

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

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

ITA No.2882/Mum/2025
(Assessment year : 2017-18)

Sangeeta Ratilal Panchal Room No.2115, Plot No.335 Tamil Sangam Chawl, Jawahar Nagar, Road No.19, Goregaon West, Mumbai-ALAPP5767E	vs	ITO, Ward-42(1)(5), Room No.945, Kautilya Bhavan, BKC, Mumbai- 400 051
APPELLANT		RESPONDENT

Assessee by : Shri Ravikant Pathak
Respondent by : Shri Ram Krishn Kedia, (SR. DR)

Date of hearing : 19/06/2025
Date of pronouncement : 30/06/2025

ORDER

This appeal filed by the assessee is arising out of the order of the Learned National Faceless Appeal Centre (NFAC) [hereafter, Ld.CIT(A)], dated 27/02/2025 for the assessment year 2017-18.

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

"Ground no 1: Erroneous additions u/s 56(2)(vii)(b)

1. The learned Assessing Officer (AO) has made an addition of Rs. 12,67,524, representing the difference between the purchase price of the property i.e Rs.55,57,500 and the stamp duty value i.e. Rs. 68,25,024 as on the date of registration of agreement (27th May 2016), as determined by the Stamp Valuation Authority.

2. *The Learned AO and Commissioner of Income Tax (Appeals) [CIT(A)] has erred in law and on facts in invoking the provisions of section 56(2)(vii)(b) of the Income Tax Act, 1961, in respect of the transaction for purchase of immovable property, the agreement for which was entered into in the Financial Year 2013-14 through the allotment letter.*

3. *As per proviso to section 56(2)(vii)(b), where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause. However, the Learned AO and CIT(A) has erred in taking the stamp duty value as on the date of registration of agreement ie. in FY 2016-17.*

4. *The appellant has made payment of consideration for the property through account payee cheque, thereby satisfying the conditions laid down in the 2 proviso to section 56(2)(vii)(b) of the Income Tax Act, 1961. The 1st proviso to section 56(2)(vii)(b) shall be applicable only if the payments are made through any mode other than cash. In the present case, since the appellant had paid through account payee cheque, the conditions laid above have been satisfied. Therefore, the learned AO and CIT(A) erred in making the addition.*

5. *The appellant had submitted a copy of allotment letter before the learned AO in the submission dated 14 April 2023. Even the bank statement for FY 2013-14 showing the payment of booking for the purchase of the property was duly submitted vide letter dated 14 April 2023. However, the learned AO and CIT(A) did not consider our submission dated 14th April 2023 and passed an order making the impugned addition. The appellant appeals that the impugned demand of Rs. 5,10,760/- raised under section 156 is incorrect and liable to be deleted.*

Ground no.2 : Interest u/s 234B

1. *In accordance with grounds no.1, the appellant requests that interest levied u/s 2348 should be NIL instead of the amounts mentioned in the impugned order. The appellant craves leave to add to, amend, alter, vary, omit or substitute the aforesaid grounds of appeal or add a new ground or grounds of appeal at any time before or at the time of hearing of the appeal as it may be advised."*

2. I have heard the arguments of both the counsels, perused the materials placed on record, judgements cited before me and also the order passed by the revenue authorities. From the records I notice that as per the facts of the present case, the assessee purchased an immovable property during the year under consideration for a consideration of Rs. 55,57,500/- and the market value of which was determined by the stamp duty valuation authority at Rs.68,25,024/-. Therefore, in this way, according to the revenue, the difference of Rs.12,67,524/- attracts the provisions of section 56(2)(vii)(b) of the Act and hence, the same was considered as "Income from other sources" and added to the total income.

3. However, in order to counter the said addition, the assessee had taken a specific stand that the entire consideration was paid by the assessee through account payee cheque before registration, thereby satisfying the conditions provided in Proviso to section 56 of the Income-tax Act, 1961.

4. After going through the facts of the present case and on hearing the parties at length, I find that the assessee had purchased the property in question during the financial year 2013-14, i.e. A.Y. 2014-15, vide letter of allotment, which is placed on record. However, the agreement for purchase was entered into between the parties in F.Y. 2016-17, i.e. A.Y. 2017-18 and the actual payment was made. In my view as per the Proviso to section 56(2)(vii)(b), where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not same, then in that eventuality, the stamp duty value as on the date of the agreement may be taken for the purpose of section 56(2)(vii)(b) of the Act; however, in assessee's case, though the payment was made at under construction stage, but the agreement for sale had taken place in F.Y. 2016-17 relevant to A.Y. 2017-18.

5. In fact, the bank statement for F.Y. 2015-16 relevant to A.Y. 2016-17, which shows the payment to the developer clearly indicates that no payment was made by the assessee at the time of initial booking in the year 2013-14, as claimed by the assessee.

6. Be that as it may, I am of the view that the present matter requires to be sent back to the file of the Assessing Officer with a direction to verify and consider the actual payment made towards purchase of the immovable property and in case, it is found that the payment was made in F.Y. 2015-16, then in that eventuality, the market value determined by the Stamp Duty Valuation Authority for A.Y. 2015-16 be applied and in case any difference in consideration paid by the assessee and the market value determined by the Stamp Duty Valuation Authority for F.Y. 2015-16, i.e. A.Y. 2016-17 is found, then action be taken in accordance with law. With this direction, matter stands restored to the file of the Assessing Officer. Needless to mention here, the decision shall be taken only after providing due opportunity of hearing to the assessee.

7. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 30 day of June, 2025.

Sd/-

(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 30/06/2025
Pavanan

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