

IN THE INCOME-TAX APPELLATE TRIBUNAL “A” BENCH,
MUMBAI

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA 188/MUM/2025
(A.Y. 2018-19)

Arun Kumar 1-N, Pleasant Park, 24 th Road, Bandra West, Mumbai 400 050, Maharashtra	v/s. बनाम	Deputy Commissioner of Income Tax, Circle – 42(1)(1), Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai 400051, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ADQPK1496H		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Manoj Mundra,AR
Respondent by :	Shri Ram Krishn Kedia (Sr. DR)

Date of Hearing	02.04.2025
Date of Pronouncement	03.04.2025

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal emanating from the appellate order dated 16.12.2024 is preferred by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] pertaining to assessment order passed u/s. 143(3) of the Income-tax Act, 1961 [hereinafter referred to as “Act”] dated 17.03.2021 for the Assessment Year [A.Y.] 2018-19.



2. The grounds of appeal are as under:-

Under the facts and in law, the learned CIT(A) erred in confirming addition u/s 56(2)(x) of the Income Tax Act, 1961 of Rs 66,74,600/-.

1.1 Under the facts and in law, the learned CIT(A) failed to appreciate the fact that the flat was booked by the appellant in FY 2011-12 and agreement was merely registered in the captioned assessment year, hence, the stamp duty valuation of FY 2011-12 to be considered for invoking of provision of Section 56(2)(x) of the Income Tax Act, 1961.

3. The brief facts of the case are that an addition of Rs 66,74,600/- was made u/s 56(2)(x) of the Act by Id.AO, being the difference between the Stamp Value of the property and the value shown in the actual registry done in respect of a flat owned by the assessee. It was his plea that he had booked the flat way back on 09.09.2011. However, the actual registry was done as late as on 28.02.2018, therefore, the Stamp duty value of FY 2010-11 should be considered to which the AO did not agree. The AO further noticed that the booking was done of Flat No C-603, Naman Habitat, Andheri West, Mumbai, whereas the registry was done of Flat No C-601, Naman Habitat, Andheri West, Mumbai, booking was in the name of one Ms Shruti Kumar, where as the registry was done in the name of Shri Arun Kumar, the assessee, Authorized signatories on booking slips and the registries were different and also the so-called booking slip was undated. In the subsequent appeal, the Id.CIT(A) made observations that there was a long gap between the year of booking and the year of registry which could not be ignored. Secondly, the so-called



booking slip of an amount of Rs 5,83,200/- could not be called an allotment letter for a flat valued at Rs 1,76,90,600/-. Merely writing the flat number on a booking slip did not make it an allotment letter. Besides, the source of the booking amount was Ms Shruti Kumar, whereas the entire balance payment was made by the assessee. Asking for relaxation merely on the basis of a booking amount of Rs 5,83,200/-, paid 7 years earlier by somebody else, is stretching things to an untenable limit. Hence, these grounds having no merits were dismissed.

4. The only issue in this case relates to the addition on account of difference in the market value with reference to the stamp valuation of the property. The AO invoked the provisions of section 56(2)(x) of the Act. Before the IdCIT(A), there was no compliance by the assessee despite repeated notice issued to him. As a result, the Id.CIT(A), based on the statement of facts on record concurred with the findings of the AO and the addition made was upheld by him.

5. Before us, the Id. Authorised Representative of the assessee pleaded that the Id. CIT(A) was not justified in upholding the addition made as he failed to give adequate opportunity of hearing to the assessee. A Paper Book containing 1-29 pages is also submitted enclosing various details stated to have been submitted to the AO during assessment proceedings. Documents relating to the allotment, relevant



purchase agreement, allotment letter, confirmation from the Developers, ledger account etc were submitted. As regards, non compliance before the Id.CIT(A),copies of certain computer generated communication made through e-portal have also been attached claiming that the e-mail stated therein does not belong to the assessee or any other connected person which led to the non appearance before him.

6. On careful consideration of all material facts of the case, it appears to be a case of miscommunication relating to e-portal and no malafide could be attributed to this lapse on his part. It is also observed that the Id.CIT(A) dismissed the appeal basically on the ground of non-prosecution though he did consider the contents of the SOF filed by the assessee. Such dismissal without deciding the appeal on merits is contrary to the principles of natural justice. It is settled law that it is the duty of the appellate authority to dispose of an appeal on merits after considering the materials on record, even if the appellant fails to appear. However, it is equally true that it is the fundamental duty of the assessee to diligently pursue the appeal and comply with the notices and proceedings initiated by the Revenue authorities. Despite the notices under section 250 of the Act by the CIT(A), no substantive explanation was submitted. The assessee's contention of non-receipt of notices cannot absolve it of its duty to follow up on its appeal. However,



considering the reasons cited above, we condone the delay in the larger interest of fair play and justice, following the principles of natural justice.

6.1 Accordingly, we proposed to both the sides during the hearing that the assessee be given one more opportunity and this proposition was also not objected by the Id. DR. We are of the opinion that the scales of justice demand that the matter should be verified and revisited at the level of Id.CIT(A) and accordingly, we are of the considered view that the matter should be remanded back to his file for *de novo* adjudication by him while applying the principles of natural justice after affording sufficient opportunity of being heard to the assessee. The assessee would make necessary compliance without fail for judicious adjudication of his appeal.

7. In the result, the appeal is **allowed for statistical purposes.**

Order pronounced in the open court on **03/04/2025.**

Sd/-

SANDEEP GOSAIN

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 03.04.2025

Lubhna Shaikh / Steno



आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

