

Section 56(2)(x) Addition Set Aside as AO Failed to Refer Property Valuation to DVO: ITAT Mumbai

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Naynish Harishchandra Rahane Vs ITO (ITAT Mumbai)

The Income Tax Appellate Tribunal (ITAT), Mumbai, considered an appeal filed by the assessee against the order dated 10 November 2025 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, under Section 250 of the Income Tax Act, 1961 for the assessment year 2018–19. The dispute concerned an addition made under Section 56(2)(x)(b) of the Act relating to the difference between the purchase price of an immovable property and the value determined by the stamp valuation authority.

The assessee, an individual, had filed a return of income declaring total income of ₹4,25,340 from salary. The case was selected for scrutiny in accordance with the CBDT instruction dated 5 September 2019. Notices under Sections 143(2) and 142(1) of the Act were issued and served on the assessee. During the course of assessment proceedings, it was observed that the assessee had purchased a residential property located at New Samta CHSL, MMRDA Colony, Station Road, West Mumbai for a total consideration of ₹24 lakh. However, the stamp valuation authority determined the value of the property at ₹33,32,919.

Since the stamp duty value was higher than the purchase consideration, the Assessing Officer issued a show cause notice asking the assessee to explain why the difference of ₹9,22,919 should not be added to income under Section 56(2)(x)(b) of the Act. In response, the assessee submitted that the flat was located in a building redeveloped by MMRDA for persons displaced due to road widening. The building had been constructed in 2003 and occupation had been granted in 2005. Therefore, at the time of purchase in 2017, the building was around 12 to 14 years old and was not newly constructed. The assessee further submitted that the building was not well maintained as it was occupied by families belonging to poor to average income groups who could not maintain the building properly. According to the assessee, due to these factors the market value of the flat was not more than ₹24 lakh.

The Assessing Officer rejected these submissions and passed an order dated 16 April 2021 under Section 143(3) read with Sections 143(3A) and 143(3B) of the Act. The officer added ₹9,22,919 as income under Section 56(2)(x)(b), representing the difference between the purchase consideration of ₹24 lakh and the stamp duty value of ₹33,22,990.

The assessee filed an appeal before the Commissioner of Income Tax (Appeals). The CIT(A) dismissed the appeal and upheld the addition. It was held that the Assessing Officer had correctly applied Section 56(2)(x)(b) by comparing the declared consideration with the stamp duty value. The CIT(A) rejected the assessee's contention that the property was purchased at a lower price due to its age and poor condition, observing that these claims were unsupported by independent documentary evidence. The CIT(A) also rejected reliance on Section 50C(2), holding that the provision applies only when the assessee is the seller of property.

The matter was then brought before the ITAT. After examining the submissions and the material on record, the Tribunal noted that the addition had been made because the stamp duty value exceeded the purchase consideration. **The Tribunal referred to the provisions of Section 56(2)(x)(b), which state that where an immovable property is received for a consideration lower than the stamp duty value and the difference exceeds the specified limits, the excess amount is taxable as income from other sources.**

However, the Tribunal also referred to the third proviso to Section 56(2)(x)(b), which provides that where the assessee disputes the stamp duty value on grounds mentioned in Section 50C(2), the Assessing Officer may refer the valuation of the property to a Valuation Officer. Under Section 50C(2), if the assessee claims that the stamp duty value exceeds the fair market value of the property and the value has not been disputed before any authority or court, the Assessing Officer may refer the matter to the Departmental Valuation Officer (DVO).

The Tribunal observed that in the present case the assessee had contested the stamp duty valuation and had submitted a valuation report before the CIT(A). However, the CIT(A) rejected the report as a self-procured document. The Tribunal further noted that the conditions laid down under Section 50C(2) were satisfied in this case because the assessee had claimed that the stamp duty value exceeded the fair market value and the valuation had not been challenged before any other authority.

In these circumstances, the Tribunal held that the Assessing Officer erred in not referring the valuation of the property to the Departmental Valuation Officer. The Tribunal also observed that the CIT(A) failed to address this issue despite recording the submissions made by the assessee.

Accordingly, the Tribunal set aside the impugned order and restored the issue to the file of the jurisdictional Assessing Officer for fresh adjudication after obtaining a valuation report from the Departmental Valuation Officer in accordance with the provisions of the Act. The

Tribunal also directed that no order should be passed without providing the assessee with a reasonable opportunity of hearing.

As a result, the appeal filed by the assessee was allowed for statistical purposes and the matter was remanded to the Assessing Officer for reconsideration.

FULL TEXT OF THE ORDER OF ITAT MUMBAI

The assessee has filed the present appeal against the impugned order dated 10/11/2025, 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. The Ld. CIT(A) misdirected himself in declining to make a reference to the DVO.

2. The Ld. CIT (A) ignored the third proviso to sec.56(2)(x) and fell in error of law in holding that there is no provision for reference to the DVO in the scheme of sec.56(2)(x).

3. The Ld. CIT (A) fell in error of law in not appreciating that the CIT(A) has power to make reference to the DVO for valuation, u/s. 250 of the Act."

3. The solitary grievance of the assessee is against the addition made under section 56(2)(x)(b) of the Act.

4. We have considered the submissions of both sides and perused the material on record. The brief facts of the case are that the assessee is an individual and for the year under consideration filed his return of income declaring a total income of Rs.4,25,340 from salary. The assessee was selected for scrutiny as per CBDT's instruction dated 05/09/2019, and statutory notices under section 143(2) and section 142(1) of the Act were issued and served on the assessee. Upon perusal of the response filed by the assessee, it was observed that during the year under consideration, the assessee purchased a property located at 517, 5th floor, New Samta CHSL, MMRDA Colony, Station Road, West Mumbai, for a total consideration of Rs. 24 lakh. However, as per the information filed by the Sub-Registrar Office, the Stamp Valuation Authority has determined the market value at Rs.33,32,919. As the market value determined by the stamp duty authority was higher than the purchase consideration, the assessee was asked to show cause as to why the difference, i.e. of Rs.9,22,919, should not be added to the assessee under section 56(2)(x)(b) of the Act. In response, the assessee submitted that he

purchased the flat in the building which was redeveloped/developed by MMRDA for the persons whose houses were cut down by the road and the persons were allocated the property. It was further submitted that the building was constructed in the year 2003, and occupation was given in the year 2005. It was submitted that in the year of purchase of the flat by the assessee, i.e. 2017, the building was 12 to 14 years old, and it was not a newly constructed building. The assessee also submitted that the market value of the flat purchased by him is a maximum of Rs.24 lakh only, as the building is 12 to 14 years old and not well-maintained. Furthermore, the families staying there are poor to average class, who cannot maintain the building in good condition.

5. The Assessing Officer ("AO"), vide order dated 16/04/2021 passed under section 143(3) read with sections 143(3A) and 143(3B) of the Act, disagreed with the submissions of the assessee and made an addition of Rs.9,22,919, being the difference between the purchase consideration of Rs.24 lakh and the market value determined by the Stamp Valuation Authority of Rs.33,22,990, under section 56(2)(x)(b) of the Act.

6. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and held that the AO made the impugned addition strictly following the ratio between the declared consideration and the stamp duty value as prescribed under 56(2)(x)(b) of the Act. The learned CIT(A) also rejected the submissions of the assessee regarding the distress sale or the old condition of the property on the basis that the same is unsupported by any independent documentary evidence contemporaneous to the transaction. Further, the learned CIT(A) also rejected the reliance placed by the assessee on section 50C(2) of the Act and held that the same applies only when the assessee is the seller of the property. Accordingly, the learned CIT(A) upheld the addition of Rs.9,22,919 made under section 56(2)(x)(b) of the Act.

7. Having considered the submissions of both sides and perused the material available on record, we find that in the present case, the impugned addition under section 56(2)(x)(b) of the Act has been made as the assessee purchased immovable property for a consideration which was less than the value determined by the Stamp Valuation Authority. As per the assessee, the said property was purchased in the year 2017 in a building developed by MMRDA in the year 2003, and thus, the building was very old and not in good condition at the time of purchase. It was further claimed by the assessee that the building constructed by MMRDA is occupied by families of poor to average means and cannot maintain it in good condition. In support of its contention that the assessee purchased the property at the higher rate, it is evident from the record that the assessee furnished the valuation report before the learned CIT(A). However, the same was rejected by the learned CIT(A) as a self-procured document.

8. Before proceeding further, it is relevant to note the provisions of section 56(2)(x)(b) of the Act, which 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;"

9. Thus, 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 third proviso to section 56(2)(x)(b) provides that where the stamp duty of the immovable property is disputed by the assessee on the grounds as mentioned in section 50C(2) of the Act, the AO may refer the valuation of such property to a Valuation Officer. In this regard, it is relevant to note the provisions of section 50C(2) of the Act, which reads as follows: –

"(2) Without prejudice to the provisions of sub-section (1), where—

(a) the assessee claims before any Assessing Officer that the value adopted or assessed 16[or assessable] by the stamp valuation authority under subsection (1) exceeds the fair market value of the property as on the date of transfer;

(b) the value so adopted or assessed or assessable by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court, the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of subsection (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

Explanation 1.— For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

Explanation 2.— For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty."

10. In the present case, it cannot be disputed that the value adopted by the Stamp Valuation Authority exceeds the value of the residential flat purchased by the assessee on the date of transfer, and the value so adopted is also not in dispute in any appeal, revision or reference before any Authority, Court or High Court. Thus, both the conditions of section 50C(2) of the Act are fulfilled in the present case. Accordingly, we are of the considered view that the AO erred in not referring the valuation of the residential flat to the DVO. Further, the impugned order also suffers from the same vice, as despite recording submission of the assessee in this regard, no reference was made to the DVO for the valuation as per the provision of the Act. Accordingly, in view of the facts and circumstances as noted above, we deem it appropriate to restore this issue to the file of the jurisdictional AO for *de novo* adjudication after seeking a valuation report from the DVO as per the provisions of the Act.

Needless to mention, no order shall be passed without affording a reasonable and adequate opportunity of hearing to the assessee. As a

result, the impugned order is set aside, and the grounds raised by the assessee are allowed for statistical purposes.

11. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 27/02/2026