

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

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

ITA No. 6740/Mum/2024  
Assessment Year : 2018-19

Alka Rajesh Vanigota, 1001, 10 <sup>th</sup> Floor, OM Residency, 28 Gilder Lane, Mumbai Central, Mumbai PAN : ACRPV6181E (Appellant)	vs.	Deputy Commissioner of Income Tax, Central Circle-4(2), Mumbai (Respondent)
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For Assessee :	Shri Vimal Punmiya
For Revenue :	Shri Ram Krishn Kedia, Sr.DR

Date of Hearing :	13-02-2025
Date of Pronouncement :	24-02-2025

**ORDER**

**PER B.R. BASKARAN, A.M :**

The appeal of the assessee is directed against the order dated 14-11-2024 passed by the Ld.CIT(A)-52, Mumbai and it relates to the Assessment Year (AY.) 2018-19. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition of Rs.46,05,930/- made by the AO u/s 56(2)(x) of the Income Tax Act, 1961 ('the Act').

2. The facts are discussed in brief. The AO noticed that the assessee and her husband named Shri Rajesh Kumar Ratilal Vanigota have purchased a residential property for a consideration of Rs.8,48,12,792/-. The stamp duty value was Rs.9,40,24,653/-. Since the actual consideration was less than the stamp duty value, the AO

held that the difference between the two values is required to be assessed u/s 56(2)(x) of the Act. Accordingly, the AO assessed 50% of the difference amounting to Rs.46,05,930/- as income u/s 56(2)(x) of the Act in the hands of the assessee. The Ld CIT(A) also confirmed the same.

3. It is the submission of the Ld A.R that the entire purchase consideration has been paid by assessee's husband only and the name of the assessee was included as one of the purchasers as per prevailing custom. In support of this submission, the Ld A.R took us through the record of her husband. We notice that the assessee's husband's case was taken up for scrutiny by the AO, who had raised specific query on the purchase of immovable properties. The assessee's husband has replied that the above said property was purchased by him. He had also furnished details of withdrawals made from his bank account in order to show that the entire investment was made from out of his funds only. Based on the above said facts, the Ld A.R contended that the AO could not have made impugned addition in the hands of the assessee, since she has not made any investment in the purchase of above said property.

4. The Ld D.R, on the contrary, relied upon the decision rendered by Delhi bench of Tribunal in the case of Smt Shivani Madan vs. ACIT (2023)(147 taxmann.com 423)(Delhi) and the decision rendered by the Hon'ble Allahabad High Court in the case of (Saiyad) Abdullah vs. Ahmad and Others (AIR 1929 ALL 817) and contended that the addition could be made, even if the assessee did not contribute any money for purchase of property.

5. We heard rival contentions and perused the record. The impugned addition has been made u/s 56(2)(x) of the Act, being the difference between the stamp duty value of property and the actual purchase consideration. From the facts narrated by the Ld A.R, we

notice that the entire purchase consideration has been paid by assessee's husband only. He has declared the same as his own property in his Balance Sheet and also before his Assessing Officer. There is no dispute with regard to the fact that the assessee did not contribute any money for purchase of property, meaning thereby, her name was included as one of the purchasers for reasons known to them. Hence, in our view, the assessee's husband alone can be considered to be the owner of property under the Income tax Act and hence any action under the Act could be taken in his hands only. In our view, both the case laws relied upon by Ld D.R is not applicable to the facts of the present case. The decision rendered by Delhi bench of Tribunal in the case of Smt Shivani Madan is related to assessment of Annual Letting value of the property, which is not the case here. The decision rendered by Hon'ble Allahabad High Court is related to a civil dispute. In any case, both the above said decisions are not rendered in the context of sec.56(2)(x) of the Act and hence, we are of the view that they cannot be taken support of by the Revenue.

6. Accordingly, we are of the view that the AO was not justified in making the impugned addition u/s 56(2)(x) of the Act in the hands of the assessee. Accordingly, we set aside the order passed by the Ld CIT(A) and direct the AO to delete the impugned addition made u/s 56(2)(x) of the Act.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 24-02-2025

Sd/-  
[ANIKESH BANERJEE]  
JUDICIAL MEMBER  
Mumbai, Dated: 24-02-2025

Sd/-  
[B.R. BASKARAN]  
ACCOUNTANT MEMBER

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar  
I.T.A.T, Mumbai