

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

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI RAHUL CHAUDHARY, JM

**ITA No. 3092/Mum/2023**

(Assessment Year: 2018-19)

Rajkumar Anandchand Jain  
Dw-5230, BKC, Bandra  
Mumbai-400 051

Vs.

Dy. Commissioner of Income  
Tax, Circle 19(3),  
Piramal Chambers, Dr. S S  
Rao Marg, Lalbaug, Parel  
Mumbai-400 012

**(Appellant)**

**(Respondent)**

**PAN No. AAKPJ0573F**

**Assessee by** : Smt. Arati Vissanji, AR  
**Revenue by** : Smt. Mahita Nair, DR

**Date of hearing:** 04.01.2024

**Date of pronouncement :** 05.01.2024

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by Mr. Rajkumar Anandchand Jain (the assessee/appellant) against the appellate order passed by National Faceless Appeal Centre, Delhi (the learned CIT – A) for assessment year 2018 – 19 on 10/8/2023 wherein the appeal filed by the assessee against the assessment order passed under section 143 (3) read with section 144B of The Income Tax Act, 1961 (The Act) dated 20/4/2021 by the National e-Assessment Centre, Delhi (the learned AO) was dismissed relying on the decision of the honourable Supreme Court in case of B N Bhattacharjee 118 ITR 461 upholding the action of the learned assessing

officer in assessing the income of Rs. 19,923,680 where the assessee failed to substantiate against the addition made by the learned assessing officer of Rs. 14,098,500.

02. The assessee is aggrieved with that appellate order and has preferred appeal before us raising following grounds of appeal:-

The learned Commissioner of income tax appeal erred in making an addition of Rs 14,098,500 under section 56 (2) (x) (b) details of which are as under:-

Relevant sections	issue
56 (2) (x) (b)	Addition of Rs. 1,40,98,500 under section 56 (2) (x) (b)

Ground of appeal

Agreement value	Value as per stem duty authority is	Value considered by the learned assessing officer	Difference amount added as income under section 56 (2) (x) (b)
36,20,000	1,77,18,500	1,77,18,500	1,40,98,500

The appellant craves leave to add, alter, vary, omit, substitute, or amend the grounds of appeal at any time before or at the time of hearing of the appeal to enable to the learned Commissioner (appeals) to decide the appeal according to law.

03. Brief facts of the case shows that assessee is an individual who filed his return of income on 31/10/2018 at a total income of Rs. 5,225,180/- . On 13/2/2019, the return

was processed. The case was selected for limited scrutiny for verification of investment in a property by issuing notice under section 143 (2) of the act on 22/9/2019. The issue was purchase of immovable property where the purchase value is less than the stamp value determined by authority. The necessary notice under section 142 (1) of the act was issued to the assessee.

04. Assessee has purchased the property for Rs. 3,620,000 values of which for stamp duty purposes Rs. 17,718,500 and therefore there is a difference of Rs. 14,098,500/- which was required to be taxed in the hands of the assessee.
05. The claim of the assessee is that assessee has purchased the property on 13/4/2007 wherein allotment letter issued by the builder stated that assessee has purchased a commercial property in project 'Druan Height'. According to that letter, the assessee has paid an advance of Rs. 5 lakhs on 1/7/2006 to the builder. The builder has also given a confirmation by letter dated 9/2/2021 where the name of the project has changed to 'Grand Sethia' now residential property. Therefore, the claim of the assessee is that stamp duty value may be considered as on 1/7/2016, which is the date of allotment of the flat coupled with payment of consideration also. The learned assessing officer noted that in the allotment letter dated 13/4/2007 the property was not identified as well as full value of the consideration was not stated therein and therefore same cannot be taken for the purpose of date of

acquisition of the property as it does not satisfy the conditions of the first proviso to this section. According to him, the agreement for sale dated 8/12/2017 wherein the amount of consideration for the transfer of immovable property is mentioned and therefore stamp duty value is required to be taken as on that date. Accordingly Rs. 14,098,500 being the difference between the registration deed value of Rs. 3,620,000 and the stamp duty value as on the date of Rs 17,718,500 was added to the total income of the assessee as income from other sources under section 56 (2) (x) (b) of the act. Accordingly, assessment order under section 143 (3) read with section 144B of the income tax act was passed on 20/4/2021 determining the total income of the assessee at Rs. 19,923,680.

06. Assessee aggrieved with that preferred an appeal before the learned CIT – A. Assessee was issued notices on 15/11/2022, 18/7/2023 and final opportunity was given on 25/7/2023 requesting the assessee to file the submission by 1/8/2023 which assessee failed and therefore the learned CIT – A noted that assessee does not want to effectively pursue it. Accordingly, as nothing was produced before him, he decided the issue on the merits of the case and upheld the assessment order of the learned assessing officer assessing the income at Rs 19,923,680/- wherein the addition of Rs 14,098,500 is confirmed. Thus, assessee is aggrieved and in appeal before us.

07. Before us, assessee submitted a detailed paper book containing 253 pages and a convenience compilation of 9 pages. The learned authorized representative submitted that the assessee was issued allotment letter on 13 April 2007 wherein assessee was allotted a commercial premises on third floor and one basement parking in project ' Draun Height'' at plot bearing number 610 and 629 of village Bandra ( E ) Teachers colony, off Western express Highway, Mumbai - 51. That letter also confirmed that the assessee has paid a sum of Rs 5 lakhs by cheque number 055808-dated 1/7/2006 of Oriental Bank of commerce. Subsequently, on 6 December 2020 it was stated by the builder to the assessee that the name of the project has changed to Sethia Grandeur and now the characteristics of the project has also changed from commercial project to residential project. In that letter, the consideration was decided at Rs. 3,620,000. Subsequently the builder wrote another letter dated 21 October 2017 wherein the brief statement of the project was mentioned, and it was stated that assessee has been allotted fourth floor flat number 405 having approximate carpet area of 692 ft<sup>2</sup> at the agreed consideration of Rs 3,620,000 and assessee was asked to clear the balance outstanding sum of ? 3,120,000/-. Therefore the claim of the assessee is that allotment was made to the assessee on 13 April 2007 wherein the assessee paid part of the sum by cheque of Rs. 5 lakhs and therefore the stamp duty value as on that date should be taken for the purpose of computation of income under section 56 (2) (x) (b) of

the act. It was the claim of the assessee that the learned CIT – A has decided the issue without considering the merits of the case and upholding the action of the learned assessing officer for the reason, that assessee did not comply with the notices of hearing given by him. It was submitted that the learned CIT – A has not considered the arguments already placed before the assessing officer that allotment letter dated 13 April 2007 is the date of allotment of the flat coupled with the payment made by the assessee should be considered as the date of acquisition for the purpose of ascertaining any income under section 56 (2) (x) (b) of the act.

08. The learned departmental representative vehemently submitted that assessee has failed to respond to the any of the notices issued by the learned CIT – A and therefore the learned CIT – A did not have any other option but to decide the issue on the merits of the case wherein he has upheld the action of the learned assessing officer and therefore there is no infirmity in the order of the learned CIT – A.
09. We have carefully considered the rival contention and perused the orders of the lower authorities. The only dispute in this appeal is whether the date of acquisition of the property should be considered by the letter dated 13/4/2007 wherein the assessee has demonstrated that he has paid a sum of Rs 5 lakhs for booking of the commercial property. The learned assessing officer has disregarded this argument for the reason that the letter



dated 13/4/2007 did not identify the property as well as did not mention the actual consideration agreed between the parties and therefore such allotment letter cannot be considered as the date of acquisition of the property. This was the stand of the parties before the first appellate authority. The first appellate authority issued three notices, which were not responded to by the assessee, and therefore in paragraph number 4.1 he noted that appellate remedy does not mean merely filing of the appeal but effectively pursuing it. Thus, as no information was available before him in the form of submission made by the assessee, he upheld the action of the assessing officer. We find that in form number 35 filed by the assessee the email address to which notices may be sent is mentioned as pankajshah0106@gmail.com and the mobile number is 9324608288. It is not the case of the assessee that notices have not been received at that email address or on the ITBA portal. Before us in form number 36 also the assessee has given the same email address. Therefore, nonreceipt of the notice cannot be believed. However, it is also the fact that the learned CIT – A should have given a detailed reason on the ground of appeal raised by the assessee in terms of provisions of section 250 (6) of the act. The learned CIT appeal without considering the merits of the case has merely upheld the action of the learned assessing officer. Therefore, the order of the learned CIT – A is not in accordance with the provisions of section 250 (6) of the act as in the ground of appeal there was a specific ground raised about the addition of Rs.



14,098,500. In view of the above facts and in the interest of natural justice we restore the appeal of the assessee back to the learned CIT – With a direction to the assessee that as soon as the window is available for submission of detailed by the learned CIT – A, assessee must submit the detail within the prescribed time which may be considered by the learned CIT – A and decide issue on the merits of the case after giving proper opportunity of hearing, if asked. Accordingly, the solitary ground of appeal of the assessee is allowed with above direction.

010. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 05.01.2024.

Sd/-  
(RAHUL CHAUDHARY)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 05.01.2024

*Dragon*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai