

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI
MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
SHRI JAGADISH, ACCOUNTANT MEMBER**

**ITA. No.8297/MUM/2025
Assessment Year: 2017-18**

ABBAS FAKHRUDDIN, 305 Taiyebi Apartments, 106 108 T B Kadam, Marg, Byculla, Mumbai – 400027, Mumbai.	Vs.	Income Tax Officer – 20(1)(1), Piramal Chamber, Mumbai – 400012.
(Appellant)	:	(Respondent)

PAN No. AAWPF 1410 D

Present for:

Assessee by : Ms. Rupal Kaku, Ld. AR
Revenue by : Shri Surendra Mohan (Sr. DR.)

Date of Hearing : 16.02.2026
Date of Pronouncement : 12.03.2026

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 03.10.2025, impugned herein, passed by National Faceless Appeal Centre (NFAC), Delhi/Ld. Commissioner of Income Tax (Appeals) [in short Ld. Commissioner] u/s 250 of the Income Tax Act, 1961, [in short 'the Act'] for the A.Y. 2017-18.

2. In the instant case, as per the information to the effect "that the Assessee has not filed his return of income for the Assessment Year under consideration, however, has purchased an immovable property on 16.02.2017 for a consideration of Rs.36,00,000/-. Stamp duty value of the said property as per stamp duty valuation authority, has been determined according to the SRO at Rs.67,56,275/- and thus the provision of section 56(2)(vii)(b) of the Act, attracts in the case", the case of the Assessee was reopened u/s 147 of the Act by issuing a notice u/s 148 of the Act.

3. Thereafter, the Assessing Officer issued further notice u/s 148(A)(b) of the Act and also passed an order u/s 148A(d) of the Act, and consequently issued a fresh notice u/s 148 of the Act, on dated 28.07.2022. However, the Assessee as per Assessment Year made no compliance. Therefore in the constrained circumstances, the Assessing Officer framed the assessment being a best judgment assessment by taking refuge of the provisions of section 144 of the Act, and ultimately made the addition of Rs.67,56,275/- being unexplained investment, in the aforesaid property u/s 69 of the Act.

4. The Assessee though being aggrieved challenged the said addition by filing First Appeal before the Ld. Commissioner, however the Ld. Commissioner ultimately affirmed the aforesaid addition by dismissing appeal of the Assessee, and thus the Assessee being aggrieved has preferred the instant appeal.

5. We have heard the parties and perused the relevant material on record. The Ld. Counsel for the Assessee demonstrated the

following facts that the Assessee had booked a flat by paying the down payment of Rs.10,00,000/- on dated 20.07.2008, through banking cheque and therefore allotment of flat i.e. 1402 admeasuring approximately 39.95 Sq. Meters. Carpet area on the 14th floor, in the building known as Qamar Enclave, situated at Plot CS.No.639 of Mazgaon Division, 309 and 319, Ram Bhau Bhogle Marg, Mumbai – 400010, has been made as acknowledged vide allotment letter dated 20.07.2008.

6. In the allotment letter, the total consideration amount of such flat has been shown to the tune of Rs.36,00,000/-. Subsequently, the Assessee paid the remaining amount in installments, such as detailed below:-

Sr. No.	Date	Amount	Mode	Remarks
1.	20 Jul 2008	10,00,000	Cheque	Down payment on allotment
2.	4 Feb 2013	5,00,000	RTGS	First installment
3.	30 Apr 2013	5,00,000	RTGS	Second installment
4.	28 May 2013	5,00,000	RTGS	Third installment
5.	21 Sep 2013	5,00,000	RTGS	Fourth installment
6.	11 Jun 2014	5,00,000	Cheque	Fifth and Final installment
Total		36,00,000		

7. Subsequently, on dated 16.02.2017 an agreement for sale was executed between the builder and the Assessee acknowledging the aforesaid amount of Rs.36,00,000/- and the property under consideration, and the same was registered in the Sub-Registrar Office, Mumbai-02 on dated 16.02.2017, as is evident from the agreement for sale filed by the Assessee.

8. As the 1st Proviso to Section 56(2)(x) of the Act, is clear that where the date of agreement fixing amount of consideration for 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. Thus, coming to the instant case, as in the instant case admittedly the property was agreed to be purchased on dated 20.07.2008 and/or sold through allotment letter referred to above. However, subsequently the installments have been paid and ultimately Rs.36,00,000/- in total and transferred/received the property through agreement for sale dated 16.02.2017 and therefore addition u/s 68 of the Act, would not be applicable, as the case of the Assessee falls under the 1st proviso of such provision, as made applicable by the authorities below. Further, admittedly the Assessee has not paid any amount during the year under consideration, as all the installments have been paid from 20.07.2008 onwards and till 11.06.2014 and therefore the provisions of section 68 of the Act, would also be not applicable, as the Assessee has not made any investment, in the year under consideration.

9. The Hon'ble Jurisdictional High Court in the case of *Pr.CIT vs. Vembu Vaidyanathan (2019) 413 ITR 248 (Bom)* which is celebrated judgment on the issue under consideration, has held that the allottee gets title to the property on the issue of allotment letter and the payment of installments and delivery of possession are just an follow up action and formality.

10. Therefore, the date of allotment is paramount for considering the deduction claimed u/s 54 of the Act, and possession of the property has *ipso-facto*, no major effect on the claim u/s 54 of the Act.

11. We further observe the Hon'ble Coordinate Bench of the Tribunal in the case of *Dharmesh Ramesh Jhaveri V. Assistant/Deputy Commissioner of Income-tax* (2024) 169 taxmann.com 662 (Mumbai – Trib) [04-12-2024] had also considered the identical case, wherein the Assessee had purchased a flat from a builder, which was allotted through the allotment letter by receiving the advance and subsequently agreement for sale was registered during the year involved and therefore the Hon'ble Coordinate Bench of the Tribunal held that the Allotment letter should be considered as the agreement, referred to in the proviso to Section 56(2)(vii)(b) of the Act.

12. Thus, on the aforesaid analyses, the addition under consideration is unsustainable and hence the same is deleted.

13. Resultantly the JAO is directed to verify the stamp duty valuation of the property under consideration, as on the date of allotment of the property by allotment letter referred to above and determine the tax liability accordingly.

14. In the result, the Assessee's Appeal is allowed in the above terms.

Order pronounced in the open court on 12.03.2026.

Sd/-
(Jagadish)
Accountant Member

M. Ranganath Vithal
Sr. Private Secretary.

Sd/-
(Narender Kumar Choudhry)
Judicial Member

Copy of the Order forwarded to :

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

BY ORDER,
(Dy./Asstt.Registrar)
ITAT, Mumbai