

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

**BEFORE SH. G. S. PANNU, PRESIDENT AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

ITA No.2955/Del/2018
(Assessment Year : 2014-15)

Shri Anwar Hussain Khan S/o. Shri Maqshood Hussain, C/o. Royal Gas Services, G.T. Road Khurja, Bulandshahr PAN No. AAMPH 9619 N (APPELLANT)	Vs.	ACIT Circle Bulandshahr (RESPONDENT)
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Assessee by	Dr. Rakesh Gupta, Adv. and Shri Somil Aggarwal, Adv.
Revenue by	Shri Kanv Bali, Sr. D.R.

Date of hearing:	09.10.2023
Date of Pronouncement:	17.10.2023

PER CHANDRA MOHAN GARG, JM :

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-Aligarh dated 22.02.2018 for Assessment Year 2014-15.

2. Learned Counsel for the assessee submitted that Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.74,55,500/- u/s 56(2)(vii)(b) on the ground of difference between circle rate and actual amount paid for purchase of land, more so when the land was purchased for the purpose of business and the same was shown as stock in trade and impugned

addition has been made by recording incorrect facts and findings and in violation of principles of natural justice. He further submitted that the action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.74,55,500/- u/s 56(2)(vii)(b), is bad in law and against the facts and circumstances of the case and by not considering the submissions placed on record by the assessee. Further placing reliance on the order of ITAT, Jaipur Benches in the case of CIT vs. Shri Ashok Agarwal HUF, ITA No.71/JP/2020 dated 30.07.2020, the Learned Counsel submitted that when the properties in question are undisputedly shown in the books of account of the assessee as stock-in-trade and part of the closing stock, then the same would not fall in the ambit of the property as defined in explanation to section 56(2)(vii) of the Act and consequently the said provisions will not be applicable in the case of the assessee.

3. The Learned Counsel further drawing our attention towards Memo of Understanding (MOU) dated 10.12.2013 to submit that the assessee and his brother Shri Safder Hussain Khan jointly purchased the property in question and entered into a Memorandum of Understanding (MOU) that the land will be utilized for development of commercial/residential Multistory Project at Khurja, Distt. Bulandshahr and also decided to sale the land in small pieces after developments. The Learned Counsel also drew our attention towards para 11 of said MOU and submitted that the assessee and his brother also agreed that they will setup a new project in a status of partnership firm or Pvt. Ltd. Company or LLP as mutually decided between them and the land and property will be treated as stock-in-trade or trading assets on such MOU in the hands of both parties.

The Learned Counsel finally submitted that the AO was not justified in making additions in the hands of the assessee by invoking inapplicable provision of section 56(2)(vii) of the Act and Learned CIT(A) was also not justified in upholding the same. The Learned Counsel thus submitted that the addition made by AO and upheld by CIT(A) may kindly be deleted.

4. Replying to the above, Learned Sr. D.R. supported the action of the AO and submitted that the Learned CIT(A) in para 7.2 has recorded a categorical finding that no independent evidence has been brought on record by the assessee either during the assessment proceedings or during the remand proceedings to substantiate that the purchased land was not a capital asset and it was stock-in-trade in the hands of the assessee and his brother. The Learned Sr. D.R. also submitted that if the appellant has held this land as stock-in-trade then he would have made efforts to find prospective buyers and there was no evidence which could show that the appellant has made some efforts in this regard. The Learned Sr. D.R. also submitted that despite lapse of so many years, the appellant has not shown any inclination of trading in the said land and there was no earlier or subsequent explanation to show that the assessee and his brother was in the business of developing and building projects and thus the land in question cannot be treated as stock-in-trade in the hands of assessee to avoid trigger of section 56(2)(vii) of the Act.

5. Placing rejoinder to the above, the Learned Counsel also drew our attention towards medical records of the brother of assessee Shri Safdar Hussain Khan placed at pages 48-53 of the assessee paper

book and submitted that since the brother of the assessee was seriously ill after purchase of land and therefore, no action could have been taken and no business decisions could have been made to proceed for development of land and construction of multistory commercial and residential projects. He also contended that due to said reason the propose of purchase of land could not be achieved but the MOU shows that the intention of assessee and his brother was only to develop a project and they rightly treated the purchased the land as stock-in-trade.

6. On careful consideration of above submissions from the assessment order, we note that assessing officer made addition under section 56(2)(vii) of the Act with following observations and findings:

“3. During the period relevant to A.Y. 2014-15. The assessee has purchased land at Murari Nagar, Khurja, for an amount of Rs.99,60,000/- along with his brother in the 50-50 share ratio. Thus the total investment in the purchase of land made by the assessee amounts to Rs. 49,80,000/-. The value of the total land for stamp purpose/circle rate was at Rs. 2,48,71,000/- and the value of assessee's share worked out to Rs. 1,24,35,500/-. The assessee was asked to explain as to why the provision of section 56(2)(vii)(b) be not applied to his case and the difference of Rs.75,55,500/-, between the purchase consideration and the circle rate value value for stamp purchase may not be taxed. The assessee in his explanation has argued that he has purchased the land as stock in trade trading asset whereas the applicability of section 56(2)(vii)(b) is restricted to capital assets only.

4. The contention of the assessee has been examined and it is found that, the same has no force since the provisions read as under:-

Section 56(2)(vii) (inserted by the finance Act, 2009, w.e.f 01.10.2009) where any immovable property is received by an individual or HUF without consideration, the stamp: duty value of which exceeds Rs.50,000/- the stamp duty value of such property would be charged to tax in the hands of the individual of HUF as income from other sources. The existing provision does not cover a situation where the

immovable property has been received by an individual or HUF for inadequate consideration. As per amended provisions of clause (vii) of sub-section 56 where any immovable property is received 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, shall be chargeable to tax in the hands of the individual or HUF as income from other sources.

5. *Here is worthwhile to mention that for capital gain purpose provision of Sec-50C are applicable for the purpose of charging long term capital gain as well as short term capital gain taking the value for stamp purpose and the sale value whichever is higher i.e. in case capital assets is sold at lower value than the value for stamp purpose, it is the value for stamp purpose, which it to be taken for charging capital gain tax. The section 56(2)(vii)(b) speaks of capital assets and the same is applicable for purpose of immovable property of any kind. Therefore the contention of the assessee that he has not purchased the capital assets but stock in trade also does not hold good since, transfer of immovable property is involved in entire transaction. The assessee has not brought on record any evidence except MOU (Memorandum of Understanding), self drafted document between the assessee and his brother Shri Safdar Khan for launching a new commercial multistorey market. In fact, this document bears no sanctity. The ITI was deputed to visit the land and report after ascertaining the nature of land with reference to its situation. The ITI in his report has opened that the land under consideration is that of urban character and is situated well within the municipal limit. No signs of agricultural operations having been carried on there earlier were visible from the inspection of the land. The assessee has simply got constructed a boundry wall along the sides of the plot with some land filling work which is not sufficient enough to prove the nature of the land as trading asset/ stock in trade. This so called multi storey project at Khurja has not been approved by Development Authority i.e. Khurja Development Authority, Khurja. The assessee with the sole intention to save itself from the mischief of section 56(2)(vii)(b) is trying to treat the property under consideration as stock in trade. Accordingly an addition of Rs. 74,55,500/- being the difference of the purchase value and the market value is made to the returned income of the assessee treating the same as income from other sources.*

(Addition of Rs. 74,55,500/-)”

7. From the first appellate order, we further note that the Learned CIT(A) has upheld the addition with following observations and findings :

“All these grounds relate to the addition of Rs. 74,55,500/- made by the AO us 56 (2) (viiia) (b). It is an undisputed fact that the value of the appellant's share in the purchase of land as per circle rate is Rs. 1,24,35,500/- whereas his share as per the value mentioned in the purchase deed is Rs. 49,80,000/-. The AO has applied the provisions of section 56(2)(viiia) (b) and added the difference of Rs. 74,55,500/- to the total income. The appellant is contending that the said land is his stock in trade and therefore, provisions of section 56(2) (viiia) (b) are not applicable. In the remand report, the AO has argued that the documents produced by the appellant are self drafted and self arranged and have been created just to avoid mischief of section 56(2)(viiia)(b). It has been submitted that no independent evidence has been brought out by the assessee either during the assessment proceedings or during the remand proceedings to substantiate that the purchased land is not a capital asset. The AO had deputed and Inspector to visit the site and he has reported that the assessee has simply got constructed a boundary wall around the plot with some land filling and there is no evidence that the said land is held as stock in trade. It has also been indicated that the appellant's project has not been approved by the Khurja Development Authority. Considering the totality of the facts and evidence, I find merit in the AO's argument that there is no such evidence which would establish that the land in question is held as stock in trade. The land is in possession of the appellant for the past so many years and yet no portion of the land has been sold to any If the appellant has held this land as stock in trade, he would have made efforts to find prospective buyers. There is no evidence which would show that the appellant has made some efforts in this regard. When an asset is held as stock in trade, the intention is to trade in the same as quickly as possible. Despite lapse of so many years, the appellant has not shown any inclination of trading in the said land. Since the intention of trading is absent, it is not prudent to consider the land as stock in trade. The MOU drafted by the appellant and his brother is simply a self serving document which cannot be considered to be of much significance. Apparently, the said document has been created just to escape the tax liability U/s 56(2)(viiia)(b).

Considering the above, the appellant's claim of holding the said land as stock in trade is being rejected. Therefore, the provisions of section 56(2) (viiia) (b) are clearly applicable in this case. Hence, the AO

was fully justified in applying the provisions of section 56(2)(vii)(b) and adding a sum of Rs. 74,55,500/- to the total income.

In view of the above, the addition of Rs.74,55,000/- is confirmed and these grounds of appeal are being dismissed.”

8. On careful consideration of above rival submissions, basis taken by the AO for invoking provision of section 56(2)(vii) of the Act and findings recorded by the Learned CIT(A) while confirming the addition. First of all, we note that it is a fact on record that the assessee prior to purchase of land, on 10.12.2013 entered into MOU with his co-owner brother Shri Safdar Hussain Khan, which speaks of only future planning of the assessee and the co-owner but the same was not sufficient to protect the assessee from the applicability of section 56(2)(vii) of the Act. As subsequent to the purchase of land, there was no action by the assessee and his brother showing their intention to use the land for development of project as a business venture. The copies of Medical Certificates available at pages 48-53 shows that these medical documentary evidence shows illness of Shri Safdar Hussain Khan from 21.04.2016 to 03.05.2016 and also shows that the brother of assessee being co-owner was under treatment for some serious illness during F.Y. 2016-17. Moreover, the fact of illness was brought to the notice of the Assessing Officer during assessment proceedings only for seeking some more time to present the case before the Assessing Officer. Keeping in view said fact, when we proceed to adjudicate the contention of the assessee then we know that the land was purchased by assessee and his brother on 10.12.2013 during F.Y. 2013-14 and even after laps of 3 years up to A.Y. 2015-16 except signing MOU no other action had been taken by the assessee and his brother showing their intention to develop the land as a business venture.

9. It is also pertinent to note that the judgment relied by the Learned Counsel of assessee rendered by Co-ordinate Bench of ITAT, Jaipur in the case of CIT vs. Shri Ashok Agarwal HUF (supra), the assessee successfully demonstrated its intentions of assessee to develop the land and undisputedly in that case the land in question was shown in the books of accounts as stock-in-trade and part of other closing stock. Therefore, the Tribunal held that the land in question was not under the ambit of trigger of section 56(2)(vii) of the Act. But the facts and circumstances of the present case are clearly distinguishable and dissimilar from the said case as in the present case, expect signing an MOU, there is no action or evidence on record by the assessee and his co-owner brother after laps of three years till his co-owner brother fall ill. There is no other documentary evidence to show that the Shri Safdar Hussain Khan is continuously sick till date. There is no action or efforts by the assessee and his brother before illness of his co-owner brother to show that the assessee and his brother formed any partnership firm or LLP entity or Company for said business venture and showing any action to apply for any approvals or permissions from the Government Authorities regarding development of land as a Multistory Commercial/Residential Project. Therefore, we are inclined to hold that the benefit of order of Co-ordinate Bench of ITAT, Jaipur in the case of CIT vs. Ashok Agarwal HUF (supra) is not available for the assessee in the present case.

10. In view of the foregoing discussions, we reach to a logical conclusion that the AO was right in making addition by invoking provision under section 56(2)(vii) of the Act as a land in question was a capital asset and the same was not kept as stock-in-trade by the

assessee and his co-owner brother. Therefore, the ground of assessee being devoid of merits are dismissed.

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

Order pronounced in the open court on 17.10.2023

Sd/-

**(G. S. PANNU)
PRESIDENT**

Sd/-

**(CHANDRA MOHAN GARG)
JUDICIAL MEMBER**

Date:-17.10.2023

*Priti Yadav, Sr. PS**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI