THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri B.R. Baskaran (AM)

I.T.A. No. 5487/Mum/2017 (Assessment Year 2014-15)

ITO(IT)-2(3)(1) 17th Floor, Room No. 1727 Air India Building Nariman Point Mumbai-400 021.	Vs.	Mr. Richard Christopher Fleury 101, Belscot Building Lokhandwala Complex Andheri West Mumbai-400 053. PAN : ACAPF2929J
(Appellant)		(Respondent)

Assessee by	Shri Rituraj H. Gurjar
Department by	Ms. Hemalatha
Date of Hearing	2.11.2017
Date of Pronouncement	2.11.2017

O R D E R

The appeal filed by the revenue is directed against the order dated 27-06-2017 passed by Ld CIT(A)-56, Mumbai and it relates to the assessment year 2014-15. The revenue is aggrieved by the decision of Ld CIT(A) in holding that the provisions of sec. 56(2)(vii)(b) are not applicable to the assessee.

2. I heard the parties and perused the record. During the year under consideration, the assessee purchased a flat no.1003 in the apartment known as "Basera" in Azad Nagar Basera Co-op Housing Society for a consideration of Rs.70.00 lakhs by way of sale agreement dated 22.07.2013. The AO noticed that the stamp authorities have valued the flat at Rs.1,17,15,434/-. Hence the AO proposed to assess the difference amount of Rs.47,15,434/- as income of the assessee u/s 56(2)(vii)(b) of the Act. The assessee submitted that the agreement for sale was prior to the insertion of provisions of sec. 56(2)(vii)(b) of the Act and he has also paid advance of Rs.1.00 lakh on 26-02-2010 and further sum of Rs.12.295 lakhs on 12.12.2012. The AO noticed that the advance claimed to have been paid by the assessee is very minimum and further the assessee has failed to produce the agreement before him.

Accordingly he rejected the claim of the assessee and assessed the difference amount of Rs.47,15,434/- as income of the assessee under the head Income from other sources.

3. Before Ld CIT(A), the assessee submitted that it had entered into an agreement to sell with the builder on 22.7.2013, i.e., prior to the insertion of the provisions amended by the Finance Act, 2013 and accordingly contended that the first and second proviso to sec.56(2)(vii)(b) shall apply to his transaction. The Ld CIT(A) accepted the same and accordingly deleted the addition. Aggrieved, the revenue has filed this appeal.

4. Having heard the rival submissions, I notice that the assessing officer has not examined the applicability of first and second proviso to sec. 56(2)(vii)(b) to the transactions carried on by the assessee. I notice that the second proviso does not prescribe any monetary limit and hence the observation of the AO that the payments claimed to have been made by the assessee was less than 20% is not correct. I also notice that the clause (b) of sec. 56(2)(vii) has undergone changes frequently. I further notice that the assessee does not appear to have furnished copy of Sales agreement before the AO, though the Ld A.R claims that it was submitted before the AO. The AO has specifically stated so. However the Ld CIT(A) has made reference to the agreement to sale dated 22.7.2013. The payments claimed to have been are much prior to the date of agreement to sale.

5. Thus, I notice that the facts relating to the issue have not been examined properly by both the tax authorities. Under these set of facts, I am of the view that this issue deserves to be restored to the file of the AO for examining it afresh by duly considering the sale agreement, payment details, applicable law etc. Accordingly, I set aside the order passed by Ld CIT(A) and restore all the issues to the file of the AO with the direction to examine them afresh by considering the information and explanations that may be furnished by the assessee and take appropriate decision in accordance with the law.

6. In the result, the appeal filed by the revenue is treated as allowed for statistical purposes.

Order has been pronounced in the Court on 2.11.2017.

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 2/11/2017

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

BY ORDER,

//True Copy//

(Asstt. Registrar/Senior PS)
ITAT, Mumbai

PS