

**आयकर अपीलीय अधिकरण न्याय पीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“SMC” BENCH, MUMBAI**

**BEFORE SHRI PAWAN SINGH, JM &**  
**SHRI ARUN KHODPIA, AM**

**I.T.A. No.7118/Mum/2025**  
(Assessment Year: 2010-11)

<b>Mr. Silvester Ligorio Rebello,</b> 1101, Prathamesh harmony, Gautam Buddha Marg, Opp. Orlem Church, Malad West, Mumbai - 400064 <b>PAN: ADWPR1000Q</b>	Vs.	<b>ITO-19(2)(2),</b> Piramal Chamber, Mumbai-400013.
<b>Assessee -अपीलार्थी / Appellant</b>	:	<b>Revenue - प्रत्यर्थी / Respondent</b>

**Assessee by** : Shri Vijay Shah, CA  
**Revenue by** : Shri Rajesh Sakhardande, Sr. DR  
**Date of Hearing** : 19.01.2026  
**Date of Pronouncement** : 27.01.2026

**ORDER**

**Per Arun Khodpia, AM:**

The instant appeal is preferred by the assessee challenging the order of Addl./ JCIT(A)-1, Visakhapatnam dated 16.09.2025 for the Assessment Year (AY) 2010-11, which in turn arises from the assessment order passed u/s 143(3) r.w.s. 147 of Income Tax Act, 1961 (for short “The Act”), dated 29/12/2017, by ITO-29(2)(2), Mumbai (for short “the Ld. AO”). The grounds of appeal raised by the assessee are as under:

*“1) On the facts and circumstances of the case, the CIT (A) has erred in law and fact in determining the capital gain of Rs.4,94,000/- as the appellant has purchase rented property before 1981 therefore the cost of acquisition should be taken as on 01-04-1981. If the CIT (A) is unable to determine the cost of acquisition then there is no capital gain accrue to the appellant.*

*2) On the facts and circumstances of the case, the CIT (A) has erred in law and fact in determining the sale price at rupees 52,50,000/- for R.No.5, Mistry building, Sleater Road, Opp. Grant Road Station, Mumbai 400 007 without deducting rupees 2,50,000/- paid to landlord for determining net capital gain. The appellant has received net consideration of rupees 50,00,000/-and the landlord has received rupees 2,50,000/-.”*

2. The brief facts of the case are that the assessee has not file his return of income for the AY 2010-11. However, from the ITS details, it is revealed that the assessee has sold immovable property for Rs. 52,50,000/- during the year, which has become the reason for reopening of the assessment under section 148 of the Act. In response to notice under section 148, the assessee filed his return of income declaring a total income of Rs. 2,25,860/-, the Capital Gain in the said return was declared at Nil, claiming the cost of acquisition at Rs. 6,32,000/- and cost of purchase of new Apartment for Rs. 47,55,000/-. The ld. Assessing Officer (AO) was not satisfied with the claim of assessee regarding cost of acquisition, in absence of documentary evidence, to be furnished by the assessee in support of such claim. Accordingly, an addition of Rs. 4,94,600/- was made in the hands of assessee. Being aggrieved with the aforesaid addition, assessee preferred the appeal before the ld. CIT(A), contending that the property sold by assessee was a tenanted property purchased before 1981, therefore, the assessee has no evidence to show the cost of acquisition, however, if the value of such property is determined as on 01.04.1981, such valuation would surely be more than the claim of the assessee. It is also requested by the assessee before ld. CIT(A) that the matter should be referred

to Departmental Valuation Officer (DVO). The assessee also submitted before the Id. CIT(A), that the Landlord of the property was also paid a sum of Rs. 2,50,000/-, while selling the property, such fact is on record as part of agreement of transfer of tenancy dated 08.02.2010, wherein at para 2(d) of the said agreement, it is specifically mentioned that the total consideration of Rs. 52,50,000/- was segregated in two parts i.e. (i) Rs. 50,00,000/- to the outgoing tenant i.e. the assessee in present case and Rs. 2,50,000/- to the Landlord. The aforesaid information is further substantiated, as mentioned in the same para that Rs. 2,50,000/- are paid to the Landlord vide cheque/DD No. 014202 dated 05.02.2010 of HSBC Bank. Such contentions of the assessee are noted by the Id. CIT(A), but had not considered satisfactory, therefore have confirmed the addition made by Id. AO, by dismissing the appeal of assessee.

3. Being aggrieved with the aforesaid decision of Id. CIT(A) assessee preferred the present appeal before us.

4. At the outset, the Id. AR of the assessee had reiterated the facts of the case from the documents available on record and have made the following two-fold arguments, as under:

(i) That if the revenue authorities are not satisfied with the cost of acquisition claimed by the assessee, the matter as requested by the assessee, should have been referred to the DVO, as no property could be held by the assessee without any cost of acquisition.

(ii) As per the agreement of transfer of tenancy between the assessee i.e. Silvester Ligorio Rebello (the out-coming tenant), Rushi Properties and Investment (P.) Ltd. (Landlord) and Smt. Nipa Deepen Parekh (the incoming tenant) dated 08.02.2010, an amount of Rs. 2,50,000/- was directly paid to the Landlord out of the total consideration of Rs. 52,50,000/-, therefore the net

consideration in the hands of assessee would be only Rs. 50,00,000/-, whereas the AO had computed the capital gain taking consideration at Rs. 52,50,000/-.

5. In backdrop of aforesaid submissions, it was the prayer by ld. AR that both these issues are not properly appreciated and verified by the Authorities below, therefore, the matter in the interest of justice, may be referred back to the file of ld. AO, for fresh adjudication, by referring the matter to the DVO for valuation of property to determine the cost of acquisition as on 01.04.1981 and to reduce Rs. 2,50,000/- from total consideration, which was never belongs to and received by the assessee.

6. Per contra, the ld. DR representing the revenue supported the orders of the ld. AO as well as ld. CIT(A).

7. We have considered the rival submissions and perused the material available on record. On a critical analysis of facts in present case, we find that the contentions raised by ld. AR needs attention, accordingly, after a thoughtful consideration, are of the view that, for valuation of property to find out the cost of acquisition in the hands of assessee as on 01.04.1981, the matter should be referred to the DVO. Further, regarding payment of Rs. 2,50,000/- to land lord, which is duly corroborated with the help of agreement of transfer of tenancy rights (refer to supra), therefore no further verification is required, we, thus, direct the ld. AO to reduce such amount from the total consideration of Rs. 52,50,000/-, while re-computing the capital gains in the hands of assessee. In terms of aforesaid observations, we deem it appropriate to restore the matter back to the file of ld. AO, to re-compute the capital gain in the hands of assessee, following our directions herein.

8. In result, the appeal of assessee is **partly allowed** for **statistical purposes**, in terms of our aforesaid observations.

*Order pronounced in the open court on 27-01-2026.*

**Sd/-**  
**(PAWAN SINGH)**  
**Judicial Member**  
Mumbai, Dated : 27-01-2026.  
*\*SK, Sr. PS*

**Sd/-**  
**(ARUN KHODPIA)**  
**Accountant Member**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

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