

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH MUMBAI
BEFORE: SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

ITA No. 4445/MUM/2025(AY: 2018-19)

Haresh Damji Shah 90/4, Mahalaxmi Building No.1, Hindu Colony, Road No 3, Dadar T.T., Mumbai- 400014,	Vs.	ITO, Ward 20(1)(1) Piramal Chambers, Lalbaug, Mumbai 400012,
PAN: AACPS 1856 Q		
(Appellant)	..	(Respondent)

Assessee by	Shri. Pradip Kapasi CA
Revenue by	Shri. Ritesh Mishra, CIT-DR
Date of Hearing	25/08/2025
Date of Pronouncement	13/10/2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of Learned Commissioner of Income Tax (Ld. CIT(A)) dated 20.06.2025 for A.Y. 2018-19. The assessee was raised following grounds of appeal.

"GROUND NO. 1: Addition u/s. 56(2)(x)

The L.d. CIT(A) erred in law and on facts in confirming the action of the Ld.AO in adding an amount of Rs 1,82,96,708 in aggregate under the head 'Income from other sources in respect of the following items ignoring the fact that such amounts were due/receivable in lieu of surrender of tenancy rights under the Permanent Alternative Accommodation Agreement ('PAAA') executed for surrender of tenancy rights of the residential premises and was due for lawful, adequate and valid consideration and the provisions of s.56(2)(x) was not applicable and further erred in valuing the receipt/income of the PAAA at Rs. 1,10,01,000 ignoring the fact that the stamp duty value of the said PAAA was nominal and insignificant.

<i>S.No Description</i>	<i>Amount</i>
<i>1 Value of immovable property</i>	<i>Rs. 1,10,01,000/-</i>
<i>2. Car Parking</i>	<i>Rs 7,31,501/-</i>
<i>3. Hardship Compensation</i>	<i>Rs.15,87,555/-</i>
<i>4. Brokerage</i>	<i>Rs.1,16,978/-</i>
<i>5. Shifting Charges</i>	<i>Rs 20,000/-</i>
<i>6. Transit rent for 33 months</i>	<i>Rs.42,59,174/-</i>
<i>7. Stamp duty and registration fee</i>	<i>Rs.5,80,500/-</i>
<i>TOTAL</i>	<i>Rs.1,82,96,708/-</i>

GROUND NO. 2: Capital Gains and Exemption u/s. 54F

Without prejudice to Ground No.1, the Ld. CIT(A) erred in law and on facts in confirming the action of the Ld AO in NOT computing the Income on surrender of tenancy rights as the Income under the head 'capital gains' and further erred in law in denying the exemption u/s. 54F on reinvestment of the net consideration in acquiring the residential premises and further erred in holding that there was "no sale or transfer of tenancy rights occurred for monetary consideration, negating 5.45 applicability leading to inapplicability of s.54F exemption in the absence of capital gain".

GROUND NO. 3: Taxing Capital Receipts not liable to Tax

Without prejudice to the Ground No. 1&2, the Ld. CIT(A) erred in law and on facts in confirming the action of the Ld.AO;

i. In taxing the hardship compensation of Rs.15,87,555, the shifting charges of Rs.20,000, the compensation of Rs 42,59,174, for shifting to temporary alternative accommodation on rent and brokerage of Rs.1,15,978 all of which was due for bearing with personal inconvenience and the hardship faced on account of submitting the residential premises to redevelopment and for shifting compulsorily to another location and accommodation.

ii. in bringing to tax the said amounts in the year under consideration without appreciation of the fact that such amounts were received /receivable in different years.

iii. again, in ignoring the fact that such amounts or part thereof were offered for taxation by a appellant from time to time in different years.

iv. once again in not allowing the deduction for the actual expenditure incurred by your appellant towards shifting charges, brokerage and rent for the temporary accommodation.

v. in not following the several decisions of the Tribunal and High Court on the subject where such receipts were held to be not liable to tax.

GROUND NO. 4: Taxation of 100% of receipt/income in hands of appellant who was a 50% co-owner

Without prejudice to Ground Nos. 1,2&3, the Ld. CIT(A) erred in law and on facts in confirming the action of the Ld.AO in making an entire addition of Rs.1,82,96,708 in aggregate in the hands of the appellant only who was a co-tenant of the residential premises with his wife and both of them were entitled to receive and had received the benefits in equal shares in lieu of the surrender of tenancy rights in respect of one and the same premises under one and the same PAAA. Agreement for Permanent Alternate Accommodation was also in joint name and not in single name of appellant.

GROUND NO. 5: Addition of Rs. 5,80,500 for the liability of the Developer of stamp duty and registration charges

Without prejudice to Ground Nos. 1,2,3 & 4, the Ld. CIT(A) erred in law and on facts in confirming the action of the Ld.AO in making an addition of Rs.5,80,500 representing the contractual liability of the stamp duty and registration fees ignoring the fact that under the said PAAA the said payments were the responsibility and the liability of the Developer alone which was paid by him and the appellant had not paid any amount nor he had received the said amount.

GROUND NO. 6: Violation of Natural Justice

The Ld.CIT(A) erred in law and on facts in ignoring the overwhelming submissions made before him in writing and also ignoring the direct decisions on the subject forming part of the judicial proceedings and holding that no sale or transfer of tenancy rights occurred inspite of the PAAA, a copy whereof was furnished to him.

The appellant craves for leave to add, amend, alter or delete any of the grounds of appeal.

Each of the grounds here before are independent of each other."

2. Brief facts of the case are that case of the assessee was selected for scrutiny under compulsory category based on information received from Sub-Registrar; Mumbai that assessee had purchased an immovable property, and has shown less consideration than the value adopted by stamp value authority. During the assessment the assessing officer issued show caused notice dated 21.01.2021 to explain the facts. In response to such notice the assessee filed his reply on 03.02.2021. In the reply the assessee explained that he was a tenant of the premises of Room No.4, admeasuring 803.42 square feet on the 1st floor of Mahalaxmi Building No.1, Hindu Colony, Dadar (E), Mumbai-14. The tenanted building was owned by Kanchan Nishant Joshi, Aditya Avinash Virkar and Rajshree Avinash Virkar. The landlords/owners have given development rights to redevelopment of property to Sugee Four Developers. The assessee along with landlord and owners entered into an agreement with Sugee Four Developers. As per term of agreement that assessee in lieu of surrender of tenancy right was allotted permanent alternate accommodation on ownership basis, without payment of any consideration, copy of such agreement was furnished. The assessee submitted that he has not paid any consideration for allotment of permanent alternate accommodation. On perusal of development agreement and the details furnished by the assessee the assessing officer was of the view that

as per term of registered agreement, the assessee relinquished various rights in the existing property aggregating of Rs. 1.82 Crore. The details of the value of such rights are mentioned on page No. 4 of assessment order. The assessing officer issued show caused notice as to why provision of section 56(2)(X) may not invoked against the assessee. The assessing officer recorded that no response was made to such show caused notice. The assessing officer thereby added Rs. 1.82 crore to the income of assessee.

3. Aggrieved by the action of assessing officer the assessee filed appeal before the Ld. CIT(A). Before Ld. CIT(A) the assessee filed detailed written submissions. Submissions of assessee are recorded in para No. 5 impugned order of Id CIT(A). The assessee in his submission stated that he along with his wife was tenant since 1993. The assessee jointly occupying the space under tendency in Mahalaxmi Building in Mumbai and paying monthly rent. Such tenancy was protected under Bombay Rent Control Act. The landlord granted redevelopment right to Sugee Four Developers who entered into a registered agreement dated 04.11.2017 with assessee and his wife and landlord. In pursuance of term of contract the assessee vacated tenanted premises. The assessee was allotted permanent alternate accommodation as flat No. 401, admeasuring 1119.67 square feet. The benefit/consideration/allotment of flat was made in-lieu of tenancy right which is a 'capital receipt' and should be tax at capital gain and its investment is exempted under section 54F. Further the hardship compensation of Rs. 15,87,555/- is capital receipt as has been held in various judicial pronouncement. The tenancy was in the joint name and taxing entire amount in the hand of assessee is incorrect. The assessee was given transit rent per

month. The assessee was also given shifting charges of Rs. 20,000/-, transit rent of Rs. 42,59,174/-. Further Bombay High Court in its decision held that no stamp duty value is leviable on permanent alternate accommodation agreement.

4. The Id. CIT(A) after considering the submission of assessee upheld the action of assessing officer. The Ld. CIT(A) was of the view that the assessee has received property without consideration or inadequate consideration in excess of Rs. 50,000/-. Assessee received flat value of which Rs. 1.10 crore, Car parking 73150, and stamp duty fees of Rs. 5,80,511/-. Thus, such aggregate amount of Rs. 1.23 Crore was upheld with the aforesaid observation. For hardship compensation of Rs. 15,87,555/- and transit rent of Rs. 42,59,174/-, the Id CIT(A) held that such claim is based on self declaration. The claim of brokerage expenditure is not supported by any documentary evidence. Thus, all the additions were upheld. Further aggrieved the assessee has filed present appeal before the Tribunal.
5. We have heard the submission of both the parties and have gone through the orders of lower authorities carefully. The Learned Authorized Representative (Ld. AR) of the assessee submits that the assessee and his wife were joint tenant in the property known as Mahalaxmi Building, Hindu Colony, Dadar (E), Mumbai. The landlord granted development right to redevelop the property wherein the assessee was tenant. The assessee, his wife, landlord and builder entered into an agreement. In lieu of surrender of tenancy right, the assessee was allotted alternate accommodation being flat No. 401, in the building constructed thereon. Copy of agreement of permanent alternate accommodation is filed on record at page No. 46 to 80 of paper book. The assessee in addition to allotment of

alternative flat also given relocation charges. The detail of such relocation charges is given on page No. 84-87 of paper book. The stamp duty value of car parking and stamp duty registration for development agreement was paid by developer. The assessee and his wife were regularly making payment of rent in alternative transit accommodation and details of the rent receipt are given on page No. 38-41 of paper book. The tenancy right is 'capital assets' which are held as a long term capital assets and there was no cost of acquisition and entire amount received were invested in a permanent alternate accommodation which can be considered as investment for exemption under section 54F. There is no application of section 56(2)(x). The assessing officer disregarded and added Rs. 1.82 crore to the income of the assessee. Though, the tenancy right and the newly alternate accommodation are in joint name, still the assessing officer without appreciation made addition at the hand of assessee. Hardship compensation is also a capital receipt. The lower authorities disregard and ignore the details furnished during the assessment as well as in first appeal. The Ld.AR of the assessee while summing up the submission would submit that the assessee did not owned any residential premises on the date of transfer of tenancy right, tenancy right being a capital assets and case of assessee is also covered under section 54F and qualified for exemption. No reason is given by assessing officer for denying exemption. To support his various submissions, the Ld. AR of the assessee relied upon the following decisions;

- Vasant Nagorao Barabde Vs DCIT (2015) 174 taxmann.com 101 (Mum.),
- Jatinder Kumar Madan Vs ITO (2019) 21 taxmann.com 316(Mum),
- ACIT Vs Dr. Jayesh K. Shah, 175 ITD 751 (Mum.),
- Meher F. Surti, ITA No. 1186/Mum/2013 and
- ITO Vs Abbas Ali Shiraz, (2006) 5 ITD 422(Bang.).

6. So far as addition on account of car parking of Rs. 7,31,501/- representing the stamp duty value of car parking is concerned, it was agreed for allotment as per clause 10 of agreement. No such payment was received by the assessee. The possession of said car parking has not been received in the relevant financial year and he received only on 30.09.2021. The said car parking is an open space and no right of ownership or tenancy is created in favour of the assessee. The assessee has no transferable right. More over car parking was allotted along with residential premises. The assessee has not paid any additional amount; it was given along with the flat. To support his submission the Ld.AR relied upon the decision of Mumbai tribunal in case of Dr. Jayesh K. Shah, ITA No. 6743/Mum/2017, 175 ITD 751 (Mum.). On other receipt which include hardship compensation, brokerage charges, shifting charges, transit rent and stamp duty, Ld. AR of the assessee submits that all charges were paid by builder with no such amount was received during the year under consideration. The stamp duty was paid by developer; transit rent was paid on three years and was paid to the landlord. The lower authority failed to appreciate the fact that assessee is owner of half of the share and taking the entire value of alternative assets is absolutely unjustified. The Id AR of the assessee prayed for deleting all the additions.
7. On the other hand, Learned Senior Department Representative (Ld. Sr. DR) for the revenue supported the order of CIT(A). The Ld. Sr. DR for revenue submits that matter may be restore back to the file of assessing officer to verifying the facts, if the assessee is owner of 50% of share in newly constructed alternative accommodation/ flat received by assessee in lieu of surrender of tenancy right.

All remaining receipt and addition thereof may be reconsidered by assessing officer.

8. We have considered the rival submission of both the parties and have gone through the orders of lower authorities carefully. We have also deliberated on various case of Ld.AR of the assessee. We find that there is no dispute on the facts that the assessee was tenant and in lieu of surrender of tenancy right the assessee and his wife were given flat on ownership basis. The ready reckoner value of such flat was of Rs. 1.10 Crore. On perusal of record and the order of lower authority, we find that the assessee is allotted alternative accommodation in a redevelop project being flat No. 401 in the property. From the contents of redevelopment agreement it is clearly discernable that assessee and his wife were tenant in the property and both were allotted alternative/ new flat under a redevelopment project in exchange/lieu of surrender of tenancy. We find that coordinate bench of Mumbai Tribunal in Vasant Nagorao Barabde (Supra) on similar facts and while considering similar ground of appeal held that where tenancy rights were surrender in favour of developer and against such surrender developer allotted new flat for nil consideration, as tenancy right was a capital assets which was liable to be tax under section 45 and there was an investment by way residential flat allotted to equivalent stamp duty value against surrender of tenancy, applicability of section 56 of ruled out. It was further held that the tenancy right was surrender in the favour of developer and then was investment by way permanent alternative accommodation of residential flat, equivalent to stamp duty value capital gain so computed would be eligible for deduction under section 54F. We find that facts of the case in hand are similar to that of Vasant

Nagorao Barabde (Supra). Thus, we held that there is no applicability of section 56 in the present case. So far as addition of car parking of Rs. 7,31,501/- is considered, it was allotted along with alternative flat therefore such addition is also deleted. So far as hardship compensation of Rs. 15,87,555/- is concerned such receipt is a capital receipt as has been held in Sarfraz S. Furniturewalla, 467 ITR 230 (Bom). Further stamp duty and registration fee of Rs. 5,80,500/- was paid by builder as per term of agreement so such addition is also deleted.

9. So far as shifting charges is concerned same are admittedly revenue expenditure. Similarly transit rent for 33 months was not paid in the year under consideration and was paid for almost three years and cannot be added similarly brokerage of Rs. 1,16,978/- is also revenue expenditure. Resultantly all addition made by the assessing officer are deleted. In the result, the grounds of appeal raised by the assessee are allowed.

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

Order pronounced on 13/10/2025 in open court.

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Mumbai; Dated 13/10/2025
Disha Raut, *Steno*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai