

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
'SMC' BENCH , CHANDIGARH

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT

आयकर अपील सं./ ITA No. 1379/CHD/2025

निर्धारण वर्ष / Assessment Year: 2013-14

Shri Amarjit Singh Marwaha, Cottage No.1, Sadhora, Mashobra, Baldeyan, Shimla.	Vs	The ITO, Ward-1, Shimla.
स्थायी लेखा सं./PAN NO: AEEPM0161N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Assessee by : Shri Vishal Mohan Sr.Advocate, with
Shri Abhinav Bijwaria, Advocate

Revenue by : Shri Vivek Vardhan, Addl. CIT Sr.DR

Date of Hearing : 21.01.2026

Date of Pronouncement : 28.01.2026

PHYSICAL HEARING

ORDER

The assessee is in appeal before the Tribunal against the order of the ld. Commissioner of Income Tax (Appeals) [in short 'the CIT (A)'] dated 28.08.2025 passed for assessment year 2013-14.

2. The assessee has taken three grounds of appeal out of which, ground No. 3 is general ground which does not call for recording of any specific finding.

3. In Ground No.1, assessee has challenged re-opening of assessment whereas in ground No. 2, assessee has pleaded that ld.CIT (Appeals) has erred in confirming the addition of Rs.12,05,148/-.

4. The brief facts of the case are that assessee has filed its return of income on 26.12.2014 declaring total income at Rs.5,10,980/-. Scrutiny assessment order was passed on 30.11.2015 determining taxable income of the assessee at Rs.6,60,980/-. Thereafter AO has issued notice u/s 148 of the Income Tax Act after recording reasons for re-opening of the assessment. The copy of the reasons has been placed at page No. 6 to 9 of the Paper Book.

5. In brief, case of the AO was that assessee has sold a house in Zirakpur where he was having 50% share. This house was sold for a consideration of Rs.77,50,000/- and after giving benefit of indexed cost, Long Term Capital Gain comes to Rs.28,65,000/- which has escaped assessment.

6. After hearing the assessee, ld. AO has passed the impugned assessment order on 30.03.2022 u/s 147 read with Section 144B of the Income Tax Act. The ld. AO has taken

cognizance of the computation made by the assessee of alleged Long Term Capital Gain. The AO has observed that 50% share of the property falls in the hands of the assessee, thus, total sale consideration was Rs.38,75,000/-. He has given benefit of cost of acquisition of Rs.8 lacs and cost of improvement of Rs.2 lacs. In this way, he has calculated Long Term Capital Gain at Rs.28,65,000/-. Thereafter, it was demonstrated by the assessee that he has made investment in purchase of house and claimed deduction u/s 54F. The ld. AO has allowed this claim of the assessee of Rs.12,05,148/-. The AO, thereafter, worked out the balance amount at Rs.16,59,852/- He has made addition of this amount. The case of the ld. counsel for the assessee is that since this amount was deposited in a Long Term Capital Gain account, the AO has accepted this fact but did not grant benefit to the assessee, simply for the reason that he has not used this benefit within three years as required u/s 54/54F of the Act. He drew my attention towards 1st proviso attached to sub-clause (2) of Section 54 and submitted that after assessee fails to utilize the deposits made in Long Term Capital Gain Account, then the addition would be made in the previous year in which the

period of three years from the date of the transfer of the original asset expires. Hence, this addition cannot be made in the hands of the assessee in this year.

7. The ld. DR was unable to controvert this proposition. He relied upon the orders of the Revenue Authorities.

8. I have duly considered the rival contentions and gone through the record carefully. The first proviso attached to Section 54 sub-clause (2) reads as under :

54. (1) Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

x x x

***Provided** that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—*

(i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

9. A bare perusal of sub-clause (1) of the above proviso would indicate that if the amount deposited in Long Term Capital Gain not so utilized, then it will be charged to tax u/s 45 as the income of the previous year in which the period of three years from the date of transfer of the original asset expires. Meaning thereby, three years from assessment year 2013-14, it has to be taxed but, it is not sustainable in assessment year 2013-14. Accordingly, I allow this ground of appeal and delete the addition of Rs.16,59,852/-.

9.1 As far as re-opening of the assessment is concerned, ld. counsel for the assessee has submitted that though assessee did not include alleged Long Term Capital Gain in his computation of income but during the course of scrutiny assessment, he has filed the computation vide reply dated 10.11.2015, therefore, AO must have applied his mind and this assessment is being reopened after expiry of four years which cannot be done.

10. With the assistance of ld. Representative, I have gone through the record carefully. It is pertinent to note that if the AO has reasons to believe that income has escaped

assessment, then he may, subject to the provisions of Section 148 to 153, assess or reassess such income. It is to be appreciated that there should be an information possessed by the AO which has a live nexus with the formation of belief that income has escaped assessment. The ld. counsel for the assessee has emphasized for availing the benefit of first proviso to Section 147 as it was existing prior to 01.04.2021, since the assessment year involved here is 2013-14. A perusal of the first proviso would indicate that interdiction available in this proviso puts an embargo upon the powers of the AO to reopen an assessment. If a scrutiny assessment has been passed and four years have been expired from the date of the relevant assessment year, then AO cannot take any action unless it is demonstrated that assessee failed to disclose all material facts fully and truly for its income. The ld. counsel for the assessee has relied upon the judgement of Hon'ble Himachal Pradesh High Court in ITA 22 of 2007. He placed on record copy of the Hon'ble High Courts judgements.

11. On due consideration of all these facts and circumstances, I am of the view that AO has duly

demonstrated that assessee has withheld particulars of his income. He has not disclosed fully and truly all particulars of income. As far as reference to alleged letter dated 10.11.2015 is concerned, I fail to appreciate that there was any questionnaire from the AO regarding computation of Long Term Capital Gain. In the garb of reply, all other issues assessee has been incorporated, which cannot be looked into by the AO with due diligence also. Therefore, it is a case where it has been proved that assessee failed to disclose fully and truly all necessary particulars of his assessable income. The AO got fresh information about escapement of income on account of Long Term Capital Gain. Accordingly, ld. AO has rightly reopened the assessment. As far as the judgement of Hon'ble Himachal Pradesh High Court is concerned, it is not applicable in the given facts and circumstances. This ground of appeal is rejected.

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

Order pronounced on 28.01.2026.

Sd/-

(RAJPAL YADAV)
VICE PRESIDENT

“Poonam”

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 आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

सहायक पंजीकार/ Assistant Registrar