

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
&
SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 3121/Mum/2025
Assessment Year: 2021-22

Johar Hasan Zojwalla 1 st Floor, Rani Mansion Murbad Road Kalyan (W), Dist. Thane Maharashtra - 421301 [PAN: AAAPZ5650K]	Vs	Pr. Comm. of Income Tax, Thane-1
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Subodh Ratnaparkhi, A/R
Revenue by :	Ms. Kavita P. Kaushik, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 12/06/2025
घोषणा की तारीख /Date of Pronouncement: 17/06/2025

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the Id. Principal Commissioner of Income Tax, Thane - 1 [hereinafter "the Id. Pr. CIT"] dated 27/03/2025 framed u/s 263 of the Act.

2. The grievance of the assessee is as under:-

"1. The Hon. Pr. CIT erred in holding the order framed by the Id. AO u/s 143(3) r.w.s. 144B of the I. Tax Act on 26.12.2022, to be erroneous and prejudicial to the interest of revenue and accordingly the assumption of jurisdiction by the Hon. Pr. CIT u/s 263 of the I.T Act, 1961 is unjustified and therefore not valid.

2. The Hon. Pr. CIT erred in setting aside to the file of the assessing officer, the assessment framed u/s 143 (3) r.w.s. 144B of the I. Tax Act, 1961 on 26.12.2022, by relying upon the provisions of sec. 263 of the I. Tax Act, 1961, directing the Id AO to examine the applicability of section 56(2)(x)(b)(B)/section 50C to the transaction of purchase of flat no.3602 at Planet Godrej, Mahalaxmi (E), Mumbai vide agreement dt.03.08.2021, when undisputedly the said transaction of purchase of residential flat does not fall in the previous year relevant to AY 2021-22 but falls in AY 2022-23 and therefore the Hon. Pr. CIT is in error in setting aside the assessment

for AY 2021-22. The appellant prays that the order u/s 263 dt.29.03.2019 be held to be bad-in-law and quashed.

3. *The appellant craves leave to add, alter, amend and/or vary any of the grounds at any time before the decision of the appeal."*

3. Representatives of both the sides were heard at length, case records carefully perused and the relevant documentary evidence brought on record duly considered in the light of Rule 18(6) of the ITAT Rules, 1963.

4. Briefly stated the facts of the case are that the assessee is a proprietor of M/s. Sab Realty engaged in real estate business. The assessee filed its return of income on 15/03/2022 declaring total income at Rs.4,20,31,010/-. The return was selected for scrutiny assessment and assessment order was framed on 26/12/2022 u/s 143(3) r.w.s. 144B of the Act after making an addition of Rs. 6,03,81,465/- by disallowing the claim of deduction u/s 80IBA of the Act.

5. Assuming jurisdiction conferred upon him by the provisions of Section 263 of the Act, the Id. Pr. CIT vide notice dated 06/03/2025, asked the assessee to showcause why the assessment order dated 26/12/2022 be not treated as erroneous and prejudicial to the interest of the revenue. The showcause notice reads as under:-

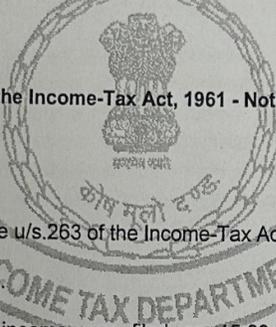
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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE PRINCIPAL
COMMISSIONER OF INCOME TAX
PCIT, Thane-1

<p>To, JOHAR HASAN ZOJWALLA . . India</p>	
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PAN: AAAPZ5650K	Assessment Year: 2021-22	Dated: 06/03/2025	DIN & Notice No : ITBA/COM/F/17/2024-25/1074123861(1)
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Sir/ Madam/ M/s,
Subject: Proceeding u/s 263 of the Income-Tax Act, 1961 - Notice

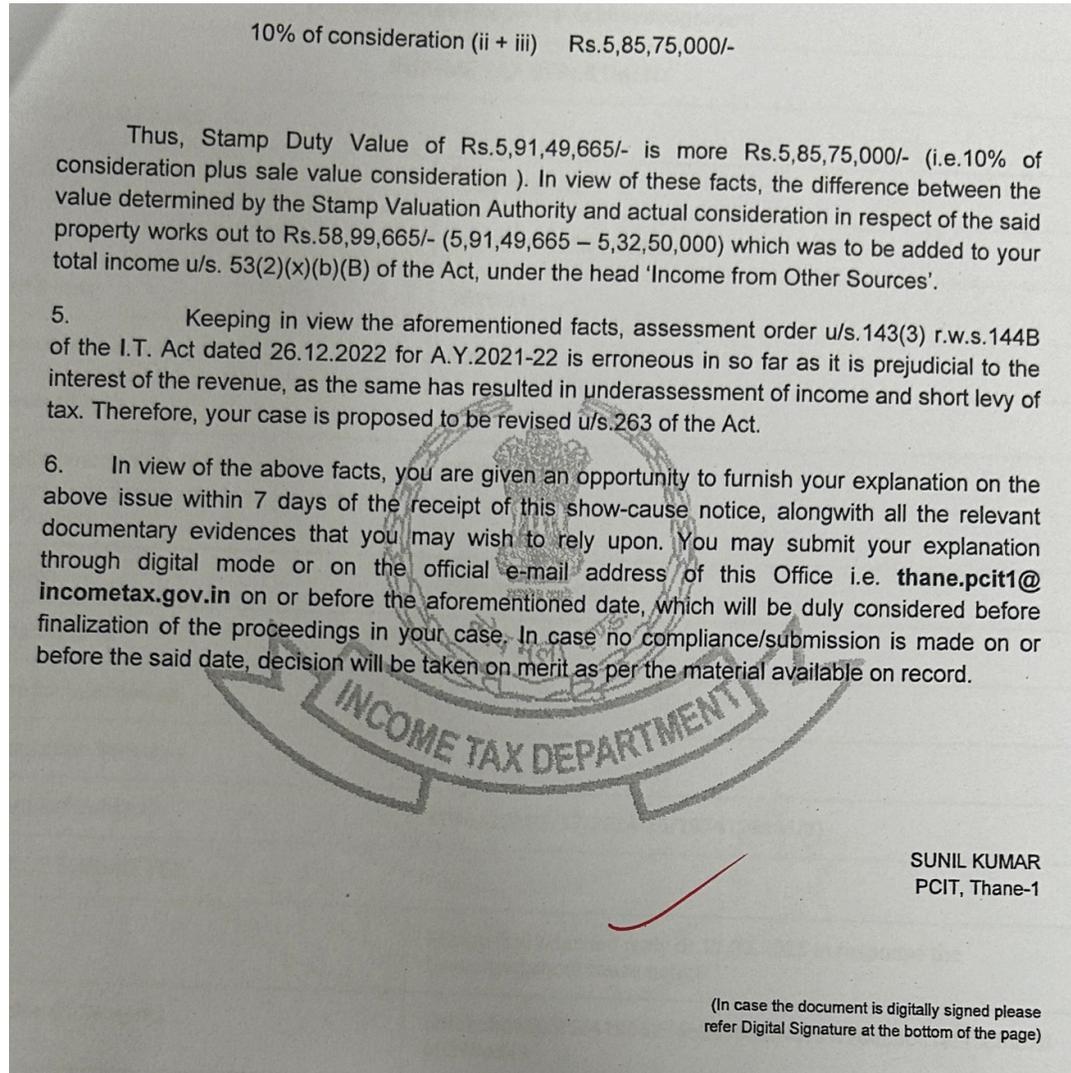

Sub: Show-cause notice u/s.263 of the Income-Tax Act, 1961 for A.Y.2021-22- reg..
Please refer to the above.

2. In this case, return of income was filed on 15.03.2022 declaring total income at Rs.4,20,31,010/-. Assessment order u/s.143(3) r.w.s.144B of the I.T. Act was passed by the Faceless Assessing Officer (FAO) on 26.12.2022 for A.Y.2021-22 assessing total income at Rs.10,50,09,385/-.

3. On perusal of records, it is seen that you have purchased a residential property being Flat No.3602 at Planet Godrej, Mahalaxmi East, Mumbai at a consideration of Rs.5,32,50,000/- whereas the Market Value of the property determined by the Stamp Valuation Authority is Rs.5,91,49,665/-. As per Section 53(2)(x)(b)(B) of the Act, if the stamp duty value exceeds the consideration amount by more than 10% of the consideration, the differential amount is chargeable to income tax under the head 'Income from Other Sources'.

4. The purchase price of the property is for Rs.5,32,50,000/- while the value determined by the Stamp Valuation Authority is at Rs.5,91,49,665/-.

i. Stamp Duty Value	Rs.5,91,49,665/-
ii. Sale Value Consideration	Rs.5,32,50,000/-
iii. 10% of the Consideration	Rs. 53,25,000/-
iv. Sale Value Consideration+	



6. We have given a thoughtful consideration to the aforementioned showcause notice. After going through the facts on record, we are of the considered view that the Id. Pr. CIT has assumed jurisdiction on wrong appreciation of facts. The impugned property was purchased by the assessee on 03/08/2021 falling in FY 2021-22 relevant to AY 2022-23 whereas the impugned assessment year is AY 2021-22.

7. All the apprehensions raised by the Id. Pr. CIT in justifying that the assessment order dated 26/12/2022 is erroneous and prejudicial to

the interest of the revenue may be relevant for AY 2022-23 and not for the year under consideration. Since the assumption of jurisdiction is based upon wrong appreciation of facts, we have no hesitation in setting aside the impugned order of the Id. Pr. CIT dated 27/03/2025 and restore that of the AO dated 26/12/2022.

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

Order pronounced in the Court on 17th June, 2025 at Mumbai.

Sd/-

**(SAKTIJIT DEY)
VICE PRESIDENT**

Sd/-

**(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER**

Mumbai, Dated 17/06/2025

S.S.B.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai