

**IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI
BEFORE MS. SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER
AND**

SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

**ITA No. 2027/MUM/2025
Assessment Year: 2016-17**

Raghavendra Ramakrishna Naik Raghavendra Ramakrishna Naik D-1, Flat No. 7, Navyouak Society, Bhandup East, Mumbai 400042 PAN: (AFAPN9077M)	vs	Income Tax Officer, Ward 3(3)(1), Mumbai Room No. 626, 6 th Floor, Kautilya Bhavan, C-41 to C-43, G Block, Bandra Kurla Complex, Bandra (East), Mumbai 400051
Appellant		Respondent

Present for:

Appellant by : Ms. Manisha Thakkar, CA

Respondent by : Shri. Krishna Kumar, Sr. DR

Date of Hearing : 17.09.2025

Date of Pronouncement : 16.12.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the final assessment order passed by Id. ITO (Intl. Tax) Ward 3(3)(1), Mumbai-3 vide Order No. ITBA/COM/F/17/2024-25/1072645237(1) dated 28.01.2025 passed pursuant to the Directions of the Id. Dispute Resolution Panel u/s. 144C(5) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 02.12.2024 for AY 2016-17.

2. Grounds taken by the assessee are reproduced as under:

"1. The applicant states that the learned Income tax officer has erred in passing the order which is illegal, arbitrary and against the principle laid

down in the Interpretation of statutes and order issued is bad in law and illegal and against the principle of Act and judicial pronouncement.

2. The applicant states that the addition of Rs. 18,95,000/- to the Income of the applicant u/s 56(2) (vii) (b) of the Income Tax Act, 1961 on account of consideration paid for the purchase of the flat No. 901 Building known as "Prathmesh Pearls" at bearing CTS No.433,433/ 1, Bhandup Village Road Bhandup West, Mumbai 400078 completely disregarding the actual date of allotment agreement Dated 29.09.2010 and the Cheque payment made pursuant to the same as a part purchase consideration for the purchase of the said flat and disregarding the Provisions of proviso to the section 56(2)(vii)(b)(ii) of the Act

3. On the Facts and Circumstances of the case, The DRP/ Ld. AO erred both on facts and in law in confirming the addition of Rs. 18,95,000/- disregarding the Proviso to Section 56(2)(vii) (b)(ii)of the Act, which stipulates that where the date of the agreement fixing the amount of consideration for the transfer/ purchase of immovable property (date of allotment 29.09.2010) and the date of registration (18.03.2016) are not the same, the stamp duty value as on the date of the agreement may be taken for the purposes of this sub-clause, Provided that amount of consideration, 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.

4. The DRP/Ld. AO erred both on facts and in law in confirming the addition of Rs. 18,95,000/-, affirming the Contention of the Income Tax Officer, vide Draft Order u/s. 144C, dated 02.12.2024 that..... in such scenarios the interpretation has to be strict. In absence of any formal Agreement", the benefit of the immunity proviso cannot be allowed to the applicant assessee".

2.1. The issue contested by the assessee in the present appeal is in respect of addition of Rs. 18,95,000/-, u/s. 56(2)(vii)(b), on account of consideration paid for purchase of a flat at Mumbai, for the difference in the value mentioned in the registered sale deed dated 17.03.2016, and the value which ought to have been taken as per the allotment letter issued by builder on 29.09.2010 for which assessee had made part payment through account payee cheque for booking of the said flat.

3. Brief facts of the case in this regard are that assessee had not filed his return of income for the year under consideration. Specific information was flagged as per Risk Management Strategy formulated

by CBDT through ITBA portal under the category “NMS cases”. Based on this specific information, case of the assessee was taken up for reopening u/s.148 r.w.s. 147 of the Act. The specific information relate to purchase of an immovable property comprising of flat no. 901, building known as Prathmesh Pearls, Bhandup Village Road, Bhandup West, Mumbai-400078 for a value of Rs. 81,80,500/-. Notice u/s. 148 was issued dated 13.03.2023, under the new regime of reassessment introduced by Finance Act, 2021. Explanations were called for from the assessee in respect of the purchase of said immovable property for which he furnished copy of purchase agreement with index-2 and bank statement. From the documents furnished by the assessee, ld. AO noted that agreement value of the property is Rs. 62,88,500/- whereas the value for the purpose of stamp duty is recorded at Rs. 81,80,500 and thus, the difference between the two was proposed to be added u/s. 56(2)(x) which amounts to Rs.18,95,000/- by passing a draft order u/s. 144C(1).

4. Assessee filed his objection on the proposed assessment before the ld. DRP. He furnished additional evidences in support of his claim for which remand report was called from the ld. AO. Copy of the remand report furnished by the ld. AO is reproduced in the order of ld. DRP. From the perusal of the same, it is noted from paragraph 5 that ld. AO had categorically mentioned that assessee submitted copy of HDFC bank statement and on its verification, he noted that assessee had made total payment of Rs.7,98,000/- through cheque to the builder which is before the issuance of allotment letter dated 29.09.2010. As the rejoinder to the remand report, assessee furnished the following documents before the ld. DRP for its consideration:

1. Confirming letter issued by M/S Jaydeep Construction (Builder)

2. Allotment letter issued by M/S Jaydeep Construction (Builder)
3. Purchase deed
4. Payment Schedule
5. HDFC Bank Statement w.r.t payment Schedule.

5. Assessee contented that agreement for the said property was confirmed on 29.09.2010 for which an allotment letter was issued by the builder mentioning the consideration of Rs.62,88,500/-. In the said allotment letter, payment schedule was also tabulated which is extracted below for ready reference:

Sr. No.	Particulars	Percentage
1	Earnest payment	9,43,275.00
2	On plinth	9,43,275.00
3	On casting podium slab	6,28,850.00
4	On casting 2 nd slab	6,28,850.00
5	On casting 4 th slab	6,28,850.00
6	On casting 6 th slab	3,14,425.00
7	On casting 8 th slab	3,14,425.00
8	On casting 10 th slab	3,14,425.00
9	On casting 12 th slab	3,14,425.00
10	On casting top slab	3,14,425.00
11	On completion of brick work	3,14,425.00
12	On completion of plaster of	3,14,425.00
13	On completion of paving area of the building	3,14,425.00
	Total	62,88,500.00

5.1. Claim of the assessee is that his case is covered by the provisos to Section 56(2)(vii)(b) according to which when date of agreement fixing the amount of consideration for transfer of immovable property is not same as that the date of registration then, the stamp duty value to be taken for the purpose is on the date of agreement. Assessee has complied with the requirement of the said provisos since he made part

payment to the builder out of the consideration fixed under the allotment letter by way of account pay cheques which are duly verifiable from the bank statement placed on record. Assessee also furnished a valuation report from the government approved valuer to demonstrate its value at the time when the allotment letter was issued by the builder, whereby this specific flat was identified and booked in the name of the assessee. From the said report, working for the valuation of the property for the year 2010 was furnished which is based on Maharashtra Government Ready Reckoner Rate vide CTS No.121/433 issued by Maharashtra Government. The said working for the purpose of valuation is extracted below:

Particulars	Area
Carpet Area as per Index II Square Flt	616.00
Built-up Area @1.2	739.00
Are in Square/Meter	68.65
Area Rate as per Ready Reckoner CTS No. 121/433	42,400.00
Particulars	
Total Value in Rs.	29,10,962
Add: 5% floor rise in Rs.	1,45,548
Add; 5% for left in Rs.	1,45,548
Total value for the year 2010 in Rs.	32,02,059

5.2. Thus, it was submitted by the assessee that valuation for the year 2010 comes to Rs. 32,02,059/- which is less than the agreement value fixed at Rs. 62,88,500/-. Thrust of the assessee in his contention is that actual date of allotment is an agreement which was executed between the builder and him by way of an allotment letter dated 29.09.2010, wherein identified flat was allotted and reserved for the assessee on mutually agreed terms, including payment terms, based on various stages of construction. This letter of allotment issued by the builder for the impugned immovable property is a contract between the builder and

the assessee and thus, fulfills the conditions laid down in the provisos to Section 56(2)(vii)(b). For this, assessee referred to the specific content of the allotment letter placed in the paper book, whereby it is mentioned that builder has agreed to allot the specified flat in the name of the assessee which is subject to term and conditions laid down in the said allotment letter (“agreement”) as well as, as per the terms of MCGM/BMC Rules and Regulations and or other authorities. The relevant extract in this respect from the allotment letter is reproduced for ready reference:

“As per your request we have reserved for you a Flat No.901. in B-wing on 9th Floor, in the building Known as Prathamesh Pearl CTS No. 433, Village Road. Near Momaya Park Bhandup (W), Mumbai. We have agreed to allot the above Flat and the reservation of said Flat No B-911 under subject to terms and conditions laid down in the Agreement and as per the terms of MCGM/BMC rules and regulations and/or other authorities. The allottee have verified in all respect and have accepted to pay the consideration lump-sum value of Rs.62,88,500 (Rupees Sixty Two Lac Eighty Eight Thousand Five Hundred Only) for Flat containing Super Built up area of approximately 1015 Sq. Feet with one car parking.”

5.3. In respect of the allotment letter, assessee strongly submits that it is a contract which fulfills all the essential elements of a valid contract u/s. 10 of Indian Contract Act, 1872, as listed below:

- i. Offer and acceptance: There must be a clear offer and acceptance.
- ii. Consent: Both parties must consent voluntarily without coercion
- iii. Consideration: Something of value must be exchanged
- iv. Legal capacity: Both parties must have legal capacity to contract.
- v. Legal purpose: The contract's purpose must be legal
- vi. Contract can be written or oral.

6. On this factual matrix, assessee contended that the stamp duty value of the said property as on the date of agreement/allotment letter i.e. 29.09.2010 of Rs.32,02,059/- which is duly certified by the valuation report of government approved valuer is to be considered for the purpose of provision of section 56(2)(vii)(b) as assessee has paid part consideration through account pay cheque to the builder fulfilling the conditions prescribed in the proviso to the said section.

6.1. Assessee had also furnished the registered sale deed which is dated 18.03.2016 and asserted that the stamp duty value mentioned therein has to be considered only for the purpose of registration of the said property in the name of the assessee. It cannot be taken into account for the purpose of applying the provision of section 56(2)(vii)(b) to make addition in the hands of the assessee.

6.2. From the perusal of the order of the ld. DRP, we note that while discussing on the issue in paragraph 6.3, ld. DRP observed that allotment letter issued by the builder is not an agreement in terms of proviso to section 56(2)(x)/56(2)(vii)(b) and thus, concluded that allotment letter cannot be claimed to be an agreement. It thus, rejected the objections of the assessee and directed to make the proposed addition of Rs. 18,95,000/- u/s. 56(2)(vii)(b), since according to it, the only agreement in existence is the registered sale agreement dated 17.03.2016.

7. We have carefully perused the documentary evidences placed on record which include allotment letter, bank statements, evidencing the part payments made by the assessee at the time of booking and prior to the registered sale agreement executed in the year 2016. We have also carefully gone through the orders of the authorities below as well as

provision of section 56(2)(x)/56(2)(vii)(b). The proviso to the said section in explicit terms mentions about the value which needs to be considered where an agreement is entered into by the assessee for an immovable property which fixes the amount of consideration and is registered subsequently at a later date. These provisos mitigate the hardship which may arise on the assessee on account of increase in the stamp duty value owing to passage of time, required for the construction of the immovable property or for such other similar reasons which leads to a time gap between the agreement entered into by the assessee and the actual registration taking place in the name of the assessee.

7.1. There is a requirement to have an agreement which fixes the amount of consideration for the immovable property for which stamp duty value on the date of said agreement is to be identified and part payment of the agreed consideration is to be paid by any mode other than cash on or before the date of agreement for the said immovable property. In the present case before us, assessee has evidentially demonstrated by placing bank statement and other relevant documents that all these requirements in the provisos to the said section have been duly complied with. The issue has arisen since ld. DRP observed that letter of allotment issued by the builder is not an “agreement” in terms of the proviso to said section.

7.2. We have gone through the letter of allotment which prescribed all the terms and conditions agreed upon by the builder and the assessee which fixes the amount of consideration and the payment schedule also, details which are already noted in the above paragraphs. This letter of allotment brings exclusivity for the assessee in respect of the flat which has been identified and allotted/booked in his name vis-a-vis rest of the word. It is an enforceable document since both the parties have duly

agreed upon the terms and conditions and assessee has made part payment as required therein. Furthermore, this letter of allotment fulfills the conditions as prescribed u/s. 10 of the Indian Contract Act, 1872, already listed above. Considering the overall factual matrix and the position of law, we find that assessee has fulfilled the conditions prescribed in the provisos to the said section and therefore, no addition is called for in the hands of the assessee as made by the ld. AO. We delete the addition so made. Accordingly, grounds raised by the assessee in this respect are allowed.

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

Order pronounced in the open court on 16.12.2025.

Sd/-
[Suchitra Raghunath Kamble]
Judicial Member

Sd/-
[Girish Agrawal]
Accountant Member

Dated: 16.12.2025.

Divya Ramesh Nandgaonkar
Stenographer

Copy to:

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai