

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 202/Mum/2023**

**(A.Y: 2018-19)**

Benudhar Gokulanand Biswal, H 302, Shanti Complex, Saki Vihar Road, Powai, Mumbai – 400072,	Vs.	National E assessment Centre, Room.no 401,2 nd Floor, E Ramp, Jawaharlal Nehru Stadium, New Delhi-110003.
PAN/GIR No. : ADOPB9106B		
Appellant	..	Respondent

Appellant by :	Mr.Tanmay Phadke.AR
Respondent by :	Ms.Naina K Kumar.DR

Date of Hearing	20.04.2023
Date of Pronouncement	29.05.2023

**आदेश / O R D E R**

**PER PAVAN KUMAR GADALE JM:**

The appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi/CIT(A) passed U/sec 250 of the Act. The assessee has raised the following grounds of appeal:

*1.On the facts and in the circumstances of the case and as per the law, the National Faceless Appeal Centre/Commissioner of Income Tax (Appeals) [“the learned Commissioner (Appeals)]despite concluding that the agreement for sale was*

*entered into on 13.07.2009 (i.e. prior to 01.04.2017), failed to appreciate that the provisions of Section 56(2)(x) of the Act which was inserted vide Finance Act, 2017 and made expressly applicable from 01.04.2017 are not applicable to the facts under consideration. The addition of Rs. 9,88,343/(50% of Rs. 19,76,686/-) as confirmed by the Learned Commissioner (Appeals) under Section 56(2)(x) of the Act is bad in law and may be deleted.*

*2. Without prejudice to the above and on the facts and in the circumstances of the case and as per the law, the Appellant mentions that the date of agreement was inadvertently stated as 13.07.2009 instead of 08.10.2009 before the learned assessing officer and the learned Commissioner (Appeals). Since the payment of Rs. 2,00,000/- and the date of agreement (i.e. 08.10.2009) is the same, the benefit of the second proviso to Section 56(2)(x) of the Act is available and the addition of Rs. 9,88,343/(50% of Rs. 19,76,686/) under Section 56(2)(x) of the Act is not tenable. Thus, the said addition may be deleted.*

*3. Without prejudice to the above and on the facts and in the circumstances of the case and as per the law, the learned Commissioner (Appeals) erred in confirming the addition of Rs. 9,88,343/(50% of Rs. 19,76,686/) under Section 56(2)(x) of the Act on the observation that since the first payment of Rs. 2,00,000/by way of cheque was made on 08.10.2009 which was subsequent to the date of agreement i.e. 13.07.2009 the benefit of the second proviso to Section 56(2)(x) of the Act is not available. Thus, the addition of Rs. 9,88,343/- (50% of Rs. 19,76,686/) as confirmed by the Learned Commissioner (Appeals) under Section 56(2)(x) of the Act is bad in law and may be deleted.*

4. *Without prejudice to the above, the learned commissioner (Appeals) failed to appreciate that the section 56(2)(x) of the Act including its second proviso was incorporated on 01.04.2017 and the transaction was entered into on 13.07.2009 on which there was neither deeming fiction of Section 56(2)(x) of the Act nor was the benefit as carved out under the second proviso available. The Appellant cannot be fastened with a tax liability by invoking the proviso which was not available on the statute book on the date of execution of the agreement. Thus, the addition of Rs. 9,88,343/ - (50% of Rs. 19,76,686/-) as confirmed by the Learned Commissioner (Appeals) under Section 56(2)(x) of the Act is bad in law and may be deleted.*

5. *Without prejudice to the above, for the sake of presumption without any admission, it is considered that the provisions of Section 56(2)(x) of the Act were applicable to the present case, in such a scenario, the second proviso to the section would be read down to achieve its purpose when there was no observation by the Revenue that the Appellant had paid over and above the sale consideration and the addition of Rs. 9,88,343/(50% of Rs. 19,76,686/-) as confirmed by the Learned Commissioner (Appeals) under Section 56(2)(x) of the Act may be deleted.*

6. *The Appellant craves leave to add, alter, rescind, or amend any of the above grounds of appeal*

2. The brief facts of the case are that, the assessee is engaged in the business of manufacturing of transformers and electrical intermediate items. The assessee has filed the return of income for the A.Y 2018-19 on 28.10.2018 disclosing a total income of

Rs. 9,50,340/- and the return of income was processed u/s 143(1) of the Act. Subsequently the Assessing Officer (AO) has received the information that the assessee has purchased property on 14.07.2017 for a consideration of Rs.32,97,500/-, whereas the stamp valuation of the property is Rs. 52,74,186/-, therefore the AO invoked the provisions of Sec. 56(2)(x) of the Act as the assessee has failed to disclose fully material facts to the extent of Rs.19,76,686/-. Subsequently, the AO has issued notice u/s 143(2) and 142(1) of the Ac along with the questionnaire. In compliance to the notice, the Ld. AR of the assessee has filed the details on 12.02.2021 and furnished copy of purchase deed and some copies of payment proofs and the assessee has not filed other details as per the questioner.

3. Further, the AO has issued a show cause notice and it was duly complied by the assessee. The AO on perusal of details and purchase agreement found that the assessee has purchased a property from HDIL at an agreed price of Rs.32,97,500/- and got registered in the year 2017 at market value of Rs. 52,74,186/- and the stamp valuation and registration fee of Rs.

2,94,000/- was paid. Further the AO has observed that the assessee has not furnished bank account details including the foreign bank account highlighting the payments relating to purchase of property and also the initial agreement with the seller was not produced. Finally the AO has made an addition u/s 56(2)(x) of the Act being the difference in value of property which worked out to Rs.19,76,686/- and assessed the total income of Rs. 29,27,030/- and passed order u/s 143(3) r.w.s 143(3A)&143(3B) of the Act dated 18.03.2021.

4. Aggrieved by the order, the assessee has filed an appeal with the CIT(A), whereas the CIT(A) has considered the grounds of appeal, findings of the A.O and the assessee submissions which could not be filed in the assessee proceedings referred at page 7 to 9 of the order and CIT(A) has granted partial relief to the assessee and observed at Para 7 of the order read as under:

*1The purchase agreement is clearly stating that the assessee is the part owner*

*of the property. But the officer has included entire additional income and interest in the assessee income In fact, assessee owns only 50% of the property. Copy of agreement is attached.*

*2All the documents pertaining to co-owner Brajakishore Madan Panigrahi that were asked by the officer at the time of assessment which consists of Income Tax Return, Computation Sheet and Balance Sheet, Profit and Loss were submitted on February 23, 2021We are attaching again for your ready reference.*

*3The original purchase agreement date was 13th July, 2009 which is mentioned on the agreement but for the purpose of registration the M/s Housing Development and Infrastructure Limited (HDIL) (seller) had changed the year of purchase manually from 2009 to 2017. HDIL is currently under investigation in Mumbai for various frauds with Banks and other legal agencies. Copy of purchase agreement is attached.*

*4The M/s HDIL (seller) had changed the agreement date to 2017 from 2009on the top page of the agreement However, on page 18 at clause 10 of the purchase agreement, it is mentioned that all the payment for the property has to be done till 30.06.2011. Hence, it is proved that the property is purchased in 2009Also, major payments for the property were made starting from 2009 and copies of receipts were submitted to the learned assessing officer on February 12, 2021. Copies of receipts are attached for ready reference. 5The assessee and his*

*co-owner had made payments for the said property as mentioned below*

<i>Sr. No.</i>	<i>Date of Payment</i>	<i>Receipt No.</i>	<i>Cheque No.</i>	<i>Amount</i>
<i>1</i>	<i>22.10.09</i>	<i>HDILKPRB2009Oct00106</i>	<i>288227</i>	<i>90,000</i>
<i>2</i>	<i>22.10.2009</i>	<i>HDILKPRB2009OCT00105</i>	<i>675380</i>	<i>2,90,000</i>
<i>3</i>	<i>8.10.2009</i>	<i>HDILKPRB2009OCT00023</i>	<i>288218</i>	<i>2,00,000</i>
<i>4</i>	<i>20.10.2012</i>	<i>1100/2021/1600007117</i>	<i>100023</i>	<i>5,00,000</i>
<i>5</i>	<i>20.10.2012</i>	<i>1100/2012/1600007120</i>	<i>300145</i>	<i>50,000</i>
<i>6</i>	<i>20.10.2012</i>	<i>1100/2012/16000007119</i>	<i>200031</i>	<i>50000</i>
<i>7</i>	<i>18.05.2013</i>	<i>1100/2013/1600003584</i>	<i>100033</i>	<i>52,078</i>
<i>8</i>	<i>18.05.2013</i>	<i>1100/2013/1600003581</i>	<i>100035</i>	<i>15,400</i>
<i>9</i>	<i>18.05.2013</i>	<i>1100/2013/1600003580</i>	<i>633690</i>	<i>67,477</i>
<i>10</i>	<i>09.09.2017</i>	<i>1100/2017/160005070</i>	<i>207446</i>	<i>36,600</i>
<i>11</i>	<i>09.09.2017</i>	<i>1100/2017/1600005069</i>	<i>207446</i>	<i>22,247</i>
<i>12</i>	<i>09.09.2017</i>	<i>1100/2017/1600005068</i>	<i>033930</i>	<i>14,353</i>
<i>13</i>	<i>09.09.2017</i>	<i>1100/2017/1600005066</i>	<i>033930</i>	<i>37,906</i>
<i>14</i>	<i>09.09.2017</i>	<i>1100/2017/1600005067</i>	<i>033930</i>	<i>6,588</i>
		<i>Total</i>		<i>14,32,649</i>

*The above receipts were duly submitted to the learned assessing officer.*

*As Ms/HDIL (seller) is under liquidation and its owners are in judicial/police custody and not available we are trying to arrange more receipts for payments made.*

*1. The officer has issued order under section 56(2)(x) the Income Tax Act, 1961 which is effective from 01.04.2017, as the property is purchased in 2009 the aforesaid section does not apply to the assessee. Since the initial transaction started in 2009.*

*2Screen shot of submissions made as per the e-filing website is attached for ready reference.*

*3In view of the above, we kindly pray that kindly delete the additions made by the Learned Assessing officer and also consequential interest and initiation of penalty proceedings*

*7. I have considered the facts of the case, assessment order and assessee purchased a property from HDIL on 14-07-2017 for total consideration of Rs. 32,97,500/ value of which was determined at Rs. 52,74,186/ by the stamp authority for stamp duty purpose. The AO was of the view that this transaction attracted the provisions of sec. 56(2)(x) of the Act and the assessee did not disclose fully and truly all the material facts relating to the income of Rs. 19,76,686/- during the relevant year. The AO being not satisfied with the assessee's reply, made the addition of Rs. 19,76,686/- u/s. 56(2)(x) of the Act. In the written submissions uploaded on the ITBA Portal, the appellant has submitted that he had furnished all requisite documents before the AO to prove that he was the part owner (50%) of the property and other 50% was owned by co-owner Sh. Brajkishore Madan Panigrahi. The appellant has submitted that the original purchase agreement was executed on 13-7- 2009 but the HDIL had changed the year of purchase manually from 2009 to 2017, but on page no18 at Clause 10 of the agreement it was mentioned that all the payment for the property had to be done till 30-06-2011. The appellant has provided the details of payments in tabular form to emphasize that major payment towards purchase of property was made prior to the AY 2018-19. The appellant has contended that since transaction started in 2009, therefore, provisions of section 56(2)(x) of the Act are not applicable to the AY*

2018-19. Considering the facts of the case, am inclined to agree with the appellant's claim. I have gone through registered purchase deed dated 14-07-2017 and upon perusal of the same, find that the said document contains names of two persons as purchasers, first is Sh. Benudhar Gokulanand and second is Sh. Brajakishore Panigrahi This fact is further strengthened from the payment receipts towards purchase from the HDIL which are duly acknowledged by HDIL wherein also name of the appellant and name of Brajakishore Panigrahi are clearly reflecting Thus, there remains no doubt that the property in question was purchased by two persons and the appellant was not the only owner/purchaser of said property. Therefore, it is wrong on the part of the AO to hold that the assessee was the only owner of the said property.

Further, in the instant case, the AO invoked the provisions of section 56(2)(x) of the Ac, therefore, it is imperative to refer to the provisions of sec. 56(2)(x) which read as under:

"Income from other sources.

4356. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1) the following incomes, shall be chargeable to income-tax under the head "Income from other sources "namely:-

x) on or after the 1st day of April 2017,-

*any sum of money, without consideration the aggregate value of which (a) exceeds fifty thousand rupees, the whole of the aggregate value of such sum;*

*(b) any immovable property.-*

*(A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such 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: (B)*

*Following item (B) shall be substituted for the existing item (B) of sub-clause (b) of clause (x) of sub-section (2) of section 56 by the Finance Act, 2018, w.e.f. 1-4-2019:*

*for a consideration, the stamp duty value of such property as (B) exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:-*

*(i) the amount of fifty thousand rupees; and*

*(ii) the amount equal to five per cent of the consideration:*

*Provided that where the date of 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 agreement may be taken for the purposes of this sub-clause:*

*Provided further that the provisions of the first proviso shall apply only in a case where the amount of consideration referred to therein or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of agreement for transfer of such immovable property:*

*Provided also that where the stamp duty value of immovable property is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C the Assessing Officer may refer the valuation of such property to a Valuation Officer and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of this sub-clause as they apply for valuation sections;.....*

*From the plain reading of section, it is clear that provisions of section 56(2)(x) apply to any person who receive any sum of the money or property having value exceeding the specified amount on or after 01.04.2017 from any person or persons during the previous year. Further, the first proviso to section 56(2)(x)(b) of the Act provides that where the date of 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 agreement may be considered. The first proviso only comes into play if the assessee satisfies condition mentioned in second proviso to sub clause of 9(x) of clause (2) of section 56 of the Act which provides that THEN provisions of the first proviso*

*shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of agreement for transfer of such immovable property.*

*In the instant case, it is noted that the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same. The date of agreement as submitted by the appellant is 13-07-2009 whereas purchase deed was registered on 14-07- 2017. However, from the details of payments given in a tabular Form in para 6 (supra)it is seen that the first payment of Rs2,00,000/- by way of cheque has been made on 08-10-2009 vide cheque no. 288218. This date i.e. 08-10-2009 is subsequent to the date of agreement i.e. 13-07-2009 therefore as per second proviso to section 56(2)(x) of the Act, the appellant's claim is not allowable.*

*However, as the appellant is only 50% owner of the property purchased, only 50% of the difference in the stamp duty value and purchase consideration is to be added in the hands of the appellant. Thus, the addition of Rs. 19,76,686/- made by the AO is reduced to 50% of this amountthe appellant gets partial relief The ground raised by the appellant regarding this issue is partly allowed.*

Finally the CIT(A) has partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in granting partial relief and sustaining the addition to the extent of 50% difference of stamp duty value as per SRO and purchase consideration as the agreement overlooking the material facts that the purchase agreement is dated 13.07.2009 and it was registered on 14-7-2017. Whereas the purchase agreement was entered much prior to 01.04.2017 and the provisions of Sec. 56(2)(x) of the Act are incorporated from Finance Act 2017 and is applicable prospectively from 01.04.2017. The Ld.AR substantiated the Submissions with the factual paper book, judicial decisions and prayed for allowing the appeal. Per contra, the Ld.DR relied on the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue envisaged by the Ld.AR that, the CIT(A) has erred in sustaining addition to the extent of 50% of

difference in stamp duty value of the flat as per SRO and purchase consideration as per agreement overlooking the various facts and the evidences. We find that the purchase agreement is dated 13.07.2009 and it was registered on 14-7-2017 placed at page 1 to 37 of the paper book and the purchase agreement was entered much prior to 01.04.2017 and the provisions of Sec. 56(2)(x) of the Act are incorporated from Finance Act 2017 and is applicable prospectively from 01.04.2017. The Ld. AR submitted that the date of agreement was inadvertently mentioned as entered on 13.07.2019 instead of 08.10.2009. Further, the first/initial payment of Rs.2 Lakhs was made by cheque by the assessee, Whereas the date of agreement and date of initial cheque payment are prior to the incorporation of Sec. 56(2)(x) of the Act in the Finance Act 2017 effective from A.Y 2017-18. The Ld.AR has relied on the following judicial decisions.(i)*Principal Commissioner of income tax Vs Naina Saraf (2022)142 taxmann.com 147(Rajasthan)(9-05-2022)*(ii) *Rajib Rathindra Saha Vs Income Tax Officer (International Taxation)(2022)139 taxmann.com 211(Mumbai Trib)(21-02-2022* and (iii)*Shri Ashutosh*

*Jha (HUF) VS I.T.O Ranchi in ITA No.188/Ran/2019 dated 30-4-2021.*

7. We find that the assessee has purchased the flat vide agreement dated 13.07.2009 and the section 56(2)(x) of the Act was not in the statute book, and also it is well settled principle of Law that a charging section cannot be pressed into service retrospectively unless it is specifically provided for by the legislature. The provisions of Sec. 56(2)(x) of the Act are incorporated in the Finance Act 2017 with the prospective applicability from A.Y.2017-18 and the transactions entered into prior to 1.04.2017 would not suffer any implications of the section. Whereas in the present case, the transaction of purchase of flat is vide agreement dated 13.07.2009 and it was registered on 14-7-2017 in the F.Y.2018-19. Further, merely because the first payment of Rs.2 lakhs was made on 8-10-2009 subsequently after date of agreement, the revenue cannot rely on the second proviso to section 56(2)(x) of the Act and tax the difference in stamp duty value of flat as per SRO and purchase consideration as per agreement. Since the section 56(2)(x) of the Act is not applicable to the

assessee, as the agreement was entered prior to 1-04-2017, hence the second proviso cannot be made applicable and the assessee cannot be fastened the liability in the light of second proviso to section 56(2)(x) of the Act. We considering the facts, circumstances, submissions, ratio of the judicial decisions set-aside the order of the CIT(A) and direct the Assessing officer to delete the addition and allow the grounds of appeal in favour of the assessee.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on .05.2023.

Sd/-

Sd/-

**(B.R. BASKARAN)**  
**ACCOUNTANT MEMBER**

**(PAVAN KUMAR GADALE)**  
**JUDICIALMEMBER**

Mumbai, Dated 29 .05.2023

KRK, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT

ITA No. 202/Mum/2023  
Benudhar Gokulanand Biswal., Mumbai.  
- 17 -

5. DR, ITAT, Mumbai
6. Guard File

सत्यापित प्रति //True Copy//()

1.

आदेशानुसार/ BY ORDER,

( Asst. Registrar)  
ITAT, Mumbai