

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'D', NEW DELHI**

**Before Sh. Challa Nagendra Prasad, Judicial Member  
Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 1673/Del/2023 : Asstt. Year: 2014-15**

Shyamkumar Madhavdas Chugh, Post Box No. 8124, Sharjah United Arab Emirates, UAE, Local Address: 402 Royal Palaces CHS Ltd, 4 <sup>th</sup> Floor Cross Road, Off 4 Bunglows Shastri Nagar, Andheri West Mumbai 40053	Vs	The ACIT, International Taxation Circle 1(2)(1), New Delhi
(ASSEESSEE)		(RESPONDENT)
<b>PAN No. ANSPC 8127 H</b>		

**Assessee by : Sh. Manuj Sabharwal, Adv. &  
Ms. Shalini, Adv.**

**Revenue by : Sh. Vizay B. Vasanta, CIT-DR**

**Date of Hearing: 04.01.2024**

**Date of Pronouncement: 08.01.2024**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

Delay condoned.

The present appeal has been filed by the assessee against the order dated 31.01.2023 passed by the AO u/s 147 r.w.s. 144C (13) of the Income Tax Act, 1961.

2. The assessee has raised the following grounds of appeal are as under:-

*1. On the Facts and Circumstances of the case, the Assessment Order passed in pursuance to the directions issued by the Dispute Resolution Panel (DRP) is vitiated order, as the DRP erred both on facts and in law in confirming and enhancing the additions made by the made by the Assistant Commissioner of Income Tax,*

*International Taxation Range 1(2)(1) New Delhi (Assessing Officer or AO') to the Appellant's Income.*

*2. The DRP/ Ld. A.O erred both on facts and in law in confirming the addition of Rs. 40,45,000/- to the Income of the Assesseeu/s 56(2)(vii) (b)(ii) of the Income Tax Act, 1961 on account of consideration paid for the purchase of the flat No. 1301 Building known as "Ram Nivas" at Ganesh Mandar CHS LTD, CTS No.E/221, Khar West Mumbai 400052, completely disregarding the actual date of allotment agreement Dated 23.06.2010 and the Cheque payment made pursuant to the same as a part purchase consideration for the purchase of the said flat and disregarding the Provisions of proviso to the section 56(2)(vii)(b)(ii) of the Act.*

*3. On the Facts and Circumstances of the case, The DRP/ Ld. AO erred both on facts and in law in confirming the addition of Rs. 40,45,000/-, disregarding the Proviso to Section 56(2)(vii) (b)(ii) of the Act, which stipulates that where the date of the agreement fixing the amount of consideration for the transfer/ purchase of immovable property (date of allotment 21.06.2010) and the date of registration (13.08.2013) are not the same, the stamp duty value as on the date of the agreement may be taken for the purposes of this sub-clause, Provided that amount of consideration, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property*

*4. The DRP/ Ld. AO erred both on facts and in law in confirming the addition of Rs. 40,45,000/-, affirming the Contention of the Assistant Commissioner of Income Tax, International Taxation Range 1(2)(1) vide Draft Order u/s. 144C, dated 27.03.2022 that words used in Proviso to section 56(2)(vii) (b)(ii) are MAY BE TAKEN and not SHALL BE TAKEN, Hence the Provisions of Proviso to section 56(2) (vii) (b)(ii) are recommendatory in nature and not Mandatory. The Assessee Prays that the Stamp Duty Value of the Property as on date of Agreement (i.e. 21.06.2010) of Rs. 1,40,16,984, duly certified as per the report of Registered/ Govt. Approved Valuer M/s. G.N. Gandhe, dated 18.04.2022 be considered for the purpose of Provisions of section 56(2) (vii) (b) (ii) of the Act, as the Assessee had paid consideration for the purchase of Said Flat since 2010 in terms of and in compliance of the Proviso to section 56(2)(vii) (b)(ii) of the Act.*

3. Heard the arguments of both the parties and perused the material available on record.

4. The Appellant, a non-resident individual, did not file return of income for the Assessment Year 2014-15 on the premise that the total income has not exceeded the exemption limit. Based upon the information received by the Assessing Officer that the Assessee has purchased an immovable property for INR 2,22,45,000/-, reassessment proceedings were initiated under Section 147 of the Act and notice dated 28/03/2021, was issued served on the Appellant. In response to the aforesaid notice, the Assessee filed return of income on 24.01.2022. During the re-assessment proceedings, it was submitted before the AO that, the assessee has purchased a residential flat No. 1301, Ramnivas, The Ganesh Mandar CHS Ltd, CTS No. E/221, Khar West Mumbai 400052 from M/s Prakash Estates for a consideration of Rs 1,82,00,000.

5. It was also submitted that, the agreement to sell in respect of the said flat was entered into on 21.06.2010 (i.e. in FY 2010-11) and the registration of the flat was done on 13.08.2013 (i.e. in FY 2013-14 i.e. AY 2014-15). The AO thereafter examined the source of funds and there was no adverse found on the said aspect. The payments made by the assessee are as under:

**SHYAMKUMAR M.CHUGH**

**DETAILS OF AMOUNTS PAID TO PRAKASH ESTATE FOR FLAT**

Sr No	Date of payment	Amount	Details
1	17.06.2010	1,00,000.00	paid to Prakash Estate (Seller)
2	17.06.2010	25,00,000.00	paid to Prakash Estate (Seller)
3	18.04.2011	26,00,000.00	paid to Prakash Estate (Seller)
4	21.12.2011	20,80,000.00	paid to Prakash Estate (Seller)
5	28.12.2011	20,80,000.00	paid to Prakash Estate (Seller)
6	01.03.2012	20,80,000.00	paid to Prakash Estate (Seller)
7	21.04.2012	20,80,000.00	paid to Prakash Estate (Seller)
8	12.06.2012	20,80,000.00	paid to Prakash Estate (Seller)
9	14.08.2013	26,00,000.00	paid to Prakash Estate (Seller)
10	14.08.2013	2,88,250.00	paid to Prakash Estate (Seller)
11	14.08.2013	1,36,205.00	paid to Prakash Estate (Seller)
12	14.08.2013	1,88,940.00	paid to Prakash Estate (Seller)
<b>Total</b>		<b>1,88,13,395.00</b>	<b>paid to Prakash Estate (Seller)</b>
13	07.08.2013	9,45,000.00	paid for Stamp Duty
14	13.08.2013	1,66,000.00	paid for Stamp Duty
15	07.08.2013	30,000.00	Paid for Registration Chgs
<b>Total</b>		<b>1,99,54,395.00</b>	<b>Flat Cost</b>

  

1	Purchase Cost	1,82,00,000.00	
2	Stamp Duty paid	11,11,000.00	
3	Registration Chgs	30,000.00	
4	M.Vat	1,88,940.00	
5	Service Tax	1,36,205.00	
6	Other Chgs	2,88,250.00	
<b>Total</b>		<b>1,99,54,395.00</b>	<b>Total Flat Cost</b>

6. During the assessment proceedings, AO invoked provisions of s. 56(2)(vii)(b) on the premise that the stamp value on the date of registration being 13.08.2013 (being Rs. 2,22,45,000/-) shall be taken into consideration while the assessee argued that the stamp valuation on the date of agreement i.e. on 21.06.2010 was to be taken into consideration. The AO passed a draft assessment order on 27.03.2022 making an addition of Rs 40,45,000 (i.e. 2,22,45,000 being the stamp value as on the date of registration) minus Rs 182,00,000 being the amount

paid. The AO declined to give relief of the first proviso to s. 56(2)(vii)(b) of the Act on the premise that the phrase used in the said proviso is "may be taken" and not "shall be taken".

7. In summary, the details are as under:

Consideration (Rs.)	Stamp Value as on 13.08.2013 (Rs.)	Stamp value as on 21.06.2010 as per approved Govt Valuer (Rs.)
Rs. 1,82,00,000	Rs. 2,22,44,345 or Rs. 22,45,000	1,40,16,984

8. The relevant observation of the Assessing Officer is as under:

*"21. In view of the above, considering the directions of Hon'ble DRP, the assessee's contentions were verified. It is noticed that the assessee has submitted the valuation report of the property as on the date of agreement which was not submitted during passing of draft assessment order. The same has been perused. In rejoinder as well the assessee has mainly contested on the less amount of time given to the Bank to verify the bank account details. The information from the bank was received and has been perused. Further, the assessee has submitted case-laws which are not in relevance to this particular case and have different factual matrix. Here the main contention that the "may be taken" phrase as in proviso to section 56(2)(vii)(b) i) suggests that the same is directory and not mandatory. So the stamp duty at date of registration is being considered for the applicability of section 56(2) (vii)(b)(i). In view of the above, the total income of the assessee is computed as under:*

(i) *Income as per ITR* *Rs. 68,729/-*

(ii)	Addition: as discussed above	Rs.40,45,000/-
	Total	Rs. 41, 13,729
	R/o	Rs. 41, 13,730/-"

9. The provisions of section 56(2)(vii)(b) reads as under:

*In particular, and without prejudice to the generality of the provisions of subsection (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—*

\*\*\*\* \*\*

*(b) any immovable property,—*

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

*(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:*

***Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement maybe taken for the purposes of this sub-clause:***

*Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;"*

10. First proviso to section 56(2)(vii)(b) categorically provides that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purpose of this provision. Admittedly, the agreement fixing the consideration was entered into on 21.06.2022 fixing the value of Rs 1.82 crores and the sale deed was registered on 13.08.2013. Prescription of the second proviso is admittedly fulfilled in the instant case inasmuch as the assessee paid a sum of Rs. 26 lakhs in FY 2010-11 (i.e. on 17.06.2010 i.e. even before the date of the agreement to sell being 21.06.2022) as part payment through banking channel. In view of the foregoing discussion, the provisions of s. 56(2)(vii)(b) do not apply to the facts of the instant case as it is covered by the first and second provisos inasmuch as the assessee entered into an agreement fixing the amount of consideration for the purchase of the immovable property in the year 2010 but the actual registration took place in 2013 and, further, the assessee paid a part of the consideration by cheque in the year 2010 before the date of the agreement. In such circumstances, we hold that, it is the stamp value on the date of agreement in the year 2010, has to be considered.

11. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 08/01/2024.

**Sd/-**  
**(C.N Prasad)**  
**Judicial Member**

**Sd/-**  
**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 08/01/2024**

\*NV, Sr. PS\*

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**  
**ITAT, DELHI**