

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGARAO, JUDICIAL MEMBER AND
SHRIK.M. ROY, ACCOUNTANT, MEMBER

ITA no.467/Nag./2024
(Assessment Year : 2014-15)

Bhavesh Suresh Sejpal
Gujrati Pura, Jawahar Road
Akot, Akola 444 101 PAN – BGJPS8295P

..... Appellant

v/s

Income Tax Officer
Ward-3, Nagpur

..... Respondent

Assessee by : Shri Naresh Jakhotia
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 07/01/2025

Date of Order – 21/03/2025

ORDER

PER V. DURGA RAO, J.M.

The instant appeal by the assessee is emanating from the impugned order dated 18/06/2024, passed by the National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2014-15.

2. Following grounds have been raised by the assessee:–

"1. The re-assessment proceeding initiated is bad in law, illegal & not in accordance with the principles laid down for reassessment proceeding.

2. On the facts and circumstances of the case and in law, Whether Learned Assessing Officer is right in invoking the provision of section 56(2)(vii)(b) introduced by the FA-2013 w.e.f. 01.04.2024 even though the same was not there in the statue book as on the date of execution of the REGISTERED agreement to sale on 29.05.2012?

3. On the facts and circumstances of the case and in law, Whether Learned Assessing Officer is right making & Learned CIT (Appeal) in confirming the additions of Rs. 8,46,000/- to the returned income of the Appellant?

4. Appellate crave to add, amend, modify, alter, revise, substitute, delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal."

3. In this case, the assessee is an Individual. For the year under consideration, on 29/11/2014, the assessee filed his return of income disclosing total income at ₹ 2,65,770, after claiming deduction under Chapter-VI-A at ₹ 1,00,000. The books of account of the assessee have been audited under section 44AB of the Income Tax Act, 1961 (*"the Act"*) and Audit Report was furnished on 2/11/2014. The assessee purchased an immovable property as a co-owner from M/s. Sri Balaji Betala INfracon, Nagpur, for a consideration of ₹ 25,92,000. However, the Assessing Officer found that the market value of the said immovable property was ₹ 42,84,000, vide sale deed registration executed on 15/03/2014. The Assessing Officer was of the view that according to the provisions of section 56(2)(vii)(b) of the Act, if any immovable property for a consideration which is less than the stamp duty value of the property by an amount exceeding ₹ 50,000, the stamp duty of such property, as exceeds such consideration, shall be chargeable to income tax under the head *"Income from other sources"*. The Assessing Officer was further of the view that the amount of ₹ 8,46,000, is required to be taxed under section 56(2)(vii)(b) of the Act and hence the case was re-opened under section 147 of the Act, as the assessment year under consideration is deemed to be a case where the income chargeable to tax has escaped assessment. Accordingly, statutory notices were issued under section 148 of the Act in response to which, on 21/05/2021, the assessee again filed its return of income and thereafter the Assessing Officer issued reason for re-

opening which was received by the assessee. The assessee, in response to the notice under section 148 of the Act issued to the assessee, the assessee, vide replies dated 12/10/2021 and 22/10/2021, submitted his explanation along with copy of sale agreement, sale deed and bank statements. The Assessing Officer, on a perusal of these documents, noticed that the assessee has jointly purchased Flat No. SF-201, 2nd Floor, Pujiyashri Complex, Plot No. 52, Survey No.289, Ward No.24, Nagpur, for a total consideration of ₹ 25,92,000. Sale Agreement was executed on 29/05/2012 and Sale Deed was executed on 15/03/2014. The market value as per sale agreement as well as sale deed is ₹ 42,84,000. In support of his claim, the assessee has submitted as under:—

"As the date of agreement for purchase of flat is 29.05.2012 and the amount is paid by bank transfer to the seller ie. to Sri Balaji Betala Infracons herewith from the joint loan account taken in the name of Shri Devesh Suresh Sejpal and Shri Bhavesh Suresh Sejpal. The amendment is made in section 50 of the I.T. Act is w.e.f. 01.04.2014 and the proviso clarifies the facts that the date of agreement is to be taken as far as consideration of the cost of property. As per section 56 also provides that the sale consideration is to be taken if the agreement of sale is registered before the Sale Deed then the date of agreement is to be considered as the date of purchase of the property and the payment must be made other than cash and the same is also applicable w.e.f. 01.04.2014."

4. The Assessing Officer quoted the relevant provisions of section 56 of the Act in his order and other statutory amendments by way of CBDT circular, etc. The Assessing Officer again sought explanation from the assessee in response to which the assessee, vide reply dated 25/12/2021, reiterated that the provisions of the said section 56 of the Act are not applicable in his case, which were rebutted by the Assessing Officer in his assessment order vide

Para-8 therein. Accordingly, the Assessing Officer, while concluding the assessment, held as under:-

"11. Vide show cause notice dated 27.01.2022 containing draft assessment order as discussed above, assessee was provided one final opportunity to comment on proposed addition. But, assessee did not respond to the show cause notice before the due date mentioned in show cause notice. In the absence of any reply from assessee, assessment order is passed based on draft assessment order.

12. The assessment of income is done as per computation sheet and the sum payable is determined as per the demand notice.

13. Assessee has not declared income to the extent of Rs. 8,46,000/- under the provisions of Income Tax. This amounts to under reporting of the income. Hence, penalty proceedings u/s. 271(1)(c) of the IT Act for under-reporting is initiated separately."

Consequent upon the issuance of the assessment order passed under section 56(2)(vii)(b) of the Act, the assessee filed appeal before the first appellate authority.

5. The learned CIT(A) dismissed the appeal of the assessee by holding as under:-

"5.2. On being informed by the ITO (I & CI)-5, Nagpur, that the assessee has purchased a flat by payment of consideration of Rs. 25,92,000/-, whereas, the market value of the property was Rs. 42,84,000/-, the AO reopened the case to tax the difference between the market value and the deed value, as "Income from Other Sources", u/s. 56(2)(vii) of the Act.

5.3. During the reassessment proceedings, the assessee pleaded that, although the property was registered on 15/03/2014, the actual agreement of purchase was registered on 29/05/2012. Therefore, he pleaded that the market value as on registration of the sale agreement, should be considered for the purchase consideration, instead of the value, as mentioned in the final registered deed. The AO found that the Income Tax Act provides for taking the consideration value, as per the Market Value of agreement date, but such Amendment in the Act applies in relation to AY 2014-15 and subsequent AYs only. Therefore, any agreement prior to such date is not to be considered for AY 2014-15, as the agreement was prior to the date of the Amendment, taking place.

5.4. Therefore, he considered the Market Value of Rs. 42,84,000/- as the consideration, paid by the assessee, instead of the actual value stated in the deed, for Rs. 25,92,000/-. There was a difference of Rs. 16,92,000/- and since the assessee was a joint owner, having 50 per cent of the property, the assessee's share as "Income from Other Sources out of such transaction, is Rs. 8,46,000/-.

5.5. Aggrieved with the order, the assessee instituted the present appeal, where he has taken the same plea, that the Market Value, as on Agreement date of sale should be taken for consideration, for any addition u/s. 56.

5.6. During the appeal proceedings, the assessee submitted that the agreement of sale, dated 29.05.2012, was duly registered by payment of due Stamp Duty, before the Registering Authority

5.7. I have gone through the assessment order, as well as, through the submission of the assessee. I am of the considered view that, since the case falls under AY 2014-15, the amended provision of Sec. 56(2)(viib) read with the provisos below, are squarely applicable in this case. Therefore, as per the 1st proviso below that Section, which provides that, where date of agreement, fixing the amount of consideration, for the transfer of immovable property and the date of registration are not same, the stamp duty value on the date of agreement may be taken for the purpose of sub-clause (b) of Clause (vii) of sub-section 2 of Section 56. In this case, in the duly registered agreement of sale, dated 29.05.2012, the Market Value of the property, was determined for Rs.42,84,000/-, on which Stamp Duty of Rs.2,35,620/-was paid, by the assessee, along with his joint owner. The Market Value on the date of actual registration, dated 15.03.2014, was also the same value of Rs.42,84,000/-. Therefore, even if the Market Value as on the date of agreement of sale is considered, it is not different from the Market Value on the date of actual registration of the property. Therefore, I do not find any merit in the appeal filed by the assessee and the addition made by the AO, for Rs.8,46,000/- u/s. 56(2)(viib), is completely upheld.

6. The appeal of the assessee is, therefore, dismissed."

The assessee being aggrieved by the impugned order so passed by the learned CIT(A), is in further appeal before the Tribunal.

6. The learned Authorised Representative for the assessee, reiterating the submissions made before the authorities below, further submitted that the addition is not sustainable and in support of his arguments, he relied upon several judicial pronouncements.

7. The learned Departmental Representative supported the impugned order passed by the learned CIT(A).

8. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. We find that exactly similar issue came up before the Co-ordinate Bench of the Tribunal, Vizag Bench, wherein, one of us (Judicial Member) was a part of Corum, the decision rendered by the Co-ordinate Bench of the Tribunal in ACIT v/s Sri Anala Anjibabu, ITA no.415/ Viz./2019, for the assessment year 2014-15, vide order dated 17/08/2020, by dismissing the appeal filed by the Revenue held as under:—

"6. We have heard both the parties and perused the material placed on record. The question to be decided in the instant case is whether in the facts and circumstances of the case, provisions of section 56(2)(vii)(b)(ii) are applicable or not. The provisions of section 56(2)(vii) (b)(ii) came into statute by Finance Act 2013 w.e.f. 01.04.2014 i.e., A.Y.2014-15. In the instant case, the assessee had entered into agreement for purchase of the property on 13.08.2012 for a consideration of Rs.5.00 crores and paid the part of sale consideration by cheque. This fact is evidenced from the assessment order. In the assessment order, the AO acknowledged the fact that the assessee had entered into an agreement for purchase of the property for a sum of Rs.5 crores and paid the advance of Rs.5 crores on 13.08.2012. There is no dispute with regard to existence of agreement. From the order of the Ld.CIT(A), it is observed that the property was in dispute due to bank loan and the original title deeds were not available for complying with the sale formalities. Therefore, there was a delay in obtaining the title deeds for completing the registration. Thus, we find that there is genuine cause for delay in getting the property registered. The Ld.CIT(A) relied on the decision of M.Siva Parvathi and Ors, which is rendered in the context of application of section 50C of the Act. In the decision cited, this Tribunal has considered the decision of Hon'ble Supreme Court in the case of K.P.Varghese and held that the provisions of section 50C which were not available in the statute cannot be applied during the interim period. For the sake of clarity and convenience, we extract relevant part of the order of the Ld.CIT(A) in 6.3 and 6.4 which reads as under:

6.3. On a careful perusal of the judicial pronouncement cited by the appellant, I find that the facts are almost identical in nature to the facts of the appellant's case. In the said case of M. Siva Parvathi & Drs., (Supra) the decision was rendered in the context of s.SOC of the Act. s.56(2)(vii)(b) is nothing but an extension of the provisions of s.50C of the Act. The provisions of s.SOC are

applicable to the vendor and the provisions of s.56(2)(vi) (b) are applicable to the buyer. But for this difference, the provisions are identical in all respects. In the case before the Hon'ble ITAT, Visakhapatnam Bench the agreement was entered into in August, 2001 and the sale took place in October, 2004. In the interim period, the provisions of s.50C were introduced we.f. AY.2003-04. Thus, the agreement was prior to AY.2003-04 and the sale was subsequent to AY.2003-04. While addressing the issue whether the provisions of s.50C can be made applicable in such a situation, the ITAT held as under:

8.10. The periods of the impugned transactions have fallen in the transition phase of law, i.e., the sale agreement was entered before the introduction of s. 50C and the registration was completed after the introduction of said section. As pointed out by Hon'ble apex Court in the case of KP. Varghese (supra), the assessee has only fulfilled the contractual obligation imposed upon them by virtue of the sale agreement. The ratio of the decisions in the cases of Nirmal Textiles (supra) and Laxman Singh (supra) is that the character of the transaction vis-a-vis IT Act should be determined on the basis of the law that prevailed on the date the transaction was initially entered into. However actual computation of income and income-tax would be made as per the law existing on the 1st April of the relevant assessment year. If we look at the impugned transactions from the point of view of this legal proposition, we notice that the provisions of s. 50C cannot be applied to the sale agreement as the said section was not available in the statute book at that time. Even otherwise, as stated earlier, there is no suppression of actual consideration. Consequently, since the final registration of the sale is only in fulfilment of the contractual obligation, the logical conclusion is that the provisions which do not apply at the time of entering into the transaction initially would not also apply at the time the transaction is completed. In view of the above, we are unable to agree with the arguments of learned Authorised Representative that the computation provisions fail in the facts and circumstances of the case. In our opinion, the final argument of the learned Authorised Representative that the FMV cannot be substituted in the absence of charging section is not relevant under the peculiar facts and circumstances of the case.

8.11. In view of the foregoing discussions and on consideration of the facts and circumstances of the case and legal propositions discussed in the preceding paras, we are led to the logical conclusion that the provisions of s. 50C should not be made applicable to these assessee and we order accordingly."

6.4. The facts in the case of the appellant are identical to the facts of the appellant. The agreement was entered into prior to insertion of the provisions of s.56(2)(vii)(b) of the Act and the sale deed was registered subsequent thereto.

Therefore, respectfully following the decision of the jurisdictional bench, I hold that the provisions of s.56(2)(vii) (b) are not applicable to the appellant and I hereby direct the Assessing Officer to delete the entire addition of Rs. 4,55,11,750/-. Thus, the appeal made by the appellant on this ground stands allowed."

6.1. Hon'ble Supreme Court in the case of K.P.Varghese observed that the vendor has fulfilled the contractual obligation which was cast upon him by sale agreement. It was held by the Hon'ble Apex court in Nirmal Textiles that the character of the transaction vis-à-vis I.T. Act to be decided on the basis of the law that is prevalent as on the date of

transaction which was initially entered into. Final transaction was only the fulfilment of the contractual obligation, thus, this Tribunal viewed that the proviso which was not in existence at the time of entering into the transaction would not apply at the time of completion of the transaction also. As observed from The facts, in this case, agreement was entered on 13.08.2012 for purchase of the property and paid part consideration as discussed above. Hence, the provisions existing as on the date of entering into agreement required to be applied for deciding the taxable income. The provisions u/s 56(2)(vii)(b) which are applicable for the A.Y. 2013-14 reads as under:-

(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009 but before the 1st day of April, 2017,-

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

(b) any immovable property, -

(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

As per the provisions the Act from the A.Y.2014-15 sub clause (ii) has been introduced so as to enable the AO to tax the difference consideration if the consideration paid is less than the stamp duty value. The AO is not permitted to invoke the provisions of section 56(2)(vii)(b)(ii) in the absence of sub clause (ii) in the Act as on the date of agreement.

6.3. In this connection, we also refer to the decision relied upon by the assessee in the case of D.S.N.Malleswara Rao cited supra which is related to the A.Y.2006-07 which is prior to the insertion of section 56(2)(vii) (b) and the same has no relevance in the instant case. However in the cited case of D.S.N.Malleswara Rao also the Hon'ble ITAT held that the law as applicable as on the date of agreement required to be applied for taxing the income. The department has not made out any case of application of 56(2)(vii)(b) and since the provisions of section 56(2)(vii)(b)(ii) were not available in the statute as on the date of entering into the agreement, following the reasoning given in the case of M.Siva Parvathi & Others (supra), the same cannot be made applicable to the assessee. The department has not brought any evidence to show that there was extra consideration paid by the assessee over and above the sale agreement or sale deed. No other case law of any high court supporting the contention of the department was brought to our notice by the Ld.DR. Therefore, we hold that the Ld.CIT(A) has rightly applied the decision of this Tribunal in the assessee's case and deleted the addition. Hence, we do not find any infirmity in the order of the Ld.CIT(A) and the same is upheld.

7. Ground No.(vi), (vii) and (viii) are related to the adoption of fair market value as certified by the registered valuer for the purpose of section 56(2)(vii)(b) of the Act. Since, we have decided the appeal on the issue with regard to application of provision of section 56(2)(vii) (b) in favour of the assessee and against the revenue, we consider, it is not necessary to adjudicate the ground Nos. (vi), (vii) and (viii), though the Ld.AR argued that

the assessee's case is covered by the decision of this Tribunal in the case of Venkateswara Vara Prasad Rao Karipineni in I.T.A.No.178/Viz/2019 dated 15.11.2019. Accordingly, the appeal of the revenue is dismissed."

9. Since the issue for our adjudication being identical, consistent with the view taken therein in Revenue's cited supra, respectfully following the findings given therein, we find no scope to differ from the above view. Accordingly, the impugned order passed by the learned CIT(A) is hereby reversed by allowing all the grounds raised by the assessee.

10. In the result, appeal by the assessee stands allowed.

Order pronounced in the open Court on 21/03/2025

**Sd/-
K.M. ROY
ACCOUNTANT MEMBER**

NAGPUR, DATED: 21/03/2025

**Sd/-
V. DURGA RAO
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur