

**IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH :: NAGPUR**

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
SHRI KHETTRA MOHAN ROY, ACCOUNTANT MEMBER**

**ITA No. 262/NAG/2025
(Assessment Year : 2013-14)**

Udaykumar Vyas, Flat No. 402, Lepresting Apartment, Plot No. 105- 106, Ramdaspath, Nagpur. PAN : AARPV 4578 K	vs	ITO, Ward – 1(5) Nagpur
Assessee		Respondent

Assessee by	:	Shri Sameer Wazalwar, CA
Revenue by	:	Shri Pankaj Kumar, CIT DR
Date of hearing	:	24.02.2026
Date of pronouncement	:	21.04.2026

ORDER

PER KHETTRA MOHAN ROY, AM:

This appeal by the assessee is directed against the order of Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi, dated 11/03/2025 passed under section 250 of the Income Tax Act, 1961 (for short, “**Act**”) which is arising out of assessment order passed u/s. 143(3) r.w.s 147 of the Act,

dated 26.12.2019 by the ITO, Ward-1(5), Nagpur for the Assessment Year 2013-14.

2. The assessee has raised the following grounds of appeal:

1. *On the facts and circumstances of the case and in law, the Ld. CIT(A) and AO failed to appreciate the fact that the appellant is regularly engaged in the business of purchasing and selling land for profit, to which the provisions of section 50C is not applicable.*
2. *Without prejudice to above, the computation of capital gain done by AO and confirmed by CIT(A) is incorrect, since while calculating the capital gain on sale of land to M/s Vedbhumi Builders, the cost of acquisition of different land is deducted from the sale price.*
3. *The appellant craves leave to add, alter, amend, or withdraw any of the above grounds of appeal before or at the time of hearing.*

3. Brief facts of the case are that assessee is an individual, engaged in the business of land development and plot trading, filed his return of income for AY 2013-14 declaring total income of Rs. 76,13,940/- furnished on 29.08.2019. On the basis of the information received by the Ld. Assessing Officer (**AO**) that assessee along with Shri Karemore executed sale deed on 31.12.2012 for a market value of Rs. 9,21,00,000/-. Shri Karemore was given irrecoverable Power of Attorney (POA) to the

assessee. The assessee executed an oral agreement with sale with the owner of the land on 21.02.2006. Moreover, sale deed was executed on 10.07.2009 and the indexed cost of the said property was valued at Rs. 96,30,310/-, in which assessee's share comes to Rs. 48,15,155/-. Thus, long term capital gain is estimated to Rs. 4,12,37,845/- after deducting indexed cost of acquisition. Therefore, Ld. AO has reason to believe that the capital of Rs. 4,12,37,845/- has escaped assessment. Hence, case was reopened and notice u/s. 148 was issued and served upon the assessee. In reply, assessee requested the Ld. AO to treat the original return of income filed u/s. 139 as return filed in response to notice u/s. 148. Statutory notices u/s. 143(2) & 142(1) were issued and asked the assessee to upload various details in ITBA portal, which had not done by the assessee. As per the information available on records, Ld. AO invoking section 50C computed the LTCG at Rs. 4,43,34,000/- after deducting indexed cost of acquisition and asked the assessee to explain, by issuing show-cause notice, as to why the said amount should not be added to the total income as income from LTCG. In response to show-cause notice, assessee submitted that assessee and Shri Jagdish

Karemore entered into a development agreement on 04/05/2002 with the Nakade family for land development as a business venture, not investment. Out of the total land, 1.77 hectares was sold to Vedbhumi Builders via sale deed dated 18/01/2013. The assessee acted as a consenting party (through development rights/POA) and received consideration. The land constitutes stock-in-trade, and the assessee is regularly engaged in land trading business. Income from this transaction was rightly offered as business income in A.Y. 2013-14, with sale and proportionate cost reflected in the P&L account. Hence, Section 50C and capital gains provisions are not applicable. The sale deed dated 10/07/2009 pertains to a different portion; the remaining land continues as stock-in-trade. Ld. AO was not convinced with the explanations offered by the assessee and computed the LTCG of Rs. 4,34,43,000/- by invoking section 50C which was added to the total income of the assessee.

4. Being aggrieved, assessee carried the matter to the Ld. CIT(A), who dismissed the appeal of the assessee. While upholding the addition made by the Ld. AO, Ld. CIT(A) observed that assessee had executed the registered sale deed dated 10.07.2009

(Document No. 3162/2009) and thereby became the absolute owner of the property. The Ld. CIT(A) held that once the assessee is reflected as owner in the registered documents and has participated as seller/consenting party in the subsequent sale deed dated 31.12.2012, the transaction necessarily partakes the character of transfer of a capital asset, thereby attracting the provisions of section 50C of the Act, irrespective of the accounting treatment adopted by the assessee or the claim that the land constituted stock-in-trade. The Ld. CIT(A) further held that the assessee had disclosed nil opening stock, and had failed to furnish any credible documentary evidence to substantiate that the land was held as stock-in-trade. Therefore, Ld. CIT(A) confirmed the addition made by the Ld. AO on account of Long Term Capital Gain.

5. Aggrieved by the order of Ld. CIT(A), assessee is in appeal before this Tribunal. Ld. Counsel for the assessee, placing reliance on the paper book running into 79 pages submitted that assessee never acquired ownership of the Chikhali Deosthan land through any Sale Deed. He acted merely as a developer under a registered irrevocable Power of Attorney (POA) dated 20.11.2008, which

granted rights for development, layout approval, and sale on behalf of the original owners (Nakade family), without transferring title. The 7/12 extracts confirm that ownership remained with the Nakade family. Accordingly, the land was treated as stock-in-trade/project inventory in the books, and sales were recorded as business turnover, which was accepted by the Department in previous years also. He refuted the finding of Ld. CIT(A) that assessee was the absolute owner of the property based on the Sale Deed dated 10.07.2009. He further submitted that the said sale deed pertains to a distinct parcel of land admeasuring 3.85 hectares (9.57 acres), which was acquired under peculiar circumstances due to disputes between co-owners, and was never sold during the year under consideration, but continues to be reflected as stock-in-trade in the books of account. Ld. counsel pointed out that the land actually sold during A.Ys. 2012-13 & 2013-14 aggregates to 10.86 acres, which is different from the land covered under the sale deed in question and has no nexus with the impugned Sale transaction of AY 13-14. Ld. counsel further submitted that Ld. AO has erroneously adopted the cost of acquisition relating to the said 2009 land, which pertains to

completely different land having distinct boundaries. Thus, both the cost component and the sale consideration adopted by the AO are factually incorrect and unrelated to the transaction under consideration. Learned counsel finally heaped upon that Ld. AO has accepted the books of account; and not rejected the method of accounting and also accepted the sales figures as business turnover. Simultaneously, Ld. AO taxed the same sale receipts as Long Term Capital Gains by invoking Section 50C, which amounts to double taxation.

6. *Au Contraire*, Ld. Departmental Representative (**DR**) relied upon the orders of the authorities below and submitted that invocation of section 50C was justified on the basis of stamp duty valuation because assessee had acted as seller in the registered sale deed dated 31.12.2012 (Document No. 0405/2013) and was the absolute owner of the property as established by the earlier registered sale deed dated 10.07.2009 (Document No. 3162/2009) wherein the assessee along with Shri Jagdish N. Karemore were shown as purchasers and had become absolute owners as reflected in the City Survey records. Ld. DR further submitted that once assessee is shown as seller in the registered sale deed, the

transaction is necessarily a transfer of a capital asset and the provisions of section 50C are attracted irrespective of the claim of stock-in-trade or the accounting treatment adopted by the assessee.

7. We have heard both the parties and perused the material available on record. We find that AO has primarily proceeded that assessee was a co-owner of the land by relying upon the registered sale deed dated 10.07.2009 and the fact remains that assessee executed the subsequent sale deed dated 31.12.2012. The Ld. AO has also observed that assessee was shown as owner in revenue records and had rights to transfer the property, thereby treating the land as capital asset, and invoked section 50C. Ld. CIT(A) has confirmed the addition by holding that assessee failed to demonstrate that the land was held as stock-in-trade. In the Paper Book filed before us, we find that the Gumastha under Shops & Establishments Act clearly established that assessee was engaged in the business of Property Dealer, land Developer from 1996 onwards. On perusal of the Agreement of Sale/Development dated 20.11.2008, registered Power of Attorney (POA) and 7/12 extracts demonstrate that assessee had not acquired ownership of the total

land of 10.86 acres in Chikhali Layout in question, but was merely acting as a developer/attorney holder on behalf of the original landowners, namely the Nakade family. On perusal of these documents, we find that the Power of Attorney merely granted development rights, layout approval, selling rights, etc incidental to the business activity of land development and did not effect any transfer or conveyance of title in favour of the assessee. The revenue records also continued to stand in the name of the original landowners (Nakade Family). We find force in the contention of the assessee that reliance placed by the lower authorities on the Sale Deed dated 10.07.2009 to infer ownership is factually infirm and nebulous. The said deed pertains to a distinct parcel of land admeasuring 3.85 hectares (9.57 acres), whereas the land actually sold during the relevant assessment years aggregates to 10.86 acres, which clearly does not match with the area covered under the said deed of 10.07.2009. Further, the boundaries and location of the land covered under the 2009 Sale Deed are absolutely distinct from the land forming part of the Chikhali layout developed under the Agreement dated 20.11.2008. It is also not in dispute that the land covered under

the 2009 Sale Deed was not sold during the year under consideration and continues to remain part of stock-in-trade. Thus, the adoption of cost of acquisition based on the said Sale Deed by the Ld. AO is fundamentally erroneous and has no nexus with the transaction under consideration. The very foundation of the addition, being based on incorrect identification of the property, stands vitiated due to misapplication of documentary evidence. In these circumstances, the finding of the Ld. CIT(A) treating the assessee as absolute owner solely on the basis of the said Sale Deed cannot be sustained. We further observe that Balance Sheets for A.Ys. 2012-13 & 2013-14, filed before us reveals that the land in question i.e Chikhali Layout was consistently reflected as stock-in-trade / project inventory alongwith two other layouts. The proportionate cost of land was debited at the time of sale and the surplus was offered to tax under the head "Profits and Gains of Business or Profession" in return filed u/s 139(1). It is also not in dispute that in the assessment for A.Y. 2012-13, a similar transaction from the very same layout project, the Department accepted the profit on land sale as income from Business. This establishes that assessee was engaged in land

development and trading business. The provisions of section 50C are attracted where there is a transfer of a capital asset, being land or building or both, and the consideration declared is less than the stamp duty valuation as per government ready reckoner. However, for invoking section 50C, the asset transferred must first fall within the definition of “capital asset” under section 2(14) of the Act, which specifically excludes stock-in-trade. In the present case, the AO has failed to bring any cogent material on record to establish that the land sold constituted a capital asset owned by the assessee in order to invoke sec 50C of the Act. On the contrary, the legal documents placed on record, the consistent accounting treatment in the books of account and the Department’s acceptance of similar transactions in the earlier year supports the assessee’s claim that the land formed part of business inventory held in the course of land development activity.

8. We further note that the present issue is no more *res integra*. The Hon’ble Madras High Court in the case of *CIT v. Thiruvengadam Investments (P) Ltd.* [2010] 320 ITR 345 (Mad) has categorically held that “*where the property is treated as a business asset, the provisions of section 50C of the Act have no application,*

as the said provision is confined only to capital assets". The said view has been consistently followed by various Benches of the Tribunal, including the Mumbai Bench in *Inderlok Hotels Pvt. Ltd. vs. ITO* (ITA No. 5428/Mum/2010), wherein it has been held that section 50C, being a deeming provision, cannot be extended to transactions involving stock-in-trade. Respectfully following these binding precedents, we hold that the provisions of section 50C are not applicable to the facts of the present case.

9. We further find that sale consideration of ₹84,50,000/- arising from the sale of Land of 4.37 acres (1.77 hectares) was already disclosed by the assessee as part of its business turnover and the profit thereon was offered to tax under the head "Profits and Gains of Business or Profession." The Ld. AO has accepted the net profit offered as per books of account and has not rejected the same under section 145(3) of the Act. Without rejecting the books of accounts, the AO has again proceeded to tax the same transaction under the head capital gains by invoking section 50C, which amounts to double taxation. Section 14 of the Act clearly demonstrates heads of income in a watertight manner. A singular transaction cannot be vivisected into two heads of income. Thus,

when surplus is taxed u/s. 28, section 50C cannot be pressed. In view of the above findings, we hold that the land sold by the assessee formed part of stock-in-trade and therefore section 50C is not applicable. We reverse the order passed by the Ld. CIT(A) and direct the Ld. AO to delete the addition of ₹4,34,43,000/- made on account of long-term capital gain.

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

Order pronounced on 21.04.2026 under Rule 34 of Income Tax (Appellate Tribunal) rules 1963

sd/-
PAWAN SINGH
JUDICIAL MEMBER

sd/-
KHETTRA MOHAN ROY
ACCOUNTANT MEMBER

Nagpur: Dated: 21/04/2026

vr/-

Copy to:

1. The Assessee
2. The Revenue
3. The Pr.CIT concerned.
4. The DR, ITAT, Nagpur
5. Guard file.

By order

Senior Private Secretary
ITAT, Nagpur