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

BEFORE SHRI ANIKESH BANERJEE, JM &
MS PADMAVATHY S, AM

I.T.A. No. 4063/Mum/2025
(Assessment Year: 2018-19)

Abdul Majid Muhammed Hussein Tanwar, B-4/31A, White Rose C.H.S. Khira Nagar, S.V. Road, Santacruz (West), Mumbai-400054. **PAN: AAAPT9720E**	Vs.	**ITO, Ward-41(4)(1),** Kautilya Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai-400051.
Appellant)	:	**Respondent**)

Assessee / Appellant by	:	Shri Nishit Gandhi, AR
Revenue / Respondent by	:	Shri Surendra Mohan, Sr. DR
Date of Hearing	:	04.11.2025
Date of Pronouncement	:	11.11.2025

O R D E R

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [In short 'CIT(A)'] passed under section 250 of the Income Tax Act, 1961 (the Act) dated 11.04.2025 for Assessment Years (AY) 2018-19. The assessee raised the following grounds of appeal:

*"1. **On validity of the order.***

1.1. In the facts and circumstances of the case and in law, the Ld Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre, Delhi ["the CIT (A)", for short) erred in rejecting the appeal filed by the Appellant

1.2. The Ld CIT (A) erred in not treating the the order passed u/s 143(3) rws 143(3A) and 143(38) of the Income tax Act. 1961 (the Act) as invalid and void ab initio since the provisions of sections 143(3A) and 143(3B) ceased to operate after 31.03.2021 while the impugned assessment order is passed on 07.04.2021.

1.3. in the facts and circumstances of the case and in law, Ld. CIT(A) erred in not quashing the impugned assessment order u/s 143(3) of the Act as bad in law and void also because the same is passed in contravention of section 144B of the Act as well.

*2. **On violation of Natural Justice:***

2.1. In the facts and circumstances of the case and in law, the Ld. CIT (A) erred in affirming the assessment order passed by the Ld. Assessing Officer in gross violation of principles of Natural Justice wherein a huge addition has been made by him without an appropriate show cause notice in this regard despite being mandated by law.

2.2. In the facts and circumstances of the case and in law, the impugned assessment order passed by the Ld. AO and as affirmed by the ld. CIT(A) deserves to be quashed and it is prayed accordingly.

*3. **On Merits:***

3.1. In the facts and circumstances of the case and in law, the Ld. AO erred in making and the Ld. CIT (A) erred in affirming an addition of Rs. 1,39,04,200/- in the hands of the Appellant under Section 56(2)(x) of the Act, which is contrary to the extant law.

3.2. While affirming the said action of the Ld. AO, the Ld. CIT(A) failed to appreciate that:

a. Section 56(2)(x) is invoked without any show cause notice in this regard and such an action therefore cannot be countenanced,

b. Admittedly, the Assessee had paid more than 80% of the consideration way back in 2007 and for which he was issued an allotment letter on 12.10.2007;

c. Such an allotment letter once issued crystallises the right and title of the Assessee in the property and is a valid document under Law including the Maharashtra Ownership Flat Act;

d. Merely the registration of the property was done later (on 16.01.2018) and this delay in registration was on account of the lapse on the part of the builder and the Assessee had no control over the same,

e. Since an allotment letter was already issued and the initial payment made in cheque, the stamp duty value as on the date of allotment letter should have been taken for the purpose of section 56 and the Ld. AO erred in taking the stamp value as on the date of registration thereby making an addition in the hands of the Assessee;

f. In any case and without prejudice to the above, once the Assessee raised a dispute over the adoption of stamp value as the purchase value, an addition cannot be straightaway made in the hands of the Assessee without referring the same to the Departmental Valuation Officer,

3.3. In the facts and circumstances of the case and in law, the Ld. CIT (A) erred in affirming the date of registration of the agreement as date of purchase and not date of allotment of the property as per the allotment letter and erred in affirming addition of difference between purchase consideration of Rs.50,62,500/- at the time of allotment letter and the value of Rs. 1,89,66,700/- determined by the Stamp duty valuation authority for the property registered by the Appellant during the FY 2017-18 as income from other sources u/s 56(2)(x) of the Act.

3.4. In the facts and circumstances of the case and in law, the Ld. CIT (A) erred in affirming the date of registration as date of purchase of the property without considering the facts that the Appellant had already paid nearly the entire purchase consideration at the time of allotment of the property and delay in getting the property was due to the dispute between the Builders & the Tenants and not attributable to the Appellant personally

3.5. In the facts and circumstances of the case and in law, the Ld. CIT (A) erred in affirming the date of registration of the agreement as date of purchase and not date of allotment of the property as per the allotment letter without considering the facts that it is the market practice in Mumbai to exchange Allotment letter for purchase of under construction premises, which in itself is an agreement enforceable under law.

3.6. In the facts and circumstances of the case and in law, the Ld. CIT (A) erred in affirming the date of registration of the agreement as date of purchase and not date of allotment of the property as per the allotment letter without considering the facts that even in Maharashtra RERA the allotment letter is considered as official and legal way of transfer of property and which is an agreement enforceable under law.

3.7. In the facts and circumstances of the case and in law, the Ld. CIT (A) erred in affirming the date of registration of the agreement as date purchase is not as per the first proviso to section 56(2)(x) of the Act i.e. where the date of 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 agreement may be taken for the purposes of this sub-clause.

3.8. In the facts and circumstances of the case and in law, the impugned addition of the difference amounting to Rs. 1,39,04,200/- between the purchase consideration and stamp duty value be deleted and it is prayed accordingly.

***4.** In the facts and circumstances of the case and in law the Ld. AO erred in levying interest under Section 2348 and 234C of the Act on the Appellant."*

2. The assessee is an individual and filed the return of income for AY 2018-19 on 29.03.2019 declaring a total income of Rs. 21,55,570,/-. The assessee's case was selected for scrutiny and the statutory notices were duly served on the assessee. The Assessing officer (AO) during the course of assessment noticed that during the year under consideration, the assessee has purchased a property for a consideration of Rs. 50,62,500/- whereas the stamp duty value of the said property is at Rs. 1,89,66,700/-. The AO issued a show-cause notice to the assessee as to why the provisions of section 56(2)(x) cannot be invoked in assessee's case. The assessee submitted that the flat was allotted to him vide letter dated 12.10.2007 and the assessee has made substantial amount of payment based on the allotment letter. The assessee submitted that the valuation of the property in 2007 was at Rs. 52,68,847/- and the difference as compared to the purchase consideration is within the allowable tolerance limit of 5%. Accordingly, the assessee submitted that the proviso to section 56(2)(x) would be applicable in assessee's case and no addition could be made. The AO however did not accept the submissions of the assessee and held that the letter of allotment could not be considered as an agreement and therefore proceeded to treat the difference as addition u/s 56(2)(x) of the Act. Aggrieved the assessee filed further appeal before the CIT(A). The CIT(A) confirmed the addition made by the AO stating that the date of letter of allotment cannot be taken as the date of transfer of the property.

3. We heard the parties and perused the material on record. The assessee vide allotment letter dated 12.10.2007 was allotted a flat no. 1703 admeasuring 1350 sq. ft on 17th floor, C-Wing of the Building in Goregaon (West) (page 1 to 5 of PB). We notice as per clause-10(A) the purchase consideration of the property was determined at Rs. 50,62,500/- and that the assessee has paid 10% of the consideration on booking the flat. We also notice that the assessee has paid an earnest deposit of a sum of Rs. 40,00,000/- at the time of booking of the flat. The contention of the revenue is that the property was registered by the assessee during the year under consideration and accordingly the stamp duty value as on the date of transfer should be considered. The assessee is contending that the allotment letter dated 12.10.2007 should be considered as the year of purchase and therefore as per the proviso to section 56(2)(x), the stamp duty valuation as on the date of allotment and not on the date of registration should be considered. The relevant proviso to section 56(2)(x) reads as under –

56(2)(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,—

(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,—

(A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(B) 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:

Following item (B) shall be substituted for the existing item (B) of sub-clause (b) of clause (x) of sub-section (2) of section 56 by the Finance Act, 2018, w.e.f. 1-4-2019 :

(B) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:—

(i) the amount of fifty thousand rupees; and

(ii) the amount equal to five per cent of the consideration:

> ***Provided*** *that where the date of 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 agreement may be taken for the purposes of this sub-clause :*
>
> ***Provided further*** *that the provisions of the first proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of agreement for transfer of such immovable property:*

4. From the perusal of above provisions, it is clear that where the date of agreement fixing the amount of consideration for transfer of immovable property is different from the date of registration then for the purpose of section56(2)(x), the stamp duty value on the date of agreement shall be considered. One more condition for the applicability of the above proviso is that the assessee should have paid atleast the part of the consideration by any mode other than cash. In assessee's case the allotment letter wherein the purchase consideration is agreed on 12.10.2007 and that the assessee has paid advance by account payee check at the time of allotment. Therefore in our considered view, there is merit in the submission that the Proviso to section 56(2)(x) is applicable to assessee's case. Now coming to the issue of whether the letter of allotment can be considered as an agreement for the purpose of proviso to section 56(2)(x), we notice that in the case of ITO vs. Narendrakumar Jain (ITA no.3422/Mum/2024 dated 22/08/2024) the coordinate bench on an identical issue has held that

> *"10. Thus, when on the date of agreement amount of consideration is fixed for the transfer of immovable property and the date of registration is not the same, then the Stamp duty Value on the date of agreement is to be taken. The section further provides that the value as on date of agreement can be taken only when the amount of consideration in the agreement has been paid by way of account payee cheque or by the electronic clearing system through a bank account on or before the date of agreement transfer of such immovable property. Thus, the aforesaid provisos carve out exception by taking the stamp duty value as on the date of agreement when the payments have been made through banking channels. The Ld. AO has stated that allotment letter is not a*

registered agreement, therefore, the value of the property has to be taken as on the date of sale registration. First of all, when builder gives an allotment letter with terms and conditions and all the rights and the value of purchase is agreed upon and assessee has acted upon by accepting the terms and conditions and starts making the agreed payment, then it is clearly covered under aforesaid proviso to section 56(2)(x) of the Act. The assessee has agreed to purchase in the year 2012 in terms of allotment letter and also made the payments before the sale was registered. Therefore, the value as on date of allotment has to be treated as stamp duty value for the purpose of aforesaid provision of section 56(2)(x) of the Act and since at that time payment made was more than the stamp duty value therefore, no addition can be made. Thus, the aforesaid finding of the Hon'ble CIT (A), which is in consonance with the provisions of the Act and the judgment of Hon'ble Bombay High Court, is upheld. Accordingly, the revenue appeal is dismissed."

5. Considering that the facts in assessee's case and respectfully following the ratio of the above decision we hold that the date of letter of allotment should be considered for the purpose of proviso to section 56(2)(x). Therefore the addition made by the AO by considering the stamp duty value on the date of registration is not tenable and liable to be deleted. Accordingly we direct the AO to delete the addition made in this regard.

6. In result, appeal filed by assessee is allowed.

Order pronounced in the open court on 11-11-2025.

Sd/-	***Sd/-***
(ANIKESH BANERJEE)	**(PADMAVATHY S)**
Judicial Member	**Accountant Member**

**SK, Sr. PS*

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai