

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'A': NEW DELHI.**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
and
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.4182/Del/2025
(Assessment Year: 2022-23)**

Anshu Dhawan,
House No.933, Sector 17B,
Gurgaon – 122 001 (Haryana).

vs.

Income Tax Officer,
Delhi.

(PAN : AGGPD5365D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ashwani Kumar, CA
Shri Ankur Agarwal, CA
REVENUE BY : Shri Ajay Kumar Arora, Sr. DR

Date of Hearing : 10.11.2025
Date of Order : 30.01.2026

ORDER

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. The assessee has filed appeal against the order of the Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT (A)", for short] dated 19.05.2025 for the Assessment Year 2022-23.
2. Brief facts of the case are, assessee filed her return of income on 30.07.2022 declaring total income at Rs.37,51,250/-. The case of the assessee was selected for scrutiny under CASS for the reason of low

Long Term Capital Gain (LTCG) and high improvement cost. Subsequently, notices under section 143(2) and 142(1) of the Income-tax Act, 1961 (for short 'the Act') were issued and served on the assessee. In response, Id. AR of the assessee attended and submitted information as called for.

3. During assessment proceedings, the AO observed that assessee has declared LTCG loss of Rs.45,80,056/- and observed that total cost of improvement with indexation at Rs.1,83,73,704/- was claimed. The assessee was asked to submit the details in respect to cost of acquisition and cost of improvement. He observed that assessee along with her husband booked unit bearing No.PTS-01-501, 5th Floor, Palm Terraces Select, Sector 66, Golf Course Extension Road, Gurgaon with the developer, Emaar MGF Land Limited in the year 2010. In this regard, assessee has submitted copy of registered buyer agreement dated 03.04.2014 between developer and assessee. As per the agreement, assessee had agreed to purchase the said immovable property for a consideration of Rs.1,68,54,215/-. After the demise of assessee's husband, the allotment of the said property was transferred to the assessee's name by the developer. Further AO observed that the copy of executed registered agreement to sale dated 15.07.2021 by which assessee had mutually agreed for nomination/transfer of the above said

immovable property to Rajat Likhyani and Mrs. Bhawana Likhyani for a consideration of Rs.2,22,00,000/- and claimed total cost of acquisition/cost of improvement with indexed at Rs.2,67,80,056/-. The AO issued notice u/s 133(6) of the Act to Emaar MGF Land Limited, the developer. As per the information submitted by them, he observed that the said immovable property was booked by assessee and her husband in the year 2010 and agreement to sale was executed between the assessee and developer on 03.04.2014. It was also mentioned that sale deed shall be executed and got registered in favour of the allottees within six months from the date of receipt of full sale consideration. He observed from the allotment of the said property that it was transferred to the assessee by the developer. The assessee has requested the developer to substitute the name of the nominee of the said property to Rajat Likhyani and Mrs. Bhawana Likhyani in place of assessee's name. Further the executed agreement of sale deed with the above said buyers on 15.07.2021 for a consideration of Rs.2,19,50,000/-. Accordingly, AO observed that the above said immovable property was neither transferred to the assessee nor given the possession of the property by the developer. The above said investment of Rs.1,76,06,235/- on the above said immovable property and received an amount of Rs.2,22,00,000/- for relinquishment of right of allotment of said property, therefore, the profit earned by the

assessee was of Rs.45,93,765/- on investment in the said property which should be treated as income from other sources. Accordingly, he rejected the claim of the assessee and proceeded to make the addition under the head income from other sources.

4. Aggrieved with the above order, assessee preferred an appeal before the NFAC, Delhi and filed the grounds of appeal as well as filed detailed submissions which are reproduced by the Id. CIT (A) at pages 4 to 16 of the impugned order. After considering the detailed submissions of the assessee, Id. CIT (A) sustained the additions made by the AO.
5. Aggrieved with the above order, assessee is in appeal before us raising following grounds of appeal :-

1. That the order dated 19.05.2025 passed u/s 250 of the Income-tax Act, 1961 (hereinafter called the "Act") by the Commissioner of Income Tax(Appeals), National Faceless Appeal Centre (NFAC), Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the National Faceless Assessment Centre, Delhi in computing total income at Rs.83,45,015/- as against Rs.37,51,250/- as per return Of Income filed by the Appellant.

2. That the order dated 19.05.2025 passed u/s 250 of the Act by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the National Faceless Assessment Centre, Delhi in making an addition of Rs.45,93,765/- (being difference of Rs.2,22,00,000/- shown as full value consideration under the head "Capital Gain" as total receipt under the head of "Income from Other Sources after excluding the payment of Rs.1,76,06,235/-) by treating the capital gain (sale of rights in flat) as "Income from Other Sources"

3. That the order dated 19.05.2025 passed u/s 250 of the Act by the Commissioner of Income Tax(Appeals), National Faceless Appeal Centre (NFAC), Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the National Faceless Assessment Centre, Delhi in making the assessment in complete scrutiny as against the case of the Appellant was selected for scrutiny under CASS for reason "Long term Capital Gains and High Improvement Cost" and in disallowing capital loss and computed income under head income from other sources."

6. At the time of hearing, Id. AR of the assessee submitted as under :-

"Brief History of the Case :-

Particulars	Date
Original Return of Income filed by the Appellant Company 139(1) of the Act at Total Income of Rs.37,51,250/-	30.07.2022
Notice issued u/s 143(2) of the Act and served to the Appellant.	01.06.2023
Show Cause Notice issued to the Appellant by the Ld. Assessing Officer.	16.02.2024
Reply filed by the Appellant in response to the Show Cause the Ld. Assessing Officer.	20.02.2024
Assessment completed u/s 143(3) of the Act at the addition of in the total Income of the Appellant.	15.03.2024

2) The case of the Appellant was selected for scrutiny under CASS for reason "Long term Capital Gains and High Improvement Cost".

3) The Appellant's late husband, Col (Retd) San deep Dhawan, had booked Unit bearing No. PTS-01-501, 5th Floor, The Palm Terraces Select, Sector-66, Golf Course Extension Road, Gurgaon (Haryana) with the developer EMAAR MGF LAND LIMITED in the year 2010 and had been allotted the same vide letter dated 31.08.2010. Subsequently, a buyer agreement dated 03.04.2014 was entered into between him, MIs Emaar MGF Land Ltd (as Developer) and MIs Brijbasi Projects Private Limited (as the confirming party) w.r.t the said property. After his death the said property was transferred in the name of the Appellant by the Developer i.e. MIs Emaar MGF Land Ltd.

4) Subsequently, the Appellant sold the said property by virtue of a registered agreement to sell dated 15.07.2021 to Mr Rajat Likhyani and Mrs Bhawana Likhyani for a total sale consideration of Rs.2,22,00,000/- and

claimed total cost of acquisition/ improvement duly indexed at Rs.2,67,80,056/- while filing the return of income. The resultant Capital loss of Rs.45,80,056/- was disclosed as a long-term capital loss while filing the return of income.

5) During the course of assessment the Appellant was issued a show cause as to why the amount of Rs. 2,22,00,000/- shown as full value consideration under the head "Capital Gain" should not be treated as total receipt under the head of "Income from Other Sources" and after excluding the payment of Rs.1,76,06,235/- made, the net amount of Rs. 45,93,765/- should not be treated as the income from other sources. In response thereto a detailed reply dated 20.02.2024 was filed by the Appellant before the Ld. Assessing Officer.

6) However, the Ld Assessing Officer, while framing the assessment has arbitrarily, unjustifiably and illogically, proceeded to make an addition of Rs.45,93,765/- (being difference of Rs.2,22,00,000/- shown as full value consideration under the head "Capital Gain" as total receipt under the head of "Income from Other Sources" after excluding the payment of Rs.1,76,06,235/-) by treating the capital gain as "Income from Other Sources".

7) A chart regarding the Chronology of Events in the instant case:-

Chronology of Events	Date
Allotment Letter dated 31-Aug-10 issued to Sh. Sandeep Dhawan towards provisional allotment of Apartment No PTS-01-0501 in Palm Terraces, Sector-66, Gurgaon (At Page 62 of Paper Book)	31.08.2010
Buyer Agreement between Emaar MGF Land Limited, M/s Brijbasi Projects Private Limited and Sandeep Dhawan (At Page 63-72) of Paper Book)	03.04.2014
Endorsement of Buyer agreement by Emaar India Ltd. in favour of Anshu Dhawan	13.05.2021
Emaar-Change of Name from Mr. Sandeep dhawan to Mrs. Anshu Dhawan	14.06.2021
Agreement to Sell dated 15.07.2021 between MrsAnshu Dhawan and Mr. Rajat Likhyani (At Page 73-82 of Paper Book)	15.07.2021

8) Arguments on behalf of the Appellant:-

a) The Ld. Assessing Officer vide his assessment order has mentioned that the Assessee has made investment of Rs. 1,76,06,235/- on the said immovable property and subsequently, relinquished the right for allotment on said property for Rs.2,22,00,000/-. He has also stated that the Appellant has earned profit of Rs.45,93,765/- (Rs.2,22,00,000 - Rs.1,76,06,235/-) on investment in the said immovable property which should be treated as "income from other sources."

b) The Ld. Assessing Officer has explicitly admitted that the Appellant herein has made an investment of Rs.1,76,06,235/- in the said "immoveable property" which right has been subsequently relinquished in favour of an external third party. As such both the legs of the transaction entail a Capital Asset (immoveable property or the right to purchase property, whichever way one may choose to look at it and interpret the facts) which would definitely fall within the scope and definition of a Capital Asset within the meaning of section 2(14) of the Act making the resultant effect (i.e. whether gain or loss) being liable to be calculated and treated as "Capital Gains" (short/long term depending upon the period of holding).

c) As per section 2(14) of the Act, "Capital Asset" means "property of any kind held by an Assessee, whether or not connected with his business or profession". The rights conferred on the Appellant herein by virtue of the agreement dated 03.04.2014 bestow it with a property i.e. rights akin to an owner in getting the specified flats on the compliance with the terms, conditions and stipulations laid down therein.

d) In this connection, reference is also invited to the express provisions of Section 2(47) of the Act as per which "transfer" in relation to a Capital Asset includes, among others -

..... ,

(v) any transaction involving the allowing or the possession of any immoveable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882;

(vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring or enabling the enjoyment of, any immovable property".

e) Reference is invited to Para 11.2 of Departmental Circular No. 495 dated 23-09-1987 (At Page 43 of Paper Book) which reads as follows:-

"The clause (vi) referred to above which was inserted into the Act by the Finance Act 1987 (w.e.f 1-4-1988), has brought into the ambit of "transfer", the practice of enjoyment of property rights through what is commonly shown as Power of Attorney arrangements. The practice in such cases is adopted normally where transfer of ownership is legally not permitted. A person holding the power of attorney is authorised the powers of owner, including that of making construction. The legal ownership in such cases continues to be with the transferor".

f) Further, section 53A of the Transfer of Property Act, 1982 deals with the concept of "part performance" in the context of transfer of immovable

property and protects the interest of a transferee, who based on a contract has taken possession/done some acts in furtherance of a contract, even if the formal transfer has not been executed.

g) The above clauses expand the meaning of the word "transfer" to bring within its scope agreements/arrangements which in effect have the effect of transferring possession and de-facto ownership of the underlying property, irrespective of the legal execution of the sale deed and completion of all other related formalities. The said view also gets unequivocal support from the Department's circular explaining the provisions and implications of the same, referred to above.

9) Cases Laws Relied by the Appellant:-

- 1) Vinod Kumar Jain vs. Commissioner of Income-tax, Ludhiana [(2010) 195 Taxman 174 (Punjab & Haryana)].
- 2) Asst. Commissioner of Income Tax, Central Circle 16(2), vs. Ashwin. S. Bhalekar [(2019) ITA No. 6822/Mum/2016].
- 3) Shailendra Bhandari vs ACIT, Circle - 2(2)(1) [ITA No. 6528/MUM/2018]
- 4) Mahendrasingh Ramsingh Jadav vs. ITO [(2021) 125 taxmann.com 434 (Bangalore - Trib.).”

7. On the other hand, ld. DR of the Revenue brought to our notice detailed findings of the lower authorities and argued that the transactions made by the assessee are not transferred, therefore, the same cannot be charged to tax under the head capital gains. He heavily relied on the findings of the lower authorities.

8. Considered the rival submissions and material placed on record. We observe that assessee along with her husband booked a unit with the Palm Terraces Select, Gurgaon (Haryana) with the developer, EMAAR MGF Land Limited on 31.08.2010 and had been allotted the same vide letter dated 31.08.2010. After the demise of assessee's husband, the above said

property was transacted in the name of the assessee by the developer. Subsequently, assessee transferred above said property with registered agreement to sale dated 15.07.2021 to Rajat Likhyani and Mrs. Bhawana Likhyani for total consideration of Rs.2,22,00,000/- and claimed total cost of acquisition/improvement along with indexed cost at Rs.2,67,80,056/- in her return of income. The assessee has declared resultant capital loss of Rs.45,80,056/-. We observed that the AO in his assessment order observed the above facts on record and he was of the view that assessee has only transferred right on the above said unit and there was no registered agreement nor there is any transfer of physical possession of the unit to the assessee. That being the case, he was of the view that assessee has transferred only right of the property and not transferred the property physically, therefore, the transfer of the above said property will not fall under the head capital gains but it will be taxed in the head income from other sources.

9. After considering both the parties, we observed that as per the provisions of section 2(14) of the Act, the definition of capital assets means property of any kind held by an assessee, the property of any kind having a broader meaning. Further we observed that the definition of transfer in relation to capital assets given u/s 2(47) of the Act, specifically (v) (vi) read as under :-

- “(v) any transaction involving the allowing or the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882;
- (vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring or enabling the enjoyment of, any immovable property”.

10. From the above definition, it is clear that any transaction in which allowing or the possession of any immovable property be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882, any transaction which has effect of transferring or enabling the enjoyment of any immovable property. In the given case, we observed that assessee was allotted the unit on 31.08.2010 and assessee was continuously making the payment to the developer to the extent of Rs.1,76,06,235/-. Therefore, in this case, the assessee has right over the unit and paid substantial amount to the developer. Therefore, assessee had rights over the property but due to personal reasons, assessee has transferred the above said right to other persons and received sale consideration over and above the amount invested by the assessee in the property. Assessee has transferred the property by entering into an agreement to sale on 15.07.2021, therefore, the assessee had the right over the property from 31.08.2010 to 15.07.2021, therefore, in our considered view, the transfer of unit will fall

under the definition of transfer. Accordingly, the assessee is eligible to declare the income/loss under the head capital gains. In this case, after claiming the case of acquisition/improvement the indexed cost was more than the sale consideration received by the assessee. Therefore, the assessee is eligible to claim the LTCL in her return of income. We also observed that the case laws relied by the lower authorities are distinguishable to the facts on record. Accordingly, grounds raised by the assessee are allowed.

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

Order pronounced in the open court on this 30th day of January, 2026.

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 30.01.2026
TS

Copy forwarded to:

1. Appellant
2. Assessee
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI