

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
ITA No. 56/Mum/2021 (A.Y. 2014-15)

Mr. Sajjanraj Mehta  
C/o. M. Mehta & Co., Shop No. 19,  
PalamSojal Building, Dadar (W),  
Mumbai-400028.

**PAN: AABPM9430B**

..... Appellant

Vs.

ITO, Ward-21(3)(2)  
Room No. 206, 2<sup>nd</sup> Floor,  
Piramal Chambers, Parel,  
Mumbai-400012.

..... Respondent

Appellant by	:	Sh. Ajay Singh
Respondent by	:	Sh. Pramod Nikalje
Date of hearing	:	14/06/2022
Date of pronouncement	:	05/09/2022

ORDER

**PER GAGAN GOYAL, A.M:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-33, Mumbai [hereinafter referred to as ('CIT(A)'] dated 11.02.2020 for the Assessment Year (AY) 2014-15. The assessee has raised the following grounds of appeal:

Sr.No.	Grounds of appeal	Tax effect relating to each Ground of appeal <i>(see note below).</i>
1.	On the facts and circumstances of the case and law applicable thereto, the Ld. CIT(A) erred in upholding the order of the AO without considering the merits and fact pattern of the case.	
2.	On the facts and circumstances of the case and law applicable thereto, the Ld. CIT(A) erred in upholding the addition made by the AO u/s 56(2)(vii)(b) of the Income-tax Act, 1961 (Act) of Rs 30,28,500/- by holding that the letter of allotment is merely a letter of intent and not an agreement for sale of flat, without appreciating the fact pattern of the instant case.	
3.	Without prejudice to Ground No. 2, on the facts and circumstances of the case and law applicable thereto, the Ld. CIT(A) erred in upholding the allegation made by the AO that the case of the Appellant did not fall within the purview of the proviso to Section 56(2)(vii)(b)(ii) of the Act.	Rs.9,58,704/-
4.	On the facts and circumstances of the case and law applicable thereto, the Ld. CIT(A) erred in upholding the disallowance made by the AO of Rs 3,36,870/- on account of interest expenses incurred by the Appellant.	
5.	On the facts and circumstances of the case and law applicable thereto, the Ld. CIT(A) erred in upholding the action of the AO in levying interest under Section 234B and Section 234D of the Act, and recovering interest u/s 244A of the Act.	Rs.3,00,806/-
6.	On the facts and circumstances of the case and law applicable thereto, the Ld. CIT(A) erred in upholding the action of the AO in initiating penalty proceedings under Section 271(1)(c) of the Act.	
7.	The Appellant craves your Honour's leave to add, alter or amend any grounds of appeal at the time of hearing or before.	NA
	Total tax effect <i>(see note below)</i>	Rs. 12,59,510/-

2. Brief facts of the case are that during the course of assessment proceedings, it was noticed by the A.O. that the assessee registered the

agreement for flat purchased in Dadar namely Kamla Astral on 27.07.2013. The market value of the flat was Rs. 1,00,28,500/- while agreement value was Rs. 70,00,000/- . It was claimed by the assessee that the Flat was booked during the F.Y. 2011-12 and the assessee has paid the Builder Sai Sadguru Developers, Rs. 48,50,000/- up to March 2013 towards the said purchase and has also paid stamp duty of Rs. 5,02,000/- and Registration Charges of Rs. 30,000/- which have been capitalized to the flat account.

3. The AO further states that the purchase agreement shows that the assessee started making payments to the Developer on 17/10/2011 and till 29/01/2013, he had paid Rs. 48,50,000/- from his Bank a/c of Bank of Maharashtra to Sai Sadgure Developers. However, there was no separate agreement for the said payments/fixing of purchase price produced by the assessee.

4. Since the assessee being an individual has received a property vide Agreement dated 23/07/2013 for consideration of Rs. 70,00,000/- (part payment done till that date Rs. 48,50,000/-) and the market value of the property was Rs. 1,00,28,500/- his attention was drawn to the provision of section 56(2)(vii)(b). The assessee was required to show cause why the difference between the consideration and the stamp duty value (i.e.  $1,00,28,500 - 70,00,000 = 30,28,500/-$  should not be added to his income u/s. 56(2)(vii)(b) of the I.T. Act .

5. In response, the assessee contended that the value as on the date fixing the price for purchase i.e. 17/10/2011 (date of allotment letter) should be adopted. He stated that the market value in October 2011 will be the agreement value of Rs. 70,00,000/- only. Hence, the AR vehemently argued that no addition would

entail. Further, the AR contended that letter of allotment holds supreme importance in property deals. It has all the ingredients of an agreement and date of allotment letter can be considered as date of acquisition for calculating Long Term Capital Gain.

6. The assessee's submission was not accepted by the A.O. who held that there is no agreement fixing the amount of consideration for transfer of immovable property in this case produced by the assessee. The letter dated 17/10/2011 issued by Sai Sadgure Developers is merely a letter of intent. Para 2 mentions the intention of the assessee to acquire the said flat. Para 9 says that this writing is merely a letter of intent and is not and does not purport to be an agreement for sale /purchase which shall be executed upon final confirmation. Surprisingly, this letter of intent issued by Said Sadguru Developers to the assessee Shri Sajjanraj.M. Mehta is not even accepted and confirmed by the assessee. Here, only agreement available with regard to this transfer is dated 23rd July 2013. In the said agreement, purchase price of the property is fixed at Rs. 70,00,000/- vide para 10 thereof . Hence, first proviso to section 56(2)(vii)(b)(ii) would not apply. Accordingly, the difference between the stamp duty value and consideration (agreement value) i.e Rs. 30,28,500/- was added to the total income of the assessee as 'Income from other sources'.

7. Aggrieved, the appellant has filed appeal. During the appellate proceedings, the appellant vide letter dated 03/04/2018 submitted that the AO has made addition ignoring the 1st and 2nd proviso to section 56(2)(vii)(b) inserted by Finance Act, 2013 w.e.f. 01.04.2014. The appellant was allotted flat no. 502 in the building Kamla Astral, Dadar for a total consideration of Rs. 70,00,000/- vide

allotment letter dated 17.10.2011 by the builder M/s. Sai Dadguru Developers . The assessee registered the said flat vide agreement dated 23.07.2013. The text of 1st and 2nd proviso was reproduced and it was claimed that if the agreement(allotment letter) is executed then in that case the date of agreement would be taken for the purpose of section 56(2)(vii)(b). The appellant has paid substantial amount (70% approx) before registration of agreement through banking channel only. Fair market value at the time of allotment was Rs. 70,00,000/- as per ready reckoner sheet attached with the valuation report issued by B.L. Jain & Associates . In the assessment proceedings, allotment letter of flat no. 501 in the same building in the name of assessee's wife Mrs. Majula Mehta was wrongly submitted. The allotment letter in the name of appellant for flat no. 502 was filed during the appellate proceedings. In case of assessment of wife for AY 2014-15, no such addition was made.

8. A remand report was called for, from the AO, vide this office letter dated 23/05/2018. In response, the AO, vide his letter dated 16/09/2019, has submitted his remand report has stated given below :

*“a) The submission made by the assessee which was enclosed with your letter dated 23/05/2018 has been duly considered. The assessee has just submitted the allotment letter dated 17/10/2011 issued by the builder M/s. Said Sadguru Developers, in the name of the assessee. The allotment letter was submitted during the course of assessment proceedings, but it was issued in the name of M/s. Manjula S Mehta (his wife).*

*b) It is pertinent to- mention here that the addition made by the A.O. was on account of difference in stamp duty valuation vis-a-vis agreement value. The A.R of the assessee contended that the letter of allotment should be adopted for the amount of consideration for transfer of immovable property i.e. 17/10/2011 (date of allotment letter). On verification of the record, it is noticed, the assessee had*

*entered in to agreement with the builder with regard to transfer of the said flat which got registration on 23/07/2013. In this agreement, the purchase price of the property is fixed at Rs. 70,00,000/- vide para 10 thereof. Further, on perusal of the purchase agreement shows that the assessee started making payments to the Developers from 17.11.2011 and till 29.01.2013. Therefore, this allotment letter dated 17/10/2011 issued to the assessee cannot be treated as additional evidence. This is just a letter of intent. Further, vide para 9 of the said letter stated that "Upon final confirmation an agreement for sale shall be executed between us for purchase of the said flat by you". Thus, this writing is merely a letter of intent and is not and does not purport to be an agreement for sale/purchase of the said flat. The right and obligations shall become effective only on payment of entire consideration and execution of agreement of sale.*

*c) Moreover, it is pertinent to mention here that the assessee has never furnished any details/documentary evidence which can show the stamp duty value or market value of the said property at the time of allotment of the said property i.e. 17/10/2011. In fact, the assessee had never raised this contention during the assessment. Further, the AO had not rejected the allotment letter though the same was issued in the name of wife of the assessee. Hence, the allotment letter was never in question. The AO has invoked the provision of section 56(2)(vii)(b) of the Act.*

*Sec. 56(2)(vii)(b) says that*

*d) Even, the exclusion provision of this section cannot be applied in the case of the assessee, which says that"*

*"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:*

*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".*

*In this case, the allotment letter cannot be considered as "Agreement for sale and purchase" as the assessee has entered into agreement with builder on 23rd July, 2013 as per the copy of agreement on record".*

*e) Hence, the AO has rightly invoked sec. 56(2)(vii)(b) and accordingly the difference between the stamp duty value/Market Value of Rs. 1,00,28,500/- and*

*the agreement value of Rs. 70,00,000/- i.e. Rs. 30,28,500/- is correctly added to the income of the assessee."*

9. A copy of the remand report was forwarded to the appellant vide this office letter dated 25/11/2019. In response, the appellant did not file any rejoinder till date. This office has issued notices vide letters dated 25/11/2019 fixing hearing on 11/12/2019. In response, the appellant asked for an adjournment. The case was adjourned on 13/01/2010. The appellant asked adjournment for 10 more days and the case was adjourned to 24/01/2010. However, there was neither any compliance on 24/01/2010 nor any further request to adjourn the case. No response from the appellant was received till date. In view of above, it is deemed proper to dispose the appeal based on materials available on record.

10. We have gone through the order of the A.O, Ld. CIT(A) and various submissions of assessee dated 06-10-2021. Vide pg no-23 to 27 of paper-book we have observed the payment made by the assessee to the developer on 17-10-2011 amounting to Rs 14 lacs vide cheque no 906740, Bank of Maharashtra to enter into an agreement cum acknowledgement of payment made and other terms and conditions about the property. This agreement between assessee and developer clearly confirms the amount of consideration along with other terms and conditions relating to levy of stamp duty, service tax and other charges to be paid by the assessee.

11. The finding of the A.O vide pg no-4, para-2.6 wherein he observed that assessee has deposited Rs 14 lacs with the developer to year mark the said premises for Rs 70 lacs. Even if for the time being it is assumed that this agreement is merely a letter of intent, still amount mentioned in this so called

letter of intent can't be changed by either of the party .At the max the parties involved may opt for exit from the transaction but amount of consideration can't be changed. This transaction of the assessee has to be analysed in commercial parlance, without finalisation of consideration nobody will deposit 20% of the final consideration. The vitality of the agreement further found force from the behaviour of the assessee as confirmed by the A.O also that assessee paid further Rs 34.5 lacs till financial year 2012-13. Assessee also paid Rs 1,00,285/- as VAT, Rs 1,35,187/- as service tax, Rs 5,02,000/- as stamp duty and Rs 30,000/- as registration charges.

12. The chronology of the events confirms that the finding of the A.O treating the agreement of the assessee as letter of intent is not correct. In this matter treating the said agreement as letter of intent shows an over thinking and hyper technical interpretation at the end of the A.O. assessee's case clearly falls in the proviso to Section 56(2)(vii)(b). For sake of clarity we are reproducing herein below the relevant portion of proviso

*“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:*

*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”.*

13. We further relied on following judicial pronouncement of coordinated benches of ITAT, Hon'ble High Court and Apex Court as under:



a) *“Siraj Ahmed Jamalbhai Bora vs. ITO Ward - 1(3) (1) ITA No. 1886/M/2019 dtd. 28/10/2020, (Mum.) (Trib.):*

*Date of registration irrelevant for Sec 56(2)(vii)(b) as substantial obligation discharged on date of agreement.*

b) *Radha Kishan Kungwani vs. ITO Ward - 1(2) ITA No. 1106/JP/2018 dtd. 19/08/2020, [185 ITD 433 (Jaipur - Trib.)]*

*Where assessee entered into agreement for purchase of flat and had made certain payment at time of booking of flat, stamp duty valuation or fair market value of immovable property was to be considered as on date of payment made by assessee towards booking of flat*

c) *Sanjay Dattatraya Dapodikar v/s ITO Ward - 6(2), Pune ITA No. 1747/PN/2018 dtd. 30/04/2019(Pune) (Trib)*

*Where date of agreement for fixing amount of consideration for purchase of a plot of land and date of registration of sale deed were different but assessee, prior to date of agreement, had paid a part of consideration by cheque, provisos to section 56(2)(vii)(b) being fulfilled, stamp value as on date of agreement should be applied for purpose of said section*

d) *Ashutosh Jhavs. ITO Ward-2(5), Ranchi ITA No. 188/Ranchi/2019 dtd. 30/04/2021, [190 ITD 450 (Kolkata - Trib.).]*

*Where assessee purchased a property and made part payment of sale consideration by cheque on very next day of execution of purchase agreement and registry was done after a year, since such part payment made by cheque on very next day of execution of agreement was towards fulfilment of terms of purchase contract itself and there was no mala fide or false claim on part of assessee, no addition could be made on account of difference between amount of sale consideration for property shown in purchase agreement and stamp duty value of said property on date of registry by invoking section 56(2)(vii)(b)*

e) *Dy. CIT-5(3)(1) vs. Deepak Shashi Bhusan Roy ITA No. 3204 & 3316/M/2016 dtd. 30/07/2018(Mum.) (Trib.)*

*In order to determine taxability of capital gain arising from sale of property, it is date of allotment of property which is relevant for purpose of computing holding period and not date of registration of conveyance deed*

f) *Mohd. Ilyas Ansari v. ITO-23(2)(3), Mumbai [ITA No. 6174/M/2017 dtd. 06/11/2020, 186 ITD 407 (Mumbai - Trib.)]*

*Where Assessing Officer mechanically applied provisions of section 56(2) to difference between stamp duty value and actual sale consideration paid by assessee and made additions, without making any efforts to find out actual cost of property, additions made by Assessing Officer were to be set aside.”*

14. Similar property in the case of assessee’s wife with similar transactions has been accepted by the same A.O without any addition for the same A.Y. Here we would like to rely on the decision of Hon’ble Gauhati HC.

*“Gulabrai Hanumanbox. vs. Commissioner of Wealth –tax [198 ITR 131 (Gauhati) (HC).]*

*Two different Assesseees having similar/ identical facts w.r.t valuation of property cannot be assessed with different rates for the same property. Thereby, the order passed by the Assessing officer for co-sharer of property is arbitrary and unjustified in law”*

15. Keeping in view the facts of the case, chronology of events and respectfully following the pronouncements of the co-ordinated benches of ITAT, we delete the addition made by A.O and confirms that assessee is entitled to the benefits of proviso to Section 56(2)(vii)(b).

16. **Ground No 1, 2 and 3 raised by the assessee are allowed.**

17. As observed earlier supra the case of the assessee was selected for limited scrutiny under CASS with a specific mandate to examine the transaction of property as discussed supra, no any other disallowance under any head can be made. In view of this addition made of Rs 3,36,870/- is also deleted as the A.O made this beyond his jurisdiction

18. **In the result, ground no-4 is also allowed with a direction to the A.O. for deletion of disallowance of Rs 3,36,870/-.**

19. Rest of the grounds are consequential in nature, no specific adjudication is required.

20. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 5<sup>th</sup> day of September, 2022.

Sd/-  
(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER

Sd/-  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 05/09/2022

SK, Sr.PS

**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.

//True Copy//

BY ORDER,

(Dy. /Asstt. Registrar)  
ITAT, Mumbai