

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "D" BENCH : MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER

ITA No.	A.Y.	Appellant	Respondent
7344/Mum/2025	2020-21	Mamta Gourav Jain, Room No. 302, Panch Ratan Building, 14 th Lane, Kamathipura, Mumbai Central, Mumbai-400008. [PAN: AFGPJ6405D]	Income Tax Officer, Ward-20(2)(1), Piramal Chamber, Mumbai-400012.
7345/Mum/2025			

For Assessee :	Shri Bhavesh Shah <i>(Virtually present)</i>
For Revenue :	Shri Annavarani Kosuri

Date of Hearing :	21-01-2026
Date of Pronouncement :	27-01-2026

ORDER

PER VIKRAM SINGH YADAV, A.M :

These are two appeals filed by the assessee against the respective order(s) of the Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’], dated 18-09-2025 pertaining to Assessment Year (AY) 2020-21. The appeal in ITA No. 7345/Mum/2025 relates to addition made and emanating from the assessment order passed u/s. 147 r.w.s. 144B of the Income Tax Act, 1961 (‘the Act’) and the appeal in ITA No. 7344/Mum/2025 relates to consequent levy of penalty u/s. 270A of the Act.

2. Briefly, the facts of the case are that during the course of assessment proceedings, the AO observed that the assessee has entered into an

agreement with Shagun Construction and also executed an Agreement of Permanent Alternate Accommodation registered on 04-06-2019, wherein the residential Flat No. 1901, measuring 626.79 sq. ft., carpet area in a new building known as 'Krishvi Apartment' was allotted to the assessee, in lieu of old premises where the assessee was holding the tenancy rights, by way of Permanent Alternate Accommodation free of cost and on ownership basis and as per Index II, consideration value of the said immovable property was ZERO while value as per stamp authority was Rs. 1,27,29,000/-. The AO accordingly held that the assessee has received an immovable property without consideration and the same was brought to tax, invoking the provisions of section 56(2)(vii)(b) of the Act. The assessee thereafter carried the matter in appeal before the Ld.CIT(A), who has since dismissed the appeal of the assessee on account of non-prosecution and against the said order, the assessee is in appeal before us.

3. During the course of hearing, the Ld.AR submitted that notices were issued by the Ld.CIT(A) on the e-mail ID, which belong to the earlier Counsel and the said Counsel did not inform the assessee about the receipt of the said notices, which resulted in non-compliance to the notices. It was submitted that the said non-compliance was neither intentional nor deliberate, but has occurred on account of non-communication of the notices so issued by the Ld.CIT(A). It was further submitted that the assessee held the tenancy rights in the earlier property since October, 2012 and surrender of the rights were made in June, 2019 claiming holding period of 36 months which classified the asset as Long Term Capital Asset. It was further submitted that the AO has not taken into consideration the contents of the agreement entered into by the assessee with the developer which clearly states that the tenancy rights were surrendered to the developer in exchange for the ownership rights in

the re-developed the premises. It was accordingly submitted that the addition so made by the AO is erroneous as the transaction does not fall under the definition of receipt of immovable property without consideration. It was submitted that surrender of tenancy rights against ownership in an alternate accommodation is a recognized and established form of consideration in re-developed cases and is therefore, not a gratuitous transfer. Further, it was submitted that the AO has erred in invoking the provisions of section 56(2)(vii)(b) of the Act, which was replaced with Section 56(2)(x) of the Act w.e.f. AY. 2018-19. It was accordingly submitted that the assessee has a strong case on merits and an opportunity may be provided and the matter may be remitted to the file of the Ld.CIT(A) to decide the same afresh, after providing reasonable opportunity to the assessee.

4. It was further submitted that the matter relating to levy of penalty, which also went un-complied with before the Ld.CIT(A) may also be set aside to the file of the Ld.CIT(A).

5. The Ld.DR has been heard, who has not raised any specific objection where the matter is remitted to the file of the Ld.CIT(A).

6. We have heard the rival contentions and perused the material available on record. Admittedly, due to non-prosecution, the appeal of the assessee has been dismissed by the Ld.CIT(A) and there is no findings on the merits of the case and the findings of the AO have been summarily confirmed by the Ld.CIT(A). The Ld.AR has explained the reasons for non-compliance and has further contended that the assessee has strong case on merits of the case and the necessary documentation is already available on record which needs to be appreciated in correct perspective. In view of

the same and the limited prayer so raised on behalf of the assessee which has not been contested by the Ld.DR, we are of the considered opinion that in the interest of justice, the assessee should be granted one more opportunity to represent her case before the Ld.CIT(A). Consequently, we deem it fit and proper to set aside the impugned order in both the appeals and restore the matter(s) to the file of the Ld.CIT(A) for deciding the same afresh as per law, after providing reasonable opportunity to the assessee. We also direct the assessee to fully co-operate with the Ld.CIT(A) for expeditious disposal of the matter and is at liberty to file necessary explanation/documentation as so advised.

7. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 27-01-2026

Sd/-

[MS. KAVITHA RAJAGOPAL]
JUDICIAL MEMBER

Mumbai, Dated: 27-01-2026

TNMM

Sd/-

[VIKRAM SINGH YADAV]
ACCOUNTANT MEMBER

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai