

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI
BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

AND

SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

**ITA No.5372/MUM/2024
Assessment Year: 2018-19**

Vasant Nagorao Barabde 602, Sanskar Santi Park, Ghatkopar East, Mumbai 400088 PAN: ACMPB3211G	Vs	DCIT Circle 27(3), Mumbai. Income tax officer, Vashi Railway Station Building, Navi Mumbai 400703
Appellant		Respondent

Present for:

Appellant by : Shri Dharan Gandhi CA
Respondent by : Ms. Kavitha Kaushik, DR

Date of Hearing : 27.02.2025
Date of Pronouncement : 22.05.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of National Faceless Appeal Centre (NFAC), Delhi vide appeal No: NFAC/2017-18/10041561 dated 23.08.2024 passed against the assessment order u/s.143(3) r.w.s 143(3A) & 143(3B) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 08.03.201 for AY 2018-19.

2. Grounds taken by the assessee are reproduced as under:

“1. erred in confirming the action of the AO in making the addition of Rs 2,88,85.600 by treating the Market Value of the PAA Agreement registered on 21.09.2017 as taxable Income u/s 56(2)(x) being value of property for which no consideration is paid.

2. erred in confirming the action of the AO in making the addition of Rs 2,88,85.600 in the hands of the Assessee instead of treating the same as exempt in the hands Ashwini Barabde the daughter of the Assessee.”

3. Brief facts of the case are that, assessee filed his return of income on 15.08.2018 reporting total income at Rs.61,34,820/-. Case of the assessee was selected for limited scrutiny for the reason of purchase value of property less than the value as per stamp authority. Ld. AO noted that assessee had purchase a property at flat no.1103, Akarava Majala Buildings, Rudraksh Block, Chembur, Mumbai 400071. According, to him consideration paid for this purchase of property is NIL and the stamp duty value is Rs.2,88,85,600/-. Purchase of this property was registered on 21.09.2017. The Ld. AO issued show cause notice on the assessee to explain the said transaction, proposing to make the addition of Rs.2,88,85,600/- being the stamp duty value for which no consideration was paid, by applying section 56(2)(x)(b)(B). Since, nothing came up from the assessee, he completed the assessment by making the addition of aforesaid amount u/s.56(2)(x)(b)(B). Aggrieved, assessee went in appeal before the Ld. CIT(A).

4. Before the Ld. CIT(A), assessee made detailed submissions corroborated by additional evidences by making application under rule 46A. Contention of the assessee is that the impugned property belongs to the daughter of the assessee Ms. Ashwini Vasant Barabde who was a tenant of the building "Seeta Sadan" and agreement for Permanent Alternate Accommodation (PAA) for the impugned property was entered into on 21.09.2017 between the developer Sandu Developers and the tenants viz. the assessee and his daughter Ms. Ashwini Barabde. Daughter of the assessee was occupying the residential premises on the front left ground floor as a tenant in Seeta Sadan building with land lord Shri. Dilip Pandurang Sandu and others who were the owners of the building. Daughter surrendered and relinquished her tenancy rights

in respect of this said residential premise under an agreement with the developer to provide and allot on ownership basis by way of Permanent Alternate Accommodation without any consideration, one flat comprising of three bedrooms, hall and kitchen along with permissible amenities in the new building proposed to be constructed on the said property. For this Sandu Developers issued an allotment letter dated 26.03.2013 in the name of daughter of the assessee contents of the said letter are reproduce for ready reference:

"This bears reference to the ongoing Development of the property being place of parcel of land bearing C.T.S. No. 1630, 1630/ 1 to 5 of Village Chembur, Sandu Wadi, 7th Road, Chembur, Mumbal-400 073. (hereinafter referred to as "the said property"). We intend to construct a residential building (hereinafter referred to as the "New Building") on the said property after demolishing the existing building named "SEETA SADAN" (hereinafter referred to as "the existing building") standing on the said property.

In lieu of having agreed to surrender and relinquish your tenancy rights in respect of the residential premises located on the front left side of the Ground Floor of the existing building, we have agreed to provide, allot and deliver to you, on ownership basis by way of permanent alternate accommodation absolutely free of cost to 1 Flat, comprising of 3 Bedrooms, Hall and Kitchen along with permissible 2 amenities in the New Building proposed to be constructed on the said property. This Allotment and the specifications in respect of the area of the aforesaid Flat and the floor thereof shall be ascertained and confirmed vides an Agreement for Permanent Alternate Accommodation to be executed by us in your favor after receipt of Commencement Certificate and other requisite approvals, permissions and sanctions in respect of the New Building."

5. Against this allotment letter, assessee received the residential flat no. 1103 in the new building developed by the developer with the stamp duty value of Rs.2,88,85,600/- under the registered agreement for Permanent Alternate Accommodation dated 21.09.2017 which is against the surrender of tenancy rights. In this agreement, the first name of the tenants is noted that of the assessee and second name is that of the daughter of the assessee. Since, the first name appears that of the assessee as tenants, Id. AO took the assessee as the first holder/owner of the impugned property for the purpose of making addition in his hands. Against this, assessee strongly contented that

since the tenancy right was surrendered by the daughter of the assessee, the ownership of new flat given by the developer in lieu of surrender of tenancy right always belonged to and owned by the daughter and not the assessee. Name of the assessee was included in this agreement only for the purpose of administrative had convenience, since for the purpose of perusing her studies the daughter at to go abroad for doing her MS. She went to USA in California and completed her Master's Degree in Science from Californian University in May, 2021. Daughter had filed her return of income on 16.07.2018. It was submitted that the capital gain arising on surrender of tenancy right had to be brought to tax in the hands of the daughter since tenancy rights were in the name of the daughter and not the assessee.

5.1 Furthermore, it was submitted that the capital gain so arrived at on this impugned transaction was reinvested in the new property which was allotted by the builder and therefore, deduction u/s. 54F is available, making the taxable capital gain on the impugned transaction at NIL. It was thus, submitted that value of the flat will not be taxable, neither in the hands of the assessee nor in the hands of the daughter of the assessee i.e. Ms. Ashwinin Vasant Barabde since capital gain arising on surrender of tenancy rights is invested in residential house and is exempted u/s. 54F.

5.2 Assessee furnished all the relevant documentary evidence before the Ld. CIT(A) as additional evidences for which a remand report was called from the Ld. AO. The remand report furnished by the Ld. AO is reproduced in the order of the Ld. CIT(A). On perusal of the same it is noted that Ld. AO has alleged that at the time of registration of the agreement for PAA i.e. on 21.09.2017 age of the daughter of the assessee was only 23 years. According to him, daughter was minor at the time of

taking permits on rent and could not have entered into any agreement including rent agreement. He further noted that letter of Sandu Developers dated 26.07.2013 is merely on after thought as she being a minor could not have registered tenancy agreement even two years back. Thus, Ld. AO justified the addition made in the assessment in the hands of the assessee.

5.3. Assessee furnished a rejoinder to the remand report which is also reproduced in the Ld. CIT(A) order. Assessee submitted that both, when the PAA agreement was entered and registered as well as when the allotment letter was issued by the developer, age of the daughter was 23 years and 19 years, respectively. Thus, she was a major during both the stated events. It was also submitted that even if the contention of the Ld. AO is accepted that agreement for PAA is made between Sandu Developers and the assessee and not the daughter, then also, the capital gain so computed will be exempted in the hands of the assessee, since he has invested the full value of consideration (that is, the stamp duty value) in the PAA residential flat no.1103.

5.4. After considering the submissions made by the assessee and the remand report along with rejoinder, Ld. CIT(A) observed that assessee is not able to substantiate his claim that his name in the agreement for the flat has been incorporated only for security purposes. According to him, assessee is trying to create story to avoid tax liability and has not proven that ownership of the new flat is covered for exemption u/s. 54F of the Act. He further noted that, such a claim has not been made either by the assessee or by the daughter of the assessee in their returns. He thus, sustained the addition made by the Ld. AO and dismissed the appeal of the assessee. Aggrieved, assessee is in appeal before the Tribunal.

6. Before us, Ld. Counsel for the assessee reiterated the above stated facts. He further referred to the agreement for PAA to point out that both, the assessee and his daughter are the tenants as mentioned in the said agreement. Thus, it is an undisputed fact that the family had been residing at the residential premises on the front left ground floor as a tenant of Seeta Sadan building which underwent redevelopment by Sandu Developers. Recitals relating to the tenants who represented to the developers as contained in clause 'O' of this agreement are reproduced for ready reference:

"O. The Tenants have represented to the Developers that:

i. The Tenants are the lawful joint tenants of Flat on the front Left side (hereinafter referred to as the "Existing Flat") located on the Ground Floor of the Seeta Sadan. The tenants is entitled to undivided rights, title and interest in an area admeasuring 350 Sq. Ft. (Carpet Area) (hereinafter referred to as the "said Existing Area") comprised in the Existing Flat and is solely and exclusively entitled to the ownership and tenancy rights in respect of the said Existing Area and is in possession of the same. The Tenants hereby declares that the Tenants is entitled to enter into this Agreement and further declare that except the Tenants, no other person(s) is entitled to claim any share, right, title and interest Existing Area in any manner whatsoever. The Tenants hereby agrees and undertakes to indemnify and keep indemnified the Developers against all claims, costs, charges and expenses that may be made against or occasioned to or suffered by the developers, by reason of the tenants entering into this Agreement and the Developers providing to the Tenants, permanent alternate accommodation as agreed and specified hereunder and the Developers are satisfied with the documents in possession of the Tenants and have confirmed that the Tenants is the only person who is entitled to all rights, title, interest and share in respect of the said Existing Area.

ii. The Tenants hereby agree and confirm with the Developers that the Tenants has absolutely no objection to the Developers undertaking the development of the said Land as constructed undertake said development agreement in accordance with planes sanctioned by the MCGM and /or any other Concerned authority.

iii The Tenants shall, within -- (Fifteen) days from the execution hereof, hand over peaceful possession of the said Existing Area to the Developers for demolition.

B. In consideration of having consented to the redevelopment of the said Land and handing over vacant and peace-- Possession of the said Existing Area for redevelopment, and in lieu of the said Existing Area to which the Tenants entitled to by virtue of having been in occupation and possession, the Developers

agree and undertake to provide/allot to the Tenants, without any further consideration, permanent alternate accommodation as is specifically mentioned herein below.

C. The Developers had agreed to execute a written Agreement in respect of the Permanent Alternate Accommodation in favor of the Tenants being in fact these presents and also to register this presents under the Registration Act, 1908.

D. The parties hereto are desirous of recording the terms and conditions agreed between the parties more particularly with reference to the entitlement of the tenants in the new building in the manner appearing hereinafter.

6.1 In para 2 of this agreement which relates to PAA, developer has agreed and undertaken to allot to the tenants without any additional consideration of flat, details of which are already stated above. The said para is also reproduced for ready reference:

“2. PERMANENT ALTERNATE ACCOMMODATION:

a. In consideration of the Tenants co-operating in the redevelopment of the said Land and in further consideration of the Tenants handing over vacant and peaceful possession of the Existing Premises, the Developers agree and undertake to allot to the Tenants without any additional consideration by way of permanent alternate accommodation. Flat bearing No.1103 consisting of 3 (Three) Bedrooms, Hall And ---, Admeasuring aggregate) 1279.19 Sq. Ft. (carpet area) equivalent to 11883 sq.mt which include 350 Sq. Ft. (Carpet Area) being the said Existing Area and and 92519 sq. ft being additional usable carpet area which is free of cost, on ow 11th Floor, of the New Building, hereinafter referred to as "the - new, which is more particularly described in the SECOND SCHEDULE written hereunder and which area is inclusive of the areas which may be constructed appurtenant to the said New Flat by utilizing the Compensatory FSI permissible/available under the D. C. Rules. Annexed hereto and marked Annexure: 'F' is the Typical Floor Plan of 11th Floor, of the New Building showing shaded thereon the said New Flat agreed to be allotted to the Tenants.

b. The Developers have agreed to provide Amenities in all the New Flats of the New Building as set out in Annexure: 'G' hereto.”

7. It was thus submitted that there is a surrender of tenancy rights. Against this surrender of tenancy rights, there is an allotment of a new flat by the developer without any consideration, stamp duty value of which is Rs. 2,88,85,600/-. Thus, there is a transfer within the meaning of Section 2 (47) of the Act, attracting capital gains chargeable u/s. 45 r.w.s. 48 of the Act. On this impugned, transaction it is only the capital

gain which is chargeable to tax. For computing the capital gain u/s. 48, the full value of consideration would be the stamp duty value of Rs. 2,88,85,600/- since there is no actual consideration otherwise. The cost of acquisition for tenancy rights which have been surrendered is to be taken as NIL, resulting into capital gain of Rs. 2,88,85,600/-. This entire capital gain has been reinvested in the PAA residential flat and therefore, is eligible for claim of deduction u/s. 54F of the Act. It is only the capital gain which is subject to deduction u/s. 54F, is to be dealt with either in the hands of the assessee or in the hands of the daughter of the assessee but would have no bearing on the taxability in either hands.

7.1. Ld. AO has resorted to provisions of Section 56(2)(x)(b)(B) for the purpose of making addition in the hands of the assessee which is bad in law as it falls under the head "income from other sources". When income derived from different sources falling under a specific head has to be computed for the purpose of taxation in the manner provided by the appropriate section and no other. If the income from another source falls within a specific head, fact that it may indirectly be covered by another head will not make the income taxable under the later head. Section 56 provides for chargeability of income of every kind which is not chargeable to income-tax under any of the heads specified in section 14 items A,C,D and E. Therefore, if the income is included in any one of the heads i.e. under capital gain in the present case, it cannot be brought to tax under the residuary provisions of section 56 i.e. under the head income from other sources. For this, reliance was placed on the decision of Hon'ble Supreme Court in the case of CIT vs. D.P. Sandu Bros. Chembur (P) limited [2005] 273 ITR 1(SC).

7.2. Per contra, Ld. Senior DR submitted that claim of deduction u/s. 54F was never made by the assessee and therefore, cannot be allowed. He placed reliance on the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. vs. CIT [2006] 284 ITR 323 (SC). According to him, no new claim is permissible without filing a revise return. Also, even if it is considered as a gift from the daughter to her father i.e. the assessee, there is no gift deed which has been signed to justify the said transaction and therefore, addition has been rightly made in the hands of the assessee.

8. We have heard both the parties and perused the material on record. We have given our thoughtful consideration to the submissions made before us and the factual matrix as demonstrated by the documentary evidences placed on record and submissions made before the authorities below. It is an undisputed fact that both the assessee and his daughter are tenants in the registered agreement for PAA dated 21.09.2017 under which flat no.1103 in the new building has been allotted by the developer against surrender of tenancy rights. Existence of tenancy is not in dispute. Primarily, the claim is that the surrender of tenancy rights is by the daughter of the assessee for which letter of allotment issued by Sandu Developers dated 26.03.2013 is placed on record which records the said transaction in the name of the daughter of the assessee. Ld. AO has resorted to make the addition in the hands of the assessee by taking note of the fact that agreement for PAA bears first name as that of the assessee. Since there was no consideration for having the impugned flat registered in the name of the assessee, the entire stamp duty value of the said flat was taken as income in the hands of the assessee u/s. 56(2)(x)(b)(B) of the Act.

8.1. In the given set of facts, it is important to note that there is a surrender of tenancy rights against which a new flat has been allotted for which a registered deed is placed on record, contents of which are not in undispute. Once it is disputed that there is a surrender of tenancy rights, the factual position which emerges is that tenancy right is a capital asset which has been transferred and is liable to be taxed u/s. 45 of the Act for capital gain r.w.s 48 of the Act. The moot point arises is as to in whose hands this capital gain is to be taxed depending upon who owned the tenancy rights and who transferred the same to the builder against which the new flat was allotted. In present set of facts, it could be either the assessee or his daughter Ms. Ashwini Barabde. In either case, deduction u/s, 54F is available against the capital gain so computed since, there is an investment by way of PAA residential flat allotted by the builder of equivalent stamp duty value of Rs. 2,88,85,600/-. Thus, in either hands, the capital gain so computed will be eligible for deduction u/s. 54F in toto.

8.2. We are in agreement with the contention raised by the Ld. Counsel that once an income from a source falls within a specific head, the fact that it may indirectly be covered by another head will not make the income taxable under the later head. In our considered view, applicability of Section 56 is ruled out in the present fact of the case. Respectfully following the principle laid down by the Hon'ble Supreme Court in the case of D.P. Sandu Bros. Chembur (P) limited (Supra) and in the given set of facts as narrated above, the addition made by the Ld. AO in the hands of the assessee u/s. 56(2)(x)(b)(B) of the Act is deleted. Further, claim of the assessee for deduction u/s. 54F against the capital gain on the impugned transaction is an allowable claim by taking into account the observation of Hon'ble Supreme Court in the case of Goetze (India) Ltd. vs. CIT (supra) whereby Hon'ble Court held that (*nothing*

impinges on the power of the appellate authorities to entertain such a claim of the assessee).” Accordingly, grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 22nd May,2025.

Sd/-
[Sandeep Singh Karhail]
Judicial Member

Sd/-
[Girish Agrawal]
Accountant Member

Dated: 22.05.2025.

Divya R. Nandgaonkar
Stenographer

Copy to:

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai