

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA Nos. 6407 & 6668/MUM/2024
Assessment Years: 2018-19**

Khudbuddin Dadepir Pirjade
Plot No. 3, Bld. No.3, C-11,
Kaveri Nagari Nivara
Parishad,
A.K. Vadiya Marg, Flim City
Road, Goregaon (E),
Mumbai-400065
PAN NO. AKLPP 0464C
Appellant

Income Tax Officer, Ward- 41(4)(2),
Mumbai
Vs. Income Tax Officer Ward- 41(4)(2)
Kautilya Bhawan, Bandra (E),
Mumbai-400051.

Respondent

Assessee by : Mr. Ajay R. Singh,
a/w Mr. Shri Akshay Pawar
Revenue by : Mr. Hemanshu Joshi, CIT-DR

Date of Hearing : 17/03/2025
Date of pronouncement : 18/03/2025

ORDER

PER OM PRAKASH KANT, AM

The Captioned appeals filed by the assessee are directed against two separate orders, both dated 30.10.2024, passed by the Ld. Commissioner of Income-tax [Appeals]-National Faceless Appeal Centre, Delhi [in short Ld. CIT(A)] for Assessment year 2018-19,



first appeal being against the quantum of assessment proceedings and second being against the penalty levied for misreporting of income. Issues involved in both the appeals being interconnected, same were heard together and disposed off by way of this consolidated order for sake of convenience.

2. Firstly, we take up the appeal of the assessee in ITA No. 6407/Mum/2024 for A.Y. 2018-19 in relation to quantum proceedings. The grounds raised by the assessee are reproduced as under:-

“1. The Ld. Commissioner of Income (Appeals) erred in upholding the order of Assessing officer wherein the addition of Rs. 30,51,000/- (Rs. 34,26,000/- minus Rs. 3,75,000/-) is made, being difference in stamp valuc rate and agreement rate of the property purchased, us 56(2)(vii)(b) 56(2)(x) as income from other sources, without appreciating the facts of the case.

2. The Ld. Commissioner of Income Tax (Appeal) erred in holding that 1" proviso to section 56(2)(x) of the Act is not applicable as assessee has failed to furnish the details of payment made by Appellant's father pursuant to agreement dated 13th September, 2004 being sale consideration of Rs. 3,75,000/- as per the modes specified. The assessee had filed the explanation and details showing payments vide letter dt: 27/6/2023.

3. The Ld. Commissioner of Income Tax (Appeal) failed to consider that after the demise of his father, the property was transferred to his son without any additional consideration on 1 March, 2018 pursuant to the purchased agreement entered in the year September, 2004 and the sale consideration was on the basis of rate prevailing during the relevant period and also possession was handed over, merely to get the clear title of the property registration was done in the March, 2018. Therefore, section 56(2)(vii)(b)/56(2)(x) wrongly invoked to the facts of the case as neither payment is made nor possession is handed over during the year.



4. The Assessee craves leave to add, alter modify or delete one or more ground before or at the time of hearing of appeal.”

3. Briefly stated, the facts of the case are that the assessee filed his return of income for the assessment year under consideration on 31.08.2018, declaring a total income of ₹2,07,200/-. The return of income was selected for scrutiny based on information indicating that the transaction value of an immovable property was reported at an amount lower than the stamp duty valuation. During the scrutiny proceedings, the Assessing Officer issued a show cause notice to the assessee, seeking an explanation for the difference between the purchase consideration of ₹3,75,000/- and the stamp duty value of ₹34,26,000/-. However, due to non-compliance on the part of the assessee, the Assessing Officer treated the difference of ₹30,51,000/- as deemed income under Section 56(2)(vii)(b) of the Act and completed the assessment under Section 143(3) read with Section 144 of the Act on 26.03.2021. On further appeal, the assessee explained before the learned CIT(A) that the property in question was originally purchased by his father, with an agreement executed on 30.09.2004 and the full payment of ₹3,75,000/- made as per the prevailing market value in the financial year 2004. The assessee further stated that his father passed away on 22.07.2010, and subsequently, on 01.03.2018, the assessee registered the agreement for stamp duty, substituting the assessee in place of his father. The assessee argued that, in accordance with Section 56(2), the stamp duty value applicable in the financial year 2004 should



be considered for the purpose of determining the income under this section. However, as the assessee failed to provide a copy of the original sale agreement dated 30.09.2004 or any supporting evidence of payment via cheque, the learned CIT(A) rejected the appeal observing as under :

“8.5. A plain reading of Section 56(2)(x)(b) shows that any assessee receives any immovable property for a consideration, the stamp duty value of such property as exceeds actual consideration, the same shall be chargeable to income-tax under the head "Income from other sources". The appellant's argument is correct as to the proviso 1 to the sub section, the original agreement value is to be considered for stamp duty valuation. However, as per the proviso 2 of the section the provisions of the first proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed], on or before the date of agreement for transfer of such immovable property. In the present case, it is seen that the appellant has not shown the payment was made in modes prescribed as in proviso (2) of the section. It is apparent from the sale agreement that no payment was made in electronic modes as mentioned in the provisions. The appellant has failed to prove that the payment was made as per the prescribed mode before the date of agreement either before the AO or before the appellate authority. No Such evidence was produced by the appellant to prove that the payment was made before the sale agreement dated 13/09/2004 in a mode prescribed by furnishing linking documentary evidence. As such, it is held that the appellant's contention cannot be accepted and the AO is right in applying the provisions of the section 56(2)(x) for taxing the difference amount of actual consideration and stamp duty valuation.

8.6. In view of the above facts and detailed discussion, it can be reasonably concluded that the nature of income received being income from other sources and the Assessing Officer has taxed them rightly 56(2)(x)(b) of the Act after considering both factual and circumstantial evidence. No infirmity is found in the order of the Assessing Officer and the action of the Assessing Officer treating the difference amount



between stamp duty value and actual sale consideration, under income from other sources warrants confirmation. Thus, the Ground of appeal in No. 2, 3 and 5 raised by the appellant are not acceptable and hereby dismissed.”

4. Before us, the learned counsel for the assessee submitted a paper book comprising pages 1-53 and filed an application for admitting additional evidence, annexed as pages 54-63. This included a bank statement reflecting a payment of ₹3,75,000/- made by the assessee's father. The learned counsel specifically pointed out that page 55 of the paper book clearly indicates a cheque payment of ₹3,50,000/-. Additionally, the assessee submitted a certificate from the relevant cooperative society where the immovable property is located. In light of these additional affidavits, the learned counsel requested that the matter be remanded to the Assessing Officer for verification of compliance with the provisions of Section 56(2) of the Act.

5. We have considered the rival submissions and examined the relevant material on record. The primary issue in dispute is whether the property was registered at a purchase consideration lower than the stamp duty value on the date of registration.

5.1 As per Section 56(2)(x) of the Act, if an assessee receives or purchases an immovable property for a consideration below its stamp duty value, the difference between the stamp duty value and the purchase consideration is deemed to be the assessee's income. However, the second proviso to this section states that if the



consideration (or a part thereof) is paid via an account payee cheque on or before the date of the agreement for transfer, the stamp duty value as of the agreement date may be considered instead. In the present case, the assessee contends that the agreement for the property purchase was originally executed by his father in the financial year 2004, with the payment made through cheque. Therefore, the assessee claims compliance with the second proviso to Section 56(2)(x). In support of this, the assessee has submitted additional evidence and requested that the matter be remanded to the Assessing Officer for reconsideration. Furthermore, we have examined the registered sale agreement, which was executed on 01.03.2018 and is available in the paper book on pages 31-34. However, upon perusal, we do not find any mention of the ₹3,75,000/- payment made by the assessee's father or any reference to an earlier purchase agreement. The learned counsel for the assessee contends that this omission was inadvertent and maintains that no additional payment was made by the assessee at the time of registration. In view of the above facts and circumstances, and in the interest of substantive justice, we admit the additional evidence submitted by the assessee and remand the matter to the Assessing Officer for a fresh decision in accordance with the law, after verifying the documentary evidence. If deemed necessary, the Assessing Officer may conduct inquiries with the cooperative society from which the property was purchased.



6. In conclusion, the grounds raised by the assessee are allowed for statistical purposes.

7. The next appeal in ITA No. 6668/Mum/2024 is in relation to penalty levied for misreporting of the income in quantum assessment proceeding. Since the appeal of the assessee in relation to quantum proceeding has already been restored back to the file of the assessing officer, therefore, we find it appropriate to restore this appeal also to file to the assessing officer for necessary action in accordance with law.

8. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 18/03/2025.

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 18/03/2025
Disha Raut

Copy of the Order forwarded to :

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

Khudbuddin Dadepir Pirjade 8
ITA Nos. 6407 & 6668/MUM/2024



//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai