

IN THE INCOME TAX APPELLATE TRIBUNAL
"H (SMC)" BENCH, MUMBAI

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.8244/MUM/2025
(Assessment Year 2017-18)

Zahida Bano Mohammad Yusuf Shaikh

A/10 Jai Hind Society,
Asalpha Gahtkopar Link,
RO Mohili Village Sakinaka,
Mumbai - 400072
PAN: BUUPS3134C

..... Appellant

v/s

Income Tax Officer, Ward-41(4)(4),

Aayakar Bhavan, M.K. Road,
Mumbai - 400020

..... Respondent

Assessee by : Ms. Shama Mohd. Ismail Patel, CA

Revenue by : Shri Pravin Salunkhe, Sr.DR

Date of Hearing - 28/01/2026

Date of Order - 30/01/2026

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal against the impugned order dated 07.10.2025, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2017-18.

2. The solitary grievance of the assessee is against the addition made under section 56(2)(vii)(b) of the Act.

3. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee is an individual, and for the year under consideration, filed her return of income on 30.09.2017, declaring a total income at Rs.4,26,590/. On the basis of the information received from DIT(I & CI), Mumbai that the assessee has entered into a transaction of purchase of immovable property, wherein the assessee has not transacted as per the stamp value rate of the property, notice under section 148 of the Act was issued to the assessee on 22.07.2022. During the proceedings pursuant to the notice issued under section 148 of the Act, it was noticed that the assessee has entered into a transaction of purchase of immovable property for Rs.25 Lakh. However, the value of the said property as determined by the Stamp Duty Authority was Rs.39,74,735/-. Since there was a difference of Rs.14,74,735/- between the registration value and the value determined by the Stamp Duty Authority, the assessee was asked to show cause as to why the difference should not be taxed under section 56(2)(vii)(b) of the Act. In response, the assessee submitted that the said property is MHADA-registered and its value is determined by the relevant state authorities, which make it public by issuing circulars or advertisements. The assessee submitted that she purchased the property well above the price range declared by the MHADA authorities during the year under consideration.

4. The Assessing Officer ("AO"), vide order dated 02.05.2023 passed under section 147 read with section 144B of the Act, disagreed with the submissions of the assessee and made an addition of Rs.14,74,735/- under section 56(2)(vii)(b) of the Act.

5. Before the learned CIT(A), the assessee could not respond to any of the notices issued through ITBA. Accordingly, the learned CIT(A) dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

6. During the hearing, the learned Authorised Representative ("learned AR") submitted that the assessee is a senior citizen and is unable to read and write in English. It was further submitted that she is literate only in Urdu, which significantly limits her ability to independently manage and comply with tax-related formalities. Thus, she is compelled to rely on others to handle her tax compliance requirements. It was further submitted that since the notices were issued by the learned CIT(A) through ITBA portal, due to her limitations, the assessee could not respond to any of the notices issued by the learned CIT(A). On merits, the learned AR submitted that pursuant to the query raised under the RTI Act, the assessee came to know that the price of a similar property in a similar locality in MHADA is much below the consideration paid by the assessee. The learned AR submitted that these details were also furnished by the assessee before the AO. However, the same were not taken into consideration while making the impugned addition. The learned AR submitted that the submissions in this regard were also

included in the statements of fact filed by the assessee along with her appeal before the learned CIT(A).

7. On the other hand, the learned Departmental Representative vehemently relied upon the orders of the lower authorities.

8. Having considered the submissions of both sides and perused the material available on record, we find that in the present case, the impugned addition under section 56(2)(vii)(b) of the Act has been made as the assessee purchased immovable property for a consideration which was less than the value determined by the Stamp Duty Authority. As per the assessee, the said property was purchased from MHADA at the value determined by the said authority. It was further the claim of the assessee that the said property, along with flats constructed by MHADA, is for the economically weaker section and does not command the same rate in the open market. In support of its contention that the assessee purchased the property at the higher rate, the assessee has placed reliance upon the information received under the RTI Act.

9. Before proceeding further, it is relevant to note the provisions of section 56(2)(vii)(b)(ii) which reads as follows: -

"(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:

.....

(c)

Provided that where the stamp duty value of immovable property as referred to in sub-clause (b) is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of sub-clause (b) as they apply for valuation of capital asset under those sections :"

10. Thus, as per the provisions of section 56(2)(vii)(b)(ii) of the Act, if any individual or HUF received any immovable property for a consideration which is less than stamp duty value of the property by an amount exceeding Rs.50,000/-, then the stamp duty value of such property as it exceeding such consideration shall be chargeable to income tax under the head "income from other sources". The first proviso to section 56(2)(vii)(b) provides that where the stamp duty of the immovable property as referred to in sub-clause (b) is disputed by the assessee on the grounds as mentioned in section 50C(2) of the Act, the AO may refer the valuation of such property to a Valuation Officer. In this regard, it is relevant to note the provisions of section 50C(2) of the Act, which reads as follows: -

"(2) Without prejudice to the provisions of sub-section (1), where—

(a) the assessee claims before any Assessing Officer that the value adopted or assessed 16[or assessable] by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;

(b) the value so adopted or assessed or assessable by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act,

1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

Explanation 1.— For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

Explanation 2.— For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty."

11. In the present case, it cannot be disputed that the value adopted by the stamp duty authority exceeds the value of the residential flats purchased by the assessee on the date of transfer, and the value so adopted is also not in dispute in any appeal, revision or reference before any Authority, Court or High Court. Thus, both the conditions of section 50C(2) of the Act are fulfilled in the present case. Accordingly, we are of the considered view that the AO erred in not referring the valuation of the residential flats to the DVO. Further, the impugned order also suffers from the same vice, as despite recording submission of the assessee in this regard, no reference was made to the DVO for the valuation as per the provision of the Act. Accordingly, in view of the facts and circumstances as noted above, we deem it appropriate to restore this issue to the file of the AO for *de novo* adjudication after seeking a valuation report from the DVO as per the provisions of the Act. Needless to mention, no order shall be passed without affording a reasonable and adequate opportunity of hearing to the assessee. As a result, the impugned order is set aside, and the grounds raised by the assessee are allowed for statistical purposes.

12. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 30/01/2026

**Sd/-
GIRISH AGRAWAL
ACCOUNTANT MEMBER**

**Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

MUMBAI, DATED: 30/01/2026

Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai.