

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

**BEFORE SHRI.B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A No. 5761/Mum/2024
(Assessment Year: 2018-19)**

Amar Anil Turakhia 505, Stellar Towers, 2 nd Cross Road, Lokhandwla Complex, Andheri West Mumbai-400 053 PAN: ABXPT8015G	vs	ITO, Ward 24(1)(1), Mumbai Piramal Chambers, Lalbaug, Parel, Mumbai-400 012
APPLICANT		RESPONDENT

Assessee by : Shri Kirti Sanghvi
Respondent by : Shri Ram Krishn Kedia (SR DR)

Date of hearing : 17/12/2024
Date of pronouncement : 20/12/2024

ORDER

PER ANIKESH BANERJEE:

The 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 (for brevity the "Act"), date of order 09/09/2024 for Assessment year 2018-19. The impugned order was emanated from the order of the National Faceless Assessment Centre, Delhi (for

brevity the "Ld. AO")order passed under section 143(3) read with section 144B of the Act, date of order 24/09/2021.

2. The assessee has taken the following grounds: -

"1. The learned CTT(A) (NFAC) erred in law and on facts in ignoring the provisions of First and Second Proviso of 56(2)(X) of the IT.Act, 1961, while pasting the impugned Order confirming the addition

2. The learned CTT(A) (NFAC) erred on facts and in law in confirming the Order of the AO making addition of Rs 58,77,000- being the difference between the value determined for the purpose of stamp duty and the agreement value / consideration."

3. The brief fact of the case is that the assessment was completed with an addition under section 56(2)(x) amount to Rs.58,77,000/- with the total income of the assessee. The assessee had booked a flat with M/s Orbit Heights Pvt Ltd on 22/10/2010 for a total consideration of Rs.1,29,33,500/-. The assessee had regularly made payment as demanded by the builder from time to time and all the payments are made through banking channel. Due to some financial stringency, the project was delayed and finally the building was completed, and assessee entered into an agreement with M/s Neminath Homes Pvt Ltd, who took over the entire project from existing builders and the agreement was duly executed and registered on 31/03/2017. On the basis of the stamp duty value, the stamp duty authority valued the property amount to Rs.1,88,11,000/-. Accordingly, the difference of stamp duty value amount to Rs. 1,88,11,000/- and the agreement value amount of Rs.1,29,33,500/- which works out the difference amount of Rs.58,77,500/- r/o Rs.58,77,000/- was added back to the total income of the assessee for contravening provisions of section 56(2)(x) of the Act. Being aggrieved, the assessee filed an appeal before the Id. CIT(A). The Ld.CIT(A)

rejected the assessee's appeal. Being aggrieved on the impugned appeal order, the assessee filed an appeal before us.

4. We find that the assessee has booked the property in 2010 but due to financial stringency, the project was delayed and the new builder, who has taken over the entire project has executed an agreement on 31/03/2017. But the letter of allotment was already issued to the assessee on 22/10/2010, placed in APB page-1 and the project consideration of Rs.1,29,33,500/- was already started for payment from 2010. So, the assessee is falling under the Proviso to section 56(2)(vii)(b) of the Act. Here, the said section is reproduced as follows: -

"56(2)(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009[but before the 01st day of April, 2017], —

(b) any immovable property, —

(i) xxxxxxxxxxxx

(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

Provided that where the date of the 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 the agreement may be taken for the purposes of this sub-clause:

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;"

Accordingly, the assessee is not falling under section 56(2)(x) of the Act. The copy of agreement of sale is duly annexed in APB pages 2 to 125. Further, the payment related to M/s Orbit Heights Ltd was made through banking channels, is also annexed in APB pages 128 to 129.

5. The Ld. DR argued and relied on the order of revenue authorities. He invited our attention in impugned appeal order paragraph 5.2 which is reproduced as below:-

"5.2 Ground No. 1:

The assessee, during the year under consideration purchased a property for a consideration of Rs. 1,29,33,500/- whereas the value of the property in question was of Rs. 1,88,11,000/- as per stamp valuation authority. The AO noted that the consideration paid was less than the stamp duty value and accordingly made an addition of Rs. 58,77,000/- under section 56(2)(x) of the Act, treating the difference as income from other sources. I have thoroughly perused the submissions of the appellant in this regard but do not find any merit in the same. Section 56(2)(x) of the Income Tax Act, 1961, which was introduced by the Finance Act, 2017, with effect from 1st April 2017, applies to any person receiving any property for a consideration that is less than the stamp duty value of such property by an amount exceeding 50,000. The provision explicitly states that the difference between the consideration and the stamp duty value shall be treated as income under the head "Income from Other Sources. The AO has rightly applied the provisions of section 56(2)(x) in the present case. Therefore, I find no infirmity in the order of the AO and addition of Rs. 58,77,000/- is confirmed and the ground No. 1 is dismissed."

6. We have considered the rival submissions and reviewed the documents available on record. It is observed that the assessee had booked the flat in 2010, and payments to the builder were made through banking channels starting in 2010. The agreed consideration at the time of booking was Rs.1.29 crores. Subsequently, the agreement was executed on 31/03/2017 with a new builder who had taken over the project from the original developer. Upon review, we find that the assessee's case is not impacted by the provisions of Section 56(2)(x) of the Act, since it falls within the ambit of the proviso of Section 56(2)(vii)(b) of the Act. The Ld. AO erred by considering the stamp duty value of the agreement

on 31/03/2017. As the assessee has fulfilled all the criteria outlined under the relevant provisions. Consequently, the difference between the stamp duty value and the agreed consideration does not form part of the assessee's taxable income.

Considering the above, the impugned appellate order is set aside, and the addition amounting to Rs. 58,77,000/- is deleted.

7. In the result, the appeal of the assessee bearing **ITA No.5761/Mum/2024** is allowed.

Order pronounced in the open court on 20th day of December 2024.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 20/12/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

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

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai