

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 7925/MUM/2025
Assessment Year: 2018-19**

Bihari Parmanand Kandhari,
401, Blue Nile Chs Ltd. 24th
Road, Near Tavaa Restaurant,
Mumbai-400050.
PAN NO. AAEPK 2159 A
Appellant

ACIT, Circle-23(1),
R. No. 511, 5th floor, Piramal
Chambers, Lalbaug, Parel,
Mumbai-400012.
Vs.
Respondent

Assessee by : Mr. Akshay Jain
Revenue by : Mr. Swapnil Choudhari, Sr. DR

Date of Hearing : 17/02/2026
Date of pronouncement : 23/02/2026

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 24.09.2025 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)'] for assessment year 2018-19, raising following grounds:

- 1. That on the facts and circumstances of the case and law, the Ld. CIT (A) failed to appreciate that the Ld. AO has travelled beyond his*



jurisdiction and made an addition with respect to the issue which was not the part of limited scrutiny.

2. That on the facts and circumstances of the case and law, the Ld. CIT (A) failed to appreciate that the Ld. AO erred by making addition u/s 56(2) of the Act of Rs. 3,92,87,988/- with respect to two properties.

3. That on the facts and circumstances of the case and law, the Ld. CIT (A) failed to appreciate that the Ld. AO erred by making addition u/s 56(2) of the Act without appreciating the fact that the market value of the aforesaid properties as on the date of allotment should be adopted instead of market value as on the date of registration.

4. That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in rejecting the additional evidence filed by the Appellant, including the bank statement, ready reckoner rate extract on the date of allotment, and the allotment letter.

5. That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in rejecting the allotment letter solely on the ground that it was unregistered.

6. That on the facts and circumstances of the case and in law, the Ld. CIT(A), based on remand report, erred in rejecting the admission of bank payment on the ground that only one entry appeared in the bank statement, without appreciating that the Appellant had paid Rs. 2.5 lakh each for both properties (totalling Rs. 2.5 lakh), and the single entry reflected a consolidated payment.

7. That on the facts and circumstances of the case and in law, the Ld. CIT(A), based on the remand report, wrongly doubted the payment, without appreciating that Rs. 2.5 lakh was paid towards each of the two flats.

8. That on the facts and circumstances of the case and in law, the Ld. CIT(A), based on the remand report, has doubted the payment on the mere ground that the same was nominal.

2. The central issue in this appeal pertains to an addition of **₹3,92,87,988/-** made under **Section 56(2)(x)** of the Income-tax Act, 1961 ("the Act"). During the assessment proceedings under Section 143(3), the Assessing Officer (AO) observed that the



purchase consideration of the subject property was significantly lower than the value adopted by the Stamp Duty Authority. He accordingly called upon the assessee as why the addition should not be made u/s 56(2)(x) of the Income-tax Act, 1961 (in short 'the Act'). In the absence of an explanation or supporting documentation from the assessee at the assessment stage, the AO treated the differential amount of Rs.3,92,87,988/- as "Income from Other Sources."

2.1 On further appeal, the assessee filed a letter before the Ld. CIT(A) and contended that the property was booked via an agreement dated 18.10.2011, with substantial payments made through banking channels at that time. Consequently, the assessee sought the benefit of the proviso to Section 56(2), which mandates that where the date of agreement and the date of registration are not the same, the stamp duty value as on the date of the agreement may be considered.

2.2 The Ld. CIT(A) though called for the remand report of the Assessing Officer, but he declined to admit this evidence, holding that the assessee had failed to satisfy the "sufficient cause" threshold under Rule 46A. The Ld. CIT(A) reasoned that since the AO had issued specific show-cause notices, the failure to produce the agreement during the assessment was an inexcusable lapse. The relevant finding of the Ld. CIT(A) is reproduced as under:



“5.3.2.1 It is further submitted that Rule 46A conditions not met. The AO did not deny admission of this evidence. The assessee simply did not submit it during assessment. There is no persuasive sufficient cause for failure to produce this letter when the issue of undervaluation of flat was squarely under examination. Despite knowing the importance of establishing the agreement date, the assessee chose not to furnish this document earlier, nor did he indicate any inability or request more time. The proceedings provided adequate opportunity as the AOs notices and show cause specifically invited all relevant evidence. Therefore, none of the Rule 46A conditions justify admission of this letter now.”

3. We have heard the rival submissions and perused the record. The Ld. Counsel for the assessee has categorically stated before us that the notices issued during the assessment proceedings were not served upon the assessee, thereby precluding any meaningful representation before the AO and producing the necessary document in support of its contention that assessee had already entered into an agreement in the year 2011 for purchase of the property.

3.1 We find that the assessee was prevented by "sufficient cause" from producing the relevant documents before the Assessing Officer, accordingly the conditions of the Rule 46A are satisfied. The rigid interpretation adopted by the Ld. CIT(A) regarding Rule 46A stands in contrast to the spirit of equity and the mandate of natural justice.

3.2 The proviso to Section 56(2)(x) is a beneficial provision intended to protect taxpayers from fluctuations in stamp duty rates between the date of agreement and final registration. To deny the



assessee the opportunity to prove the existence of such an agreement—especially when the non-production is attributed to the non-receipt of notices—would be to prioritize form over substance.

3.3 Accordingly, we set aside the impugned order on this issue and direct the Ld. CIT(A) to:

- (i) Admit the additional evidence filed by the assessee under Rule 46A.
- (ii) Remand the matter to the Assessing Officer for a comprehensive report on the merits and veracity of the said evidence.
- (iii) Adjudicate the issue afresh, ensuring the assessee is granted a fair opportunity to substantiate the claim that the transaction is governed by the value prevalent on the date of the 2011 agreement.

3.4 While sending matter for remand process, the Id CIT(A) may direct the AO to verify the authenticity of the "Agreement to Sell" dated 18.10.2011, inter-alia, examining the original document to ensure it is not a backdated instrument and verifying the stamp paper's date of purchase and the vendor from whom it was sourced to ensure it aligns with the purported execution date in 2011. The core requirement of the proviso to Section 56(2)(x) is that the consideration, or a part thereof, must have been paid by way of a prescribed electronic mode on or before the date of the agreement.



The Id CIT(A) may further direct the AO to cross-verify the payments mentioned in the 2011 agreement with the assessee's bank statements from that period; verify that the payments were made directly to the seller of the property or their authorized agents as per the terms of the agreement and ensure the amounts, dates, and instrument numbers (Cheque/NEFT/RTGS) match the entries in the bank's ledger. Upon successful verification of the agreement and the advance payments, the AO shall ascertain the official Circle Rate or Stamp Duty Value applicable to the specific property category and location as of 18.10.2011 and compare this 2011 valuation with the actual purchase consideration paid by the assessee. The Id CIT(A) may further direct the AO to apply the curative tolerance band. If the difference between the purchase consideration and the 2011 SDV falls within the prescribed 5% or 10% margin (as applicable retrospectively), no addition shall be warranted.

3.5 The Id CIT(A) may direct the AO to provide the assessee with a reasonable opportunity to explain any discrepancies found during this verification process. The final Remand Report must be speaking, reasoned, and based on the documentary evidence provided, rather than mere conjectures. To facilitate this process of verification, the assessee is advised to produce the following before the AO (i) Certified Copy of the 2011 Agreement to Sell (ii) Attested Bank Statements for the financial year 2011-12 highlighting the



advance payments (iii) Confirmation Letter from the seller (if available) acknowledging the receipt of funds in 2011 (iv) Official Circle Rate Notification from the relevant State Authority applicable for October 2011.

4. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 23/02/2026.

**Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 23/02/2026
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai