

IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT
(HYBRID HEARING)

**Before: Shri T.R. Senthil Kumar, Judicial Member And
Shri Bijayananda Pruseth, Accountant Member**

**ITA No: 1042/SRT/2024
Assessment Year: 2016-17**

Shobhana Dinesh Trivedi Plot NO. 15, GIDC Colony Umbergaon 396171 Taluka Umbergaon, Dist. Valsad, Gujarat PAN: ABAPTS5001H (Appellant)	Vs	The ACIT Vapi Circle, Vapi (Respondent)
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**Assessee Represented: Shri P.M. Jagasheth, CA
Revenue Represented: Ms. Neerja Sharma, Sr.D.R.**

Date of hearing : 05-05-2025
Date of pronouncement : 30-07-2025

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the exparte appellate order dated 19.08.2024 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2016-17.

2. Brief facts of the case is that the assessee is a Super Senior Citizen filed her Return of Income for the Asst. Year 2016-17 on 20-02-2017 declaring total income of Rs.64,69,270/-. The return was taken for scrutiny assessment. The assessee had transferred her old flat at MIG Colony, Bandra Mumai to M/s. DG MIG Realtors & Builders Pvt. Ltd. for redevelopment on 26-04-2015. As per the development agreement read with the Deed of Modification dated 25-08-2014, the sales consideration for such flat was determined at Rs.2,54,61,685/- as well as a new flat in the new upcoming building. However the assessee computed Long Term Capital Gain taking into consideration of the total receipt at Rs.1,07,90,553/- and finally arrived at net LTCG of Rs.47,86,787/- after claiming deduction u/s. 54 of the Act.

3. The assessee's contention was that the sale consideration adopted on receipt basis and not as per agreement. However the A.O. was of the view that as per Section 45(1) of the Act, the profit or gains arising from transfer of capital asset shall be deemed to be income of the assessee in the year in which transfer to place as provided u/s. 45(1) of the Act which clearly states that the entire gain shall be deemed to be income of the assessee in which the transfer took place. Therefore the A.O. took the value of total sale consideration at Rs. 2,54,61,685/- and the net LTCG at Rs. 1,94,57,919/- after allowing deduction u/s. 54 of the Act.

4. Aggrieved against the said addition, assessee filed an appeal before Ld. CIT(A) on 22-12-2018 and appeal was migrated to National Faceless Appeal Centre. The appeal was posted for hearing

on 15-11-2023, 22-03-2024 and 08-08-2024. The assessee was asked to submit her written submission by 16-08-2024. The assessee submit that she had sent an adjournment request, however the same was not considered by Ld. CIT(A) and dismissed the appeal for non-prosecution and confirming the addition made the assessing officer by observing as follows:

“8.1. I also find that the assessee did not file any submissions supported by proper evidence along with a petition under Rule 46A for admission of evidence in the appellate proceedings. The assessee has not controverted the findings of the AO supported by proper evidence. I also find that the additions made by the AO are based on solid evidence which was confronted to the assessee by the AO and the additions are made as per the provisions of law. No evidence whatsoever has been filed by the assessee to substantiate and buttress the grounds of appeal. Therefore, I find that the AO was correct in taking the view that as per Section 45(1) of the Act, the profit or gains arising from transfer of capital asset shall be deemed to be income of the assessee in the year in which the transfer took place as provided in section 45(1) of the Act which clearly states that the entire gain shall be deemed to be the income of the year in which the transfer took place. Therefore, I do not find any infirmity in the action of the AO in adopting the value of total Sales Consideration at Rs. 2,54,61,685/- and the net LTCG at Rs. 1,94,57,919/- after allowing the deduction u/s.54 of the Act and the same is upheld.

Hence, the grounds of appeal are Dismissed.”

5. Aggrieved against the appellate order, assessee is in appeal before us raising the following Grounds of Appeal:

1. The Ld. CIT(A)-NFAC erred on facts and in law in dismissing the appeal without appreciating the grounds of appeal and statement of facts submitted in Appeal and also without making any independent judgement or opinion relating to the subject matter of the original assessment order.

2. Further no notices were sent on the residential address of the appellant as submitted in the appeal.

3. The appellant had asked for adjournment of the Hearing on 16.08.2024 for the hearing to be held on 16.08.2024. The appeal order was passed on 19.08.2024 without taking into account our request for adjournment. Further the reason for not granting the adjournment has also not been recorded in the appeal order.

6. Ld. Counsel Shri P.M. Jagasheth appearing for the assessee submitted before us the details of payment received from developer after 31-03-2016 in connection with the Redevelopment Agreement, Returns of Income and Computation of Total Income filed for the Asst. Years 2019-20 to 2024-25 by the assessee as follows:

Ass. Yr.	Hardship Compensation received Rs.	F. S. I. Receipts Rs.	Total Receipts Rs.
1 2019-20	1,268,814	-	1,268,814
2 2020-21	1,757,552	-	1,757,552
3 2021-22	701,606	-	701,606
4 2022-23	3,551,625	5,776,550	9,328,175
5 2023-24	4,237,779	5,862,794	10,100,573
6 2024-25	<u>3,013,500</u>	-	<u>3,013,500</u>
	14,530,876	11,639,344	26,170,220

Note 1

Outstanding compensation 14,671,132
as on 31.03.2016
(As per assessment order)

Note 2

For Ass. Years 2022-23, 2023-24 and 2024-25, hardship compensation was treated as exempt. So only amount received towards FSI sale receipt was considered for capital gains tax.

6.1. Ld. Counsel further submitted list of judgments holding that hardship compensation received by the assessee is treated as exempt as follows:

1. Sarfaraz S. Furniturewalla vs. Afshan Sharfali Ahsok Kumar & Ors. Writ Petition No.4958 of 2024 (HC of Bombay)
2. Shri Lawrence Rebello vs. ITO-1(3), Indore ITA No.132/Ind/2020 (ITAT, Indore)
3. Abhay Shaligram Patil vs. ITO, Wd-23(1)(1), Mumbai ITA No.995/Mum/2024 (ITAT, Mumbai)
4. Sonal Samit Vartak vs. ITO, Wd-35(3)(3), Mumbai ITA No.1139/Mum/2024 (ITAT, Mumbai)
5. Narayan Devarajan Iyengar vs. ITO [2023] 152 Taxmann.com 188 (Mumbai Trib.)
6. Jitendra Kumar Soneja vs. ITO, Wd-6(3)(3), Mumbai [2016] 72 Taxmann.com 318 (Mumbai-Trib.)
7. Kushal K Bangia vs. ITO, Wd-21(1)(2) [2012] 18 Taxmann.com 31 (Mum.) (ITAT, Mumbai)
8. Viren Vashi vs. ITO, 16(3)(3), Mumbai ITA No.3830/Mum/2023 (ITAT, Mumbai)
9. Vinod Murlidhar Chawal vs. ITO, Wd-23(3)(5), Mumbai ITA No.3206/Mum/2022 (ITAT, Mumbai)
10. Ajay Parasmal Kothari vs. ITO, Wd-30(1)(1), Mumbai ITA No.2823/Mum/2022 (ITAT, Mumbai)
11. Smt. Delilah Raj Mansukhani vs. ITO, 35(1)(3), Mumbai ITA No.3526/Mum/2017 (ITAT, Mumbai)
12. Smt. Kunnama V. Balakrishna vs. ITO-23(2)(2), Mumbai ITA No.2577/Mum/2023 (ITAT, Mumbai)

6.2. Thus the amount received towards FSI sale receipt alone offered for capital gain tax. Ld. CIT(A) without considering the adjournment request passed the exparte order, therefore the matter be set aside back to the file of Jurisdictional Assessing Officer to pass appropriate assessment order.

7. Ld. Sr. D.R. appearing for the Revenue has no serious objection in setting aside the matter back to the file of JAO. Recording the above submission of rival parties, the order passed by the lower authorities are hereby set-aside with a direction to pass fresh order by giving adequate opportunity of hearing to the assessee. Needless to say, the assessee should cooperate by filing all necessary details, documents before the Jurisdictional Assessing Officer to pass fresh assessment order on merits.

8. In the result, the appeal filed by the Assessee is allowed for statistical purpose.

Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on 30-07-2025

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Ahmedabad : Dated 30/07/2025

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad

6. Guard file.

By order/आदेश से,

// TRUE COPY //

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
सूरत