the Assessing Officer and confirmed by the learned CIT(A) has no legs to stand. Accordingly, the assessee succeeds. I thus set aside the impugned order passed by the learned CIT(A) by allowing all the grounds raised by the assessee.

9. In the result, assessee's appeal stands allowed.

Order pronounced in the open Court on 05/03/2025

NAGPUR, DATED: 05/03/2025

**Sd/-
V. DURGA RAO
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur