

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 3755/MUM/2024
Assessment Year: 2018-19**

Commercial Development
Corporation,
703, Hariom Chambers, B-16,
Veera Ind. Estate Off Link Road,
Andheri (W),
Mumbai-400053.
PAN NO. AA AFC 7020 J
Appellant

Vs. NFAC/ITO Ward 24(1)(1),
Piramal Chambers, 6th floor,
Lalbaug, Parel,
Mumbai-400012.

Respondent

**ITA No. 3791/MUM/2024
Assessment Year: 2018-19**

Income Tax Officer,
Room No. 604, 6th floor,
Piramal Chambers, Lalbaug,
Parel,
Mumbai-400012.

Vs. Commercial Development
Corporation,
703, Hariom Chambers, B-16,
Veera Ind. Estate Off Link Road,
Andheri (W),
Mumbai-400053.
PAN NO. AA AFC 7020 J

Appellant

Respondent

Assessee by : Mr. Dr. K. Shivram
Revenue by : Mr. R.A. Dhyani, CIT-DR

Date of Hearing : 30/09/2024
Date of pronouncement : 28/10/2024



ORDER

PER OM PRAKASH KANT, AM

These cross-appeals by the assessee and the Revenue are directed against order dated 31.05.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2018-19.

2. The grounds raised by the Revenue are reproduced as under:

1. Whether on the facts and circumstances of the case and in law, Ld. CIT(A) has erred in considering market value of the property, viz Plot at CTS No. 565 & 566, Newatia Road Malad (W) as on sale agreement date 15.03.1978 for application of provisions of section 56(2)(x) of the Act, when registration/conveyance of sale deed has been done on 23.03.2018

2 (b) Whether on the facts of the case and in law, the Ld. CIT (A) has erred in directing the AO to consider the valuation of property as on 15.03.1978 determined by the district valuation officer, for application of provisions of section 56(2)(x) of the Act, when the facts of payment of amount of consideration for purchase of property is through account payee cheque or account payee bank draft or by use of electronic clearing system through bank account on or before the date of agreement for transfer of immovable property has not been established either during the assessment proceeding or the appellate proceedings.

2.1 The grounds raised by the assessee in ITA No. 3755/Mum/2024 are reproduced as under:

1. (a). The Ld. CIT(Appeal)/The National Faceless Appeal Centre('NFAC') has erred in not treating the 'Captioned Property' as Stock in trade, not subject to provision of Section 56(2)(x) of the Income tax Act, 1961.



b) Your appellant prays that, on the facts and circumstances of the case, the Assessing Officer may be directed to consider the 'Captioned Property' as Stock in Trade, not subject to provisions of Section 56(2)(x) of the Income tax Act, 1961, and thereby no addition to income on this ground is warranted

2. (a) The Ld. CIT(Appeal)/The National Faceless Appeal Centre('NFAC') has erred in sustaining addition of Rs.8,79,263/- based on Value determined by DVO as value to be considered as 'Stamp Duty Value' on the date of Agreements, even though as per applicable Law on levy of Stamp duty, the concept of Levy of duty on market rate / reckoner rate is not in existence as on date of Agreement i.e 14-03-1978.

b) Your appellant prays that, on the facts and circumstances of the case, the Assessing Officer may be directed to consider Agreement Value as 'Stamp Duty Value' as on date of Agreements and thereby delete the addition made under section 56(2)(x) of the Act.

3. Briefly stated, facts of the case are that the assessee, a partnership firm, was engaged in the business of real estate development. For the year under consideration, the assessee filed return of income on 25.06.2018 declaring total income at Rs.8,18,890/-. The return of income filed by the assessee was selected for limited scrutiny for verification of the fact that purchase value of the property recorded in the sale consideration was less than the value as per the stamp duty value authorities. The statutory notices under the Act were issued and complied by the assessee. In the course of the assessment proceedings, it was noticed that assessee firm had purchased land along with tenants and dwelling house standing thereon vide two agreements each dated 15.03.1978 for a total consideration of Rs.4,25,000/- for building and Rs.3,25,000/- for land respectively. The large portion of the land is still occupied by unauthorized hutments which are



declared as Slum by the appropriate authority. The agreement was executed and possession of the property was taken by the assessee in the year 1977-78. The purchase consideration was also discharged by the banking channels but the conveyance of property was however registered in the year under consideration. As the conveyance of the property was not passed on after transaction of purchase, the assessee took the matter to Hon'ble High Court of Bombay, wherein the Hon'ble High Court directed the seller for grant of conveyance in favour of the assessee. On further appeal, the Hon'ble Supreme Court also allowed the issue in favour of the assessee. Consequently, in the year under consideration, the assessee registered the conveyance of the property, wherein the stamp duty value of the property is assessed at Rs.80,34,09,000/-. Accordingly, in the course of the assessment proceedings, the Assessing Officer asked as why the sale consideration of the property should not be taken at the value which is recorded by the stamp duty value authorities. The Assessing Officer rejected the submission of the assessee and held the sale consideration at Rs.80,34,09,000/- and computed the addition in terms of section 56(2)(x) of the Act.

4. On further appeal, the assessee submitted that property in dispute was stock-in-trade and therefore, the provisions of section 56(2)(x) of the Act were not applicable in the case of the assessee. The assessee also contested that provisions of section 56(2)(x) of the



Act have been inserted by way of Finance Act, 2009 w.e.f. 01.10.2009 and whereas property in dispute were entered in the books of accounts of the assessee as stock-in-trade in the assessment year corresponding to the previous year 1977-1978 and therefore said provisions cannot be invoked in the year under consideration. The assessee also submitted that invoking proviso to section 56(2)(x) of the Act, if at all any addition has to be made, then the value of the property as per stamp duty value as on date of the agreement in the year 1997-1998 should be considered. The Assessing Officer referred the matter of valuation to the DVO and the report of the DVO was received during the appellate proceedings and therefore, the Ld. CIT(A) applied the rate estimated by the DVO at Rs.16,29,263/- as against the agreement value of Rs.7,50,000/- shown by the assessee. The Ld. CIT(A) accordingly sustained addition of Rs.8,79,263/- as against the addition of Rs.80,34,09,000/- made by the Assessing Officer.

6. Aggrieved, both the assessee and the Revenue are in appeal before the Tribunal by way of raising grounds as reproduced above.

7. Before us, the Ld. counsel for the assessee has filed a Paper Book containing pages 1 to 298.

8. We have heard rival submission of the parties and perused the relevant material on record including Paper Book pages 1 to 298 filed by the assessee. We find that the Ld. CIT(A) has considered the



property as stock-in-trade which has not been disputed by the Revenue. The relevant finding of the Ld. CIT(A) is reproduced as under:

“12.1.4 DECISION: | have carefully examined the rival contentions. It is pertinent to note that the Appellant is engaged in the business of real estate development. The Appellants' submission that the captioned property as purchased in 1978 has been treated as stock in trade and accepted as such in assessment proceedings in those years is evident from the perusal of assessment orders and its financial statements. The Appellant still shows the said land as its stock in trade in its financials of A Y 2018-19 and stamp duty paid during the year added to the said plot treated as stock in trade/ work in progress. The Assessing Officer has not disputed the said treatment or rejected the books of accounts or given any deduction of stamp duty paid while making addition under section 56(2) (x) of the Act. The A O has not brought on record any material which may point out / conclude that the captioned property is a different property.”

8.1 Further, on the applicability of section 56(2)(x) of the Act on the stock-in-trade, the Ld. CIT(A) rejected the contention of the assessee. The finding of the Ld. CIT(A) is reproduced as under:

“12.2.1 DECISION: I have carefully examined submission of the Appellant as to applicability of provisions of section 56(2)(x) to the immovable property acquired as stock in trade. The CBDT Circular as relied upon by the Appellant is relating to the provision of section 56(2)(vii) of the Act and as such not helpful in the present case. Further, there is no clear cut and definite finding either by the Assessing Officer or as per any clear cut proof/organic evidence of the property being stock in trade. In view of the above ,whether the property is stock in trade or not, it is not entitled to any relief on the ground and contention that it is out of the ambit of Section 56 (2)(x) of the Act and therefore the Appellant is not eligible for any relief on this ground alone. The contention of the appellant that the captioned property is in the nature of stock-in-trade in view of the amendment by the Finance Act, 2010 wherein the expression 'property' has been defined in clause (d) of the Explanation below section 56(2)(vii) clarifying that "with effect from 01.04.2009, the property would only include capital assets is misplaced as the amendment solely dealt with the issues related section 56(2)(vii) and its meaning was not supposed to be imported to the fabric of the provisions 56(2)(x) of the Act. The contention of the appellant on this ground is therefore rejected as dismissed and not admissible.”



8.2 Before us, the Ld. counsel for the assessee has referred to the decision of the Co-ordinate Bench of the Jaipur in the case of Satendra Kaushik v. ITO [2019] 106 taxmann.com 244 (Jaipur) (Trib.), wherein it is held that provisions of section 56(2)(x) of the Act have application to the property which is in the nature of the capital asset of the recipient. In said case, the assessee purchased a piece of land as its stock-in-trade, therefore, addition made by the Assessing Officer invoking provisions of section 56(2)(x) of the Act was set aside. The relevant finding of the Co-ordinate Bench of the Tribunal is reproduced as under:

“10. I have considered the rival contentions and carefully gone through the orders of the authorities below. The provisions of section 56(2)(vii) were introduced as a counter evasion mechanism to prevent laundering of unaccounted income. The provisions were intended to extent the tax net to such transactions in kind. The intent is not to tax the transactions entered into in the normal course of business or trade, the profits of which are taxable under specific head of income. Therefore, the definition of property has been amended to provide that section 56(2)(vii) will have application to the 'property' which is in the nature of a capital asset of the recipient and therefore would not apply to stock-in-trade, raw material and consumable stores of any business of such recipient. However, a property is defined in a very specific way, which includes agricultural and non-agricultural land or both. It appears that the lower authorities have not properly appreciated the relevant provisions of the Act with regard to the land purchased by the assessee, which is part of stock-in-trade. In the substantial interest of justice, we restore the matter back to the file of the AO for deciding the matter afresh after giving due opportunity of hearing to the assessee.”

8.3 Similarly, the Co-ordinate Bench of the Tribunal in the case of Mubarak Gafur Korabu v. ITO [2020] 117 taxmann.com 828 (Pune-Trib.) has adjudicated the issue as under:

“10. In the totality of above definitions, we hold that agricultural land purchased by assessee is not governed by the provisions of section



56(2)(vii)(6) of the Act being not capital asset and also because of the fact that the assessee was holding it as stock in trade. Hence, it is outside the purview of said section and no addition has to be made in the hands of assessee.”

8.4 Respectfully, following above decisions of Tribunal, we hold that section 56(2)(x) of the Act cannot be invoked in the case of the transactions of the assessee, which are undisputed for purchase of stock in trade. Further, the provisions of section 56(2)(x) of the Act have been introduced by Finance Act, 2009 w.e.f. 01.10.2009, whereas transaction of the purchase of the land in question has been recorded by in its books of accounts as stock-in-trade in the assessment year corresponding to the previous year 1977-78 and therefore, now the provision of section 56(2)(x) of the Act cannot be applied over the case, merely for the reason that said property has been registered now. Since, we have held that section 56(2)(x) of the Act is not applicable over the transaction in dispute in this case, the addition cannot be made in the case of the assessee and therefore, the grounds raised by the Revenue in its appeal are dismissed. The grounds raised by the assessee in its appeal are also rendered merely academic, which we are not required to adjudicate, when we have already held the application of section 56(2)(x) of the Act as unsustainable in law in the case of the assessee. The grounds of appeal of the assessee are also dismissed as infructuous.



9. In the result, the appeal of the Revenue is dismissed, whereas appeal of the assessee stand allowed.

Order pronounced in the open Court on 28/10/2024.

**Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 28/10/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai