

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

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.2499/MUM/2024
(Assessment Year:2020-2021)**

Ketan Himatlal Mehta

1st Floor, Cine Star Building,
Trikamdas Road, Kandivali West
Mumbai – 400067. Maharashtra.
[PAN:ADDPM0713C]

..... **Appellant**
Vs

**Deputy Commissioner of Income Tax
1(1)(1), Mumbai**

Room No.579, Aayakar Bhavan,
M. K. Road, Mumbai - 400020
Maharashtra.

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Rakesh Joshi

For the Respondent/Department : Shri Pravin Salunkhe

Date

Conclusion of hearing : 17.10.2025

Pronouncement of order : 16.12.2025

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Assessee is directed against the Order, dated 26/03/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the **CIT(A)**'] whereby the Ld. CIT(A) had dismissed the appeal against the Assessment Order, dated 23/09/2022, passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 for the Assessment Year 2020-2021.
2. The Assessee has raised following grounds of appeal :

1. *The learned CIT(A) has erred in upholding additions of Rs 18,48,70,810 u/s 56(2)(x) of the Income Tax Act, 1961 made by the Assessing Officer as the Ld. CIT(A) also did not consider the submissions made by the appellant from time to time.*
 2. *The learned CIT(A) erred in not considering the Agreement dated 24.8.2013 signed between M/s Vaibhav Development Corporation and Mr. Vijay Krishnaji Sawant proprietor of Vaibhav Developers on one side as the Vendors and Vanshree Developers, a partnership firm, wherein the appellant was a partner, on the other side as purchasers for Rs. 12 crores in respect of the same immovable property located at Dahisar.*
 3. *The learned CIT(A) erred in not considering Memorandum of Understanding (MOU) entered on 01/11/2017 between Mr. Abbot Anthony Quinny and the Appellant and agreed to renounce all Rights, Title and Interest in the same immovable property located at Dahisar in favor of the Appellant for Rs. 9,00,00,000. It is important to note that out of total consideration of Rs.9,00,00,000 an amount of Rs.3,00,00,000 was paid on 31.10.2017 and the said MOU culminated in Conveyance Deed dated 19.09.2019.*
 4. *Order passed is bad in law and contrary to the provisions of the Act. Therefore, the appellant prays to delete the additions of Rs. 18,48,70,810 confirmed by Ld. CIT(A)."*
3. The relevant facts in brief are the Assessee, an individual, filed its return of Income for the Assessment Year 2020-2021 on 30/01/2021 showing a total income of INR.55,48,740/-, The case was selected for regular scrutiny, inter-alia, for verification of purchase of property for consideration less than the stamp duty value. On perusal of order passed by the Assessing Officer and the CIT(A) it emerges that Assessee had claimed to have purchased land located a Dahisar, Mumbai through a partnership firm (i.e., Vanshree Developer) vide Agreement dated 24/08/2013, which was registered on 22/11/2013 for a total consideration of INR.12,00,00,000/-. Subsequently, dispute arose regarding ownership of the land and in terms of consent terms drawn up between the disputing parties, the Hon'ble Bombay High Court directed the Assessee to make additional payment of

INR.9,00,00,000/-. Thereafter, Sale Deed, dated 19/09/2019, was executed between the Assessee and the disputing party for consideration of INR.9,00,00,000/-. The Assessee had provided following chronology of events to the Assessing Officer and the CIT(A):

- (a) Originally the agricultural land in question belonged to Mr. Anwar Haji Alimohammed Haji Kassam and family, who had given this land for the purpose of cultivation to Mr. Louis Francis Misquitta. As per Bombay Tenancy and Agricultural Lands Act 1948, the Mr. Louis Francis Misquitta was declared as tenant. He had made an application in the year 1968 to the Tehsildar, Taluka Borivli, Bombay Suburban District and the Tehsildar by an Order, dated 30/03/1968, declared the said Mr. Louis Francis Misquitta, as a tenant and issued Certificate, dated 18/12/1971, declaring him owner of the said lands under Section 32M of Bombay Tenancy and Agricultural Lands Act 1948. Since as per the provision of Bombay Tenancy and Agricultural Lands Act 1948, the aforesaid certificate is a conclusive evidence of purchase, Mr. Louis Francis Misquitta became the owner of said land. Subsequently, after the death of Mr. Louis Francis Misquitta, his wife Mrs. Marcelina Luis Misquitta became the owner of this land.
- (b) Vide Agreement, dated 30/07/1981, between Mrs. Marcelina Luis Misquitta and M/s Vaibhav Development Corporation, a partnership firm being Developer/Builder/Contractor acquired the land for the purpose of development.
- (c) M/s Vaibhav Development Corporation and Shri Vijay Krishna Sawant entered into Agreement, dated 24/08/2013, with Vanshree Developers which was registered on 22/11/2013. It is the case of the Assessee that by way of the aforesaid agreement Vanshree Developers acquired the land and took over physical

possession also for a total consideration of INR.12,00,00,000/-. Vanshree Developers recorded this land as stock-in-trade in its books of accounts. Subsequent to reconstitution of Vanshree Developers, the Assessee and his mother continued as partner with 95% share and 5% share, respectively. However, on demise of his mother, the Assessee became the sole surviving partner taking over 100% share on dissolution of Vanshree Developers and in the process becoming the sole owner of land acquired by Vanshree Developers vide dated, 24/08/2013.

(d) Meanwhile, Mrs. Marcelina Luis Misquitta passed away on 15/07/1988 leaving behind Mr. Abott Anthony Quinny as her legal heir who was became the executor as well as the beneficiary of her Will. Mr. Abott Anthony Quinny disputed the transfer of ownership of the land. However, the said dispute was settled between the disputing parties and on 13/02/2018 consent terms were filed before the Hon'ble Bombay High Court in terms of which on payment of INR.9,00,00,000/- Mr. Shri Abott Anthony Quinny agreed to execute Conveyance Deed in favour of the Assessee.

(e) The above Conveyance Deed was registered during on 19/09/2019 (i.e. during the relevant previous year) having INr.9,00,00,000/- as agreed consideration when the Index II stamp duty value of the land was INR.27,19,39,000/-.

4. On perusal of the Assessment Order we find that the Assessing Officer adopted stamp duty value of INR.27,19,39,000/- and taking difference between the aforesaid stamp duty value and the book value of INR.8,70,68,190/-, the Assessing Officer made addition of INR.18,48,70,810/- (INR.27,19,39,000 - INR.8,70,68,190/-) under Section 56(2)(x) of Act vide Assessment Order, dated 23/09/2022.

5. The appeal preferred by the Assessee challenging the aforesaid addition did not yield any favorable results as the CIT(A) confirmed the addition made by the Assessing Officer under Section 56(2)(x) of the Act and dismissed the appeal holding as under:

"7. *The appellant has purchased/acquired one property for a transaction value of Rs. 8,70,68,190/- during the relevant year. The stamp duty value for the said property is Rs. 27,19,39,000/- The appellant has not disputed the stamp duty value of the property.*

8. *The appellant contends that a partnership firm named M/S Vanshree Developers then not consisting of appellant as one of the partners entered in to an agreement on 24.08.2013 for purchase of said property at a consideration of Rs. 12.00 Crores. Subsequently, the appellant became sole proprietor of the said partnership firm upon reconstitution of firm on 07.07.2015 and death of other partner and the ultimate purchase of the said property in relevant year by the appellant in his individual capacity does not come under the purview of section 56(2)(x) of the Act as the agreement for purchase was done on 24.08.2013 when section 56(2)(x) was not in force. It is pertinent to mention here that the agreement dated 24.08.2013 was entered in to between the said M/S Vanshree Developers and one M/S Vaibhab Development Corporation & Another and not with the present seller of the property, Mr. Abbot Anthony Quinny. The appellant while claiming so, contends that i) the agreement between said M/S Vanshree Developers and M/S Vaibhab Development Corporation & Another be considered an agreement within the meaning of section 56(2)(x) for the instant purchase transaction of appellant and ii) said partnership firm of the appellant and appellant himself should be treated as one and same person for the applicability of section 56(2)(x) of the Act. Both the contentions of the appellant hold no merit.*

9. xx xx

10. *It clear from the above that statute provides for adoption of pre agreed consideration value only in a case, where the amount of consideration, or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed], on or before the date of agreement for transfer of such immovable property.*

In the instant case, there was no such payment by the appellant in prescribed mode before the date of registration to the seller of the property, Mr. Abbot Anthony Quinny and hence in this case, the provisions of section 56(2)(x) are clearly attracted.

- 11. One more question arises out of the contention of the appellant is that whether, any agreement between a person/entity other than the present seller and a partnership firm which is also distinct from the present purchaser can be considered as "An Agreement" for the purpose of section 56(2)(x) of the Act?. The answer is in negative. Hence, I hold that invoking of section 56(2)(x) by the AO is valid.*
- 12. All the grounds of appeal are directed against addition of Rs. 18,48,70,810/- made u/s 56(2)(x) of the Act. The action of AO of making addition of Rs. 18,48,70,810/- by invoking section 56(2)(x) is held to be valid by me. In the result, all the grounds of appeal of the assessee are rejected/dismissed.*

In the result, the appeal of the appellant is disallowed and addition of Rs. 18,48,70,810/- is upheld."

6. Being aggrieved the Assessee has preferred the present appeal before the Tribunal on the grounds reproduced in Paragraph 2 above.
7. The Learned Authorized Representative for the Assessee placed reliance upon the written submissions and supplementary written submissions filed during the hearing. While the Learned Departmental Representative placed reliance upon the order passed by the Assessing Officer and Learned CIT(A).
8. We have considered the rival submissions and have perused the material on record.
9. During the course of hearing the Learned Authorized Representative for the Assessee had, inter-alia, raised the contention that the Assessee is also engaged in a real estate development and the land in question was acquired and held as stock-in-trade. Reliance was placed on (a) Satendra Kaushik v. ITO 106 taxmann.com 244 (Jaipur), (b) Mubarak Gafur Korabu v. ITO (117 taxmann.com 828) (Pune) and (c)

CBDT Circular No. 1/2011 to contend that the anti-avoidance provisions contained in Section 56(2)(x) of the Act not applicable to the present case. Thus, it was submitted that the addition of INR.18,48,70,810/- made under Section 56(2)(x) of the Act was legally and factually untenable. Reliance was also placed upon the decision of Co-ordinate Bench of the Tribunal in the case of Commercial Development Corporation Vs. NFAC/ITO Ward 24(1)(1) [ITA No.3755/Mum/2024, dated 28/10/2024, Assessment Year 2018-2019].

10. We have perused the decisions cited on behalf of the Assessee. We note that the Mumbai Bench of the Tribunal had, in the case of **Commercial Development Corporation Vs. NFAC/ITO Ward 24(1)(1) [ITA No.3755/Mum/2024, dated 28/10/2024, Assessment Year 2018-2019]**, held that provisions of Section 56(2)(x) of the Act cannot be invoked in the case of transactions of purchase of stock-in-trade. The relevant extract of decision of Tribunal reads as under:

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 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 Appellant's submission that the captioned property was purchased in 1978 and 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 AY 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)(v) 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)(vi) 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 56pt) 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 suture 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 my 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 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 mate afresh after sung 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 he issue as under:

"10. In the totality of above definitions, we hold that agricultural land purchased by assessée is not governed by the provisions of section 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." (Emphasis Supplied)*

11. On perusal of above, we find that the Co-ordinate Benches of the Tribunal have held that provisions contained in Section 56(2)(x) of the Act cannot be invoked in the case of purchase of stock-in-trade. On perusal of Balance Sheet of the Assessee for the relevant previous

year we note that asset under consideration has been recorded under the head 'Other Current Assets' and not under the head 'Capital Assets'. It is the contention of the Assessee that the Assessee has been holding the same as stock-in-trade. During the course of hearing the Learned Departmental Representative pointed out that the financial statements submitted by the Assessee were not audited and therefore, the Revenue should be granted another opportunity. Further, we note that the findings returned by the Assessing Officer and the CIT(A) are predominantly in relation to period/mode of acquisition of asset in question by the Assessee. While the Balance Sheet supports the stand taken by the Assessee, we note that there is no factual finding returned by the Assessing Officer or the CIT(A) in this regard. Taking into consideration the submissions made by both the sides, and facts & circumstances of the present case were deem it appropriate to remit this issue back to the file of the Assessing Officer with the directions to adjudicate the issue afresh after taking into consideration the above decision of the co-ordinate benches of the Tribunal. The Assessing Officer is directed to verify the relevant financial statements of the Assessee to return specific factual findings as to whether the asset in question was held by the Assessee as stock-in-trade. It is clarified that in case the Assessing Officer arrives at a conclusion that the asset in question is held as stock-in-trade, no addition under Section 56(2)(x) the Act would be made. The Assessee is directed to co-operate and place before the Assessing Officer relevant financial statements. It is clarified that in case the Assessee fails to appear before the Assessing Officer or fails to provide the financial statement requisitioned by the Assessing Officer, the Assessing Officer would be at liberty to adjudicate the issue on the basis of material on record. In terms of the aforesaid, the addition of INR.18,48,70,810/- made under Section 56(2)(x) of the Act is set aside.

Before parting we would like to observe that during the course of hearing it was contended on behalf of the Assessee, on a without prejudice basis, that in any case while making the addition the cost of acquisition of asset or agreed consideration should be taken as 21 Crore [12 Crore + 9 Crore] while computing the addition under Section 56(2)(x) of the Act. Since we have restored the issue back to the file of the Assessing Officer, we have not adjudicated upon the other contentions raised by the Assessee. In case the occasion arises, the Assessee would be at liberty to raise all rights and contentions before the Assessing Officer.

12. Accordingly, in terms of paragraph 11 above, Ground No.4 raised by the Assessee is allowed for statistical purpose and Ground No. 1 to 3 raised by the Assessee are dismissed as having been rendered infructuous since we have remanded the issue back to the file of Assessing Officer.
13. In terms of above, the present appeal is partly allowed.

Order pronounced on 16.12.2025.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 16.12.2025
Milan, LDC

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण ,मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai