

**IN THE INCOME TAX APPELLATE TRIBUNAL
'SMC' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1363/Bang/2025
Assessment Year: 2018-19

Saritha Flavina DSouza, 15-13-785, Jos Villa, Kadri Coconut Garden, Near Cheffs Restaurant, Kadri, Mangalore – 575 002. PAN – AGTPD 1354 R	Vs.	The Income Tax Officer, Ward – 1(1), Mangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Sanketh S Nayak, CA
Revenue by	:	Shri Ganesh R Ghale, Advocate – Standing Counsel for Revenue

Date of hearing	:	27.01.2026
Date of Pronouncement	:	29.01.2026

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The present appeal has been instituted by the assessee against the order of the NFAC, Delhi dated 17.12.2024 for the assessment year 2018-19.

2. We have considered the petition seeking condonation of delay of 119 days in filing the present appeal along with the affidavit filed by the assessee explaining the reasons for such delay. The assessee is an individual who has challenged the order passed by the learned CIT(A),

National Faceless Appeal Centre, for Assessment Year 2018-19. In the affidavit, the assessee has stated that the appeal before the first appellate authority related to computation of capital gains arising from sale of immovable property, in which deduction towards cost of acquisition of the residential house was not fully allowed. It is explained that the property was jointly owned with her mother, the assessee having only a 25% share by inheritance, and that the sale had taken place during a period of financial difficulty when her mother was undergoing cancer treatment. The custody of old records relating to the property was with her aged mother, who was unable to trace or recollect the location of such documents after vacating the house in March 2018, and therefore the assessee could not promptly gather the municipal records, tax receipts and other papers required to substantiate the cost of construction. It is further stated that efforts were made to obtain valuation and supporting evidence from approved valuers and municipal authorities, but the same could not be completed within the prescribed time due to circumstances beyond her control, and hence the appeal could not be filed within limitation, as detailed in the affidavit.

3. After considering the above explanation, we note that the reasons placed on record disclose genuine hardship and practical difficulty in collecting old documents, particularly in view of the serious medical condition and advanced age of the assessee's mother, who was in possession of the relevant records. The delay does not appear to be deliberate or due to negligence, but attributable to circumstances beyond the control of the assessee. It is well settled that while considering applications for condonation of delay, the Tribunal should

adopt a liberal approach so as to advance substantial justice, provided sufficient cause is shown and no mala fides are apparent.

4. In the facts of the present case, we are satisfied that the assessee has been able to demonstrate reasonable and sufficient cause for the delay of 119 days in filing the appeal. Accordingly, in the interest of justice, the delay is condoned and the appeal is admitted for adjudication on merits.

5. The issue raised by the assessee on grounds of appeal pertains to the addition of long-term capital gain on sale of land & building.

6. The brief facts are that the assessee is an individual who has not filed regular return under section 139 of the Act. The case of the assessee was selected for income escaping assessment under section 147 of the Act on account of information received regarding transfer of immovable property by her (the assessee).

7. During the assessment proceedings, the AO observed that the assessee and her mother had jointly sold an immovable property on 19-03-2018 for a total consideration of ₹1.20 crore. On verification of the sale deed and the purchaser's confirmation, it was found that the assessee had received ₹30 lakh out of the said amount. Though the AO accepted the assessee's explanation regarding inheritance and restricted her taxable share to ₹30 lakh only. However, the AO noted that she had neither filed her return of income nor furnished any computation of capital gains. The AO further observed that despite repeated opportunities, the assessee failed to produce the purchase deed of the

property or the fair market value as on 01-04-2001, which was necessary to determine the cost of acquisition and its indexation. In the absence of these basic details and supporting evidence, the AO held that the cost of acquisition had to be taken at nil. Accordingly, he concluded that the sale consideration of ₹30 lakh received by the assessee represented undisclosed long-term capital gain for the year and added the same to her total income under section 48 of the Act.

8. The aggrieved assessee preferred an appeal before the learned CIT(A).

9. Before the leaned CIT(A), the assessee argued that the AO erred in treating the gross sale consideration as capital gain without deducting the cost of acquisition. She submitted that the impugned property was jointly purchased by her father and mother as on 10th September 1992 for a consideration of Rs. 3 lakh and further incurred cost such as stamp paper and registration expenses of Rs. 42,100/-. After the death of the father, she inherited 25% right in the said property as legal heir.

10. The assessee claimed the fair market value of said property as on 1st April 2001 must be higher than original cost of acquisition of Rs. 3,42,100/- in which her share is 25%. It was claimed that she is in process of obtaining the fair market value of the said property as on 1st April 2001 for the purpose of computation of index cost of acquisition. She further claimed that approach has been made to land revenue office to obtain the stamp value of the property as on 1st April 2001 but due to official being engaged in the election process the required detail not yet received.

11. The learned CIT(A) considering the assessee's submission held that the gross amount without providing deduction of cost of acquisition cannot be considered as capital. Hence the learned CIT(A) directed the AO to give credit for cost of acquisition.

12. The AO in accordance with direction of the learned CIT(A) issued notice dated 29th January 2025 requiring the assessee to furnish relevant document. Based on documents made available, the AO in the OGE provided relief of Rs. 5,23,600/- on account of cost of acquisition. Accordingly, the addition of account of capital gain reduced from Rs. 30 Lakh to Rs. 24,76,400/- only.

13. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

14. The learned AR before us submitted that the AO as well as the learned CIT(A) erred in computing the long-term capital gains arising from sale of the immovable property by ignoring the cost of acquisition and cost of improvement attributable to the residential house constructed on the land. It was pointed out that the assessee had inherited only a 25% share of the property from her late father, while the remaining 75% belonged to her mother.

14.1 The learned AR further evidenced that though the Faceless Assessment Unit accepted the assessee's proportionate ownership, it wrongly treated the entire amount of ₹30,00,000 as long-term capital gain without granting any deduction towards cost of acquisition of the inherited property consisting of land and residential building, despite the

sale deed itself clearly evidencing existence of a residential house and mentioning renovation carried out in the year 2007.

14.2 The learned AR submitted that the non-production of documents at the assessment stage was not deliberate but was due to genuine hardship, as the property was inherited, old records were in custody of the assessee's aged mother who is more than 80 years, and the whereabouts of such papers could not be traced after vacating the house.

14.3 The learned AR also contended that the assessee before the learned CIT(A) had produced materials to support the fair market value of the land, which was accepted, but the cost of the residential house continued to be disallowed only for want of documentary proof, even though the assessee consistently pleaded inability to trace old records for reasons beyond her control.

14.4 It was further argued that the assessee has now obtained a valuation report from an approved valuer for estimating the cost of construction and renovation of the residential house and that, in the absence of contemporaneous records, such valuation is a recognized and reasonable mode of determining cost of construction for the purpose of computing capital gains. The learned AR therefore prayed that the Tribunal may direct the AO to allow deduction of proportionate cost of acquisition and improvement of the residential house on the basis of such valuation report while computing long-term capital gain.

15. On the contrary, the learned DR strongly supported the orders of the AO and the learned CIT(A). He submitted that the burden to establish the cost of acquisition and cost of improvement squarely lies on the assessee and, in the absence of cogent documentary evidence, no deduction can be allowed merely on the basis of estimates. It was contended that the assessee failed to produce any contemporaneous records such as bills, vouchers, sanctioned plans or completion certificates either during the assessment proceedings or before the learned CIT(A) to substantiate the alleged cost of construction or renovation of the residential house. The learned DR further argued that the valuation report obtained at this belated stage is an afterthought and cannot substitute primary evidence, particularly when the assessee had multiple opportunities before the lower authorities to substantiate her claim. It was also submitted that the learned CIT(A) had already granted partial relief by accepting the fair market value of the land based on material produced, and therefore the assessee's grievance is limited only to the disallowance of the cost of the residential structure, which was rightly rejected for want of proof. The learned DR thus prayed that, in the absence of reliable evidence and considering the concurrent findings of the lower authorities, the appeal of the assessee be dismissed.

16. We have heard the rival contentions of both the parties and perused the materials available on record. The issue before us is limited to whether the assessee is entitled to deduction towards cost of acquisition and cost of improvement of the residential building while computing long-term capital gains arising from sale of the inherited property. The factual background shows that the AO initially treated the entire sum of ₹30 lakh received by the assessee as long-term capital

gain by taking the cost of acquisition at nil, since the assessee could not produce purchase documents or fair-market-value details. On appeal, the learned CIT(A) held that capital gains cannot be computed on gross sale consideration and directed the AO to allow cost of acquisition, pursuant to which partial relief was granted by taking limited cost based on documents then produced, as recorded in the case history.

16.1 Before us, the assessee has consistently contended that the property consisted not merely of land but also of a residential house, and that the registered sale deed itself records the existence of the building and mentions renovation carried out in the year 2007. These assertions of the assessee are noted in the proceedings and arguments extracted in the record. The learned AR has further explained that the failure to produce fair market value of the property and old construction-related documents at the assessment stage was not deliberate but was due to genuine practical difficulties, as the property was inherited, the records were with the assessee's aged mother, and the same could not be traced after vacating the house. It has also been submitted that the assessee has obtained a valuation report from an approved valuer to estimate the fair market value of the property and renovation, which is a recognized method in situations where contemporaneous records are not available.

16.2 In our considered view, the existence of a residential building and renovation in 2007, as mentioned in the registered sale deed, cannot be brushed aside merely for want of absolute documentary evidence of actual construction expenditure. When the building itself is admitted and forms part of the asset sold, the law requires that reasonable and fair

cost attributable to such land & building and improvement should be considered for the purpose of computing capital gains. At the same time, the quantum of such cost has to be properly verified and supported by reasonable material, such as valuation reports and surrounding circumstances, before granting deduction.

16.3 Therefore, in the interest of justice and fair play, we consider it appropriate to set aside this issue to the file of the Assessing Officer. The AO is directed to examine afresh the assessee's claim of fair market value of the property and cost of improvement of the residential building, including the renovation stated to have been carried out in 2007, after giving due opportunity to the assessee to file the valuation report and any other supporting material available. The AO shall then determine the eligible proportionate cost relatable to the assessee's 25% share and recompute the long-term capital gains in accordance with law. Accordingly, this issue is restored to the file of the Assessing Officer for limited verification and fresh adjudication in the above terms. Hence, the ground of appeal of the assessee is allowed for statistical purposes.

17. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in court on 29th day of January, 2026

Sd/-

(KESHAV DUBEY)

Judicial Member

Bangalore

Dated, 29th January, 2026

/ vms /

Sd/-

(WASEEM AHMED)

Accountant Member

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore