

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI

**BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA No.2311/Mum/2025
(Assessment year: 2011-12)**

Rekha shah D-614, Veena Santoor, Sector-8, Opp. KVSC, Sai Baba Nagar Extension Road, Borivali (W), Mumbai-400 092 PAN: ABGPS4732G	vs	National Faceless Appeal Centre (NFAC) / ITO-Ward-34(3)(2), Mumbai Kautilya Bhavan, BKC, Banda, Mumbai-400 051
APPELLANT		RESPONDENT

Assessee by : Shri Vimal Punmiya
Respondent by : Shri Annavaram Kosuri (SR DR)

Date of hearing : 03/06/2025
Date of pronouncement : 04/06/2025

ORDER

Per Anikesh Banerjee (JM):

Instant appeal of the assessee is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi [in short, 'Ld.CIT(A)] passed under section 250 of the Income Tax Act, 1961 (in short, 'the Act') for A.Y. 2011-12, date of order 25/07/2023. The impugned order was emanated from the order of the Learned Income-tax Officer, Ward 25(3)(3), Mumbai(in short, the "Ld. AO")

passed under section 144 read with section 147 of the Act, date of order 29/11/2018.

2. The brief facts of the case are that the assessee, Mrs. Rekha Santilal Shah, is a senior citizen aged 82 years and an uneducated individual who was entirely dependent on her late husband for handling financial, legal, and tax-related matters. She filed her return for AY 2011-12 declaring total income of Rs.1,08,000/-, on 11.07.2011. The assessee was assessed under Section 144 read with Section 147 of the Act by the Ld. AO. The assessment was made on the basis of third-party information from the ITD system regarding purchase of property and time deposits, resulting in an assessed income of Rs.51,62,311/-.The Ld. AO passed an ex-parte assessment order dated 29.11.2018 under Section 144 read with Section 147 of the Act, making additions of Rs. 51,62,311/- on account of alleged undisclosed investments in property and bank deposits. The Ld. AR argued that the impugned assessment order passed by Ld. AO against the principle of natural justice as it can be clearly observed that various notices were not served on the assessee and later on, when a show cause notice dated 22.11.2018 was received by her husband, he replied vide letter dated 12.12.2018 along with all the supporting documents clearly mentioning that no notices were received by the assessee except the notice dated 22.11.2018 but later on, the assessment order dated 29.11.2018 was received by her husband on 22.12.2018. Aggrieved by the assessment order dated 29.11.2018, the assessee filed an appeal before the Ld. CIT(A), on 21.01.2019. During the course of appellate proceedings before the Ld. CIT(A), the assessee was unable to participate due to personal circumstances, including the serious illness of her husband, who was solely handling the case and was the registered user of the email ID used for

departmental communication. Subsequently, the assessee's husband passed away on 01.04.2022, after which the assessee remained unaware of further communications from the department, as all hearing notices were sent to the email address of her deceased husband, which she could no longer access. The Ld.CIT(A) passed an order dated 25.07.2023, dismissing the appeal for non-appearance and also upheld the alleged assessment order. However, the assessee was not made aware of this order at the relevant time due to the above-mentioned circumstances. The assessee only came to know about the CIT(A)'s order in early 2025, during a review of her old financial records with the help of a newly appointed representative. Upon learning this, she took immediate steps to obtain a copy of the appellate order and filed the present appeal. Accordingly, the appeal in Form No. 36 before the ITAT was filed on 01.04.2025, resulting in a delay of approximately **555 days** from the prescribed period of limitation. The assessee submitted an affidavit, which is duly executed on 30/05/2025 and placed on record. We are satisfied that the delay in filing the appeal late by 555 days is duly explained by the assessee and that the assessee was prevented sufficient and convincing reasons from filing the appeal in time. The Ld. DR has not made any objection against the prayer of the assessee. Therefore, we condone the delay in filing the appeal and admit the appeal for adjudication.

3. The Ld.AR argued and submitted that on page 2 of the assessment order, the Ld.AO mentioned that no return of income was filed for the year under consideration and no assessment was made and that the only requirement for initiating proceedings u/s 147 is reason to believe which has been recorded. The Ld.AR submitted that the above observation made by the Ld.AO is completely wrong as the return was filed by the assessee on 11.07.2011 declaring total

income of Rs. 1,08,000/- vide acknowledgement number 1222000469 and the same is enclosed on **APB page 1** and that this proves that the Ld. AO failed to make the proper enquiry and just made an addition based on:

- (i) Assessee has registered an immovable property on 21.07.2010 stamp duty valuation of which is Rs.35,27,088/- and Agreement Value is Rs. 16,83,000/-. Differential amount is 18,44,088/-;
- (ii) The payment of Rs. 16,83,000/- made towards the purchase of above property are made through Saraswat Co-operative Bank Ltd. The payment was made on 04.08.2009 vide cheque number "46403" which can be clearly observed from bank statement of Saraswat Co-operative Bank Ltd, copy of which is enclosed in **APB page no. 11-16** and also in bank book **page no. 5 -10 of the APB.**

4. The Id. AR argued that from the letter of provisional registration which also mentions the consideration amount to Rs.16,83,000/- and details of the cheque issued to purchase the property on **page 21 of the APB** where on 4th page of the provisional registration document the builder confirmed that he had received a payment of Rs. 16,83,000/- vide cheque number 046403 dated 01.08.2009. The Ld.AR accordingly submitted that from the above it can clearly observe that property was purchased in AY 2009-10 and not in AY 2011-12 as the provisional registration documents and payment was made on 04.08.2009. Just only registration was done on 21.07.2010 i.e. in AY 2011-12.

5. With regard to the sources of purchase, the Ld.AR submitted that the purchase was made out of the maturity of the fixed deposits in the A.Y. 2009-10, the details of which have been explained as below: -

S.No.	Date of transaction	Nature of transaction	Instrument details	Amount in Rs.	Paper book pages
1.	03.08.2009	Fixed Deposit	25299	7,38,000/-	11&5
2.	03.08.2009	Fixed Deposit	14555	8,00,000/-	11&5
3.	03.08.2009	Fixed Deposit	84615	8,00,000/-	11 &5
		Total		23,38,000/-	

The Ld.AR submitted that the above receipts of Rs. 23,38,000/- credited in the bank account was used to make payment towards purchase of the property (Rs.16,83,000/-) and for the payments towards amenities (Rs.6,54,500/-).Ld.AR, therefore, stated that the investment in the property is properly explained by the assessee.

6. With regard to the addition made under section 56(2)(viib) of the Act, the Ld.AR submitted that the same cannot be done in the case of the assessee for the following reasons:-

(a) Provisions of section 56(2)(viib) Of Income Tax Act states that -

“[(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009,-

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

[(b) any immovable property, without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;]

(c) any property, other than immovable property, -“

The Ld.AR, thus, argued that it is clear from the above provision that an addition could have been made under section 56(2)(viib) only if any immovable property, with stamp duty value exceeding Rs.50,000/-, was acquired without consideration. In this case, the property was not acquired without consideration. Therefore, the provision of Section 56(2) (vii) (b) of the Act is not found applicable in this case. This provision was amended by the Finance Act, 2013 w.e.f. 01.04.2014 whereby the difference between the stamp duty value and the actual sale consideration was made liable for addition as "Income from other sources". The Ld. DR has contended that this amendment was clarificatory in nature and, therefore, it should be made applicable for this preceding year, as well. It is found from the Memorandum explaining the provision in Finance Act, 2013 that the amendment to Section 56(2)(vii)(b) of the Act was not clarificatory in nature. The said memorandum reads as under:

"The existing provisions of sub clause (b) of clause (vii) of sub-section (2) of section 56 of the Income-tax Act, inter alia, provide that where any immovable property is received by an individual or HUF without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property would be charged to tax in the hands of the individual or HUF as income from other sources. The existing provision does not cover a situation where the immovable property has been received by an individual or HUF for inadequate consideration. It is proposed to amend the provisions of clause (vii) of sub-section (2) of section 56 so as to provide that where any immovable property is received for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such

consideration, shall be chargeable to tax in the hands of the individual or HUF as income from other sources."

The Ld.AR stated that considering the fact that there may be a time gap between the date of agreement and the date of registration, it is proposed to provide that where the date of the agreement fixing the amount of consideration for the transfer of the immovable property and the date of registration are not the same, the stamp duty value may be taken as on the date of the agreement, instead of that on the date of registration. This exception shall, however, apply only in a case where the amount of consideration, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement fixing the amount of consideration for the transfer of such immovable property. He also submitted that this amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years. Therefore, as per section 56(2)(viib), it is clearly mentioned that "any person receives an immovable property without consideration" which is not in the case of assessee where it is very clear that the consideration of Rs. 16,83,000/- is paid by the assessee to purchase the property.

7. The Ld. DR argued and relied on the order of the revenue authorities. The Ld.AR invited our attention to paragraphs 4 and 5 of the impugned assessment order, which are extracted below:-

"4. As per information available in ITD system, the assessee had purchased immovable property for consideration of Rs. 16,83,000/- for which market price was Rs.35,27,088/, as per stamp duty authority valuation. However, due to absence of basic details, the undersigned have no

other option but to assume that the assessee has no creditworthiness to invest such a huge amount compared to having below taxable income. Therefore, in the absence of documentary evidence to know real amount involved as well as share holding pattern of the assessee in the purchase transaction, other than ITS data, to protect the interest of the revenue, stamp duty value of Rs.35,27,088/ is hereby treated as assessee's undisclosed income from undisclosed sources.

5. In view of non-compliance from the assessee, as briefed above, the undersigned could not verify the time deposit in bank to the tune of Rs. 16,35,223/-. In the absence of details to verify the issue of source of income, I have no option but to treat the said amount of Rs. 16,35,223/- as assessee's undisclosed income from undisclosed sources."

8. We have heard the rival submissions and examined the documents available on record. It is observed that the Ld. AO incorrectly assumed that the assessee had not filed the ITR for the relevant assessment year. However, upon perusal of the documents, we find that the assessee had indeed filed the ITR, a copy of which is annexed at **page 1 of the APB**. The said return was duly filed on 11/07/2011. We further note that the assessee had sufficient sources of funds for making the payment towards the purchase of the flat. This payment is reflected in the bank account maintained with Saraswat Co-operative Bank Ltd., bearing Account No. 146200100004957, as evidenced on **pages 11 and 16 of the APB**. The Ld. AR specifically stated that the said amount was deposited by liquidating fixed deposits. The funds were deposited on three occasions - Rs. 7,38,000/-, Rs. 8,00,000/-, and Rs. 8,00,000/- on 03/08/2009, as per **APB page 11**.

In our considered opinion, the Ld. AO's assumption that the cash deposits were unexplained is merely conjectural and not supported by facts. With respect to the applicability of Section 56(2)(viib) of the Act, it is noted that this provision came

into effect from 01/04/2014, relevant to AY 2014–15. However, the impugned assessment year is AY 2011–12; hence, this provision has no relevance to the present case. From the above discussion, it is evident that the said amendment has no retrospective applicability.

The assessee has adequately explained the source of investment through documentary evidence, namely the maturity proceeds of fixed deposits credited to the aforementioned bank account. Furthermore, the addition made under Section 56(2)(viib) of the Act for the entire value of the stamp duty amounting to Rs.35,27,088/- is wholly unjustified, as the investment in the property was made during FY 2009–10, while the registration was carried out in the subsequent FY 2010–11. It is also observed that the assessee was unable to present her case effectively before the Ld. AO as well as the Ld. CIT(A). In light of the above, we are of the considered view that the assessee should be granted a reasonable opportunity to present her evidence before the authorities afresh.

Accordingly, we restore the matter to the file of the Ld. AO for a fresh examination in light of the observations made by the Bench. It is needless to say that the assessee must be afforded a fair opportunity of hearing in the set-aside assessment proceedings. Simultaneously, the assessee is expected to act diligently and cooperate in ensuring the early completion of the assessment process.

9. In the result, the appeal filed by the assessee bearing **ITA No. 2311/Mum/2025** is allowed for statistical purpose.

Order pronounced in the open court on 04th day of June, 2025.

Sd/-

(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 04/06/2025
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai