

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

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA No. 692/Mum/2026
(Assessment Year: 2020-21)**

DCIT-19(1), Mumbai Piramal Chambers, Lalbaug, Parel, Mumbai-400 012	Vs.	Dinesh Gulab Mirchandani 84/A Mehar Apartments, Anesty Road, Off Altamount Road, Mumbai- 400 026
PAN/GIR No. AGGPM4719G		
(Applicant)		(Respondent)

Assessee by	Shri Pradeep Kapasi, Ld. AR
Revenue by	Shri Annavaram Kosuri, Ld. DR

Date of Hearing	23.04.2026
Date of Pronouncement	30.04.2026

आदेश / ORDER

PER MAKARAND VASANT MAHADEOKAR, AM:

The present appeal is filed by the Revenue against the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi[hereinafter referred to as "CIT(A)"], under section 250 of the Income-tax Act, 1961[hereinafter referred to as "the Act"] dated 27.11.2025, arising out of the

assessment order passed by the Assessing Officer under section 143(3) read with section 144B of the Act dated 29.09.2022 for the assessment year 2020–21.

Facts of the Case

2. Briefly stated, the facts of the case are that the assessee is an individual who filed his return of income for the assessment year 2020–21 on 15.02.2021 declaring total income at Rs.2,44,02,200/-. The return was processed under section 143(1) and subsequently the case was selected for scrutiny under CASS for verification of “Large Capital Gain Set off with large Capital loss and Taxable receipts from House Property shown in Schedule TDS-2 is higher than the receipts from house property shown in ITR”. Notice under section 143(2) dated 29.06.2021 and notice under section 142(1) dated 11.11.2021 were issued.

3. During the course of assessment proceedings, the Assessing Officer examined the receipts reflected in Form 26AS and noticed a difference of Rs.14,37,503/- between rental receipts credited under section 194-I and the income declared under the head “House Property”. The assessee explained that the said receipts were already offered as business income on account of sub-leasing of property and requested that no addition be made. The Assessing Officer, after verification, accepted the explanation and dropped the proposed addition.

4. The primary issue arose in respect of taxability of consideration of Rs.3,67,68,000/- received by the assessee on

surrender of tenancy rights in respect of two premises situated at Senapati Bapat Marg, Lower Parel, Mumbai, in favour of Phoenix Mills (P) Ltd. The assessee had treated the said transaction as giving rise to long term capital gains, adopting indexed cost of acquisition at Rs.2,23,45,645/- and computing capital gain of Rs.1,44,22,355/-, which was claimed as exempt under section 54F on account of investment in residential property, resulting in nil taxable capital gain.

5. During the assessment proceedings, the Assessing Officer issued show cause notices requiring the assessee to furnish documentary evidence in support of cost of acquisition, proof of investment and details of transaction. The assessee submitted that tenancy rights were acquired in the year 1994 and constituted a capital asset under section 55(2)(a), and that surrender thereof amounted to transfer within the meaning of section 2(47). The assessee further contended that even if the transaction was regarded as transfer of possessionary rights, the same would still fall within the ambit of capital asset, and reliance was placed on judicial precedents. The assessee also furnished working of cost of acquisition based on valuation as on 01.04.2001 and claimed that the entire consideration was deposited in capital gains account scheme.

6. However, the Assessing Officer observed that the assessee failed to furnish documentary evidence substantiating the cost of acquisition despite repeated opportunities. The Assessing Officer further took the view that surrender of possessionary rights did

not give rise to capital gains and proposed to assess the entire consideration under the head "Income from Other Sources". It was held that since the assessee had not established the cost of acquisition, the same was to be treated as NIL, and consequently the transaction was not assessable under the head "Capital Gains". Accordingly, the Assessing Officer assessed the entire amount of Rs.3,67,68,000/- under the head "Income from Other Sources" and completed the assessment determining total income at Rs.5,98,38,100/- under section 143(3) read with section 144B of the Act.

7. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The assessee raised various grounds challenging the action of the Assessing Officer in taxing the consideration under the head "Income from Other Sources", disregarding section 55(2)(a), not allowing indexed cost of acquisition and deduction under section 54F, and also alleging violation of principles of natural justice.

8. During the appellate proceedings, the assessee reiterated that tenancy rights are capital assets and their surrender results in capital gains, and that the Assessing Officer erred in invoking section 56. It was further submitted that the assessee had furnished tenancy agreements, valuation working and details of deposit in capital gains account scheme, which were not properly considered by the Assessing Officer. The assessee also contended that the assessment was completed without granting adequate opportunity, including denial of video conference hearing.

9. The CIT(A), after considering the submissions of the assessee and material on record, examined the legal position regarding taxability of surrender of tenancy rights. The CIT(A) referred to judicial precedents including the decision of the Hon'ble Supreme Court in the case of **D.P. Sandu Bros. Chembur Pvt. Ltd. [2008 -TMI - 6153 -Supreme Court]** and held that tenancy rights constitute capital asset and surrender thereof gives rise to capital receipt chargeable, if at all, under the head "Capital Gains". It was further held that if such receipt is not chargeable under the head "Capital Gains", the same cannot be brought to tax under the residuary head "Income from Other Sources". The CIT(A) thus concluded that the Assessing Officer was not justified in taxing the consideration of Rs.3,67,68,000/- under the head "Income from Other Sources" and directed deletion of the addition. Accordingly, the appeal of the assessee was allowed.

10. Aggrieved by the relief granted by the CIT(A), the Revenue is in appeal before us and has raised the following grounds of appeal:

1. *Whether on the facts and in the circumstances of the case and in law, the CIT (A) has erred in directing the AO to delete the addition made by the AO that assessee received Rs.3,67,68,000/- from surrender of tenancy/occupancy rights to Phoenix Mills Pvt. Ltd, shown as Long-Term Capital Gain.*
2. *Whether on the facts and in the circumstances of the case and in law, the CIT (A) has erred in considering that surrender of tenancy / possession rights does not amount to transfer of a capital asset, and since cost of acquisition was NIL / unproved, capital gain could not be computed.*

3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A), erred in not considering that the assessee has not responded to the notice and it is clear that the assessee has not established its claim to cost of acquisition and it appears that the cost of acquisition of the possessionary/ occupancy/ tenancy rights is NIL. The assessee only prepared a working in order to claim benefit of cost of acquisition while computing capital gains. If there is no cost of acquisition, the receipt is not assessable under Capital Gain. Accordingly, Rs.3,67,68,000/- is assessed under the Head 'Income from Other Sources'.*
4. *The appellant craves to add, alter, classify, reclassify, delete or modify any of the above grounds of appeal and requests to consider each of the above grounds without prejudice to one another.*

11. The learned Departmental Representative (DR), relying upon the assessment order, submitted that the Assessing Officer has categorically recorded a finding in para 7 of the assessment order that the assessee has failed to establish its claim of cost of acquisition. The learned DR drew our attention to the specific finding of the Assessing Officer wherein it has been observed that:

“the assessee has not established its claim to cost of acquisition. It appears that the cost of acquisition of the possessionary/occupancy/tenancy rights is NIL. The assessee only prepared a working in order to claim benefit of cost of acquisition while computing capital gains. If there is no cost of acquisition, the receipt is not assessable under Capital Gain.”

12. Per contra, the learned Authorised Representative (AR), placing reliance on the order of the learned CIT(A), reiterated the submissions as were advanced before the first appellate authority and as reproduced in the appellate order. The learned AR submitted that the assessee had acquired tenancy rights in respect of two adjoining premises, namely Premises No. 11 and Premises No. 12 situated on the 2nd floor of the building located

at 462, Senapati Bapat Marg, Lower Parel, Mumbai. It was submitted that the tenancy rights in respect of Premises No. 11 and Premises No. 12 were acquired on 12th February, 1994 for a consideration of Rs.31,59,003/- and Rs.15,02,887/- respectively. It was further submitted that during the financial year 2019–20, the assessee entered into agreements to surrender the tenancy rights in respect of both the aforesaid premises for a total consideration of Rs.3,67,68,000/- (Rs.2,45,76,000/- for Premises No. 11 and Rs.1,21,92,000/- for Premises No. 12).The learned AR drew attention to the fact that copies of the tenancy acquisition agreements dated 12.02.1994 as well as surrender agreements dated 28.08.2019 were duly furnished before the Assessing Officer during the course of assessment proceedings. It was contended that both the acquisition and surrender agreements clearly evidenced that the assessee had acquired tenancy rights in the said premises for consideration and that the amount received on surrender represented consideration for transfer of such tenancy rights. The learned AR further submitted that the Assessing Officer, without properly verifying the agreements and supporting documents, proceeded to conclude that the cost of acquisition was NIL and held that the receipt was not assessable under the head “Capital Gains”. It was contended that such finding of the Assessing Officer, as recorded in para 7 of the assessment order, is contrary to the facts on record and is based on incorrect appreciation of material evidence.

13. We have carefully considered the rival submissions, perused the material available on record including the assessment order, the order of the learned CIT(A), and the written submissions placed before the lower authorities. The solitary issue arising for our consideration is whether the consideration of Rs.3,67,68,000/- received by the assessee on surrender of tenancy rights is liable to be assessed under the head “Capital Gains” or under the head “Income from Other Sources”.

14. The Assessing Officer, as evident from para 7 of the assessment order, proceeded on the premise that the assessee had failed to establish the cost of acquisition of tenancy/occupancy rights and therefore held that the cost of acquisition was NIL. Based on this reasoning, the Assessing Officer concluded that the computation mechanism under section 48 fails and consequently the receipt is not assessable under the head “Capital Gains”, and thus brought the entire amount of Rs.3,67,68,000/- to tax under the head “Income from Other Sources”. The learned Departmental Representative has strongly relied upon the aforesaid findings of the Assessing Officer and submitted that the assessee did not furnish documentary evidence in support of cost of acquisition and merely furnished a working. It was thus contended that in absence of ascertainable cost, capital gains computation fails and the Assessing Officer was justified in invoking the residuary head.

15. The submissions before the learned CIT(A), as reproduced in the appellate order, demonstrate that the assessee had

categorically stated that tenancy rights in respect of Premises No. 11 and 12 were acquired for consideration and the same were surrendered during the year for total consideration of Rs.3,67,68,000/-. It was further contended that both the acquisition and surrender agreements clearly evidenced the existence of tenancy rights as well as the cost incurred for acquiring the same. The assessee also relied upon provisions of section 55(2)(a) and judicial precedents to contend that tenancy rights are capital assets and surrender thereof gives rise to capital gains.

16. The learned CIT(A), after considering the entire material and submissions, has recorded a categorical finding that tenancy rights constitute a capital asset within the meaning of the Act and any consideration received on surrender thereof is a capital receipt. The learned CIT(A) has further relied upon the decision of the Hon'ble Supreme Court in the case of **CIT vs. D.P. Sandu Bros. Chembur Pvt. Ltd.(supra)**, wherein it has been held that if a receipt is not chargeable under the head "Capital Gains", the same cannot be taxed under the residuary head "Income from Other Sources". The learned CIT(A) has specifically held that:

"There is no dispute that a tenancy right is a capital asset the surrender of which would attract section 45 so that the value received would be a capital receipt and assessable if at all only under item E of section 14... If the income cannot be taxed under section 45, it cannot be taxed at all... The AO is wrong in taxing the consideration received by the appellant on extinguishment/surrender of tenancy rights under the head Income from Other Sources. The addition of 3.67 crores is directed to be deleted."

17. Thus, the learned CIT(A) has not only accepted the factual position regarding existence of tenancy rights and receipt on surrender thereof, but has also adjudicated the issue on settled legal principles governing taxability of such receipts.

18. On careful consideration, we find no infirmity in the approach adopted by the learned CIT(A). The existence of tenancy rights and the factum of surrender thereof has not been disputed by the Assessing Officer. The entire addition has been made only on the premise that the cost of acquisition was not established to the satisfaction of the Assessing Officer.

19. In our considered view, even assuming that the cost of acquisition is not ascertainable or is taken as NIL, the legal position is now well settled by the Hon'ble Supreme Court that such a receipt cannot be brought to tax under the residuary head. The scheme of the Act clearly provides that income arising from transfer of a capital asset is chargeable under the head "Capital Gains", and if for any reason such income is not chargeable under that head, the same cannot be artificially brought under section 56.

20. The above legal position stands authoritatively settled by the Hon'ble Supreme Court as under:"

16. *There is no dispute that a tenancy right is a capital asset the surrender of which would attract section 45 so that the value received would be a capital receipt and assessable if at all only under Item E of section 14. That being so, it cannot be treated as a casual or non-recurring receipt under section 10(3) and be subjected to tax under section 56. The argument of the appellant that even if the income cannot*

be chargeable under section 45, because of the inapplicability of the computation provided under section 48, it could still impose tax under the residuary head is thus unacceptable. If the income cannot be taxed under section 45, it cannot be taxed at all. [See : S.G. Mercantile Corporation (P.) Ltd. v. CIT [1972] 83 ITR 700 (SC)].

17. Furthermore, it would be illogical and against the language of section 56 to hold that everything that is exempted from capital gains by statute could be taxed as a casual or non-recurring receipt under section 10(3) read with section 56. We are fortified in our view by a similar argument being rejected in Nalinikant Ambalal Mody v. S.A.L. Narayan Row, CIT [1966] 61 ITR 428, 432, 435.

21. The contention of the Revenue that in absence of cost of acquisition the receipt should be taxed under "Income from Other Sources" is directly contrary to the ratio laid down by the Hon'ble Supreme Court in **D.P. Sandu Bros. Chembur Pvt. Ltd. (supra)**, which has been rightly relied upon by the learned CIT(A). Once the nature of receipt is held to be capital in nature arising from transfer of a capital asset, the same cannot be re-characterised under a residuary head. Further, we also find merit in the submission of the assessee that documentary evidences in the form of tenancy agreements and surrender agreements were placed on record and the Assessing Officer has not recorded any adverse finding with regard to their genuineness. The conclusion that cost of acquisition is NIL appears to be based on non-acceptance of the working rather than absence of material.

22. In light of the above discussion, we find that the learned CIT(A) has correctly appreciated both the factual matrix and the legal position and has rightly directed deletion of the addition of Rs.3,67,68,000/- made by the Assessing Officer under the head

“Income from Other Sources”. Accordingly, the grounds raised by the Revenue are devoid of merit and are hereby dismissed.

23. In the result, the appeal of the Revenue stands dismissed.

Order pronounced in the open court on 30.04.2026.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER
Mumbai, Dated 30/04/2026
Dhananjay, Sr.PS

Sd/-
(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai