IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.6576/MUM/2025
(Assessment Year : 2018-19)

Cherie Tandon Saldahna,
10, Diamond Apartments,
Mount Mary Road,
Bandra, Mumbai - 400050 ..... Appellant
PAN: AQZPS6487N

v/s

Deputy Commissioner of Income Tax,
Circle - 23(1),
Piramal Chambers,
Mumbai - 400012 ..... Respondent

Assessee by : Shri Vishal Shah
Ms. Bijal Khara
Revenue by : Shri Virabhadra Mahajan, Sr. DR

Date of Hearing – 11/02/2026	Date of Order - 18/02/2026

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal against the impugned order dated 13/08/2025, 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. In this appeal, the assessee has raised the following grounds: -

"1. On the facts and under the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. AO in passing the Assessment Order u/s 143(3) which is bad in law.

2. a) On the facts and under the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. AO in considering the market value of the flat on the date of registration i.e. 28.06.2017 instead of the market value on the date of allotment i.e. 03.05.2011, thereby disregarding the fact that the true date of allotment was evidenced by the duly executed allotment letter issued by the developer. The Ld. CIT(A) erred in construing the language of this document narrowly, failing to appreciate its substantive legal effect and instead placing undue emphasis on its form.

b) On the facts and under the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. AO in applying the provisions of section 56(2)(x) and making an addition of Rs. 1,14,87,300, while ignoring the proviso to section 56(2)(x) which is applicable in the case of the appellant. The entire consideration of Rs. 2,87,96,200 was paid by the appellant prior to the allotment in 2011 through account payee cheque, as required.

c) On the facts and under the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. AO in making an addition of Rs. 1,14,87,300 on account of the difference in market value of the property as per ready reckoner value under Stamp Duty Rules on the date of registration i.e. 28.06.2017 vis-a-vis the market value of the property as per ready reckoner value under Stamp Duty Rules on the date of allotment i.e. 03.05.2011. Such addition is bad in law."

3. 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.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is an individual, and for the year under consideration, filed her return of income on 31/10/2018, declaring a total income of INR 36,570. Pursuant to the information received from Directorate of Intelligence and Criminal Investigation that during the survey various cases of infringement of sections 50C/43CA and section 56(2)(x) of the Act have been spotted, 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. During the assessment proceedings, it was noticed that the assessee purchased immovable property in Mumbai for a total consideration of INR 2,87,96,200 on 31/03/2017 from M/s Rustomjee Constructions Private Limited. Further, it was noticed that on the date of registration of the property in the name of the assessee on 28/06/2017, the stamp duty value/market value of the property as per the Joint Sub Registrar was INR 4,02,83,500. Accordingly, the assessee was asked to show cause as to why the difference between the stamp duty valuation/market value and consideration of purchase, i.e. amounting to INR 1,14,87,300, should not be added under section 56(2)(x)(b)(B) of the Act. However, until the assessment order was finalised, the assessee did not file her response. Accordingly, the Assessing Officer ("*AO*"), vide order dated 25/04/2021, passed under section 143(3) read with section 144B of the Act, made an addition of INR 1,14,87,300 under section 56(2)(x)(b)(B) of the Act to the total income of the assessee.

5. The learned CIT(A), vide impugned order, disagreed with the submissions of the assessee that the stamp duty value as on the date of allotment should be considered. Accordingly, the addition made by the AO under section 56(2)(x)(b)(B) of the Act was upheld. 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. In the present case, the assessee purchased immovable property, namely Flat No. 601, Wing-B, Rustomjee Seasons, MIG Group 4, Gandhinagar, Bandra East, Mumbai-400051, from M/s Rustomjee

Constructions Private Ltd for a total consideration of INR 2,87,96,200. Since on the date of registration of the agreement for sale, i.e. on 28/06/2017, the stamp duty value/market value of the property was determined at INR 4,02,83,500 by the Joint Sub-Registrar, the AO made an addition of INR 1,14,87,300 under section 56(2)(x)(b)(B) of the Act, being the difference between the stamp duty value and purchase consideration. On the other hand, as per the assessee, the property was booked on 03/05/2011, and an allotment letter was also issued to the assessee by M/s Rustomjee Constructions Private Ltd., on 03/05/2011. Therefore, 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., 03/05/2011, should be taken into consideration for the purpose of section 56(2)(x) of the Act.

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. From the perusal of the letter of allotment dated 03/05/2011, forming part of the paper book from pages 1-7, we find that on 26/02/2011, the assessee booked a residential flat in "*Rustomjee Seasons*". Further, it is evident from the record that pursuant to the aforesaid booking, the assessee made a total payment of INR 2,87,96,200 from 28/02/2011 to 31/03/2011, vide 3 cheques issued from her bank account maintained with Citibank, Mumbai. The builder, i.e., M/s Rustomjee Constructions Private Ltd, has duly acknowledged receipt of payment in the allotment letter. It is also pertinent to note that even the residential unit, i.e. Flat No. 601, on the 6th floor of Wing Monsoon, having a total carpet area of 1317.51 ft², was also identified. The initial consideration agreed to be payable by the assessee was INR 3,59,95,250, out of which INR 2,87,96,200, i.e. 80% of the total consideration, was agreed to be payable on the booking itself and the remaining payment was agreed to be payable as per the payment schedule annexed with the allotment letter. Subsequently, due to the notification dated 06/01/2012 regarding the amendment of the Development Control Regulations for Greater Mumbai, the allotment letter dated 03/05/2011 was modified vide Supplemental Allotment Letter dated 25/04/2016. From the perusal of the Supplemental Allotment Letter, forming part of the paper book from pages 8-24, we find that the sale consideration of the aforementioned residential flat was modified to INR 2,87,96,200 instead of INR 3,59,95,250. The other modification was in the dimension of the flat, due to which the carpet area of the flat was reduced from 1317.51 ft² to 1371 ft². However, the builder agreed to provide one parking space at no additional cost to the assessee. It is also pertinent to note that the allotment letter and the

Supplemental Allotment Letter were also signed by the assessee as acceptance of the terms of allotment.

10. As per the assessee, on 28/06/2017, the builder entered into an agreement for the sale of the flat to the assessee. From the perusal of the agreement for sale, forming part of the paper book from pages 30-160, we find that the agreements also duly record the payment made by the assessee from 28/02/2011 to 31/03/2011, vide 3 cheques issued from her bank account maintained with Citibank, Mumbai, in respect of the flat. From the perusal of the agreement, it is evident that apart from the change which was mandated due to the amendment of the Development Control Regulations for Greater Mumbai, there was no change in terms of the allotted flat, which was agreed between the parties in respect of which the allotment letter was issued on 03/05/2011. Thus, in the present case, from the perusal of the record, it is evident that the terms agreed vide the allotment letter dated 03/05/2011 were complied with by both parties, and payment as per the schedule was also made to the builder.

11. 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.*
>
> *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."

12. 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 letter, i.e., 03/05/2011, 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 stamp duty value/market value of the property determined by the Joint Sub-Registrar on the date of registration of the agreement for sale, i.e. on 28/06/2017, should be considered for the purpose of section 56(2)(x)(b) of the Act.

13. 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."

14. During the hearing, the learned Departmental Representative ("*learned DR*") relied upon the judgment of the Hon'ble Supreme Court in Ramesh Chamd (D) Thr, LRS v. Suresh Chand and Anr., in Civil Appeal No. 6377 of 2012, dated 01/09/2025. From the perusal of the said decision, we find that the Hon'ble Supreme Court, after considering the provisions of the Transfer of Property Act, 1882, held that only by a deed of conveyance as per section 54 of the Transfer of Property Act, 1882, the title in a property can be conferred. In this regard, it is pertinent to note that the Transfer of Property Act, 1882, does not contain a provision similar to section 56(2)(x)(b)(B) of the Act, which recognises that the date of agreement fixing the amount of consideration for the transfer of immovable property can be different from the date of

registration for the purpose of taxability under the Act. Further, as noted in the foregoing paragraph, the first and second proviso to section 56(2)(x)(b) of the Act carves out an exception and provide that, in such a case, 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, if the conditions as laid down in second proviso are fulfilled. It is also pertinent to note that the provisions of sections 50C/43CA and section 56(2)(x) of the Act were introduced by the legislature in the statute from time to time as anti-abuse provisions, so that the stamp duty value/market value as determined by the Stamp Duty Authority is deemed to be the transaction value where the actual transaction value is less than such stamp duty value/market value and the difference between such stamp duty value/market value and the actual transaction value is considered for taxation under the Act. Therefore, we are of the considered view that the decision of the Hon'ble Supreme Court, as relied upon by the learned DR in the context of the Transfer of Property Act, 1882, is not applicable to the present case involving the issue of the addition made under section 56(2)(x) of the Act.

15. Therefore, respectfully following the decisions of the Coordinate Bench cited *supra*, we are of the considered view that the allotment letter dated 03/05/2011 issued by the builder in respect of the flat can be considered as an agreement to sell in the present case for the purpose of section 56(2)(x)(b)(B) of the Act. It is further evident from the record that the assessee paid the entire consideration, i.e., INR 2,87,96,200, by 3 cheques 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., 03/05/2011, and the date of registration of agreement for sale, i.e., 28/06/2017, 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 03/05/2011, 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/market value of the property determined by the Joint Sub-Registrar on the date of registration of the agreement for sale, i.e., on 28/06/2017, 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 03/05/2011, 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 18/02/2026

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

MUMBAI, DATED: 18/02/2026

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.