

आयकर अपीलीय अधिकरण
मुंबई पीठ “ डी”, मुंबई
श्री जी. एस. पन्नू, अध्यक्ष एवं
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “D”, MUMBAI
BEFORE SHRI G. S. PANNU, PRESIDENT &
SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 7120/मुं/2018 (नि.व. 2014-15)
ITA NO.7120/MUM/2018 (A.Y.2014-15)

Income Tax Officer- 25(3)(3),
Room No.606, 6th Floor,
C-10, Pratyaksh Kar Bhavan,
Bandra Kurla Complex,
Bandra (E) Mumbai – 400 051

..... अपीलार्थी /Appellant

बनाम Vs.

Rajni D. Saini
6, Lalit Kunj, Dadabhai Road,
Vile Parle (West), Mumbai 400 056.
PAN: AACPS-7288-J

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Smt. Shailaja Rai
प्रतिवादी द्वारा/Respondent by : Dr. K. Shivram with
Shri Shashi Bekal

सुनवाई की तिथि/ Date of hearing : 11/08/2022
घोषणा की तिथि/ Date of pronouncement : 09/11/2022

आदेश/ ORDER

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)- 37, Mumbai [in short ‘the CIT(A)’] dated 4/10/2018 for the Assessment Year 2014-15.

2. The Revenue in appeal has raised eight grounds assailing the findings of CIT(A) deleting addition of Rs.5,13,25,000/- u/s. 56(2)(vii)(b) of the Income Tax

Act, 1961 [in short 'the Act']. The assessee has filed written submissions giving the gist facts and the controversy involved.

3. Dr. K. Shivram appearing on behalf of the assessee submitted that during the financial year 2010-11 the assessee had booked property in a building known as "Shrikant Chambers -II", Chembur at a total consideration of Rs.2.60 crores. The Developer issued allotment letter dated 19/05/2010 wherein the specific number of the property Unit No.901 was allotted. The allotment letter also mentioned the schedule of payment. The assessee had made initial payment of Rs. 10.00 lacs at the time of allotment. Thereafter, installments were paid on behalf of the assessee to the developer by the parents of the assessee through various cheques. The Id.Counsel for the assessee furnished a table giving the details of date of payment, amount paid, cheque number with account number and name of Bank. The payments were made directly by the parents of the assessee to the developer. Gift deeds to that effect were also made by the parents of the assessee. The Id.Counsel for the assessee referred to the gift deeds at pages 185 to 198 of the Paper Book. The entire payment for purchase of property was concluded till Financial Year 2011-12. A registered sale deed dated 01/08/2013 was executed. During the course of scrutiny assessment proceedings for Assessment Year 2014-15, the Assessing Officer disbelieved the submissions of assessee and the gift deeds executed by parents of the assessee. Thus, the Assessing Officer made addition of Rs.5.31 crores u/s. 56(2)(vii)(b) of the Act being the difference between the Stamp Duty valuation as on the date of registration less the actual consideration paid. Aggrieved by the addition, the assessee filed appeal before the CIT(A). The CIT(A) after examining the facts and documents on record deleted the addition. The Id.Counsel for the assessee submitted that in so far as the ground of Revenue

that the sale consideration is less than stamp duty valuation on the date of registration, the assessee has two fold submissions. First, the date of allotment would be the date of purchase of immovable property. The Id.Counsel for the assessee placed reliance on the first proviso to section 56(2)(vii)(b) of the Act. The Id.Counsel for the assessee submitted that the sale consideration agreed in the letter of allotment can be treated as an agreement for this purpose. Any agreement between the parties even if unregistered but preceded by a part payment of consideration through banking channel would suffice requirement of this proviso. In support of this submission reliance was placed on the decision in the case of PCIT vs. Vembu Vaidyanathan 413 ITR 248 (Bom).

3.1 The second proposition put forth by the Id.Counsel for the assessee, without prejudice to the primary submission is, that the date of allotment of immovable property is 19/05/2010. The last payment was made by the assessee on 17/12/2012. The stamp duty value of the property on the date of allotment was Rs.2.54 crores i.e. less than the actual sale consideration, therefore, amended provisions introduced by the Finance Act, 2013 would not apply in the facts of the present case. The registration of sale deed was merely a formality which was done on 01/08/2013 in a period relevant to the Assessment Year 2014-15. The Id.Counsel for the assessee submits that the provisions of section 56(2)(vii)(b) of the Act cannot have retrospective effect, hence, the same would be not applicable on a transaction completed in Assessment Year 2012-13.

3.2 In respect of objection raised by the Assessing Officer on gifts received by assessee from her parent, the Id.Counsel for the assessee submits that the gifts are supported by gift deed. In any case gifts are tax free. The payments made by the parents of the assessee for purchase of immovable property are made through banking channel. The allegation of the Assessing Officer that there is

diversion of payment does not demonstrate any tax benefit received by the assessee. In any case, the gifts received by the assessee have no bearing on the issue of section 56(2)(vii)(b) of the Act.

3.3 In so far as the allegation of forged documents, the assessee on oath had admitted that she had not purchased the stamp paper. The CIT(A) has observed that the assessee cannot be penalized for the acts of her father. Even if it is assumed that the document is fake it would not alter the nature of transaction. The Id.Counsel for the assessee vehemently supported the findings of CIT(A) in upholding the date of allotment as the date of agreement.

4. Per contra, Smt. Shailaja Rai representing the Department vehemently defended the assessment order and prayed for reversing the findings of CIT(A).

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. It is an undisputed fact that letter of allotment was issued to the assessee by Shrikant Studios Pvt. Ltd. on 19/05/2010. The same is at page 16 to 18 of the paper book. The assessee had paid Rs.10.00 lacs at the time of allotment and the remaining amount of consideration was paid in installments. The parents of the assessee had made payment of the entire sale consideration in installments upto 17/12/2011. The aforesaid payments were directly made to the developer /builder by way of cheque. The assessee has furnished before the Authorities below letter of allotment, details of the payment of purchase consideration, confirmation from the builder that entire amount of consideration was paid before the date of registration of sale deed. The stamp duty value of the property at the time of allotment was Rs. 2.54 crores as against the agreed purchase consideration of Rs.2.60 crores. Thus, at the time of agreement to purchase, sale consideration was more than the stamp duty value. Now, the issue arises as to whether the stamp duty value of property

on the date of allotment should be preferred over the value of property as on the date of registration of sale deed. A bare perusal of the first Proviso to section 56(2)(vii)(b) of the Act would show that where the date of agreement fixing the amount of consideration for transfer of immovable property and the date of registration are not same, the stamp duty value as on the date of the agreement may be taken. The provisions of clause (b) to section 56(2)(vii) were amended by the Finance Act, 2013 w.e.f. 01/04/2014. The CIT(A) in the impugned order (para 5.15) referred to the Memorandum to the Finance Act, 2013 explaining the reason for amending the provisions of section 56(2)(vii)(b) of the Act. The purpose for introducing proviso to clause (b) to section 56(2)(vii) of the Act was to avoid taxable differential arising due to time gap between the booking of a property and registration of sale deed. The Hon'ble Jurisdictional High Court in the case PCIT vs. Vempu Vaidyanathan (Supra) has held that for computing capital gain tax, the date of allotment of flat would be the date on which the purchaser of flat is stated to have acquired property. In the instant case, on the date of allotment the building was under construction and even on the date of registration of sale deed the assessee had not taken possession of the immovable property. The assessee had acquired right in the ownership of flat at the time of issuance of allotment letter. Therefore, in the facts of the case stamp duty value as on the date of allotment of flat is relevant.

6. The CIT(A) in the impugned order has referred to various decisions explaining the term "transfer" as per section 2(47) of the Income Tax Act. The CIT(A) after considering the facts and various decisions concluded as under:-

"5.25 After considering the totality of facts and applicability of law, it is found that appellant was allotted a premises vide the allotment letter dated 19-05-2010. The appellant has further made full payment to the builder by 17-12-2012 against the premises, All the rights in the flat were duly acquired by the appellant on 19-05-2010,

when he was given letter of allotment which clearly described the precise number of premises so allotted to him. As per the provisions of section 2(47)(ii), "Transfer" in relation to capital assets includes the extinguishment of any right therein. This letter of allotment extinguishes the rights of builder in the said premises in favour of the appellant and by signing the letter of allotment, the assessee agreed to buy the same and for which payment was made according to the letter of allotment. As per the Board Circular No. 672 and the appellant acquired the rights/title in the premises by way of allotment letter on 19.05.2010. Further, it is also evident from the provisions of 56(2)(vii)(b) that if the date of agreement fixing the consideration and date of registration are not in same, the stamp duty value may be taken as on the date of agreement fixing the consideration, instead of that on the date of registration. The value of property as per stamp duty ready reckoner rate on date of the fixing the consideration is Rs.2,54,84,716/-. Agreement value of the property purchased is Rs.2.60 crores and it is higher than the stamp duty value of Rs.2.54 crores on date of the agreement fixing the amount of consideration for the transfer of immovable property. Further, in terms of proviso to the section, payment of consideration has been made by the appellant before the date of the agreement. In view of the above, the provision of the Section 56(2)(vii)(b) is not applicable to the appellant. The A.O. is directed to delete the addition of Rs.5,13,25,000/-. This ground is allowed."

7. We concur with the findings of the CIT(A), hence, the same are upheld and the appeal of the Revenue is dismissed being devoid of any merit.
8. The other peripheral issues raised by the Assessing Officer are not material to decide the main controversy, hence, not deliberated upon.
9. In the result, appeal by the Revenue is dismissed.

Order pronounced in the open court on Wednesday the 09th day of November, 2022.

Sd/-
(G.S. PANNU)

Sd/-
(VIKAS AWASTHY)

अध्यक्ष / PRESIDENT

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 09/11/2022

VM Sr.PS(O/S)

प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai