

**THE INCOME TAX APPELLATE TRIBUNAL,  
'SMC' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)  
&  
Shri Rakesh Mishra, Accountant Member**

**I.T.A. No. 1200/KOL/2024  
Assessment Year: 2015-2016**

***Tamojit Das,.....Appellant  
Mamo Maya Apartment, Flat-D/404,  
139, Bhattacharjee Para Road,  
Thakurpukur,  
West Bengal, PIN-700063  
[PAN:ADCPD4177A]***

**-Vs.-**

***Income Tax Officer,.....Respondent  
Ward-63(3), Kolkata,  
169, A.J.C. Bose Road,  
Kolkata-700014***

**Appearances by:**

*Smt. Saswati Mitra Dutta, Advocate and Shri Rajshree  
Dutta, Advocate, appeared on behalf of the assessee*

*Shri L.N. Dash, JCIT, appeared on behalf of the Revenue*

**Date of concluding the hearing: July 25, 2024**

**Date of pronouncing the order: October 03, 2024**

**O R D E R**

**Per Rajpal Yadav, Vice-President (KZ):-**

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 26<sup>th</sup> March, 2024 passed for Assessment Year 2015-16.

2. The assessee has taken seven grounds of appeal, but in brief, his grievance is whether any addition could be made in his hand under section 56(2)(vii)(b)(ii) of the Income Tax Act on the ground that cost of a property purchased by him along with his mother would be deemed equivalent to the amount on which stamp duty was paid by the assessee.

3. Brief facts of the case are that the assessee has filed his return of income on 31.08.2015 declaring total income of Rs.7,27,020/-. The case of the assessee was selected for scrutiny assessment by issuance of a notice under section 143(2) dated 05.08.2016. On scrutiny of the accounts, it revealed to the Id. Assessing Officer that the assessee has purchased a residential flat jointly with his wife Smt. Gargi Das through Deed of Conveyance, which was registered on 28.10.2014 before District Sub-Registrar-II, South 24-Parganas. The value of the said transaction was declared by the assessee at Rs.24,05,715/- as against stamp duty valuation of Rs.38,74,500/-. The difference of both these amounts of Rs.14,68,785/- was treated by the Id. Assessing Officer as a deemed gift within the meaning of section 56(2)(vii)(b)(ii) of the Income Tax Act. When assessee was confronted with, then the assessee has submitted that he has booked this flat with Greenfield City Project LLP and first payment was made on 08.06.2010. In support of his contention, he filed (i) copy of receipt from Greenfield City Project LLP, (ii) letter of allotment by Greenfield City Project LLP dated 10.06.2010 and (iii) copy of typical floor plan purported to be allotment of flat to the assessee.

The Id. Assessing Officer did not equate this allotment letter and payment of the instalment by the assessee through account payee cheque as an agreement contemplated in proviso appended to sub-Clause (2) of section 56(1) of the Income Tax Act. The Id. Assessing Officer made the addition of the difference to the total income of the assessee.

4. Dissatisfied with this addition, the assessee filed an application under section 154 of the Income Tax Act and emphasized that the letter given by the developer demonstrating the booking of the flat amounts to an agreement kindly rectify the mistake but Id. Assessing Officer has rejected this application of the assessee. Dissatisfied with the rejection order passed under section 154, the assessee has filed an appeal before the Id. CIT(Appeals), which has been dismissed by the impugned order.

5. With the assistance of Id. Representatives, we have gone through the record carefully. Section 56(2)(vii)(b) has a direct bearing on the controversy. Therefore, we deem it appropriate to take note of this section, which reads as under:-

*“56(1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income tax under the head “Income from Other Sources”. If it is not chargeable to income tax under any of the heads specified in section 14, items A to E.*

*(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely*  
*(i) dividends ;*

.....

*(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;*

*(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 may be taken for the purposes of this sub-clause (emphasis supplied).*

*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;*

6. A perusal of the proviso appended to this section would contemplate that when the date of agreement fixing the amount of consideration for the transfer of an immovable property and the date of registration are not be same, the stamp duty valuation on the date of agreement may be taken for the purpose of this clause. In other words, the stamp duty valuation on the date of agreement is to be considered and if there is any variation between the amount disclosed by an assessee as a purchase consideration, vis-a-vis the amount on which stamp duty was paid/ payable, then

such a difference will be treated as a deemed gift in the hands of the assessee.

7. The dispute in the present case is whether the allotment letter by the developer is to be construed as an agreement or not. The copy of this letter is available on page no. 5 of the paper book. We have perused it. Thereafter the assessee has placed on record the complete allotment letter upto page no.11. The assessee thereafter drew our attention towards the collection history reported in Greenfield City Project LLP. Copy of the ledger is available on page no. 12 of the paper book. A perusal of this ledger would indicate that all these amounts starting from 1<sup>st</sup> June, 2010 upto 2<sup>nd</sup> September, 2010 and payments have been made by the assessee by way of different cheques; For example- Rs.1,00,000/- Cheque No. 757061- HDFC Bank, Rs.55,000/-, Rs.52,000/-, Rs.1,50,000/- and Rs.6,57,980 on 02.09.2010. This was paid through account payee cheque No.717352. It indicates that all the payments were made through account payee cheque and part payments were made before 2<sup>nd</sup> September, 2010. Therefore, it is an incorrect interpretation by both the revenue authorities. This allotment letter is be equated to an agreement to sale. The agreement is not required to be a registered document. The only requirement in the law is that agreement should be followed by payments through banking channel, so that its veracity cannot be doubted. In the present case, the assessee has established the genuineness of the allotment letter by showing that payments were made through account payee cheques. Therefore, the valuation date for the purpose of any deemed gift is the date when first

payment was made, in this case it happened around June, 2010. The Id. Assessing Officer has erred in taking the valuation of the property as on 28<sup>th</sup> October, 2014.

8. At this stage, we would like to draw attention to the CBDT Circular No. 872 dated 16.12.1993. The issue under this Circular was whether allotment of flats/houses by Cooperative Societies and other Institutions whose scheme of allotment and construction are similar to this of DDA should be treated as the cases of construction for the purpose of section 54 and 54F. Earlier there was a Circular bearing No. 471 dated 15.10.1986, wherein it was provided that cases of allotment of flats under the self-financial scheme of the Delhi Development Authority should be treated as cases of construction for the purpose of section 54 & 54F of the Income tax Act. The scope of this Circular was enlarged to cover other Institutions and Cooperative Societies meaning thereby that allotment letter by the developer was always been recognized as an agreement to purchase the house. Thus, we are also considered as a construction activity where benefit of set off of capital gain could be granted to the purchaser. If we apply that very analogy in the present case, then it would reveal that allotment letter given by the developer to the assessee way back in 2010 would be construed as an agreement of purchase between the developer and the assessee. Therefore, benefit of proviso appended to section 56(2)(vii)(b) would be available in the present case. The Id. Assessing Officer has committed an error by ignoring this aspect. If this starts from June,2010 for which the assessee has made payments through account payee cheque is being

construed as an agreement, then additions under section 56(2)(vii)(b)(ii) will not survive. Accordingly, we allow this appeal of the assessee and delete the addition.

**9. With the above directions, the appeal of the assessee is allowed.**

Order pronounced in the open Court on 03/10/2024.

Sd/-

Sd/-

**(Rakesh Mishra)**  
**Accountant Member**

**(Rajpal Yadav)**  
**Vice-President (KZ)**

**Kolkata, the 3<sup>rd</sup> day of October, 2024**

*Copies to :(1) Tamojit Das,  
Mamo Maya Apartment, Flat-D/404,  
139, Bhattacharjee Para Road,  
Thakurpukur, West Bengal, PIN-700063*

*(2) Income Tax Officer,  
Ward-63(3), Kolkata,  
169, A.J.C. Bose Road, Kolkata-700014*

*(3) Commissioner of Income Tax (Appeals),  
National Faceless Appeal Centre (NFAC),  
Delhi;*

*(4) CIT - , Kolkata;*

*(5) The Departmental Representative;*

*(6) Guard File*

*TRUE COPY*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**