

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

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER

I.T.A No.386/Mum/2025 - A.Y. 2018-19
I.T.A No.387/Mum/2025 - A.Y. 2018-19

JugeshShobhnath Yadav 403, Sai Darshan Building, Rajesh Co-op Housing Society Sarvoday Nagar, Jogeshwari, Mumbai-400 060 PAN: ABXPY2016L	vs	Assessment Unit, Income-tax Department, Delhi
APPELLANT		RESPONDENT

Assessee by : Shri Vipul Shah / Akshay Shah
Respondent by : Ms. Kavitha Kaushik,(SR DR)

Date of hearing : 03/03/2025
Date of pronouncement : 04/03/2025

ORDER

PER BENCH:

The instant appeals of the assessee were filed against the order of the National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2018-19, both the orders dated 13.08.2024. The impugned orders were emanated from the order of the Assessment Unit, Income-tax Department (in short the "AO") passed under section 147 read with section 144 read with section 144B of

the Act, date of order 15/03/2023 and order passed under section 271AAC(1) of the Act, date of order 21/08/2023.

2. Both appeals pertain to issues of quantum and penalty. For the sake of convenience, ITA No. 386/Mum/2025 is taken up for adjudication first.

ITA No.386/Mum/2025

2.1 The assessee has taken the following grounds of appeal:-

"1. On the facts and in the circumstances of the case and in law, the learned CIT(A) National Faceless Appeal Centre [“(CIT(A))”] erred in not appreciating the fact that the difference of Rs. 84,040/- in the Loan amount and consideration for the purchase of immovable property was paid by the Appellant from his own sources thereby erred in directing the AO to treat Rs. 84,040/- as unexplained investments U/s. 69B of the Income Tax Act, 1961 for the purchase of immovable property.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming addition of Rs. 21,76,000/- being the difference between the Market Value of the Property and the consideration of the Property Purchased as Income from Other Sources under Section 56 (2) (x) of the Income Tax Act, 1961.

(i) Without granting any opportunity to the Appellant for substantiating his stand that the building is constructed on plot bearing CTS No. 154B, in utter violation of principal of natural justice.

(ii) Without referring the Valuation to the Departmental Valuation Office (DVO) as per third Proviso to Section 56(2)(x) despite specific request made by the Appellant in violation of provisions of Section 56(2).

3. On the facts and in the circumstances of the case, the learned CIT(A) erred in directing the Assessing Officer to retain the penalty U/s. 271AAC (1) of the Income Tax Act, 1961 for the additions sustained.

4. The Appellant craves leave to add, amend, delete, alter, modify, or substitute any or all the above ground(s) of appeals.”

ITA 387/Mum/2025

“1. On the facts and in the circumstances of the case, the learned CIT (A) National Faceless Appeal Centre [“CIT(A)”] erred in directing the AO to confirm the penalty U/s. 271AAC (1) of the Income Tax Act, 1961 on the addition of Rs. 84,040/- as unexplained investments U/s. 69B of the Income Tax Act, 1961 for the purchase of immovable property.

2. On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in confirming penalty U/s. 271AAC (1) of the Income Tax Act, 1961 on addition of Rs. 21,76,000/- being the difference between the Market Value of the Property and the consideration of the Property Purchased as Income from Other Sources under the provision of Section 56 (2) (x) of the Income Tax Act, 1961.

2.1 On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in appreciating the fact that the addition of Rs. 21,76,000/- difference in the market value and the consideration of the property purchased, was sustained without appreciating the details submitted by the Appellant and without considering the request made by the Appellant for referring the Valuation to the Departmental Valuation Office (DVO) as per third Proviso to Section 56(2)(x).

2.2 Without prejudice to the above, the learned CIT (A) erred in appreciating the fact that no penalty is leviable on estimated additions.”

3. The brief facts of the case are that the assessee is engaged in the trade and supply of building materials and conducts business under the proprietorship concern, M/s Krishna Enterprises. During the impugned assessment year, the assessee did not file a return of income. However, the assessee purchased an immovable property in the said assessment year. Based on the available information, the Ld. AO observed a discrepancy between the stamp duty valuation and the purchase value of the immovable property situated in Jogeshwari(E), Mumbai. Consequently, the difference of Rs.21,76,000/- was added to the assessee’s income under the provisions of Section 56(2)(x) of the Act.

Additionally, an addition was made under Section 69B of the Act concerning the unexplained source of investment for the purchase of the immovable property and a tempo. Since the assessee failed to substantiate the source of investment during the assessment proceedings, a sum of Rs.59,86,934/- was added back under Section 69B of the Act.

Aggrieved by the assessment order, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) partly allowed the appeal by deleting a portion of the addition made under Section 69B, reducing it to Rs. 84,040/-. However, the addition of Rs.21,76,000/- under Section 56(2)(x) was upheld in its entirety. The Ld. AR contended that with respect to the addition of Rs.84,040/-, the Ld. CIT(A) erred in failing to consider the bank loan availed for the purchase of the property. Further, concerning the addition under Section 56(2)(x), the assessee had requested a reference to the District Valuation Officer (DVO) for valuation purposes, but this request was not considered, and the addition was confirmed. Aggrieved by the appellate order, the assessee has now preferred an appeal before us.

4. The Ld.AR first argued that the assessment was completed with an addition under section 69B of the Act related to the assessee's purchase of property amounting to Rs.49 lakhs by an agreement for sale deed dated 03/05/2017. The Ld.CIT(A) observed that Rs.19 lakhs was duly accommodated by selling of property by an agreement dated 19/04/2017. In respect of rest of the amount, the assessee claimed that, he has taken loan from ICICI Bank of Rs.30 lakhs. The

Ld.AR further placed that the Ld.CIT(A) erred to consider this loan amount as Rs.29,15,960/-, so the difference amount of Rs.84,040/- was confirmed under section 69B of the Act. The Ld.AR prayed that the issue should be remanded to the file of the Ld.AO for further verification of the amount of Rs.84,040/- and delete the addition sustained.

5. Related to addition under section 56(2)(x), the assessee purchased the property amount to Rs.49lakh whereas the stamp duty valuation was Rs.70,76,000/-. The Ld.AR prayed that the CTS No.154B of Revenue Village Majas, Jogeshwari(E) and therefore, the actual CTS number for calculation of market value for Stamp duty is 154B whereas the stamp duty was assessed at a higher amount considering the wrong CTS 155. It was prayed before the Ld.CIT(A) for referring the matter to the DVO. The letter was filed before the Ld. CIT(A) on dated 18/05/2024 but without considering the said letter, the impugned appellate order was passed. Even the Ld.CIT(A) had not taken any cognizance for referring the matter to the DVO with reference to Third Proviso to section 56(2)(x) of the Act. The Ld.AR prayed for setting aside the matter to the file of the Ld.AO with a direction to refer the matter to the DVO for valuation of the said property.

6. The Ld.DR vehemently argued and fully relied on the order of the revenue authorities.

7. We have heard the rival submissions and carefully examined the documents available on record. With respect to Ground No. 1, the Ld. AR submitted that the Ld. CIT(A) considered the loan amount as Rs.29,15,960/- received from ICICI Bank. However, the assessee contended that the actual loan

amount was Rs.30,00,000/-. Upon review, we find that there is a factual discrepancy in this regard. Therefore, we remit the matter to the file of the Ld. AO for verification of the addition of Rs.84,040/-, granting the assessee an opportunity to furnish any relevant evidence or documents during the set-aside assessment proceedings.

Regarding Ground No. 2, the assessee had already requested before the Ld. CIT(A) that the valuation be considered in accordance with the Third Proviso to Section 56(2)(x) of the Act. However, we find that the Ld. CIT(A) passed the order without considering this aspect. Accordingly, we remit the matter to the file of the Ld. AO for reconsideration of the issue. The Ld. AO is directed to refer the valuation of the property to the DVO, taking into account the provisions of the Third Proviso to Section 56(2)(x) of the Act.

Accordingly ground nos. 1 & 2 of the appeal of the assessee are allowed for statistical purpose.

8. Ground 3 is consequential in nature, so need not be adjudicated upon.

9. Ground 4 is general in nature.

ITA No.387/Mum/2025

10. This appeal pertains to the penalty of Rs.3,59,216/- levied under Section 271AAC(1) of the Act. The penalty was imposed in connection with an addition of Rs.59,86,934/- made under Section 69Br.w.s. 115BBE of the Act. However, the Ld. CIT(A) has already allowed the appeal in part and deleted an addition of Rs.59,02,894/-. The remaining addition of Rs.84,040/- has been remanded to the

file of the Ld. AO for further verification. Consequently, the issue of penalty levy is also restored to the file of the Ld. AO for reconsideration, to be decided in accordance with the final determination of the addition of Rs.84,040/-.

11. In the result, appeal in **ITA No.386/Mum/2025 & 387/Mum/2025** are allowed for statistical purpose.

Order pronounced in the open court on 04th day of March 2025.

Sd/-

(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 04/03/2025
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