

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH 'SMC', LUCKNOW**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

I.T.A. No.99/Lkw/2025  
Assessment Year:2015-16

Sanjeev Kumar Saxena, A-1, Shalimar Courtyard, Near Tarikhana Rly Crossing Sitapur Road, Lucknow-226022 PAN:ADQPS7532Q (Appellant)	Vs.	Income Tax Officer-3(4), Lucknow-New  (Respondent)
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Appellant by	Shri Swaran Singh, C.A.
Respondent by	Shri Amit Kumar, Addl. CIT (D.R.)

**ORDER**

(A) This appeal vide I.T.A. No.99/Lkw/2025 has been filed by the assessee for assessment year 2015-16 against impugned appellate order dated 10/01/2025 (DIN & Order No.ITBA/APL/S/250/2024-25/1072063307(1) of Commissioner of Income Tax (Appeals) ["CIT(A)" for short]. In this appeal the assessee has raised the following grounds:

- "1. *That the Ld. CIT(A) has erred in law and on facts in sustaining the impugned assessment order ignoring the fact that the order passed under section 143(3) issued by the Ld. A.O. without*

*adjudicating the grounds in the appellant's case taken before CIT(A).*

2. *That the Ld. CIT (A) has erred in law and on facts in sustaining the impugned assessment order ignoring the fact that the notice issued under section 143(2) of The Income Tax Act, 1961 was issued mechanically through CASS and not by ACIT, Range -3 which is also accepted by the Ld. A.O. therefore, the impugned Assessment order is illegal, void-ab -initio and liable to be quashed.*
3. *That the Ld. CIT (A) has erred in law and on facts in sustaining the impugned assessment order ignoring the fact that the notice u/s 143(2) of the Income Tax Act, 1961 (Appeals), dated 20.09.2016 was issued by ACIT, Range-3, Lucknow, being the non- jurisdictional officer, therefore the impugned assessment order is illegal, void-ab-initio and deserves to be quashed.*
4. *That the Ld. CIT (A) has erred in law and on facts in sustaining the impugned assessment order ignoring the fact that the notice u/s 143(2) of the Income Tax Act, 1961 dated 20.09.2016 was issued by ACIT, Range-3, Lucknow, however, the case was transferred to Income Tax Officer-3(4), without any order u/s 127 of the Income Tax Act, 1961 therefore the impugned assessment order is illegal, void-ab-initio and deserves to be quashed.*
5. *That the Ld. CIT (A), has erred in law and on facts in sustaining the impugned assessment order ignoring the fact, that objections in the jurisdiction which was raised by the appellant during the assessment proceedings which were not disposed off in accordance with law therefore, the impugned assessment order is illegal, void-ab-initio and deserves to be quashed.*
6. *That the Ld. CIT (A), has erred in law and on facts in sustaining the impugned assessment order ignoring the fact, that arbitrary addition of Rs.11,59,091/- u/s 56(2)(vii)(b) r.w.s 50C made by Ld. AO of the Income Tax Act, 1961 without making reference to the Department Valuation Officer.*
7. *That the Ld. CIT (A), 1ms erred in law nnd on fuels in sustaining the impugned assessment order ignoring the fact, an*

*arbitrary addition of Rs.11,59,091/- made under section 56(2)(vii)(b) of The Income Tax Act, 1961 by ld. AO without any proper basis which is wholly unjustified, much too high and deserves to be deleted.*

8. *The CIT (A), has erred in law und on facts in sustaining the order of the Ld. A.O., which is insupportable in law and on facts and is also contrary to the principles of natural justice and equity is unsustainable in law and liable to be deleted."*

(B) In this case assessment order dated 27/12/2017 was passed u/s 143(3) of the I. T. Act whereby the assessee's total income was assessed at Rs.23,84,351/- (rounded off to Rs.23,84,350/-). In the aforesaid assessment order, an addition of Rs.11,59,091/- was made u/s 56(2)(vii)(b) of the Act. The assessee's appeal against the assessment order was dismissed by learned CIT(A) vide impugned appellate order dated 10/01/2025. The present appeal has been filed by the assessee against the aforesaid appellate order dated 10/01/2025. In the course of appellate proceedings in Income Tax Appellate Tribunal, paper book was filed in two parts containing the following particulars:

**Index of Paper Book**

<b>S. No.</b>	<b>Particulars</b>
1.	Assessee filed a return of income u/s 139(1) vide acknowledgement no. 777604120050915, dated <b>05.09.2015</b> showing total income of Rs 12,25,260
2.	Assessee filed a revised return of income u/s 139(5) vide acknowledgement no. 783399240070915, dated <b>07.09.2025</b> showing total income of Rs 12,25,260
3.	Copy of notice issued under section 142(1) of The Income Tax Act , 1961 requiring to furnish true and correct return of income , dated <b>20.09.2016</b>
4.	Copy of notice issued under section 143(2) of The Income Tax Act , 1961 selecting the case for LIMITED SCRUTINY, dated <b>20.09.2016</b> having DIN- ITBA/AST/S/143(2)/2016-17/1000380980(1)
5.	Copy of notice issued under section 142(1) of The Income Tax Act , 1961 along with Questionnaire, dated <b>14.06.2017</b>
6.	In response to notice under section 142(1) of The Income Tax Act,1961 dated 14.06.2017 the assessee has furnished a reply along with attachments , dated <b>23.06.2017</b>
7.	Case was converted from LIMITED to COMPLETE Scrutiny , dated <b>29.11.2017</b>

3.	Copy of notice issued under section 143(3) of The Income Tax Act , 1961 requiring the assessee to furnish actual sale consideration paid in respect of property purchased from Shalimar Corp Limited , dated <b>04.12.2017</b>
9.	Reply dated <b>18.12.2017</b> in response to notice issued u/s 143(3) of The Income Tax Act , 1961 dated 04.12.2017 providing explanation relating to difference in stamp duty value and actual consideration paid by assessee u/s 56(2)(vii)(b) , inter-alia along with following attachments :- (i) Reply dated 14.12.2017 (P.B.No -121) (ii)Reply dated 16.12.2017 (P.B.No -122)
10.	Copy of Assessment Order passed under section 143(3) Of the Income Tax Act,1961 dated <b>27.12.2017</b>
11.	Copy of Order Passed under section 250 of The Income Tax Act , 1961, dated <b>10.01.2025</b> having DIN- ITBA/APL/S/250/2024-25/1072063307(1)
12	Judgement of Hon'ble ITAT Lucknow Bench "B" in the case of Nirmal Singh Vs The Income Tax Officer ,Ward-1 in ITA No.83/LKW/2024
13	Judgement of Hon'ble ITAT Mumbai Bench "B" in the case of Mohd. Ilyas Ansari Vs Income Tax Officer 23(2)(3), Mumbai [2021] 123 taxmann.com 122 (Mumbai – Trib.)
14	Judgement of Hon'ble ITAT Agra Bench in the case of Hari Om Garg Vs Income Tax Officer, Ward-3(5), Hathras in ITA No. 342/Agra/2017
15	Judgement of Hon'ble ITAT Hyderabad Bench "A" in the case of ACIT Vs Lalitha Karan in ITA No. 1130/Hyd/2015
16	Judgement of Hon'ble ITAT Agra Bench in the case of Dr. Sanjay Chobey ( HUF) Vs ACIT, Circle – 2(3), Jhansi in ITA No. 140/Agr/2018
17	Judgement of Hon'ble ITAT Amritsar Bench in the case of Dev Brat Sharma Vs Income Tax Officer, Ward -3(1) Jalandar in ITA No. 493/Asr/2018
18	Judgement of Hon'ble Delhi Bench "A" in the case of Income Tax Officer, Ward 2(1),Moradabad Vs M/s Aditya Narayan Verma (HUF) [2017] 88 taxmann.com 840 (Delhi – Trib.)
19	Judgement of Hon'ble ITAT Delhi Bench "D" ( Third Member ) in the case of ACIT Vs Anima Investment Ltd [2000] 73 ITD 125 (Delhi) (TM)

20	Judgement of Hon'ble ITAT Mumbai Bench "E" in case of Suresh C. Mehta Vs Income Tax Officer, Ward - 13(2)(1), Mumbai in ITA No. 33/Mum./2011
21	Judgement of Hon'ble Madras High Court in the case of C.I.T Vs L.G. Ramamurthy [1977] 110 ITR 453 (Madras)
22	Judgement of Hon'ble Gujarat High Court in the case of Sayaji Iron & Engg. Co. Vs C.I.T [2002] 121 Taxman 43 (Gujarat)
23	Judgement of Hon'ble Gujarat High Court in the case of Uttar Gujarat Vij Co. Ltd. Vs Income-tax Officer [2024] 162 taxmann.com 201 (Gujarat)
24	Judgement of Hon'ble ITAT Mumbai Bench "D" in the case of Tata Sons Ltd. Vs Assistant Commissioner of Income-tax, Circle-2(3) [2016] 76 taxmann.com 126 (Mumbai)
25	Judgement of Hon'ble ITAT Lucknow Bench "A" in the case of Income Tax Officer-6(1), Kanpur Vs Arti Securities & Services Ltd. [2021] 123 taxmann.com 395
26	Judgement of Hon'ble ITAT Allahabad Bench in the case of Obeetee Pvt. Ltd., Bisunderpur, Vs. The Commissioner of Income Tax, Allahabad. in ITA.No.161/Alld./2015
27	Judgement of Hon'ble Patna High Court in the case of Bimla Singh Vs Commissioner of Income Tax [2009] 308 ITR 71 (Patna)
28	Judgement of Hon'ble ITAT Nagpur Bench in the case of Yashoda Builders And Developers Vs ACIT Circle-1, Nagpur in ITA No. 302/Nag./2024
29	Judgement of Hon'ble Bombay High Court in the case of Bharat Jayantilal Patel Vs Union of India [2015] 59 taxmann.com 333 (Bombay)
30	Judgement of Hon'ble Bombay High Court in the case of Bayer Material Science (P.) Ltd. Vs Deputy Commissioner of Income-tax-10(3) [2016] 66 taxmann.com 335 (Bombay)

### Index of Supplementary Paper Book

S.NO	Particulars
1	Synopsis in the case of Appellant
2	Judgment of Hon'ble Kolkata High Court in the case of Kusum Goyal Vs. I.T.O. [(2010) 329 I.T.R. 283 (Calcutta)]
3	Decision of Hon'ble I.T.A.T. "A" Bench Bangalore in the case of Amit Kumar Banthia (HUF) Vs. D.C.I.T., Circle-1(1), Bangalore in I.T.A. No. 2326/Bang/2024
4	Judgment of Hon'ble Karnataka High Court in the case of Hewlett Packard Financial Services (India) (P.) Ltd. Vs. Deputy Commissioner of Income Tax [2023] 152 taxmann.com 559 (Karnataka).
5	Judgement of Calcutta High Court in the case of Sunil Kumar Agarwal Vs. Commissioner of Income-tax, Siliguri [2014] 47 taxmann.com 158 (Calcutta)
6	Decision of the Hon'ble ITAT Lucknow Bench in the case of M/s. Prachi Leathers Pvt. Ltd. vs. The Addl. CIT, Range-VI in I.T.A. No. 26(L)/2010

7	Judgment of Hon'ble Bombay High Court in the case of Pr. C.I.T.-1, Vs. Capstone Securities Analysis Pvt. Ltd. [2023] 146 Taxmann.com 423 (Bombay)
8	Judgement of Hon'ble Delhi High Court in the case of Valvoline Cummins Ltd. Vs. Deputy Commissioner of Income Tax, Circle 17(1). [2008] 171 taxman 241 (Delhi)
9	Judgement of Hon'ble Calcutta High Court in the case of Berger Paints India Ltd. Vs. Asst. Commissioner of Income Tax [2001] 115 taxman 290 (Calcutta).

(B.1) The paper book also contained a synopsis, which is reproduced below:

RE: Sanjeev Kumar Saxena, Lucknow .....Appellant  
Vs.  
The Income Tax Officer-3(4), Lucknow .....Respondent  
[ITA No. 99/LKW/2025 for the Assessment Year 2015-16]  
Filing of Appellant's Synopsis

**Ground of Appeal No. 2, 3 & 4:**

The appellant filed return of income under section 139(1) of the Income Tax Act, 1961 (P.B. No. 1-2) declaring gross total income of Rs. 13,87,815/- which was revised on 07.09.2015, the revised return is appearing at P.B. No. 5-20. Thereafter in contravention to CBDT Circular No. 1/2011 the ACIT, Range-3, Lucknow issued a Notice under section 143(2) of the Income Tax Act, 1961 dated 20.09.2016 (P.B. No. 22) mechanically without considering the facts that monitory jurisdiction to issue the aforesaid notice lies with I.T.O.-3(4) Lucknow. In the impugned Assessment Order the Ld. A.O. at Para 1 noted the aforesaid details and on page 2 reproduced the order sheet entries dated 20.12.2007 part of the said order sheet entries are reproduced as under:-

(Quote)

*"...Vide letter dated 16.12.2017, the issue of jurisdiction was raised in the assessment proceedings asked to be dropped. However, unlike as claimed in the said order, the case was not selected for scrutiny by ACIT Range-3, Lucknow but was selected through "CASS" and scrutiny notice issued accordingly. Thereafter, on jurisdiction ground the case was transferred to the undersigned and proceedings conducted thereafter. Accordingly the issue of jurisdiction does not arise at all and the proceedings are valid in law..."*

On this issue the Ld. C.I.T.(A) has given his finding at Para 6.1.2 and held that all the officers in given range had concurrent jurisdiction of all the cases at the given time depending upon the total income as per the case, as per return the jurisdiction was decided. Since the jurisdiction of the present case automatically vested with ACIT there was no need to pass the jurisdiction order under section 127 of the Income Tax Act, 1961 for the precise reason that all the officers had concurrent jurisdiction over the cases falling in jurisdiction in the particular range, further as per provisions of section 127(2) of the Income Tax Act, 1961 there is no requirement of passing the order under section 127 for transferring the case from one Officer to another officer.

The reason given by the Ld. Pr. C.I.T. is erroneous. Section 120(3) of the Income Tax Act, 1961 specified that the CBDT has power to issue directions or order to Income Tax Authorities to exercise jurisdiction over the case of any one or more of the following criteria namely:

- a) Territorial area
- b) Persons or classes of persons
- c) Income or classes of income
- c) Cases or classes of cases.

Accordingly, the CBDT has issued Circular No. 1/2011 as per on the basis of income the jurisdiction lies with Income Tax Officer Ward Lucknow considering the fact that A.O. himself admitted that the notice under section 143(2) was issued through CASS and the case was not selected by ACIT, Range-3 Lucknow did not apply his mind and check as to whether he was having jurisdiction on the basis of aforesaid CBDT Circular to issue Notice under section 143(2) of the Income Tax Act, 1961 on the basis of income or not. Therefore, the said notice is unsustainable in law and liable to be quashed and consequently the impugned Assessment Order is also illegal and liable to be quashed. Reliance is placed on the following Judgments/Decisions:

- i) Decision of Hon'ble ITAT Allahabad Bench in the case of Obeetee Pvt. Ltd., Mirzapur Vs. Commissioner of Income Tax, Allahabad in ITA No. 161/Alld/2015, 166/Alld/2016 and 113 & 89/Alld/2013 (P.B. No.290-340)

It is further, submitted that one Income Tax Authority assumed jurisdiction over the case then he should complete the assessment and in case the case is

transferred to the another Assessing Officer even within same range then order under section 127 of the Income Tax Act, 1961 is mandatory. It is admitted fact that no such order under section 127 of the Income Tax Act, 1961 has been passed in the instant case, therefore the impugned Assessment Order is unsustainable in law and liable to be quashed. Reliance is placed on the following Judgments:-

i) Decision of Hon'ble ITAT Mumbai Bench in the case of Tata Sons Limited Vs. ACIT [2016] 76 Taxmann.com 126 (P.B. No.250-267)

ii) Decision of Jurisdictional Hon'ble I.T.A.T. Lucknow Bench in the case of Income Tax Officer Vs. Arti Securities & Services Ltd. [2021] 123 taxmann.com 395 (Lucknow Trib.) (P.B. No.268-289)

(iii) Decision of the Hon'ble ITAT Lucknow Bench in the case of M/s. Prachi Leathers Pvt. Ltd. vs. The Addl. CIT, Range-VI in I.T.A. No. 26(L)/2010 (P.B. No.394-404)

iv) Judgment of Hon'ble Kolkata High Court in the case of Kusum Goyal Vs. I.T.O. [(2010) 329 I.T.R. 283 (Calcutta)] (P.B. No.379-382)

v) Judgment of Hon'ble Bombay High Court in the case of Pr. C.I.T.-1, Vs. Capstone Securities Analysis Pvt. Ltd. (P.B. No.405-406)

vi) Judgment of Calcutta HC at PB-415-419 and Judgment of DHC in the case of Valvoline Cummins Ltd vs DCIT PB 407-414 Para 28 & 29.

It is further provided that vide letter dated 16.12.2017 (P.B No. 122) the appellant raised objections on the initiation of reassessment proceedings however, the Ld. A.O. did not adjudicate the objection on the jurisdiction during the assessment proceedings, however, dealt with the same in the assessment order in contravention to the Judgment of Hon'ble Supreme Court of India in the case of GKN Driveshafts (India) Ltd. Vs. I.T.O. (2003) 259 I.T.R. 19 (S.C.) On this issue also the impugned Assessment Order is unsustainable in law and liable to be quashed. Reliance in this regard is placed on the following Judgments/Decisions:-

i) Decision of Hon'ble I.T.A.T. "A" Bench Bangalore in the case of Amit Kumar Banthia (HUF) Vs. D.C.I.T., Circle-1(1), Bangalore in I.T.A. No. 2326/Bang/2024 (P.B. No.383-386)

ii) Judgment of Hon'ble Karnataka High Court in the case of Hewlett Packard Financial Services (India) (P.) Ltd. Vs. Deputy Commissioner of Income Tax [2023] 152 taxmann.com 559 (Karnataka) (P.B No. 387-389)

**Ground of Appeal No. 6, 7 & 8:**

Initially the case was selected for Limited Scrutiny on the issue “Deduction claimed under the head Capital Gains” refer P.B 22 however subsequently at the end of limitation of 31.12.2017, on 29.11.2017 the Ld. AO converted the case from Limited to Complete Scrutiny and notice under section 142(1) of Income Tax Act 1961 dated 04.12.2017 and was issued fixing the date of compliance on 13.12.2017. In response the appellant filed following replies

Reply dated 14.12.2017 ( P.B No. 121)

Reply Dated 16.12.2017 ( P.B No.122)

Vide Letter dated 18.12.2017 and vide letter dated 14.12.2017 submitted before the Ld. A.O. (Page No. 118 to 119). The assessee filed explanation relating to difference in Stamp Duty Value and Actual Purchase Consideration paid by the assessee and also requested to refer the matter to DVO in case the explanation is not accepted. Request for reference to DVO was also made vide letter dated 14.12.2017 (P.B No. 121), however, the Ld. A.O. arbitrarily did not refer the matter to DVO and made addition of Rs. 11,59,091/- under section 56(2)(vii)(b) of the Income Tax Act, 1961. Under these circumstances the said addition is unsustainable in law and liable to be deleted. In such situation the Hon’ble Tribunal in catena of cases deleted the addition made under section 56(2)(vii)(b) of the Income Tax Act, 1961 and also did not allow second inning to the department by sending matter that to A.O. Reliance in this regard is placed on the following Decisions:-

- i) Decision of Hon’ble ITAT Lucknow Bench in the case of Nirmal Singh Vs. I.T.O. in ITA No. 83/LKW/2024 (P.B. No. 137 to 153).
- ii) Decision of Hon’ble ITAT Mumbai “B” Bench in the case of Mohd. Ilyas Ansari Vs. Income Tax Officer 23(2)(3) Mumbai [2021] 123 taxmann.com 122 (Mumbai Trib.) (P.B. No. 154-166).
- iii) Decision of Hon’ble ITAT Amritsar Bench in the case of Dev Brat Sharma Vs. I.T.O. in ITA No. 493 (Asr) of 2018 dated 17.01.2019. (P.B No. 197-205)
- iv) Decision of Hon’ble ITAT Delhi “A” Bench in the case of ITO, Ward-2(1), Moradabad Vs. M/s. Aditya Narayan Verma (HUF) in ITA No. 4166/Del/2013 dated 07.06.2017. (P.B No.206-210)

v) Judgement of Calcutta High Court in the case of Sunil Kumar Agarwal Vs. Commissioner of Income-tax, Siliguri [2014] 47 taxmann.com 158 (Calcutta)( P.B No.390-392)

It is further submitted that in various decisions, it has been held that variation up to 15-20% between the Stamp Value as per Stamp Valuation Authority and as per actual purchase consideration paid by the assessee will be ignored for the purpose of Section 56(2)(vii)(b) of the Income Tax Act, 1961 and section 50C of the Income Tax Act, 1961. In the present case the actual consideration paid by the assessee is Rs.73,37,500 and Stamp Value assessed by the Stamp Valuation Authority is Rs. 84,96,591 and difference between comes to Rs.11,59,091 which is approximately 13.642% percentage , therefore, such difference is liable to be ignored. Reliance in this regard is placed on the following decisions:-

Kindly peruse the purchase deed of Flat No. A-1, Shalimar Courtyard, near tadikhana, Sitapur Road, Lucknow, on page 13 of the said deed the value for stamp calculation purpose is calculated as under:

i)Value of Land	37,45,140.00
ii)Value of Construction	36,43,200.00
iii)Sub Total	73,88,340.00
iv)Value of Common Facilities	11,08,251.00
for stamp purposes	
Total Value for stamp Purpose	84,96,591.00

Copy of relevant page of stamp value is fixed by authorities is enclosed.

Further as per clause 5 on Page 7 of the said purchase deed, the assessee has no ownership right over common facilities but he can only use these facilities i.e. the ownership of common facilities is not transferred in favour of assessee, further on page 13, the schedule of the property which is transferred in favour of assessee is only Flat.

However, Stamp Duty is charged not only for the transfer of immovable property but also Stamp Duty is charged on Right to use the common area/common facilities, which is in nature of intangible property whereas immovable property as contemplated in section 56(2)(vii)(b) of the Income Tax Act, 1961 is tangible property.

It is submitted that Section 56(2)(vii)(b) of the Income Tax Act, 1961 read as under:

(Quote)

“...[(vii) where an individual or a Hindu undivided family **receives**, in any previous year, from any person or persons on or after the 1<sup>st</sup> day of October, 2009 |but before the 1<sup>st</sup> 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**. –

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

(ii) 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:

**Provided** that 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 purpose of this sub-clause;

**Provided further** that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property:]...”

(Unquote)

Above provision of section 56(2)(vii)(b) of the Income Tax Act, 1961 are applicable only when assessee receives any immovable property which is tangible property on its transfer. However common facilities such as lifts, staircase, parking, club etc. are not transferred in favour of the assessee and these are not “immovable property”

For use of these common facilities the assessee has to pay proportionate maintenance charges from time to time which is evident from clause 13 and clause 15 of the purchase deed of the Flat.

Under these circumstances, the difference of the actual amount paid for the flat i.e. Rs.73,37,500.00 and stamp value of proportionate undivided land and construction i.e. Rs. 73,88,340.00 come to Rs. 50,840.00 which is about 0.69% of actual consideration paid by the assessee and for which reference to D.V.O. has been requested by the assessee.

Many courts have held that difference upto 15% for the purpose of section 50C of the Income Tax Act, 1961 is to be ignored. In view of the above facts and provision of law it is humbly submitted that no addition under section 56(2)(vii)(b) of the Income Tax act, 1961 is warranted.

Reliance in this regard is placed on the following decisions/Judgments:-

- i) Decision of Hon'ble ITAT Nagpur Bench in the case of Yashoda Builders and Developers Vs. ACIT, Circle-1 Nagpur in ITA No. 302/Nag/2024.( P.B No. 344-361)
- ii) Judgment of Hon'ble Patna High Court in the case of Bimla Singh Vs. Commissioner of Income Tax [2009] 308 ITR 71 (Patna).( P.B No. 341-343)
- iii) Decision of Hon'ble Mumbai "E" Bench in the case of Mr. Suresh C. Mehta Vs. Income Tax Officer in ITA No. 33/Mum/2011.( P.B No. 225-231)

(C) At the time of hearing, the learned Authorized Representative for the assessee placed reliance on the aforesaid synopsis. He also placed reliance on the following precedents:

- (1) Order of ITAT, Lucknow Bench in the case of Nirmal Singh vs. Income Tax Officer, I.T.A. No.83/Lkw/2024
- (2) Order of ITAT, Mumbai Bench in the case of Mohd Ilyas Ansari vs. Income Tax Officer [2021] 123 taxmann.com 122 (Mumbai-Trib)
- (3) Order of ITAT, Agra Bench in the case of Hari Om Garg vs Income Tax Officer, I.T.A. No.342/Agra/2017
- (4) Order of ITAT, Hyderabad Bench in the case of ACIT vs. Lalitha Karan in I.T.A. No.1130/Hyd/2015
- (5) Order of ITAT, Agra Bench in the case of Dr. Sanjay Chobey (HUF) vs. ACIT, I.T.A. No.140/Agr/2018
- (6) Order of ITAT, Amritsar Bench in the case of Dev Brat Sharma vs. Income Tax Officer, I.T.A. No.493/Asr/2018

- (7) Order of ITAT, Delhi Bench in the case of Income Tax Officer vs. M/s Aditya Narayan Verma (HUF) [2017] 88 taxmann.com 840 (Delhi-Trib)
- (8) Order of ITAT, Delhi Bench in the case of ACIT vs. Anima Investment Ltd. [2000] 73 ITD 125 (Delhi)(TM)
- (9) Order of ITAT, Mumbai Bench in the case of Suresh C. Mehta vs. Income Tax Officer, I.T.A. No.33/Mum/2011
- (10) Judgment of Hon'ble Madras High Court in the case of CIT vs. L. G. Ramamurthy [1977] 110 ITR 453 (Madras)
- (11) Judgment of Hon'ble Gujarat High Court in the case of Sayaji Iron & Engg. Co. vs. CIT [2002] 121 Taxman 43 (Gujarat)
- (12) Judgment of Hon'ble Gujarat High Court in the case of Uttar Gujarat Vij Co. Ltd. vs Income Tax Officer [2024] 162 taxmann.com 201 (Gujarat)
- (13) Order of ITAT, Mumbai Bench in the case of Tata Sons Ltd. vs. ACIT [2016] 76 taxmann.com 126 (Mumbai)
- (14) Order of ITAT, Lucknow Bench in the case of Income Tax Officer vs. Arti Securities & Services Ltd. [2021] 123 taxmann.com 395
- (15) Order of ITAT, Allahabad Bench in the case of Obeetee Pvt. Ltd. vs. CIT, I.T.A. No.161/All/2015
- (16) Judgment of Hon'ble Patna High Court in the case of Bimla Singh vs. CIT [2009] 308 ITR 71 (Patna)
- (17) Order of ITAT, Nagpur Bench in the case of Yashoda Builders and Developers vs. ACIT, I.T.A. No.302/Nag/2024
- (18) Judgment of Hon'ble Bombay High Court in the case of Bharat Jayantilal Patel vs. UOI, I.T.A. No.302/Nag/2024
- (19) Judgment of Hon'ble Bombay High Court in the case of Bayer Material Science (P.) Ltd. vs. DCIT [2016] 66 taxmann.com 335 (Bombay)

In particular, learned Authorized Representative for the assessee placed reliance on Division Bench orders of Co-ordinate Bench of the Income Tax Appellate Tribunal, Lucknow in the case of Nirmal Singh vs. Income Tax Officer, I.T.A. No.83/Lkw/2024 (supra) and in the case of Prachi Leathers Pvt. Ltd. vs. Addl. CIT, I.T.A. No.27/Lkw/2010 (supra).

(C.1) The learned Departmental Representative relied on the assessment order and on the impugned appellate order of learned CIT(A).

(C.2) Both sides have been heard. Materials on record have been perused. It is not in dispute that the assessee requested the Assessing Officer to make a reference to Departmental Valuation Officer ("D.V.O." for short) for determination of fair market value of the property. It is also not in dispute that the Assessing Officer did not make a reference to D.V.O. despite specific request made by the assessee. In these facts, the Division Bench of the Income Tax Appellate Tribunal, Lucknow has already taken a view in favour of the assessee in the case of Nirmal Singh vs. ITO (supra), the relevant part of which is reproduced below:

*"8. We have heard both sides. We have perused the materials available on records. It is not in dispute that vide letter dated 11/11/2021, the assessee requested for reference to Valuation Officer for determination of fair market value of the property purchased by the assessee and the property sold by the assessee. The provisions of Section 50C(2) of the Act as well as proviso to Section 56(2)(vii)(b) of the Act; mandate reference by the Assessing Officer to the Valuation Officer when the assessee claims before the Assessing Officer that the value adopted or assessed or assessable Stamp Valuation Authority exceeds the fair market value of the property as on the date of transfer. It is also not in dispute that the Assessing Officer failed to make reference to Valuation Officer, as mandated by the aforementioned provisions of law. In this regard, we find that the issue is squarely covered in favour of the assessee by order of Co-ordinate Bench of ITAT Delhi in the case of ITO Vs. M/s. Aditya Narain Verma (HUF) (supra). In this case, the request of the Departmental Representative that the matter may be set aside to the file of the Assessing Officer for referring the case to Valuation Officer, was rejected. The relevant portion of the order is reproduced as under: -*

*"4.1 On the very perusal of the provisions laid down under section 50C of the Act reproduced hereinabove, we fully concur with the finding of the ld. CIT (Appeals) that when the assessee in the present case had - claimed before Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub section (1) exceeds the fair market value of the property as on the date of transfer, the Assessing Officer should have referred the valuation of the capital asset to a valuation officer instead of adopting the value taken by the state*

*authority for the purpose of stamp duty. The very purpose of the Legislature behind the provisions laid down under sub section (2) to section 50C of the Act is that a valuation officer is an expert of the subject for such valuation and is certainly in a better position than the Assessing Officer to determine the valuation. Thus, non-compliance of the provisions laid down under sub section (2) by the Assessing Officer cannot be held valid and justified. The Hon'ble' jurisdictional High Court of Allahabad in the case of Shashi Kant Garg (supra) has been pleased to hold that it is well settled that if under the provisions of the Act an authority is required to exercise powers or to do an act in a particular manner, then Bat power has to be exercised and the act has to be performed in that manner alone and not in any other manner. Similar view has been expressed by the other decisions cited by the Ld. AR in this regard hereinabove. The first appellate order on the issue is thus upheld. The grounds are accordingly rejected."*

9. *Respectfully following the aforesaid order of Delhi Bench of ITAT of Delhi in the case of ITO Vs. M/s. Aditya Narain Verma (HUF) (supra), we hold that the additions made by the Assessing Officer amounting to Rs.2,14,22,053/- and Rs.49,11,947/-, as aforesaid, without reference to the Valuation Officer as mandated by law, has no legs to stand and is unsustainable; having regard to applicable law as well as facts and circumstances of the present case before us. Accordingly, we set aside the impugned appellate order dated 03/01/2024 of the Ld. CIT(A) and we direct the Assessing Officer to delete the aforesaid additions of Rs. 2,14,22,053 and Rs. Rs.49,11,947/-.*

10. *Since we have already directed the Assessing Officer to delete the aforesaid additions of Rs. 2,14,22,053 and Rs. Rs.49,11,947/-, the remaining arguments advanced by both sides are merely academic in nature and need not to be adjudicated."*

The orders in the case of Mohd Ilyas Ansari vs. Income Tax Officer [2021] 123 taxmann.com 122 (Mumbai-Trib), Hari Om Garg vs Income Tax Officer, I.T.A. No.342/Agra/2017, ACIT vs. Lalitha Karan in I.T.A. No.1130/Hyd/2015, Dr. Sanjay Chobey (HUF) vs. ACIT, I.T.A. No.140/Agr/2018, Dev Brat Sharma vs. Income Tax Officer, I.T.A. No.493/Asr/2018, Income Tax Officer vs. M/s Aditya Narayan Verma (HUF) [2017] 88 taxmann.com 840 (Delhi-Trib) also support the case of the assessee.

(C.2.1) Considering the synopsis filed from the assessee side [referred to in foregoing paragraph (B.1) of this order], the relevant precedents mentioned earlier in this order and submissions made at the time of hearing, it is found that the issue in dispute in the present appeal regarding aforesaid addition of Rs.11,59,091/- is covered in favour of the assessee and against Revenue vide order of Lucknow Bench of ITAT in the case of Nirmal Singh vs. ITO (supra). It is also covered in favour of the assessee, vide aforesaid precedents in the cases of Mohd Ilyas Ansari vs. Income Tax Officer [2021] 123 taxmann.com 122 (Mumbai-Trib), Hari Om Garg vs Income Tax Officer, I.T.A. No.342/Agra/2017, ACIT vs. Lalitha Karan in I.T.A. No.1130/Hyd/2015, Dr. Sanjay Chobey (HUF) vs. ACIT, I.T.A. No.140/Agr/2018, Dev Brat Sharma vs. Income Tax Officer, I.T.A. No.493/Asr/2018, Income Tax Officer vs. M/s Aditya Narayan Verma (HUF) [2017] 88 taxmann.com 840 (Delhi-Trib). Respectfully following these precedents and in the specific facts and circumstances of the present case, the impugned appellate order of the learned CIT(A) is set aside and the Assessing Officer is directed to delete the aforesaid addition of Rs.11,59,091/-.

(D) As the aforesaid addition of Rs.11,59,091/- has been deleted, ground No. 6 of appeal is treated as allowed. The remaining grounds of appeal are merely academic (as the addition of Rs.11.59.091/- has already been deleted); hence not being decided.

(E) In the result, the appeal is partly allowed for statistical purposes.

(Order pronounced in the open court on 30/01/2026)

Sd/.  
**(ANADEE NATH MISSHRA)**  
Accountant Member

Dated:30/01/2026

\*Singh

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. D.R., I.T.A.T.,