

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No.7105/Mum/2025
(Assessment Year: 2011-12)

Mr. Rohan Hemant Thakkar, A 804 Prayog Building Wing A Opposite Galaxy Hotel Prabhat Colony Road No.2 Santacruz East, Mumbai – 400 055	Vs.	Income Tax Officer 22(3)(2), Kautilya Bhavan, Bandra Kurla Complex, Bandra East, Mumbai – 400 051
PAN:AGNPT4221D		
(Appellant)	:	(Respondent)

Assessee by	:	Shri Hansraj Sanghvi, AR
Respondent by	:	Shri Annavaram Kosuri, Sr. AR

Date of Hearing	:	27.01.2026
Date of Pronouncement	:	17.04.2026

ORDER

Per Kavitha Rajagopal, JM:

This appeal has been filed by the assessee, challenging the order of the Learned Commissioner of Income Tax (Appeals) [‘Ld. CIT(A)’ for short], National Faceless Appeal Centre (“NFAC” for short) passed u/s. 250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2011-12.

2. The assessee has raised the following grounds of appeal:

“1. On the facts and in the circumstances of the case and in law the Hon’ble Commissioner of Income Tax - Appeals erred in confirming assessing capital gain of Rs.5662500/- on sale of capital assets as short term capital gain instead of as long term capital gain as claimed by the appellant. Provisions of the Act ought to have been properly construed and regard being had to facts of the case capital gain on sale of said capital assets should have been assessed as long term capital gain. Reasons assigned by him are

wrong and insufficient to justify treating gain on sale of said assets as short term capital gain.

02. On the facts and in the circumstances of the case and in law the Hon'ble Commissioner of Income Tax - Appeals erred in confirming rejection of claim made under section 54F of the Act on the pretext that gain on sale of said assets is short term capital gain.

03. On the facts and in the circumstances of the case and in law the Hon'ble Commissioner of Income Tax – Appeals ought to have appreciated that proceeding of reassessment initiated by issuing notice under section 148 of the Act is contrary to the provisions of the Act, illegal, invalid and void ab-initio considering following facts: (a) Notice under section 148 of the Act is issued on the basis of mere change of opinion and in absence of any new tangible material in possession of Assessing Officer, (b) In the reason recorded the learned Assessing Officer himself admitted that notice under section 148 of the Act is issued on the basis of "ON VERIFICATION OF RECORD" (c) The reasons recorded are not valid one as same are undated (d) The learned Assessing Officer erred in recording in reason that there is failure on the part of appellant to disclose fully and truly all material facts necessary for assessment.

04. The Hon'ble Commissioner of Income tax – Appeals erred in confirming order made under section 143(3) rws 147 of the Act which is contrary to the provisions of the Act, illegal, invalid, bad-in-law, ultra vires, without allowing reasonable opportunity of the hearing, without appreciating facts, submission and evidences in their proper perspective, and without providing copies of material relied upon is liable to be annulled.

05. The Hon'ble Commissioner of Income Tax - Appeals erred in confirming charging of interest under section 234A, 234B and 234C and 234D of the Act 06 The appellant crave leave to add, amend, alter and / or vary any of the grounds of appeal before or at the time of hearing."

3. Brief facts of the case are that the assessee is an individual and had filed his return of income dated 29.07.2011 declaring total income at Rs.9,38,240/- and the same was processed u/s. 143(1) of the Act. The Learned Assessing Officer ("Ld. AO" for short) completed the assessment u/s 143(3) of the Act vide order dated 30.12.2013 accepting the returned income of the assessee. The assessee's case was subsequently reopened vide notice u/s 148 of the Act dated 25.03.2015 for the reason that the assessee has declared Long Term Capital Gain ("LTCG" for short) on sale of building which was to be treated

as Short Term Capital Gain (“STCG” for short) amounting to Rs.55,50,325/-, thereby income chargeable to tax has escaped assessment. In response to the said notice, the assessee filed his return of income treating the original return as return of income filed in response to notice u/s 148 of the Act. Thereafter, notices u/s 143(2) and 142(1) of the Act were duly issued and served upon the assessee. The Ld. AO passed the assessment order dated 25.01.2016 u/s 143(3) r.w.s. 147 of the Act determining the total income at Rs.59,38,350/- after making an addition towards STCG amounting to Rs.56,62,500/- and income from other sources amounting to Rs.3,75,849/-.

4. Aggrieved, the assessee was in appeal before the first appellate authority, who vide order dated 10.09.2025 upheld the addition made by the Ld. AO and also dismissed the legal grounds challenging the reopening raised by the assessee.

5. Aggrieved, the assessee is in appeal before us, challenging the order of the Ld. CIT(A) on the abovementioned grounds.

6. The Learned Authorized Representative (“Ld. AR” for short) for the assessee commenced his arguments challenging the reopening proceeding on the ground that the Ld. AO erred in reopening the assessment without any new tangible material on record for the reason that the assessee has furnished complete details of the sale transactions before the Ld. AO during the original assessment proceeding, which were duly considered by the Ld. AO and thereafter accepted the returned income of the assessee. The Ld. AR contended that it is a case of change of opinion and not reason to believe and the same tantamounts to violation of the settled principles of law which makes it clear that the reassessment

proceeding can be initiated only when the Ld. AO was brought to the knowledge of relevant material to apply his mind as to the fact that income has escaped assessment in the hands of the assessee and only when there are reasons to believe the same, the AO can initiate the reassessment proceeding and the same cannot be merely on change of opinion. The Ld. AR relied on a catena of decisions in support of his contention.

7. The Learned Departmental Representative (“Ld. D.R.” for short), on the other hand, controverted the said fact and stated that in case of reopening of assessment within four years from the end of relevant assessment year, the Ld. AO has got wider power to reassess the income of the assessee, even in the absence of tangible material. The Ld. DR further contended that in the original assessment the Ld. AO has failed to consider the date of transaction and has erred in holding the same to be LTCG instead of STCG and the failure to do so is sufficient for initiating the reassessment proceeding on “reason to believe” that “income has escaped assessment”. The Ld. DR relied on the order of the Ld. CIT(A).

8. We have heard the rival submissions and perused the materials available on record. Before getting into the merits of the case, we deem it fit to adjudicate the legal ground raised by the assessee challenging the reassessment proceeding on the ground that it is mere change of opinion rather than reasonable belief based on tangible material. On perusal of the reasons for reopening, it is evident that the Ld. AO has reopened the assessee’s case where the assessee has sold a commercial property for a consideration of Rs.75,00,000/- on 09.04.2010 which according to the Ld. AO was purchased only on 16.09.2008 for a consideration of Rs.18,37,500/-. Further, it is specified that though the assessee had

booked the said commercial premises by making initial payment of Rs.1,75,000/- by cheque payment vide an agreement dated 15.10.2006, the registration of the said property was effected only on 16.09.2008, thereby treating the sale consideration as STCG instead of LTCG. On considering the submission of the Ld. AR that this issue was already examined by the Ld. AO during the original assessment order dated 30.12.2013 u/s 143(3) of the Act where the Ld. AO has categorically mentioned that the assessee had duly explained that the property was acquired by way of an agreement dated 15.10.2006, basis which the Ld. AO proceeded to treat the gain on sale of the property to be LTCG instead of STCG and further allowed the exemption claimed by the assessee u/s 54F of the Act where the assessee had invested the consideration received for purchase of a new immovable property.

9. The Ld. AR had extensively argued that the reassessment was on the basis of change of opinion and not where there was reason to believe that income has escaped assessment, for which the Ld. AR placed reliance on the decision of the Hon'ble Apex Court in the case of *Commissioner of Income Tax, Delhi vs. Kelvinator of India Ltd. (2010) 187 Taxman 312 (SC)* which has held that prior to the amendment brought about in section 147 of the Act by Direct Tax Laws (Amendment) Act, 1987, the power of AO to assess/reassess was restricted to satisfaction of twin conditions whereas post amendment w.e.f. 01.04.1989 though wider powers were given to the AO the same cannot be exercised for reviewing but are to be restricted only for reassessment, that too on the basis of "tangible material" in order to come to the conclusion that the AO had reason to believe that income has escaped assessment. It further reiterated that Amending Act, 1989 was amended again to



reintroduce the expression “*has reason to believe*” which was earlier omitted from section 147 for substituting the words “*for reasons to be recorded by him in writing, is of the opinion*” in order to avoid arbitrary powers of the AO to review rather than to reassess. The proposition that reassessment cannot be on the basis of “mere change of opinion” was reiterated in the said decision. There are plethora of decisions prior and post the decision of Hon’ble Apex Court in the case of *Kelvinator of India Ltd. (supra)* which has taken a consistent view on the said proposition. The present case in hand is nothing but a change of opinion by the Ld. AO on materials which were already on record and there being no failure on the part of the assessee in disclosing fully and truly all material facts necessary for the assessment. In view of the matter, we deem it fit to hold that the impugned notice u/s 148 and the consequent assessment order dated 25.01.2016 are unsustainable for the reason that they do not satisfy the conditions for assuming the jurisdiction u/s 147 of the Act and are accordingly set aside. We hereby allow ground No.3 raised by the assessee. As we have already quashed the assessment order, the other grounds raised by the assessee requires no further adjudication and are hereby rendered academic in nature.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 17.04.2026

Sd/-
(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai; Dated: 17.04.2026

* Kishore, Sr. P.S.



ITA No.7105/Mum/2025
Mr. Rohan Hemant Thakkar

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai