

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "SMC" BENCH : MUMBAI

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

ITA No. 5023/Mum/2025

Assessment Year : 2015-16

Lalitadevi Giriraj Kishore Malpani, 502, 5 th Floor,Sea View CHS, Near Ram Mandir Temple, Bangur Nagar,Goregaon (W), Mumbai-400090. PAN : AADPM9211C	vs.	Income Tax Officer, Ward-41(4)(2), R.No. 116,Kautilya Bhawan, C-41 to C-43,G Block, BKC, Bandra (E), Mumbai-400051.
(Appellant)		(Respondent)

For Assessee :	Shri Ajay Daga , Ld. Ld. AR
For Revenue :	Shri Vikas Chandra, Ld. Sr.DR

Date of Hearing :	10-11-2025
Date of Pronouncement :	30-12-2025

ORDER

This appeal has been preferred by the assessee against the order dated 28-06-2024 impugned herein passed by the ADDL/JCIT(A)-6, Kolkata/Ld. Commissioner of Income Tax (in short "Ld.Commissioner") u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for the AY. 2015-16.

2. At the outset it is observed that there is a delay of 346 days in filing the instant appeal on which the assessee has claimed as under:

“This is an application for condonation of delay in filing the appeal for the facts and circumstances as set out herein:

1. The Applicant had filed an appeal to the Id. Addl/Jt.CIT, NFAC against the order u/s 143(3) of the Act challenging not only the validity of assessment but also on merits in respect of assessing the long-term capital loss on transfer of rights in under construction flat as short-term capital gain.

2. Subsequent to the filing of appeal, the Applicant was diagnosed with cancer in or around February 2020 and is presently at the 4th stage of the said disease. The Applicant in the year 2021 changed her CA and her income tax matters were then looked after by the staff of her son who was not aware of the pending matters. The Applicant and the said staff was not in the practice to check the e-proceeding A/c.

3. The Applicant through post received a letter dt.04.08.2025 of the Verification Unit, NFAC intimating that the Applicant has not responded to the show cause notice issued by the Penalty Unit u/s 271(1)(c) of the Act.

4. The Applicant then immediately appointed a new CA who checked the e-filing portal and noticed that the said notices were indeed issued & remained to be complied with. On further probing, he noticed that the Id.Addl / Jt.CIT has dismissed the quantum appeal for want of prosecution vide order dt.28.06.2024.

5. The Applicant was not aware of the fact that the Id.Addl/Jt.CIT has disposed of the appeal as the entire proceeding was conducted online and in a facelessmanner which was a regime change with regard to the appeal proceedings, to which the Applicant is not yet accustomed.

6. It was only due to the receipt of letter from the Verification Unit and appointment of the new CA, it came to knowledge of the Applicant about

dismissal of appeal by the ld.Addl/Jt.CIT. The new CA then advised her to first respond to the letter dt.04.08.2025 of the VU and then to file appeal before the Hon. ITAT immediately with an application for condonation of delay.

7. Accordingly the appeal is now being filed which is belated by 346 days. The impugned appeal is thus delayed on account of the reasons mentioned hereinabove which constitute reasonable cause and it is respectfully submitted that the delay is not wilful or unreasonable.

8. The Applicant submits that under these circumstances the appeal has not been filed in time and crave your honor's indulgence in the matter and request that the delay in filing of the appeal be condoned and the same be admitted so that justice can be given to the Applicant.

9. It is submitted that the Applicant is not benefitted in any way from the delayed filing of the appeal and that irreparable loss will be caused if the delay is not condoned and the appeal is not admitted.

10. It is further submitted that no hardship or prejudice will be caused to the Respondent in case the delay is condoned and the appeal is admitted. However, if the delay is not condoned and the appeal is not admitted, the Applicant will suffer substantially and irreparable loss will be caused.

11. In light of the above facts and in the interest of natural justice, the Applicant pray before your honours to kindly condone the delay in filing the appeal and admit and adjudicate the same on merits, in the interest of natural justice."

3. The assessee has claimed that she was diagnosed with cancer, in or around February, 2020 and is presently at the fourth stage of the said disease and in the year 2021, changed her CA and her income tax matters were then looked after by the staff of her son, who was not aware of the pending matters. The assessee and her son's staff were not in practice to check the e-proceedings regularly, which resulted into delay. However, on appointing new

Chartered Accountant, who checked the e-filing portal and came to know about passing of the impugned order and then immediately, the instant appeal was filed, however, with a delay of 346 days, which was neither intentional nor malafide, but because of the aforesaid bonafide reason. The assessee also substantiated the aforesaid contentions by filing duly sworn affidavit dt. 06-11-2025. The Ld. DR did not refute such claim of the Assessee. **Thus, considering the aforesaid peculiar facts and circumstances in totality, the delay in filing the instant appeal is condoned.**

4. Now coming to merits of the case, it is observed that the Assessing Officer by perusing the details observed that the assessee had sold an immovable property i.e., Flat No. 1502, RNA Exotica, Goregaon West, Mumbai, on a total consideration of **Rs. 1,45,5000/- vide agreement for sale dt. 24-09-2014, registered on 22-09-2014.** However, the assessee subsequently, purchased the same flat on a consideration of **Rs. 1,25,94,687/-** vide agreement dt. 30-07-2014 registered on 11-08-2014 and has not shown any Short Term Capital Gain on the said property. On the contrary, the assessee claimed Long Term Capital Loss of **Rs. (-) 7,35,995/-** on sale of others (Right in property) which was under construction at the time of purchase and sale by the assessee. The AO, therefore, in order to verify the transactions, show caused the assessee.

5. The assessee by filing a reply dt. 20-06-2017 claimed inter-alia that the allotment of the said flat was received in financial year 2010-11 and part payment thereof was made in between financial years 2010-11 to 2014-15. The assessee purchased the said property at Rs. 1,25,94,687/- and out of that an amount of **Rs. 76,28,340/-** paid to the builder during the financial years **2010-11 to 2014-15** and balance amount of **Rs. 49,66,347/-** remained unpaid, as the assessee decided to sell the property before taking possession of the same. The assessee also paid the amount of **Rs. 10,51,369/-** towards stamp duty, registration charges, service tax and VAT and claimed deduction of the same, while claiming Long Term Capital Loss.

6. The AO thus, in view of theaforesaid facts, referred the matter to the Jt. Commissioner of Income Tax, Range-31(2), Mumbai, vide letter dt. 11-10-2017 and sought for direction u/s. 144A of the Act.

7. The Jt. Commissioner of Income Tax, Range-31(2), Mumbai, vide letter dt. 29-11-2017 opined that the assessee's claim of Long Term Capital Gain is not acceptable, as the purchase and sale agreement of the property, is executed in financial year 2014-15.

8. Thus the AO on the basis of direction u/s 144A of the Act, vide Assessment Order, treated the capital gain of Rs. 11,98,813/- earned from the said property, as Short Term Capital Gain, and

added the same in the income of the assessee, by passing the assessment order.

9. The assessee being aggrieved, challenged the said addition of disallowance by filing first appeal before the Ld. Commissioner, however, despite affording four opportunities, made no compliance.

10. As observed above that the Assessee was detected with cancer in February, 2020 and therefore due to such medical exigencies/cancer disease, delay in filing the instant appeal has also been occurred and, therefore, it can easily be construed that medical exigencies/cancer disease also caused non-appearance before the Ld. Commissioner, as well. And therefore considering the non-appearance of the Assessee as plausible cause, this Court is inclined to condone the non-appearance of the assessee before the Ld. Commissioner.

11. On merit, it is observed that Ld. Commissioner dismissed the appeal of the assessee as ex-parte and in limine on non-prosecution, without adjudicating the merits of the case, which is not permissible in view of the judgment of the jurisdictional High Court in CIT v. Premkumar Arjunda(2107) 297 CTR 614 (Bombay), wherein it has been held as under :-

“Section 251(1)(a) and (b), along with the explanation in Section 251(2) of the Act, mandates that the CIT(A) must apply their mind to all issues arising

from the order being appealed, regardless of whether the appellant specifically raised them [1].The law does not empower the CIT(Appeal) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act”.

Thus, this Court is inclined to remand the instant case to the file of the Ld. Commissioner for the decision afresh, however, considering the peculiar facts and circumstances in totality, as the assessee had reasonable cause for non-appearance before the Ld. Commissioner and the assessment order is on merit and the assessee has filed the relevant documents in support of her claim and the issue appears to be covered in favour of the assessee, thus, considering the aforesaid peculiar facts and circumstances again, this Court is inclined to adjudicate the appeal on merit.

12. Coming to the merits of the case, the assessee by drawing attention of this Court to a letter of allotment dt. 24-08-2011 (Pg. 62 to 70) has demonstrated that Flat No. 1502 was purchased by the assessee on 24-08-2011 from Sky Line Construction Company, as per allotment letter dt. 24-08-2011, on a total consideration of Rs. 1,25,94,687/- as per the payments, terms and conditions mentioned in such allotment letter, wherein it is also mentioned that the assessee has paid **Rs. 14,57,742/-** before the allotment letter to the builder. The assessee further by drawing attention to a letter dt. 19-06-2017 being submission of details/explanation submitted to the Income Tax Officer-31(2), Mumbai, demonstrated the amounts paid during the AYs. 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15, as detailed below:

In Financial year 2010-11: Total Amount Paid Rs. 12,00,000/-

Date	Receipt No.	Gross Amount	For agreement value	Service Tax & VAT	Remarks
20-10-2010	404	500,000/-	500,000/-	Nil	Booking Amt
31-1-2011	583	400,000/-	400,000/-	Nil	Booking Amt
3-3-2011	677	150,000/-	150,000/-	Nil	Booking Amt.
3-3-2011	678	150,000/-	150,000/-	Nil	Booking Amt.

In Financial year 2011-12: Total Amount Paid Rs. 17,90,557/-

Date	Receipt No.	Gross Amount	For agreement value	Service Tax & VAT	Remarks
28-04-2011	717/718	2,95,279/-	257,742/-	37,537/-	Slab wise dues
06-12-2011	1466	3,00,000/-	2,92,469/-	7531/-	Slab wise dues
09-12-2011	1508	4,47,640/-	4,36,403/-	11,237/-	Slab wise dues
31-12-2011	1621	7,47,638/-	7,10,102/-	37,536/-	Slab wise dues

In Financial year 2012-13: Total Amount Paid Rs. 22,50,971/-

Date	Receipt No.	Gross Amount	For agreement value	Service Tax & VAT	Remarks
22-04-2012	17365	2,47,639/-	2,47,639/-		Slab wise dues
22-04-2012	17366	4,00,000/-	4,00,000/-		Slab wise dues
19-06-2012	17715	3,51,393/-	3,51,393/-		Slab wise dues
26-06-2012	17718	5,00,000/-	4,77,478/-	22,522/-	Slab wise dues
21-08-2012	260	7,51,393/-	7,28,871/-	22,522/-	Slab wise dues

In Financial year 2013-14: Total Amount Paid Rs. 12,39,567/-

Date	Receipt No.	Gross Amount	For agreement value	Service Tax & VAT	Remarks
23-12-2013	1379	12,39,567/-	11,82,851/-	56,716/-	Slab wise dues

In Financial year 2014-15: Total Amount Paid Rs. 11,47,245/-

Date	Receipt No.	Gross Amount	For agreement value	Service Tax & VAT	Remarks
16-07-2013		7,28,318/-			Stamp Duty
18-07-013	2165	1,46,699/-	Nil		VAT
18-07-2013	2166	2,72,228/-	Nil		Slab wise dues

13. As the assessee has demonstrated, that she had purchased the property under consideration, vide allotment letter dt. 24-08-2011, but somehow the AO not accepted the same and made the addition and therefore question emerge **“whether the allotment letter can be considered, as acquisition of rights in property.”**

14. The Hon'ble jurisdictional High Court in the case of in the case of PCIT-3 Vs. Vembo Vaidyanathan (2019) 261 taxman 376 (Bom.) has dealt with the identical issue and approved the acquisition of property from the date of "letter of allotment" and in fact directly or indirectly given sanctity to the letter of allotment" by holding as under:

"Issue raised by the revenue in its appeal before the Hon'ble High Court was, as to whether the Tribunal was justified in reckoning the acquisition of the property from the date of letter of allotment which though did not lead to creation of any proper and effective right over the capital asset, and not from the date on which the agreement" which spelled out the exact terms and conditions for acquisition was executed. It was observed by the Hon'ble High Court, that the CBDT vide its Circular No. 471, dated 15.10.1996 had clarified that when an Assessee purchases a flat to be constructed by Delhi Development Authority (D.D.A) for which allotment letter is issued, date of such allotment would be the relevant date for the purpose of capital gain tax as the date of acquisition. Further, referring to the clarification issued by the CBDT, vide its Circular No. 672, dated 16.12.1993, it was observed by the Hon'ble High Court, that the Board had clarified that if the terms of the schemes of allotment and construction of flats/houses by the co-operative societies or other institutions were similar to the terms of allotment and construction by D.D.A, then on the same basis the acquisition of the property was to be related to the date on which the allotment letter was issued. On the basis of its aforesaid observations, the Hon'ble High Court had dismissed the appeal of the revenue. In the backdrop of our aforesaid deliberations, we are of the considered view that as no infirmity emerges from the order of the CIT(A), who we find had rightly concluded that the date of acquisition of the property under consideration was to be reckoned from the date of the allotment letter i.e. 03.12.1999, therefore, we uphold his order."

15. The Hon'ble Punjab & Haryana High Court, Chandigarh in the case of Ms. Madhu Kaul Vs. CIT, Chandigarh (ITA No. 89/1999 decided on 17.01.2014) also dealt with the allotment letter, for determining the Long Term Capital Gain and by holding that the payment of balance instalments, identification of particular flat and delivery of possession are consequential acts that relate back to and arise from the rights conferred by the "allotment letter", determined as under:

"13. On careful reading of the Circular issued by the Board, para 2 thereof describes the nature of right that an allottee acquires on allotment of flat under Self-Financing Scheme. According to it, the allottee gets title to the property on the issuance of an allotment letter and the payment of instalments is only a consequential action upon which the delivery of possession flows. Admittedly, the flat was allotted to the appellant on 07.06.1986, vide letter conveyed to the Assessee on 30.06.1986. The Assessee paid the first instalment on 04.07.1986, thereby conferring a right upon the appellant to hold a flat, which was later identified and possession delivered on a later date. The mere fact that possession was delivered later, does not detract from the fact that the allottee was conferred a right to hold property on issuance of an allotment letter. The payment of balance instalments, identification of a particular flat and delivery of possession are consequential acts, that relate back to and arise from the rights conferred by the allotment letter.

In view of what has been recorded hereinabove, we have no hesitation in holding that the Income Tax Appellate Tribunal has erred in holding that the transaction does not envisage a long term capital gain. Consequently, we allow the appeal, set aside order dated 15.02.1999 and answer the substantial questions of law in favour of the Assessee."

16. On the aforesaid analyzations and the dictum laid down by the Hon'ble High Courts, this Court has no hesitation to hold that for consideration of the holding period of the property or for determination of LTCG, the date of the "allotment of property" is also paramount and the payment of instalments/consideration,

delivery of possession etc. are in fact consequential acts, in pursuance to allotment letter and/or originates from the date of allotment and "allotment letter" if confirms the allotment and having essential constituents of a contract and confers any rights per se, on to the buyer, etc., then the same can be considered for determining for the claim u/s 54F of the Act.

17. Coming to this case again, it is observed that the AO has duly acknowledged the fact that vide allotment letter dated 24-08-20211, flat/property involved was purchased at Rs. 1,25,94,687/- in financial year 2010-11 by the Assessee and part payment thereof, to the tune of Rs. 76,28,340/- was made during the financial years 2010-11 to 2014-15 and balance amount of Rs. 49,66,347/- remained unpaid, as the assessee decided to sell the property before taking possession of the same. The assessee also paid the amount of Rs. 10,51,369/- towards stamp duty, registration charges, service tax and VAT and claimed deduction of the same, while claiming Long Term Capital Loss.

18. Thus, this Court is of the considered view that the assessee on the basis of allotment letter and subsequent payments made in pursuance to such allotment letter, is entitled to get the benefit for **Long** Term Capital gain/lossbut not as **short** term capital gain as determined by the AO and affirmed by the Ld. Commissioner. Thus, the AO is directed to re-recompute the Long Term Capital Gain/loss, accordingly.

19. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 30-12-2025

Sd/-
[NARENDER KUMAR CHOUDHRY]
JUDICIAL MEMBER

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai