

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL  
MEMBER**

**&**

**SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 4730/Mum/2023**

**(A.Y. 2018-19)**

M/s Nexzone Fiscal Services Pvt. Ltd. 702, Marathon Max, Mulund Goregoan Link Road, Mulund West, Mumbai-400080	Vs.	ACIT, National e- Assessment Centre, Delhi Income-tax Department, National E-Assessment Centre, Delhi
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACCN9837F</b>		
<b>Appellant</b>	<b>..</b>	<b>Respondent</b>

Appellant by :	Shri K. P. Kapadia
Respondent by :	Shri Nagnath Pasale

Date of Hearing	28.05.2024
Date of Pronouncement	27.06.2024

**आदेश / O R D E R**

**PER RENU JAUHRI [A.M.] :-**

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai.... [hereinafter referred to as “CIT(A)”] dated 28.05.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for the relevant Assessment Year [A.Y.] 2018-19.

2. The assessee has raised following grounds of appeal:

“1. The Learned CIT (Appeals) erred in confirming the order passed by Assistant Commissioner of Income Tax, National e-Assessment Centre, Delhi (herein after referred to as 'the Assessing Officer') making an addition of Rs.7.86.760/-

2. The Learned CIT (Appeals) erred in upholding the action of the Learned Assessing Officer in invoking provisions of Section 56(2)(x) of the Income Tax Act, 1961 (herein after referred to as 'the Act') and making an addition of Rs.7,86,760/- being the difference between the Stamp Duty Value and Agreement Value

**WHEN**

1. Your appellant is engaged in the business of real estate development at Bhandup, Mumbai. The ongoing projects are in progress of Development under the Slum Rehabilitation Schemes (SRA).

2. Being a Builder & Developer, of the Properties Purchased by Your Appellant during the Financial Year 2017-18 were for the purpose of re-development of the SRA Projects and they were held as Stock-in-Trade.

3. The Provisions of Section 56(2)(x) read with Clause d of the Explanation to Section 56(2)(vii) (which defines immovable property as a Capital Asset being Land or Building or Both) categorically excludes the "Current Assets" out of the ambit of Section 56(2)(x).

4. Moreover, Clause B of Sub-section (b) of Section 56(2)(x) provides as under:

**Quote**

where any person receives, in any previous year, from any person or persons on or after 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.-

*(A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property:*

*(B) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:-*

*(i) the amount of fifty thousand rupees; and*

*(ii) the amount equal to ten per cent of the consideration:*

**Unquote**

*In view of these specific provisions, the Learned CIT (A), erred in confirming the addition of Rs.7,86,760/- when the difference between the Consideration and the Stamp Duty Value which was only 0.30% of the Consideration.*

*3. In view of this laws and facts, Your Appellant Prays Your Honor to delete the addition of Rs.7,86,760/- made by the Assessing Officer u/s 56(2)(x) of the Act for the Assessment Year 2018-19.”*

3. Brief facts of the case are that the assessee filed return declaring nil income for AY 2018-19 on 29.08.2018. The case was selected for scrutiny and assessment was completed, after making an addition of Rs. 7,86,760/- u/s 56(2)(x) of the Act. The assessee company is engaged in the business of real estate development in Mumbai. The projects are being in initial stages wherein acquisition and development of land is in progress during the year under consideration. The difference between stamp duty value and consideration paid/payable in respect of four properties during the year was submitted as per the following chart:

<b>Sr No.</b>	<b>Land details</b>	<b>Registration No.</b>	<b>Registration date</b>	<b>Stamp Duty Value</b>	<b>Total consideration paid/payable</b>
1.	CTS No. 23,24,25	KRL1-10377-2017	17.10.2017	40,045,000/-	40,331,367/-
2.	CTS No. 22(Part)	KRL1-10380-2017	17.10.2017	18,576,800/-	19,180,740/-
3.	CTS No. 15 (Part)	KRL1-1506-2018	15.02.2018	186,281,500/-	186,475,780/-
4.	CTS No. 17,18,19,20	KRL 1-1504-2018	18.02.2018	260,657,500/-	259,870,740/-

4. Out of these, only in respect of one property at serial No. 4, the stamp duty value exceeds the purchase value. The difference was added to the income u/s 56(2)(x) by the AO vide order dated 31.03.2021.

5. Aggrieved with this order, the assessee filed an appeal before the Ld. CIT(A)/NFAC on 23.04.2021. Vide order dated 27.09.2023 the Ld. CIT(A), after considering the facts and circumstances of the case, dismissed the appeal.

6. We have considered the rival submissions. After careful consideration of the submissions and legal provisions, it is observed as under:

a. The difference between stamp duty and purchase price has been taxed u/s 56(2)(x) of the Act. Relevant provisions of section 56(2)(x) are reproduced below:

**“56.**

*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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.  
.*

*(x) where any person receives, in any previous year, from any person or persons on or after the 1st day 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,-*

*(A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;*

*(B) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:-*

*(i) the amount of fifty thousand rupees; and*

*(ii) the amount equal to 87[ten] per cent of the consideration:*

*Provided that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of agreement may be taken for the purposes of this sub- clause:*

*.....*

*.....*

*.....”*

*b. In this case, the difference between the purchase price and the stamp duty value is Rs. 7,86,760/- only. In order to*

invoke the provisions of section 56(2)(x), the difference between stamp duty value and purchase value has to be higher of the following amounts (i) 50,000/-  
(ii) 10% of the consideration.

c. In this case, 10% of consideration come to 2,59,87,074/-.  
However, the difference in the present case is only Rs. 7,86,760/- which is far less than the permissible limit of 10% (i.e. Rs. 2,59,87,074/-). As such the provisions of section 56(2)(x) have been wrongly invoked in this case.  
We, therefore, set aside the order of the Ld. CIT(A) and delete the additions made by the AO of Rs. 7,86,760/-.

7. In the result, the appeal of the assessee is allowed.

Order Pronounced in Open Court on 27.06.2024

Sd/-

(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER

Sd/-

(RENU JAUHRI)  
ACCOUNTANT MEMBER

Place: Mumbai

Date 27.06.2024

ANIKET SINGH RAJPUT/STENO

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai

5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench,  
Mumbai.