

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

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 409/MUM/2023
(Assessment Year: 2016-17)**

Ms. Shilpa Gautam

A-8/29, Rajawadi Coop Housing
Soc., Ghatkopar East, Mumbai-400073
[PAN: ADDPG0713G]

..... **Appellant**

Income Tax Officer

International Tax Ward-2(3)(1), Mumbai,
1727, 17th Floor, Air India Building,
Nariman Point, Mumbai - 400021

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Rajesh Athwale
For the Respondent/Department : Shri Soumendu Kumar Dash

Date

Conclusion of hearing : 02.05.2023
Pronouncement of order : 30.05.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal is directed against the Assessment Order dated, 24.01.2023, passed under Section 147 read with Section 144C(13) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'], as per directions, dated 20.12.2022, issued by the CIT (DRP-2), Mumbai-2 (hereinafter referred to as 'the DRP') under Section 144C(5) of the Act pertaining to the Assessment Years 2016-17.

2. The Grounds of Appeal raised by the Assessee are as under:

"1. The learned ITO erred in determining the income of the Appellant at INR 56,46,140/- against the returned income of INR 58,940/-.

2. *The learned ITO erred in making adjustment of INR 55,87,000 as income from other sources under Section 56(2)(vii)(b) in pursuance of the direction given by the DRP.*
3. *The learned ITO erred in not giving the effect to the first proviso to Section 56(2)(Vii)(b) of the Income tax Act. He should have considered the stamp duty valuation on the date of booking of the flat in May/June 2012 instead of agreement registered in March 2016.*
4. *The learned ITO erred in charging interest under Sections 234A, 234B and 234C of the Income Tax Act.*
5. *The learned ITO erred in initiating penalty proceedings under Sections 271(1)(c) and 27F of the Income tax Act."*

All the above grounds raised by the Appellant are directed against the addition of INR 55,87,000/- under Section 56(2)(vii)(b) of the Act, and therefore, the same are being taken up together hereinafter.

3. The relevant facts in brief are that the Appellant, a non-resident individual, did not file return of income for the Assessment Year 2016-17. Based upon the information received by the Assessing Officer that the Appellant has purchased an immovable property for INR 4,10,63,800/- bearing address – Flat No. 701, 7th Floor, Wing A, Rustomji Paramount, Village – Bandra G, Khar West, Mumbai, reassessment proceedings was initiated under Section 147 of the Act and notice, dated 27/03/2021, was issued/served on the Appellant. In response to the aforesaid notice, the Appellant filed return of income on 27.04.2021. During the re-assessment proceedings, the Appellant was asked to show-cause, vide notice dated 20.03.2021, as to why INR 55,88,800/-, being difference between stamp duty value on the date of registration of the agreement (i.e. INR.4,66,51,000/-) and the agreement value (i.e.INR.4,10,63,800/-) should not be taxed in the hands of the Appellant as 'Income for

Other Sources' as per the provisions of Section 56(2)(vii) of the Act. In response, the Appellant filed reply submitting that the immovable property was booked on 05.06.2012 and booking amount of INR 40,40,906/- was paid by way of a cheque, dated 01.06.2012. Thereafter, the Appellant had also made part-payments (otherwise than by way of cash). Therefore, Proviso to Section 56(2)(vii)(b) of the Act would be attracted. Since the agreement value is more than stamp duty value as on 05.06.2012, no income could be brought to tax as per the provisions of Section 56(2)(vii)(b) of the Act. However, the Assessing Officer was not convinced with the submissions/explanations furnished by the Appellant, and therefore, the Assessing Officer proposed addition of INR 55,87,200/- under Section 56(2)(vii)(b) of the Act by way of Draft Assessment Order, dated 31.03.2022, passed under Section 147 read with Section 144 of the Act.

4. The Appellant filed objections against the above Draft Assessment Order before the DRP. After taking into account the submissions of the Appellant, the DRP disposed the objections by issuing directions, dated 20.12.2022, the relevant extract of which reads as under:

"7.1. We have carefully considered the rival contentions. The facts are not being repeated here for the sake of brevity. The brief point of dispute is that the assessee says that the above flat was booked on 5/6/12 only, as a payment of cheque of Rs 40,40,406/- was made on this date to the builder. So, the stamp value of the property should be taken with reference to this date, rather than the date of registration of purchase, which is, of course, on a later date, as a registration shall take place only after all the installments have been paid. The assessee further says that on this date of booking, the stamp value was only Rs 2,23,02,756/-. So, as per the law and as per the fact, no addition is required.

xx xx

7.4 Now, moving ahead, it is found that in this case, there are no two documents. There is only one document, namely, sale

deed. There does not seem to be any separate agreement to sale entered in to between the assessee and the builder. So, the assessee is saying that the date of first booking amount should be taken as a deemed sale agreement and the stamp value should be reckoned with this date. And, that, the first booking was as on 5-6-12 of the amount of Rs 40,40,906/-. So, the stamp value as on this date should be taken. But, the AO says that there is no such booking amount. He is relying upon the chart as produced in the assessment order.

7.5 We on our part have also looked for the impugned cheque dtd 5-6-12. But, we also do not find it in the chart appearing in the assessment order. We have also gone through the sale deed or registered document as submitted by the assessee. The seventh schedule of the sale deed also gives an altogether different amounts to be paid to the builder from time to time. The impugned amount does not figure here too. That of course is the schedule.

7.6 However, we do find that there is a receipt at the fag end of the sale deed which refers to a total amount of Rs 2,50,48,918/- apparently paid by the purchaser to the builder, whose break-up shows at the very top the impugned cheque of Rs 40,40,406/- from bank of India. This receipt is part of the sale deed dtd 9-316. It is not clear as to why the rest of the actual payments are not appearing here and how could final sale registry take place without mentioning the same. However, here, it is important to note that the AO has never doubted the total amount of payments and his chart appearing in the assessment order also mentions the full amount. Keeping in view this confusion over the actual payments schedule, we direct the AO to revisit the facts of the issue again and verify the actual amounts paid vis-à-vis the chart as appearing in his draft order, from the bank statements of the assessee as also from any other documents as deemed fit and thereafter, delete the addition if the claim made is found to be correct. The assessee shall place all the necessary evidence forthwith before the AO. As such, the objection of the assessee is allowed subject to these remarks.

8. *The assessing officer is directed to give effect to the aforesaid directions in terms of the provisions of Section 144C(13) of the Act.” (Emphasis Supplied)*

5. Sequent to the above directions dated 20.12.2022 issued by the DRP, the Assessing Officer examined the 7th Scheduled to the Sale Deed and compared the same with the Annexure-B to the Allotment

Letter dated, 08.03.2016, to arrive at a conclusion that the Appellant was required to pay INR 1,23,19,140/- at the time of booking whereas the Appellant had only paid an amount of INR.40,40,406/- by way of cheque dated 01.06.2012. Therefore, since the pre-condition to booking the immovable property was not fulfilled, the date of booking of property (i.e. 05.06.2012) cannot be treated as date of agreement. He further submitted that even the allotment letter was issued to the Appellant on 08.03.2016. The Assessing Officer was of the view that the stamp duty as on the date of the registration of Agreement for Sale, (i.e. 09.03.2016) should be adopted while applying provisions of Section 56(2)(vii)(b) of the Act. Accordingly, the Assessing Officer made an addition of INR 55,87,200/- under Section 56(2)(vii)(b) of the Act to the returned income while passing the final Assessment Order, dated 24.01.2023, under Section 147 read with Section 144C(13) of the Act.

6. Being aggrieved by the above addition made in the Final Assessment Order, dated 24.01.2023, pursuant to the Direction, dated 20.12.2022, issued by the DRP, the Appellant has preferred the present appeal.
7. The Learned Authorised Representative of the Appellant appearing before us reiterated the submissions before the authorities below and impressed upon us the fact that proviso to Section 56(2)(vii)(b) of the Act was introduced to protect assesseees from hardship arising from adopting the date of the agreement as the relevant date for determining stamp duty for the purposes of Section 56(2)(vii)(b) of the Act as the said proviso provided that in cases where an Appellant has entered into agreement fixing the amount of consideration for the transfer of immovable property and the amount of consideration referred therein (or part thereof) has been paid by a mode other

than cash, on or before the date of the agreement for the transfer of such immovable property, the stamp value on the date of such agreement and not the registration of document shall be considered as the relevant date for determining stamp duty value for comparison with agreement value for the purposes of Section 56(2)(vii)(b) of the Act. Ld. Authorised Representative for the Appellant submitted that the Appellant had at the time of booking of the immovable property agreed upon the consideration of INR.4,10,63,800/- for purchase of the aforesaid immovable property and had made a payment of INR.40,40,406/- by way of cheque, dated 01.06.2012. Thus, the provisions contained in Provisos to Section 56(2)(vii)(b) of the Act were attracted. Accordingly, no addition could have been made by the Assessing Officer by invoking provisions of Section 56(2)(vii)(b) of the Act.

8. Per contra, the Ld. Departmental Representative relied upon the Draft Assessment Order and the Final Assessment Order passed by the Assessing Officer. He submitted that there was no agreement between the parties as on the date of booking of the immovable property since the Appellant had failed to pay the entire booking amount. Further, the actual payments by the Appellant were not as per the Schedule of Payments specified in the Agreement for Sale. Even the allotment letter was issued during the relevant previous year. Therefore, the Assessing Officer was justified in adopting the stamp value as on the date of agreement for sale (i.e. 09.03.2016) while invoking provisions of Section 56(2)(vii)(b) of the Act and making an addition of INR 55,87,200/- under the head 'Income from Other Sources'.
9. We have considered the rival submissions and perused the material on record. It is admitted position that the Appellant had applied for

immovable property on 05.06.2012. The Appellant had placed a copy of Booking Form at Page 2 of the paper-book which specifies that payment of INR 40,40,406/- vide cheque, dated 01.06.2012, drawn on Bank of India, Branch Mumbai was made by the Appellant towards booking of the aforesaid immovable property. While the Revenue admits to the aforesaid payment having been made, it contends that since the entire booking amount was not paid there was no agreement fixing the consideration for transfer of immovable property. We are not inclined to accept the aforesaid contention. We note that the developer/seller has accepted the receipt of the following payments from the Appellant:

<i>Date</i>	<i>Cheque No.</i>	<i>Name of the Bank</i>	<i>Amount (INR)</i>
01.06.2012	000005	Bank of India	40,40,406/-
30.06.2012	000001	Bank of Baroda	20,00,000/-
30.06.2012	000004	Bank of India	6,18,000/-
30.06.2012	002436	Citi Bank	44,42,813/-
30.06.2012	662327	ICICI Bank	10,20,000/-
06.03.2013	002440	Citi Bank	9,48,544/-
27.03.2015	002444	Citi Bank	54,08,947/-
26.10.2015	27101132	RTGS	16,42,552/-
24.12.2015	281215545	RTGS	16,42,552/-
xx.01.2016	270116055	RTGS	16,42,552/-
29.02.2016	0103161203	NEFT	16,42,552/-
TOTAL			2,50,48,918/-

10. On perusal of above, we find that aggregate payment of INR.1,21,12,219/- was made by the Appellant by way of cheque payments to the sellers/developer till 30.06.2012. Thus, leaving the only difference of INR 2,06,921/- in the booking amount of INR.1,23,19,140/- and the actual aggregate payments of INR.1,21,12,219/- made till 30.06.2012. Therefore, in our view, the Appellant had substantially complied with the terms of making the booking. Further, the developer/seller has not raised any objection in this regard. In paragraph 3 of the Allotment Letter, dated 08.03.2016, the developer/seller has acknowledged the fact that

booking was made by the Appellant on 05.06.2012 and pursuant thereto an aggregate amount of INR 2,50,48,918/- was paid by the Appellant on various dates by cheque/RTGS which included payment of INR 40,40,406/- made by way of cheque dated 01.06.2012. The Agreement for Sale, dated 09.03.2016, contains an acknowledgement by way of Receipt issued by developer/seller for the aforesaid payments aggregating to INR 2,50,48,918/- made by the Appellant to the developer/seller towards consideration specified in 'Seventh Schedule' to the Agreement for Sale, dated 09.03.2016. On perusal of the Booking Form, dated 05.06.2012, the Allotment Letter, dated 08.03.2016, and the Agreement for Sale, dated 09.03.2016, we find that there is no change in the amount fixed for transfer of the immovable property which stood at INR 4,10,63,800/- in all the aforesaid documents. Thus, clearly there was agreement between the Appellant and the developer/seller fixing the consideration for transfer of immovable property. Further, it is admitted position that part-payment of INR 40,40,406/- was made by the Appellant by way of cheque, dated 01.06.2012. We have already noted that the Appellant had already made aggregate payment of INR.1,21,12,219/- made till 30.06.2012. Thus, the conditions specified in the second proviso to Section 56(2)(vii)(b) of the Act stand fulfilled and therefore, stamp duty as on the date of agreement would have to be compared with the agreement value as per First Proviso to Section 56(2)(vii)(b) of the Act. The Appellant has placed on record certificate showing stamp duty ready reckoner value as on the date of booking of flat (i.e. 05.05.2012) at INR 3,20,58,607/-. Since the stamp value as on 05.06.2012 was less than the agreement value of INR 4,10,63,800/-, addition made by the Assessing Officer invoking the provisions of Section 56(2)(vii)(b) of the Act cannot be sustained. Accordingly, the addition of INR

55,87,000/- made by the Assessing Officer vide Final Assessment Order, dated 24.01.2022, is deleted. Thus, Ground Nos. 1 to 3 raised by the Appellant are allowed while Ground Nos. 4 & 5 are disposed as being infructuous.

11. In result, the present appeal preferred by the Appellant is allowed.

Order pronounced on 30.05.2023.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 30.05.2023
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai