

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Income Tax Appeal No. 88/2020

Mr. Joy Bajaj S/o Shyam Sundar Bajaj, Aged About 35 Years, R/o
1/567 Vidyadhar Nagar, Jaipur.

----Appellant

Versus

The Assistant Commissioner Of Income Tax, Ward 4(2), Jaipur.

----Respondent

For Appellant(s)	:	Mr. Sandeep Taneja with Mr. Aditya Sharma
For Respondent(s)	:	Mr. Sandeep Pathak with Mr. Palash Gupta

HON'BLE MR. JUSTICE AVNEESH JHINGAN

HON'BLE MR. JUSTICE MANEESH SHARMA

Order

11/03/2025

AVNEESH JHINGAN, J:-

1. This appeal is filed against the order of Income Tax Appellate Tribunal (for short 'the tribunal') dated 22.03.2019 relating to assessment year 2015-16.
2. The brief facts are that the appellant vide two separate registered sale deeds dated 16.10.2014 purchased two offices from M/s. Radha Swami Buildcon Pvt. Ltd. (hereinafter referred to as 'the seller') for the consideration of Rs.28,00,000/- & Rs.26,50,000/-. For payment of the consideration, cheques amounting to Rs.54,50,000/- were issued. There was dispute and the only cheque amounting to Rs.1,00,000/- was encashed. The seller filed a civil suit in 2015 for declaring the sale deeds in favour of the appellant to be null and void. During the pendency of the litigation, the parties settled dispute and new cheques totaling to Rs.53,50,000/- in lieu of earlier cheques were issued and got encashed by seller in the year 2017. The assessing officer (for

short 'the A.O.') vide order dated 22.12.2017 framed assessment under Section 143(3) of the Act and made an addition of Rs.53,50,000/- under Section 56(2)(vii) of the Act. The CIT dismissed the appeal of the appellant on 14.12.2018. The tribunal set aside the addition of Rs.53,50,000/- by accepting the appeal on 22.02.2019, but the directions were issued that the purchase consideration should be determined by notionally applying interest factor for the period of delay in making the payment. In the rectification application filed, the tribunal rectified the factual errors in the appellate order but outcome of appeal remained as it is. Hence, the present appeal.

3. On 07.05.2022, the appeal was admitted on following substantial questions of law:-

"Whether, in the facts and circumstances of the case and in law, Id. ITAT was justified in directing the Id. AO to add income in the hands of the appellant by calculating the interest income on notional basis u/s 56(2)(vii)(b) of the Income Tax Act, 1961, without there being any charging section, in this regard, under the head "income from other sources"?"

4. Learned counsel for the appellant submits that the tribunal after deleting the addition of Rs.53,50,000/- erred in directing that the sale consideration be redetermined taking into consideration interest element on notional basis, for delayed payment consideration. The argument is that Section 56(2)(vii)(b) is not applicable.

5. As per contra the appellant had enjoyed the property for more than two years and also kept Rs.53,50,000/- with him for which he must have earned interest.

6. The portion of Section 56 of the Act in issue is reproduced below:-

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:—

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(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:

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7. The relevant portion of explanatory notes to the provisions of the Finance Act, 2010 are reproduced below:-

"13.4 The provisions of section 56(2) (vii) were introduced as a counter evasion mechanism to prevent laundering of unaccounted income. The provisions were intended to extend the tax net to such transactions in kind. The intent is not to tax the transactions entered into in the normal course of business or trade, the profits of which are taxable under specific head of income. Therefore, the definition of property has been amended to

provide that section 56(2)(vii) will have application to the 'property' which is in the nature of a capital asset of the recipient and therefore would not apply to stock-in-trade, raw material and consumable stores of any business of such recipient.

13.5 In several cases of immovable property transactions, there is a time gap between the booking of a property and the receipt of such property on registration, which results in a taxable differential. Therefore clause (vii) of section 56(2) has been amended to provide that it would apply only if the immovable property is received without any consideration and to remove the stipulation regarding transactions involving cases of inadequate consideration in respect of immovable property."

8. After abolition of Gift Tax Act, 1958 Section 56(2)(vii) was inserted to tax transaction of transfer of property without consideration or for lesser value. By virtue of Section 56 every income not chargeable to tax under items A to E of Section 14 and is not to be excluded from total income shall be chargeable to tax under head 'Income from other sources'. Sub-Section 2 specifies the income to be included. Section 56(2)(vii)(b) by deeming fiction bring within ambit of charge-ability the value of immovable property received without consideration or for a consideration lesser than the stamp duty value.

9. It is undisputed that two offices were purchased by the appellant for a total consideration of Rs.54,50,000/-. Consequent to the dispute the payment of Rs.53,50,000/- was delayed and for a sale deed registered in 2014 complete payment was made in 2017. During the pendency of the civil suit, the matter was compromised and a correction deed dated 29.04.2017 was executed between the parties. The execution deed specifically mentions that in lieu of earlier cheques issued, the appellant has issued new cheques and the details of new cheques was mentioned. The cheques issued in 2017 were encashed.

10. It would be apposite to mention that the tribunal in the impugned order has wrongly recorded that the seller filed a suit for recovery, rather the suit was for setting aside of sale deeds. The tribunal erred in recording that it is not forthcoming that the cheques of Rs.53,50,000/- were handed over in 2014 by the appellant to the seller. As per the contents of the correction deed in lieu of earlier cheques given, the new cheques were issued.

11. The appeal before the tribunal was to challenge the addition of Rs.53,50,000/- made under Section 56(2)(vii). The appeal to that extent was accepted and has not been challenged by the department. In absence of cross-appeal or cross-objection by the department the tribunal after deciding the only issue involved in the appeal, in absence of prayer pleading or material before it erred in directing re-determination of purchase consideration by notionally applying the interest factor for the period of delay in making the payment of the purchase consideration.

12. There is no finding that the amount of Rs.53,50,000/- was invested by the appellant and had earned interest thereon. The income cannot be taxed on the assumption of being earned. Even if that is the case the interest earned thereon would have been taxable being covered under Section 14. The tribunal proceeded on surmises and conjectures that the interest income was earned by the appellant by delaying the payment of purchase consideration.

13. The rule of interpretation is that in case of language of the provision is clear and unequivocal the meaning should be assigned to the plain language of the section and no words can be added to the provision. Reference is made to **Commissioner of Income**

Tax, Madras vs. Ajax Products Ltd. reported in **(1965) 55 ITR**

741 (SC) held.

"13. Would the amendment make any difference in the application of the proviso? The rule of construction of a taxing statute has been pithily stated by Rowlatt J. in Cape Brandy Syndicate v. I.R.C. {1921} 1 K.B. 64 thus:

"In a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can look fairly at the language used."

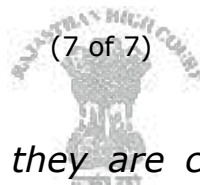
14. To put it in other words, the subject is not to be taxed unless the charging provision clearly imposes the obligation. Equally important is the rule of construction that if the words of a statute are precise and unambiguous, they must be accepted as declaring the express intentions of the legislature. Giving a close scrutiny to the second proviso, it will be clear that be giving the natural meaning to every word used therein, it clearly fits in within the scheme of the entire section."

14. There is no fiction created by section 56(2)(vii) that with delay in payment of consideration in a transaction of immovable property, the notional interest accruing on delay of such payment shall be chargeable to tax. In absence of a specific provision, the deeming fiction cannot be extended to tax notional interest income by bringing it within the ambit of provisions enacted for charging tax by deeming fiction on transfer of property without consideration or for an amount lesser than the stamp duty value.

The Supreme Court in the case of **The Commissioner of Income Tax, Bombay City I, Bombay Vs. Amarchand N. Shroff**

reported in **(1963) 48 ITR 59 (SC)** held.

"10. xxxxxxxxxxxx As was observed by this Court in Bengal Immunity Co. Ltd. v. The State of Bihar {1955} 2SCR603, legal fictions are only for a definite purpose and they are limited to the



*purpose for which they are created and should not be extended beyond the legitimate field. xxx
xxxxxxx”*

15. The impugned directions issued by tribunal shall result in creating two deeming fictions: firstly that interest was earned by delay in payment of purchase consideration and secondly that such notional interest shall be chargeable to tax. There are no such fiction created by Section 56(2)(vii)(b) of the Act.

16. After the finding of tribunal that it was not a case of receiving immovable property without consideration or for a consideration which was less than the stamp duty value of the property having attained finality, the case does not falls within the ambit of Section 56(2)(vii)(b) of the Act.

17. The substantial question of law is answered in favour of the assessee.

18. The appeal is allowed.

(MANEESH SHARMA),J

(AVNEESH JHINGAN),J

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Reportable: Yes