

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "SMC" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

ITA No. 465/Mum/2025
Assessment Year : 2018-19

Anil Dattaram Pitale, B-2, 702, Sundervan, Lokhandwala Complex, Andheri (West) Mumbai-400058. PAN :AENPP4732M	vs.	Income Tax Officer-16(2)(1), Aayakar Bhavan, Mumbai-400 020.
(Appellant)		(Respondent)

Assessee by : Dr. K. Shivaram a/w.
Mr. Shashi Bekal

Revenue by : Shri Kiran Unavekar, Sr.DR

Date of Hearing : 13-03-2025

Date of Pronouncement : 17-03-2025

ORDER

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dated 30-09-2024 passed by the Ld CIT(A), NFAC, Delhi and it relates to the Assessment Year (AY.) 2018-19. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition of Rs.19,74,660/- made by the AO u/s 56(2)(x) of the Act.

2. The appeal is barred by limitation by 54 days. The assessee has filed an affidavit explaining the delay. We heard the parties on this preliminary issue. Having regard to the submissions made by the assessee in the affidavit, we are of the view that there was sufficient

cause in filing this appeal belatedly. Accordingly, we condone the delay and admit the appeal for hearing.

3. The facts relating to the above said issue are discussed in brief. The assessee had purchased a flat in the financial year 1997-98 in Mahavir Nagar Tristar Co-op Hsg Society bearing no.C-5/28. The society underwent redevelopment as per the agreement entered with the developer. As per the terms and conditions of the agreement, the assessee got a new flat no.B-1102, vide registered agreement dated 26th December, 2017 in lieu of the old flat surrendered by him. The stamp duty value of new flat was Rs.25,17,700/-. The indexed cost of the old flat was Rs.5,43,040/-. Accordingly, the AO assessed the difference between the above said values amounting to Rs.19,74,660/- as income of the assessee u/s 56(2)(x) of the Act. The LdCIT(A) confirmed the same.

4. We heard the parties and perused the record. The facts discussed above would show that the assessee got a new flat in the redeveloped property in lieu of old flat. Hence, it is a case of extinguishment of old flat and in lieu thereof, the assessee has got new flat as per the agreement entered with the developer for redevelopment of the society. Thus it is not a case of receipt of immovable property for inadequate consideration that would fall within the purview of the provisions of sec.56(2)(x). Accordingly, we are of the view that the provisions of sec.56(2)(x) will not be applicable to the facts of the present case.

5. At the most, this transaction may attract the provisions relating to capital gains, in which case, the assessee should be entitled for deduction of cost of new flat u/s 54 of the Act. In that case, there will be no tax liability upon the assessee on account of these transactions.

6. Accordingly, we are of the view that the tax authorities are not correct in law in assessing the impugned transaction u/s 56(2)(x) of the

Act. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete the addition made by him u/s 56(2)(x) of the Act.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 17-03-2025

Sd/-
[SANDEEP GOSAIN]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai,
Dated: 17-03-2025

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai