

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'I' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.742/Mum/2025
(Assessment Year :2019-20)**

Oswald Raphael Misquitta Dreamland House Devdharan Wadi, Sanour Vasai W Bassein Thane - 401 201	Vs.	ITO Int. Tax Ward - 3(2)(1), Mumbai
PAN/GIR No.AVVPM3924A		
(Appellant)	..	(Respondent)

Assessee by	Shri Bhupendra Shah
Revenue by	Shri Krishna Kumar, Sr. DR
Date of Hearing	26/03/2025
Date of Pronouncement	22/05/2025

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 05/12/2024 against final assessment order dated 24/01/2025 passed u/s.147 r.w.s. 144C(13) in pursuance of direction given by ld. DRP dated 05/12/2024.

2. In the grounds of appeal assessee has challenged the validity of reopening assessment u/s.148A and on merits had challenged the addition of Rs. 6,16,82,500/- u/s.56(2)(x).

3. The facts in brief are that assessee is a non-resident and was not filing return of income in India. Information was received from insight portal of the Income Tax Department that assessee had made various investments in the A.Y. 2019-20, however, no return of income was filed. Accordingly, notice u/s.148 was issued on 30/03/2023. Ld. AO in his order has noted that assessee has made investment in immovable property for Rs.75,00,000/- whereas, fair market value of the land as determined by the stamp valuation authorities was Rs.6,91,82,500/- and accordingly, in the draft assessment order, ld. AO proposed addition of Rs.6,16,82,500/- being difference amount chargeable to tax u/s.56(2)(x) as 'income from other sources'. The ld. DRP has confirmed the draft order and accordingly, in the final assessment order, income has been assessed at Rs.6,16,52,500/-.

4. We have heard both the parties and also perused the relevant finding given in the impugned order. Before us it has been submitted that assessee has produced Registered Valuer's report who had valued property at much lower than the actual sale consideration, because of location and condition and use of the land, the fair market value was much far below the stamp duty value. Another important fact which has been brought on record that earlier the person from whom assessee had purchased the property in this case, the matter was referred to the departmental Valuation Officer who had submitted his report on 29/06/2017 who has valued the same property as on

30/12/2013 at Rs.22,88,790/- for the A.Y. 2013-14. The assessee had purchased the property from Mr. Santosh Vekande on 03/11/2018 who had earlier purchased same property on 30/12/2013 value of which was Rs.22,88,790/- and the Valuation Officer of the department to whom matter was referred had determined value of the property at Rs. 33,30,250/- as on date on 30/12/2013. Ld. Counsel for the assessee has submitted that the ld. AO in the case of the assessee from whom remand report was called for by the ld.DRP has clearly stated this fact. It has been further submitted that before the ld. AO, assessee has raised this specific objection that value of the land is far below the stamp value rate, the copy of the letter is placed at paper book at page 394. However, neither the ld. AO nor the ld. DRP has referred the matter to the Valuation Officer. Now, there is a DVO's report for the same property then as per the report the fair market value has been found to of much lower price then, such huge difference cannot be added.

5. On the other hand, ld. DR has submitted that the matter can be restored back to the file of the ld. AO to refer the matter to the DVO.

6. On perusal of the facts and material on record, it is seen that assessee had purchased two lands bearing Survey No. 52/D of area admeasuring 0-84-40 HRP; and Survey No. 52/1 of area admeasuring 0-36-70 HRP, being situated at revenue village Chandip, Taluka-Vasai District-Palghar vide Conveyance Deed dated 13/02/2019 for an agreed consideration of Rs.

75,00,000/- which was registered before the Dy. Sub-Registrar of Assurances Vasai-6 bearing Sr. No. 889/2019 on the same day. The assessee before the ld. AO had specifically stated that the earlier purchaser, Mr. Santosh Vekande had purchased the same property on 30/12/2013 for amount of Rs.6,00,000/- for S.No.52/1 and amount of Rs.12.50 lakhs and for S.No.52/D and even at that time the value as per the ready reckoner was far higher. The assessee had purchased the same property from Mr. Santosh Vekande on 03/11/2018 at the same consideration of Rs. 75,00,000/-. In the case of Mr. Santosh Vekande, the matter was referred to the DVO who had valued the property as on 30/12/2013 at Rs.33,30,250/-. If the index value is considered for the F.Y. 2018-19, the value of the property comes to 42,38,500/-, whereas the sale consideration by the assessee is Rs.75,00,000/-.

7. On this issue specifically remand report was called for by the ld. DRP and in the remand report ld. AO has observed and held as under:-

AO's Remand Report

2 This is with reference to your above referred email received in this office on 17.10.2024 to submit comments on the additional evidences submitted by the assessee before the CIT(DRP)-2(WZ), Mumbai which also has been forwarded to this office for perusal and for submission of remand report. Accordingly, a letter dated 18.10.2024 was issued to the assessee to present the case and an opportunity of hearing was granted by the AO

3. The assessee complied with the letter and submitted the details/documents in tapal on 22.10.2024. On perusal of the

documents submitted by the assessee following observations has been made:

As per Index-2 of the property purchase document dated 03.11.2018 the sale consideration of the property was Rs.75,00,000/-, whereas the Stamped value adopted by Stamp Duty Authority at Rs.6,91,82,500/-, Accordingly, difference of Rs. 6,16,82,500/- was proposed to be added u/s. 56(2)(x) of the Act in the draft order u/s. 144C(1) of the Act dated 29.03.2024.

The assessee has submitted that he has purchased the property from Mr. Santosh Vekande on 03.11.2018. Mr. Santosh Vekande had purchased the same property on 30.12.2013. Mr. Santosh Vekande got his land valued by a private valuer who gave the valuation of the land at Rs. 22,88,790/- for the AY 2013-14.

However, the Assessing Officer rejected the valuation by private valuer and referred it to the Assistant Valuation Officer, Thane for valuation of the property. **After all the assumptions and considerations the AVO passed order u/s 142A rw.s 55A & 50C of the Act dated 29.06.2017 in which the value of the property was determined at Rs. 33,30,250/- as on date 30.12.2013.**

Even if the indexed value is considered for the FY 2018-19 the value of the property will come out to be:

Rs. 33,30,250 280/220 Rs. 42,38,500/- which is considerably less than the Sale Consideration (ie Rs. 75,00,000/-) of the said property.

4. Hence the additional evidence submitted by the assessee may be considered and in view of the same, it on merits" submitted that the issue may be decided on merits.

8. Thus, when the department itself has got the same property valued and it has been found by the AVO that it was far below the ready reckoner value and the property was valued at Rs.33,30,250/- five years before the purchase was made by the assessee. If one takes the index value for 5 years then it comes to Rs.42,30,500/-, which is still far below the consideration of Rs.

75,00,000/- . Then how can it be held that the fair market value of the property is Rs.6,91,82,500/-.

9. The *third proviso* to Clause (x) of sub-section (2) of Section 56 clearly provides that if the stamp duty of value of immovable property is disputed by the assessee on the grounds mentioned in Section 50C(2), then ld. AO has to refer the matter to the Valuation Officer. Once the assessee has challenged the valuation specifically and has brought all these facts of earlier valuation, then either AO should have accepted the valuation done by the department earlier and taken the index cost or should have referred the matter to the DVO / AO.

10. Since, in the remand report called for by the ld. DRP in the case of the assessee for present assessment year, AO himself has considered all these aspects by taking into consideration the earlier departmental valuation officer's report and the index value as per the ready reckoner is Rs.42,38,500/-, then the sale consideration of Rs.75,00,000/- is held to be far reasonable and fair market value of the property. Accordingly, the difference of Rs.6,16,82,500/- added by the ld. AO is deleted.

11. In the result, appeal of the assessee is allowed.

Order pronounced on 22nd May, 2025.

Sd/-
(PADMAVATHY S)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 22/05/2025
KARUNA, sr.ps

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai