

**IN THE INCOME-TAX APPELLATE TRIBUNAL “F” BENCH,
MUMBAI**

**BEFORE BEENA PILLAI, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No. 970/MUM/2025
(निर्धारण वर्ष / Assessment Year : 2007-08)**

Late Urmila Ushakant Sheth through legal heir Mrs. Daksha Sanghvi 703, Kohinoor Square, N C Kelkar Marg, Shivaji Park, Dadar West, Mumbai-400028	v/s. बनाम	ITO, Ward 30(1)(1), Mumbai Room No. 235, 2 nd Floor, Kautilya Bhavan, BKC, Mumbai-400051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ANAPS3682D		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

निर्धारित की ओर से/Assessee by:	Shri Madhur Agarwal
राजस्व की ओर से /Revenue by:	Ms. Kavitha Kaushik

सुनवाई की तारीख /Date of Hearing	03.04.2025
घोषणा की तारीख/Date of Pronouncement	13.10.2025

आदेश / O R D E R

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 21.01.2025 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2007-08.

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

“1. On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [“the learned CIT(A), NFAC) erred in restoring the matter once again to the Assessing Officer for fresh adjudication.

2. On the facts and circumstances of the case and in law, the learned CIT(A), NFAC erred in not quashing the assessment order u/s 144 r.w.s. 254 despite the fact that the learned Assessing Officer (“the learned AO”) completed the assessment without following the earlier directions specifically given by the Hon'ble ITAT in respect of the date of handing over the possession of the property and the valuation.

3. On the facts and circumstances of the case and in law, the learned CIT(A), NFAC grossly erred in mentioning that “the assessee did not file any submissions on the ground that she did not receive any notice from the department” despite the fact that the appellant had raised a specific ground being ground no. 2 before the learned CIT(A), NFAC on the same issue and also mentioned the same in the written submissions filed.

4. On the facts and circumstances of the case and in law, the learned CIT(A), NFAC erred in not appreciating the fact that the learned AO has failed to provide inspection of case records and the other information and documents in respect of assessment proceedings u/s 144 r.w.s. 254 despite specifically requesting him to do so thereby violating the principle of natural justice to allow the appellant to effectively defend her case.

5. On the facts and circumstances of the case and in law, the learned CIT(A), NFAC erred in not appreciating the fact that the learned AO in particular has not furnished any part of the assessment records or any record to corroborate the fact that the notice dated 02/03/2016 u/s 142(1) was served by affixture or the assessment order was despatched to or served upon the appellant within the time prescribed u/s 153(3) for completion of the assessment.

6. On the facts and circumstances of the case and in law, the learned CIT(A), NIA erred in not quashing the assessment order despite the fact that the assessment u/s 144 r.w.s. 254 was completed without issuing any notice u/s 142(1). Even according to the learned AO, only one alleged notice dated 2nd March, 2016 was issued which was not served on your appellant but was allegedly served only by affixture.

7. On the facts and circumstances of the case and in law, the learned CIT(A), NFAC erred in not appreciating that the learned AO has erred in not serving the best judgement assessment order passed u/s 144 r.w.s. 254 within the prescribed time limit. The assessment order was served after 3.5 years of passing the order and 3 years after expiry of the limitation period expiring on 31st December, 2016 and that also to the authorized representative of your appellant when he made inquires about the assessment.

8. On the facts and circumstances of the case and in law, the learned CIT(A), NFAC erred in not considering the 1st proviso to sub-section (1) of section 50C inserted by the Finance Act, 2016 w.e.f. 01/04/2017 which is curative in nature.



9. On the facts and circumstances of the case and in law, the learned CIT(A), NFAC erred in not appreciating that the learned AO has erred in not making any inquiry regarding handing over of possession on 5th May, 2005 to the Developers as per the directions of the Hon'ble ITAT.

10. On the facts and circumstances of the case and in law, the learned CIT(A), NFAC erred in not appreciating that the learned AO has erred in not referring the matter to the Departmental Valuation officer (DVO) as per the directions of the Hon'ble ITAT.

11. On the facts and circumstances of the case and in law, the learned CIT(A), NFAC erred in not appreciating that the learned AO has erred in adopting stamp duty value of land for making assessment and not considering the fact that the valuation had already been approved by the appropriate authority at the time of obtaining certificate u/s 269UL in July 2001 i.e., Prior to the registration of the Development Agreement on 26th October, 2001.

12. On the facts and circumstances of the case and in law, the learned CIT(A), NFAC erred in not appreciating that the learned AO has erred in assessing the capital gains once again in the current year i.e., A.Y.2007-08 although the same had already been assessed u/s 143(3) in A.Y.2006-07.

13. On the facts and circumstances of the case and in law, the learned CIT(A), NFAC erred in not appreciating that the learned AO has erred in applying provisions of Section 50C although the Registered Development Agreement has been entered into by the appellant on 26th October, 2001, whereas Section 50C has been introduced from 01/04/2003 and hence, section 50C is not applicable to your appellant.

14. Without prejudice to the above, on the facts and circumstances of the case and in law, the learned CIT(A), NFAC erred in not providing an opportunity of being heard by way of a video conferencing despite being specifically requested for it.”

3. Brief facts of the case are as under:

- i. The assessee expired on 31.08.2007, and therefore, her return for AY 2007-08 was filed by Mrs. Daksha Sanghvi as her legal representative on 31.07.2007, declaring total income of Rs. 3,25,581/-.
- ii. The case was selected for scrutiny and the assessment was completed u/s 143(3) of the Act vide order dated 24.12.2009 determining the total income at Rs. 3,14,00,889/- after invoking the provisions of section 50C of the Act for computing long-



termcapital gains (LTCG) on transfer of development rights of a property owned by the assessee.

- iii. It was noticed by the Ld. AO that the transfer of development rights was done vide conveyance deed registered on 08.12.2006 at a consideration of Rs. 3,40,00,000/-. However, the Sub-registrar had adopted the stamp duty value of Rs. 13,49,46,000/-, and accordingly, Ld. AO invoked the provisions of section 50C and determined the capital gains of the assessee (50%) share at Rs. 3,14,00,889/-.
- iv. Aggrieved with the order of Ld. AO, the assessee preferred an appeal before Ld. CIT(A), which was dismissed vide order dated 25.02.2011, rejecting the assessee's plea, that the AO should have referred the issue of valuation to the Departmental Valuation Officer (DVO). Ld. CIT(A) held that the AO did not have any option but to adopt the SRO value as deemed value of consideration u/s 50C, and there was no need to refer the matter to the DVO.
- v. Aggrieved with the order of Ld. CIT(A), the assessee had preferred an appeal before the ITAT. Vide order dated 17.12.2015, the coordinate bench set aside the orders of the Ld. AO/CIT(A) and directed the AO to recompute the capital gains after seeking a



valuation report from the DVO in respect of the property transferred by the assessee. While setting aside the orders of lower authorities, the Hon'ble coordinate bench had directed as under:

5. The Id. AR of the assessee draw our attention to the assessment order of the assessee in respect of AY-2006-07 dated 29.12.2008 wherein the AO has accepted that possession of the said property was handed over in the FY 2005-06, and indexation has been worked out for FY 2005-06, the order of AO further contained the reference that sale consideration has been received in the FY 2001-02 and the cost inflation index was adopted for FY 2001-02, hence we restore this ground to the file of AO to verify the date of handing over the possession and passing over the sale consideration.

6. The next issue for our consideration is that CIT(A) erred in applying the provision of section 50C in determining the full value of consideration. While dealing with this ground, the Id. CIT(A) has observed as under:

It transpires that there is no discretion vested in the Assessing Officer u/s 50C regarding the fact whether the valuation made by the Stamp Duty authorities are to be adopted or not. The word 'shall' means it is mandatory u/s 50C(1) for the Assessing Officer to adopt the valuation done by the stamp duty authorities. In view of the fact that after consideration of the appellant's request the Assessing Officer exercising his discretion did not make reference to the Valuation Officer by the Assessing Officer, and the fact that under the provisions of the LT. Act no such reference can be made once the assessment has been completed, the action of the Assessing Officer in determining the long term capital gain by invoking provisions of Section 50C of the Income Tax Act, in the case of the appellant is upheld and the grounds of appeal on this issue are dismissed

7. We have seen that while determining the value, the AO has not referred the matter for determining the value of the property for its fair determination by the Valuation Officer as this issue is also remanded back to the AO for fresh consideration after seeking the valuation report in respect of the property transferred by the assessee.

8. In view of the above discussion, the appeal of the assessee is allowed for statistical purposes.



- vi. In order to give effect to the order of the coordinate bench, Ld. AO issued a notice u/s 142(1) to the assessee on 02.03.2016, requesting her to file the details with regard to the date of possession of the property, along with copies of the agreement of the property, etc. However, the notice was returned unserved by the Postal Authorities. Thereafter, the notice was served through affixture. Since no compliance was made by the assessee, Ld. AO observed that the valuation of the property has to be referred to the DVO only on a request of the assessee. Since no such request had been made by the assessee during the assessment proceedings, and the notices remained uncomplied with, in the absence of details regarding the date of possession of the property etc. (which were required for making reference to the DVO), Ld. AO again adopted the stamp duty value of Rs. 13,49,46,000/- as full value of consideration u/s 50C of the Act and accordingly passed the order u/s 144 r.w.s. 254 of the Act at the same income as originally assessed.
- vii. Aggrieved with this order, the assessee again filed an appeal before Ld. CIT(A). After considering the assessee's ground of appeal and written submissions, Ld. CIT(A) set aside the order of



Ld. AO for making a fresh assessment as per the directions of the coordinate bench with the following observations:

“6.5 In view of the above, I am of the considered opinion that the impugned consequential order passed by the AO cannot be sustained in the eyes of the law. Be that as it may, as explained elsewhere in this order, during the course of proceedings before the AO, the assessee did not file any submissions on the ground that she did not receive any notice from the department. On the other hand, it is categorically stated in the assessment order that the notice u/s. 142(1) of the Act was served by affixture.

6.6 Faced with this situation, after having considered the totality of facts and circumstances of the case, I am of the considered opinion that the ends of justice would be met if the matter is restored to the file of the AO for fresh adjudication of the issue under dispute in the light of the specific direction issued by the Hon'ble ITAT that the AO is required to compute the capital gains after referring the matter of determination of the Fair Market Value of the property to the Valuation Officer/DVO and after seeking the valuation report. Accordingly, notwithstanding with the fact that the assessee did not make any specific submission during the course of set aside proceedings, requesting the AO to refer the matter to the Valuation Officer/DVO, it is imperative on the part of the AO to refer the matter to the Valuation Officer/DVO in adherence to specific direction issued by the Hon'ble ITAT. Accordingly, after obtaining the valuation report, the AO is required to re-compute the capital gains.

6.7 Similarly, the AO is required to verify the date of handingover the possession of property and passing over the sale consideration and determine the year of taxation of capital gains as directed by the Hon'ble ITAT.

6.8 Needless to say that, by following the principles of natural justice and fair play, the assessee shall be given suitable opportunity of being heard to adduce the evidence and offer explanation as may be considered expedient to defend her claims before the AO. Accordingly, by virtue of powers vested in me under proviso to section 251(1)(a) of the Act, the impugned assessment order made by the AO u/s. 144 of the Act (supra) is set aside back to the file of the AO for making a fresh assessment as per the specific directions issued by the Hon'ble ITAT and in accordance with the provisions of the Act.”

4. Aggrieved with the order of Ld. CIT(A) dated 21.01.2025, the assessee has once again preferred an appeal before the Tribunal, raising as many as 13 grounds both on merits as well as legal issues.



5. During the course of hearing, Ld. AR has submitted that the order giving appeal effect passed by Ld. AO was time-barred as it was dated 13.05.2016 but was actually served on the assessee only in 2019 in physical mode after three years of the limitation date i.e 31.12.2016. Even then, the order was served only after the authorised representative of the assessee went to the office of the ld. AO to enquire about the status of the case. He has further claimed that since the directions of the Hon'ble coordinate bench were not followed by the AO and therefore, Ld. CIT(A) erred in restoring back the issue to Ld. AO once again, instead of quashing the order u/s 144 r.w.s. 254 of the Act.

5.2 Further, on merits, it has been submitted by the Ld. AR that the assessee had declared the impugned transaction in her return for AY 2006-07. The assessment was completed u/s 143(3) of the Act, wherein the long-term capital loss arising out of the impugned transaction was examined and reworked by the ld. AO. A copy of the order u/s 143(3) dated 29.12.2008 for AY 2006-07 has also been placed before us. Ld. AR has argued that once the assessee has declared the impugned transaction in the earlier assessment year and the same has been assessed u/s 143(3) of the Act, there is no justification for invoking Section 50C for making any addition on account of this very transaction during the year under consideration. Moreover, the agreement for transfer of development rights for the impugned property was executed by the



assessee and her husband on 26.10.2001. This agreement was registered on 09.11.2001, and the said transaction was also approved by the Appropriate Authority and a certificate u/s 269UL(3) was issued. However, the possession to the developer was handed over in FY 2005-06, and therefore, the assessee had declared the transaction in her return for AY 2006-07, and the same was accepted by Ld. AO while making assessment u/s 143(3) after recomputing the long-term capital loss. The total consideration of Rs. 3,40,00,000/- shown by the assessee consisted of the following:

- a) Rs. 56,00,000/- paid at the time of execution of the agreement.
- b) Rs. 58,00,000/- paid in the year 2001.
- c) Rs. 2,25,00,000/- by way of flats measuring 13637 sq. ft @ Rs. 1650 per sq. ft.

5.3 Subsequently, as the project was unduly delayed, the unpaid consideration of flats worth Rs. 2,25,00,000/- was modified to a monetary consideration of Rs. 3,82,00,000/- and 50% share of assessee in the difference of Rs. 1,57,00,000/- was offered to tax in A.Y. 2007-08. By execution of the fresh conveyance, no new assets are transferred by the assessee and only an enhanced compensation has been received, on which the assessee offered her share (50%) amounting to Rs. 78,50,000/- for tax in the AY 2007-08. This



agreement was stamped by the registering authority in December, 2006 at a value of Rs. 13,49,46,000/-. Lastly, Ld. AR also raised the issue that the provisions of section 50C are not applicable in the present case as the registered development agreement had been entered by the assessee on 27.01.2001, whereas section 50C has been introduced w.e.f. 01.04.2003.

6. Ld. DR, on the other hand, has strongly relied on the order of Ld. CIT(A). It has been submitted that reference to the Valuation Officer as per the directions of the coordinate bench was required to be made, and therefore, Ld. CIT(A) has rightly set aside the order of the Ld. AO u/s 144 r.w.s. 254 of the Act for a fresh consideration of the issue in the light of the specific directions of the coordinate bench, and, therefore, the same deserves to be upheld.

7. We have heard the rival submissions and perused the material placed on record. At the outset, we take up the legal ground wherein the assessee has argued that the impugned assessment order u/s. 144 r.w.s 254 was time barred as the same was served on the assessee in 2019 i.e three years after the limitation period.

In this regard, Ld. AR has placed on record, a copy of the screen shot of the e-filing portal of Income Tax Department as per which the date of uploading of the order is mentioned as 10.02.2025. Further the attachment



with the order shows that the authorized representative has received the said order on 26.12.2019.

It was, therefore, argued by the ld. AR that the order was passed much beyond the limitation date of 31.12.2016 and served upon the assessee on 26.12.2019 and thus was clearly time barred.

7.2 In view of these evidences, the ld. DR was given an opportunity to obtain and place on record any documentary evidence to show that the order had been actually issued within the limitation period. However, despite several opportunities, ld. AO could not place the requisite records before us. Even the information from the portal to show as to when the consequent demand was created and uploaded on system could not be made available by the ld. DR despite making efforts in this regard.

7.3 We thus note that while ld. AR has filed documentary evidences in support of his contentions, the revenue has not been able to counter the same and no evidence whatsoever has been submitted to establish that the impugned order though dated 13.05.2016 had been issued to the assessee through any mode before the limitation date of 31.12.2016.

In view of above facts and circumstances, we hold that the impugned assessment order u/s. 144 r.w.s 254 was not issued before the limitation date and therefore, the same being time barred is hereby quashed.



8. Since we have quashed the order u/s. 144 r.w.s 254 dated 13.05.2016, other grounds are rendered infructuous and therefore not being adjudicated upon.

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

Order pronounced in the open court on 13.10.2025.

Sd/-

BEENA PILLAI

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 13.10.2025

अनिकेत सिंह राजपूत/स्टेनो

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

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

**सत्यापित प्रति//True Copy//
आदेशानुसार/ BY ORDER,**

सहायक पंजीकार(Asstt. Registrar)



ITA No. 970/Mum/2025
A.Y. 2007-08

Late Urmila Ushakant Sheth Through Legal Heir Mrs. Daksha Sanghvi

**आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.**

