

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, MUMBAI BENCH  
MUMBAI**

**BEFORE SHRI N. K. CHOUDHRY, JM &  
SHRI OMKARESHWAR CHIDARA, AM**

I.T.A. No.1414/MUM/2024  
(Assessment Year: 2018-19)

**ABBS Gulam Rasool  
Maknoja**  
Plot No.1, Shop No.01,  
Bandra East,  
Mumbai – 400 051

**Income Tax Officer,  
Ward – 23(1)(1)**  
Mumbai  
Vs.

**PAN No. AACPR3809G**

**(Appellant) : (Respondent)**

**Appellant/Assessee by** : Shri Vimal Punamiya, CA  
**Respondent/Department by** : Shri Manoj Kumar Sinha,  
Sr.DR

**Date of Hearing** : 25.06.2024  
**Date of Pronouncement** : 23.09.2024

ORDER

**Per N. K. Choudhry, JM:**

This appeal has been preferred by the Assessee against the order dated 16.02.2024, impugned herein, passed by National Faceless Appeal Centre (NFAC), Delhi/Ld. Commissioner of Income Tax (Appeals) [in short 'Ld. Commissioner'] under section 250 of the Income Tax Act 1961 (in short 'the Act') for the Assessment Year (in short 'AY') 2018-19.

**2.** Brief facts relevant for adjudication of the instant appeal are that the assessee had declared his total income at Rs.4,53,870/- by filing his return of income on 30.07.2018, which was selected for limited scrutiny assessment under E-Assessment Scheme, 2019 on the following issue, i.e., 'Investment in Immovable Property'. From the ITS data for the AY under consideration, it was seen that transaction value (as on 12.7.2017) of the property in question was Rs.63,00,000/- whereas the stamp duty value was Rs.3,11,66,300/. This fact is also evident from the Departmental inside portal. However, the assessee has not offered the stamp duty valuation to tax, in his return of income under the head 'Income from Other Sources' as per Section 56(2)(x) of the Act and therefore the return of the assessee was selected for scrutiny through CASS and accordingly various statutory notices were issued to the assessee. In response to which, the assessee furnished his replies. On perusing the same, including the registered agreement dated 7.11.2017, it was observed by the Id. Assessing Officer (AO) that the property was booked during April, 2012 and registered during December 2017 by four (4) persons, including the assessee himself. Assessee's share of property is of 27.78% and the shares of rest of the owners are 27.78%, 22.22% and 22.22% each. The assessee claimed that he had contributed the sum of Rs.17,50,000/- out of total purchase consideration of Rs.63,00,000/-, viz. 27.78% of the whole. The property was booked and payment was made in FY 2012-13 (i.e. before the construction was started) by all the co-owners including the assessee, amounting to Rs.63,00,000/- All the payments made on varying dates before 25.06.2012, by way of

cheques and the same were verified from the copies of bank statements furnished by the assessee. The property was registered and the possession was handed over to them by the builder on completion of the construction of the property during the FY 2017-18 and registered with the payment of stamp duty on prevailing valuation as on 07.12.2017. The assessee before the Id. AO produced the copy of the agreement for purchase of property and booking letter issued on 25.6.2012.

**3.** On verifying the peculiar facts and circumstances of the case, it was observed by the Id. AO that purchase value of the property as per the registered agreement deed dated 7.11.2017 has been shown at Rs.63,00,000/- whereas in the year 2012, the stamp duty value of the property was Rs.1,96,22,000/- when the property was initially purchased by agreement and booking letter dated 25.6.2012. The Id. AO further, observed that as per the first and second proviso of Section 56(2)(x) of the Act, the assessee's share of the difference of Rs. 1,33,22,000/- *{1,96,22,000/- the stamp duty value in the year 2012 minus 63,00,000/- as consideration amount shown by the assessee}* should be brought to tax under head 'Income from Other Sources' as per Section 56(2)(x) of the Act and the Assessee's share is 27.78% of Rs.1,33,22,000/- which comes to Rs.37,00,852/-. The Id. AO, ultimately made the addition of Rs.37,00,872/- in the income of the assessee.

**4.** The assessee being aggrieved challenged the aforesaid order before the Ld. Commissioner. Before the Ld. Commissioner, the

assessee raised various issues including non-application of the provisions of the section 56(2)(x) of the Act, as well as valuation of the property as valued by the Id. AO, but could not get success, as the Ld. Commissioner affirmed the addition made by the Id. AO by dismissing the appeal of the assessee. The Assessee being aggrieved is in appeal before us.

**5.** The assessee has raised various issues before us, including the consideration of valuation of the property on the basis of stamp duty valuation in the year 2012, when the assessee had initially purchased the property under consideration. The assessee further submitted that following few points are required to be considered for determining the true value of the property:

- a. The said shop does not fall on the main road and approach to said shop is through a very narrow lane*
- b. Construction not good*
- c. Building was not ready in 2012.*
- d. Property is purchased by 4 co-owners*
- e. Said shop does not have facility of lavatory.*
- f. There is no water connection in said shop.*
- g. There is no parking facility*
- h. The height of the shop is less than the average shop height.*
- i. The area is not well developed.*
- j. It is far from a railway station.*
- k. There is no proper public transport facility in the area.*

**6.** On the contrary the Ld. DR though admitted the factual aspects as demonstrated by the AR, however, refuted the claim of

the assessee qua valuation of the property as per section 56(2)(x) of the Act by the authorities below. Further, Id. DR also refuted the claim of the assessee qua impediments with regard to the property as demonstrated by assessee. And at last submitted that both the authorities below have rightly considered the claim of the assessee in its right and proper perspective and therefore in the impugned order no interference is required.

**7.** We have heard the parties and perused the material on record and considered the rival contentions of the parties. The assessee mainly claimed that the property purchased by the assessee, in fact is not general in nature and having many factors referred to above for low value on which the assessee has purchased. We observe, that there is a huge difference between the stamp duty value as taken into consideration by the authorities below and the consideration amount shown by the assessee, therefore, it would have been appropriate to seek the DVO report as per the provisions of section 56(2)(x) of the Act. However, both the authorities below failed to make any exercise as enshrined in 3<sup>rd</sup> proviso to section 56(2)(x) of the Act. Therefore, considering the peculiar facts and circumstances in totality, in our considered view, substantial justice would be met by remanding the case to the file of Id. AO with a direction to refer the valuation of the property to the district valuation Officer (DVO) and to recompute the liability/income of the assessee by taking into consideration the value to be determined by the DVO. Thus, the case is remanded to the file of AO for decision afresh, as per directions made above.

**8.** In the result, the appeal filed by the Assessee stands allowed for statistical purposes.

Order pronounced in the open court on 23.09.2024.

**Sd/-**  
**(Omkareshwar Chidara)**  
**Accountant Member**

**Sd/-**  
**(N. K. Choudhry)**  
**Judicial Member**

*MP, Sr.PS.*

**Copy of the Order forwarded to :**

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

BY ORDER,

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