

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

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.4164/Mum/2025
(Assessment year: 2018-19)

Assistant Commissioner of Income Tax 252, 2 nd Floor, KautilyaBhavan, BKC, Bandra East, Mumbai- 400051	vs	Vidhi Enterprises 504, ParshwaKunj, Malaviya Road, Vile Parle East, Mumbai-400057 PAN: AAGFV4334C
APPELLANT		RESPONDENT

Assessee by : Shri Satyaprakash Singh,
Respondent by : Shri Sushil B. Shende (SR DR)

Date of hearing : 09/02/2026
Date of pronouncement : 16/02/2026

ORDER

Per: Anikesh Banerjee (JM):

The instant appeal of the revenue filed against the order of the NFAC, Delhi [for brevity 'the Ld. CIT(A)'], order passed under section 250 of the Income Tax Act 1961 (for brevity 'the Act') for assessment year 2018-19, date of order 04.04.2025. The impugned order emanated from the order of the Ld. Assessment Unit Income Tax Department (for brevity the 'Ld. AO'), order passed under section 147 r.w.s. 144B of the Act date of order 22.03.2024.

2. The revenue has taken the following grounds:

"1. "Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 108134530/-made on account of Profits and gains from Business of the assessee on sale of the property for the relevant Assessment year?"

2. "Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made on account of sale of immovable property despite of information on Insight Portal regarding assessee having carrying out transaction relating to sale of immovable property which remained unexplained due to assessee failing to furnish its return of income in the A.Y 2018-19 and the same has escaped assessment?"

3. "Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made on account of Profits and gains from Business of the assessee on sale of the property, despite of assessee's admitting the fact during the assessment proceedings that no business activity was carried on, except the sale of immovable property by the assessee and ignoring the AO's finding that the books have not been audited for F.Y. 2013-14, no return was filed and no income was offered or loss was declared for A.Y. 2014-15 relevant to F.Y. 2013-14?"

4. The appellant craves leave to amend or alter or add a new ground which may be necessary."

3. The brief facts of the case are that on basis of the information available with department the Ld. AO initiated the proceeding u/sec. 147 and accordingly notice u/sec. 148 was issued. During the assessment proceeding the Ld. AO found that the assessee made the transactions a project for redevelopment of existing IT Park. The assessee is a partnership firm and carried of a business Real Estate Developer. The project was taken for redevelopment of existing IT Park. The agreement for redevelopment of project was entered with landowner in 2008 and having share ratio of area 58% for developer that is the assessee and 42% for landowner in the redevelopment property. All the cost for construction as a developer were to be borne by the assessee firm and in lieu of the same the assessee was entitled to sell located area is 58%of the unit available as stock in

the said redevelopment. Accordingly the assessee completed the construction of the said new building in accordance with sanctioned building plans initiation of disapproval (10D) the assessee issued the copy of certificate bearing No.31.03.2012 dated in respect of new building. Copy of the completion certificate was duly filed before the Ld. CIT(A). In and around 2014-15 dispute arose amongst the partners and it was settled in the Hon'ble High Court of Bombay. The assessee's claim is that the entire transaction was made in earlier years including the issueance of possession certificate to the buyer of the property. But Ld. AO considered the alleged amount as income in impugned assessment year and added back with total income. Aggrieved assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) deleted the addition and upheld the ground of appeal petition. Being aggrieved the revenue filed an appeal before us.

4. The Ld. DR vehemently supported the assessment order and reiterated the findings recorded by the Ld. AO. It was contended that the Ld. AO had rightly brought the impugned amount to tax in the relevant assessment year based on the information available on record. However, during the course of hearing, the Ld. DR was unable to controvert the factual submissions advanced by the Ld. AR, nor could he place any judicial precedent or contrary authority to rebut the legal propositions relied upon by the assessee. Consequently, the arguments of the revenue remained confined to reliance on the assessment order without any substantive rebuttal to the contentions raised on behalf of the assessee.

5. The Ld. AR argued and filed a paper book containing **pages 1 to 103** which has been placed on record. In connection with his argument the relevant part of the written submission of the Ld. AR is reproduced as below:-

“8. The Agreement for sale was entered for the office premises No. 201 & 202 (having area of 7480 Sq. Ft) on 13.10.2013 for a sales consideration of Rs.10,95,88,000/- and out of the said consideration Rs.8.09 Crore was received before execution of the said agreement and balance was received before 31 March 2014 except for Rs.45,00,000/-which was not received and has been written off as a Bad Debts in F.Y 2015-16 itself due to defect in supplies. Copy of the Agreement for sale dated 13th Oct, 2013 as "Annexure-A" and ledger account for the same alongwith copy of the Bank Statement reflecting the said receipts for sales consideration is enclosed herewith and marked as "Annexure- B & B-1". Also, possession was handed over in 2013-14. The deed of assignment was executed on 03.08.2017, copy of the deed is enclosed and marked as "Annexure-C". All the above documents were submitted before Ld.AO during the assessment proceedings, however the AO in stereotype manner only on the basis of information from Sub-registrar added the sale consideration in the AY. 2018-19 without understanding the facts of the case.

9. In view of the redevelopment agreement 58% (39,042.16 Sq. Ft.) of the stock available due to redevelopment was allowed to be sold by M/s. Vidhi Enterprises, the Appellant. The details of the sale as a share in the stock in view of the redevelopment agreement are as follows:

Office No.	Name of the buyer	Agreement Date	Agreement value	Area in Sq Ft	Related Financial Year
401	Kanchan Manekar	26.03.2013	10,95,88,000	7,478.72	2012-13
501	Ritesh Export	22.02.2013	12,31,00,000	7,478.72	2012-13
601	Ritesh Export	11.03.2013	12,31,00,000	7,478.72	2012-13
201/202	Pankaj Enterprises	13.10.2013	10,95,88,000	7,480.00	2013-14

302	A.S. Enterprises	12.08.2014	6,25,00,000	3,791.00	2014-15
301	Zenith Mehta	28.12.2022	6,82,00,000	5,335.00	2022-23

10. As it can be seen from the table above that during the year under consideration no property has been sold, only assignment deed has been registered for the property sold in earlier year i.e in the year 2013-14.

11. Your lordship will find the assessee was engaged in the business of real estate development and therefore the units held by it was in nature of 'stock-in-trade' as opposed to the AO's action of holding the said plot of land to be in nature of 'capital asset' is erroneous and flawed.

12. Hon'ble Andhra Pradesh High Court in the case of M.Krishna Rao (120 ITR 101) took note of the fact that, the assessee had purchased land along with another person. The Hon'ble Court observed that, the assessee had taken steps to convert the land-use and thereafter sold the same. The Hon'ble Court accordingly held that, whether the assessee intended to deal in real property or not has to be judged not from the fact that there was a time lag between the first transaction and second transaction, but from the facts whether he sought to take any steps to exploit the said land. On the given facts of this case, the actions of the assessee confounded its intention which was to carry on business in real estate and thereof the profits derived therefrom was held to be assessable to tax as an adventure in the nature of trade.

13. Kind attention is solicited to the fact that there were no business transaction (Sale of Stock) during the year under consideration, only Interest Income of Rs.20,410/- had accrued and hence there was LOSS of meagre amount of Rs.4,590/-. In support of the submission copy of the Bank Statement for the period 01.04.2017 to 27.07.2023 was submitted before the Ld. AO during the course of assessment to substantiate there were no sales of stock during the year. It is only due to registration of the assignment deed during the year, information was flagged in the INSIGHT

system for A.Y 2018-19 and hence proceeding was initiated u/s-148A and order for the proceeding was passed.

14. The Data reflected in the system was for "Sale by any person of immovable property", the amount of Rs. 10,95,88,000/-. Here attention is invited to the fact that the said property is only a stock of the Firm and not immovable property (Capital Assets) of the Firm and hence the profit, if any, would be taxable in the year property was handed over to the purchaser and consideration received under the head "Income from Business" and not under the head "Capital Gains".

15. Possession of the said premises was handed over to the purchaser and the transaction was completed. The transaction pertained to F.Y 2013-14 and hence recorded as Business Sale in that particular financial year i.e F.Y 2013-14, It can be seen from the table above, no sale happened in the year 2017-18.

16. The appellant firm is engaged in the business of the real estate, therefore property constructed for sale has to be considered only as a STOCK for sale of the firm. Further, during year under consideration MVAT (MAHARASTRA VALUE ADDED TAX) a form of sales tax used to collect tax on transactions involving sales of goods completed assessment for the said transaction(sale of unit 201 & 202) has been completed under The Maharashtra Value Added Tax for the period F.Y 2013-14 and said transaction has been considered as sale of Stock. Copy of the Assessment Order passed under the MVAT Act is enclosed herewith and marked as "Annexure-D".

6. The Ld. AR argued and heavily relied on the order of the Ld. CIT(A). The contention of the impugned appellate order in paragraph no. 14 to 17 is reproduced as below.

"14. In view of the facts and submissions of the assessee, proceedings and record / assessment proceedings and submission made during appeal proceedings, I find it difficult to concur with the finding by the AO that the date of registration deed shall be considered as the event to recognize the sale. It is an undisputed fact that the sale is from stock in trade of the assessee and addition has accordingly made under the head 'Business & Profession also invoking provisions of section 43CA of Income Tax Act. It is well recognized accounting principal that in the business of real estate projects, sale is recognized as and when the revenue is received in the books. To say that sales shall be recognized at the time of registration of sale deed shall in fact lead to deferment of revenue recognition by real estate developer and shall be against legal and accounting principles. In the instant case, it is not-disputed by the AO that entire consideration has been received by the assessee in F.Y. 2013-14 and possession has been given by the same period. It is also not doubted by the AO of the assertion made by the assessee that the sale has been shown in the VAT return for F.Y. 2013-14. In this background, it is difficult to accept the proposition that the sale shall be recognized in the year in which registration deed is made. In fact, even in the case of transfer of capital asset, registration of deed is no condition for recognition of transfer. As evident from section 2(47) of Income Tax Act, 1961, transfer is triggered whenever part payment is received and possession of the property is handed over. Registration of deed is not precondition for recognizing transfer of a capital asset. This proposition is even more true in the case of sale of stock in trade.

15. The case law relied by the AO have been found different from the facts of the present case. The AO had placed reliance on the judgment in the case CIT Vishnu Trading & Investment Co. (2003) 259 ITR 724 (Raj)) relied upon the SC judgment in the case of CIT v. Poddar Cement Pvt. Ltd, [1997] 226 ITR 625. At page 653, their Lordships observed as under

"Following the view taken by their Lordships, we are of the view that for taxing the capital gain, registration of the sale deed is not necessary under the provisions of the Income-tax Act."

15.2 In this case Hon'ble HC only has held that taxing the capital gain, registration of the sale deed is not necessary under the provisions of the Income-tax Act. This proposition is in fact favourable to the appellant. In the instant case, the appellant is arguing that taxation may be

determined on the basis of part performance of contract and handing over of possession and not the basis of registration of property.

15.3 The AO's reliance on Hon'ble Apex court SC judgement in the case of CIT v. Podar Cement Pvt. Ltd. [1997] 226 ITR 625 is also misplaced, wherein it is held that, "We are conscious of the settled position that under the common law owner means a person who has not valid title legally conveyed to him after complying with the requirements of law such as Transfer of Property Act, Registration Act etc. But in the context of section 22 of the Income-tax Act having regard to the ground realities and further having regard to the object of the Income-tax Act, namely, 'to tax the income', we are of the view, owner' is a person who is entitled to receive income from the property in his own right." This decision also does not cast any obligation for taxability to be determined on the basis of registration of property but whosoever is entitled to enjoy the fruits of property.

15.4 The AO has also relied upon judgment by Apex court in ALAPATI VENKATARAMIAH VS. COMMISSIONER OF INCOME TAX HYDERABAD and was under the provisions Indian Income-tax Act, 1922 (11 of 1922). This case pertains to Asstt. Year 1948-49 and also examines taxability under the head capital gain. On both counts this does not help in supporting the case of the department on present facts where the issue on hand is sale of 'Stock in Trade'. Even the law of taxability of capital gain has substantially changed from Asstt. Year 1948-49.

15.5. It is clear from the foregoing discussion that none of the case laws relied upon by the AO are relevant to the facts and circumstances of the present case and are clearly distinguishable.

16. The appellant relied upon the judgment of Jurisdictional Hon'ble Bombay High Court in the case of (i) Chaturbhuj Dwarkadas Kapadia of Bombay vs. Commissioner of Income-tax [2003] 129 Taxman 497 (Bombay)/[2003] 260 ITR 491 (Bombay)/[2003] 180 CTR 107 (Bombay) [13-02-2003] and with reference to the provisions as per the Transfer of Property Act, 1882 the ownership of the property is said to be transferred once the possession is completed and sales can be recognised in the books as well as for tax purpose in the year in which possession was handed over. The Hon'ble Bombay High Court held that Section 45, read with section 2(47) of the Income-tax Act, 1961 Capital gains - Year in which assessable Assessment year 1996-97

Assessee an individual entered into an agreement dated 18-8-1994, in which he agreed to sell to 'Flore at' his share of immovable property - For that purpose, assessee agreed to execute a limited power of attorney, authorising Floreat to deal with said property and also to obtain permissions and approvals from various authorities for further developments On obtaining all permissions assessee agreed to grant an irrevocable licence to Floreat to enter upon assessee's share of property By 31-3-1996 Floreat paid almost entire amount of consideration and obtained all permissions However, since Bombay Municipal Corporation issued a commencement certificate permitting construction of a building up to plinth level only, plan came to be amended and ultimately power of attorney was executed on 12-3-1999 Assessing Officer held assessee liable to capital gains tax for assessment year 1996-97 as, according to him, transfer had taken place during accounting year ending 31-3-1996 However, according to assessee, liability arose during assessment year 1999-2000 as in said assessment year only he had executed an irrevocable licence in favour of Floreat - Tribunal upheld Assessing Officer's finding - Whether, since in instant case a mistake apparent from record was found in findings of Tribunal inasmuch as date of possession of property by Floreat was shown as 1-4-1996 which in fact was 1-4-1997, it could be said that Tribunal was not justified in concluding that assessee had transferred said property during previous year relevant to assessment year 1996-97-Held, yes.

Even this case law relied upon by the appellant pertains to taxability under the head 'Capital Gain', whereas the addition in the instant case has been made under the head 'Income from business & profession' on account of sale of stock in trade. However, this case law is of limited help to the appellant to the extent of its finding that registration of deed is not a precondition to recognize the transfer of capital asset. It has been held that the transfer is recognized where there is substantial performance of the underline contract.

17. Considering the above discussion material on record and in view of the facts and circumstances of the case, I have no hesitation in arriving at the conclusion that there is no transfer of stock in trade in assessment year 2018-19. There is no accrual or receipt of any income in favour of the assessee in assessment year 2018-19 as no consideration was received in the Asstt. Year 2018-19 but only assignment deed was done during the period. Earlier

consideration was received during Asstt. Year 2014-15 and possession has also been claimed to be handed over in Asstt. Year 2014-15. These facts have not been contested by the AO. In view of these facts, therefore, whole of the addition in assessment year under appeal i.e. 2018-19 is unjustified. Thus, I am of the considered view that the AO addition made by the AO amounting to Rs. 10,81,34,530/- under the head Business Income is incorrect and deserves to be deleted in assessment year under appeal. Thus, Grounds of appeal Nos. 2 and 4 are allowed.”

7. The Ld. AR advanced his argument and respectfully relied on the order of the Coordinate Bench of ITAT-Mumbai, B-Bench in the case of **Navketan Premises Pvt Ltd vs. DCIT, ITA No. 4228/Mum/2024** date of pronouncement **06/08/2025**. The observation of the Coordinate Bench in relevant paragraph is reproduced as below:-

“17. The legal position on this point is equally well-settled. Section 2(47)(v) read with section 53A of the Transfer of Property Act leaves no room for ambiguity. Once possession is handed over in part performance of a written agreement for consideration and the transferee is willing to perform their obligations, the transaction qualifies as a transfer for the purpose of taxation. The formal registration of the agreement at a later date, being merely a procedural formality, cannot defer the taxability of the transaction.

18. The Revenue's conduct in this case is also materially significant. Having assessed the income in AY 2014-15 and failed to pursue its appeal against the Id.CIT(A)'s order deleting the addition in that year, it cannot now seek to revive the same addition in a subsequent year based on an inconsistent and contradictory factual position. The same income cannot be taxed twice. The doctrine of consistency and finality of proceedings operates with full force in such circumstances.

19. The invocation of section 43CA in the impugned year is also misplaced. The conditions for applicability of section 43CA(1) are not satisfied once it is accepted that the transaction occurred in the prior year. Even if section 43CA were to apply, sub-sections (3) and (4) direct that the stamp duty valuation as on the date of agreement must be taken when part or whole of the

consideration has been received earlier. In the present case, the entire consideration was received more than one year prior to the date of the agreement.”

8. We have heard the rival submissions and perused the material available on record. The undisputed facts emerging from the record demonstrate that the assessee, a partnership firm engaged in the business of real estate development, had entered into an agreement for sale of Office Premises No. 201 & 202 on 13.10.2013 for a total consideration of Rs.10,95,88,000/-. Substantial consideration was received prior to execution of the agreement and the balance (except Rs.45,00,000/- written off subsequently as bad debts) was received before 31.03.2014. Possession of the premises was also handed over during F.Y. 2013-14. These facts have not been controverted by the Assessing Officer. The only event that occurred in the impugned AY 2018-19 was the registration of the assignment deed on 03.08.2017.

The primary issue before us is whether the registration of the assignment deed in the impugned year can trigger taxation of business income in A.Y. 2018-19, despite the fact that the entire consideration was received and possession handed over in F.Y. 2013-14. The assessee has consistently contended that the units constituted its stock-in-trade and the sale was duly recognized as business income in the year in which possession was handed over and consideration was received. The VAT assessment under the MVAT Act for F.Y. 2013-14 has also recognized the transaction as sale of stock. These aspects lend corroboration to the assessee's stand.

The Ld. CIT(A), after detailed examination, has rightly observed that even in the case of capital assets, transfer is not dependent upon registration alone but is

governed by the principles embodied in section 2(47) of the Act read with section 53A of the Transfer of Property Act. A fortiori, in the case of stock-in-trade, revenue recognition is aligned with the accrual of income and handing over of possession in accordance with commercial principles. The Ld. AO has not disputed receipt of consideration in F.Y. 2013-14 nor the handing over of possession in that year. In absence of any accrual or receipt of income in A.Y. 2018-19, the addition merely on the basis of data reflected in the Insight Portal cannot be sustained.

We also find merit in the reliance placed by the Ld. AR on the decision of the Coordinate Bench of ITAT Mumbai in **Navketan Premises Pvt. Ltd.** (supra), wherein it has been categorically held that once possession is handed over in part performance of the contract and consideration is received, the transfer is complete for taxation purposes and subsequent registration does not defer taxability. The Bench further emphasized that the same income cannot be taxed twice and the doctrine of consistency must be respected. The ratio laid down therein squarely applies to the present facts.

The reliance placed by the Ld. AO on judicial precedents relating to capital gains is misplaced and distinguishable on facts. In the present case, the property constituted stock-in-trade of the assessee and the addition has been made under the head "Profits and Gains from Business or Profession." The Ld. AO has failed to demonstrate any accrual of income during the impugned year. Section 43CA also cannot be invoked in a year in which no transfer of stock-in-trade has taken place. The revenue has not brought any contrary material or judicial precedent to rebut the factual findings recorded by the Ld. CIT(A). The deletion of addition is based on proper appreciation of facts, settled legal principles, and accounting standards applicable to real estate developers. We find no infirmity in the impugned

appellate order. In view of the foregoing discussion, we hold that there was no transfer of stock-in-trade nor any accrual or receipt of income in AY 2018-19. The addition of Rs.10,81,34,530/- made by the Ld. AO is unsustainable in law. Accordingly, the order of the Ld. CIT(A) deleting the addition is upheld.

9. In the result, the appeal of the revenue bearing **ITA No.4164/Mum/2025** is dismissed.

Order pronounced in the open court on 16th day of February 2026.

Sd/-

(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 16/02/2026
SAUMYASr.PS

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.

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BY ORDER,

(Asstt. Registrar), ITAT, MUMBAI