

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

(BEFORE SRI SANJAY GARG, JUDICIAL MEMBER & SRI RAJESH KUMAR, ACCOUNTANT MEMBER)

I.T.A. No. 1322/Kol/2018

Assessment Year: 2014-15

Balaram Suryavanshi.....Appellant
[PAN: APGPS 3982 JJ]

Vs.

ITO, Ward-44(2), Kolkata.....Respondent

Appearances by:

None appeared on behalf of the Assessee.

Smt. Ranu Biswas, Addl. CIT, Sr. D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : December 9th, 2021

Date of pronouncing the order : December 16th, 20 21

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 16.01.2018 of the Commissioner of Income Tax (Appeals)-13, Kolkata [hereinafter referred to as 'CIT(A)'] on the following grounds of appeal:

"1) For that on the facts and in the circumstances of the case, the CIT(A) erred in law and on facts in dismissing the appeal preferred by the appellant without objectively considering the applicable legal provisions and judicial decisions available on the subject.

2) For that on the facts and in the circumstances of the case, the authorities below were unjustified in making additions of Rs.6,63,329/- and Rs.43,45,222/- merely on the ground that the value adopted by the registration authorities for the purpose of payment of stamp duty at the time of purchase was higher than the apparent consideration.

3) For that on the facts and in the circumstances of the case, the authorities below ought to have ascertained the true market value of the properties purchased and should not have blindly adopted the value with reference to which stamp duty was demanded; as the basis for making addition u/s 56(2)(vii)(b) of the Act & that too without making reference to the Valuation Officer; as required by law.

4) For that on the facts and in the circumstances of the case, the CIT (A) ought to have referred the valuation of the properties purchased during the year for the determination by the DVO in accordance with the decision of the jurisdictional High Court in the case of Sunil Kumar Agarwal Vs CIT and by not doing so there was a miscarriage of justice.

5) For that on the facts and in the circumstances of the case, the additions of Rs.6,63,323/- & Rs.43,45,222/- u/s 56(2)(vii)(b) be deleted and/or reduced.

6) For that on the facts and in the circumstances of the case, the AO was unjustified in making an addition of Rs.6,04,968/- being unexplained investment in purchase of the house property.

7) For that on the facts and in the circumstances of the case, addition of Rs.6,04,968/- may kindly be deleted.

8) For that the appellant craves leave to file additional grounds and/or amend or alter the grounds already taken either before or at the time of hearing of the appeal.”

2. No one put in appearance on behalf of the assessee despite notice. A perusal of the earlier file orders reveal that on earlier dates also, no one had appeared on behalf of the assessee and today was the last opportunity given to the assessee. In view of this, we proceed to decide the appeal on merits after hearing the ld. D/R.

3. **Ground No.-1:**

Ground no. 1 is general in nature.

4. **Ground Nos.-2 to 5:**

The assessee vide ground nos. 2 to 5 has agitated against the confirmation of the addition of ₹6,63,329/- & ₹43,45,222/- made by the AO u/s 56(2)(vii)(b) of the Income Tax Act, 1961 (hereinafter the 'Act') in respect of difference in the purchase value of the properties as compared to the value fitted by Stamp Duty Authority.

4.1. The brief facts relating to the issue are that the AO observed that the assessee had purchased a property measuring 1030 sq. ft. at 27/19/1, Atapara Lane, Kolkata-700 050, on 13.12.2013 at a consideration of ₹24,00,000/- but the value of the said property was assessed by the Stamp Duty Officer at ₹30,63,329/-. Similarly, the AO observed that the assessee had purchased a land at Bediapara, Dumdum on 12.03.2014 at a consideration of ₹20,00,000/- but the market value was assessed by the stamp duty officer at ₹63,45,222/-.

4.2. The AO called for the reply of the assessee in this respect asking why the additions be not made u/s 56(2)(vii)(b) of the Act. However, neither any one appeared on behalf of the assessee nor any reply filed. The AO, therefore concluded that the assessee had nothing to explain. The AO accordingly made the impugned additions as 'income from other sources' invoking provision of Section 56(2)(vii)(b) of the Act.

5. During the appellate proceedings before the Id. CIT(A), it was contended on behalf of the assessee that the AO had erred in making the impugned additions u/s 56(2)(vii)(b) of the Act as the said amended provisions came into effect vide Finance Act, 2013 with effect from 01.04.2014 and that the same would have been applicable for AY-2015-16 onwards. That the said amended provisions were not applicable for the purchase of the property done during Financial Year 2013-14. However, the Id. CIT(A) did not agree with the above contention of the Id. Counsel for the assessee observing that the amended provisions of Section 56(2)(vii)(b) of the Act were clarificatory in nature and that the amendment in the said provisions sought to cover the buyer/transferee of immovable property on the lines of Section 50C/43CA of the Act.

6. Being aggrieved by the said order of the Id. CIT(A), the assessee has come in appeal before this Tribunal.

7. We have heard the Id. D/R and gone through the record. We find that the contention of the assessee before the Id. CIT(A) was that the amendment brought to Section 56(2)(vii)(b) of the Act vide Finance Act, 2013 w.e.f. 01.04.2014 would not be applicable for the assessment year under consideration. We, at this stage, deem it fit to refer to the relevant provisions of Finance Act, 2013 (17 of 2013).

The opening lines of the Finance Act, 2013 (17 of 2013) read as under:

“An Act to give effect to the financial proposals of the Central Government for the financial year 2013-2014”.

The said Act was brought at the beginning of the FY-2013-14 and received assent by the President of India on 10.05.2013 which shows that the Finance Act, 2013 was enacted at the beginning of FY-2013-14 which will be applicable to the AY-2014-15. Therefore, the plea of the Id. Counsel for the assessee that the amended provisions would be applicable for AY-2015-16, in our view, is not correct, hence not tenable.

However, the Id. CIT(A) under the wrong presumption went on to hold that the said provisions of Section 56(2)(vii)(b) of the Act were explanatory and hence retrospectively applicable. Though we agree with that, the amended provisions of Section 56(2)(vii)(b) of the Act would be applicable for the assessment year under

consideration however, the reasoning given by the Id. CIT(A) in our view, was not correct, rather it was a simple case where the amended provisions of Section 56(2)(vii)(b) of the Act were directly applicable for the assessment year under consideration. In view of the above observations, we do not find merit in these grounds raised by the assessee/appellant and the same are accordingly decided against the assessee.

8. **Ground Nos. 6 & 7:**

The assessee vide these grounds has agitated against the action of the Id. CIT(A) in confirming the addition of ₹6,04,968/- on account of unexplained investment on purchase of the property.

8.1. The AO noticed that the assessee paid cash amount of ₹6,04,968/- in relation to the purchase of the aforementioned properties. On being asked to explain about the source of the cash, the assessee failed to explain the source of the aforesaid cash amount paid for the purchase of the property. The AO, therefore, treated the said amount as unaccounted income of the assessee and added the same to the taxable income of the assessee.

During the appellate proceedings before the Id. CIT(A), the assessee argued that no such cash payment has been made for the purchase of the property. However, the assessee failed to submit any explanation regarding the source of the amount paid for the purchase of the property. In view of this, the Id. CIT(A) confirmed the additions made by the AO.

Before us, neither anyone appeared nor any document filed to show the source of the cash payment made for the purchase of the property. In view of this, we do not find merit on this issue also. Hence these grounds are also decided against the assessee.

9. **Ground No. 8:**

Ground no. 8 is general in nature.

10. In view of our observations made above, we accordingly dismiss the appeal filed by the assessee.

11. In the result, the appeal filed by the assessee stands dismissed.

Order is pronounced in the open court on 16.12.2021.

Sd/-
[Rajesh Kumar]
Accountant Member

Dated: 16.12.2021

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Balaram Suryavanshi, 50, Kalicharan Ghosh Road, Kolkata-700 050.**
2. **ITO, Ward-44(2), Kolkata.**
3. CIT(A)-13, Kolkata. (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy

By order

Senior Pvt. Secy./DDO/H.O.O.
ITAT, Kolkata Benches,
Kolkata