

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Smt. Beena Pillai (JM) & Shri Omkareshwar Chidara (AM)

ITA No. 6456/MUM/2024 (Assessment Year : 2018-19)

Yukti Anand Khanna Glen Classic-504 Hirrandani Gardens Powai Mumbai-400 076.	Vs.	ITO Ward-41(1)(5) Kautilya Bhavan Avenue-3, Near Videsh Bhavan BKC, Bandra East Mumbai-400 051.
PAN : AMGPK1892E		
Appellant		Respondent

Assessee by	:	Shri Rakesh Joshi
Revenue by	:	Shri Nihar Ranjan Samal
Date of Hearing	:	03/02/2025
Date of pronouncement	:	17/03/2025

ORDER

Per Omkareshwar Chidara (AM) :-

In the above mentioned case, the appellant has taken the following effective grounds of appeal which are mentioned as under :-

1. On the facts and circumstances of the case as Rs. 10,87,860/- well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in making an addition of Rs.41,18,760/- u/s 56(2)(x) of the Income Tax Act,1961 being difference between purchase consideration and stamp duty value of the property, without considering the facts and circumstances of the case.
2. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in not considering the facts that the said residential flat was purchased in the financial year 2016-17 and hence stamp duty rate of FY 2016-17 is to be considered.
3. The only issue to be adjudicated in this case is which financial year is to be taken into consideration for reckoning the addition under section 56(2)(x) of the Income Tax Act, i.e., whether the year of registration or the year of allotment of property to buyer.

4. In this case, the Ld. AO has taken the value of property as per Circle Rate of the year of registration, whereas the contention of the appellant is that section 56(2)(x) of the Act should be applied by taking the value of property at the time of allotment. As the Ld. AO has taken the value of the property at the time of registration and compared the same with the sale consideration mentioned in the sale deed, a difference of Rs. 41,18,760/- arose and the Ld. AO added the same under section 56(2)(x) of the Act.

5. During the hearing proceedings before the ITAT, the Ld. AR of the appellant pleaded that section 56(2)(x) of the Act is unambiguous and value of property should be taken at the time of allotment provided the appellant paid part consideration through account payee cheque to the seller. It was argued that the allotment letter is dated 7.3.2017, i.e. agreement fixing the amount of consideration is to be considered for the purpose of stamp duty valuation. The Revenue has not disputed the date of allotment and payment by account payee cheque, hence the value of F.Y. 2016-17 should be adopted for the purpose of section 56(2)(x) of the Act. The Ld. AR of the appellant filed written submissions in which a tabular form was also given and the same is reproduced below :-

Particulars	A.Y. 2018-19	A.Y. 2017-18
Ready reckoner rate	2,65,300	2,34,800
Stamp duty value	2,86,88,760	2,53,90,580
Agreement value	2,45,70,000	2,45,70,000
Diff	41,18,760	8,20,580
Diff in %	16.76	3.34

If the value of F.Y. 2016-17 is taken and computation is done section 56(2)(x) of the Act, then the variation between the sale deed value and circle rate would be less than 5% and no addition can be made, it was contended.

6. The Ld. DR relied on the orders of lower authorities where it was held that the value of circle rate of the year of registration should be taken for computing the value under section 56(2)(x) of the Act.

7. After hearing both sides, it is decided that the circle rate of the year in which allotment was finalised, should be taken for making the computation under section 56(2)(x) of the Act because the section clearly says so and the section is reproduced as under :-

“56(2)

[(x).....

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

Provided further that 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.”

8. Thus, the perusal of proviso to section mandates two conditions, i.e., the date of agreement fixing amount of consideration and date of allotment letter should be taken and secondly part payment should be made to seller through account payee cheque. Since both the conditions are fulfilled, the circle rate of F.Y. 2016-17 should be adopted to find out the variation between circle rate and sale consideration. If this computation is done, the variation is Rs. 8,20,580/- which is less than 4%, and the same is well within the tolerance limit of 5% and hence the addition made by Ld. AO is not warranted. In view of the above discussion, the addition made by Ld. AO is deleted and appellant's appeal is allowed.

Order pronounced in the open Court on 17/03/2025.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Mumbai; Dated: 17/03/2025

Copy of the Order forwarded to :

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

//True Copy//

PS

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai