

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH MUMBAI
BEFORE: SHRI PAWAN SINGH, JUDICIAL MEMBER AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No. 5415/Mum/2024(A.Y: 2020-21)
(Physical hearing)

Bhavin Rasiklal Gadoya, 134/D42, Vishava Co-operative Housing Society, Sector -1, Charkop, Kandivali(West), Mumbai-400067.	Vs	Assessment Unit Income Tax Department Delhi.
PAN: AHEPG0156E		
(Appellant)	..	(Respondent)

Assessee by	Shri. Vipul Shah, Advocate
Revenue by	Shri. Surendra Mohan, Sr. DR
Date of Hearing	08/07/2025
Date of Pronouncement	28/07/2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of National Faceless Appeal Centre (NFAC)/ Learned Commissioner of Income Tax (Ld. CIT(A)) dated 18.08.2024 for A.Y. 2020-21. The assessee has raised the following grounds of appeal:

" 1. On the facts and circumstances of the case and in law while adjudicating the appeal the learned Commissioner of Income Tax (A) ["CIT(A)"] erred in not adjudicating the following grounds of appeal;

a. No personal opportunity of hearing was granted to the Appellant while finalising the assessment due to technical reasons, which violates principles of natural justice.

b. Year of execution of agreement was 05.02.2019 relevant to A.Y. 2019-20 and not the A.Y. 2020-21.

c. Year of booking of the flat was 30.04.2010 and accordingly transaction pertain to A.Y. 2011-12 and not A.Y. 2020-21, as upheld by the CIT(A).

d. Year of Contract was F.Y. 2010-11 and not F.Y. 2019-20. The valuation of Property was Rs.56,73,953/-.

2. On the facts and circumstances of the case and in law learned CIT(A) erred in not appreciating the fact that as per Sec. 47 of the Indian Registration Act 1908, upon registration of the document, it relates back to the date of execution and accordingly the transaction pertains to A.Y. 2019-20 and not A.Y. 2020-21. On that count the addition made is bad in law is liable to be deleted.

3. On the facts and circumstances of the case and in law the learned CIT(A) erred in not following the Circular No. 471 dated 15.10.1986 and 672 dated 16.12.1993 issued by the CBDT, which are binding to the Income tax department.

4. On the facts and circumstances of the case and in law the learned CIT(A) erred in partially accepting the Valuation Report by considering the valuation as at 23.04.2019 and not considering valuation as on 08.04.2010, and the year of booking as A.Y. 2011-12.

5. On the facts and circumstances of the case and in law the learned CIT(A) ought to have appreciated that it is a settled position of law that the allotment letters should be considered as agreements for sale, especially when part payment was made through banking channels before the sale agreement.

6. WITHOUT PREJUDICE, the learned Assessing Officer erred in not appreciating a fact that as per section 56(2)(x), the provisions of section are applicable only in the cases where any immovable property is "received in any previous year". In the case of the Appellant, the property is still under construction and possession of the said flat has not been received till date. On that count itself, provisions of section 56(2)(x) were not applicable to the Appellant and the addition made by the Assessing Officer is bad in law and liable to be deleted.

7. On the facts and circumstances of the case and in law the learned CIT(A) erred in not appreciating the fact that there was a delay by the Developer in registering the agreement due to a change of plans and no delay by the Appellant.

The Appellant craves leave to add, amend and/or alter all or any of the grounds of appeal."

2. The brief facts of the case as gathered from the orders of lower authorities are that assessee is an individual, filed his return of income for relevant assessment year from 26.12.2020 declaring taxable income of Rs. 18,12,200/-. The case was selected for scrutiny. During the assessment, the

Assessing Officer (AO) noted that assessee purchased immovable property being Flat no. 709, 7th Floor, Hari Dham-2, R.K. Singh Marg, Aambewadi, Andheri(E), Mumbai-400069 and has shown sale consideration of Rs. 99,66,000/- on the agreement to sale registered with sub-registrar concerned. The said flat was purchased by assessee along with his brother. The transaction of purchase of flat was registered with sub-registrar on 23.04.2019. The Stamp Valuation Authority (SVA) assessed the value of said property at Rs. 1,40,65,587/- for the purpose of registration, on the basis of ready reckoner rate declared by State Government and collected requisite stamp duty of Rs. 7,03,500/-. AO noted that there is difference of Rs. 40,99,587/- (1,40,65,587-99,66,000/-) viz-a-viz the value declared by the assessee and the value determined by SVA. The AO was of the view that since there is a difference between the stamp duty value and the value shown on the conveyance deed, hence, provision of section 56(2)(x) are attracted. On show cause notice the assessee submitted that he along with his brother Yogesh R Gadoya, purchased said property both are having 50% share. The property was jointly purchased in the year 2010. The said property is a part of Slum Rehabilitation Project (SRA). The property was booked in the year 2010 and allotment letter dated 30.04.2010 for a total sale consideration of Rs. 54,40,000/-. The assessee made 10% of total sale consideration on 08.04.2010. The final agreement to sale was executed on 05.02.2019 (relevant to A.Y. 2019-20) but agreement was registered only on 23.04.2019. The total consideration in the final agreement is Rs. 99,66,000/-. The developer unilaterally by force increase the cost from original

consideration of Rs. 54,40,000/- to Rs. 99,66,000/- under the threat of cancelling the booking. The assessee submitted that transaction was completed in F.Y. 2018-19 relevant to A.Y. 2019-20. The assessee also took plea that part payment of sale consideration was paid in April 2010. Therefore, the cost of Flat/asset should be considered as agreed in April 2010. The assessee also made prayer for referring the matter to Departmental Valuation Officer (DVO) for estimation of fair market value of asset. The AO referred that matter to the DVO. However, report of DVO was not received and the assessment was getting time bared. Thus, the AO completed the assessment and made addition of difference vis-a-viz the value declared by the assessee and his brother and the value determined by SVA. As there was a difference of Rs. 40,99,587/-, the assessee being owner of 50% share, accordingly addition of Rs. 20,49,793/- was made.

3. Aggrieved by the additions in the assessment order, the assessee filed appeal before Id. CIT(A). Before Id. CIT(A) the assessee raised similar plea/submissions as raised before AO. While considering the submissions of assessee against the addition of Rs. 20,49,793/-, the Ld. CIT(A) recorded that report of DVO was received. The DVO estimated the value of property as on 24.04.2019 at Rs. 1,28,07,446/- and there is a difference of Rs. 28,41,446/- only. Therefore, accepting the report of DVO, the Id CIT (A) reduced the addition to that extent. The assessee is having 50% share, thereby restricted the addition to the extent of Rs. 14,20,723/-. Thereby allowed part leave to the assessee. Further, aggrieved the assessee has filed present appeal before Tribunal.

4. We have heard the submission of learned Authorized Representative (Ld. AR) of the assessee and the learned Senior Departmental Representative (Ld. DR) for the revenue and have gone through the orders of lower authority carefully. In addition to oral submission, the Ld. AR of the assessee also furnished short written synopsis of his written submission. The Ld. AR of the assessee submits that he has various alternative submission against any addition sustained by Ld. CIT(A). The assessee made a booking of flat with builder on 08.04.2010. The builder issued the allotment letter dated 30.04.2010. In the allotment letter, the cost of flat was determined at Rs. 54,40,000/-. The assessee paid 10% of such cost by way of cheque. The receipt of 10% of amount is duly acknowledged in the allotment letter. The property/flat purchased by the assessee is a part of SRA project. The completion of SRA project was delayed due to various hindrances. Ultimately the final agreement to sale was executed on 05.02.2019. Before, execution of final agreement, the assessee purchased a stamp duty on 19.12.2018 for execution of final agreement to sale. The agreement to sale was finally registered on 23.04.2019. As the assessee has paid part payment of the sale consideration. Therefore, the relevant date for the purpose of valuation of asset under section 56(2)(x) shall be considered as the date of allotment and the assessee may be allowed benefit of First and Second proviso to section 56(2)(x). The Ld. AR of the assessee further submit that there are series of decision of Tribunal wherein it has been consistently held that allotment letter can be considered as agreement to sale for the purpose of section 56(2)(x). Such decisions are rendered on the ratio that allotment letters represents

meeting of minds and intention to enter into an agreement for sale, specially where certain payments are made. Such allotment letter is a valid contract as per provisions of Indian Contract Act. As per Maharashtra ownership of flats (Regulation of Promotion and Construction Sale Management and Transfer) Act, allotment letter is recognised as contract. Further, as per section 47 of Registration Act 1908, registered documents operates from the date of its execution and not from its registration. Such, principle has been accepted up to Supreme Court. The agreement to sale was executed on 05.02.2019, though it was finally registered on 23.04.2019. Thus, the transaction of sale does not pertain to the assessment year under consideration, rather it pertains to previous assessment year.

5. In alternative submission the Ld. AR submits that during assessment issue of valuation of asset/flat was referred to DVO for estimation of share market value. DVO report was not received and the assessment was getting time bared. Therefore, the assessment was completed. The DVO estimated the fair market value of the asset at Rs. 56,73,953/- as on 08.04.2010. therefore, such value estimated by DVO may be accepted and the value estimated by DVO as on 23.04.2019 may be ignored. In support of his submission, Ld. AR further relied upon the decision of Mumbai Tribunal in Parth Dashrath Gandhi Vs ACIT in ITA no. 1990/Mum/2022 dated 31.01.2023 and in Smt. Pinki Chetan Shah Vs ACIT in ITA No. 3629/Mum/2023 dated 27.02.2024. At the conclusion of submission, we asked about the status of case of co-owner/brother of assessee. The Ld. AR submits that his case is still pending at the stage of Ld. CIT(A).

6. On the other hand, the Ld. DR for the revenue supported the order of lower authorities. The Ld. Sr DR for the revenue submit that the assessee has not pleaded for benefit of First and Second provision to section 56(2)(x) before lower authorities.
7. We have considered the rival submission of both the parties and have gone through the orders of lower authorities carefully. We have also deliberated on various case laws relied by Id AR of the assessee. Though, the assessee has raised multiple grounds of appeal. However, at the time of making submissions by Id AR of the assessee, no ground wise submissions were made nor in his written notes grounds wise submissions were filed. As all the grounds of appeals are interconnected, therefore, we shall deal all the grounds together. We find that AO made addition of difference viz-a-viz the value declared in the agreement to sale and the value determined by the SVA. The assessee declared value of Rs. 99,66,000/-. The SVA valued the asset for the purpose of registration of agreement to sale at Rs. 1,28,07,446/-. The AO worked out the difference of Rs. 40,99,587/-, as the assessee is 50% owner, thereby addition of Rs. 20,49,793/- was made under section 56(2)(x). However, on appeal before CIT(A), the addition was reduced to 14,20,729/- on the basis of DVO report dated 26.10.2022.
8. Before us, the Ld. AR of the assessee has made three fold submission. In first submission, the Ld. AR of the assessee submits that the value as on 30.04.2010 agreed by the assessee and builder, which is shown the allotment letter should be considered as the assessee has made part payment i.e. 10% of agreed and benefit of First and Second provision of section 56(2)(x) be

given. Secondly, the execution of final agreement to sale was made on 05.02.2019, thus, the transaction relates to F.Y. 2018-19 relevant to A.Y. 2019-20. And thirdly the report of DVO for estimating value of asset in 2010 at Rs. 56,73,953/- should be taken into consideration. In our considered view all three contention of the assessee are not tenable, on the peculiar facts of the present case. As the assessee himself has declared value of sale consideration as per final agreement to sale as Rs. 99,66,000/-. Thus, once the assessee himself has shown sale consideration at Rs.99,66,000/-, therefore, the sale consideration, even if agreed in 2010 has no relevance. If the assessee has any grievance about alleged enhancement/ increase of agreed sale consideration by builder, the right course of action for assessee was to approach Civil Court to seek performance of agreement allegedly executed in 2010, under the provisions of Specific Relief Act. Otherwise, the condition of pervious contract /agreement, if any has been merged with the final agreement registered on 23.04.2019. It is not the case of assessee that he and his brother has not paid consideration, except shown in the allotment letter, rather accepted the allegedly enhanced value of asset. Thus, first and third contention of the Id AR of the assessee are rejected. The ratio of decisions relied by assessee are also not helpful to the assessee as facts of his case is quite different.

9. So far as second contention of the Id AR of the assessee that agreement was executed in FY 2018-19 relevant to AY 2019-20, is concerned, we find that required stamp paper was defaced only on 23.04.2019 and documents were presented for registration on the same date. No doubt, the date of execution

on the final agreement to sale is mentioned as 05th Day of February 2019. However, the assessee has not filed any other evidence to substantiate such fact that transaction of sale was completed in all aspect in earlier assessment year. Copy of return of income for financial year 2018-19 relevant for AY 2019-20 is not filed on record, to substantiate such facts that the assessee has shown such transaction in earlier year. Even otherwise this asset is not shown in the schedule -3 (details of property) in the list of property attached with return of income for AY 2020-21. Copy of balance sheet either for previous year or this year is not filed on record to substantiate this fact. Hence, we do not find any merit in the submissions of Id AR of the assessee that transaction of purchase of asset completed in earlier assessment year.

10. We find that during the hearing the Id AR of the assessee has not assailed the report of DVO for estimating the value of asset in 2019. On careful perusal of such report of DVO, we find that he has considered four comparable instances while arriving estimating the value of asset at Rs. 1,25,342/- per square meter. The total area of asset is 102.18 square meter, thus, value was arrived at Rs. 1,28,07,446/-. The assessee has not filed report of Government registered valuer. Nor any objection against the valuation of DVO is filed either before DVO, or before this Bench. On independent consideration of such comparable instances, we do not find any infirmity in estimating such value.

11. One more glaring fact is that the allotment letter is in respect of Flat No. A-701, but final agreement to sale is in respect of Flat No. 709, such fact was not explained before us. This fact was noted while considering the report of

DVO. Such change was explained by assessee before DVO. There is also variation in the area of flat, mentioned in allotment letter, final agreement to sale and in report of DVO. In the result, all the grounds of appeal are rejected.

12. In the result, the appeal of the assessee is dismissed.

Order pronounced in open court on 28.07.2025 as per Rule 34 of Income Tax (Appellate Tribunal) Rules.

Sd/-

(PADMAVATHY S)
ACCOUNTANT MEMBER

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

Mumbai; Dated 28/07/2025

Anandi Nambi, *Steno*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai