

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

SMC MATTER

ITA no.154/Nag./2024
(Assessment Year : 2017-18)

Roshan Diwakarrao Dhore
Capitol Heights, Medical Square
Nagpur 440 003 PAN – ADAPD5640A

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-2(1), Nagpur

..... Respondent

Assessee by : Shri Mahavir Atal
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 18/02/2025

Date of Order – 21/03/2025

ORDER

Appeal filed by the assessee is emanating from the impugned order dated 17/01/2025, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, [*learned CIT(A)*], for the assessment year 2017-18.

2. Following grounds have been raised by the assessee:-

"Whether on the facts and circumstances the learned Assessing Officer was justified in making an addition of Rs 15,05,000/-under section 56(2)(vii)(b)."

3. The assessee, for the year under consideration, is an Individual. On 03/04/2019, a search and seizure operation was conducted under section 132 of the Income Tax Act, 1961 (*"the Act"*) at the residential premises of the

assessee. The Assessing Officer issued notice dated 20/03/2020, under section 153A of the Act in response to which, on 31/07/2017, the assessee filed its return of income disclosing total income of ₹ 8,40,000. The Assessing Officer, adopting due process, completed assessment under section 143(3) r/w section 153A of the Act on 23/04/2021, determining total assessed income of ₹ 23,45,300, after making addition of ₹ 15,05,000, under section 56(2)(vii)(b) of the Act.

4. On appeal, the learned CIT(A) confirmed the assessment order passed by the A.O. The decision arrived by the learned CIT(A) is as under:–

"4. Discussion and decisions:–

I have perused the submission of the appellant and the assessment order. Considering the above facts, I am of the view that the AO was justified in adding Rs. 15,05,000/- to the income of the Appellant as the appellant had taken possession of the above mentioned property and the agreement regarding sale purchase has been registered with the registrar. Hence considering the above facts, the appeal of the appellant is hereby dismissed."

5. Before us, the learned Authorised Representative for the assessee assailing the impugned order passed by the learned CIT(A), by way of written submissions furnished, argued as under:–

"The Appellant is an individual and the present appeal is filed against the addition of Rs. 15,05,000/- under section 56(2)(vii)(b) as difference in ready reckoner value and actual sale consideration for purchase of immovable property on the basis of Agreement to sale.

However, in actual sale deed or a conveyance deed is not executed till date, as the said property is in litigation.

The booking of the said property was done in 2007, however latter the assessee came to know that the said floor (i.e. 5th floor), is illegally constructed by the builder and the gram panchayat has imposed an embargo on the sale of the said apartment.

Therefore, considering the matter of litigation, Appellant did not execute the sale deed and waiting to resolve the matter of litigation after that Appellant will execute the sale deed.

In the absence of any sale deed or conveyance deed, the title of the property still vest with the builders and therefore, said transaction has not resulted in any purchase of immovable property by the assessee. Therefore, the transaction will not get covered by the deeming fiction of section 56(2)(vii)(b).

However, the learned Assessing officer ignored all important facts and submission of the appellant and treated difference amount as income under section 56(2)(vii)(b) and the same has been upheld by the learned CIT(Appeal).

Considering the above facts, the assessee prays that the addition made and upheld by the CIT (Appeal) is unjustified and deserve to be deleted."

6. The learned Departmental Representative relied on the impugned order passed by the learned CIT(A).

7. I have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. In this case, the assessee has purchased immovable property executing registered sale agreement with the Registrar, paid consideration of the property and also took possession which amounts to transfer keeping in view the provisions of section 2(47) of the Transfer Act and hence the provisions of section 56(2)(vii)(b) of the Act clearly applies. By rejecting the argument of the learned Authorised Representative for the assessee that the registration has not taken place and, therefore, it does not amount to "transfer", I hold that the provisions of section 56(2)(vii)(b) of the Act are indeed apply. Thus, all the grounds raised by the assessee are dismissed.

8. In the result, appeal by the assessee stands dismissed.

Order pronounced in the open Court on 21/03/2025

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