

**INCOME TAX APPELLATE TRIBUNAL, MUMBAI
BENCHES, MUMBAI**

BENCH: D

**BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

ITA 1672/MUM/2026	
निर्धारणवर्ष/AssessmentYear:2018-19)	
MR. RAJESH SHAMJI FURIA 168, SHRIPATI BHAVAN, V.N. PURAV MARG, CHUNABHATTI- SION MUMBAI 400022	Vs. ITO WD41(1)(4) KAUTILYA BHAVAN, BKC, BANDRA EAST, 400051 MUMBAI
अपीलार्थीAppellant	प्रत्यर्थी Respondent
Permanent Account Number of Assessee:	AAAPF5898F
अपीलार्थीद्वारा/Appellant represented by:	Shri Kiran Mehta & Ravi Dasiya
प्रत्यर्थीद्वारा/Respondent represented by:	Shri Prasma Prakash Tewari Sr.DR.
सुनवाईकीतारीख/Date of conclusion of hearing:	02-Jul-2026
घोषणाकीतारीख/Date of pronouncement:	16-Jul-2026

आदेश / ORDER

PERSHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:

This appeal is filed by the Assessee against the order of Ld. The Commissioner of Income Tax (Appeals), NFAC, dated 30.12.2025 for the Assessment Year 2018-19. The assessee has raised the following grounds of appeal:

2. The brief facts of the case are that the assessee is an individual who filed his return of income for the Assessment Year 2018-19 on 25.07.2018 declaring a total income of ₹11,28,190/-. During the course of assessment proceedings, the Assessing Officer noticed that the assessee had acquired Flat No. 503 in the

redeveloped building "Majala Priya Girish Vihar" under an Agreement for Permanent Alternate Accommodation dated 12.01.2018. The Assessing Officer examined the applicability of section 56(2)(x) of the Income-tax Act, 1961 ("the Act"), since the stamp duty value of the flat exceeded the amount of ₹6,00,000/- paid by the assessee towards purchase of an additional 55 sq. ft. area. The assessee submitted that the new flat had been received under a redevelopment scheme in exchange for the old flat and the payment of ₹6,00,000/- was with respect only to the additional area purchased from the developer. The Assessing Officer accepted this explanation and held that the provisions of section 56(2)(x) of the Act were not attracted.

3. Thereafter, on examination of the return of income and supporting documents, the Assessing Officer observed that the assessee, along with his wife, had purchased Flat No. 2 admeasuring 510 sq. ft. in the financial year 2006-07. Pursuant to a redevelopment agreement executed with the developer during the financial year 2012-13, the old building was demolished and a new flat bearing No. 503 was allotted to the assessee having the original carpet area, 30% additional area under the redevelopment scheme, 185 sq. ft. received as a gift from the assessee's mother and an additional 55 sq. ft. purchased for ₹6,00,000/-. The new flat was handed over under the Agreement for Permanent Alternate Accommodation dated 12.01.2018 and this was sold by the assessee on 20.01.2018 for a consideration of ₹1,95,48,000/-. The assessee treated the

gain arising from such sale as long-term capital gain and claimed the benefit of exemption under section 54F of the Act in respect of purchase of another residential flat. The Assessing Officer was of the view that the transfer of the old flat to the developer under the redevelopment arrangement constituted an independent transaction from the subsequent sale of Flat No. 503. Since the new flat was allotted to the assessee on 12.01.2018 and sold by the assessee on 20.01.2018, the Assessing Officer held that the holding period was less than twenty-four months and, therefore, the gain arising from the sale constituted short-term capital gain. Accordingly, the Assessing Officer denied the claim of exemption under section 54/54F of the Act and the Assessing Officer also denied the indexation benefit and made an addition of ₹80,14,500/- being the assessee's 50% share of the short-term capital gain, in the hands of the assessee.

4. In appeal, the learned CIT(A) upheld the action of the Assessing Officer. The CIT(A) observed that the redevelopment arrangement was not a simple case of sale and purchase but involved transfer of rights in the original flat followed by allotment of a newly constructed and substantially larger flat under the redevelopment scheme. According to the CIT(A), while the assessee had an interest in the original property during redevelopment, the rights in the newly constructed Flat No. 503 crystallised only upon execution of the Agreement for Permanent Alternate Accommodation dated 12.01.2018. Since the assessee acquired a new and distinct capital asset under the said agreement and sold it

within the same financial year, the Assessing Officer was justified in treating the gain arising from its sale as short-term capital gain. The CIT(A) further observed that the payment of ₹6,00,000/- for acquisition of an additional 55 sq. ft. area and the larger area comprised in the new flat supported the fact that the newly allotted flat was not merely a continuation of the old asset but constituted a separate capital asset, thereby justifying the bifurcation adopted by the Assessing Officer between the transfer of the old flat and the sale of the newly constructed flat.

5. The learned CIT(A) also rejected the assessee's contention that the gain ought to be assessed as long-term capital gain with the benefit of indexation and exemption under section 54/54F of the Act. The CIT(Appeals) held that the Assessing Officer had rightly treated the transfer of the original flat and the subsequent sale of the redeveloped flat as two distinct taxable events. Consequently, the benefit of section 54/54F of the Act, and indexed cost could not be allowed in respect of the sale of Flat No. 503, which was held for less than the prescribed period. Accordingly, CIT(Appeals) dismissed the appeal of the assessee.

6. The assessee is in appeal before us against the order passed by CIT(Appeals) dismissing the appeal of the assessee.

7. We have heard the rival contentions and perused the material available on record. The issue arising for our consideration is whether the capital gains arising from the sale of Flat No. 503 at Majala Priya Girish Vihar Co-operative Housing Society Ltd., Mumbai are liable to be assessed as Short-Term Capital Gains or as Long-Term Capital Gains, looking into the instant facts. The other issue is whether the assessee is entitled to the benefit of indexed cost of acquisition and exemption under section 54/54F of the Act.

8. The brief facts are that the assessee, jointly with his wife, had acquired the original residential flat measuring 510 sq. ft. in the financial year 2006-07. Subsequently, the society entered into a redevelopment arrangement with the developer under the Development Agreement executed on 15.02.2013. Under the said agreement, every existing member became entitled to receive, in lieu of the existing premises, a permanent alternate accommodation comprising the original carpet area together with 30% additional carpet area without any monetary consideration. The assessee also became entitled to additional area purchased from the developer under the redevelopment scheme and a further area transferred by his mother. The Permanent Alternate Accommodation Agreement was entered into on 12.01.2018 in which Flat No. 503 was allotted to the assessee as the permanent alternate accommodation to which the assessee had already become entitled under the redevelopment arrangement. The assessee

sold the said flat on 20.01.2018 and claimed exemption under section 54/54F of the Act on investment in another residential house.

9. The Assessing Officer accepted that the transaction did not attract section 56(2)(x) of the Act since the redeveloped flat was received pursuant to the redevelopment arrangement. However, while computing capital gains, the Assessing Officer proceeded on the footing that Flat No. 503 was a completely new capital asset acquired only upon execution of the Permanent Alternate Accommodation Agreement dated 12.01.2018. Since the flat was sold on 20.01.2018, the Assessing Officer held that the holding period was less than twenty-four months and accordingly assessed the gains as Short-Term Capital Gains, denied the benefit of indexation and also rejected the claim of exemption under section 54/54F of the Act. The learned CIT(A) affirmed the said view taken by the Assessing Officer.

10. We are of the considered view that a redevelopment scheme does not result in extinguishment of the owner's proprietary rights followed by acquisition of an altogether fresh capital asset. The ownership rights of an existing member continue throughout the redevelopment process and merely undergo substitution from the old structure to the newly constructed premises. The Permanent Alternate Accommodation Agreement neither creates ownership for the first time nor results in acquisition of an independent capital asset. It

merely identifies and records the permanent alternate premises allotted in substitution of the existing premises pursuant to rights which had already accrued under the Development Agreement. Therefore, the execution of the Permanent Alternate Accommodation Agreement cannot be regarded as the starting point for computing the period of holding.

11. The controversy involved before us is no longer *res integra*. The Coordinate Bench of the Tribunal in **Mrs. Urmila Jagdish Mehta v. ACIT, Circle 33(3), Mumbai, ITA No. 5944/Mum/2024, order dated 29.12.2025**, while dealing with an identical redevelopment arrangement, after considering the judgment of the Hon'ble Bombay High Court in **PCIT v. Vembu Vaidyanathan** [(2019) 413 ITR 248 (Bom.)] and CBDT Circular Nos. 471 and 672, held that the issue relating to determination of the holding period in redevelopment cases stands concluded. The Tribunal observed:

“The issue relating to the date of acquisition and commencement of holding period in cases of allotment of flats under development or construction schemes is no longer res integra.”

12. After considering the judgment of the Hon'ble Bombay High Court, the Tribunal further held:

“The redevelopment arrangement was not a fresh purchase in isolation but was a continuation of ownership rights flowing from the original flat.”

13. The Coordinate Bench further observed:

“Mere payment of instalments towards additional area does not postpone the date of acquisition.”

.....

“Once the date of allotment/crystallization of rights is taken as the date of acquisition, it is evident that the assessee had held the capital asset for a period exceeding thirty-six months... Consequently, the asset qualifies as a long-term capital asset.”

14. The aforesaid decision governs the controversy before us. Similar is the position emerging from the binding judgment of the Hon'ble Bombay High Court in **PCIT v. Vembu Vaidyanathan (2019) 413 ITR 248 (Bom.)**, wherein, after considering CBDT Circular Nos. 471 and 672, the Hon'ble High Court held:

“The allottee gets title to the property on the issue of the allotment letter and the payment of instalments was only follow-up action and taking delivery of possession is only a formality.”

The Hon'ble High Court further held:

“The date of allotment would be the date on which the purchaser of a residential unit can be stated to have acquired the property.”

15. The above observations lay down that the period of holding cannot be counted from the date of execution of the conveyance deed or the Permanent Alternate Accommodation Agreement. What is relevant is the point of time when enforceable rights in the property come into existence. Applying the aforesaid principle, we find that the assessee acquired the original flat in the year 2006. The Development Agreement executed on 15.02.2013 recognised and crystallised the assessee's entitlement to receive the redeveloped premises consisting of the original carpet area together with 30% additional area without consideration. The additional area purchased from the developer also originated under the same Development Agreement. Also, the area transferred by the assessee's mother derived its character from rights already held by her, and upon transfer, the assessee stepped into her shoes for determining the period of holding. Therefore, each component comprised in Flat No. 503 emanated from pre-existing rights under the redevelopment arrangement and cannot be dissected into separate capital assets merely because the Permanent Alternate Accommodation Agreement was executed subsequently.

16. We are also unable to agree with the finding of the learned CIT(A) that the original flat was transferred to the developer and thereafter a new independent asset came into existence. The redevelopment agreement itself shows that the developer merely undertook reconstruction of the society building in consideration of development rights. The existing members never purchased the redeveloped flats as independent purchasers. Rather, they continued to hold their ownership interest in the land and the building, which was substituted by the permanent alternate accommodation allotted in the redeveloped structure. Thus, the redeveloped flat was continuation of the existing capital asset and not acquisition of a fresh capital asset for the first time on 12.01.2018.

17. At this stage, it is also necessary to determine the relevant date from which the period of holding is to be reckoned. The counsel for the assessee has contended that the holding period should be reckoned from the date of acquisition of the original flat in December, 2006, whereas, in the alternative, it was argued that even if the rights in the redeveloped premises are considered to have crystallised under the Development Agreement dated 15.02.2013, the capital asset would nevertheless qualify as a long-term capital asset on the date of its sale on 20.01.2018. We find merit in the alternative contention of the assessee. The original ownership rights indisputably originated in the year 2006 and those rights continued throughout the redevelopment process. The Development Agreement executed on 15.02.2013 specifically recognised and

crystallised the assessee's enforceable right to receive the permanent alternate accommodation comprising the original area, the additional area receivable free of cost under the redevelopment scheme and the additional area agreed to be purchased from the developer. Thus, even assuming, for the sake of argument, that the period of holding is reckoned from the date of the Development Agreement, 15.02.2013, the capital asset was held by the assessee for almost five years before its sale on 20.01.2018, which is well beyond the statutory period prescribed for treating the asset as a long-term capital asset. Therefore, it is not necessary for us to finally adjudicate whether the holding period should commence from the original acquisition in the year 2006 or from the crystallisation of rights under the Development Agreement in the year 2013, since under either view the asset qualifies as a long-term capital asset.

18. Once this legal position is accepted, the inevitable consequence is that the capital asset sold by the assessee was held for a period exceeding the statutory period prescribed under the Act. Accordingly, the gains arising therefrom are liable to be assessed as Long-Term Capital Gains. Consequently, the assessee is entitled to the benefit of indexed cost of acquisition in accordance with law. Further, it is an admitted position that the assessee invested the capital gains in purchase of another residential house within the period prescribed under section 54/54F of the Act. Therefore, having held that the gains are Long-Term Capital

Gains, the denial of exemption under section 54/54F of the Act by the Assessing Officer and the learned CIT(A) cannot be sustained.

In view of the foregoing discussion, and respectfully following the binding judgment of the Hon'ble Bombay High Court in **PCIT v. Vembu Vaidyanathan (2019) 413 ITR 248 (Bom.)** as well as the recent decision of the Coordinate Bench in **Mrs. Urmila Jagdish Mehta v. ACIT (ITA No. 5944/Mum/2024, order dated 29.12.2025)**, we hold that the capital gains arising on sale of Flat No. 503 are assessable as **Long-Term Capital Gains** and not as **Short-Term Capital Gains**.

19. The addition of ₹80,14,500/- made by the Assessing Officer and confirmed by the learned CIT(A) is accordingly directed to be deleted. The Assessing Officer is further directed to allow the benefit of indexed cost of acquisition and to grant exemption under section 54/54F of the Act in accordance with law.

20. Accordingly, the grounds raised by the assessee are allowed.

Order pronounced in the open court on **16-Jul-2026**.

Sd/-
VIKRAM SINGH YADAV
ACCOUNTANT MEMBER

Sd/-
SIDDHARTHA NAUTIYAL
JUDICIAL MEMBER

Mumbai
Dated: **16-Jul-2026**.
Sharath, PS

Copy to:

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