आयकर अपीलीय अधिकरण न्याय पीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI AMIT SHUKLA, JM &
SHRI ARUN KHODPIA, AM

I.T.A. No. 4080/Mum/2025
(Assessment Year: 2015-16)

Murtuza Kothari, C Block, 2nd Floor, Tapia Building, Jalbhoy Lane, Girgaon S.O. Mumbai - 400004 **PAN: AACPK2876Q**	Vs.	**ITO, Ward-19(2)(2),** Piramal Chambers, Mumbai-400012
Assessee -अपीलार्थी / Appellant	:	**Revenue -** प्रत्यर्थी / Respondent

Assessee by	:	Shri Suresh Otwani, AR
Revenue by	:	Shri Annavaran Kosuri, Sr. DR
Date of Hearing	:	24.12.2025
Date of Pronouncement	:	06.01.2026

O R D E R

Per Arun Khodpia, AM:

This appeal is filed by the assessee challenging the order of Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi [for short "ld. CIT(A)"] dated 28.12.2024 for the AY 2015-16, arises from the assessment order passed under section 147 r. w. s. 144B of the Income Tax Act, 1961 (the Act) dated 31.01.2024 by the Assessment Unit,

Income Tax Department. The grounds of appeal raised by the assessee are as under:

> "1. The FAA i.e, CIT (A) erred in not accepting the contention of Appellant filed before FAA along with documents and submissions made.
>
> 2. The FAA i.e, CIT(A) went on to confirm the Order of A.O and erred in denying the deduction of cost of improvement computed by the appellant and considering it at NIL, for the reasons mentioned in the impugned order or otherwise.
>
> 3. The FAA Ld. CIT(A) erred in denying exemption u/s 54 of the Act as proposed by the appellant, for reasons mentioned in the impugned order or otherwise.
>
> 4. That the Appeal is not in time and delay in filing the appeal is neither intentional nor due to negligence, but solely due to the genuine and bonafide reason of being unaware about the outcome of the CIT(A) Order."

2. Brief facts of the case, the assessee had not filed its return of income for the AY 2015-16. Whereas, have entered into a transaction of sale of immovable property for an amount of Rs. 86,00,000/-. Such information was received by the Assessing Officer (AO), therefore, the case of assessee has been selected for scrutiny under section 147 of the Act. Order under section 148A(d) of the Act was issued on 09.04.2022. Further notice under section 148 was issued and served to assessee on 09.04.2022, in compliance of which the assessee filed ITR under section 148 of the Act on 14.02.2023. In due course, notice under section 143(2) was issued and thereafter notices under section 142(1) were issued along with questionnaire to furnish specific information. In response to aforesaid notices assessee submitted written reply along with a sale-deed of immovable property, copy of bank statement, copy of valuation report, copy of passbook,

Aadhar Card, Gas connection, computation of income and copy of rectification deed and other documents. After analysing the aforesaid information furnished before the AO, it is observed by the AO that the assessee has disclosed full value of consideration adopted under section 50C of the Act for the purpose of capital gain at Rs. 86,00,000/- and a deduction was claimed under section 48 of the Act for Rs. 83,62,976/- as cost of improvement with indexation, thus Long Term Capital Gain (LTCG) of Rs. 2,37,024/- has been disclosed.

The ld. AO, further examined the issue and have proposed that the cost of acquisition claimed by the assessee as deduction under section 48 of the Act, falls within the category of items referred to under sub-clause (i) to (iv) of sub-section (1) of section 49 of the Act, therefore the same shall be taken at Nil and accordingly the LTCG would be the entire consideration received by the assessee i.e. Rs. 86,00,000/-. Considering these facts variation was proposed and a show-cause notice was issued. In response to aforesaid show-cause assessee submitted that the property which is sold was originally with assessee's mother as tenanted property, against the tenanted property they got ownership flat, and the ownership flat was valued at Rs. 44,80,627/- as on 22.07.2008 (the date when tenancy right was surrendered and converted into ownership right by virtue of development agreement), as per Valuation report dated 13.03.2018 and capital gain was worked out accordingly. It is also submitted that after getting the property the assessee was enjoying the property

as ownership and whatever maintenance and other charges were paid, they become the cost of property. Aforesaid reply of the assessee was perused and analyzed by the AO, was factually agreed with the facts furnished by the assessee, however a question was raised that how the property was acquired by the assessee and how much consideration was paid by him for acquiring the said property and had answered that the property was acquired in lieu of surrender of tenancy rights and no consideration was paid by the assessee, reference was made to rectification deed dated 20.11.2023 and registered sale agreement dated 21.05.2014. Accordingly, the claim of assessee under section 48 for deduction on account of cost of acquisition with indexation was denied, treating the same as NIL. The AO further rejected the claim of assessee for deduction under section 54/54F of the Act on account of failure of assessee to submit relevant documents like valid registered sale agreement / contract in support of his claim. A notice under section 133(6) of the Act was also issued to Hozaifa S. Contractor, the seller as claimed by the assessee, to furnish registered sale agreement / contract in respect of sale of property to the assessee but he also failed to furnish the same, however a certificate (page 16 of the assessment order) was issued by him that flat No. 33B, 4th Floor, B Block, Adam Mahal, 143/147, Wadia Street, Tardeo, Mumbai-400034 was handed over to Murtuza Taher Kothari on rent and he is enjoying the said property as owner till date. On the aforesaid reply from Hozaifa S. Contractor shows that the property is on rent for which the assessee is paying rent regularly, the

amount of Rs. 86,00,000/- deposited with Hozaifa S. Contractor was therefore not for the purpose of purchase of property / transfer of property as claimed by the assessee. Accordingly, the claim of assessee under section 54/54F was also denied and in LTCG of the assessee was computed at Rs. 86,00,000/- which is reduced by the amount already declared by the assessee and finally an addition of Rs. 83,62,976/- was made.

3. Aggrieved with the aforesaid addition assessee preferred the appeal before the ld. CIT(A), however the contentions raised by the assessee could not find favour with the CIT(A), who had dismissed the appeal of the assessee with the following observations:

> *"**7. Adjudication and decision**:*
> *The order appealed against is in consequence of an order u/s 147 for the assessment year 2015-16 in respect of the reopened assessment.*
>
> *The information was that the assessee, a Non-Filer of the return for the relevant year under consideration i.e., A.Y. 2015-16 had sold a property for Rs.86 lakhs and therefore the same was found to be chargeable to tax which escaped assessment as a result of non-filing of the return of income.*
>
> *On the analysis of ITR which the assessee filed u/s 148 of the Act, it is found that the assessee disclosed income from Long Term Capital Gain of Rs. 2,37,024/- and after claiming deduction u/s VI, total income disclosed by him was Rs. 2,20,200/-. On further analysis of computation of Long Term Capital Gain, it was noticed that the assessee disclosed full value of consideration adopted as per section 50C for the purpose of Capital Gains of Rs. 86,00,000/-, deduction claimed u/s 48 of the Act of Rs. 83,62,976/- as cost of improvement with indexation, and thus Long Term Capital Gain of Rs. 2,37,024/- has been disclosed.*
>
> *The AO however found that the property sold had been acquired without consideration in cash in exchange for the tenancy rights which the appellant had acquired on account of his long stay.*

Since the tenancy rights was not acquired but self-generated the AO did not permit any cost of acquisition and improvement along with indexation thereof. Besides, the alternate claim of exemption u/s 54 was also found to be not allowable for the reason that the appellant had not purchased residential house within a period of one year before or two years after the date on which transfer took place nor he had constructed one residential house in India within a period of three years after that date.

Aggrieved, the appellant filed the appeal with the abovementioned grounds. The appellant's grounds relate to the claim of benefit of indexation in relation to the cost incurred for acquiring the tenancy rights in the form of deposit advanced long time ago and therefore the same requires to be deducted from the sale consideration. In appellant's words, "since for obtaining a property on pagdi system one has to give deposit, which Appellant has given long back ie, around 50 years back, now pagdi amount becomes the original cost and that is replaced as per indexation i.e, Fair Market Value as on year 2001.

It is to be held that originally when the appellant occupied the premises, what were the understanding with the owner and what was the amount given as deposit and whether only nominal rent was charged were questions of fact which the appellant could not substantiate. ***Therefore, the claim that the tenancy rights require to be assigned a cost and the FMV of the same as on 1.4.2001 was rightly not entertained by the AO treating the tenancy rights as having been acquired without incurring any cost.***
The appellant's alternate claim of investment in another property eligible for exemption was also not well placed for the capital asset transferred did not qualify as a long term capital asset to be eligible for any exemption u/s 54/54F. Therefore, the reasoning assigned by the AO for the treatment given to the claim of capital gains computed does not require any interference as the assessment order passed was a speaking order in tandem with the provisions of the Act.
For these reasons, the grounds raised by the appellant are dismissed.
The appeal accordingly is dismissed."

4. Being disagreed with the aforesaid decision by ld. CIT(A), the assessee has furnished the present appeal before us for our consideration.

5. At the outset, the ld. Authorized Representative (for short "Ld. AR") on behalf of the assessee submitted that the decision of ld. CIT(A) was erroneous and under misappropriation of the facts and submissions made by the assessee. The ld. AO as well as the ld. CIT(A) were in error in denying the contention of cost of improvement by taking the same at Nil. On this issue, the ld. AR submitted as under:

> "The appellant an Individual Male sold the residential property in question, known as:-
> Flat No-703, ORION Building, Rajaram Mohan Roy Road, C.S. No-1150,. Off. Girgaon Road, Grant Road, Mumbai-400 007
>
> Since year 1940, was originally held by Late Mr. Taher Kothari, father of the appellant, under the **pagdi tenancy system** in Mumbai with the original address named as
>
> Room No-C/9, 2nd Floor, Tapia Building,
> Rajaram Mohan Roy Road, Jalbhai Street, Mumbai-400 007.
>
> Upon the demise of the father of appellant, the aforesaid tenancy rights were transferred to appellant's mother Nafisa Taher Kothari, and subsequently, after her demise on 20/08/2002, the tenancy rights devolved upon the legal heirs-
> **four brothers,** including the appellant.
>
> The aforesaid sold flat was acquired on ownership basis by appellant being one of legal heir of his deceased parents vide development agreement dt.22/07/2008 with the developer named: - M/s Rubberwala Developers Pvt Ltd in exchange of surrender of aforesaid tenancy rights of said original property known as: -
>
> C/9, 2nd Floor, Tapia Building, Raja Ram Mohan Roy Road,
> Jalbhai Street, Mumbai-400007.
>
> The appellant as per redevelopment agreement (Deed of Confirmation) the got the ownership for flat no-3 and 4 at 7th floor in lieu of his share in aforesaid ancestral property having tenancy rights, subsequently vide rectification deed executed by developer and appellant dt.20/11/2013, the unit number of the said property rectified from unit no-3 & 4 to flat no-703.

The appellant subsequently sold the aforesaid ownership flat vide agreement dt. 21/05/2014, named: Flat No-703, ORION Building, Rajaram Mohan Roy Road, C.S. No-1150, Off. Girgaon Road, Grant Road, Mumbai-400 007, acquired under the redevelopment agreement, which represented his share in the ancestral tenancy property held by his late parents. The sale consideration for the aforesaid property at Rs.86,00,000/- and market value at Rs.85,68,500/- as on date of sale dt.21/05/2014.

Return of Income was not filed by the appellant, since the total income as per computation was less than the maximum marginal limit for threshold.

The appellant received notice dt. 15/02/2018 for non-filing of income tax return along with compliance of the information generated on his PAN through AIR Information code-AIR-007 consisting "Sold Immovable Property Valued at Rs.30,00,000/- of more during F.Y.2014-15".

The appellant in response to the aforesaid notice, furnished the computation of total income, wherein capital gain worked out considering the fair market value amounting Rs.45,00,000/- of said property as on 22/07/2008(Date of Development agreement) i.e. the date of acquisition of ownership, as per valuation report provided by government registered valuer and applied cost of indexation against the sale consideration of property sold at Rs.86,00,000/- The resultant amount of capital gain worked for the aforesaid property arrived at Rs.2,37,024/-,

Subsequently in Year-2022, the re-assessment notice u/s-148A(b) dt.23/03/2022 was received by the appellant wherein the said issue was raised for compliance on the part of the appellant. The appellant once again reiterated the same contention along with supporting documents filed in response to the said notice and claimed the aforesaid capital gain as long-term capital gain after considering the index cost of acquisition at Rs.83,62,976/-.

The assessing authority rejected the said claim of the appellant, invoked Section-55(2)(a) and considered the cost of acquisition for the aforesaid property as "NIL" and added to total income entire amount of sale consideration amounting Rs.86,00,000/-, ignoring the fact that the property sold was ownership property and not tenanted property/tenancy rights, on the date of sale agreement.
In principle the fact is that, exchange of tenancy rights for ownership flat is considered a taxable event in itself, but capital gain calculation applies to subsequent sale of flat and for the purpose of computation of capital gain the cost of the said property (Ownership property acquired) is to be considered fair market value on the date of surrender of tenancy rights i.e., 10/08/2007,

The similar facts are covered by the judicial pronouncement by This Hon'ble ITAT Mumbai, E-Bench in the case of Mrs. Tauqeer Fatema Rizvi vs Income Tax Officer vide appeal no-ITA no. 8862/Mum. /2011, wherein it was held that,

"the tenancy right got converted into acquisition of a flat, when the assessee must have got the possession of new flat constructed by the builder. Thus, the market value of the said flat as on the date of its possession would be the cost of its acquisition"

Praver Before This Hon'ble Bench: -
In view of the aforesaid facts and documents furnished during, assessment proceedings, appellate proceedings as well as before this hon'ble ITAT Bench,
the appellant humbly prays to grant relief in the form of: -

- Cost of acquisition to be allowed at Rs.83,62,976/- from the sale consideration amounting Rs.86,00,000/-.
- The amount of Rs.2,37,024/- to be allowed as long-term capital gain as per computation of total income.
- Any other relief considering the facts and merits of the case may be granted by this Hon'ble ITAT Forum to the appellant."

6. Based on aforesaid submissions, it was the prayer that the tenancy rights got converted into acquisition of flat, when the assessee must have got the possession of flat constructed by the Builder, the market value of the said flat as on the date of its possession would be the cost of acquisition. In present case, the original tenanted property held by assessee's father Late Shri Taherf Kothari under pagdi tenancy system, which upon demise of the father of assessee was transferred to his mother Nafisa Taher Kothari, subsequently after her demise on 20.08.2022 the same tenancy rights devolved upon the legal heirs which includes four brothers including the assessee. On surrender of aforesaid tenancy right, the assessee was provided with one ownership flat in Tapia Building. Later on, vide registered deed dated 20.11.2023, the assessee's unit no. 3 & 4 were rectified as flat no 703 on 7th Floor, Orion Building. The assessee

subsequently sold the aforesaid ownership flat vide agreement dated 21.05.2014 for a consideration of Rs. 86,00,000/-.

7. The cost of acquisition for computation of capital gain was worked out by the assessee considering the Fair Market Value (FMV) of Rs. 45,00,000/- of the said property as on 22.07.2008 (the date of development agreement when the assessee has acquired the ownership). Accordingly, the cost of acquisition was claimed with indexation from the date of acquisition of ownership.

8. Per contra, Senior Departmental Representative (Sr. DR) vehemently supported the orders of revenue authorities.

9. We have considered the rival submissions, perused the material on record and case laws relied upon by the assessee. The relevant findings from the cast laws/ decision relied upon by the assessee are as under:

10. In **ITA No. 3051/Mum/2010 (A.Y. 2006-07), in the case of Shri Atul G. Puranik vs. ITO-12(1)(1)",** ITAT Mumbai has observed the issue regarding conversion of tenancy right in ownership and thereafter should be the cost of acquisition on transfer of such ownership property, discussed at length, and held as under:

> **II "COST OF ACQUISITION OF RIGHTS IN THE PLOT AND SECTION 49 (1)**
>
> 10. During the course of assessment proceedings, the assessee contended that the

cost of acquisition of the Plot was Rs.2,88,35,000/-, being the amount determined by applying market rate of the Plot at Rs.3950/- per sq. mtr. on the date of transfer. The AO, on the other hand, came to the conclusion that the cost of acquisition was liable to be taken at Rs.4,70,362/- as the cost at which the asset was acquired by the previous owner u/s.49. Such amount was determined by considering the rate of revised compensation at Rs.11/- per sq. mtr. The ld. CIT(A) echoed the assessment order on this point. The ld. counsel for the assessee contended that the authorities below were not justified in upholding the application of section 49(1) as such a provision was not applicable to the present facts. Per contra, the ld. DR reiterated the reasoning given by the AO in this regard.

10.1 In order to ascertain whether or not sec. 49(1) is applicable to the facts of the instant case, it is imperative to have a look at the language of the section, which is reproduced as under :

> *"49(1) Where the capital asset became the property of the assessee —*
> *(i) on any distribution of assets on the total or partial partition of a Hindu undivided family;*
> *(ii) under a gift or will;*
> *(iii) (a) by succession, inheritance or devolution, or*
> *(b) on any distribution of assets on the dissolution of a firm, body of individuals, or other association of persons, where such dissolution had taken place at any time before the 1st day of April, 1987, or*
> *(c) on any distribution of assets on the liquidation of a company, or*
> *(d) under a transfer to a revocable or an irrevocable trust, or*
> *(e) under any such transfer as is referred to in clause (iv) or clause (v) or clause (vi) or clause (via) or clause (viaa) or clause (vica) or clause (vicb) of section 47;*
>
> *(iv) such assessee being a Hindu undivided family, by the mode referred to in sub- (2) of section 64at any time after the 31st day of December, 1969,*
>
> *the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be."*

10.2 A bare perusal of the provision indicates that where the capital asset became the property of the assessee in any of the situations contemplated in clauses (i) to (iv), the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the

cost of improvements, etc. The Explanation below sub-section (1) defines the expression "previous owner of the property" to mean the last previous owner who acquired it by a mode of acquisition other than those referred to in clauses (i) to (iv) of this sub-section. The sum and substance of sec. 49(1) is that where a capital asset becomes the property of the assessee by any of the modes specified in clauses (i) to (iv), such as gift or will, succession, inheritance or devolution, etc., the cost of acquisition of such capital asst in the hands of the assessee receiving such capital asset shall be deemed to be the cost for which it was acquired by the person transferring such capital asset in the prescribed modes. The rationale behind this provision is that the transfer of such asset by the person receiving in any of the modes prescribed, should not go tax free. In order to compute capital gain on the transfer of any capital asset, the existence of cost of acquisition is an essential element. If there is no cost of acquisition and the case is not covered u/s 55(2), then the computation provisions shall fail and no liability to tax shall arise u/s 45. As no cost is actually incurred by the assessee in acquiring the assets under such modes, and on the further transfer of such assets, the capital gain is contemplated by the legislature, the mechanism of section 49 has been put in place to remedy the situation. This provision deems the cost of acquisition of the assessee as the cost for which it was acquired by the previous owner as increased by the cost of any improvements incurred by the previous owner.

10.3 However, in order to apply the mandate of sec.49(1), it is *sine qua non* that the capital asset acquired by the assessee in any of the modes prescribed in clauses (i) to (iv) should become the subject matter of transfer and only in such a situation where such capital asset is subsequently transferred, the cost to the previous owner is deemed as the cost of acquisition of the asset. It is apparent from the language of sub-sec. (1) itself which opens with the words: "Where the capital asset became the property of the assessee" and after enumerating certain situations, provides that "the cost of acquisition of *the asset* shall be deemed to be the cost for which the previous owner of the property acquired it." The phrase `the asset' used in the later part of the provision relates to the capital asset which became the property of the assessee in the given circumstances. The natural corollary which, therefore, follows is that the cost to the previous owner is considered as the cost of acquisition only of the capital asset, which becomes the property of the assessee in the modes given in clauses (i) to (iv). But once such capital asset is transferred and another capital asset is acquired, there is no applicability of sec. 49(1) to such converted asset.

10.4 Coming back to the facts of the instant case, the view point of the AO that the cost of acquisition in this case on the assigning of rights in the Plot to M/s Pathik Construction should be considered as the amount of compensation originally awarded on the acquisition of lands from assessee's father, relying on

sec. 49(1), does not appear to be sound. This provision cannot have any application at the stage when the assessee transferred the rights in the Plot to a third party in the year in question, because what has been transferred in this year is the right in the Plot, which was not inherited by the assessee from his father. The assessee only received the capital asset in the shape of right to receive compensation from the Government on the death of his father. Cost to the previous owner u/s 49(1) would be relevant at the time of computing the capital gain in the preceding year, when compensation was received in the shape of right in the Plot. Once the first transaction on the allotment of rights in the Plot came to an end, the provisions of sec. 49(1) also ceased to operate. It could not have been applied to the second independent transaction on the sale of such rights to M/s. Pathik Construction in the year in question. We, therefore, hold that the authorities below were not justified in applying sec. 49(1).

10.5 Having held that sec.49(1) is not applicable, the immediate question which arises for consideration then is that what is the cost of acquisition of rights in the Plot transferred on 25-08-2005 to M/s. Pathik Construction. The ld. A.R. argued that the market value of the plot of land on the date of allotment should be taken as the cost of acquisition, as has been held by the Tribunal in ACIT v. Nirmal Bhogilal (supra). From the factual matrix of the case, it is noted that the assessee was allotted rights in the Plot on 16-08-2004 as compensation for the acquisition of lands acquired by the Special Land Acquisition Officer way back in the years 1970/72. The value of rights in the Plot is *quid pro quo* for the acquisition of lands from assessee's father in the past. In other words, the market value such rights in the Plot was considered by the State Govt. as compensation for acquisition of land in earlier years. If such rights in the Plot had not been allotted, then the assessee would have been given cash equivalent to the market value of such rights as compensation for acquisition of lands. As it is a transaction with the Government, the question of any under-hand payment also stands ruled out. Sec. 48 deals with the mode of computation of income chargeable under the head 'Capital gains'. It provides that such income shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset, the cost of acquisition of the asset and the cost of improvement, if any, along with the expenditure incurred wholly and exclusively in connection such transfer. The full value of the consideration received or accruing as a result of the acquisition by the Govt. is the amount given as consideration for such acquisition or in the alternative the market value of any other capital asset given to the assessee against such acquisition. As in the instant case the Govt. has allotted rights in the Plot as the full value of consideration on the acquisition of lands by it in the years 1970/72, the market value of such right is to be considered as full value of consideration at the time of computing capital gain on the first transaction in the preceding year. Once a particular amount is considered as full value of consideration at the time

of its purchase, the same shall automatically become the cost of acquisition at the time when such capital asset is subsequently transferred. Thus, the full value of consideration should mean the market value of the lease rights in the Plot for sixty years at the time of the first transaction which was completed on 16-08-2004, and the same amount shall become the cost of acquisition when such rights in the Plot became subject matter of transfer in the current year on 25-08-2004. We, therefore, set aside the view taken by the ld. CIT(A) on this issue and **hold that the market value of such lease rights for sixty years in the Plot as on 16-08-2004 shall constitute the cost of acquisition for the purpose of computing capital gain when it was assigned for a consideration of Rs.2.50 cores on 25-08-2005.** The AO is directed to determine the cost of acquisition in terms indicated above after allowing a reasonable opportunity of being heard to the assessee."

In ITA No. 8862/Mum/2011, in the case of Mrs. Tauqeer Fatema Rizvi Vs, ITO, Mumbai, the relevant observations are as under:

"9. We have carefully considered the rival contentions and perused the relevant findings of the authorities below. The assessee, in the present case, is an old tenant in a building wherein, she was residing with her son in the flat area admeasuring 1,200 sq.ft. The said premise was under the joint tenancy along with her son. On 6th May 1982, the agreement was entered into by a builder, M/s. Abis Construction, whereby the builder undertook to develop the said property and in order to rehabilitate the tenants, he allocated two flats, one to the assessee and other to her son, admeasuring 728 sq.ft. and 500 sq.ft. respectively, on ownership basis as a permanent alternative accommodation. In this manner, the assessee got the acquisition of the flat on ownership basis in the proposed new building. Besides this, the assessee was also required to deposit Rs. 2,000 with the builder for society membership. Thereafter, the assessee on 29th October 2004, has sold this property and for the purpose of section 50C, the value of the same was taken at Rs. 38,78,375. The Revenue's case has been that the assessee has not incurred any cost of acquisition and, therefore, no cost can be attributed for acquiring the flat, whereas the assessee's case is that the flat was allotted to her on ownership basis in lieu of surrender of tenancy right and, therefore, the market value of the acquired flat should be taken as on the date of 16th May 1982. For the purpose of ascertaining the cost, the assessee has taken the instance of sale of similar kind of premise in the same month with the builder which was sold for Rs. 3,64,000. It is now quite settled that for the purpose of cost of acquisition under section 48 and 49, the tenancy rights is to be taken into consideration. This is evident from sub–section (2) of section 55. The builder has given the alternate flat to the assessee only by virtue of surrender of tenancy rights by the assessee. Had there been no tenancy right, the builder would have not offered any flat to the assessee, on ownership basis. Thus, it is a valuable right on which cost of acquisition has to be

determined. It is not a case that the cost of acquisition cannot be determined in lieu of the surrender of tenancy right at all. **Once the cost of acquisition is determinable, the benefit of such acquisition has to be given while computing the tax on capital gain. In the present case, the tenancy right got converted into acquisition of a flat, when the assessee must have got the possession of new flat constructed by the builder. Thus, the market value of the said flat as on the date of its possession would be the cost of its acquisition and, accordingly, such cost deductible while computing income by way of capital gains, whether long term capital gain, as the case may be.** This is as the holding period of the capital assets, being the said residential flat, would only commence from the date the assessee is put in possession thereof after its completion. Accordingly, we set aside the impugned order passed by the learned Commissioner (Appeals) and restore the issue back to the file of the Assessing Officer and direct him to take the value of the flat for the purpose of cost of acquisition from the year in which the assessee got the actual possession of the flat and then only he shall compute the capital gain. Thus, the assessee's ground is partly allowed for statistical purposes.

CIT Vs. Abrar Alvi, Hon'ble Bombay High Court (2000) 03 BOM CK 100

"1. By a sale deed dated May 2, 1992, between the appellant, on the one hand, and Sameer Mehta (HUF), on the other hand, property bearing plot No. 22. "Janki Kutir", came to be sold. The dispute is regarding the cost of acquisition of the said property. The Assessing Officer took the value as on April 1, 1981, at Rs. 750 per sq. ft. After applying the cost index, the acquisition value was worked out at Rs. 36,03,680. The appellate authority overruled the decision of the Assessing Officer. The appellate authority came to the conclusion that the assessee was a tenant. Accordingly, the appellate authority valued the cost of acquisition at a nominal amount of Rs. 2,500. Being aggrieved, the matter was carried in appeal to the Tribunal, which came to the conclusion that what was transferred, vide sale deed dated May 2, 1992, was not the tenancy rights but the building "Janki Kutir" itself and, therefore, ***what was to be allowed as deduction for working out the capital gains was not the cost of tenancy but the cost of ownership rights***. ***In view of the said finding, the Tribunal remanded the matter back to the Assessing Officer to work out the market value of "Janki Kutir" as on August 4, 1983, and allow as a deduction the cost of the asset sold to work out the capital gains. This is a pure finding of fact. No interference is called for***. *Hence, the appeal is dismissed."*

11. In backdrop of aforesaid decisions, we find force in the contentions raised by the ld. AR that the ownership property received by virtue of surrender

of tenancy rights has whatever valuable right on which cost of acquisition has to be determined. The perception is that if the value of right in the tenanted property, if surrendered without any allotment of ownership property in lieu of surrender, the assessee would have received certain cash/compensation equivalent to the market value of such right on the date of such surrender of tenancy right and acquisition of ownership. Accordingly, the market value of such exchange of rights on the date of surrender would constitutes the cost of acquisition for the purpose of computing capital gain and the cost of acquisition would be arrived at accordingly.

12. In terms of aforesaid observations, in the facts and circumstances of present case, we are of the considered view that the cost of acquisition in present case would be the FMV of the flats which the assessee has acquired in exchange of surrender of tenancy right to the developer vide development agreement dated 22.07.2008. The market value of the property shall be as per provisions of law. We accordingly direct the AO to re-compute the capital gain of the assessee and allow deduction of cost of acquisition in terms of our aforesaid observations.

13. Regarding the claim of assessee under section 54/54F, which could not be substantiated by the assessee by furnishing relevant documents which makes the assessee entitled to qualify for such claims, we therefore reject such contention of the assessee.

14. Accordingly, ground nos. 1 & 2 of the assessee are partly allowed for statistical purposes, whereas ground no.3 stands dismissed.

15. In result the appeal of assessee is partly allowed, in terms of our aforesaid observations.

Order pronounced in the open court on 06-01-2026.

Sd/-	***Sd/-***
(AMIT SHUKLA)	**(ARUN KHODPIA)**
Judicial Member	**Accountant Member**

Mumbai, Dated : 06-01-2026.
**SK, Sr. PS*

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai