

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH “A”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.1984/M/2023  
Assessment Year: 2018-19**

Mr. Amrin Mohamed Umar Khimani, 37, Rehmat Manzil, 59, LJ Road, Mahim, Mumbai – 400 016 <b>PAN: BIOPK8842H</b>	Vs.	Income Tax Officer, National e-Assessment Centre, Delhi
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Subhash Chhajed, A.R.  
Revenue by : Shri Manoj Kumar Sinha, D.R.

Date of Hearing : 22 . 11 . 2023  
Date of Pronouncement : 18 . 01 . 2024

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

The appellant, Mr. Amrin Mohamed Umar Khimani (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 23.03.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2018-19 on the grounds inter-alia that :-

*“1. On the facts and in the circumstances of the case and in law, the Ld. Assessing officer erred in not obtaining the requisite approval u/s 151 of the IT Act for issuing the Notice u/s 148 within 4 years from the end of Assessment year 2018-19 and therefore the entire Reassessment proceedings u / s 147 are liable to be quashed.*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 62,01,357/- being the difference between the Purchase Consideration for immovable property at Rs. 30,75,680/- as per the Purchase Agreement AND the valuation of Rs. 92,77,037/- fixed by the stamp Duty Authorities.*

3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in invoking provisions of 5th provision in section 48 in complete contravention to the fact that the Assessee has purchased the immovable property as per the letter of allotment dt.20/12/2014 and purchase agreement registered on*

3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the Fair market value of the immovable property as on the date of registration of the purchase agreement i.e. 16/09/2017 instead of considering the FMV on the date of Allotment of the property being 20/12 / 2014 as per the Allotment letter issued by the builder.*

4. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. AO of not making the reference to the DVO for valuation of property as on the date of Allotment being 20/12/2014 as per the Allotment letter issued by the Builder, despite specific request by the”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee is into the business of manufacturing of articles of concrete, cement and plaster under the name and style of M/s. Smart Tiles, filed return of income declaring total income at Rs.5,47,090/- which was processed under section 143(1) of the Income Tax Act, 1961 (for short ‘the Act’). During the assessment proceedings it was noticed that the assessee had purchased an immovable property i.e. flat on 15.09.2017 for a consideration of Rs.25,80,000/- as against stamp duty valuation of Rs.92,77,037/-. The flat in question purchased by the assessee was built under Slum Rehabilitation Scheme of Government of Maharashtra. The case of the assessee is that he was allotted the said flat by the builders namely M/s. Bahist Enterprises Pvt. Ltd. vide allotment letter dated 20.12.2014 at a consideration of Rs.25,80,000/- on making advance payment of

Rs.1,00,000/- by way of banking channel and balance payment along with stamp duty and registration charges totaling Rs.30,75,680/- was paid on or before registration of the property i.e. on 16.09.2017. Declining the contentions raised by the assessee that he has purchased the property in question on 20.12.2014 the Assessing Officer (AO) proceeded to hold that amount of Rs.62,01,357/- (Rs.92,77,037/- – Rs.30,75,680/-) being the difference between the value fixed by the stamp duty authority and the value of sale as per sale deed dated 16.09.2017 is treated as income from other sources of the assessee and added the same to the income of the assessee and thereby framed the assessment under section 143(3) read with section 144B of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has upheld the assessment order by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly the flat in question was allotted in favour of the assessee by M/s. Bahist Enterprises Pvt. Ltd. on 20.12.2014 for a consideration of Rs.25,80,000/- on making payment of Rs.1,00,000/- through banking channel. It is also not in dispute that the stamp duty valuation of the property in question as on 16.09.2017 was Rs.92,77,037/-. It is also not in dispute that the

assessee as per allotment letter paid total amount of Rs.30,75,680/- i.e. Rs.25,80,000/- sale consideration + Rs.4,95,680/- being the stamp duty and registration charges on 16.09.2017.

6. In the backdrop of the aforesaid undisputed facts the AO as well as the Ld. CIT(A) has treated the difference of Rs.62,01,357/- (Rs.92,77,037/- – Rs.30,75,680/-) being the difference between sale price and stamp duty valuation and as income from other sources.

7. The Ld. A.R. for the assessee challenging the impugned order contended that under the proviso to section 50C of the Act where the development agreement fixing the amount of consideration for transfer of immovable property and the date of registration are not the same, stamp duty value on the date of agreement may be taken for the purpose of this sub clause and as such market value as on date of builder's letter of allotment dated 20.12.2014 has to be considered and drew our attention towards the builder's allotment letter. It is further requested by the Ld. A.R. for the assessee that in such situation issue as to the valuation be referred to the Departmental Valuation Officer (DVO) as per provisions contained under section 50C of the Act.

8. We have perused the allotment letter dated 20.12.2014 (supra) which shows that the property in question was being developed as Rehabilitation of Slum Scheme by the Slum Redevelopment Authority which was not transferable by the assessee for a period of ten years, in these circumstances when the AO was not agreed with the assessee to take the value of the property as on 20.12.2014 he should have referred the matter to the DVO as per section 50C of the Act. During the assessment

proceedings the assessee has written letter dated 26.04.2022 to the AO available at page 119 to 122 of the paper book to refer the matter to DVO but the AO has proceeded to decide the issue as per his whims and fancies which is not permissible under the law.

9. However, on the other hand, the Ld. D.R. for the Revenue relied upon the order passed by the AO as well as the Ld. CIT(A).

10. The Ld. A.R. for the assessee also relied upon the order passed by the co-ordinate Bench of the Tribunal in case of Parth Dashrath Gandhi vs. Addl./Deputy/Asst. Commissioner of Income Tax in ITA No.1990/M/2022 for A.Y. 2018-19 order dated 31.01.2023 which is on identical facts.

11. Keeping in view what has been discussed above, we are of the considered view that the issue is required to be remitted back to the AO to decide afresh after providing opportunity of being heard to the assessee who shall refer the matter to the DVO for valuation as per provisions contained under section 50C of the Act so as to compare the actual sale consideration with the stamp duty valuation as on date of the allotment letter (supra). Hence, the impugned order passed by the Ld. CIT(A) is set aside

12. Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 18.01.2024.**

**Sd/-**  
**(MS. PADMAVATHY S)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 18.01.2024.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.