

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH MUMBAI

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 4500/MUM/2025
Assessment Year: 2018-19**

Nakoda Developers Room No. 1 & 2, 199/201 Solitaire Mansion, Kalbadevi Road, Near Cotton Exchange, Mumbai - 400002 (PAN: AAKFN0607N)	Vs.	DCIT Circle 23(1), Piramal Chamber, Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Bhavesh Shah, AR
Revenue : Shri Leyaqt Ali Aafaqui, Sr. DR

Date of Hearing : 12.11.2025
Date of Pronouncement : 09.02.2026

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2025-26/1076198744(1), dated 14.05.2025, passed against the assessment order by National E-Assessment Centre, Delhi, u/s. 143(3) r.w.s 143(3A) & 143(3B) of the Income-tax Act (hereinafter referred to as the “Act”), dated 13.04.2021 for Assessment Year 2018-19.

2. Grounds taken by assessee are reproduced as under:

1. *On facts and in law, the learned Commissioner of Income Tax (Appeals) (CIT (A)) erred in confirming the addition of Rs. 28,66,000 under section 56(2)(x) of the Income Tax Act, 1961, ignoring the bona fide nature of the transaction and the fact that the purchase was executed at fair market value based on a registered valuer's report.*

2. *The learned CIT (A) failed to appreciate that the appellant has carried out the purchase transaction for the purpose of business i.e., the property purchased is a stock-in-trade and hence, no tax is attracted in the hands of the buyer, even if the purchase price is less than SDV.*

3. *The learned CIT (A) erred in relying upon the preliminary valuation of the DVO which was valued by taking into consideration the future market value of the new project and factoring the costs rather than taking the current market value of the existing old building.*

4. *The learned CIT (A) erred in relying upon the preliminary valuation of the DVO obtained post-assessment, without providing an effective opportunity of cross-examination or rebuttal to the appellant.*

5. *The learned CIT (A) failed to appreciate the valuation methodology and report furnished by the appellant for independent registered valuer which is more in consonance with the actual transaction value and market trends.*

6. *The learned CIT (A) failed to appreciate that as per the Section 142A(6) of the Income Tax Act, 1961, the preliminary valuation report of the DVO was not shared with the appellant within the timelines mentioned in the provision.*

7. *The learned CIT (A) failed to appreciate that as per the Section 142A(7) of the Income Tax Act, 1961, the opportunity of being heard was not provided to the appellant by the Assessing Officer as per the mentioned provision.*

8. *The learned CIT (A) failed to appreciate that the final valuation report of the DVO is not yet shared with the appellant.*

9. *The addition confirmed is unjust, arbitrary, and bad in law as it disregards the principles of natural justice and opportunity of being heard was not provided.*

10. *The above grounds of appeal are without prejudice to one another and the appellant craves leave to add, alter, amend, delete or modify any one of the above grounds of appeal.*

3. Brief facts of the case are that assessee is a partnership firm engaged in a business of real estate development. Assessee filed its return of income reporting a total income at Rs.3,67,300/-. Facts relevant to the issue under consideration are that assessee had executed a conveyance deed dated 27.03.2017 with M/s. Jayant

Constructions for purchasing an immovable property, i.e., land, along with two structures thereon, for a consideration of Rs.1,75,00,000/-. Subsequently, a supplementary deed of conveyance was executed on 29.05.2017 in continuation of the earlier conveyance deed, whereby the total consideration was revised and fixed at Rs.3,25,00,000/-. Sub-Registrar valued the said property at Rs.4,39,56,00/- for the purpose of stamp duty which was not agreed upon by the assessee. Ld. Assessing Officer invoked provisions of section 56(2)(x) and made the addition of Rs.1,14,56,000/- to the income of the assessee for the difference between the stamp duty value and the revised consideration, i.e., Rs.4,39,56,000 – Rs.3,25,00,000. Matter was referred to the Department Valuation Officer (DVO) by the ld. Assessing Officer for furnishing a valuation report, however, the same remained pending to be received by the Assessing Officer. Ld. Assessing Officer thus, completed the assessment pending receipt of ld. DVO's report by making the addition towards the difference amount u/s.56(2)(x) with a remark that effect of valuation report will be considered subsequently as per provisions of section 155(15).

3.1. Assessee went in first appeal before the ld. CIT(A). In the course of first appellate proceedings, preliminary valuation report from the ld. DVO was received, dated 17.01.2022 estimating the fair market value of the impugned property transaction at Rs.3,56,66,000/-. Considering this report, ld. CIT(A) reduced the addition so made by the ld. Assessing Officer to Rs.28,66,000/-, i.e., Rs.3,53,66,000 – Rs.3,25,00,000. Assessee is in appeal before the Tribunal for the addition so sustained by the ld. CIT(A), i.e., Rs.28,66,000/-

4. At the outset, the fact of valuation arrived at by ld. DVO is not in dispute which has resulted into reduction of the addition made by ld.

Assessing Officer by applying provisions to section 56(2)(x). In this regard, it is important to take note of the proviso contained in clause(x) to section 56(2), whereby addition to the extent of 10% towards the actual consideration and the stamp duty value has been waived off for the purpose of taxation under the said provisions of section 56(x).

5. Reliance is placed on the following judicial precedents which dealt with similar issues:

- a. Maria Fernandes Cheryl ITA No. 4850/Mum/2019 A.Y 11-12 dated 15.01.2021
- b. Rajeev Kumar Agarwal vs. ACIT (2014) 45 taxmann.com 555 (Agra)
- c. CIT vs. Ansal Landmark Township Pvt. Ltd. (2015) 61 taxmann.com 45 (Del)

5.1. In the case of Maria Fernandes Cheryl (supra), it was held that amendment made by introducing proviso for tolerance band of 5% and later on increased to 10% applied w.e.f. 01.04.2003 when the provisions of section 50C were introduced.

5.2. It is also noted that third proviso to section 56(2)(vii) provides reference to section 50C for determining the valuation of the property by Valuation Officer. The third proviso to section 50C provides that where the value adopted or assessed or assessable by the Stamp valuation Authority does not exceed 10% of the consideration received shall be taken as full value of consideration, i.e., if the difference is less than 10%, the same can be taken as fair market value. Though this provision is brought in the statute w.e.f. 01.04.2019, however, Courts have consistently held that the same is a beneficial provision and therefore benefit should be given with retrospective effect.

6. Thus, in the given set of facts and considering judicial precedents as well as provisions of the Act, we find that assessee is eligible for 10% tolerance limit u/s.56(2)(x)(b)(B). Accordingly, the addition made by the Id. CIT(A) is deleted and the grounds raised by the assessee are allowed.

7. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 09 February, 2026

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 09 February, 2026

MP, Sr.P.S.

Copy to :

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- 2 The Respondent
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BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai