

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.593/Mum/2024  
(Assessment Year :2018-19)**

Mr. Nisar Ahmed Sayed R.No.601, 6 <sup>th</sup> Floor, 30 Cadle Castle Co-op Housing, Cadel Road Mahim, Mumbai – 400 016	Vs.	ITO Ward No.22(2)(1) Kautilya Bhawan Avenue 3, Near Videsh Bhavan, G Block BKC Bandra Kurla Complex Bandra East Mumbai – 400 051
<b>PAN/GIR No.AAJPS2370L</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Ms. Aasifa Khan
Revenue by	Shri R.R. Makwana
<b>Date of Hearing</b>	<b>18/06/2024</b>
<b>Date of Pronouncement</b>	<b>28/06/2024</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed against order dated 18/01/2024 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) for the A.Y.2018-19.

2. In various grounds of appeal, assessee has challenged the *exparte* order passed by the Id. CIT(A) and on merits addition of Rs.8,52,000/- as 'income from other sources' and *lastly*, the

validity of reopening u/s.148 as ld. AO has not given any reasons for reopening the case.

3. Before us, ld. Counsel for the assessee, Ms. Aasifa Khan submitted that before the ld. AO as well as ld. CIT(A) assessee could not appear because the notices issued on the email of the assessee and she was not aware of any such e-mail sent as she is not an educated person. On merits she submitted that assessee had purchased property i.e. a small shop at Shop No.3, Ground floor, admeasuring area 190 sq.ft Built up, bearing C.S.No.1354, Mahim Division situated at Cadle Castle Co-operative Housing Society Ltd, Veer Savarkar Road, Mahim, Mumbai – 400 016. Alongwith another co-owner Shri Siraj Ahmed Merchant had purchased a shop premise for a consideration of Rs.20,00,000/- and both the co-owners have paid Rs.10,00,000/- each. However, the stamp value of the said property was determined at Rs.37,04,000/- as mentioned in the deed of transfer.

4. The assessee has filed her return of income on 02/08/2018 declaring total income of Rs.7,22,220/-. The assessee's case was selected for scrutiny for the reason of specific information pointing tax evasion received from other agency. The information was that assessee had purchased property which was in violation of Section 50C and 56(2)(x). Before the ld. AO, assessee submitted purchase agreement, sale agreement, details of bank account, copy of return of income along with schedules and details of properties. The ld. AO held that since stamp value of

the property exceeds actual purchase value and therefore, as per Section 56(2)(x). The excess is deemed to be income of the assessee and accordingly, he held that there is a difference of Rs.17,04,000/- and since assessee is a co-owner and has paid 50%, half of the amount i.e. Rs.8,52,000/- was brought to tax under the head 'income from other sources'.

5. She further submitted that the reason for purchasing property lesser than the circle rate was that the property was under litigation and was occupied by various tenants and Civil Suit was filed in the Court of small causes wherein assessee was also party to the said suit. It is because of civil suit and litigation value of the property was much lesser. In support she also filed copy of the suit filed before the Court of small causes. Thus, she submitted that in the interest of justice, matter should be restored back to the file of the ld. AO to examine the value of the property. Ld. Counsel submitted that assessee could not respond to the notices being unaware of the notices sent through email and ITBA portal, this fact was not brought on record before AO.

6. On the other hand, ld. DR also did not have any objection if the matter is restored back to the file of the ld. AO for determining the correct value of the property.

7. After considering the aforesaid facts and the order of the ld. AO, we find that ld AO had taxed difference between the purchase consideration and the stamp value of the property u/s.56(2)(x). The assessee could not present the facts before the ld. AO that this property was under litigation and was occupied

by a tenant for which case was filed. If the property was under litigation and occupied, the ostensibly, the market value of the property will be lesser. Since the fact of this litigation and the property being occupied by tenant was not brought to the knowledge of the ld. AO, therefore, this matter is restored back to the file of the ld. AO who shall considered this issue in light of these facts and if required ask the assessee to get registered valuer's report and decide accordingly or if ASO deems fit, he can seek comments from the DVO also. Accordingly, the matter is remitted to the file of the ld. AO to decide the issue after giving fair opportunity of hearing to the assessee and assessee is also directed to cooperate in the proceedings and substantiate his case.

**8. In the result, appeal of the assessee is allowed for statistical purposes.**

Order pronounced on 28<sup>th</sup> June, 2024.

**Sd/-**  
**(RATNESH NANDAN SAHAY)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 28/06/2024  
KARUNA, *sr.ps*

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**