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

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.954/MUM/2025
(A.Y. 2012-13)

Jagmeet Singh Sabharwal, 1302, Ocean View, Union Park, Khar - 400 052, Maharashtra	v/s. बनाम	Commissioner of Income Tax, National E-Assessment Centre, Delhi - 110 051, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAQPS1189N		
Appellant/अपीलार्थी	..	**Respondent/प्रतिवादी**

Appellant by :	Shri Surendra Singh Sabharwal, AR
Respondent by :	Ms. Kavitha Kaushik (Sr. DR)

Date of Hearing	12.12.2025
Date of Pronouncement	05.01.2026

आदेश / O R D E R

PER PRABHASH SHANKAR [A.M.] :-

The present appeal arising from the appellate order dated 12.04.2024 is filed by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] pertaining to assessment order passed u/s. 143(3) r.w.s. 147 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] dated 07.12.2017 as passed by the DCIT, Circle-13(3)(1), Mumbai for the Assessment Year [A.Y.] 2012-13.

2. The grounds of appeal are as under:-

> *"1. The learned AO has grossly erred in treating capital gains as short term gains which is bad in law whereas the facts figures and documents clearly prove long term nature of the asset. Your appellant had declared LTCG and paid taxes accordingly.*
> *2. Regarding addition u/s. 50C the Ld. AO ought to have accepted the explanation that difference is less than 2% and the value shown is true and fair market value."*

3. At the outset, it was notice that the instant appeal is delayed by 272 days. In an affidavit filed, it is stated by the assessee that he did not get the appeal order dated 12.04.2024 as it was posted on a wrong address in place of the actual address. Further, the assessee learnt of the same only thought a reminder from VSV Scheme 2024 on 18.12.2024.He could collect the appellate order only on 15.01.2025 and filed the appeal on 12.02.2025.Request was made to condone the delay.

4. On careful consideration of the submissions of the assessee, we are of the considered opinion that the delay in filing of the present appeal was not intentional but due to unavoidable and sufficient cause. Such a bonafide mistake needs to considered libarally. In this connection, reliance could be placed on the landmark decision of hon'ble Supreme Court which inter alia held in **Collector, Land Acquisition v Mst. Katiji And Others- 167 ITR 471 (SC)** that *"ordinarily, a litigant does not stand to benefit by lodging an appeal*

late.....Refusing tocondone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated....Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.... A litigant does not stand to benefit by resorting to delay. In fact, he runs serious risk." We therefore, condone the delay setting aside the appellate order and proceed to adjudicate the grounds on merit.

5. In **ground no. 1**, the assessee has mainly challenged the decision of the Assessing Officer treating the capital gains arising on sale of an immovable property as Short Term Capital Gains instead of Long Term Capital Gains as claimed by the assessee. The AO noted that the date of purchase of property as reflected in registered purchase deed was 30.12.2011 and the date of sale of the same property as reflected in registered sale deed dated 30.12.2011. On being pointed out to show cause as to why the transaction should not be considered as short term capital gains, it was explained by the assessee that he purchased a property in F.Y. 2006-07 and sold it in F.Y. 2011-12 and the registration

was made in F.Y. 2011-12 due to technical and legal compliances the builder had to comply. Since payment was made in F.Y. 2006-07 and accounted for in that year cost inflation index was calculated from that year. The registration delay was beyond assessee's control and unanticipated. However, the ld.AO rejected the contention on the ground that the assessee had not submitted any letter of allotment. Accordingly, he treated the transaction as short term rejecting the contentions of the assessee and worked out STCG in terms of section 2(47) of the Act in place of claimed LTCG. Reliance was also placed on judgement of Honorable Supreme court in the case of Suraj Lamp and Industries P. Ltd. vs State of Haryana. The ld.CIT(A) concurred with the AO and upheld the addition. The ld.CIT(A) in the subsequent appeal endorsed the decision of the AO and upheld the addition.

6. Before us, the ld.AR of the assessee submitted that he purchased one property during financial year 2006-07 and paid more than 90% of the cost price and obtained letter of allotment from the builder. Allotment letter and payment details were mentioned in the agreement. Copies were also filed before us ready reference.It was submitted that due to some technical reasons and legal compliances agreement could be registered on 30.12.2011 only and immediately thereafter the property was sold. In this regard, it was further contended

that copies of return of income and Balance Sheet for Assessment year 2006-07 were duly submitted at the time of hearing and are on the record of AO. Explanation for treating the asset as long term asset was also given which is mentioned in para 5 page 4 of the assessment order. The AO ignored all the above facts, details and information and misapplied section 2(29A) of the Act. Further, the ld. CIT(A) rejected the contention that the capital gain arising out of the transaction is LTCG not STCG wherein he has relied on the date of purchase agreement dated 30.12.2011. He has stated that assessee has not submitted any letter of allotment. It is reiterated that the assessee had submitted letter of allotment, ledger account copy of the developer giving payment details from F.Y.2006-07 to 2011-12 to the AO as well as CIT(A) and the same are available on Income Tax Portal and the payment details were clearly mentioned on the last page of agreement, page 25 also. The assessee had attached Balance sheet copies of F.Y. 2006-07 and 2011-12 wherein the payments made during these periods were duly reflected. The Purchase Agreement was made on 30-12-2011 only after he received Occupation Certificate from government authority and full payment from him. Reliance was placed on Vembu Vedhyanathan ITA No.1459 of 2016 dated 22.1.2019 (Bombay HC), Dilshad Ahmed ITA No. 1687/ Mum/2022 etc.

6.1 The ld.DR placed reliance on the orders of authorities below.

7. We have given a careful thought to all the relevant facts and the circumstances of the case. It is evident from the contents of the assessment order as also from the appellate order that both the authorities have based their conclusions treating the said property as short term asset without appreciating the totality of facts and completely ignoring the truth that the assessee had made all the payments much before the stated the possession letter. Moreover, they have completely glossed over the fact that relevant agreement/allotment were submitted as also the details of payments made. These facts fortify the grounds that all the essential ingredients of a constructive possession were already met by the assessee.

7.1 We are of the considered view that the letter of allotment is a crucial document as it outlines the terms and conditions of a sale. It serves as proof of the payment made to the seller or developer and the remaining balance that must be cleared. It assures buyers that the property in question will be completed by the promised date. Since the allotment letter of a property is a contract between the buyer and the seller,it is considered a legally binding agreement under section 10 of the Indian Contract Act. Therefore, if the seller is not able to hold on to their part of the deal, buyers can hold them legally responsible for not

delivering the house on time. effective from the date of agreement to sale.

7.2 It may be stated here that in the case of **Richa Bagrodia v. DCIT (2019) 175 ITD 552 (Mumbai, ITAT)**, on a similar issue, it was held by the coordinate bench that date of allotment of flat and not date of giving possession of flat which has to be considered as date for computing holding period of 36 months. Further, the Indore Tribunal in the case of **Sanjay Kumath V ACIT (2014) in ITA NO.448/Ind/2013** held that the period of holding of a flat reckoned from the date of allotment letter as it extinguished the right of the builder in the flat and the assessee had acquired all rights in said flat on the date of allotment thus, the holding period being more than 36 months, exemption under section 54F was admissible to him.

7.3 It was held by the **Hon'ble Supreme Court of India in the case of Sanjeev Lal v CIT (2014)** that the agreement to purchase is to be considered as a date on which the property i.e. the residential house had been acquired (transferred). It is stated that by looking at the provisions of Section 2(47) of the Act, which defines the word "transfer" in relation to a capital asset, one can say that if a right in the property is extinguished by execution of an agreement to sell, the capital asset can be deemed to have been transferred.

7.4 Even seen in the light of consideration paid, as per details placed on record, it is evident that the assessee paid almost the entire amount much earlier. It was held by the Delhi Tribunal in the case of **Rajiv Madhok v ACIT (2020)ITA No.2291/Del/2017** that the relevant date is when the petitioner paid the full consideration amount on the flat becoming ready for occupation and obtained possession of the flat. The Tribunal has looked at the clause of the agreement deed and concluded that the purchase was substantially effected when the agreement of purchase was carried out by payment of full consideration and handing over of possession of the flat.

7.5 We note that any capital asset held by the assessee for more than a period of thirty-six months is in the nature of Long Term Capital Asset. Further, the word "held" used in Section 2(14) of the Act implies right over a capital asset. In the instant case of the assessee, the right over the property was held by the assessee for the period of 36 months, therefore, on transfer of these properties the 'long term capital gain' has been offered by the assessee. The assessee further paid the entire consideration in the year 2006 itself.

7.6 In the case of **Smt. Jennifer Chakraborty ITA No.400/Kol/2016 & ITA No.514/Kol/2016,**it was observed that the letter of provisional allotment issued by the builder is to be considered

as date of acquisition of right in the property. The tribunal relied further on the judgment of the Coordinate Bench in the case of **M/s. Anindya Dutta in ITA No.473/Kol/2012, for AY2008-09,** order dated 29.11.2013 wherein similar facts were discussed and it was held as under:

> "*9. Further, Board's Circular No. 471 dated 15-10-1986, has also been considered by Hon'ble Bombay High Court in the case of CIT v. Hilla J.B. Wadia 216 ITR 376 (Bom), it was held that Section 54 of the Act has to be construed in the context of the manner in which residential properties are now being constructed in a city like Bombay where, looking to the cost of the land, co-operative housing societies are being formed for constructing a building in which flats are allotted to members. This must also be viewed as a method of constructing residential tenements. What we have to see is whether the assessee has acquired a right to a specific flat in such a builder which is being constructed by the society and whether he has made a substantial investment within the prescribed period which will entitle him to obtain possession of the flat so constructed and in which he intends to reside. The material test in this connection is domain over the flat and investment in it.*

7.7 The Central Board of Direct Taxes Circular No. 471, dated October 15, 1986, deals with investment in flats under the self-financing scheme of the Delhi Development Authority. *The Board has stated in the circular that when an allotment letter is issued to an allottee under this scheme on payment of the first instalment of the cost of construction, the allotment is final unless it is cancelled. The allottee, thereupon, gets title to the property on the issuance of the allotment letter and the payment of instalments is only a follow-up action and taking delivery of possession is only a formality.*

7.8 Similar issue came up for consideration before the coordinate Bench of ITAT, Mumbai in the case of **Minaxi Mahesh Pawani (Deceased) in ITA No. 4380/MUM/2023 dated 28/06/2024**

wherein it was held that the holding period shall be computed from the date of the allotment letter and not the date of registration of sale agreement. It was held that where the assessee sold right to an under-construction flat conferred by an allotment letter by a builder, the holding period should be computed from the date of allotment letter and not date of registration of agreement of sale between assessee and builder. It is an undisputed fact that a letter of allotment was issued by the builder to the assessee by which a right to own the flat had accrued on the assessee. The right which accrued to the assessee is the booking right, i.e., the right to purchase the flat and obtain the title. It is not in dispute that the assessee has not defaulted on the terms and conditions of the letter of allotment. The assessee has made all the payments as required under the letter of allotment which has been duly acknowledged in the subsequent registration of the agreement to sell. Further, the assessee has furnished details of payments made in each of the years. *The consequence of the issuance of a letter of allotment for the flat signifies a contractual arrangement between the assessee and the builder by which a right in persona is created in favor of the assessee. When such a right is created in favor of the assessee, the builder is restrained from selling the said identified flat to someone else because the assessee in whose favor the right in persona is created, has*

a legitimate right to enforce specific performance in terms of the said letter of allotment, if the builder, for some reason is not executing and complying with the terms stated therein. A ***right in personam*** *had been created in favor of the assessee in whose favor the letter of allotment had been issued* and who has paid 20% of the total agreed consideration as advance.

7.9 Based on the above stated facts and circumstances mentioned above, we are of the view that the sale of the above stated premises is in the nature of long term asset resulting in long term capital gains. The addition made is, accordingly deleted and claim of the assessee is LTCG is restored. Ground no.1 is therefore, allowed.

8. In the **ground no.2** the assessee has challenged the addition made by the AO u/s 50C of the Act who noticed from the computation of total income that during the year under consideration, the assessee had shown sale of property at sale consideration of Rs. 1,70,00,000/-. The authorized representative of the assessee was asked to submit the details of sale of property such as purchase and sale deed, to submit the details of sale of property such as purchase and sale deed for verification. In response, the authorized representative of the assessee filed both the agreements. While going through the agreements, it was noticed that the sale consideration was shown at Rs. 1,70,00,000/- whereas the market

value of the same had shown at Rs.1,73,34,000/-. Thus, there was a difference between market value and sale consideration which attracts provisions of Section 50C of the Act. Accordingly, a show cause was issued as to why provisions of section 50C of the Act is not applicable to assessee on the sale of property. In response to the same, the assessee filed explanation stating that in its case the difference was less than 2%.The AO however, rejected the contentions of the assessee which was upheld by the ld.CIT(A).

9. Before us, it is contented by the ld.AR that the AO ought to have accepted the explanation that difference was less than 2 percent and the value shown was true and fair market value. It is also submitted that the AO was requested to go for valuation if he so desired which was not accepted on the ground that there was small difference. The ld.DR placed reliance on the orders of authorities below.

10. We have heard the rival contentions and perused the material available on the record. The undisputed fact emerges from the record are that the assessee had purchased a property and the difference in value of the property as declared in the sale agreement and as determined by the stamp duty authority is less than 2.32% of the sale consideration. Further we find that the identical issue has been discussed at length by the Coordinate Mumbai Benches of the Tribunal

in case of **Joseph Mudaliar Vs. DCIT, CC-4**(3), Mumbai (supra) wherein the matter as to whether the third proviso of section 50C(1) providing exception in case of difference in value is less than 10% would be applicable to section 56(2)(vii)(b) has been discussed at length including the amendment brought in by the Finance Act 2018 and it has been held that section 56(2)(vii)(b) has to be harmoniously construed alongwith sections 50C, 56(2)(x) and 43CA and the exceptions provided in the later three provisions have to be read into section 56(2)(vii)(b)(ii) to provide true meaning to the intention of the legislature and it has been held that the assessee would be eligible to get the benefit of 10% margin difference in the valuation between the value determined by the stamp duty authority and the declared sale consideration and the amendment brought in by the Finance Act 2018 is curative in nature and same should apply retrospectively. We have carefully considered all relevant facts of the case. It is evident that the difference in terms of section of 50C of the Act is only 2% which is much less than the tolerance limit of 5% revised to 10% subsequently. Reference could also be made to the decision of the coordinate bench in the case of Hon'ble ITAT, Mumbai in case of **Smt. Cheryl Maria Fernandes vs Ito (It)-2(3)(1), in ITA No. 4850/Mum/2019** (AY 2011-12) where similar issue was decided in favour of the assessee.

11. We therefore find that the facts of the present case are *pari materia* and given the difference only of 2.32% of the sale consideration, the assessee would be eligible for the benefit of the third proviso and no addition deserves to be made in the hands of the assessee. In the light of the same and following the decision of Coordinate Mumbai Benches of the Tribunal, the addition so made by the AO and sustained by the ld. CIT(A) is hereby directed to be deleted. Thus, the ground no.2 is allowed.

12. In the result, **the appeal of the assessee is allowed.**

Order pronounced in the open court on **05/01/2026**.

Sd/-	**Sd/-**
NARENDER KUMAR CHOUDHRY	**PRABHASH SHANKAR**
(न्यायिक सदस्य /JUDICIAL MEMBER)	**(लेखाकार सदस्य/ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai
दिनांक /Date 05.01.2026
Lubhna Shaikh / Steno

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//
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