

IN THE INCOME TAX APPELLATE TRIBUNAL
“H(SMC)” BENCH, MUMBAI
BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)
AND
SHRI OMKARESHWAR CHIDARA (ACCOUNTANT MEMBER)

I.T.A. No. 823/Mum/2025
Assessment Year: 2017-18

Firdos Shahnawazuddin Siddiqui 304, Akash Jyoti, Vakola, Santacruz East, Maharashtra-400055 PAN: BKWPS4694F	Vs.	Commissioner of Income-Tax (Appeals) National Faceless Appeals Centre, Income Tax Department, Primal Chambers, Mumbai-400012
(Appellant)		(Respondent)

Appellant by	Shri Dipesh Ruparelia
Respondent by	Shri Pravin Salunkhe, Sr. DR.

Date of Hearing	20.03.2025
Date of Pronouncement	27.03.2025

ORDER

Per: Smt. Beena Pillai, J.M.:

The present appeal filed by the assessee arises out of order dated 12/12/2024 passed by NFAC, Delhi, for assessment year 2017-18 on following grounds of appeal :

“Based on the facts and circumstances of the case, Firdos Shahnawazuddin Siddiqui (hereinafter referred to as the 'Appellant') respectfully craves leave to prefer an appeal against the order passed under Section 250 of the Income-tax Act, 1961 (the Act) by the Hon'ble Commissioner of Income-tax (Appeals), National Faceless Appeals Centre [Hon'ble CIT(A)] dated 12 December 2024 on the following grounds, which are Independent and without prejudice to each other:

On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has:

Primary Arguments

- 1. Erred in making an addition under Section 56(2)(vii)(b) of the Act of INR 21,91,700;*
- 2. Erred in not appreciating the fact that the transfer was effected as on 25 March 2010 and merely registration of the aforesaid transfer was done on 25 May 2016;*
- 3. Erred in disregarding the fact that 'Transfer of a capital asset has been defined under Section 2(47) of the Act to inter-alia include allowing of a possession of an immovable property in part performance of a contract;*
- 4. Erred in not appreciating the fact that, assuming without admitting, even if the agreement for transfer of immovable property was entered for an inadequate consideration, the provisions of Section 56(2)(vii) were not prevailing during FY 2009-10 when the transfer was carried out;*
- 5. Erred in holding that the date of agreement of sale of the impugned property was 25 March 2010 and the first payment for purchase of property was made by the Appellant by cheque on 29 March 2010, whereas, the Appellant had duly submitted that the cheque was given on the date of agreement itself on 25 March 2010 (which was a Thursday) and the cheque took 2 to 3 working days for clearing and was reflected in the bank statement only on 29 March 2010;*
- 6. Erred in disregarding the fact that it was impossible for a cheque dated 29 March 2010 to reflect in the bank statement on the same date as the banking and clearing system were not so quick way back in 2010;*

7. Erred in holding that the Appellant has violated the provisions of Section 56(2)(viib) of the Act as the payment (or part payment) has to be made in any mode other than cash;

8. Erred in holding that the Appellant has failed to submit any documentary evidence to prove that the possession of the impugned property was taken by the Appellant in 2010, whereas, the Appellant had submitted a notarized affidavit on stamp paper dated 25 March 2010 (signed by both, the Appellant and the seller of the property) mentioning the fact that the possession of the impugned property was granted to the Appellant in 2010 itself;

9. Erred in characterizing the Appellant as a non-filer without appreciating the fact that the Appellant was not required to file a return of income as her income was below the basic exemption limit;

10. Erred in holding that the source of income in AY 2010-11 was not explained by the Appellant whereas the Appellant had duly submitted the source;

11. Erred in holding that the Appellant has not explained the reason behind the delay in registration of the property even though it was duly explained that the Appellant was an unaware senior citizen who did not know that after having bought a property by utilizing all her wealth at that point in time and entering into an agreement for sale of property, signing (and notarizing) an affidavit and even after getting the possession of the property, she was still required to get the property registered under the stamp duty laws;

12. Erred in doubting the source of funds out of which stamp duty of INR 2,05,000 was paid by the Appellant without appreciating the fact that the same was paid through the legitimate banking channels by virtue of FD closure proceeds;

13. Erred in holding that the Appellant has failed to provide any documentary evidence to prove that the stamp duty of INR 2,05,000 was paid out of FD closure proceeds, whereas the Appellant had submitted a copy of the bank passbook duly reflecting the entry of FD closure proceeds;

14. Erred in levying interest under Section 234A and Section 234B of the Act; and

15. Erred in initiating penalty proceedings under Section 270A and Section 271AAC of the Act;

Without prejudice arguments on merits

16. Erred in not appreciating the fact that the property was purchased in the joint name of the Appellant and her son. Thus, the complete addition in the name of the Appellant is unjust and unwarranted;

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing of the appeal, so as to enable the Hon'ble Income-tax Appellate Tribunal to decide this appeal according to the law.

For the above and other grounds and reasons which may be submitted during the course of hearing of this appeal, the Appellant requests that the appeal be allowed as prayed."

Brief facts of the case are as under:

2. The assessee is an individual and was earning salary income till the F.Y. 2010-11. In the subsequent year assessee left her job as she had to look after her son and accordingly, no return of income was filed subsequently and even during the year under consideration.

2.1 On 25/03/2010 (corresponding to A.Y. 2010-11), the assessee entered into an agreement and purchased of immovable property from Mr. Amaan Naeem Ansari ('seller') for Rs.13,00,000/-. The aforesaid agreement was mutually registered by the parties on 25/05/2016. The consideration paid by the assessee to the seller was as under:

Date of debit from the bank account of the assessee	Mode of payment	Amount
NA	Cash withdrawn from bank. Statement attached as Annexure 1	4,00,000
29-03-2010	Bank - Statement attached as Annexure 1	2,00,000
03-04-2010	Bank - Statement attached as Annexure 1	1,00,000
06-04-2010	Bank - Statement attached as	2,00,000

	Annexure 1	
NA	Cash payment made from personal savings of the Appellant ['Stridhan']	4,00,000
	Total	13,00,000

2.2 Additionally, the assessee made payment towards stamp duty and Registration from her SBI Bank Statement on 25/05/2016. A copy of bank statement that formed part of the paper book as Annexure 2.

2.3 The Ld.AO initiated the reassessment proceedings under Section 148 of the Act dated 30//06/2021. Assessee filed requisite details. The Ld.AO after considering submissions of the assessee passed order dated 22/03/2023 making the following additions:

Particulars	Amount
Addition on account of difference in Stamp duty value as on 25 May 2016 and the transaction value of INR 13,00,000 entered as on 25 March 2010	21,91,700
Addition in respect of source of income for payment of stamp duty	2,05,000
Total	23,96,700

Aggrieved by the addition made by the Ld.AO, assessee preferred appeal before the Ld. CIT(A).

3. The Ld. CIT(A) upheld the addition by the Ld.AO based on the stamp duty valuation by observing as under:

“During the course of appeal proceedings, the appellate has submitted the submission. I have carefully considered the facts of the case, contentions of the appellant as well as the case laws relied upon by the appellant and the order of A.O. It is also stated by the appellant that transfer of capital assessee has been defined u/s 2(47) of the Income Tax Act to inter-alia include allowing of a possession of any immovable property in part performance of a contract and also the agreement for transfer of immovable property was entered for an inadequate

consideration, the provisions of Section 56(2)(vii) were not prevailing during FY 2009-10 when the transfer was carried out. In respect of the same, the Assessing officer clearly mentioned in assessment order and brought out all relevant facts as Second proviso to sub-clause (ii) of clause (b) of sub-section (vii) of section 56(2) of the act, is applicable in this case first payment by cheque has been made on 29/03/2010, i.e. after the date of agreement of sale dtd.25/03/2010. Though, provisions of section 56(2)(vii)(b) says that payment or part payment has to be paid in any mode other than cash on or before the date of agreement for sale. Being violated the provisions of section 56(2)(vii)(b)(ii) by the appellant in, the difference of Rs.21,91,700/- was added by Assessing officer to total income under the head income from other source.

In view of the above circumstances, it is pertinent to note that the appellant failed to submit any documentary evidence to prove that possession of property was taken in 2010 itself. It is also noted that the appellant is a non-filer and source of income amounting to Rs. 13,00,000/- in A.Y. 2010-11 also not established. The appellant has also failed to establish any valid argument or reason or supporting documentary evidences for the query why there is delay in registration of purchase the said property. In view of the above discussion and sincerely following the Hon'ble judiciary decision, in my considering opinion, the case laws referred by the appellant does not help as there is basic difference of facts of the case. In this case, the appellant has not filed the return of income during A.Y. 2010-11 & 2011-12 in which the appellant was paid sale consideration amounting to Rs. 13,00,000/- (agreement for sale). It is also noted that the appellant has not filed the return of income during A.Y. 2017-18 in which the appellant was executed the sale deed of the said property. Being teacher, the argument that she is not aware of registration process of property does not cut ice. Being innocent of law is not an excuse. Though, the property has been purchased jointly, the entire sale consideration & stamp duty has been paid by the Appellant from her Bank account only as her son was studying. The appellant has also failed to prove that her son was earning & contributed to be purchase of property. The contention of the appellant is not found tenable. Hence, this ground of appeal is noted as disallowed.”

3.1 The next addition alleged by the assessee was the disallowance, the stamp duty and registration charges to the tune of Rs. 2,05,000/- as expenditure at for registering the

property, as the assessee failed to explain supporting evidences. The Ld. CIT(A) observed and held as under:

“During the course of appeal proceedings, the appellate has submitted the submission and stated that the said payment amounting to Rs. 2,05,000/- was paid through banking channels by virtue of FD closure proceeds. In response to the same, the appellant has not provided any documentary evidences in support of its claim. However, the appellant failed to substantiate its claim with relevant documentary evidence. Merely, saying that the source of income regarding the FD cannot treated as a conclusive proof for the expenses made by the appellant. Considering the fact that the appellant had failed to produce any relevant proof in support of its claim and also considering the nature of business of the appellant. I am agreeing with the view of the AO and found that the appellant failed to explain the source of such expenses amounting to Rs. 2,05,000/- was made addition by the AO. The contention of the appellant is not found tenable. Hence, the ground is disallowed.”

Aggrieved by the order of the Ld. CIT(A) the assessee is in appeal before this *Tribunal*.

4. The Ld.AR submitted that **Ground No. 1-11** are in respect of the addition made, based on the difference between the Agreement value and on the stamp duty value as on the date of registration. He submitted that, the assessee purchased immovable property in the year 2010 through banking channels. It was submitted that, the Rs. 2,00,000/- each was given on 25/03/2010 by way of two cheques to the vendor as part payment and thereafter another 3,00,000/- was paid on 03/04/2010 and 06/04/2010 by way of cheque. He submitted that sum of Rs. 4,00,000/- was paid on 22/03/2010 and 25/03/2010 by way of cash withdrawn from bank and remaining 4,00,000/- was paid after 06/04/2010 from her own savings. The Ld.AR submitted that the assessee paid entire sale consideration during financial year 2009-10 and 2010-11

amounting to Rs. 13,00,000/-. He placed reliance on the following table showing the breakup of payment made.

<i>Date of debit from the bank account</i>	<i>Mode of payment</i>	<i>Amount (INR)</i>
<i>22-03-2010 and 25-03-2010</i>	<i>Cash withdrawn from bank. Statement attached as Annexure 3</i>	<i>4,00,000</i>
<i>29-03-2010</i>	<i>Bank Statement attached as Annexure 3</i>	<i>2,00,000</i>
<i>03-04-2010</i>	<i>Bank Statement attached as Annexure 3</i>	<i>1,00,000</i>
<i>06-04-2010</i>	<i>Bank Statement attached as Annexure 3</i>	<i>2,00,000</i>
<i>NA</i>	<i>Cash payment made from personal savings of the Appellant['Stridhan']</i>	<i>4,00,000</i>
	<i>Total</i>	<i>13,00,000</i>

4.1 The Ld.AR submitted that the said property purchased by the assessee was a part of SRA project, and therefore registration could not have taken place immediately. He submitted that subsequently, aforesaid agreement was registered on 25/05/2016 wherein the stamp duty value was computed at Rs.34,91,700/- against which the assessee paid stamp duty and registration amount of Rs. 2,05,000/-. The Ld.AR submitted that, as on the date of registration the value of the property increased and therefore the stamp duty value also was high as compared to the value as on actual date of purchase by the assessee. The Ld.AR submitted that, assessee had not paid any extra money over and above Rs. 13,00,000/- and that assessee was in possession of said property from 2010 and was residing in the property with her son since then.

4.2 The Ld.AR submitted that under such circumstances provisions of section 56(2)(vii)(b) cannot be invoked based on the value of the property as on the date of registration. The Ld.AR submitted that mere registration on latter dated would not cover a transaction already executed in the preceding assessment year when the assessee has discharged her onus by making good the vendor with total consideration having paid.

4.3 On the contrary the Ld.DR relied on orders passed by the authorities below.

We have perused the submissions advance by both sides in the light of record placed before us.

5. Assessee purchased residential unit bearing Flat No.709 on 7th Floor, A-Wing, Building No.4, Khandwala S.R.A. Cooperative Housing Society Limited, Khandwala Compound, Datta Mandir Road, Vakola Bridge, Santacruz (East), Mumbai 400 055, admeasuring area 225 sq. ft. Carpet area. Admittedly the said flat is located in a SRA project and the vendor was a bonafide member of cooperative society holding shares No. 1086 to 1090 under Certificate No. 218 for a value of Rs. 13,00,000/-. There is no dispute between the authorities that the consideration has been paid by the assessee way back in 2010-11. The assessee has placed before us, the bank passbook showing the entry of monies having withdrawn by cheque from the bank or in cash. It is noted that, the vendor also executed an affidavit as on 25/03/2010 stating that the said property has been transferred to the assessee and that all the necessary title in respect of the property is being transferred in her name. It is further noted that, there is nothing on record brought by the revenue to establish

anything contrary to the above and it is not a case of inadequate consideration as alleged by the revenue. In our view the amended provisions of section 56(2)(vii)(b) introduced subsequently by the Finance Act 2013 and that assessee's case would fall within the pre amended provision. In view of the fact that the agreement for purchase of the property was entered into during financial year 2009-10. The Ld.AO is thus directed to delete the addition made u/s. 56(2)(vii)(b) of the Act.

Accordingly Ground no. 1-11 raised by the assessee stands allowed.

6. In respect of **Ground No.12** raised by the assessee the disallowance is challenged in respect of the stamp duty and registration amount paid by the assessee which was held to be not through disclosed sources. The Ld.AR has filed before us the bank passbook of the assessee wherein assessee had withdrawn the fixed deposit on 24/05/2016 and the money was paid to the broker through RTGC on 25/05/2016. He also submitted the copy of the FD was old and assessee en cashed the same to in case expenditure towards duty. He thus submitted that the said expenditure is allowable in the hands of the assessee.

6.1 On the contrary, the Ld.DR relied on the orders passed by the authorities below.

We have perused submissions advance by both sides in the light of records placed before us.

7. It is noted that as assessee has not provided any documentary evidences the claim was disallowed. However the Ld. CIT(A) was aware of the fact as the assessee submitted the bank statement of the FD closure proceeds being deposited into

account. However it was held that FD account cannot be treated as conclusive proof for the expenses has been made this. In our view is contrary opinion expressed by the Ld. CIT(A) by blowing hot and cold at the same time. Nothing contrary to what is submitted by the assessee is brought on record by the Ld.DR. Accordingly we do not find any reason to sustain the addition made and the same stands deleted.

Accordingly the ground no.12 raised by the assessee stands allowed.

8. Other ground raised by the assessee are consequential in nature and therefore do not require adjudication.

In the result the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 27/03/2025

Sd/-

(OMKARESHWAR CHIDARA)
Accountant Member

Sd/-

(BEENA PILLAI)
Judicial Member

Mumbai:

Dated: 27/03/2025

Poonam Mirashi,
Stenographer

Copy of the order forwarded to:

- (1)The Appellant
 - (2) The Respondent
 - (3) The CIT
 - (4) The CIT (Appeals)
 - (5) The DR, I.T.A.T.
- True Copy

By order

(Asstt. Registrar)
ITAT, Mumbai