

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No. 5836/MUM/2025 (AY: 2018-19)**

(Physical hearing)

Amar Narendra Joshi, 204 Roop Kala Co. Op. Housing Society Ltd., 128 West Avenue Road, Santa Cruz (West), Mumbai – 400054. [PAN : AAFPJ7124H]	Vs	ITO, Ward-22(1)(1), Mumbai, Piramal Chambers, Lalbaug, Parel, Mumbai – 400012.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Ajay Singh, Advocate
Revenue by	Shri B. Laxmikanth, Sr. DR
Date of Institution	23.09.2025
Date of hearing	27.01.2026
Date of pronouncement	23.04.2026

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by assessee is directed against the order of Id. CIT(A)/NFAC dated 11.08.2025 for Assessment Year (AY) 2018-19. The assessee has raised following grounds of appeal:

"1. The Ld. CIT(A) erred in dismissing the appeal on ground of delay by refusing to condone the delay in filing the appeal without appreciating that the assessee is a senior citizen and had not received the assessment order dt: 26/07/2021 either by post or email, and it was during the Covid Pandemic period when the assessment was completed and order was passed, without service of notice as per SOP issued by the CBDT.

2. The Learned CIT(A) failed to appreciate that ex parte order u/s 144 r.w.s 147 r.w.s. 144B of the Act was passed without giving due intimation/notice to the assessee who was dislocated due to Redevelopment of his building.

3. The Ld. CIT(A) erred in not adjudicating the case on merits i.e. addition of Rs 41,38,500/- u/s. 56(2)(x) of the Act being the difference between the stamp duty value of Rs. 71,68,500/- for total area of flat and cost for purchase of extra area 140 sq. ft. which was adjusted in lieu of corpus and hardship

compensation receivable from developer as per development agreement for a period 1/4/2013 to 31/3/2015, and amendment thereto by supplementary agreement Dt. 1-3-2013 thus price was decided in the year 2013 and not 2017, therefore adopting stamp value of year 2017 for a transaction materialized in year 2013 is not justified.

4. Without Prejudice to above the Id CIT(A) failed to adjudicate the case on merit namely that the agreement is registered in name of assessee and his wife, therefore assessing the assessee on total amount is not justified.

5. The Assessee craves leave to add, alter, amend, delete and/or modify all or any of the above grounds of appeal.

2. Rival submissions of both the parties have been heard and record perused. The learned Authorised Representative (Id. AR) of the assessee submits that assessment was carried out through severe Covid – 19 pandemic. The assessing officer has issued only two notices for seeking explanation with regard to purchase of immovable property wherein sale/purchase value shown on registered document and the determined by stamp valuation authority of difference of Rs. 41.38 lac. The assessee could not respond to such notices due to miscommunication. Consequently, the assessment was completed on 26.07.2021 in making addition of Rs. 41,38,500/- under section 56(2)(x). The assessee filed appeal before Id. CIT(A) on 21.04.2024. There was delay in filing appeal. The assessee explained the cause of delay by filing application for condonation of delay. The delay was not condoned by Id. CIT(A) and the appeal was dismissed as unadmitted. The Id. AR of the assessee submits that after excluding the period of severe Covid – 19 pandemic, it was allowed upto May, 2022. The delay was only of 970 days. The assessee has furnished medical certificate along with the application. The delay

was not intentional or deliberate. The Id. AR of the assessee prayed that assessee was good case on merit and likely to succeed, if his case is heard on merit. On merit, the Id. AR of the assessee submits that assessee received a new flat in lieu of the old flat surrendered for redevelopment of housing project. It is not a case of receipt of immovable property for inadequate consideration which may fall under the deeming provision of section 56(2)(x). To support his submission, the Id. AR of the assessee relied upon the following decision:

- Smt. Shashi Yogendra Raj Singhavi vs ITO (ITA No. 3022/M/2022)
 - Anil Dattaram Pitale vs ITO (2025) 173 taxmann.com 51 (Mum-Trib.)”
3. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the Revenue on the plea that condonation of delay before Id. CIT(A) submits that the delay was not explained by assessee on merit. The Id. Sr. DR for the revenue submits that lower authorities have not considered the case of assessee. In case this bench is of the view that delay in filing appeal before Id. CIT(A) is to be condoned, the matter may be restored back to the file of lower authorities to consider the case on merit. In the short rejoinder submissions, the Id AR of the assessee submits that on merit, the issue is covered in favor of the assessee and that no useful purpose would serve in restoring the matter to the lower authorities.
4. I have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. Firstly, I am considering the plea of condonation of delay. On considering the fact explained before me, I find that delay in filing appeal before Id. CIT(A) was not intentional

or deliberate. Thus, considering, the fact that assessee is really interested in pursuing his case on merit. Hence, delay in filing appeal is condoned. On merit, on perusal of various evidences, I find that the assessee received a new residential flat in lieu of surrender of old flat. Therefore, I find that the case of assessee is squarely covered by the decision of this Tribunal in Anil Dattaram Pitale vs ITO (Supra) wherein on similar set of fact, the Co-ordinate Bench of Tribunal held that where assessee got a new flat in lieu of old flat surrendered by him to society, it was not a case of receipt of immovable property for inadequate consideration that would fall within purview of provisions of section 56(2)(x), therefore, assessing officer was to be directed to delete addition made by him under section 56(2)(x). Hence, I direct the assessing officer to delete the entire addition made by invoking the rigorous of section 56(2)(x). In the result, grounds of appeal raised by assessee are allowed.

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

Order pronounced in the open court on 23/04/2026

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 23/04/2026
Biswajit

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