IN THE INCOME TAX APPELLATE TRIBUNAL

"H(SMC)" BENCH, MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.8667/MUM/2025
(Assessment Year : 2018-19)

Pramod Salvi
153, Poornanand CHS, CR Dungarshi Road,
Walkeshwar,
Mumbai - 400006. ..... Appellant
PAN: AAJPS3189B

v/s

Income Tax Officer, Ward – 2(1)(1),
Aaykar Bhavan, Maharishi Karve Road,
Mumbai- 400020 …… Respondent

Assessee by : Shri Tanmay Phadke, Adv.
Revenue by : Shri Pravin Salunkhe, Sr. DR

Date of Hearing – 11/02/2026	Date of Order - 16/02/2026

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal against the impugned order dated 29.10.2025, 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 2018-19.

2. The solitary grievance of the assessee is against the addition made under section 56(2)(x) of the Act in respect of two residential flats purchased by the assessee.

3. The brief facts of the case are that the assessee is an individual, and for the year under consideration, filed his return of income on 31.10.2018, declaring a total income of Rs. 6,440/-. The return filed by the assessee was selected for scrutiny, and statutory notices under section 143(2) and section 142(1) of the Act were issued and served on the assessee. On the basis of the Statement of Financial Transaction details available with the Department, it was observed that the assessee purchased two flats, namely Flat Nos. 5002 and 5003, Orchid Enclave, Wing-A, Mumbai Central, Mumbai, for a sale consideration of Rs. 2,04,50,000/- per flat. It was further observed that the Sub-Registrar assessed the value of the property on the date of registration of the sale deed for the purpose of stamp duty and registration at Rs. 2,27,01,500/- per flat. As there was a difference of Rs. 22,51,500/- between the sale consideration and the value determined by the Stamp Valuation Authority in respect of each property, the assessee was asked to show cause as to why the total difference amounting to Rs. 45,03,000/- between the sale consideration of the two flats and the stamp duty value, be not considered for addition as per the provisions of section 56(2)(x) of the Act. In response, the assessee submitted that both the flats were booked in the year 2007, and the price of the flats was also agreed between the parties in the year 2007. Thereafter, instalments were periodically made by the assessee as per the agreed terms. Thus, as per the assessee, the stamp duty value as on the date of booking of the flats should be considered for the purpose of section 56(2)(x) of the Act.

4. The Assessing Officer ("*AO*"), vide order dated 29.09.2021 passed under section 143(3) read with section 144B of the Act, disagreed with the submissions of the assessee and held that the Sub-Registrar had assessed the value of each flat at Rs. 2,27,01,500/- for the purpose of stamp duty and registration, therefore, the total consideration paid by the assessee for each flat, i.e., Rs. 2,04,50,000/-, was less than the stamp duty value of the property by more than Rs. 50,000/-. Thus, the AO held that the provisions of section 56(2)(x) of the Act are applicable in this case. The AO further held that the assessee did not dispute the valuation as per the Stamp Valuation Authority and, therefore, the same had become final. Accordingly, the AO proceeded to make an addition of Rs. 45,03,000/- under section 56(2)(x) of the Act to the total income of the assessee under the head "*Income from Other Sources*" for the year under consideration.

5. The learned CIT(A), vide the impugned order, dismissed the ground raised by the assessee on this issue and upheld the addition made by the AO under section 56(2)(x) of the Act. Being aggrieved, the assessee is in appeal before us.

6. We have considered the submissions of both sides and perused the material available on record.

7. Before proceeding further, it is relevant to analyse the provisions of section 56(2)(x)(b) of the Act, which are relevant for the adjudication of the issue at hand. Section 56(2)(x)(b) of the Act reads as follows: -

> *"(b) any immovable property,—*

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

(B) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:—

(i) the amount of fifty thousand rupees; and

(ii) the amount equal to five per cent of the consideration:

Provided that where the date of 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 agreement may be taken for the purposes of this sub-clause :

Provided further that the provisions of the first proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of agreement for transfer of such immovable property:

Provided also that where the stamp duty value of immovable property 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 this sub-clause as they apply for valuation of capital asset under those sections;"

8. Therefore, as per the provisions of section 56(2)(x)(b) of the Act, where any person receives any immovable property from any person or persons on or after 01.04.2017 either without consideration or for consideration, the stamp duty value of such property exceeding such consideration shall be considered as its income from other sources, if the amount of such excess is more than the amount mentioned in the section. The first proviso to section 56(2)(x)(b) of the Act provides 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 considered for the purpose of section 56(2)(x)(b) of the Act. The second proviso to section 56(2)(x)(b) of the Act imposes a condition on the applicability of the first proviso and provides that the provisions of the first proviso shall only be applicable where the amount of consideration, or part thereof, was paid by the assessee by a mode other than cash before the date of the agreement.

9. As per the assessee, on 04.04.2007, the assessee booked two flats, namely Flat nos.5002 and 5003, Orchid Enclave, Wing A, Mumbai Central, Mumbai, for a consideration of Rs. 2,04,50,000/- per flat. As per the assessee, in this regard, the assessee made a payment of Rs. 12,50,000/- per flat on 03.04.2007 and a payment of Rs. 7,50,000/- per flat on 07.05.2007. It is the plea of the assessee that, thereafter, as per the agreed schedule of payment, the assessee made the payments in respect of each of the flats from time to time.

10. During the hearing, the learned Authorised Representative ("learned AR") drew our attention to the separate allotment letters of even date 08.05.2010 issued by the builder, i.e., Neelkamal Realtors & Builders Pvt. Ltd., which form part of the paper book from pages 1-10. From the perusal of these allotment letters, we find that the builder agreed to allot Flats bearing no. 5002 and 5003 on the 50th Floor in Wing-A of the building known as "*Orchid Enclave*", situated at Mumbai Central, Mumbai, ad-measuring 959 sq. ft. of carpet area, for a consideration to be paid as per the schedule of payment. We further find that vide these allotment letters, the builder also acknowledged receipt of payment of Rs. 20,00,000/- per

flat, as a part payment, made via cheques by the assessee. It is also pertinent to note that the said allotment letters were also signed by the assessee as acceptance of the terms of allotment.

11. As per the assessee, on 20.03.2018, the builder entered into an agreement for the sale of these flats to the assessee. From the perusal of these agreements for sale, forming part of the paper book from pages 6-85, we find that the agreements duly record the payment made by the assessee from 04.04.2007 till 21.12.2016 in respect of each of these flats. It is evident from the perusal of these agreements that there was no change either in terms of the allotted flats or in the carpet area of these flats, which was initially agreed between the parties in respect of which the allotment letters were issued on 08.05.2010.

12. In the present case, from the perusal of the record, it is thus evident that the terms as agreed vide allotment letter dated 08.05.2010 were complied with by both parties and payment as per the schedule was also made to the builder. Thus, the allotment letter was not only duly accepted by the parties, but other conditions were also complied with. We find that the Coordinate Bench of the Tribunal in Salochana Saijan Modi vs ITO, reported in [2023] 152 taxmann.com 56 (Mumbai –Trib.), held that the allotment letter can be considered as an agreement to sell. The relevant findings of the Coordinate Bench, in the aforementioned decision, are reproduced as follows: –

> *"11. …… According to the AO and Ld.CIT(A), the allotment letter is not in the nature of the agreement for sale. However, we find that the Tribunal in the*

case of Parth Dashrath Gandhi v. Addl./Dy./Asstt. CIT [IT Appeal No. 1990 (Mum.) of 2022, dated 31-1-2023 held that "the allotment letter should be considered as agreement for sale." The relevant finding of the Tribunal (supra) is reproduced as under: -

> *6. 'We heard the parties and perused the record. We notice that the AO has considered the stamp duty value as on the date of registration of the agreement to sell for the purpose of determining the applicability of sec.56(2)(x) of the Act. However, the facts that the assessee had been allotted both the properties by way of allotment letters and further, the assessee has also paid instalments as per that letter are not disputed. Hence, the question that arises is whether the allotment letter can be considered as "agreement to sale" within the meaning of the provisos to sec. 56(2)(x) of the Act, which states that the stamp duty valuation as on the sale of sale agreement should be taken into consideration for the purpose of sec.56(2)(x),provided that amount of consideration or part thereof had been paid as per the mod prescribed on or before the date of agreement for transfer of such immovable property.*
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> *7. Before us, the Ld A.R placed reliance on the decision rendered by the coordinate bench in the case of Mr. Sajjanraj Mehta vs. ITO (ITANo.56/Mum/2021 dated 5-09-2022), wherein it was held that the date of allotment letter can be taken as date of agreement of sale for the purposes ofsec.56(2)(x) of the Act. On the contrary, the Ld D.R placed his reliance on the decision rendered by another co-ordinate bench, which was relied upon by AO & CIT(A), viz., Sujauddian Kasimsab (supra).*
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> *8. With regard to the decision rendered in the case of Sujauddian Kasimsab (supra), the Ld A.R submitted that the said decision has been rendered on the basis of facts prevailing in that case. The assessee, in the above said case, had paid Rs. 3.00 lakhs before the date of agreement, but the same was described as "earnest money deposit" in the Agreement, meaning thereby, the assessee did not fulfill the condition prescribed in sec.56(2)(x) of the Act. The Ld A.R further submitted that the Tribunal did not consider the effect of second proviso to sec.56(2)(x) of the Act in the above said case. We agree with the submissions of Ld A.R with regard to the distinguishing features pointed out in the decision rendered by the co-ordinate bench in the case of Sujauddian Kasimsab (supra). Hence, we are of the view that the above said decision could not lend support to the case of the revenue.*
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> *9. On the contrary, we are of the view that the decision rendered by another co-ordinate bench in the case of Mr Sajjanraj Mehta (supra) is applicable to the facts of the present case. The decision rendered in the case of Mr Sajjanraj Mehta by the co-ordinate bench is extracted below, for the sake of convenience:-*
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> *"10. We have gone through the order of the A.O, Ld. CIT(A) and various submissions of assessee dated 6-10-2021. Vide pg no-23 to 27 of paperbook we have observed the payment made by the assessee to the developer on 17-102011 amounting to Rs. 14 lacs vide cheque no 906740, Bank of Maharashtra to enter into an agreement cum acknowledgement of payment made and other terms and conditions about the property. This agreement between assessee and developer clearly confirms the amount of consideration along with other terms and conditions relating to levy of stamp duty, service tax and other charges to be paid by the assessee.*
>
> *11. The finding of the A.O vide pg no-4, para-2.6 wherein he observed that assessee has deposited Rs. 14 lacs with the developer to year mark the said*

premises for Rs. 70 lacs. Even if for the time being it is assumed that this agreement is merely a letter of intent, still amount mentioned in this so called letter of intent can't be changed by either of the party. At the max the parties involved may opt for exit from the transaction but amount of consideration can't be changed. This transaction of the assessee has to be analysed in commercial parlance, without finalisation of consideration nobody will deposit 20% of the final consideration. The vitality of the agreement further found force from the behaviour of the assessee as confirmed by the A.O also that assessee paid further Rs. 34.5 lacs till financial year 2012-13. Assessee also paid Rs. 1,00,285/- vs VAT, Rs1,35,187/- as service tax, Rs. 5,02,000/-as stamp duty and Rs. 30,000/-as registration charges.

12. The chronology of the events confirms that the finding of the A.O treating the agreement of the assessee as letter of intent is not correct. In this matter treating the said agreement as letter of intent shows an over thinking and hyper technical interpretation at the end of the A.O. assessee's case clearly falls in the proviso to section 56(2)(vii)(b). For sake of clarity we are reproducing herein below the relevant portion of proviso 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 purposes 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".

13. We further relied on following judicial pronouncement of coordinated benches of ITAT, Hon'ble High Court and Apex Court as under:

(a) "Siraj Ahmed Jamalbhai Bora vs. ITO Ward-1(3)(1)ITA No. 1886/M/2019 dtd. 28/10/2020, (Mum.) (Trib.):
Date of registration irrelevant for Sec 56(2)(vii)(b) as substantial obligation discharged on date of agreement.

(b) Radha Kishan Kungwani vs. ITO Ward - 1(2) ITA No. 1106/JP/2018dtd. 19/08/2020, [185 ITD 433 (Jaipur - Trib.)]
Where assessee entered into agreement for purchase of flat and had made certain payment at time of booking of flat, stamp duty valuation or fair market value of immovable property was to be considered as on date of payment made by assessee towards booking of flat

(c) Sanjay Dattatraya Dapodikar v/s ITO Ward - 6(2), Pune ITA No. 1747/PN/2018 dtd. 30/04/2019(Pune) (Trib)
Where date of agreement for fixing amount of consideration for purchase of a plot of land and date of registration of sale deed were different but assessee, prior to date of agreement, had paid a part of consideration by cheque, provisos to section 56(2)(vii)(b) being fulfilled, stamp value as on date of agreement should be applied for purpose of said section

(d) Ashutosh Jhavs. ITO Ward-2(5), Ranchi ITA No. 188/Ranchi/2019 dtd.30/04/2021, [190 ITD 450 (Kolkata - Trib.).]
Where assessee purchased a property and made part payment of sale consideration by cheque on very next day of execution of purchase agreement and registry was done after a year, since such part payment made by cheque on very next day of execution of agreement was towards fulfilment of terms of purchase contract itself and there was no mala fide or false claim on part of assessee, no addition could be made on account of difference

between amount of sale consideration for property shown in purchase agreement and stamp duty value of said property on date of registry by invoking section 56(2)(vii)(b)

(e) Dy. CIT-5(3)(1) vs. Deepak Shashi Bhusan Roy ITA No. 3204 &3316/M/2016 dtd. 30/07/2018(Mum.) (Trib.)

In order to determine taxability of capital gain arising from sale of property, it is date of allotment of property which is relevant for purpose of computing holding period and not date of registration of conveyance deed

(f) Mohd. Ilyas Ansari v. ITO-23(2)(3), Mumbai [ITA No. 6174/M/2017dtd.06/11/2020, 186 ITD 407 (Mumbai - Trib.)]

Where Assessing Officer mechanically applied provisions of section 56(2)to difference between stamp duty value and actual sale consideration paid by assessee and made additions, without making any efforts to find out actual cost of property, additions made by Assessing Officer were to be set aside."

14. Similar property in the case of assessee's wife with similar transactions has been accepted by the same A.O without any addition for the same A.Y. Here we would like to rely on the decision of Hon'ble Gauhati HC.

"Gulabrai Hanumanbox. vs. Commissioner of Wealth-tax [198 ITR 131 (Gauhati) (HC).]Two different Assessees having similar/identical facts w.r.t valuation of property cannot be assessed with different rates for the same property. Thereby, the order passed by the Assessing officer for co-sharer of property is arbitrary and unjustified in law"

15. Keeping in view the facts of the case, chronology of events and respectfully following the pronouncements of the co-ordinated benches of ITAT, we delete the addition made by A.O and confirms that assessee is entitled to the benefits of proviso to Section 56(2)(vii)(b)."

10. Accordingly, following the above said decision, we hold that the respective allotment letters issued to the assessee should be considered as "Agreement to sell" for the purposes of sec.56(2)(x) of the Act. Since the assessee has paid the parts of consideration as per the terms and conditions of allotment through banking channels prior to the execution of Sale agreement, we are of the view that the provisos to sec.56(2)(x) shall apply to the facts of the present case. Accordingly, the stamp duty valuation as on the date of respective Allotment letters should be considered for the purposes of sec.56(2)(x) of the Act. Hence the AO was not justified in considering the stamp duty valuation as on the date of execution of agreement to sell.

11. On a perusal of record, we notice that the details of stamp duty value as on the date of respective allotment letters was not brought on record. Since we have held that the stamp duty valuation as on the date of respective allotment letters should be considered for the purpose of sec.56(2)(x) of the Act, it is imperative on the part of the assessee to show that the actual consideration was equal or less than the stamp duty valuation as on the date of issue of respective allotment letters. Accordingly, we are restoring this issue to the file of AO for the limited purpose of comparing the actual sale consideration with the stamp duty valuation as on the date of respective allotment letters. In the limited set aside, the AO shall take appropriate decision in accordance with law after affording adequate opportunity of being heard.'

12. The Ld.CIT(A) has relied on the decision of the Hon'ble Supreme Court in the case of Balbir Singh Maini (supra) but we find that in the said decision, following substantial questions were raised before the Hon'ble High Court:-

> *"(i) Whether the transactions in hand envisage a "transfer" exigible to tax by reference to section 2(47)(v) of the Income-tax Act, 1961 read with section 53-A of the Transfer of Property Act, 1882?*
> *(ii) Whether the Income-tax Appellate Tribunal, has ignored rights emanating from the JDA, legal effect of non registration of JDA, its alleged repudiation etc.?*
> *(iii) Whether "possession" as envisaged by section 2(47)(v) and section 53-A of the Transfer of Property Act, 1982 was delivered, and if so, its nature and legal effect?*
> *(iv) Whether there was any default on the part of the developers, and if so, its effect on the transactions and on exigibility to tax?*
> *(v) Whether amount yet to be received can be taxed on a hypothetical assumption arising from the amount to be received?"*

13. The Hon'ble Supreme Court accordingly, adjudicated on the issue of interpretation of the transfer defined u/s 2(47) of the Act and upheld the order of Hon'ble High Court. Therefore, ratio in the case of Balbir Singh Maini (supra) is not applicable over the facts of the instant case.

14. In view of the above discussion, we are of the opinion that the assessee fulfills the requirement of proviso 1 & 2 of section 56(2)(x)(b) of the Act and therefore, we feel appropriate to restore this issue to the file of the AO for limited purpose of comparing the stamp duty valuation as on the date of the allotment with the transaction value recorded in the registration document. Accordingly, the AO shall give effect to this decision after affording adequate opportunity of being heard to the assessee in terms indicated above. The Grounds raised by the assessee are accordingly, allowed."

13. As per the assessee, in view of the provisions of the first proviso to section 56(2)(x)(b) of the Act, the stamp duty value on the date of the allotment letters, i.e., 08.05.2010, should be taken into consideration for the purpose of section 56(2)(x)(b) of the Act. On the other hand, as per the Revenue, the value of the property assessed by the Sub-Registrar on the date of registration of the sale deed, i.e. on 20.03.2018, for the purpose of stamp duty and registration, should be considered for the purpose of section 56(2)(x) of the Act.

14. We find that, while deciding a similar issue, the Coordinate Bench of the Tribunal in Radha Kishan Kungwani v. ITO, reported in (2020) 120 taxmann.com 216 (Jaipur - Trib.), observed as follows: -

> *"Thus, as per clause (b) of sub-section (2)(vii), if the assessee has received immovable property for a consideration which is less than the stamp duty value, the value of such property as exceeds such consideration shall be chargeable to income tax under the head income from other sources. However, the first and second proviso carve out the exception for taking stamp duty value on the date of agreement prior to the date of registration if an amount of consideration or part thereof has been paid by any mode other than the cash before the date of agreement for transfer of such immovable property. Therefore, if there is an agreement between the parties, fixing the amount of consideration for transfer of immovable property prior to the date of registration and the purchaser has made the payment of consideration or part thereof before the date of that registered agreement for transfer by any mode other than cash then the value as determined for the stamp duty will be taken on the date of such earlier agreement. In the case in hand, all these facts are duly acknowledged by the parties in the registered agreement that earlier there was a booking of flat and the assessee paid part payment of consideration. Hence, the proviso first and second to section 56(2)(vii) of the Act would be applicable in the case and the stamp duty valuation or the fair market value of the immovable property shall be considered as on the date of booking and payment made by the assessee towards booking of the flat. Accordingly, the orders of the authorities below are set aside and the matter is remanded to the record of the A.O. to apply the stamp duty valuation as on 10/10/2010 when the assessee booked the flat and made then are payment of consideration and consequently, if any difference being the stamp duty valuation is higher than the purchase consideration paid by the assessee, the same would be added to the income of the assessee under the provisions of section 56(2)(vii)(b) of the Act."*

15. Therefore, respectfully following the aforesaid decisions, we are of the considered view that the allotment letter dated 08.05.2010 issued by the builder in respect of each flat can be considered as an agreement to sell in the present case for the purpose of section 56(2)(x)(b) of the Act. It is further evident from the record that the assessee also made part-payment of consideration in respect of each flat by a mode other than cash on or before the date of the allotment letter. Thus, we are of the considered view that the assessee satisfied the requirements of the second proviso to section

56(2)(x)(b) of the Act in the present case. Since, in the present case, the date of allotment letter, i.e., 08.05.2010, and the date of registration of agreement for sale, i.e., 20.03.2018, are not the same, in terms of the first proviso to section 56(2)(x)(b) of the Act, we are of the considered view that stamp duty value as on the date of the allotment letter, i.e., on 08.05.2010, should be taken into consideration for the purpose of section 56(2)(x)(b) of the Act. Accordingly, we delete the addition made by the AO by considering the stamp duty value on the date of registration of the agreement for sale, i.e., on 20.03.2018, and restore this issue to the file of the AO with a direction to consider the stamp duty value on the date of allotment letter, i.e. on 08.05.2010, for the purpose section 56(2)(x)(b) of the Act. We further direct that no order shall be passed without affording reasonable and adequate opportunity of being heard to the assessee. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 16/02/2026

Sd/-	**Sd/-**
VIKRAM SINGH YADAV	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 16/02/2026

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.