

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

BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER

ITA NO. 4175/MUM/2016 : **(A.Y : 2006-07)**

Kulbhushan Dhanpal Jain Vs. ITO-4(3)(4), Mumbai
Plot no. 5, 1st floor, Dhananjay, (Respondent)
Gulmohar, Cross Road, No. 5
JVPD Scheme, Irla,
Mumbai 400 049 (Appellant)
PAN : AAAPJ8014D

Assessee by : **Shri K.R. Lakshminarayanan**
Revenue by : **Ms. Beena Santosh**

Date of Hearing : **28/12/2016**

Date of Pronouncement : **06/01/2017**

ORDER

PER G.S. PANNU, AM :

The captioned appeal by the assessee is directed against the order of CIT(A)-9, Mumbai dated 29.03.2016, pertaining to the Assessment Year 2006-07, which in turn has arisen from the order passed by the Assessing Officer, Mumbai dated 18.02.2014 under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act').

2. Although the assessee has raised multiple Grounds of appeal, but the only grievance is with respect to an addition of Rs.18,61,648/- made by the Assessing Officer by invoking Sec. 56(2) of the Act.

3. Briefly put, the relevant facts are that the appellant is an individual who was Member of a group housing society, i.e., Greater Bombay Cooperative Housing Society Ltd. The said society was allotted a plot at Vile Parle, Mumbai free of cost by the Bombay Housing Board somewhere in 1958. On 13.10.1996, the assessee entered into a Memorandum of Understanding with one, M/s. Lavlesh Classic Developers Pvt. Ltd. for developing a club at the said land and in exchange, the society was to receive seven constructed buildings at Mira Road, Thane. Dispute arose between the society and the aforesaid company and ultimately somewhere in 2005 society received a compensation of Rs.6,50,00,000/- and the society relinquished its right in the property situated at Mira Road. Subsequently, by way of an agreement dated 17.8.2005, society invested the said amount of compensation with a builder, namely M/s. Emerald Realtors Pvt. Ltd. for construction of 27 flats at Dheeraj Diamond, Malad (W), New Link Road. The society through a Special General Body meeting held on 11.6.2006 allotted the said 27 flats to its Members free of cost, which included the assessee before me. As per the Assessing Officer, in terms of the agreement dated 17.8.2005 with M/s. Emerald Realtors Pvt. Ltd., the assessee obtained a right to have a flat free of cost and, therefore, he brought to tax the value of such flat, i.e., Rs.18,61,148/- as a gift within the meaning of Sec. 56(2) of the Act. The CIT(A) has also affirmed the said decision of Assessing Officer, against which the assessee is in further appeal before the Tribunal.

4. At the time of hearing, the only plea raised by the assessee is that the said action of Assessing Officer is not falling within the scope and ambit of Sec. 56(2)(v) of the Act as it stood for the instant assessment year. In sum and substance, the plea of assessee is that for assessment year under consideration, only 'any sum of money' is covered by Sec. 56(2)(v) of the Act whereas the Assessing Officer has sought to include the value of right to get a flat, which is not permissible for the instant assessment year.

5. On the other hand, the Id. DR appearing for the Revenue has merely pointed out that assessee has received the flat free of cost and, therefore, the same is assessable as gift u/s 56(2) of the Act.

6. I have carefully considered the rival submissions. The facts in the present case lie in a narrow compass, as noted in the earlier paragraphs. It is also emerging from the orders of the authorities below that the possession of said flat was given to the assessee on 19.6.2006. In the instant assessment year, corresponding to the previous year 1.4.2005 to 31.3.2006, the Assessing Officer has made out a case that assessee obtained a right to get a flat free of cost in view of the Memorandum of Understanding signed between the society and M/s. Emerald Realtors Pvt. Ltd. on 17.8.2005. No doubt, in terms of Sec. 56(2)(v) of the Act, as it stood for Assessment Year 2006-07, 'any sum of money' exceeding a specified amount received without consideration was liable to be assessed. So however, it is not the case of Assessing Officer that assessee has received the amount of Rs.18,61,648/- in the shape of money. The case made out is that assessee has obtained a

right to get a property free of cost. Quite clearly, the same is not a 'sum of money' which is liable to be included in Sec. 56(2)(v) of the Act as it stood for Assessment Year 2006-07. Notably, Finance (No. 2) Act, 2009 amended Sec. 56(2) of the Act by inserting a new clause (vii) to provide that the value of any property received without consideration or for an inadequate consideration will also be taxed as 'income from other sources'. The said amendment is effective from 1.10.2009. In any case, it is not a case of Assessing Officer that assessee has received any immovable property and, therefore, *qua* the instant assessment year the action of Assessing Officer is beyond jurisdiction. Furthermore, even if one is to consider that what is taxed by Assessing Officer is a right to get property, which is a moveable property, yet it is not equivalent to 'any sum of money' which alone can be taxed u/s 56(2)(v) of the Act in the instant assessment year. Therefore, in this view of the matter, it has to be held that the stand of Assessing Officer is without jurisdiction and is hereby set aside.

7. In the result, appeal of the assessee is allowed, as above.

Order pronounced in the open court on 6th January, 2017.

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 6th January, 2017

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai