

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.408/M/2025
Assessment Year: 2013-14**

Harshadkumar and Brothers, 438, Gopal Galli, M.J. Market, Kalbadevi Market, Mumbai – 400 002 PAN: AAAFH3802M	Vs.	Assistant Commissioner of Income Tax 18(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri K. Gopal, Ld. A.R.a/w
Ms.Neha Paranjpe, Ld. A.R.

Revenue by : Shri Hemanshu Joshi, Ld. D.R.

Date of Hearing : 08.04.2025

Date of Pronouncement : 30.04.2025

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 17.12.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2013-14.

2. Relevant facts for adjudication of the 1st issue/addition are that the Assessee had purchased a property i.e. flat no.1102, 11th floor, A-wing, La Vista, Sector 10, Karghar, Navi Mumbai consisting of carpet area 91.83 sqm., on dated 10.01.2008 on a lump sum consideration of Rs.44,46,750/- and paid the amount of Rs.5,00,000/- as advance. Seller party i.e. M/s. Ravechi Delivering Dreams issued an allotment letter dated 10.01.2008 in this regard and thereafter in pursuance to the allotment letter, the Assessee paid the remaining amount in instalment as tabulated below:

Date	Amount	Account debited to
11.01.08	500000	Ravechi Properties
05.02.08	500000	Ravechi Properties
07.03.08	219000	Ravechi Properties
07.04.08	200000	Ravechi Properties
09.05.08	200000	Ravechi Properties
12.06.08	200000	Ravechi Properties
21.07.08	200000	Ravechi Properties
19.08.08	200000	Ravechi Properties
20.09.08	200000	Ravechi Properties
14.10.08	300000	Ravechi Properties
02.02.09	100000	Ravechi Properties
24.03.09	100000	Ravechi Properties
20.04.09	527750	Ravechi Properties
29.04.09	500000	Ravechi Properties
27.05.09	500000	Ravechi Properties
	4446750	Total amount as per Balance sheet
01.04.13	30000	Amount paid for various charges etc. Amount paid by the firm, by cheque, however through oversight was debited to the account of Partner Shri Harish R Shah. The mistake was noticed and by journal entry the same was transferred to the account of Ravechi Flat by crediting to his capital account.
01.04.13	450700	
05.04.13	75000	
05.04.13	323750	
06.06.13	62250	Ravechi Properties
Total	5388450	Total amount paid for Ravechi flat as per books of accounts.

3. Ultimately, the seller company had executed a formal purchase agreement dated 28.03.2013 on making the total payment as agreed as per the allotment letter and completion of building.

4. However, the Assessing Officer (AO) in a scrutiny case under CASS, show caused the Assessee to explain *“as to why the market value of the said property arrived at by the stamp duty authorities to*

the tune of Rs.90,13,000/-, should not be considered as the actual price of the property for proposed addition u/s 69B of the Act.

5. Simultaneously the AO also referred the valuation of the property to DVO-I, Mumbai vide reference letter dated 25.02.2016.

6. The Assessee in the meantime in response to the show cause notice dated 07.03.2016, filed its reply substantiating the value of the property to the tune of Rs.44,46,750/- as correct.

7. Thereafter, the valuation officer vide valuation report dated 18.03.2016 affirmed the value of the subjected property to the tune of Rs.90,13,000/- as on the date of registration, as determined by the stamp duty valuation authority.

8. The AO therefore considering all the aforesaid facts and circumstances of the case and while relying on the DVO report and citing various judgments and considering the peculiar facts and circumstances of the case, ultimately found the contention of the Assessee as not acceptable and resultantly made the addition of Rs.45,66,250/- being difference between the consideration shown in the allotment letter dated 10.01.2008 and the stamp duty value as determined by the stamp duty valuation authority as well as by the DVO, by mainly observing and holding as under:

“As per agreement dated 28.03.2013 clause (1), the builder has received commencement certificate on 20.05.2008 whereas the Assessee has received the allotment letter dated 10.01.2008 i.e. much before the builder received commencement permission for construction. The MRTP Act, 1961, section 45 empowers builder to commence construction of immovable property. The construction without obtaining commencement certificate, when

the builder has no right in the proposed construction before 20.05.2008, the acquisition of right by the Assessee to obtain the conveyance of immovable property, does not arise in case of Assessee on 10.01.2008 i.e. prior to commencement date. Hence, the valuation based on the allotment letter cannot be considered as cost of purchase. The valuation officer has confirmed the stamp duty value of the property at Rs.90,13,000/- as on the date of registration while considering all the aspect and while arriving at the value of Rs.90,13,000/-, thus the Assessee's contentions are not acceptable. Hence, the provisions of section 69B are invokable. Therefore, the addition of Rs.45,66,250/- being difference between the consideration shown in the allotment letter dated 10.01.2008 and the stamp duty value as determined by the stamp duty valuation authority as well as by the DVO, is made".

9. The Assessee, being aggrieved, challenged the said addition as well before the Ld. Commissioner, however, of no avail, as the Ld. Commissioner affirmed the aforesaid addition.

10. We have given thoughtful considerations to the peculiar facts and circumstances of the case. Admittedly, the provisions of the Act i.e. sections 50C and 56(2)(vii) of the Act, have carved out certain exception/provision such as "where the date of agreement fixing the amount of consideration and the date of registration for the transfer of capital asset are not same, the value adopted or assessed or assessable by the stamp duty authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer. Herein, in the instant case, the AO instead of invoking the relevant exception, invoked the provisions of section 69B of the Act which reads as under:

“69B. Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year.”

11. What the provisions of section 69B prescribes, are that where the amount expended on making investment in bullion, jewellery or other valuable article and the amount is exceeded the amount recorded in this behalf in the books of account maintained by the Assessee for any source of income and the Assessee offers no explanation about such excess amount or the explanation offered by him is not satisfactory, then the excess amount may be deemed to be income of the Assessee. Herein, in the instant case, the Assessee has duly explained the transaction by producing the relevant allotment letter and the payment schedule starting from 11.01.2008 till 27.05.2009 and thereafter up to 06.09.2013 demonstrated that initially the property was allotted vide allotment letter dated 10.01.2008 and thereafter the entire sale consideration of Rs.44,46,750/- was paid in installments and ultimately formal purchase agreement was registered on 28.03.2013 as per agreement allotment letter and completion of building and therefore the consideration amount fixed and shown vide allotment letter dated 10.01.2008 is required to be considered but not the date of executing formal purchase agreement date on 28.03.2013.

12. The AO, instead of applying the relevant exception carved out in sections 50C and 56(2)(vii) of the Act, in fact, relied on section 45 of MRTP Act, which empowers the builders to commence construction of immovable property after obtaining commencement certificate for construction/development and in case of default launching of prosecution and levy of penalty on the builders, under MRTP Act, is prescribed.

13. Even, if we consider the date of commencement certificate as on 28.05.2008, as the date of allotment and/or empowering the builder to start the construction of the property under consideration, then also from payment schedule, it is clear that the Assessee thereafter as well, has paid the substantive part of the consideration amount.

14. In our considered view, the explanation given by the Assessee goes to show that the Assessee has been able to discharge its onus cast u/s 69(B) of the Act, if at all is liable to be discharged and/or if at all provisions are applicable. Even otherwise, it is not the case of the Revenue Department that the Assessee had ever paid any amount over and above the consideration fixed vide agreement dated 10.01.2008 but the authorities below simply relied on the DVO report and the provisions of section 142A and 69B of the Act by sidelining the relevant provisions of the Act, as applicable.

15. Further admittedly, the DVO has adopted the value of the property as determined by the Stamp Duty Valuation Authority, as on the date of executing formal purchase agreement dated 28.03.2013.

16. Both the authorities below have accepted the said valuation report by sidelining the exceptions carved out under the provisions

of section 50C and 56(2)(vii) & of the Act, as well as the explanation given by the Assessee and/or discharging the onus cast u/s 69B of the Act.

17. Thus on the aforesaid analyzations, the addition in any case, is un-sustainable and therefore the same is deleted.

18. Coming to the **2nd issue/addition** which pertains to the addition of Rs.4,00,000/- u/s 35AC of the Act on account of disallowance of claim of deduction. According to the authorities below, the Assessee though claimed the deduction of Rs.4,00,000/- on account of donation u/s 35AC of the Act, however, in spite of asking to submit the proof of deduction claimed, failed to provide the copy of receipt of the donation and bank statement reflecting payment in support of its claim and therefore the claim of the Assessee was disallowed for want of verification and consequently the amount of Rs.4,00,000/- was added back to the income of the Assessee. Whereas, the Assessee before us has claimed that it has duly submitted the relevant documents in support of its claim and therefore orders passed by the authorities below are not in consonance with the documents submitted by the Assessee. The Assessee before us also placed notification dated 30.12.2010 along with details/receipts of the donation paid to the tune of Rs.4,00,000/-. Thus considering the peculiar facts and circumstances in totality, we deem it would appropriate to remand the instant issue to the file of the AO for verification purposes. Consequently, the AO is directed to verify the notification dated 30.12.2010 and the receipts dated 25.07.2012, 13.08.2012, 03.09.2012 & 04.10.2012 and on verification, allow the deduction claimed by the Assessee, for such amount.

19. In the result, the appeal of the Assessee is allowed in the aforesaid terms.

Order pronounced in the open court on 30.04.2025.

**Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.