

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A No.5352/Mum/2024
(Assessment Year: 2018-19)**

NFAC, Delhi 2 nd Floor, E-Ramp, Jawaharlal Nehru Stadium, Delhi, Pin-110003	vs	NRB Developers, 16, Dadi Seth Agairy Lane, Vndrawala Building, Kalbadevi Road, Mumbai-400002 PAN: AAGFN1786N
APPELLANT		RESPONDENT

**I.T.A No.5218/Mum/2024
(Assessment Year: 2018-19)**

NRB Developers, 16, Dadi Seth Agairy Lane, Vndrawala Building, Kalbadevi Road, Mumbai-400002 PAN : AAGFN1786N	vs	NFAC, Delhi 2 nd Floor, E-Ramp, Jawaharlal Nehru Stadium, Delhi, Pin-110003
APPELLANT		RESPONDENT

Assessee by : Shri. Rushabh Mehta
Respondent by : Mr. Leququt Ali, SR.DR.

Date of hearing : 24/02/2025
Date of pronouncement : 25/ 02/2025

ORDER

PER ANIKESH BANERJEE, J.M:

This cross appeals filed by the assessee and the revenue challenge the order of the National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2018-19, date of order 14.08.2024. The impugned order was emanated from the order of the National Faceless Assessment Centre, Delhi, passed under section 143(3) read with section 144B of the Act, date of order 30/09/2021.

2. The brief facts of the case are as follows. During the alleged assessment year, the assessee registered a property from M/s Lotus Griha Nirman Pvt Ltd, covering approximately 6,180 sq. ft. in the proposed commercial building "Lous Link Square," for a total consideration of Rs.8,19,00,000/-. The assessee booked the property by paying Rs.3,50,00,000/- through banking channels, and a letter of allotment was issued in favor of the assessee on 30/03/2010. At the time of registration, there was a difference of Rs.9,04,37,500/- between the set forth value and the stamp duty value. The issue was referred to the DVO for valuation of the alleged property; however, no valuation report was provided to the assessee during the assessment proceedings. Consequently, the assessment was completed on 30/09/2021, with an addition of Rs.9,04,37,500/- made under section 56(2)(x). The assessee then filed an appeal before the Ld. CIT(A). The Ld. CIT(A) received a valuation report dated 23/03/2022 (No. DVO-1/mum/CGT/2021-22/402) and, in accordance with section 56(2)(x), the DVO valued the property as pertaining to the financial year 2009-10 since the property was allotted on 30/03/2010, and payment was made through banking channels. The difference between

the DVO's valuation and the set forth value, amounting to Rs.81,19,625/-, was considered for addition. The Ld. CIT(A) restricted the addition to this amount, and the assessee's appeal was partially allowed. Both the revenue and the assessee, being aggrieved by the appeal order, have filed appeals before this court.

3. We have heard the rival submissions and considered the documents on record. The Ld. DR contended that the Ld. CIT(A) erred in treating the allotment letter as an agreement for sale, and that, accordingly, the value should not be deemed as at the financial year 2009-10. The Ld. DR relied entirely on the impugned assessment order.

In contrast, the Ld. AR argued that the Ld. CIT(A) correctly considered the valuation in relation to the allotment letter issued on 30/03/2010, and that the property should accordingly be valued as at that date. With respect to the valuation difference of Rs.81,19,625/-, the Ld. AR further contended that, as this difference is less than 10%, the assessee is entitled to the benefit under section 56(2)(x)(b)(B) of the Act, thereby necessitating the deletion of the differential value confirmed by the Ld. CIT(A). The Ld. AR submitted a chart which is extracted below:

	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
Unit No.	Area (Built up Sq.mts.) (A)	Purchase value (B)	Ready Reckoner Rate per sq.mt. as on the date of allotment i.e. 30-03-2010 (C)	Stamp duty Value on the date of allotment i.e. 30-03-2010 (AXC)	Fair Market Value as per Department Valuation Report	Lower of (D) and (E) as per section 50C(3) (F)	Difference (F-B)	Difference % (G/B)
101	86.98	1,04,00,000	1,30,700	1,13,68,286	1,57,26,000	1,13,68,286	9,68,286	9.31%
102	86.32	1,05,00,000	1,30,700	1,15,43,424	1,55,21,000	1,15,43,424	10,43,424	9.94%
103	513.45	6,10,00,000	1,30,700	6,71,07,915	8,98,06,000	6,71,07,915	61,07,915	10.01%
Total		8,19,00,000		9,00,19,625	12,10,53,000	9,00,19,625	81,19,625	

4. The Ld.AR further argued that the issue is squarely covered by the order of the co-ordinate bench of ITAT, Mumbai Bench in the case of **Balkrishna Venkappa Bhandary v. DICT (2024) 169 taxmann.com 76 (Mumbai Trib.)**. The relevant paragraphs 7.3 to 7.5 are reproduced as below:-

“7.3. It is submission of the Ld.AR that, the receipt placed at page 130 of the paper book also reveals the first booking amount having paid on 20/06/2016 issued by the builder and therefore the value as on the date of making the first payment is to be considered for the purpose of computation of income u/s. 56(2)(X)b of the Act. The Ld.AR also emphasized that as on the date of first payment the stamp duty valuation was Rs.5,67,18,369/- as against the agreement value of Rs.5,30,87,707/-. He submitted that by way of amendment w.e.f. 01.04.2021 the tolerance level was increased to 10% u/s. 56(2)(X)(b)(ii). It is submitted by the Ld.AR that, the authorities duly did not consider these documents including the allotment letter and receipt of the first booking amount.

7.4. He submitted that the said amendment was held to be applicable retrospectively by various decisions of coordinate bench of this Tribunal as under: -

i. Maria Fernandes Cheryl vs. Income Tax Officer- Mumbai ITAT

ii. Aaeshka Riddhi Realty, Mumbai vs. CIT(A)- NFAC – ITO – 19(1)- Mumbai ITAT

iii. Chandra Prakash Jhunhunwala vs. DCIT ITA- Kolkata ITAT

7.5. He also place reliance on following decisions in support of his arguments: -

i. Sulochana Saijan Modi vs. ITO, Mumbi- Mumbai ITAT

ii. Gurukrupa Developers D N Nagar vs. Pr. CIT- 32, Mumbai- Mumbai ITAT

iii. Ms. Shilpa Gautam vs. The Income Tax Officer- Mumbai ITAT”

5. The Ld.AR also submitted that amendment to section 56(2)(x) of the Act brought in Finance Act, 2020 of increasing tolerance limit from 5% to 10% with effect from 01/04/2021 under section 56(2)(X)(b)(B). The point of consideration before us that the application of the section in impugned assessment year whether it is treated as clarificatory/curative in nature having retrospective application or otherwise. The issue is squarely covered by the order of the co-ordinate bench of ITAT-Mumbai in the case of **Glory Shipmanagement Private Limited vs CIT (Appeals) ITA No.3149/MUM/2023**, date of pronouncement **30/01/2024** and also the decision of the co-ordinate bench of ITAT-Kolkata in the case of **Sandeep Kumar Poddar v. ITO, Wared-44(1), Kolkata ITA No.484/Kol/2022** date of pronouncement **13/03/2023**.

6. Upon reviewing the said chart, we find that, with respect to Unit No. 103, the incremental difference exceeds 10%, i.e. 10.01%. The Ld. AR contended that any excess over 10% should be added. In our considered view, we hold that the provision of section 56(2)(x)(b)(B) has retrospective effect and is applicable to the impugned assessment year. Accordingly, we uphold the view adopted by the Ld. CIT(A) in reducing the addition under section 56(2)(x). However, with respect to section 56(2)(x)(b)(B), we remit the matter to the file of the Ld. AO for allowing the assessee the incremental differences as per the said Act for the alleged properties. In the case of Unit No. 103, the excess over 10% shall be considered for addition. Consequently, the appeal of the assessee is allowed.

7. In the result, the appeal of the revenue bearing **ITA No.5352/Mum/2024** is dismissed and the appeal of the assessee bearing **ITA No.5218/Mum/2024** is allowed.

Order pronounced in the open court on 25th day of February 2025.

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 25/02/2025
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai