

IN THE INCOME TAX APPELLATE TRIBUNAL “K (SMC)” BENCH, MUMBAI

**BEFORE MS. KAVITHA RAJAGOPAL, JM
AND
SHRI PRABHASH SHANKAR, AM**

ITA No.6455/Mum/2025
(Assessment Year: 2009-10)

Mr. Zarir Rustom Joshi, 26, Heera Meher, 108, Wood House Road, Colaba, Mumbai – 400 005	Vs.	Income Tax Officer, Ward -17(3)(5) Room No.116, 1 st Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai – 400 020
PAN:AAHPJ9575G		
(Appellant)	:	(Respondent)

Assessee by	:	Shri Dinesh Kukreja, Adv.
Respondent by	:	Shri Bhagirath Ramawat, Sr. DR

Date of Hearing	:	02.12.2025
Date of Pronouncement	:	04.02.2026

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] passed u/s. 250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2009-10.

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

“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. AO that the transfer of an immovable property takes place only on execution of conveyance deed and not before that, under the Act.



2. *On the facts and circumstances of the case and in law, the Ld. AO and Ld. CIT(A) have erred in holding that pursuant to the development agreement only license was given, and possession of immovable property was not transferred.*

3. *On the facts and circumstances of the case and in law, the Ld. AO and Ld. CIT(A) have erred in holding that the execution of development agreement on 08.03.2000 does not amount to transfer as per Section 2(47)(v) of the Income-tax Act, 1961 ("Act") since the pre-requisites of section 53A of the Transfer of Property Act, 1882 are not fulfilled.*

4. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. AO in holding that since the name of the Appellant was appearing in the "7/12 Extract" in the year 2008, he was the co-owner of the land.*

5. *On the facts and circumstances of the case and in law, the Ld. AO and Ed. CIT(A) erred in not deducting Rs.1 crore paid to Homi Jal Chibber on the alleged ground that this payment was not contemplated in the development agreement.*

6. *On the facts and circumstances of the case and in law, the Ld. AO and Ld. CIT(A) erred in not deducting Rs.86,00,000 paid to hutment dwellers, and Rs.22,00,000 paid to vendors in AY 2000-01, on the alleged ground that there was no legally acceptable proof of such payments.*

7. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. AO in reopening the assessment of the Appellant u/s. 147 of the Act.*

8. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. AO in reopening the assessment of the Appellant without appreciating that the gains earned on the transfer of immovable property were already offered to tax in AY 2000-01 and an exemption claimed u/s 54EA of the Act.*

9. *The Appellant therefore prays that the reopening of assessment be held as bad in law and also, the transfer of the subject immovable property be held to have taken place in the AY 2000-01 pursuant to the development agreement entered into on 08.03.2000 and accordingly, the findings of the Ld. CIT(A) and Ld. AO be held as bad in law and be reversed accordingly.*

The Appellant craves leave to, add to or alter, by deletion, substitution, or otherwise, any or all of the foregoing grounds of appeal at or before the hearing, and to submit such statements, documents, and papers as may be considered necessary either at or before the appeal hearing."

3. Brief facts of the case are that the assessee is an individual and had not filed his return of income for the year under consideration. The assessee's case was reopened based

on the information received from ITO, Ward-2(1), Aurangabad that the assessee had sold agricultural land bearing survey No.5/1, CTS No.4083, admeasuring 1 H, 16.50 acres, out of which O H.40 acres was owned by Maharashtra Rajya Vidyut Mimiti Company and balance area admeasuring 7650 sq. mtr. was owned by the assessee along with joint owners and the same was sold for Rs.2,08,00,000/- out of which Rs.22,00,000/- was payable to 10 vendors including the assessee. Since the said property falls within the limit of municipal corporation, the assessee was liable for capital gain and therefore notice u/s 148 of the Act dated 31.03.2016 was issued and served upon the assessee as the income chargeable to tax has escaped assessment. The Learned Assessing Officer (“Ld. AO” for short) issued notices u/s 143(2) and 142(1) of the Act. In response to notice u/s 148 of the Act, the assessee filed his return of income declaring total income at Rs.1,98,110/-. After duly considering the assessee’s submission, the Ld. AO passed the assessment order dated 30.12.2016 u/s 143(3) r.w.s. 147 of the Act determining the total income at Rs.21,17,110/- after making an addition on the Long Term Capital Gain (“LTCG” for short) amounting to Rs.19,19,000/- towards the LTCG on sale of property amounting to Rs.3,23,40,000/- in which the assessee’s 1/12th share was determined at Rs.26,95,000/-.

4. Aggrieved, the assessee was in appeal before the first appellate authority, who vide order dated 12.08.2025 upheld the addition made by the Ld. AO on the ground that the assessee has failed to substantiate his claim by sufficient documentary evidence.

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

6. The Learned Authorized Representative (“Ld. AR” for short) for the assessee contended that the assessee, along with the other co-owners, entered into a development agreement with one Mr. Parag S. Shah on 08.03.2000, where the vendors agreed to sell the land to the developer for a lump sum consideration of Rs.66,00,000/- and the said development agreement was registered with the Sub Registrar, Mumbai vide registration No.832/2000 on the same date. The Ld. AR further contended that the total consideration of Rs.66,00,000/- was paid by the developer to the vendors by full payment through cheque which details are also mentioned in the development agreement. The Ld. AR further contended that the said development agreement was an irrevocable ownership to the developer and the vendors also gave a general Power of Attorney (“POA” for short) to the developer vide registered deed with registration No.226/2000 which tantamounts to “transfer” as per section 2(47)(v) & (vi) of the Act where the assessee relinquished his 1/12th share in the property for full value of consideration and had offered capital gains on the same in A.Y. 2000-01 itself. The Ld. AR further argued that subsequently the developer had conveyed the property in favour of one Mr. Bhupendra Shantilal Shah and three others by exercising his power granted under the POA only for land No.1 dated 02.04.2008 for a total consideration of Rs.2,08,00,000/- out of which Rs.86,000/- was paid to the hutment encroachers for vacating the said land No.1, Rs.1,00,00,000/- was paid to Mr. Homi Jal Chibber and balance Rs.22,00,000/- was paid to the vendors on the earlier occasion at the time of execution of the development agreement. The Ld. AR contended that the assessee and the other vendors did not receive any consideration in the year 2008 for execution of conveyance of land No.1 and further the assessee and the other vendors



are not even aware of such transaction for the reason that the total consideration was paid in the year 2000 itself where the assessee and the other vendors had already relinquished their rights in the property. The same was also confirmed by the POA holder Mr. Parag Shah by way of a notarized affidavit dated 05.07.2016 where he has categorically mentioned that Rs.22,00,000/- paid to the vendors mentioned in this sale deed dated 04.04.2008 refers to the consideration which was paid while executing the development agreement dated 08.03.2000. The Ld. AR reiterated that the assessee had already offered the capital gain in the AY 2000-01 and had claimed exemption u/s 54EA of the Act. The Ld. AR relied on the Tribunal's order in the case of the co-sharer in ITA No.2799/M/2023 where on the same facts the Tribunal held that the assessee was not liable to be taxed in the impugned year as the transaction was completed in the year 2000 itself and the assessee had rightly offered the same to tax in the very same year.

7. The Learned Departmental Representative ("Ld. D.R." for short), on the other hand, controverted the same and relied on the order of the lower authorities.

8. We have heard the rival submissions and perused the materials available on record. The issue that requires adjudication in the present appeal is whether the Ld. AO was right in determining the LTCG on sale of the property in accordance with the provisions of section 50C(1) of the Act and whether the lower authorities were right in considering the year of transfer to be in 2008 as per the registered sale deed instead of considering the date of development agreement executed by the assessee and the co-sharers in favour of the assessee. It is observed that the co-ordinate Bench in the case of *Late Burzor Rustom Joshi*

through Legal Heirs Vs. ITO in ITA No.2799/Mum/2023 in which case the Tribunal has decided this issue in favour of the assessee arising out of same set of facts, which has been extensively relied upon by the Ld. AR. The relevant extract of the said decision is cited herein under for ease of ready reference:

“5. Heard both the sides and perused the material on record. Without reiterating the facts as discussed above the assessee has received 1/12 shares from the relinquishment of his right in the property and the amount of Rs.5,50,000/- was offered to tax as long term capital gain in the return of income for assessment year 2000-01. The assessee has also submitted before the Id. CIT(A) that the entire amount of Rs.5,50,000/- was invested in the UTI MEP 2000 Scheme and he claimed exemption u/s 54EA of the Income Tax Act. The assessee has also filed affidavit of Shri Parag S. Shah before the Id. CIT(A) that no amount was paid to the assessee at the time of execution of the sale deed dated 04.04.2008. Even before the assessing officer in response to show cause notice dated 23.12.2016 the assessee has provided these detail explaining that the aforesaid transaction had occurred in the year 2000. However, without controverting the aforesaid submission and relevant explanation given by the assessee the assessing officer has determined the long term capital gain as per provision of Sec.50C in the hands of the assessee. The assessee has also explained that the assessee along with the other family member have relinquished all rights and title in the sold land bearing survey no. 5/1, 5/3 and 5/4 at Nasik Maharashtra by granting development rights and physical possession to Shri Parag S. Shah vide registered development agreement dated 08.03.2000 and received a total consideration of Rs.66,00,000/- out of which share of the assessee Rs.5,50,000/- and the same was offered for tax by him in the Income Tax return for assessment year 2000-01. After considering the aforesaid material facts we find that decision of Id. CIT(A) in sustaining the impugned addition of capital gain in the hands of the assessee without controverting the claim of the assessee that capital gain amount was already shown in the assessment year 2000-01 is not justified, therefore, the appeal of the assessee is allowed on merit. The Ld. Counsel has not made any submissions on the grounds challenging re-opening of assessment, hence, ground no. 1 of appeal is dismissed.”

9. From the above observation, it is evident that the Tribunal has examined the facts of the case along with the documentary evidences furnished by the assessee where the transaction has occurred in the year 2000 itself as a consequence of which the assessee and the co-sharers have received full consideration of Rs.66,00,000/- and had relinquished their rights in the property thereafter. The Revenue except for the fact that in the subsequent sale deed in the year 2008 it was mentioned that Rs.22,00,000/- was paid to the vendors



which the assessee contends that it was waived in the year 2000 itself. No other evidence contrary to the contention of the assessee is placed before us. In the absence of the same, we deem it fit to allow the assessee's grounds of appeal by respectfully following the decision of the Tribunal in the case of the co-sharer on the same set of facts.

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

Order pronounced in the open court on 04.02.2026

**Sd/-
(PRABHASH SHANKAR)
ACCOUNTANT MEMBER**

**Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

Mumbai; Dated: 04.02.2026

* Kishore, Sr. P.S.

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