

**IN THE INCOME-TAX APPELLATE TRIBUNAL, MUMBAI "F" BENCH, MUMBAI
BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
ITA No. 2605/MUM/2025(AY:2015-16)**

Jayashree Mukund Marathe, Bldg. No. 8, Flat No. 9, Sachin Chs, Mithagar Road, Mulund East, Mumbai-400081.	vs.	Income Tax Officer, Ward 42(2)(3), Kautilya Bhavan, Bandra Kurla Complex, Mumbai-400051.
PAN/GIR No: ABDPM3677K		
(Appellant)		(Respondent)
Appellant by	Shri Vipul Joshi	
Respondent by	Ms. Kavitha Kaushik (SR DR)	
Date of Hearing	21.01.2026	
Date of Pronouncement	23.02.2026	

ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal filed by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'Act') by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre [in short, 'CIT(A)'], dated 20.02.2025 for the assessment year (AY) 2015-16.

2. The grounds of appeal raised by the assessee are as under:

- "1. The AO erred on facts and in law in denying the deduction u/s 54 though the appellant had appropriated the entire capital gain as provided u/s.54(2) before the date of furnishing the return of income u/s. 139.*
- 2. The AO erred in not considering the fair market value of the property to be considered as cost of acquisition.*
- 3. Without prejudice to the above grounds of appeal, the AO erred in not considering the sum of Rs.5,00,000 paid before the due date u/s. 139(1) as appropriation towards the purchase of the new house.*
- 4. The appellant craves leave to add, alter and amend the Grounds of appeal."*

3. The appellant has filed revised/ additional grounds of appeal as under:-

“REVISED/ADDITIONAL GROUNDS OF APPEAL

1. CHALLENGE TO REASSESSMENT

1.1 In the facts and circumstances of the case and in law, the initiation of reassessment proceeding by invoking the provisions of section 147 r.w.s. 148A r.w.s. 148 of the Act is bad in law

1.2 Without prejudice to the generality of the ground mentioned above, the re-assessment proceedings are bad in law on account of the following:

(i) The case of the Appellant did not fall within the parameters laid down by section 147 r. w s. 148A, 148, 149 & 151 of the Act;

(ii)The necessary preconditions for initiating the reassessment proceeding and completion thereof were not satisfied.

(iii) The notice u/s. 148 of the Act is time barred in view of the judgment of the Apex Court in the case of UOI v. Rajeev Bansal [(2024) 167 taxmann.com 70/301 Taxmann 238 (SC).

1.3 It is submitted that in the facts and the circumstances of the case, and in law, the reassessment framed is bad in law, illegal and without jurisdiction

WITHOUT PREJUDICE TO THE ABOVE

2. ADDITION AS LONG-TERM CAPITAL GAINS ON SALE OF IMMOVABLE PROPERTY -RS. 73,46,310/-

2.1 The Ld. CIT (A) erred in confirming the action of the A.O. in making the addition on account of alleged capital gain arising from the transfer of a flat belonging to the Appellant.

2.2 While doing so, the Ld. CIT (A) failed to appreciate that-The Appellant was entitled for the benefit of exemption u/s 54 of the Act.

2.3 Without prejudice to the generality of the ground mentioned above, the Appellant most respectfully submits that Ld. CIT (A) failed to appreciate that-

2.3.1 The Appellant had invested the entire sales consideration arising from transfer of her flat towards the purchase of a house property within a period of one year from such transfer and, as such, was eligible for exemption u/s. 54 of the Act.

2.3.2 The Appellant had invested entire sales consideration towards the purchase of a house property before the due date of filing return

of income u/s. 139(4) of the Act and as such, was eligible for exemption u/s. 54 of the Act.

2.3.3. The provisions of section 139 were amended only by Finance Act, 2019 and were prospectively made applicable from A.Y. 2020-21 mandating an Assessee to file return of income if his total income exceeded the maximum amount not chargeable to income tax before giving effect to the provisions of section 54 of the Act.

2.3.4 The Appellant was entitled for the benefit of exemption u/s. 54 of the Act.

WITHOUT PREJUDICE TO THE ABOVE-

3.1 The Ld. CIT (A) erred in confirming the action of the A.O, in making the addition of the entire amount of alleged capital gains arising from transfer of a flat belonging to the Appellant.

3.2 While doing so, the Ld. CIT (A) failed to appreciate that -

3.3 The Appellant had invested a sum of R. 5,00,000/- arising from the transfer of her flat towards the purchase of a house property before the due date of filing return of income u/s 139(1) of the Act and such sum was eligible for exemption u/s. 54 of the Act.

4. LIBERTY

The Appellant craves leave to add, alter, delete or modify all or any the above ground at the time of hearing."

4. Let us first considered the request of the assessee to admit the additional ground raised by the appellant. The ground is legal and jurisdictional in nature. The Hon'ble Supreme court in case of NTPC Ltd. vs. CIT, 229 ITR 383 (SC) has held that the order of Tribunal u/s 254 is expressed in the widest possible terms. There is no reason to restrict the power of the Tribunal u/s 254 only to decide the grounds which arise from the order of the CIT (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross objection before the Tribunal. There is no reason why the Tribunal should be prevented from considering a question of law arising in the assessment proceedings although not

raised earlier. Undoubtedly the Tribunal will have the discretion to allow or not to allow a new ground to be raised. But where the Tribunal is only required to consider the question of law arising from the facts which are on record in the assessment proceedings, there is no reason why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of the assessee. In the instant case, the additional ground emanate from the facts on record and no additional facts are needed to decide the issue. Hence, following the decision of the Hon'ble Supreme Court in case of NTPC Ltd., (supra), the additional ground are admitted and will be decided at the relevant place in this order.

5. Facts of the case in brief are that the assessee did not file her return of income for the AY 2015-16. As per the information available with the AO, the assessee was involved in different financial transactions i.e receipt salary of Rs.6,76,144/-, paid Rs.2000/- or more for purchase of units of mutual fund and also paid Rs.95,00,000/- for immovable property. In response to the notice u/s 148 dated 27.07.2022, the appellant filed return of income on 11.05.2023. After, confronting the assessee on various issue the AO added capital gain, rental income and family pension of Rs.73,46,310/-, Rs.83,650/-, Rs.1,73,988/- and determined total income at Rs.84,46,488/-. Aggrieved by the order of AO u/s 147 rws 147B of the Act, the assessee filed appeal before the CIT(A), which was dismissed by the CIT(A).

6. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. At the outset, the Ld. AR of the assessee submitted that the case of the assessee is covered by the decision of the Hon'ble Supreme Court in cases of Union of India vs. Ashish Aggarwal (2022) 444 ITR (SC), Union of India vs. Rajeev Bansal (2024) 469 ITR 46 (SC) and decision of Hon'ble Bombay High Court in case of Spicy Sangria Hotels Pvt. Ltd., W.P. No.1325 of 2023 dated 06.10.2025. He submitted that the Notice u/s 148 was issued on 28.07.2022 and hence, it was barred by limitation. Therefore, the subsequent order u/s 147 does not survive.

7. The Ld. CIT(DR) relied on the order of the lower authorities.

8. We have heard both parties and perused the materials on record. We have also carefully gone through the decisions relied upon by the Ld. AR. There is no dispute regarding the issue of notice u/s 148 of the Act on 27.07.2022. We find that the Hon'ble jurisdictional High Court, in case of Spicy Sangaria Hotels Pvt. Ltd. (supra), under similar set of facts, quashed the notice dated 28.07.2022 issued u/s 148 of the Act for AY 2015-16. The relevant part of the decision is as under:-

"2. The above Writ Petition is filed to quash and set aside the Notice dated 28th July 2022 issued under Section 148 of the Income Tax Act, 1961. The assessment year in question is A.Y.2015-16. As far as this assessment year is concerned, the Hon'ble Supreme Court in the case of Union of India Vs. Rajeev Bansal [2024] 469 ITR 46 (SC) in paragraph 19(f) has recorded the concession made by the learned ASG that for the A.Y.2015-16, all notices issued on or after 1st April 2021 will have to be dropped as they will not fall for completion

during the period prescribed under the Taxation And Other Laws (Relaxation And Amendment of Certain Provisions) Act, 2020.

3. Admittedly in the facts of the present case, the Notice issued under Section 148 is after 1st April 2021 (namely, on 28th July 2022). This being the case, we find that in the facts of the present case, the Notice issued under Section 148 dated 28th July 2022 would have to be dropped and cannot be proceeded with further.

4. We accordingly quash and set aside the said notice dated 28th July 2022 issued under Section 148 of the IT Act.”

9. Since the facts are similar and the AY is also the same, respectfully following the above decision of the Hon'ble Bombay High Court, the notice issued u/s 148 dated 27.07.2022 is quashed and set aside. Consequently, the order passed u/s 147 rws 144B of the Act dated 27.05.2023 does not survive and is, accordingly, set aside. The grounds of the appeal are allowed.

10. Since we have set aside the order of reassessment u/s 147 of the Act, the other grounds become academic in nature and need no adjudication.

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

Order is pronounced on 23.02.2026.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(BIJYANANDA PRUSETH)
ACCOUNTANT MEMBER

*Aniket Chand; Sr. PS
MUMBAI

Date: 23.02.2026

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, MUMBAI
6. Guard File

By Order
Assistant Registrar
ITAT, MUMBAI