

IN THE INCOME TAX APPELLATE TRIBUNAL
“RANCHI” BENCH, RANCHI

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SMT. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 327/Ran/2018
(निर्धारण वर्ष / Assessment Year : 2014-15)

Bajrang Lal Naredi Chhata Compound, Baralal Street, Upper Bazar, Near Ranchi Express, Ranchi - 834001	बनाम/ Vs.	Income Tax Officer Ward-1(3), Jamshedpur, Jharkhand
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABOPN9645F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Anand Pasari with Shri Nitin Pasari, Advocates
प्रत्यर्थी की ओर से / Respondent by :	Smt. Nisha Singhmarr, JCIT

सुनवाई की तारीख / Date of Hearing	05/11/2019
घोषणा की तारीख /Date of Pronouncement	20/01/2020

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals), Jamshedpur (CIT(A)' in short), dated 09.07.2018 arising in the assessment order dated 31.08.2016 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2014-15.

2. As per multiple grounds of appeal, the assessee has essentially raised two grievances; (i) applicability of amended provisions of Section 56(2)(vii)(b) of the Act in the facts and circumstances of the case; & (ii) chargeability of interest under s.234B of the Act on additions made.

3. The assessee in the year under consideration registered in his name, an immovable property on 17.06.2013 against the actual purchase of property on 15.04.2011 in FY 2011-12. The purchase consideration was determined at Rs.9,10,000/- at the time of agreement for purchase in FY 2011-12 and accordingly the payment was made at the time of such agreement to the vendor. As noted, the registration was however carried out at a belated stage on 17.06.2013 on which date the stamp duty valuation stood at a higher figure at Rs.22,60,000/-. The AO noticed the alleged under-valuation in the purchase price of the property *qua* stamp duty valuation and applied provisions of Section 56(2)(vii)(b) of the Act and worked out the adjusted purchase consideration of Rs.18,89,350/-. The AO accordingly treated the difference of Rs.9,79,350/- as 'deemed income' having regard to the provisions of Section 56(2)(vii)(b) of the Act as amended by Finance Act, 2013 and applicable to AY 2014-15 onwards.

4. In the first appeal, the CIT(A) did not give any relief on inapplicability of amended provisions of Section 56(2)(vii)(b) of the Act to the facts of the case as claimed by the assessee.

5. Further aggrieved, the assessee preferred appeal before the Tribunal against the order of the CIT(A).

6. We have carefully considered the rival submissions on the issue. In the instant appeal, the applicability of Section 56(2)(vii)(b) of the Act as amended by Finance Act, 2013 and applicable to AY 2014-15 in question. On a perusal of pre-amended provisions of Section 56(2)(vii)(b) of the Act, we gather that where an individual or HUF receives from any person any immovable property without consideration, the provisions of pre-

amended Section 56(2)(vii)(b) of the Act would apply. The aforesaid provisions was however substituted by Finance Act, 2013 and made applicable to AY 2014-15 onwards. As per the amended provisions, the scope of substituted provision was expanded to cover purchase of immovable property for inadequate consideration as well. It is alleged on behalf of the Revenue that the amended provision will apply in view of the fact that registration has been carried out during the FY 2013-14 concerning AY 2014-15 where the amended law came into force. The assessee, on the other hand, seeks to claim that his case would be covered by pre-amended provision in view of the fact that agreement for purchase of the property was entered into with the prospective seller in FY 2011-12 relevant to AY 2012-13 at which time the new law did not come into play. It was claimed that the purchase consideration was duly paid at the time of agreement in FY 2011-12 and the purchase was *de facto* completed except for the formality of registration. It was thus submitted that the transactions entered prior to the FY 2013-14 would be governed by the pre-amended provision which triggers the applicability of such provision only where there is a total lack of consideration and does not cover a case of inadequacy in purchase consideration.

7. We find merit in such plea advanced on behalf of the assessee. It is not in dispute that purchase transactions of immovable property were carried out in FY 2011-12 for which full consideration was also parted with the seller. Mere registration at later date would not cover a transaction already executed in the earlier years and substantial obligations have already been discharged and a substantive right has accrued to the assessee therefrom. The pre-amended provisions will thus apply and therefore the Revenue is debarred to cover the transactions where inadequacy in purchase consideration is alleged. We thus find merit in the issue raised on behalf of the assessee. The order of the CIT(A) is accordingly set aside and the AO is directed to delete the additions made under s. 56(2)(vii)(b) of the Act and restore the position claimed by the assessee.

8. Second issue concerns chargeability of interest under s. 234B of the Act on assessed income *qua* return income.

8.1 We find that identical issue has come up before the co-ordinate bench of ITAT in ITO vs. M/s. Anand Vihar Construction Pvt. Ltd. ITA No. 335/Ran/2017 order dated 28.11.2018 wherein the issue was dealt with as under:

"16. We have heard rival submissions and perused the material on record. Prima facie the disputed issue, being charging of interest u/s.234A & 234B as envisaged by Id. AR, is covered by the decision of Hon'ble jurisdictional High Court in the case of Ajay Prakash Verma in ITA No.38 of 2010 reported in 2013(1) TMI 140. The Hon'ble Court in Para23&24 held as under :-

"23. Learned counsel for the appellant submitted that it has been ordered by the AO that interest be charged as per rule. Interest can be levied under Section 234A and 234B of the Act. It is submitted that in view of the judgment of Full Bench of Ranchi Bench of Patna High Court delivered in the case of Smt. Tej Kumari Vrs. Commissioner of Income-tax reported in [2001] the interest cannot be levied over the assessed income and it can be levied only on the income declared in the return. The revenue preferred SLP before Hon'ble Supreme Court against the said judgment of the Full Bench of Patna High Court, which was dismissed by the Hon'ble Supreme Court on merits vide order dated 01.08.2000 by saying that there is no merit in the appeal.

24. Learned counsel for the revenue could not dispute this legal position.

Therefore, so far as question of law involved in this appeal that whether the interest could have been levied against the assessed income of the assessee under Sections 234A and 234B is concerned, in view of the Full Bench judgment of Ranchi Bench of Patna High Court delivered in the case of Smt. Tej. Kumari, the revenue can levy the interest only on the total income declared in the returns and not on the income assessed and determined by the AO to that extent. The orders passed by the authorities below are accordingly modified and interest shall be chargeable in the light of the Full Bench judgment, referred above."

17. Id. AR also placed reliance on the decision of coordinate bench of the Tribunal in the case of Shri Girdhari Lal Sharma vs. ITO, Ward-1(4), Jamshedpur in ITA No. 31/Ran/2013 by an order dated 07.05.2012 in para No. 6 relying upon the above decision of the Hon'ble Jharkhand High Court held :-

"We accordingly following the above decision, direct the Assessing Officer to re-compute the interest under section 234B

on the basis of the total income declared by the assessee in the return filed."

18. *We respectfully following the decision of the jurisdictional High Court and the decision of coordinate bench of the Tribunal direct the AO to recomputed the interest u/s.234B on the basis of total income declared by the assessee in the return filed. This ground of Cross Objection of the assessee is allowed."*

8.2 In consonance with the view expressed by the co-ordinate bench holding that interest under s.234A & 234B of the Act is chargeable with reference to returned income only, we are inclined to adjudicate the legal objection raised by way of additional ground in favour of the assessee.

8.3 In the result, second issue concerning chargeability of interest under s.234B of the Act is allowed.

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

This Order pronounced in Open Court on 20/01/2020

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER
Ranchi: Dated 20/01/2020

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रांची /
DR, ITAT, Ranchi
6. गार्ड फाइल / Guard file.

By order,

Sr. Private Secretary
ITAT, Ahmedabad