

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

**BEFORE SHRI SANDEEP GOSAIN, (JUDICIAL MEMBER) &  
SHRI PRABHASH SHANKAR, (ACCOUNTANT MEMBER)**

**I.T.A. No.6816/Mum/2025  
Assessment Year: 2015**

ITO, 19(2)(4) 507, Piramal Chambers Lalbaug, Mumbai	Vs.	Avani Azad Parikh C-701, Beaummonde Tower, Appasheb marathe Marg, Prabhadevi, Mumbai PAN – AEJPP9907L
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	Shri Rashmikant Modi & Ms. Ketki Rajeshirke
<b>Revenue by</b>	Shri. Surendra Mohan, SR. D.R.

<b>Date of Hearing</b>	23.12.2025
<b>Date of Pronouncement</b>	06.01.2026

**ORDER**

**Per: SHRI. SANDEEP GOSAIN, J.M.:**

The present appeal has been filed by the revenue challenging the impugned order dated 27.10.2025, passed u/s. 250 of the Income Tax Act, 1961 ('the Act'), by the learned National Faceless Appeal Centre, Delhi, ('NFAC'), for the assessment year 2015. The revenue raised the following grounds:

1. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made of Rs. 7,25,08,820/- u/s 143(3) r.w.s. 147 of the Act, without

*appreciating the fact that assessee has failed to substantiate her claim with documentary evidences."*

*2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not treating appellant as the owner of 50% right in the residential flat with SkyLark Co-op Hsg. Society Ltd. inspite of the fact that assessee failed to submit documentary evidences in support of her claim".*

*3. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is right in not treating that the sales consideration of Rs. 7,25,08,820/- accrues to the assessee.*

*4. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in treating long-term capital gains of Rs. 7,25,08,820/- on the sale of flat at Skylark Cooperative Society not pertains to the assessee."*

*5. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred not appreciating that the burden of proof was on the assessee to prove the genuineness of the transactions."*

*6. "Whether on the facts and the circumstances of the case and in law, Ld CIT(A) erred in ignoring the decisions in Sumati Dayal v. CIT 214 ITR-80 and CIT v. Durga Prasad More 82 ITR-540 (S.C.) and coming to a conclusion only on the basis of the arguments advanced by the assessee."*

*7. The tax effect involved in this case is Rs. 2,24,05,225/-, which is above the prescribed limit mentioned in the CBDT's Circular F.No.279/Misc. 142/2007-ITJ(Pt) amended vide No. 09/2024 dated. 17.09.2024. Thus the appeal is being filed before the Hon'ble ITAT.*

*8. "The appellant craves leave to amend or to alter any ground or add a new ground, which may be necessary".*

2. All the grounds raised by the revenue are interrelated and interconnected and relates to challenging the order of Ld. CIT(A) in upholding the order of additions made by the AO. Therefore, we have decided to adjudicate these grounds through the present consolidated order.

3. The Ld. DR appearing on behalf of the appellant / revenue while relying upon the order of AO submitted that addition in this case was made on account of long term capital gain on sale of a residential flat at skylark Co-operative Housing Society Ltd but the Ld. CIT(A) erred in deleting the additions without appreciating the fact that the assessee had failed to substantiate her claim with supportive documentary evidences. It was further submitted that the additions were rightly made by the AO by holding that the assessee had ownership of 50% share of the flat at Skylark Cooperative Housing Society Ltd., along with her son Mr. Sujan Azad Parikh. It was further submitted that long term capital gain of Rs. 7,25,08,820/- with regard to sale of flat pertained to the assessee but the assessee could not discharge its burden of proof even then Ld. CIT(A) deleted the additions.

4. On the other hand, Ld. AR appearing on behalf of the assessee while relying upon the order of Ld. CIT(A) reiterated the same arguments as were raised by the assessee before the revenue authorities and had referred to the operative portion of the order of Ld. CIT(A) which is contained in para 7 to 7.2 and the same is reproduced herein below:

*1. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made of Rs. 7,25,08,820/- u/s 143(3) r.w.s. 147 of the Act, without appreciating the fact that assessee has failed to substantiate her claim with documentary evidences."*

2. " Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not treating appellant as the owner of 50% right in the residential flat with SkyLark Co-op Hsg. Society Ltd. inspite of the fact that assessee failed to submit documentary evidences in support of her claim".

3. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is right in not treating that the sales consideration of Rs. 7,25,08,820/- accrues to the assessee."

4. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in treating long-term capital gains of Rs. 7,25,08,820/- on the sale of flat at Skylark Cooperative Society not pertains to the assessee."

5. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred not appreciating that the burden of proof was on the assessee to prove the genuineness of the transactions."

6. "Whether on the facts and the circumstances of the case and in law, La CIT(A) erred in ignoring the decisions in Sumati Dayal v. CIT 214 ITR-80 and CIT v. Durga Prasad More 82 ITR-540 (S.C.) and coming to a conclusion only on the basis of the arguments advanced by the assessee."

7. The tax effect involved in this case is Rs. 2,24,05,225/-, which is above the prescribed limit mentioned in the CBDT's Circular F.No.279/Misc. 142/2007-ITJ(Pt) amended vide No. 09/2024 dated. 17.09.2024. Thus the appeal is being filed before the Hon'ble ITAT.

8. "The appellant craves leave to amend or to alter any ground or add a new ground, which may be necessary".

5. We have heard the counsels for both the parties, perused the material placed on record, judgments cited before us and also the orders passed by the revenue authorities. From the records, we noticed that as per the facts of the case, the assessee was 50% shareholder in residential flat at Skylark Cooperative Housing Society Ltd., along with her son Mr. Sujan Azad Parikh by virtue of

original decree from the Hon'ble Court of Small Causes Bombay. Consequently the rights in the said property were transferred by the said were Skylark Cooperative Housing Society Ltd., by issuing share certificate to of each of them being 50% holder of the property. Thereafter the assessee sold her 50% share in the said residential flat to Ms. Enakshi Sujan Parikh, wife of Mr. Sujan Azad Parikh in 2007 offered the resulting long term capital gain to to tax in A.Y 2008-09.

6. Later on Mr. Sujan A Parikh and Ms. Enakshi Sujan Parikh both became 50% each owners of the said residential flat and sold the same in July 2014 for a consideration of Rs. 15,25,00,000/- and both individually offered long term capital gain on sale of Rs. 7,62,50,000/- each for A.Y 2015-16. In this regard assessee had also placed before the AO the following documentary evidences in order to substantiate that assessee was not to be taxed for long term capital gain on sale of residential flat as she does not have any share in the residential flat.

***a. Copy of Consent terms and the order issued,***

***b. Letter given by M/s. Batliboi & Co. (original owners) to Skylark Co-op Hsg Society Ltd dated 13-10-1992, wherein he has asked the society to transfer the shares to both Appellant and her son in 50: 50 ratio,***

***c. Copy of bank statement of the Appellant with Bombay Mercantile Co-op bank, wherein the payment of Rs. 425,000/- to Batliboi & Co is seen.***

***d. A copy of the share certificate issued by the said society for transferring the shares in the name of***

***Appellant and in the name of her son Sujan A. Parikh accepting as co- owners in the said flat.***

7. However the assessment of the assessee was reopened and was completed by making addition of Rs. 7,25,08,820/- on Account of long term capital gain on a 'Protective Basis' treating the assessee as still owner of 50% share in the flat.

8. Whereas on the contrary simultaneously 50% of the sale proceeds of the flat were also added to the income of her son u/s 68 of the Act by holding that her son was not the owner of 50% share as the same belonged to the assessee.

9. It is important to mention here that Ld. CIT(A) in the case of Mr. Sujan A. Parikh deleted the addition by accepting the long term capital gain declared by him and even the Coordinate Bench of ITAT also uphold the order of Ld. CIT(A) in the case of **Sujan** by conclusively affirming taxability of the capital gains in his hands.

10. Now, since assessee had relied upon the appellate order in the case of Mr. Sujan A. Parikh and contended that when once the income stood substantively assessed and upheld in the hands of actual owner therefore the protective addition in the hands of the assessee could not survive as the same result in double taxation. Therefore the Ld. CIT(A) in the case of assessee, considering the material on record and the decision of the Coordinate Bench of ITAT held that the protective addition of Rs.

7,25,08,820/- was unsustainable and thus directed the same to be deleted in order to prevent double taxation.

11. After having meticulously gone through the undisputed facts of the present case and also considering the material placed on record, we found that Ld. CIT(A) in the present case had correctly recorded that the very same income has already been substantively assessed in the hands of Mr. Sujan A Parikh and the said assessment was accepted as long term capital gains by Ld. CIT(A) and thereafter affirmed by the Co-ordinate Bench of ITAT, Mumbai vide its order dated 02.12.2022. Therefore in our view also once the substantive assessment of the income had attained finality in the hands of the actual co-owner, thereafter the protective addition in the hands of the present assessee / respondent automatically ceases to survive.

12. Since the Ld. CIT(A) in the present case had followed the decision of the Coordinate Bench of ITAT and deleted the protective addition so as to avoid the double taxation of the same income and even the revenue has not been able to demonstrate as to how the same income can be taxed simultaneously in two different hands.

13. The arguments of Ld. DR that the assessee / respondent continued to be the owner of 50% share in the flat the time of sale in July 2014 is factually incorrect and contrary to the material placed on record. Since the assessee had already sold her entire 50% share in the flat

in July 2007 itself to Mrs. Enakshi Sujan Parikh and had duly offered resulting the long term capital gains to tax in the A.Y 2008-09. Thus in this way after the said transfer, the assessee was neither remained a co-owner nor a beneficiary of the property and was not even a party to the said sale deed executed in July 2014.

14. Even no new facts or circumstances have been placed on record before us in order to controvert or rebut the findings so recorded by Ld. CIT(A). Therefore, we see no reasons to interfere into or to deviate from the lawful findings so recorded by Ld. CIT(A). Hence, the grounds raised and by the revenue stands dismissed.

15 In the result, the appeal filed by the revenue stands dismissed.

**Order pronounced in the open court on 06/01/2026**

**Sd/-**  
**(PRABHASH SHANKAR)**  
**Accountant Member**

**Sd/-**  
**(SANDEEP GOSAIN)**  
**Judicial Member**

Mumbai:

Dated: 06/01/2026

RKR, Sr. PS

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)  
**ITAT, Mumbai**