

**IN THE INCOME TAX APPELLATE TRIBUNAL
“J(SMC)” BENCH MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA No. 8368/Mum/2025
(Assessment Year: 2017-18)**

Nilesh Pravinchandra Doshi B/29, Pushpanjali Building, Jambli Gully, Borivali West, Mumbai-400 092	Vs.	ITO Ward 42(1)(3), Kautilya Bhavan, Bandra Kurla Complex, Bandra East, Mumbai-400 051
PAN/GIR No. AMCPD6391D		
(Applicant)		(Respondent)

Assessee by	Shri Jay Shah, Ld. AR
Revenue by	Shri Surendra Mohan, Ld. DR

Date of Hearing	08.01.2026
Date of Pronouncement	12.01.2026

आदेश / ORDER

PER MAKARAND VASANT MAHADEOKAR, AM:

This appeal is filed by the assessee against the order passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”], dated 09.10.2025, for A.Y. 2017-18, arising out of the assessment order passed by the Assessing Officer under section 143(3) read with

sections 147 and 144B of the Income-tax Act, 1961[hereinafter referred to as “the Act”], dated 04.05.2023.

2. The brief facts of the case are that the assessee is an individual. He filed his original return of income for A.Y. 2017–18 on 04.08.2017, declaring total income of Rs. 14,45,090/-. Subsequently, the assessment was reopened under section 147 on the basis of information that the assessee had purchased an immovable property during the relevant year. Notice under section 148 was issued on 29.07.2022, in response to which the assessee filed return of income declaring the same income as originally returned.

3. During the reassessment proceedings, the Assessing Officer made the following additions:

1. Rs. 1,26,730/- under section 56(2)(vii)(b) on account of difference between stamp duty valuation and agreement value of immovable property.
2. Rs. 7,401/- on account of difference in savings bank interest.
3. Rs. 80,639/- on account of alleged omission of Long Term Capital Gain.
4. Rs. 17,789/- on account of alleged omission of interest income.

The total income was assessed at Rs. 15,91,073/-.

4. The assessee carried the matter in appeal before the CIT(A). The learned CIT(A) issued notices under section 250 on various

dates. As recorded in the appellate order, the assessee did not file written submissions during appellate proceedings. The learned CIT(A) proceeded to dispose of the appeal on merits and confirmed all the additions made by the Assessing Officer.

5. Aggrieved by the order of the CIT(A), the assessee is in appeal before us raising following grounds:

1. *The Assessee had Purchased the Immovable Property jointly with Mrs. Meenakshi Pravinchandra Doshi, where the share of the Assessee is 50 %. The Agreement Value (Consideration) was Rs. 49,51,000/-. However, the Stamp Duty valuation was Rs. 52,04,460/-. The Difference of Rs. 2,53,460/-, which is 4.87%. The AO has added Rs. 1,26,730/- as Income from Other Sources.*

Also, the variation of 5 %/ 10 % was eligible to be considered while computing the difference. As per Sri Sandeep Patil Vs ITO (ITAT Bangalore) (ITA No. 924/Bang/2019 Dt. 09.09.2020 for AY 2016-17) Even though the said provision has come into effect from 1.4.2019 / 1.4.2021, we notice that the Kolkata Bench of Tribunal has held it to be curative in nature in the case of Chandra Prakash Jhunjhunwala (supra) and accordingly held that the proviso shall apply since the date of insertion of sec. 50C of the Act. Accordingly, the above said reasoning given by the Kolkata bench of ITAT also supports the contentions of the assessee.

The AO erred in adding such amount, though the difference is within the specified limit.

2. *The Assessee has submitted all the requisite details to substantiate the claim of Long Term Capital Gain on sale of shares, which is exempt under section 10(38). The AO erred in considering the same as the Taxable Income and imposed tax on the same.*
3. *The AO erred in computing the Income from Other Sources, even though the details were given at the time of Assessment. Further, the expenses claimed, are not considered at all.*

4. *Due to above additions, the AO has raised the Income tax Demand and levied interest on the same, which is totally unjustifiable.*
5. *It seems that the AO was in hurry to complete the Assessment and never relied on the submissions given at the time of Faceless Assessment. The AO erred in relying upon certain decisions which are totally distinguishable on facts, which is totally unjustifiable.*
6. *Dissatisfied with the Order passed by the AO the Assessee approached the Income Tax Commissioner and submitted all the necessary documents while filing the Appeal and along with Form No. 35, Apparently the same was not received by the CIT.*
7. *Since the Assessee didn't have any additional submissions to be made before the CIT other the documents already produced before the AO and reproduced before the CIT while filing the Appeal, the assessee didn't file any reply since the document already submitted at the time of filing the Appeal and assessee didn't want to file any additional document.*
8. *Only on the receipt of the Order dated 09.10.2025 passed by the CIT the assessee was shocked to learn that the CIT didn't receive any documents. The above misunderstanding is totally technical error and not intentional, the Assessee has all the documents to prove its genuineness and therefore being aggrieved with the Order filed the present Appeal.*

In the above circumstances considering peculiar situation, true facts and applicable provisions of Law, and in the interest of natural Justice, your appellant prays for consideration of the detailed grounds of appeal and contentions attached herewith, while reserving his right to add, amend, delete or replace any point or ground at or before the time of final hearing and prays for such other relief as may be available to him according to law.

6. The learned Authorised Representative reiterated the facts and placed reliance on the ground-wise explanation furnished in the paper book. It was submitted that the addition under section 56(2)(vii)(b) has been made solely on account of difference

between the agreement value and the stamp duty valuation of the immovable property. The learned AR specifically pointed out that the difference between the agreement value of Rs. 49,51,000/- and the stamp duty valuation of Rs. 52,04,460/- works out to only 4.87 percent, which is well within the permissible tolerance limits recognised under the Act. In support of the contention, the learned AR placed reliance on the decision of the co-ordinate Bench of the Tribunal in **Sri Sandeep Patil v. ITO, ITA No. 924/Bang/2019, order dated 09.09.2020**, and submitted that on identical facts, the Tribunal has held that no addition is warranted where the difference between the stamp duty valuation and actual consideration is within the tolerance limit.

7. The learned Departmental Representative relied upon the orders of the lower authorities.

8. We have heard the rival submissions and perused the material available on record. The main issue for our consideration is whether the addition of Rs. 1,26,730/- made under section 56(2)(vii)(b) of the Act on account of difference between the agreement value and stamp duty valuation of immovable property is sustainable in law.

9. It is an undisputed fact on record that the total purchase consideration of the property was Rs. 49,51,000/-, whereas the stamp duty valuation was Rs. 52,04,460/-, resulting in a difference of Rs. 2,53,460/-, i.e. 4.87 percent of the agreement

value. The assessee's share of such difference was computed at Rs. 1,26,730/-.

10. We note that the co-ordinate Bench in *Sri Sandeep Patil v. ITO* has examined in detail the interplay between section 56(2)(vii)(b) and section 50C, and the effect of the tolerance proviso. The co-ordinate Bench in *Sri Sandeep Patil v. ITO* has clearly laid down the principle that section 50C and section 56(2)(vii)(b) operate on the same transaction, there cannot be two different fair market values for the same property, and the tolerance proviso, though introduced subsequently, is curative and must be applied retrospectively to avoid absurd and inequitable results. The learned CIT(A) has confirmed the addition without addressing this settled legal position and without distinguishing the binding co-ordinate Bench decision relied upon by the assessee. Such confirmation, in our considered view, is unsustainable.

11. Respectfully following the ratio laid down by the co-ordinate Bench of the Tribunal in *Sri Sandeep Patil v. ITO*, and in view of the undisputed fact that the difference between the agreement value and stamp duty valuation is only 4.87 percent, we hold that no addition is warranted under section 56(2)(vii)(b) of the Act. Accordingly, the addition of Rs. 1,26,730/- is directed to be deleted.

12. Next issue is relating to addition of difference in savings bank interest amounting to Rs. 7,401/-The Assessing Officer

noted interest credited in the bank statement and compared the same with the interest income declared in the return. According to the Assessing Officer, there was a difference of Rs. 7,401/-, which was added. As per the explanatory chart placed by the assessee, the assessee had received total savings bank interest of Rs. 17,062/-. Interest expenditure of Rs. 14,195/- was incurred and net interest income of Rs. 9,661/- was offered to tax. The Assessing Officer ignored the netting of interest and made the addition merely on the basis of gross figures.

13. The computation placed on record clearly shows that interest income was offered after adjusting interest expenditure. The Assessing Officer has not disputed the incurrence of interest expenditure nor has he shown that netting was impermissible. Once the net interest income has been offered, making an addition on the basis of gross credit results in incorrect computation. Therefore, the addition of Rs. 7,401/- on account of difference in savings bank interest is deleted.

14. The next issue pertains to omission of Long Term Capital Gain amounting to Rs. 80,639/- The Assessing Officer treated sale of shares as taxable income and computed Long Term Capital Gain of Rs. 80,639/-, holding that the assessee had omitted to offer the same. As per the details submitted by the assessee and noted by the Assessing Officer in his order, the assessee furnished demat statements and holding period details, the shares were held for more than twelve months and the

resulting Long Term Capital Gain was exempt under section 10(38).The records shows that the shares were acquired in earlier years and sold after a holding period exceeding twelve months. The exemption under section 10(38), as applicable to the relevant year, is available. Neither the Assessing Officer nor the CIT(A) has recorded any finding to show that the conditions of section 10(38) were not fulfilled. Therefore, the addition of Rs. 80,639/- on account of Long Term Capital Gain is deleted.

15. The last issue relates to the addition of Rs. 17,789/- made by the Assessing Officer on account of alleged omission of interest income from Jainam Financial Services. During the course of assessment proceedings, the Assessing Officer observed from the bank account and capital account of the assessee that interest receipts aggregating to Rs. 17,789/- had been credited during the previous year relevant to A.Y. 2017-18.According to the Assessing Officer, the said interest income was not disclosed by the assessee in the return of income filed for the year under consideration and, therefore, the same was proposed to be added to the total income vide show cause notice dated 24.04.2023.

16. In response to the said show cause notice, the assessee explained that the amount of Rs. 17,789/- did not represent fresh or undisclosed interest income for A.Y. 2017-18, but consisted of two components. The assessee explained that an amount of Rs. 10,994/- was received on 11.04.2016 towards interest pertaining to March 2016, which had already been offered to tax in A.Y.

2016–17, as reflected in Form 26AS for that year. It was further explained that the remaining amount of Rs. 6,116/-, received on 11.07.2016, represented interest on loan from Jainam Financial Services, which was also disclosed under the head “Income from Other Sources” in the computation of income filed along with the return, after deduction of tax at source. The assessee thus contended that the entire interest income stood duly accounted for and taxed, and that the proposed addition would result in double taxation of the same income.

17. The Assessing Officer, however, rejected the explanation of the assessee on the ground that, on perusal of the bank statement and capital account, interest receipts of Rs. 17,789/- were found credited during the year under consideration and the same were not disclosed in the return of income for A.Y. 2017–18. The Assessing Officer further observed that the revised computation furnished by the assessee during assessment proceedings was an afterthought and, accordingly, proceeded to make the addition as proposed in the show cause notice. The learned CIT(A) confirmed the addition without examining the factual claim of the assessee regarding prior-year taxation.

18. We have carefully considered the rival submissions and perused the material available on record. It is evident that the core contention of the assessee is that the interest income of Rs. 17,789/- has either already been offered to tax in the immediately preceding assessment year or has otherwise been duly accounted

for, and that the addition made in the year under consideration results in double taxation. This claim rests on factual verification of the return of income, computation, and Form 26AS of A.Y. 2016–17, which has not been examined either by the Assessing Officer or by the learned CIT(A). At the same time, the Assessing Officer has proceeded to make the addition primarily on the basis that the interest receipts were reflected in the bank account during the year and were not disclosed in the return of income for A.Y. 2017–18, without undertaking a verification as to whether the said income had already been taxed in an earlier year, as specifically claimed by the assessee.

19. In these circumstances, we are of the considered view that the issue requires limited factual verification. The interest income cannot be brought to tax twice, and if the assessee's claim that the said amount has already been included in the total income of the earlier assessment year is found to be correct, the addition would not survive.

20. Accordingly, in the interest of justice, we deem it appropriate to restore this issue to the file of the Assessing Officer for the limited purpose of verifying whether the interest income of Rs. 17,789/- has already been offered to tax in the return of income for the earlier assessment year, as claimed by the assessee. The Assessing Officer shall carry out this verification after examining the return of income, computation, Form 26AS and other relevant records of the earlier year and shall decide the

issue afresh in accordance with law. The assessee shall be afforded a reasonable opportunity of being heard and shall cooperate by furnishing the necessary details. The ground raised by the assessee on this issue is allowed for statistical purposes.

21. In the combined result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 12.01.2026.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

Mumbai, Dated 12/01/2026
Dhananjay, Sr.PS

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

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

सत्यापित प्रति //True Copy//

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आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai