

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M. JOSHI, JUDICIAL MEMBER

ITA No.129/Ind/2025
Assessment Year:2016-2017

Devyani Deepak Rawtal, Flat No.F-1201 Godrej Anandam World City, Model Mill Compound, Ganesh Perth, Nagpur (Assessee/Appellant)	<u>बनाम/</u> Vs.	ITO (IT & TP) Bhopal (Revenue/Respondent)
PAN: AJDPR3678M		
Assessee by	Ms. Madhura Pai, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	14.01.2026	
Date of Pronouncement	03.02.2026	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by final order of assessment bearing DIN: ITBA/AST/S/147/2024-25/1071274337(1) dated 17.12.2024 passed by learned ITO (IT&TP), Bhopal ["AO"] u/s 147 r.w.s. 144/144C(13) of the Income-tax Act, 1961 ["the Act"], pursuant to the directions dated 28.11.2024 issued by learned Dispute Resolution Panel-2, Mumbai ["DRP"] u/s 144C(5) of the Act for Assessment-Year ["AY"] 2016-17, the assessee has filed this appeal.

2. The background facts leading to present appeal are as under:
- (i) The assessee-individual did not file any return of income of AY 2016-17 under consideration. The AO, on the basis of information available in "RMS-Non filing of Return-PAN Cases" revealing certain financial transactions undertaken by assessee in the previous year 2015-16 relevant to AY 2016-17, completed the process of section 148A(d) and thereafter issued a notice u/s 148 to assessee so as to undertake the proceedings of assessment u/s 147. During assessment proceedings, the AO raised certain queries to which the assessee filed replies. The AO considered assessee's submissions.
 - (ii) Thereafter, on 16.03.2024, the AO sent a draft assessment-order u/s 144C(1) to assessee proposing certain variations.
 - (iii) On 12.04.2024, the assessee filed his objections to AO/Ld. DRP u/s 144C(2) against the variations proposed in draft assessment-order.
 - (iv) On 28.11.2024, Ld. DRP passed order u/s 144C(5) giving directions to AO and approving partially the variations proposed by AO.
 - (v) On 17.12.2024, the AO passed final assessment-order u/s 147 r.w.s 144/144C(13) after making the variations approved by Ld. DRP and thereby assessing total income at Rs. 13,11,180/-.
 - (vi) Aggrieved, the assessee has come in next appeal before us.

3. Subsequent to filing of appeal, the assessee raised following additional ground:

"The notice dated 14th March, 2023 issued under section 148 of the Act is void ab initio as the same is issued beyond the statutory time limit of 3 years."

However, at the time of hearing, Ld. AR for assessee made a prayer to withdraw this additional ground. Ld. DR for revenue does not have any objection if the withdrawal is allowed. **Accordingly, the additional ground is dismissed as withdrawn.**

4. Now, we take up the original grounds raised by assessee in Form No. 36 reading as under:

"1. On the facts and in the circumstances of the case and in law the Ld. AO/Dispute Resolution Panel ('DRP') erred in upholding the addition under section 56(2)(vii)(b) of the Income Tax Act, 1961 ("Act") amounting to Rs. 10,98,896/-being 50% share of the difference between the stamp duty valuation and the purchase consideration as per the purchase agreement. The said addition being unwarranted on facts and in law, needs to be wholly deleted.

2. Without prejudice to the above the Ld. AO/DRP erred in upholding the aforesaid addition without referring the matter to the Valuation Officer (DVO) as per the provisions of section 50C of the Act."

Ground No. 1:

5. In this ground, the assessee challenges the addition of Rs. 10,98,896/- made by AO u/s 56(2)(vii)(b) on account of property purchased for a consideration less than the Stamps Authority Valuation.

6. Facts apropos to this ground are such that the assessee and her husband (Shri Deepak Rawtal) jointly purchased a property for Rs. 1,21,87,707/- whose market value (Stamps Authority Valuation) was Rs. 1,43,85,500/-. The AO assessed the 50% of inadequate consideration of Rs. 21,97,793/- [Rs. 1,43,85,500 (-) Rs. 1,21,87,707] amounting to Rs. 10,98,896/- as the income of assessee under the head "Income from other sources" u/s 56(2)(vii)(b). The CIT(A) upheld AO's action.

7. Before us, Ld. AR for assessee submitted that the impugned purchase of property was done from a reputed and listed company "Godrej Properties Ltd." at a fair price and the seller is not a related party to assessee. She submitted that the purpose of section 56(2)(vii)(b) is to curb tax evasion by payment of money over and above fair market value but in the facts of present case, there is no question of any tax evasion since the purchase itself is made from a reputed listed company. Therefore, the invocation of section 56(2)(vii)(b) by AO is wrong for this very reason.

8. However, from a bare reading of law, we find that the provision of section 56(2)(vii)(b) is statutory/automatic and the difference of actual purchase consideration paid and Stamps Authority Valuation is treated as taxable income of purchaser (assessee in present case). There are certain specific exceptions prescribed by Govt. for appropriate situations but the assessee's case does not fall in any of the exceptions. The pleading made by Ld. AR that the purchase from a "reputed listed company" makes the case of

assessee not amenable to section 56(2)(vii)(b), does not have any acceptance in the provision of section 56(2)(vii)(b) and we are afraid that we can accept such a pleading. Accordingly, we are unable to accept the submission made by Ld. AR, the same is rejected and consequently **Ground No. 1 is also dismissed.**

Ground No. 2:

9. In this ground, the assessee claims that the AO/DRP has erred in making/upholding impugned addition without referring the matter to the Departmental Valuation Officer (DVO) as per provisions of section 50C(2) of the Act.

10. For this ground, Ld. AR for assessee instantly carried us to Page No. 49 of Case-file and demonstrated that the assessee made following submission to Ld. DRP in the objection filed u/s 144C(2):

"Furthermore, the assessee wishes to refer to Sec 56(2)(vii)(b) read with proviso as stated below:

".....(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 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:

It is hereby request before your goodself that before passing any adverse judgement, the assessee would request your goodself to kindly refer the valuation to a Valuation Officer instead of considering the Stamp Duty Value as fair market value as per Sec 50C."

11. Thereafter, Ld. AR submitted that the Stamps Authority Valuation is based on a static price notified by Stamps Department for all lands/properties located in a vast geographical area and the actual "fair market value" can differ depending upon several factors. That is why the Govt. has, in its wisdom, prescribed a specific provision in the Proviso to section 56(2)(vii)(b) [the said Proviso stands included in the objection filed by assessee, re-produced in preceding para] r.w.s. 50C(2), enabling assessees to get benefit of determination of "fair market value" by DVO and that is why the assessee made a specific request in objection. She re-emphasized that the assessee has purchased impugned property from a reputed listed company "Godrej Properties Ltd." at a "fair market value" and has not paid a single penny over and above the consideration agreed in documents. However, Ld. DRP has not given any head to the assessee's request and went on approving the variation/addition proposed by AO. Ld. AR relied upon decisions of (i) *ITAT, Ahmedabad in Bhavnaben Sanjaykumar Mistry Vs. ITO, ITA No. 1342/Ahd/2024* and (ii) *ITAT, Agra in Hari Om Garg Vs. ITO, ITA No. 342/Agra/2017* to contend that the Ld. DRP/AO must have made a reference to DVO before making impugned addition. She also referred the provisions of sub-sections (5), (6) and (7) of section 144C and submitted that

the DRP has wide powers of conducting enquiry or getting enquiry done from AO before issuing any direction and such power would include making a reference to the DVO by DRP himself or to alternatively direct the AO to make a reference to the DVO. Lastly, she requested that in the interest of justice and fair play also, the present matter needs to be remanded to AO with a direction for making reference to DVO and thereafter finalise this issue afresh. She submitted that the assessee would have no objection even if the AO would re-send this matter to the DRP while carrying out such exercise of fresh assessment.

12. Per contra, Ld. DR for revenue made a strong objection. He submitted that the provision of section 50C(2) is very clear according to which the assessee can make a claim only before AO for making reference to DVO. He submitted that the assessee did not make any such claim before AO and the request was made to DRP in the objection filed, which is not in accordance with section 50C(2) and which cannot help assessee. He submitted that the cases relied by Ld. AR are concerned with a situation in which the assessee raised claim before AO, therefore those cases are not applicable. He also submitted that the assessee has not filed any evidence to substantiate lower valuation of property as compared to Stamps Authority Valuation. He submitted that this matter cannot be set aside to AO.

13. We have considered the rival submissions, perused the material available on record and examined the issue before us. It is an undisputed

fact that the assessee has made a specific request in the objection filed u/s 144C(2), for making reference to DVO. Such objection strikes at the very foundation of the addition made by the AO as the determination of fair market value is the core basis for invoking the provisions of section 50C. The issue, therefore, clearly goes to the root of the matter and has a direct bearing on the correctness of the impugned addition. The Ld. DR for revenue has submitted that as per provision of section 50C(2), the claim for making reference to DVO could only be made to the AO and not to the DRP but filing of request by assessee to DRP may be a technical mistake for which substantial benefit permitted u/s 50C(2) cannot be denied. Even otherwise, the provision of sub-clause (b) of section 144C(2) itself prescribes that the assessee shall file his objections, if any, to the variation with (i) the DRP and (ii) the AO. Hence, the objection to DRP cannot be divorced from AO's proceedings. In fact, to meet this requirement of law, the assessee must have necessarily filed objection to both DRP and AO. Although this factual aspect of filing to DRP as well as AO, is not pointed out by either side during hearing but still the fact remains that the law itself requires filing of objection to both DRP and AO. That means, the request filed by assessee in the objection filed u/s 144C(2) to DRP for making a reference to DVO would also be a request filed to AO. Therefore, considering the entire conspectus of case and also in order to grant substantial justice to assessee and to ensure proper determination of fair market value in accordance with the provision of section 50C(2), we deem it appropriate to set aside this issue to the file of

the AO with a direction to make a reference to the DVO as contemplated u/s 50C(2) and thereafter decide the issue afresh after providing due opportunity of being heard to the assessee. Needless to mention that while finalizing this issue, the AO would be at liberty to invoke the procedure of DRP u/s 144C in accordance with law and the assessee shall not have any objection if the AO does so. The assessee is also directed to co-operate in the entire proceedings and furnish necessary details/documents as may be called for and as may be required for a meritorious disposal of issue.

Accordingly, this ground of appeal is allowed for statistical purposes.

14. Resultantly, this appeal is partly allowed for statistical purpose.

Order pronounced in open court on 03/02/2026

Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 03/02/2026

Patel/Sr. PS

Devyani Deepak Rawtal
ITA No. 129/Ind/2025 - AY 2016-17

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Senior Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore