

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J(SMC)", MUMBAI

**BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A No.2675/Mum/2024
(Assessment Year: 2007-08)**

Sheela Daniel 21, Nupur, Near Jewel Nursing, Gulmohar Cross Road No.5, Juhu Scheme, Mumbai-400 049 PAN : AEFPD6933C	vs	ITO 25(3)(4), MUMBAI, BKC,Bandra (East), Mumbai
APPELLANT		RESPONDENT

Assessee by : Shri Bhupendra Shah, CA
Respondent by : ShriPravin M Chavan (SRDR)

Date of hearing : 31/07/2024
Date of pronouncement : / 08/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre, Delhi (NFAC) [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for Assessment year 2007-08, date of order 09.05.2024. The impugned order was emanated from the order of the Ld.Income-tax Officer, Ward 25(3)(4), Mumbai passed under section 143(3) read with section 147 of the Act, date of order 30/03/2015.

2. The assessee has raised the following grounds of appeal:-

“[A] Grounds of Appeal Before the Honourable ITAT

1. *In the facts and the circumstances of the case and in law, the learned A.O. erred in passing the order u/s 143(3) r.w.s 147 only on the basis of information received from DDIT (Inv) Unit-9(3), therefore rendering the whole assessment bad in law which is based on*

a) borrowed satisfaction

b) After a gap of four years

c) Without disposing the objections of the Appellant about the date of recording reasons for reopening and approval taken from (he concerned authority in that regard,

2. *In the facts and the circumstances of the case and in law, the learned AC) erred in adopting the cost of acquisition of the said flat at Rs, NIL by overlooking the Circular dt, 04/07/2006 issued by The Greater Bombay Cooperative Housing Society Ltd. as per which the Appellant adopted the cost of acquisition of the flat . -\ of Rs.27,13,670/- and thereby adding STCG of Rs, 28,97,91 II- on protective basis.*

3. *The Assessing Officer wrongly charged interest u/s. 234 and initiated penalty u/s, 271(l)(c) although no tax and penalty can be levied in the case of protective assessment,*

4. *In the facts and the circumstances of law, the Ld Commissioner of Income Tax(A) erred in confirming all the mentioned grounds without granting video conferencing,*

[B] Relief Proved:

The appellant therefore prays as follows,

1. *To quash the reopening made.*

2. *To delete the addition wrongly made in the hands of the Appellant in A.Y. 2007-08 even though it was protective assessment*

3. *To delete the interest charged u/s 234 and initiation of penalty u/s 271 (1)(c),*

[D]General;

- *The appellant reserve rights to add alter or delete any portion of this appeal before its conclusion.*
- *This appeal is filed in time and may please be allowed in full.,*
- *A Detailed paper book along with case laws will be submitted at the time of hearing.”*

3. The brief facts of the case are that the assessee is a member of the Society named “Greater Bombay Housing Society Ltd”. After the settlement in society, the assessee was allotted the property in the Flat A-302 at Dhiraj Diamond, Malad (W). Accordingly, the assessee received a free property which is including Rs.17,70,000/- being cost of the flat, Rs.72,300/- being stamp duty, Rs.17,700/- being registration charges, Rs.45,600/- being other charges and Rs.13,275 being development charges. Considering all amounts, the total amount comes amount to Rs.19,18,875/- as explained by the Society on behalf of the assessee while purchasing of flat. The Ld.AO has treated the amount as contravening the provisions of section 56(2)(v) of the Act, which was added back with the total income of the assessee. The aggrieved assessee filed an appeal before the Id. CIT(A). The Id.CIT(A) upheld the assessment order. Being aggrieved on the appeal order, the assessee filed appeal before us.

4. The Ld.AR argued and placed that the same issue was agitated in earlier year also and the substantive addition was made in A.Y. 2006-07 and protective addition made in impugned assessment year. In earlier year, the issue was agitated before the ITAT and the ITAT had considered the merit of the case in **ITA No.2811/Mum/2015, date of order 19/07/2019**. The relevant part is reproduced as below:-

“6. In the instant case also the assessee got the possession on dated 12.06.2006. In the instant assessment year, corresponding to the previous year on w.e.f.01.04.2005 & 31.03.2006, the AO has made out a case that assessee obtained a right to get a flat free of cost in view of the Understanding signed between the society and M/s. Emerald Realtors Pvt. Ltd. on 17.08.2005. As per Section 56(2)(v) of the Act any sum of money exceeding a specified amount received without consideration will be taxed as income from other sources. The amendment was effected w.e.f 01.10.2009. It is not a case of the assessee that he has received any immovable property. Moreover, even if one is to consider that what is taxed by AO is a right to get property, which is a movable property yet it is not equivalent to any sum of money which alone can be taxed u/s 56(2)(v) of the Act in the instant assessment year. Accordingly, the finding of the CIT(A) is not justifiable. By honoring the decision of the Hon’ble ITAT dated 06.01.2017 (supra), We set aside the finding of the CIT(A) on this issue and decide the issue in favour of the assessee.”

5. The Ld.DR fully relied on the order of the revenue authorities.

6. We heard the rival submission and considered the documents available in the record. The Ld.AR considering the merit of the case argued that section 56(2)(v) of the Act is not applicable for the assessee. The Act for impugned assessment year only related to the money received from other than relatives more than Rs.50,000/- is taxable. The amendment for immovable property came later on which has no retrospective effect. The Ld.DR has not made any objection on the submission of the Ld.AR. Accordingly, we respectfully follow the decision of the co-ordinate bench in assessee’s own case passed by Mumbai Bench “G” and set aside the order of the Id.CIT(A). the addition of Rs.19,18,875/- made by the Ld.AO is deleted.

7. In the result, appeal of the assessee **ITA No.2675/Mum/2024** is allowed.

Order pronounced in the open court on _____ day of August, 2024.

(BR BASKARAN)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: /08/2024

Pavanan

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai

	Details	Date	Initials	Designation
1	Draft dictated on PC on	31.07.2024		Sr.PS/PS
2	Draft Placed before author	02.08.2024		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			