

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No. 4218/MUM/2024 (AY : 2018-19)
(Physical hearing)

Mohammad Mohsin Qureshi Room No. 375, Plot No. 2, Shashtri Nagar, Near Bus Depot, Bandra West, Maharashtra-400050. [PAN No. BEXPK0365Q	Vs	ITO Ward-42(2)(4) Kautilya Bhavan, Maharashtra.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Vimal Punmiya CA
Revenue by	Ms. Pradnya Gholap, Sr. DR
Date of institution of appeal	21.08.2024
Date of hearing	15.04.2025
Date of pronouncement	28.05.2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre / Commissioner (Appeals) [Id. CIT(A)] dated 18.12.2023 for A.Y. 2018-19. The assessee has raised the following grounds of appeal:

- 1. The Hon. CIT erred in making an addition of Rs. 9,48,000/- being differential amount between purchase value and stamp duty value as addition under section 56(2)(x) of the Income Tax Act without considering the material facts on record.*
- 2. The Hon. CIT erred in passing assessment order without providing sufficient opportunity of being heard.*
- 3. On the facts and circumstances of the case and in law, Hon. CIT erred in levying interest u/s 234A, 234B and 234C of the Income Tax Act, 1961.*
- 4. On the facts and circumstances of case and in law, Hon. CIT erred in initiating penalty u/s 270A.*
- 5. On the facts and circumstances of case and in law, Hon. CIT erred in initiating penalty u/s 272A(1)(d).*

6. The appellant may add modify delete any grounds of appeal before the completion of hearing before the ITAT appeals."

2. Brief facts of the case are that assessee is an individual, filed his return of income for A.Y. 2018-19 on 26.08.2018 declaring income of Rs. 2,95,400/-. Case was selected for limited scrutiny to verify transaction of immovable property. During assessment, the assessing officer recorded that assessee has purchased immovable property i.e. Flat no. 102, 1st floor, Marian Terraces, 68 Chapel Road, Bandra (W). The assessee has shown sale consideration at Rs. 81,00,000/-. The stamp valuation authority (SVA) valued the property/flat for the purpose of registration of transaction at Rs. 1.20 crore. Thus, there is difference of Rs. 39.95 lacs viz-a-viz sale consideration and the value determined by SVA. The assessee was issued show cause notice as to why the difference of Rs. 39,95,000/- should not be added under section 56(2). The assessing officer recorded that in response to show cause notice, the assessee furnished valuation report of registered valuer showing value of subject flat at Rs. 86,00,000/-. The assessing officer referred the matter to District Valuation Officer (DVO) through technical unit. As assessment was getting time barred, the assessing officer made addition of difference of Rs. 39,50,000/- while passing assessment order on 15.04.2021, subject to rectification of assessment order on receipt of report of DVO.
3. Aggrieved by the additions in the assessment order, the assessee filed appeal before Id. CIT(A). Before Id. CIT(A), the assessee filed written submission on 20.12.2023 through ITBA portal. The submission of assessee are scanned at page no. 9 to 11 of impugned order. In the submission, the assessee

submitted that during assessment, the assessee furnished various submissions on account of difference in the value adopted by Stamp Valuation Authority and the agreement value declared by assessee. Stamp Registration Authority adopts general value based on rates decided for a particular area. In two adjacent building in same City survey, the Stamp Valuation Authority took different value depending upon various factors like location of building situation of flat, quality of construction and amenity provided by builder. During assessment, the assessee made request to refer the matter to District Valuation Officer. The Valuation Officer II, Mumbai carried out valuation and furnished his report vide report dated 28.06.2021 wherein the value of flat is determined at Rs. 90.48 lacs. Against the report of valuation, the assessee filed his objection and stated that valuation officer considered two buildings as bench mark for valuation on the basis of which value of subject flat is determined. The assessee further stated that the bench mark considered by valuation DVO are of premium society of Bandra where Ex-Minister and other political party lenders are occupying flat which is not comparable with the flat of assessee. The assessee also objected on the quality of construction of comparable and his society. The Id. CIT(A) also extract the report of valuation officer on page no. 15 of his order.

4. The Id. CIT(A) on considering the submission of assessee held that assessee himself furnished valuation report showing the value of property at Rs. 86,00,000/- but he purchased at Rs. 81,00,000/-. The Id CIT(A) directed the Assessing Officer to consider the report of valuation officer / DVO and

determined the addition under section 56(2)(x). Aggrieved, by the order of Id CIT(A), the assessee has filed present appeal before Tribunal.

5. I have heard the submission of Id. Authorised Representative (Id AR) of the assessee and the learned senior departmental representative (Id. Sr. DR) for the Revenue. The Id. AR of the assessee fairly submits that there is delay of 177 days in filing appeal before Tribunal. The delay in filing appeal is neither intentional nor deliberate. The assessee has already filed application for condonation of delay. The Id. AR of the assessee submits that on coming to know about dismissal of appeal of Id. CIT(A), the assessee furnished all necessary documents and instructed his tax consultant named Rajiv Vaghani to file appeal. No appeal was filed by him in time. When no appeal was filed in time, the assessee engaged in new authorised representative/consultant for filing appeal. The assessee was totally dependent on previous consultant and he should not be suffered due to his mistake. There is no wilful or wrongful attempt on the part of assessee in filing appeal belatedly. The assessee has good case on merit and is likely to succeed if delay is condoned and matter is heard on merit.

On merits of the case, the Id. AR of the assessee submits that while passing assessment order, the assessing officer made addition of Rs. 39,95,000/- being difference vis-à-vis the value declared by assessee and the value determined by stamp valuation authority. The assessing officer made a reference to DVO for determination of order a market value of flat purchased by assessee during the subject assessment year. However, the report of DVO was not received till passing of the assessment order, therefore, the

assessing officer passed the assessment order subject to rectification on receipt of report of DVO. During appellate stage, report of valuation officer/DVO was received who valued the subject property at Rs. 90,48,000/-. Thus, the difference left vis-à-vis the value declared by assessee and value determined by DVO is of Rs. 9,48,000/- only. The DVO while preparing his report compared the subject property with the property situated in a posh locality/group housing society. The property of purchased by assessee was constructed in 1961-62 and its structure was repaired in 1992. There is no modern facility. The property purchased by assessee were very old and its plaster and external paint has vanished. Such fact/objection was recorded by DVO. The DVO has not countered such objection. The DVO straightway compared the subject property with flat of group housing society. The Id. AR of the assessee submits that he has filed photos of subject property on record showing the physical condition of the property. The Id. AR of the assessee submits that report of registered valuer may be accepted. The difference vis-à-vis the value determined by government registered valuer and the value declared by assessee is having a difference of 5.81%. It is within the tolerance limit of 10% hence no addition is liable to be made. To support his submission, the Id. AR of the assessee relied upon the decision of Patna High Court in *Bimla Singh vs CIT* (2009) 308 ITR 71 (Patna).

6. On the other hand, Id. Sr. DR for the Revenue on the issue of condonation of delay submits that assessee has not explained the delay. The approach of assessee is casual in explaining the delay. The delay may not be condoned. On merit, Id. Sr. DR for the Revenue submits that DVO has already

considered various factors and estimated the value of subject property at Rs. 90,48,000/-. The DVO has considered comparable instances of the same locality. The registered value has not given any detail analysis of various factors and comparable analysis. The assessee has already given adequate relief by Id. CIT(A) and does not deserve any further relief.

7. I have considered the rival submissions of both the parties and have gone through the orders of lower authorities. Firstly, I will consider the plea of Id. AR of the assessee in condonation of delay in filing appeal before Tribunal. Before me, the Id. AR of the assessee vehemently argued that there is no intentional or deliberate delay in filing appeal and that is previous consultant has not taken any step for filing appeal. On considering the facts of the case, I find that assessee is victim of not taking step by previous consultant Rajiv Vaghani. Thus, I am of the view that litigant should not be suffered for the negligence of his consultant/ advisor, therefore, taking a lenient view, delay in filing appeal is condoned. Now, advertng to merits of the case.
8. On merit, I find that there is a limited dispute before me, whether the DVO while estimating the fair market value of subject property has considered its value with comparable instances of similarly situated property or that those comparable instances are good comparable and DVO considered all relevant factors affecting the potential value of the subject property. On careful perusal of report of DVO, I find that DVO has duly recorded that subject property was constructed in 1961 and its repair in 1992. The subject property is part three storied building that is ground floor plus two upper floors. There is no lift facility, having common load bearing structure. The subject property

is very old and developed in phases. I also perused the comparable instances by DVO in Annexure II, attached with his report. Annexure II contained the reference of flats of group housing society. In my view, group housing society all minimum common facility are available like parking, lift, security, boundary wall etc. However, there is no such amenities/facilities are attached with the subject property. I am conscious of the fact that DVO has substantially reduced the value of subject property compared to the value determined by stamp valuation authority. Still in my view if 2.00% of further reduction is allowed in the value determined by DVO that would be sufficient to make the end of justice. Thus, the AO is directed to consider the value of subject property less by 2.00% of the value determined by DVO and recompute the addition under section 56(2)(x). In the result, the grounds of appeal raised by assessee is partly allowed.

9. In the result, the appeal of assessee is partly allowed.

Order pronounced in the open Court on 28/05/2025.

Sd/-

**PAWAN SINGH
JUDICIAL MEMBER**

MUMBAI, Dated: 28/05/2025

Biswajit

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By order

Assistant Registrar
ITAT, Mumbai