

**INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH "SMC": AGRA
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 433/AGR/2025
(Assessment Year: 2014-15)**

Sanjana Gupta, 130, Gudri Bazar, Jhansi	Vs.	ITO, Ward-2(3)(1), Jhansi
(Appellant)		(Respondent)
PAN: AWBPG1536E		

Assessee by :	Smt Prathna Jalan, CA
Revenue by:	Shri Anil Kumar, Sr. DR
Date of Hearing	19/01/2026
Date of pronouncement	21/01/2026

ORDER

1. The appeal in ITA No. 433/AGR/2025 for AY 2014-15, arises out of the order of the ADD/JCIT(A), Mumbai [hereinafter referred to as 'Id. JCIT(A)', in short] dated 27.03.2025 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 15.12.2016 by the Assessing Officer, Assessing Officer, Ward-2(3)(3), Jhansi (hereinafter referred to as 'Id. AO').
2. At the outset, I find that there is delay in filing of appeal by the assessee before this tribunal by 101 days. Considering the reason adduced in the condonation petition and in the interest of substantial justice, I am inclined to condone the delay and admit the appeal of the assessee for adjudication.
3. Though the assessee has raised several grounds before me, the only effective issue to be decided in this appeal is as to whether the Id JCIT(A) was justified in confirming the addition made on account of differential

consideration under the head "Capital Gains" in the facts and circumstances of the instant case.

4. I have heard the rival contentions and perused the materials available on record. The assessee filed her return of income for AY 2014-15 on 03.8.2016 declaring total income of ₹2,42,850/-. As per the statement of facts filed before Id JCIT(A), the assessee is engaged in the profession of petty business and had regularly filed her return of income since last six years and had produced bank passbook, copy of balance sheet showing investment in assets, copy of ITR for AY 2014-15 and preceding two years. During the year under consideration, the assessee purchased a shop jointly with Kiran Gupta on upper ground floor located behind the main road 2. The AO has not accepted the investment made in the property amounting to ₹17,04,240/- which was shown by the assessee in her records. The Assessing Officer referred the property to Departmental Valuation Officer (DVO) for valuing the same. This reference was made in terms of Section 50C(2) of the Act as the consideration shown by the assessee for purchase was less than the value adopted by the Stamp Valuation Authorities and that the assessee had objected to the value adopted by the Stamp Valuation Authorities. Accordingly, the reference to Id DVO as contemplated u/s 50C(2) of the Act was made by Id AO. The Id DVO valued the property at ₹40, 64, 800/-. The differential sum i.e. value determined by the Id DVO and the value reported by the assessee was sought to be added as income of the assessee under the head "income from capital gains" and the same was taxed @ 20% plus applicable taxes.

5. Before the Id JCIT(A), the assessee objected that assessee is only a buyer of the property and that no addition could be made under the head "Capital gains" as assessee had not transferred any capital asset instead, it

had only purchased a capital asset. The Id JCIT(A) did not heed to the contention of the assessee and upheld the action of the Id AO.

6. It is not in dispute that the addition on account of differential consideration for purchase of immovable property was made by the revenue in the hands of the assessee under the head income from capital gains. It is also not in dispute that Id AO had levied tax only @ 20% which is applicable for long-term capital gains. I am in agreement with the arguments advanced by the Id AR that assessee being purchaser of the property, could not be fastened with any tax liability under the head income from capital gains. The Id DR on this count submitted that mere mentioning of wrong section would not invalidate the addition per se. To buttress this argument of the Id DR, the Id AR placed reliance on the decision of the Hon'ble Jurisdictional Allahabad High Court, in the case of Smt Sarika Jain Vs. CIT reported in 84 taxmann.com 64 wherein, the Hon'ble High Court has held as under:-

“13. The relevant sub-section (1) of Section 254 of the Act reads as under :—

"254. Orders of Appellate Tribunal.

254 (1). The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit." (Emphasis Supplied).

14. A plain reading of the aforesaid Section reveals that the Appellate Tribunal has power to pass such orders thereon as it thinks fit.

15. The use of the word "thereon" is important and it reflects that the Tribunal has to confined itself to the questions, which are arising or are subject matter in the appeal and it cannot be travelled beyond the same. The power to pass such orders as the Tribunal thinks fit can be exercised only in relation to the matter that arises in the appeal and it is not open to the Tribunal to adjudicate any other question or an issue, which is not in dispute and which is not the subject matter of the dispute in appeal.

16. In the present case, it is apparent that the subject matter of the dispute all through before the Tribunal in appeal was only with regard to the addition of alleged amount of the gift received by the appellant-assessee as his personal

income under Section 68 of the Act and not whether such an addition can be made under Section 69-A of the Act.

17. In view of the above, it can safely be said that the Tribunal travelled beyond the scope of the appeal in making the addition of the said income under Section 69-A of the Act. It may be worth noting that the Tribunal has recorded a categorical finding that "it is clear that under the provisions of Section 68, the addition made by the Assessing Officer and sustained by the CIT (Appeals) cannot be sustained, meaning thereby that the Tribunal was of the opinion that the Assessing Officer and the CIT (Appeals) committed an error in adding the aforesaid amount in the income of the appellant-assessee under Section 68 of the Act.

18. In view of the above, when the said income cannot be added under Section 68 of the Act and the Tribunal was not competent to make the said addition under Section 69-A of the Act, the entire order of the Tribunal stand vitiated in law.

19. Accordingly, we answer the question of law, as framed above, in favour of the appellant-assessee and against the Revenue and hold that the Tribunal was not competent to make any addition under Section 69-A of the Act and as the same was subject matter of the appeal before it.

20. Accordingly, the impugned order dated 20.12.2007 is set aside and the matter is remanded to the Tribunal for deciding the appeal afresh in accordance with law.

The appeal is allowed."

7. In view of the above observations and respectfully following the decision of the Hon'ble Jurisdictional High Court supra, I hold that no addition could be made in the hands of the assessee herein in the sum of ₹23,36,284/- under the head "capital gains". Accordingly, grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 21/01/2026.

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 21/01/2026
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi