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

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

ITA No.666/Mum./2026
(Assessment Year : 2016-17)

Income Tax Officer - 8(2)(1),
Aayakar Bhavan,
Room No.209, 2nd Floor,
Churchgate,
Mumbai – 400020 .... Appellant

v/s

M/s. Supremus Lower Parel Premises Private Limited,
Lodha Supremus Senapati Bapat Marg,
Delisle Road S.O Mumbai
Mumbai – 400013
PAN : AABCK0790M .... Respondent

Assessee by : Shri Niraj Sheth, AR
Revenue by : Ms. Komal Arju, CIT DR

Date of Hearing – 09/04/2026	Date of Order – 15/04/2026

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

1. The Revenue has filed the present appeal against the impugned order dated 13/11/2025, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, ["*learned CIT(A)*"], for the assessment year 2016-17.

2. In this appeal, the Revenue has raised the following grounds: –

"i. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in allowing the appeal by quashing Notice dated 31.03.2021 issued under section 148 without appreciating that the AO's action to issue notice u/s. 148 was on the basis of tangible information?

ii. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.12,83,31,400/-in AY 2016-17, the total sale value of unit of Lodha Supremus Building of Rs.64,16,57,000/ in AY 2012-13 which is to be taxed from the AY 2012-13 to 2016-17 equally in 5 years. without appreciating the facts that AO made this adjustment on the information available with the department?

iii. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition without appreciating that the assessee has not offered any income for taxation on the sale of unit of Lodha Supremus Building in its ITR?

2. The Ld. CIT (A)'s order is contrary in law and on facts and deserves to be set aside.

3. The appellant prays that the order of Ld. CIT (A) on the above ground be set aside and that of the AO restored. The appellant craves leave to amend or alter any ground or add a new ground that may be necessary at the time of hearing.

The Appellate Order of NFAC, Delhi vide DIN & Order No. ITBA/NFAC/S/250/2025-26/1082241747(1) dated 03.11.2025 in the case of M/s. Supremus Lower Parel Premises Private Limited, [PAN: AABCK0790M), A.Y.: 2016-17 has been received in the O/o. Pr. CIT-8, Mumbled through ITBA on 03.11.2025. The Last date for filing appeal is 31.01.2026. However, appeal should be filed immediately."

3. During the hearing, the learned Authorised Representative ("*learned AR*"), at the outset, submitted that the learned CIT(A), vide impugned order, following the decisions rendered in assessee's own case not only allowed the ground raised by the assessee challenging the assumption of jurisdiction under section 147 of the Act, but also deleted the impugned addition on merits.

4. On the other hand, the learned Departmental Representative ("*learned DR*") vehemently relied upon the order passed by the Assessing Officer ("*AO*").

5. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee is engaged in the business of land development and construction of real estate properties. For the year under consideration, the assessee filed its return of income on 24/09/2016, declaring a total income at Rs. Nil. Subsequently, on the basis of the assessment order passed in the case of the assessee for the assessment year 2013-14, wherein capital gains of Rs. 64,16,57,000 was computed, and the AO came to the conclusion that the same is to be taxed from the assessment years 2012-13 to 2016-17, notice under section 148 of the Act was issued on 31/03/2021 and proceedings under section 147 of the Act were initiated in the year under consideration. In response to the aforesaid notice, the assessee filed its return of income on 26/04/2021, declaring a total income of Rs. Nil. The assessee also raised objections against the initiation of reassessment proceedings, which were rejected by the AO vide separate order. Following the approach adopted in the preceding years, wherein it was held that the capital gains is taxable in the hands of the assessee equally in 5 years from the assessment year 2012-13 to the assessment year 2016-17, the AO vide order dated 28/03/2022 passed under section 147 read with section 144B of the Act, made an addition of Rs. 12,83,21,400 in the hands of the assessee.

6. In its appeal before the learned CIT(A), the assessee raised the grounds challenging the validity of the reopening proceedings as well as the addition made by the AO on merits. The learned CIT(A), vide impugned order, after taking into consideration the decision of the Hon'ble High Court in the writ petition filed by the assessee for the year under consideration, allowed the ground raised by the assessee on the jurisdictional issue. Further, following the decision of the Coordinate Bench of the Tribunal in the assessee's own case for the assessment years 2011-12, 2013-14 and 2014-15, the learned CIT(A) also allowed the ground raised by the assessee on merits and deleted the addition made under section 45(2) of the Act. The relevant findings of the learned CIT(A) are reproduced as follows: –

"5.2. Validity of Reopening (Ground no. 1)

The AO had relied upon the findings of the assessment for A.Y. 2013-14 to form a belief that income chargeable to tax had escaped assessment for A.Y. 2016-17.

The appellant filed a WRIT PETITION NO.2615 OF 2024 before Hon'ble Bombay High Court challenging the recovery proceedings alongwith other issued related to this assessment. The same has been decided in the appellant's favour by the Hon'ble High Court on 14.08.2025. Hon'ble High Court in its order in para no. 15 & 16 has observed that:

"15. This Writ Petition relates to A.Y. 2016-17. The Assessing Officer has passed an order dated 29th March 2022 under Section 143(3) read with Section 147 of the IT Act. Vide the said Assessment Order, the Assessing Officer assessed a Capital Gain of Rs. 12,83,31,400/- under Section 45(2) of the IT Act and raised a demand of Rs.7,63,90,220/-, solely relying upon earlier Assessment Orders for A.Y.s 2012-13 to 2015-2016.

16. We find that the CIT(A) set aside the Assessment Orders for A.Y.s 2013-14 to 2015-16 assessing the Petitioner to Capital Gain for conversion of godown. The ITAT upheld the orders of CIT(A) and held that the Petitioner has made no Capital Gains and not liable to be taxed under Section 45(2) of the IT Act in respect of the godown. The said orders of the ITAT are passed prior to the reopening of the assessment for the year under consideration. Therefore, the entire basis for reopening cannot be sustained as being contrary to the orders of the ITAT."

It is seen that the Hon'ble High Court observed that the entire basis for reopening cannot be sustained as being contrary to the orders of the ITAT. The principle of judicial consistency requires that, when facts and issues are identical, the view taken by higher appellate authorities in earlier years should be followed, unless reversed by a superior court. Accordingly, this ground of appeal of the appellant stands allowed.

5.3. Addition u/s 45(2) (Ground no. 2 to 9)

Even on merit of the case, it is observed that the additions made in the for earlier assessment years, on the same set of facts, have already been deleted by the CIT(A), and such orders were confirmed by the Hon'ble ITAT. The Hon'ble Mumbai ITAT on this issue vide a consolidated order dated 02.12.2020 in ITA NO.5541-5543/Mum/2017 in the assessee's case for the A.Y. 2011-12, 2013-14 & 2014-15 held that:

> *"14. We have heard the rival submissions and perused the relevant materials on record. In the instant case, the entire project land was owned by SNCML and it was merely the godown right which was assigned to the assessee company. Further, even the cost of such godown right was assumed by SNCML in its estimated construction cost of project which is mentioned in para 4.1 of the "Agreement for Contribution towards Construction Cost" dated 31.03.2011. Thus the assessee was merely holding the godown right as an investment in its books of accounts, the cost of such right was in fact forming part of the project cost (Inventory) in the books of SNCML since the project "Lodha Supremus" was owned and developed by SNCML*
>
> *As per the accounts, the godown right of Rs.3,25,00,000/- was held as investment in the books of the assessee as on 31.03.2011; in the audited financials of FY 2011-12, the said investment in godown right was included within "capital work-in-progress" shown under the Schedule "fixed assets". The application of section 45(2) is attracted only when there is a conversion of fixed assets into stock-in-trade which is not the case under consideration thereon.*

Here, the assessee has no right to sell any unit, the godown right was embedded in the cost of the units developed which were sold by SNCML Section 45(2) which relates to capital gain arising out of conversion of capital asset into stock-in-trade requires that in order to be chargeable to tax, there has to be a transfer u/s 2(47) of the Act and capital gain shall be brought to tax in the year in which the stock-in-trade has been sold.

Since, there is no conversion of capital asset into stock-in-trade and there is no transfer of such right by the assessee-company since it has not sold any units of "Lodha Supremus", as all the sales is recognized and taxed in SNCML, there is no question of any taxability in the hands of the assessee.

Therefore, the above ground of appeal (8th ground of appeal for AY 2013-14 and 9th ground of appeal for AY 2014-15) is dismissed.

Fact being identical, our decision for the AY 2011-12 applies mutatis mutandis to AYs 2013-14 and 2014-15."

The Revenue's appeals against the ITAT order is stated to be pending before the Hon'ble Bombay High Court, and there is no contrary decision as on date.

The principle of judicial consistency requires that, when facts and issues are identical, the view taken by higher appellate authorities in earlier years should be followed, unless reversed by a superior court.

Accordingly, following the findings of the ITAT in the appellant's own case, the addition of Rs. 12,83,31,400/- made u/s 45(2) is deleted.

6. The appeal of the appellant stands allowed."

7. From the careful perusal of the impugned order, it is evident that the issues were decided in favour of the assessee by following the judicial precedents in the assessee's own case. The learned DR could not show any reason to depart from the decisions relied upon by the learned CIT(A), and no change in the facts or law was alleged in the relevant assessment year. We further find that the issue arising in the present appeal on merits is recurring in nature and has been decided in favour of the assessee by the decision of the Coordinate Bench of the Tribunal for the preceding assessment years. Accordingly, we do not find any infirmity in the findings of the learned CIT(A). As a result, the same are upheld, and the grounds raised by the Revenue are dismissed.

8. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 15/04/2026

Sd/-
BIJAYANANDA PRUSETH
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 15/04/2026
Prabhat

Copy of the order forwarded to:

(1) The Assessee;

(2) The Revenue;

(3) The PCIT / CIT (Judicial);

(4) The DR, ITAT, Mumbai; and

(5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai