

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

**BEFORE OM PRAKASH KANT, ACCOUNTANT MEMBER AND  
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA No.163/MUM/2024  
(Assessment year: 2012-13)**

<b>Hifzur Rehman Ansari</b> 1103, Zam Zam Tower Belvedere Road, Mazgaon, Mumbai-400 010 <b>PAN: AAAPA7928F</b>	<b>vs</b>	<b>ITO Ward-20(1)(5), Mumbai</b> Piramal Chambers, Dr SS Rao Marg, Parel, Mumbai-400 012
<b>APPLICANT</b>		<b>RESPONDENT</b>

Assessee by : Shri Tanzil Padvekar  
Respondent by : Shri Hemanshu Joshi, SR DR  
  
Date of hearing : 26/06/2025  
Date of pronouncement : 30/06/2025

**ORDER**

**Per Anikesh Banerjee (JM) :**

The instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter called 'Ld.CIT(A)] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for Assessment year 2012-13, date of order 17/11/2023. The impugned order emanated from the order of the Learned Income-tax Officer, Ward 20(1)(5), Mumbai (hereinafter called "Ld. AO"), order passed under section 143(3) read with section 147 of the Act.

2. The assessee has taken the following grounds of appeal: -

*"1. Addition of Rs 34,70,000 against purchase of Mithaiwala Building under Section 56(2)(vii)(b):*

*a. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) erred in confirming the addition of Rs. 34,70,000.*

*b. The pre-amended provisions of Section 56(2)(vii) (b) of the Income Tax Act, covers only situation where an individual or HUF receives from any person any immovable property without any consideration.*

*The aforesaid provisions was however substituted by Finance Act, 2013 and made applicable to AY 2014-15 onwards. As per the amended provisions, the scope of substituted provision was expanded to cover purchase of immovable property for inadequate consideration as well.*

*c. In our case, the agreement for purchase is dated \_\_\_\_\_ and the agreement is registered along with stamp duty of Rs. \_\_\_\_\_ and on dated \_\_\_\_\_*

*d. The Appellant would like to highlight the below ITAT case laws where the ITAT confirmed the inapplicability of Section 56(2)(vii)(b) to transfers that took place before the A.Y. 2014-15. The ITAT ruled in favor of the assessee, deleting the addition made under Section 56(2)(vii)(b) of the Income Tax Act.*

*i. Bajrang Lal Naredi Vs ITO 2018 (ITAT Ranchi)*

*ii. Asha Vijay Vs ITO 2023 (ITAT Kolkata)*

*e. The Appellant prays that any penalty to be levied against above addition also to be deleted.*

*f. The Appellant craves leave to add, amend, alter vary and / or withdraw any or all the above grounds of appeal.*

*2. Addition of Rs 18,97,250 against purchase of Shop at Bhuleshwar under Section 56(2)(vii)(b):*

*a. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) erred in confirming the addition of Rs. 18,97,250.*

*b. The pre-amended provisions of Section 56(2)(vii) (b) of the Income Tax Act, covers only situation where an individual or HUF receives from any person any immovable property without any consideration.*

The aforesaid provisions was however substituted by Finance Act, 2013 and made applicable to AY 2014-15 onwards. As per the amended provisions, the scope of substituted provision was expanded to cover purchase of immovable property for inadequate consideration as well.

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e. The Appellant prays that any penalty to be levied against above addition also to be deleted.

f. The Appellant craves leave to add, amend, alter vary and / or withdraw any or all the above grounds of appeal.

3. Addition of Re 2.49.480/-against sale of Tata Coffee Shares:

4. Addition of Re-16,88,000/-against-cash loans

5. Addition of Rs 102,780/- against deemed rent income:

a. We pray for standard deduction against the rental income.

6. Addition of Rs 30,00,000/- against loan from Pravin Financial Service (Rs 10 lacs) and Mohamed Iqbal Patel (Rs. 20 lacs):”

### **Additional Grounds of Appeal**

“Application for admission of the Additional Grounds

MAY IT PLEASE THE HON'BLE MEMBERS

*The Appellant abovenamed most respectfully sheweth as under:*

*1. The Appellant is in individual engaged in business of Civil contracts. The Appellants Return of Income was processed under Section 143(1) of the Act. Subsequently, two Notices under Section 148 was issued on 12/03/2016 & 27/03/2016. Pursuant to Notice 148 of the Act, an Assessment Order under Section 143(3) r.w.s. 147 of the Act was passed on 19/07/2019.*

*2. However, during the course of the proceedings before Assessing Officer and before CIT(Appeals) certain legal grounds were not raised by the Authorised Representative. Therefore, following grounds are raised before this Hon'ble Court.*

*On the facts and in law, the Ld. Assessing Officer erred by failing to provide reasons of re-opening of the assessment during the course of the Assessment Proceedings.*

*2. On the facts and in law, the Ld. Assessing Officer erred passing the impugned Assessment Order in grave violation of settled principles of law and procedure stated by the Hon'ble Apex Court in the case of GKN Driveshafts (India) Ltd. V/s. ITO [2003] 259 ITR 19 (SC).*

*Without prejudice to above, on the facts and in law, the additions made on the issues not forming part of reasons recorded shall be bad in law, if the addition made on the issue for which the reasons were recorded and notice under Section 148 was issued is deleted by this Hon'ble Court on merits of the case.*

*On the facts and in law, the Ld. Assessing Officer erred in issuing Notice under Section 148 of the Act. As the said Notice is bad in law.*

*5. On the facts and in law, the Ld. Assessing Officer erred in issuing Notice under Section 148 of the Act for the purpose of verification which is not permissible in law.*

*6. On the facts and in law, the Ld. Assesseing Officer erred in issuing impugned Notice under Section 148 of the Act when admittedly there is no fresh tangible material for formation of belief that income chargeable to tax has escaped assessment.*

*7. On the facts and in law, the Ld. Assessing Officer erred by initiating two simultaneous re-assessment proceedings vide issue of Notice under Section 148 dated 12/03/2019 and Notice under Section 148 dated 27/03/2019 of the Act, which is not permissible.*

*8. The Appellant craves, leave to add, alter, modify, revise, add/delete ground (s) with the leave of Hon'ble Bench.*

*3. The above grounds are purely legal in nature and do not require any material other than material available on record of the Assessing Officer for its adjudication. Therefore, the Appellant prays before this Hon'ble Court to admit and adjudicate the Additional Grounds."*

3. The brief facts of the case are that the assessee filed the return declaring income amount to Rs.19,14,330/- under section 139(1) of the Act. The return was taken up for scrutiny by issuance of notice under section 148 of the Act dated 12/03/2019. The assessee was a civil contractor and doing business in the name & style "H. Rahman & Co. He was also the partner of M/s Helton Infrastructure having 50% share and director in M/s Okay Estate Developers Pvt Ltd. The assessee during the proceedings, complied with the notices issued by the Ld.AO and finally, the assessment was framed under section 143(3) read with section 147 by confirming addition under section 56(2)(vii)(b) of the Act amount to Rs.34,70,000/- and Rs.18,97,250/-. Further, the addition was made related to deemed rent amount to Rs.1,02,780/-, unsecured loan received from parties Rs.30 lakhs, the cash loan amount to Rs.10,88,000/- and capital gain related to sale proceeds, Rs.2,49,840/-. The aggrieved assessee filed an appeal before the Ld.CIT(A). The Ld.CIT(A) dismissed the appeal of the assessee. Being aggrieved, assessee filed an appeal before us by challenging the impugned appellate order, both on merits and on legal grounds. The additional grounds were sought to be raised by challenging the jurisdiction of

the Ld.AO in issuance of notice U/s 148 of the Act and completing the assessment under section 143(3) read with section 147 of the Act.

4. The Ld.AR filed a paper book containing pages 1 to 166 which is kept on the record and argued the additional ground related to assumption of jurisdiction by the Ld.AO for completing the assessment under section 143(3) read with section 147 of the Act. The Ld.AR stated that the assessment was completed without providing the recorded reasons to assessee, in violation of order of Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd vs ITO (2003) 259 ITR 19 (SC). Further, the recorded reasons are bad in law as the addition on account of reasons recorded in the order was not added while completing the assessment. Admittedly, there is no fresh tangible material on record for formation of belief. Considering this, the Ld.AR prayed for acceptance of additional grounds, now sought to be raised before us.

5. The Ld.DR argued and filed a written submission in detail, related to assumption of jurisdiction by the Ld.AO for completion of assessment under section 147 of the Act. The relevant submission of the Ld.DR is extracted below:-

*“Chronology of Proceedings:*

*1. 27/11/2013: Notice under Section 148 was issued, and assessment under Section 143(3) read with Section 147 for A.Y. 2012-13 was completed on 27/03/2015, with an addition of Rs.3,31,114, resulting in a total assessed income of Rs.23,36,349.*

*2. 30/11/2013: Notice under Section 148 was issued, and assessment under Section 143(3) read with Section 147 for A.Y. 2013-14 was completed on 31/03/2013, with an addition of Rs.38,47,530/-, resulting in a total assessed income of Rs.43,87,530/-.*

*3. 07/03/2016: The Income Tax Officer (Investigation) issued a letter (No. ITO(Inv.)/U-3/Hifzur Rehman/2015-16) regarding unrecorded transactions for AYs 2012-13 & 2013-14.*

4. 14/02/2019: The then Income Tax Officer recorded reasons for reopening the assessment under Section 148 for the second time.
5. 26/02/2019: The Additional Commissioner of Income Tax (Addl. CIT) and Principal Commissioner of Income Tax (Pr. CIT) granted approval for reopening.
6. 12/03/2019: Notice under Section 148 was issued to the assessee.
7. 10/04/2019: The assessee filed the Return of Income (ROI) in response to the notice.
8. 03/05/2019: Notices under Sections 143(2) and 142(1) were issued.
9. 19/07/2019: For A.Y. 2012-13 Order u/s. 143(3) r.w.s. 147 of the I.T. Act, 1961 dated 19/07/2019 was passed assessing total income at Rs.1,23,21,840/- as against returned income of Rs.19,14,330/- filed by the assessee on 12.09.2013.
10. 24/09/2021: For A.Y. 2013-14 Order u/s. 147 r.w.s. 144 read with section 1448 of the I.T. Act, 1961 dated 24/09/2021 was passed assessing total income at Rs.73,14,330/-, thereby making an addition of Rs.29,26,500/-.
11. The assessee appealed before the Commissioner of Income Tax (Appeals) [CIT(A)], who vide order dated 17/11/2023 has upheld the Assessing Officer's (AO) decision.

Subsequently, the assessee filed an appeal before the Income Tax Appellate Tribunal (ITAT), raising additional grounds.

Upon reviewing the assessment records and additional grounds raised, it is observed that the assessee neither requested the reasons for reopening nor objected to the reassessment proceedings for the years under consideration.

Regarding the notices under Section 148 issued on 12/03/2019 and 27/03/2019, it is noted that the 12/03/2019 notice was manually signed by the then ITC, Ward 20(1)(5), whereas the notice dated 27/03/2019 was digitally signed by the same officer.

As for the additional ground stating that there was no tangible material to form a belief that Income had escaped assessment, this claim is incorrect. The reopening was based on information provided by the erstwhile ITO (Investigation), Unit-3, which constituted valid grounds for reassessment.

*In light of the above, it is respectfully submitted that the additional grounds raised by the assessee lack merit.”*

6. We find that the assessee has not asked for recorded reason from the Ld. Assessing Officer during the assessment proceedings, after filing of the return of income in response to the notice under section 148 of the Act. The Ld.AR was allowed a reasonable opportunity for submitting the same, but he conceded that the said letter was never been filed for asking the recorded reasons from the Assessing Officer. Accordingly, we note that the ruling of the Hon’ble Supreme Court in GKN Driveshafts (India) Ltd vs ITO (supra) was not followed properly by the assessee at the assessment stage. In case of absence of tangible material, it is clear from the recorded reasons that the Ld.AO had issued the notice under section 148 on the basis of the Investigation report received from ITO, Investigation Unit-III, Mumbai and the reopening was made on the basis of the loan taken by the assessee from unreliable source and for this reason, the Ld.AO added back the loan amounted to Rs.30 lakhs with the total income, which addition is already confirmed at para No.7 of the impugned assessment order. So, there is no deviation in observation in recorded reason & the addition was confirmed in alleged assessment order. The issue was already noted by the Ld.DR in the written submission and accordingly, we find that the additional grounds of the assessee has no merit; accordingly, the additional grounds of the assessee sought to be raised are rejected.

7. **Grounds 1 &2 :**

The assessee jointly purchased a property with Mr. Yunus Ahmed Maniyar, each holding a 50% share in a property located at Mithaiwala Building and a shop at Buleshwar. The Ld. AO observed a discrepancy between the purchase consideration as set forth in the sale deed and the value adopted for stamp duty purposes in respect of both properties. Consequently, the Ld. AO invoked the provisions of section 56(2)(vii)(b) of the Act and made additions corresponding to the assessee's 50% share in the differential amount, amounting to Rs.34,70,000/- and Rs.18,97,250/- for the two properties, respectively.

The Ld. DR supported and relied entirely on the findings of the lower revenue authorities.

In response, the Ld. AR submitted that the provisions of section 56(2)(vii)(b) were introduced by the Finance Act, 2013, and are applicable from Assessment Year 2014-15 onwards. Since the relevant assessment year in the present case is A.Y. 2012-13, the said provision has no applicability, and hence, the addition under section 56(2)(vii)(b) is without legal sanction.

8. We have heard the rival submissions and perused the material available on record. A plain reading of section 56(2)(vii)(b) of the Act confirms that the provision relating to the taxation of immovable property received for inadequate consideration was inserted by the Finance Act, 2013, and is effective from A.Y. 2014-15. Therefore, the application of the said provision to the assessee's case for A.Y. 2012-13 is patently unlawful and devoid of legal basis.

Accordingly, the additions of Rs.34,70,000/- and Rs.18,97,250/- made by the Ld. AO are hereby deleted. The impugned appellate order passed on this issue is set aside. Accordingly, **ground nos. 1 & 2** of the assessee's appeal are allowed.

9. **Ground nos. 3 & 4** are not pressed; hence dismissed.

10. **Ground no. 5** related to deemed rent amounting to Rs.1,02,780/- was added back with the total income of the assessee. In assessment proceedings, the Ld. AO observed that the assessee was residing in Zam Zam Flat and the assessee was holding two properties named Juveria Flat and Evergreen Flat and the assessee had only offered the house property income of Rs.45,000/-. The Ld. AO had not accepted the assessee's declaration of house property income and recalculated the deemed rent @8% on the value of the flat as declared in the financial report of the assessee which comes to Rs.1,02,780/-. The said amount was added back as deemed rent to the total income of the assessee.

11. The Ld.DR in argument only relied on the order of the revenue authorities.

12. In our considered view, we find that the Ld. AO has estimated 8% of the value of the said properties as deemed rental income. The Ld. AR has not furnished any contrary valuation or evidence to dispute the basis adopted by the Ld. AO.

We are of the view that the determination of deemed rental income must be made in accordance with the provisions of Section 23 of the Act. Accordingly, the Ld. AO is directed to determine the annual lettable value of the property and adopt the same as per law. Furthermore, as the income pertains to the head "Income from House Property," the assessee shall be eligible for deduction under Section 24 of the Act.

The issue is therefore remanded to the file of the Ld. AO for recomputation of income in light of the above observations. The Ld. AO shall ensure that a reasonable

opportunity of being heard is granted to the assessee during the course of the proceedings.

So, the **Ground no. 5** of the assessee's appeal allowed for statistical purposes.

13. **Ground No. 6** pertains to the addition of Rs.30,00,000/- towards loans alleged to have been taken from M/s Pravin Financial Services (Rs.10,00,000/-) and Mr. Mohammad Iqbal Patel (Rs.20,00,000/-). The Ld. AO had called upon the assessee to furnish evidence regarding the creditworthiness of the loan creditors, specifically the copies of their Income Tax Returns (ITRs). However, the assessee failed to produce the requisite documents during the course of assessment proceedings. Consequently, the Ld. AO treated both amounts as unexplained and added them to the assessee's total income.

During the appellate proceedings, the Ld. AR submitted that the entire loan transactions were carried out through proper banking channels, and the relevant bank statements were duly submitted before the Ld. AO. However, with respect to the PAN and ITR copies of the loan creditors, the Ld. AR prayed for an opportunity to furnish the same to substantiate the creditworthiness of the parties.

The Ld. DR did not raise any serious objection to the submission made by the Ld. AR.

In view of the above, we find that the assessee had partially complied with the requirements during assessment proceedings but failed to produce critical documents concerning the creditworthiness of the loan creditors as called for. Accordingly, we deem it appropriate to set aside this issue to the file of the Ld. AO for fresh adjudication in accordance with law. It is clarified that the assessee shall be afforded a reasonable opportunity of being heard and is expected to remain

diligent and fully co-operative during the course of the set aside proceedings to facilitate expeditious disposal of the assessment.

Accordingly, **Ground no. 6** of the assessee's appeal is allowed for statistical purpose.

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

Order pronounced in the open court on 30<sup>th</sup> day of June, 2025.

Sd/-

(OM PRAKASH KANT)  
ACCOUNTANT MEMBER  
Mumbai, दिनांक/Dated: 30/06/2025  
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. गार्ड फाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai