

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.402/SRT/2019

(निर्धारणवर्ष / Assessment Year: (2014-15)

(Physical Court Hearing)

Income Tax Officer, Ward No.3(2)(3), Room No. 417, Aayakar Bhavan, Nr.Majura Gate, Surat-395001	Vs.	Hiteshbhai Bhikhabhai Sutariya 19-20, Narayan Muni Nagar, Ved Road, Katargam, Surat-395004
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ABLPP 4628 F		
(Assessee)		(Respondent)

Assessee by : Shri Rasesh Shah, C.A

Respondent by : Ms. Anupama Singla, Sr-DR

सुनवाईकीतारीख/ **Date of Hearing** : 31/03/2022

घोषणाकीतारीख/**Date of Pronouncement**: 25/05/2022

आदेश / ORDER

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the Revenue pertaining to the assessment year 2014-15, is directed against the order passed by the Learned Commissioner of Income Tax(Appeals)-3,Surat [for short to as 'CIT(A)'] dated 10.06.2019, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide order dated 30.11.2016.

2. Grounds of appeal raised by the Revenue are as follows:-

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the Assessing Officer at Rs.1,73,19,200/- u/s 56(2)(vii)(b) of the Act, without appreciating the fact that the assessee has shown less purchase price in the Registered Deed than the Jantri Rate, which clearly attracts the provision of Section 56(2)(vii)(b) of the Act.

2. Whether on facts and circumstances of the case and in law, the Ld. CIT(A) has erred in accepting the submission of the assessee that the assessee has recorded a value higher than the Jantri rate in the books of account and deleted the addition made by the AO u/s 56(2)(vii)(b) of the Act, when recording of higher value in the books of account of the assessee can't save the assessee from rigours of Section 56(2)(vii)(b) if there is difference between the purchase value recorded in the registered deed and the Jantri value.

3. Whether on facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition made under the provision of Section 56(2)(vii)(b) of the Act, which clearly states that if an assessee buys an immovable property at a value below the Stamp Duty value and the Stamp value exceeds the purchase consideration by more than Rs.50,000/- then the difference between the stamp duty value and the purchase consideration will be treated as income under the head "**Income from Other Sources**" and when the balance sheet value of the property is immaterial for Section 56(2)(vii)(b) of the Act.

4. On the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the AO It is, therefore, prayed that the order of the Ld. CIT(A), Surat maybe set aside and that of the Assessing Officer's order may be restored."

3. Brief facts *qua* the issue are that assessee is an individual and has filed his return of income on 30.03.2015, declaring total income at Rs.9,83,640/-. During the assessment proceedings, it was observed by the assessing officer that assessee has purchased two immovable properties, the details of which are as follows:

(i) An immovable property located in Block / survey No.57 and 58 at village Umraj, Taluka & Dist. Bharuch for the consideration of Rs.2,50,00,000/- which was registered with the SRO, Bharuch vide document registration No. 5107 on 27.05.2013. On verification of the purchase deed document and calculation sheet of the stamp duty of the purchased property, it is seen that the Sub Registrar has assessed the value of the property at higher price than the value shown by the purchaser in the purchase deed. The Sub Registrar has assessed the market value of the property at Rs.3,77,78,100/- by levying stamp duty of Rs. 18,51,500/- @ 4.9% which has been paid by the assessee. Thus, there is difference of Rs. 1,27,78,100/- between the FMV assessed by SRO, Bharuch and documentary price of the immovable property.

(ii) An immovable property located in Survey No.470 paiki 3 of Khata No.1579 at Village Umaraj, Taluka & Dist Bharuch for the consideration of Rs.2,00,00,000/- which was registered with the SRO, Bharuch vide document registration No. 5745 on 19/06/2013. On verification of the purchase deed document and calculation sheet of the stamp duty of the purchased property, it is seen that the Sub Registrar has assessed the value of the property at higher price than the value shown by the Purchaser in the purchase deed. The Sub Registrar has assessed the market value of the property at

Rs.2,45,41,100/- by levying stamp duty of Rs.12,05,600/- @ 4.9% which has been paid by the assessee. Thus, there is difference of Rs. 45,41,100/- between the FMV assessed by SRO, Bharuch and documentary price of the immovable property.

4. The assessing officer observed that as per the provisions of section 56(2)(vii)(b) of the Income Tax Act, an assessee being an Individual or HUF agrees to buy an immovable property at a value below the Stamp Duty value and the stamp duty value exceeds the purchase consideration by more than Rs.50,000/-, then the difference between the stamp duty value and the purchase consideration will be treated as income under the head “income from other sources”. In this case, the assessee has purchased two immovable properties and there is difference of Rs.1,27,78,100/- and Rs.45,41,100/- between the value assessed by the Sub Registrar and the value shown in the purchase deed.

5. Therefore, a show cause notice was issued by assessing officer upon assessee on 07.11.2016 and asked to show cause as to why the amount of difference of Rs.1,27,78,100/- and Rs. 45,41,100/- which is totaling of Rs.1,73,19,200/- should not be added in “income from other sources” as per the provisions of section 56(2)(vii) of the I.T. Act. In response to show cause notice, the assessee did not file reply therefore assessing officer held that assessee has committed default u/s 56(2)(vii)(b) of the Act by not offering his share of Rs.1,27,78,100/- and Rs.45,41,100/- which is totaling of Rs.1,73,19,200 /- to tax under the head of “income from other sources” as per the registered document and calculation sheet of the purchased property, therefore, an amount of Rs.1,73,19,200/- was added to the total income of the assessee under the head “income from other sources”.

6. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before Ld. CIT(A) who deleted the addition made by Assessing Officer. Aggrieved, the Revenue is in appeal before us.

7. Learned DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

8. On the other hand, learned Counsel for the assessee, defended the order passed by the learned CIT(A).

9. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that ground of appeal raised by the Revenue pertains to making an addition of Rs.1,73,19,200/- u/s 56(2)(vii) of the Act, alleging difference in the cost of lands as per the registered purchase deed and the value adopted by the sub-registrar for the purpose of computing stamp duty (i.e. jantri Value). The assessee argued during the appellate proceedings that assessing officer without appreciating the fact that cost of the said land as already recorded in the books of account of the assessee is higher than the jantri value and therefore, the provisions of section 56(2)(vii) of the Act, stand duly complied. We note that during the course of the assessment proceedings, the assessing officer observed that assessee had purchased two immovable property by registered deed and worked the difference taking into account valuation done by the Stamp Valuation Authority and made addition to the tune of Rs.1,73,19,200/- (Rs. 45,41,100 + Rs.1,27,78,100) under section 56(2)(vii)(b) of the Act. That is, assessing officer made the addition on account of difference on the valuation of the Stamp Valuation Authority. The Id Counsel submitted that these findings of the assessing officer are absolutely wrong as the basic cost as recognized in the books of the assessee was higher than the jantri value adopted by the Sub-Registrar and transactions were done through banking channel. However, Id DR opposed the plea taken by the Id Counsel.

10. We note that to resolve this controversy, the Id CIT(A), during the appellate proceedings, sent this issue back to the Assessing Officer for his examination and to submit the remand report. The remand report as called from the Assessing

Officer (vide his report dated 4.4.2018) during the appellate proceedings states that total basic cost of land at Block No.57/58, as recorded in the books of account of the assessee was Rs.3,77,85,414/-; and total basic cost of land at Block No.470 Paiki 3, as recorded in the books of account of the assessee was Rs.2,60,09,832/-. Based on the contents of the remand report it was observed by Id. CIT(A) that contention of the assessee was correct, as the assessee had declared the purchase consideration higher than the Stamp Valuation Authority which has been verified by the Assessing Officer in the remand report.

11. We note that issue under consideration is squarely covered in favour of assessee by the judgment of the Hon'ble Madras High Court in the case of Smt. B. Jayalakshmi vs. ACIT, [2018] 96 taxmann.com 486 (Mad), wherein it was held that where Commissioner (Appeals) on basis of remand report of Assessing Officer, allowed claim of assessee, revenue was not entitled to maintain an appeal before Tribunal against said order of Commissioner (Appeals). The detailed findings of the Hon'ble Court is reproduced below:

“19. Firstly, we have to take note of the fact that the issue canvassed before us, is a jurisdictional issue, which could be raised at any point of time. Secondly, the Tribunal was required to consider as to whether it had jurisdiction to entertain the appeal filed by the Revenue against the order passed by the CIT (A), which itself was based upon a remand report. As noticed above, the order passed by the Tribunal is a verbatim repetition of the assessment order, dated 29.03.2001. Thus, the Tribunal was required to consider the correctness of the order passed by the CIT (A) and if had been done in a proper prospective, the Tribunal would have noticed that the order allowing the assessee's appeal by the CIT (A) was based on the remand report. If this had been taken note of, the Tribunal would have to consider as to whether the appeal by the Revenue was maintainable before it. In the case of Jivatlal Purtapshi (supra), it was held that the department having agreed to delete the amount from the assessment and having considered the deletion before the Appellate Assistant Commissioner, cannot be aggrieved by that part of the order to enable it to file an appeal before the Tribunal and therefore, such an appeal, neither competent nor capable of being entertained by the Tribunal.....”

12. On an overall analysis, and having gone through the judgment of Hon'ble Madras High Court in the case of Smt. B. Jayalakshmi (supra), we note that Id. CIT(A) had given an opportunity to the Assessing Officer to examine the issue

and based on his remand report concluded the matter. Hence taking a holistic view in the matter on considering both sides, we note that there is no infirmity in the order passed by the Id CIT(A). That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid addition. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

13. In the result, appeal of the Revenue is dismissed.

Order pronounced on 25/05/2022 by placing the result on the notice board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat/दिनांक/ Date: 25/05/2022
Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat