

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

ITA No.7504/Mum/2025
(Assessment year: 2015-16)

Bang Equity Broking Pvt. Ltd. 302, B-2, Marathon Innova, Opposite Peninsula Building, Ganpat Kadam Marg, Lower Parel (West), Mumbai-400013 PAN:AAACB9961E	vs	Assistant Commissioner of Income Tax, Circle 4(1)(1), Mumbai Aayakar Bhavan, Maharshi Karve Road, Mumbai-400020
APPELLANT		RESPONDENT

Assessee by : Shri Anant N. Pai, CA
Respondent by : Shri Leyaqt Ali Aafaqui (SR DR)

Date of hearing : 29/01/2026
Date of pronouncement : 16/02/2026

ORDER

Per: Anikesh Banerjee (JM):

The instant appeal of the assessee filed against the order of the NFAC, Delhi [for brevity 'the Id. CIT(A)], order passed under section 250 of the Income Tax Act 1961 (for brevity 'the Act') for assessment year 2015-16, date of order 22.10.2025. The impugned order emanated from the order of the Ld. Deputy Commissioner of Income Tax 4(1)(1), Mumbai (for brevity the 'Ld. AO') order passed under section 143(3) of the Act date of order 26.12.2017.

2. The assessee has taken following grounds:

Ground no. 1: *On facts and circumstances of the case and in law, the learned Commissioner (Appeals) erred in sustaining the action of the learned Assessing Officer in treating the long term capital gains of Rs. 1,16,18,632/- on sale of the Appellant's shares in BSE Ltd as short term capital gains of Rs. 5,98,32,250/- in the assessment order.*

This treatment of the long term capital gains as short term capital gains is misconceived and deserves to be set right in appeal

2. Ground no. 2: *On facts and circumstances of the case and in law, the learned Commissioner (Appeals) also erred in sustaining the action of the learned Assessing Officer in not allowing the cost of acquisition of the shares of BSE Ltd at the written down value of the erstwhile BSE Membership card of Rs. 2,33,70,555/- and Rs. 30,000/- paid to BSE Ltd at the time of allotment.*

The learned Commissioner (Appeals), in the process, lost sight of the audited accounts of the Appellant and evidences submitted to substantiate the cost of acquisition.

The computation of the cost of acquisition by the Appellant is correct and may please be restored in appeal.

3. Ground no. 3: *On facts and circumstances of the case and in law, and without prejudice to Ground no. 2 above, the learned Commissioner (Appeals) also failed to consider the Appellant's alternate claim that the cost of acquisition of the shares of BSE Ltd be taken at Rs. 4,65,47,000/- being the original cost of the erstwhile BSE membership card and not at its written down value.*

This alternate claim accords with the provisions of section 55 (2)(ab) and had been claimed by way of an additional ground in the appeal before the learned Commissioner (Appeals), but failed to be adjudicated in his appellate order:

The alternate claim may please be considered by the Hon'ble Tribunal in appeal.

4. Ground no. 4: *Both the lower authorities erred in passing their respective orders without granting the Appellant adequate opportunity of being heard.*

The orders passed by them are in contravention of the principles of natural justice and may therefore be set right in appeal.

5. *The appellant reserves the right to add to, alter or delete any of the above grounds of appeal.*

3. The learned AR argued and filed a paper book which is containing **page 1 to 201** which has been placed on the card. The Ld. AR submitted brief fact in the 'synopsis' during the hearing before bench. In the synopsis the Ld. AR narrated the brief facts of the case which is reproduced as below:-

"The Appellant's business is of Capital Market. The Appellant filed return of income on 22-09-2015 @ Rs. 28,15,79,870/-.

2. The history of the case is that the Appellant had acquired 3 BSE memberships cards in financial year 1999-2000 for a total of Rs. 4,65.47,000/- and claimed depreciation u/s 32 on the same (Page 12 of paper book - Computation of income AY 2000-01). The Appellant had claimed and been allowed depreciation on the Membership Cards till Assessment Years 2002-03). The depreciation has not been claimed thereafter. All these facts are borne on assessment files of the Appellant with the Income Tax Department, also filed before the learned CTT (A) and now in paper book before Hon'ble ITAT.

The BSE was demutualised and then corporatized in August 2005. In this corporatization, the Appellant was allotted 30,000 shares of Re.1 on 10-10-2005 @ Rs. 30,000/- (Re. 1 each). It has also been subsequently allotted 3,60,000/- shares as bonus shares on 25-03-2009.

3. During the financial year 2014-15 (AY 2015-16), the Appellant, in its return of income, claimed long Term Capital Gains @ 4,35,78,618/- on sale of 308500 shares of BSE, after taking the w.d.v. value of its erstwhile membership card as cost of acquisition and indexation from FY 2005-06 as base year (year on demutualization/corporatization of BSE) --- (Page 152 of paper book-computation of income for AY 2015-16).

Legally, the Appellant ought to have claimed cost of acquisition of the BSE shares sold at the original cost of acquisition of the BSE membership cards (Section 55 (2) (ab) and not at w.d.v. of the membership cards. Further period of holding should have been taken at the date of acquisition of the BSE Membership Card and not the date of acquisition of the BSE Shares allotted on corporatization. (Section 2(42A) (ha) in Explanation 1)."

The Ld. AO rejected the assessee's plea and the addition was confirmed amount to Rs. 14,84,27,662/- on the ground that sale of share is treated as short term

capital gain instead of long term capital gain claimed by the assessee, not allowing the cost of acquisition. Aggrieved assessee filed an appeal before the Ld. CIT(A). During the 1st appeal the assessee has taken additional ground related cost of acquisition of original shares ought to be taken at original cost of acquisition of membership card and not the w.d.v. by considering section 55(2)(ab) of the Act and period of holding for indexation from date of acquisition of membership card i.e. FY 2009-10 and not the date of BSE shares received on corporatization of BSE i.e. FY 2006-07. The Ld. CIT(A) rejected the appeal of the assessee. Being dissatisfied of the impugned appellate order the assessee filed an appeal before us.

The learned AR contended that the learned AO assessed the capital gain on sale of BSE shares as short-term capital gain amount of rupees 5,98,32,250/-. The treatment of capital gain was on the ground that the assessee had claimed depreciation on the erstwhile BSE membership card. Therefore the capital gain on sale of BSE shares must be given same treatment as a BSE membership card as sold considering section 50. So the cost of acquisition was taken by the learned AO at nil on the ground that assessee had not furnished the detail related to cost.

4. The Ld.AR advanced his argument and related to the ground number 1 and 3, the learned AR stated that the said issue is squarely covered by the order of the Coordinated Bench of ITAT Mumbai in third member decision in **Techno Shares & Stock Limited vs Addl CIT-4(2), ITA No. 5938/Mum/2012 for AY 2008-09**, date of order **18-10-2019**. The relevant part of the said order is reproduced as below:

“This matter was placed before the Bench to pass a confirming order by the division Bench. The learned third member has now concurred with a view taken by the judicial Member Vide Para 34, 35, 36 as under: -

"34. In light of the above discussion, I hereby hold that the cost of acquisition of shares of BSE Ltd. shall be the original cost of acquisition of membership card in terms of Section 55(2)(ab) of the Act even though assessee has claimed depreciation on the cost of membership card in the earlier years.

35. As regards the period of holding of shares of BSE Ltd., I find that as per clause (ha) inserted in Explanation 1 to Section 2(42A) of the Act by the Finance Act, 2003, period for which the person was a member of the recognised stock exchange in India immediately prior to such demutualisation or corporatisation shall also be included in period of holding of shares. In terms of the clear and unambiguous language of the section, I hold that the period of holding of shares of BSE Ltd. shall be reckoned from the date of original membership of BSE and not from date of allotment of shares in BSE Ltd.

36. I thus agree with the view taken by the learned Judicial Member that the cost of shares will be original cost of the membership card in terms of Section 55(2)(ab) of the Act."

Since, majority view now is that the cost of acquisition of shares of BSE Ltd. shall be the original cost of acquisition of Membership called in term of section 55(2)(ab) of the Act and period of holding of shares of BSE Ltd will be period for which the person was a member of the recognised stock exchange in India immediately prior to such de-mutualisation or corporatisation shall also be included in the period of holding of shares i.e. period of shares of BSE Ltd shall be reckoned from the date of original members of the BSE and not from the date of allotment of shares in BSE shares in BSE Ltd. This conformity order is accordingly passed."

5. The learned DR relied upon the orders of the revenue authorities. He contended that since the assessee had claimed depreciation on the erstwhile membership card, the learned AO was justified in treating the gains arising on its transfer as Short-Term Capital Gain in terms of the applicable provisions of the Act. He further submitted that the learned CIT(A) had passed a reasoned and speaking order after duly considering and adjudicating the grounds raised by the assessee. The relevant observations recorded in the impugned appellate order at pages 19 to 21 are reproduced hereunder:

“Decision: I have carefully considered the submission/grounds of appeal made by the appellant in appeal memo form (no. 35) and as above, the facts of the case as well as gone through the observation and findings of the AO 's assessment order. It is observed from the case record that the Assessing Officer (AO) has treated the incomes from the sale of BSE Share as short term capital gains as against long term capital gains claimed by the appellant and the AO has held the membership card being a depreciable asset would have attracted the provision of section 50 of the Act, if sold, whereby the gains from sale would be treated as gains from the transfer of short term capital assets. While doing so the AO has not allowed any deduction since the appellant being unable to provide any cost details of BSE card/Share of BSEL plus despite being specifically called for before the appellant in course of scrutiny assessment.

It is observed from the above submission of the appellant that they have claimed cost of acquisition of 30,000 BSE share (purchased on 10-10-2005) as Rs. 2,34,00,555/-. But it is observed that the appellant is unable to provide either any documentary evidence of purchasing the said shares at cost of Rs. 2,34,00,555/- or unable to establish how they justifiably take valuation of said 30,000 shares at cost of Rs. 2,34,00,555/- as on 10-10-2005 in as much as the w.d.v stood even three years ago being Rs. 2,21,97,938/-, after enjoying the depreciation allowance upto A.Y 2002-03 or unable to establish the cost of acquisition could be justifiably taken as Rs. 2,34,00,555/- in as much as the appellant themselves submitted the following:

The company was allotted 30,000 shares of BSE Ltd on 10/10/2005 in lieu of membership card on account of de-mutualization of 8SE. Further, the company was also issued 2,78,500 shares as bonus on 25/03/2009. We further state that since the BSE being an AOP was demutualized, the asset ile BSE card ceased to exist and that the BSE card was exchanged in lieu of shares of BSEL plus its trading rights. Also, the scheme of "Demutualization" envisages separation of ownership from trading, and the accumulated reserves of BSE which was an AOP, were transferred to the members in the guise of shares issued at par value of rupees one per share in BSEL.

In view of above I find no infirmity in the assessment order of the AO making computation of income under Short term capital gain of Rs. 5,98,32,250/-in as much as the same being justified and being made in accordance with law. Therefore, I have no hesitation in holding that the impugned addition/ computation under short term capital gain is based on apropos consideration of facts and law and justified for which the addition of Rs. 5,98,32,250/- made by

the AO vide order dated 26-12-2017 stand confirmed. The ground relating to this issue is dismissed.”

6. We have heard the rival submissions, perused the material available on record, and carefully considered the judicial precedents relied upon by the parties.

Ground No. 1

(Conversion of Long-Term Capital Gain into Short-Term Capital Gain)

The core issue involved in this ground is whether the gain arising on sale of shares of BSE Ltd. pursuant to demutualisation and corporatisation is liable to be assessed as Long-Term Capital Gain (LTCG) or Short-Term Capital Gain (STCG). The learned AO treated the gain as STCG by invoking section 50 on the reasoning that the erstwhile BSE membership card was a depreciable asset. The learned CIT(A) confirmed the said action. However, we find that this issue is squarely covered in favour of the assessee by the decision of the Coordinate Bench (Third Member) in the case of **Techno Shares & Stocks Ltd.** (supra). The Third Member has categorically held that the cost of acquisition of BSE shares received on demutualisation shall be the original cost of acquisition of the membership card in terms of section 55(2)(ab), even if depreciation had been claimed earlier. The period of holding shall be reckoned from the date of original membership of the stock exchange in view of Explanation 1(ha) to section 2(42A). Respectfully following the aforesaid binding precedent, we hold that the capital gain arising on sale of BSE shares is to be assessed as LTCG and not STCG.

Accordingly, **Ground No. 1** is allowed.

Ground No. 2(Cost of acquisition at WDV of membership card plus Rs. 30,000)

The assessee had computed the cost of acquisition at the written down value (WDV) of the membership card along with Rs. 30,000 paid at the time of allotment of shares. The learned AO rejected the claim primarily on the ground that sufficient documentary evidence was not furnished, and treated the cost as nil. However, from the record it is evident that the original cost of acquisition of the membership card was Rs. 4,65,47,000/-. Depreciation was claimed only up to A.Y. 2002-03. The facts relating to acquisition and depreciation were borne out from earlier assessment records and were placed in the paper book.

In light of section 55(2)(ab), which specifically governs cost of acquisition in cases of demutualisation of stock exchanges, the approach adopted by the Assessing Officer in ignoring the statutory mechanism cannot be sustained. Therefore, the rejection of cost of acquisition by the revenue authorities is not justified.

Accordingly, **Ground No. 2** is allowed.

Ground No. 3 (Alternate Claim)(Original cost of membership card to be adopted under section 55(2)(ab))

This ground, raised as an alternate plea, contends that the cost of acquisition should be taken at the original cost of membership card amount to Rs. 4,65,47,000/- and not its written down value. We find that Section 55(2)(ab) specifically provides that the cost of acquisition of equity shares allotted pursuant to demutualisation shall be the cost of acquisition of the original membership. The Third Member decision in **Techno Shares & Stocks Ltd.** (supra) has clearly affirmed this position. The learned CIT(A) failed to adjudicate this additional

ground on merits. Since the issue is covered by binding precedent, and the statutory provision is clear and unambiguous, the assessee's alternate claim deserves acceptance.

Accordingly, **Ground No. 3** is allowed.

Ground No. 4

(Violation of principles of natural justice)

In view of our findings allowing the substantive grounds in favour of the assessee, the grievance relating to lack of opportunity becomes academic. However, from the record, it appears that the learned CIT(A) passed a speaking order after considering submissions. Therefore, this ground does not survive independently for adjudication.

Accordingly, **Ground No. 4** is dismissed as infructuous.

Ground No. 5

Being general in nature, it does not call for specific adjudication.

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

7. In the result, the appeal of the assessee bearing **ITA No.7504/Mum/2025** is allowed.

Order pronounced in the open court on 16th day of February 2026.

Sd/-

(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 16/02/2026
SAUMYASr.PS

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, MUMBAI