

**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. 8409/MUM/2025
Assessment Year: 2018-19**

Bharatkumar Haridas Mehta,
2, Motivilla CHS Ltd., Azad Road,
Nr. Milan Subway, Vile Parle (E),
Mumbai-400057.

**PAN NO. AAEPM 6603 R
Appellant**

National Faceless Appeal
Centre (NFAC), Delhi.

Vs.

Respondent

Assessee by : Mr. K. Gopal, Adv. And
Mr. Om Kandalkar, Adv.
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 25.09.2025 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. The Ld. CIT(A) erred in confirming the addition of Rs. 5,83,371/- under section 56(2)(x) without properly appreciating the facts and documentary evidence placed on record, including the fact that the consideration was fixed in 2013 and substantial payments were made through banking channels prior to registration.

2. The Ld. CIT(A) erred in adopting the Stamp Duty Value as on the date of registration instead of the date of booking/allotment, contrary to the mandatory First and Second Provisos to section 56(2)(x), despite the Stamp Duty Value on the agreement date being significantly lower than the consideration actually paid.

3. The Ld. CIT(A) erred in disregarding the legislative intent of the provisos to section 56(2)(x) and in treating earlier agreements and part-payments as irrelevant, even though the statute expressly requires valuation to be linked to the booking date where consideration is fixed and part consideration is paid through banking channels.

4. The Ld. CIT(A) erred in passing the impugned order without considering the submissions made on 24-11-2025 by Appellant and without granting the Appellant an opportunity of personal hearing despite specific written request, thereby violating the principles of natural justice.

2. Briefly stated, facts of the case are that assessee, an individual, filed his return of income for the assessment year under consideration on 23.10.2018, declaring a total income of ₹78,73,910/-. The return was subsequently selected for scrutiny. During the assessment proceedings, the Assessing Officer (AO) noted that the assessee had acquired an immovable property for a total consideration of ₹1,47,06,823/-, whereas the value adopted by the Stamp Duty Authority stood at ₹1,52,92,194/-. Invoking the provisions of **Section 56(2)(x)** of the Income Tax Act, 1961, the AO treated the differential amount of ₹5,83,371/- as "Income from Other Sources" and added the same to the assessee's taxable income.



3. Aggrieved by the addition, the assessee preferred an appeal before the Ld. CIT(A). The assessee contended that the variation between the declared consideration and the stamp duty value was less than **5%**, thus falling within the protected "tolerance band" provided under the proviso to Section 56(2)(x), so no addition was warranted u/s 56(2)(x) of the Act. It was further argued that since the agreement for purchase and part-payments originated in 2013, the stamp duty value as of the date of the agreement should prevail and the stamp duty value as on date of agreement should be considered for the purpose of section 56(2)(x) and not the stamp duty value as on date of registration.

3.1 However, the Ld. CIT(A) sustained the addition, placing reliance on the Hon'ble Supreme Court's decision in *Suraj Lamp & Industries (P.) Ltd. vs. State of Haryana* [2012] 340 ITR 1 (SC). The Ld. CIT(A) held that in the absence of a registered conveyance deed in 2013, no title passed to the assessee until the year of registration (AY 2018-19). Consequently, the Ld. CIT(A) dismissed the appeal, holding that the curative provisos regarding the tolerance band had no retrospective application to the facts of the case. The Ld. CIT(A) rejected the contention of the assessee observing as under:

"5.2.3 I have examined the facts of the case. In the case of the appellant it is held that section 56(2)(x) is applicable as the appellant has purchased immovable property for a consideration less than that of the Stamp Duty value by an amount exceeding fifty thousand rupees. The fact that he had booked the flat in 2013 or that part payments have been made prior to AY 2018-19



is of no relevance as transfer of property has occurred in the AY 2018-19.

As held by the Hon'ble Supreme Court in the case of Suraj Lamp & Industries (P.) Ltd. vs. State of Haryana [2011] 14 taxmann.com 103 (SC)/[2011] 202 Taxman 607 (SC)/[2012] 340 ITR 1 (SC)[11-10-2011] transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred. Thus, the agreement to sale in 2013 and payments made prior to AY 2018-19 would be of no consequence if transfer by way of deed of conveyance duly stamped and registered as required by law had not occurred.

Further, it is held that 1st and 2nd proviso to section 56(2)(x) has no applicability in the facts of the case of the appellant.

5.2.4 In view of the above, it is held that the case of the appellant falls squarely under section 56(2)(x) and thus the addition by the AO is hereby confirmed. Grounds of appeal 1 to 4 are hereby dismissed.”

4. We have heard rival submissions of the parties and perused the relevant materials on record. The core issue before this Tribunal is whether the tolerance band of 5% (subsequently increased to 10%), introduced by the Finance Act to mitigate hardship, operates retrospectively. Though the assessee made claim before the lower authorities that the tolerance band of 5% is applicable retrospectively from the date on which the relevant provisions was introduced but said contention of the assessee has not been examined properly by the 1d CIT(A). In support of the claim that tolerance band of 5/10 % is applicable from the date on which the provisions of section 56(2)(x) has been introduced, the Ld. counsel for the assessee relied on the following decisions:



- **Balkrishan Venkappa Bhandary [2024] 169 taxmann.com 76 (Mumbai-Trib.)**
- **Maria Fernandes Cheryl v. ITO (International Taxation), 2(3)(1) [2021] 123 taxmann.com 252 (Mumbai-Trib.)**
- **Assistant Commissioner of Income-tax v. Sunil B Dalal [2022] 145 taxmann.com 313 (Mumbai-Trib.)**

4.1 We note that the Tribunal in the case of Sunil B Dalal (supra) has held that tolerance band has to be applicable retrospectively. The relevant finding of the Tribunal is reproduced as under:

“18. We have carefully considered the rival contentions and perused the orders of the lower authorities. Referred facts shows that Assessee has purchased 7 properties. Sale consideration in all the properties is 28,78,28,500/- and stamp duty value is Rs. 26,96,75,300/-. Thus difference of Rs. 1,81,53,200/- was made by the LD AO u/s 56(2) (x) of The Act. The LD CIT found that out of 7 properties in case of 6 properties the difference between the agreed consideration and stamp duty value is approximately 6%. In the 7th property, such difference was 14.50 %. Therefore, he confirmed the addition of 7th properties and deleted the addition with respect to 6 properties holding that Proviso to section 50C inserted with effect from 1-4-2019 by the Finance Act 2018 allowed the tolerance band of 5%. It was held to be applicable retrospectively. Further, by the Finance Act 2020 with effect from 1-4-2021 in the same proviso the tolerance band is replaced by increasing it to 10%. Therefore, when there is no change in the wording of the proviso but only tolerance band is increased it should also apply retrospectively.

19. Coordinate bench in case of Maria Fernandes Cheryl (supra) has already held that the amendment made by Introducing proviso [Introduction of tolerance band of 5 % and later on 10%] applies with effect from 1-4-2003 when the provision of section 50C were introduced.

20. Further introduction of tolerance band is for removing the hardship in the section. once a statutory amendment is being made to remove an undue hardship to the assessee or to remove an apparent incongruity, such an amendment has to be treated as effective from the date on which the law, containing such an undue hardship or incongruity, was introduced as held by Hon Supreme Court in CIT v. Alom Enterprises Ltd. [2009] 185 Taxman 416/319 ITR 306/227 CTR 417.



21. In view of above, respectfully following the decision of the coordinate bench in *Maria Fernandes Cheryl (supra)* we do not find any infirmity in the orders of the ld CIT (A) in applying the tolerance band limit of 10 % in the impugned assessment year also and thereby deleting the addition of Rs. 1,51,20,900/-. Accordingly, Ground no 2 is dismissed.”

4.2 Applying the aforementioned legal principles to the instant case, we find that the variation between the purchase consideration and the stamp duty value is approximately **3.98%**, which is well within the 5% (and later 10%) tolerance band introduced by the legislature.

4.3 The insertion of the safe harbor/tolerance band is a conscious legislative move to recognize that stamp duty valuations are not an exact science and may vary from actual market prices. Given that this amendment is remedial and curative, we hold that the benefit of the tolerance band must be extended to the assessee. Since the difference in the present case does not exceed the prescribed limit, the addition sustained by the Ld. CIT(A) is devoid of legal merit and accordingly, we delete the same.

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

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

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER



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