

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

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER

ITA No. 3801/Mum/2025
Assessment Year : 2018-19

Rashmi Seventilal Vakharia, C-21, Malad Gaurav Co-Op. Housing Society, Dahyabhai Patel Road, Hajibapu, Malad East, Mumbai-400097. PAN : ADGPV4261R	vs.	Income Tax Officer, Ward-41(3)(3), Mumbai.
(Appellant)		(Respondent)

For Assessee :	Shri Sunil Maloo <i>(Virtually present)</i>
For Revenue :	Shri Annavarani Kosuri

Date of Hearing :	21-01-2026
Date of Pronouncement :	28-01-2026

ORDER

PER VIKRAM SINGH YADAV, A.M :

This is an appeal filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’], dated 24-03-2025, pertaining to Assessment Year (AY) 2018-19.

2. Briefly the facts of the case are that the assessment in this case was completed u/s. 143(3) r.w.s. 143(3A) & 143(3B) of the Income Tax Act,

1961 ('the Act') vide order dt. 13-04-2021, wherein the AO has brought to tax an amount of Rs. 3,17,30,016/- being the difference of stamp duty value over the purchase consideration, invoking the provisions of section 56(2)(x) of the Act. The assessee thereafter carried the matter in appeal before the Ld.CIT(A), who has since confirmed the order and findings of the AO and against the said order, the assessee is in appeal before us.

3. One of the grounds of appeal taken by the assessee relates to erroneous application of section 56(2)(x) of the Act by the Assessing officer without reference to DVO in spite of objection raised by the assessee and sustenance of said action of the AO by the ld CIT(A).

4. In this regard, it was submitted by the ld AR that the AO has erred in invoking the provisions of section 56(2)(x) of the Act on the alleged under valuation, without making a reference to the Valuation Officer despite appellant's specific objection to the adoption of stamp duty value on account of defective title, encroachments, legal uncertainty and various other factors. In this regard, our reference was drawn to the assessee's submissions which are reproduced at para 4 of the assessment order, which reads as under:

"The property under consideration is situated at Pathanwadi, Malad (East), Mumbai. We do not have clear title of property because there are many illegal occupants and encroachments on said property. The illegal occupants constructed temporary structures on land with out permission of land owners. The land was originally held by a Parsi Trust after India got independence. They sold land to Muslim family but sale deed was not executed therefore title was defective since beginning. The Muslim family got possession of land but they could not safeguard it because there were many encroachments. The property was therefore disputed and without clear / valid title. In 2008, I took 25% stake in said disputed property along with others and decided to remove encroachments and try to obtain clear title. Even after 10 years we could not succeed in getting all the encroachments removed and getting clear possession and title of the property. Also the property is affected by road setback. So one of the co-

owner on account of rising legal costs and uncertainty about the peaceful possession of the property decided to sell his stake in the land. To avoid any further legal complications, I had to unwillingly purchase the remaining stake in the property. The detailed history of property is stated in purchase deed. Hence under these circumstances when the land with temporary structures is not having title defect and the same was purchased at a lesser price, adoption of stamp valuation as sales consideration by applying the provisions of Section 56(2)(x) is not justified. Therefore we would like to humbly request you to not invoke provisions of Section 56(2)(x) of the Income Tax Act, 1961. We also rely on case of Mohd. Yusuf Trust v/s. Assistant Commissioner of Income Tax (ITAT Mumbai Bench "D") in which similar matter arose and ITAT refused to consider stamp valuation authority."

5. It was submitted that the AO has taken note of the aforesaid fact that the assessee has purchased a property with unclear title and has disputed the stamp duty value adoption, however, without referring the matter to the DVO, the difference between the stamp duty value and the purchase consideration has been brought to tax, invoking the provisions of section 56(2)(x) of the Act. Further, reference was drawn to the findings of the Ld.CIT(A) which are contained at para 5.3 to 5.5 of the impugned order, wherein the Ld.CIT(A) held that the assessee has not filed complete documentary evidences in support of title defect, encroachment litigation etc., and the findings of the AO have been confirmed. It was submitted that the detailed history of the property and various title defects and the matter relating to encroachment and other litigations, etc have been duly stated in the purchase deed itself which neither of the lower authorities have appreciated and have summarily invoked the provisions of section 56(2)(x) of the Act. It was accordingly submitted that where the assessee disputes the adoption of the stamp duty valuation, the matter should have been referred to the DVO for determination of Fair Market Value and given that in the instant case, the matter has not been referred to DVO, the matter may be restored to the file of the AO with a direction to make an

appropriate reference to the DVO, after allowing opportunity to the assessee.

6. The Ld. DR has been heard, who has not raised any specific objection where the matter is remitted to the file of the AO for reference to the DVO for determination of fair market value.

7. We have heard the rival contentions and perused the material available on record. We find that the assessee has been consistent in his position that there is a title defect in the property so acquired by him and there are various other factors in terms of encroachment etc., in relation to the property so acquired and, therefore, the stamp duty value does not reflect the Fair Market Value of the property. In such circumstances, where the stamp duty value is disputed by the assessee, we find that appropriate course of action for the AO would have to refer the matter to DVO for determination of appropriate Fair Market Value. However, in the instant case, the matter has not referred by the AO to the DVO. Even during the appellate proceedings, the assessee has reiterated its position in terms of defect in the title and various other legal and factual challenges in relation to the property so acquired and has submitted that the stamp duty value doesn't reflect the fair market value of the property so acquired and matter needs to be referred to DVO. The Ld.CIT(A) has merely stated that the assessee has failed to file any documentary evidences to demonstrate the title dispute in the property which has been contested by the assessee stating that the agreement so entered into by her itself contains the history of the property as well as various disputes and none of the authorities have appreciated the said fact and it was further submitted that the assessee can file further documentation where so required. We accordingly find merit in the contentions advanced by the

Ld.AR that where the stamp duty value is contested by the assessee before the AO, the proper course of action for the AO was to refer the matter to the DVO to determine the fair market value instead of applying the stamp duty valuation. In light of the same, we deem it appropriate to set-aside the matter to the file of the AO to refer the matter to DVO for determination of appropriate Fair Market Value, after providing reasonable opportunity to the assessee. The assessee is also directed to file necessary information/documentation as so called for by the DVO and/or as so advised. The ground is thus allowed for statistical purposes.

8. In view of the above, the other grounds of appeal are left open and not adjudicated upon.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 28-01-2026

Sd/-

[MS. KAVITHA RAJAGOPAL]
JUDICIAL MEMBER

Mumbai, Dated: 28-01-2026

TNMM

Copy to :

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

Sd/-

[VIKRAM SINGH YADAV]
ACCOUNTANT MEMBER

By Order

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