आयकर अपीलीय अधिकरण, बेंगलुरू पीठें, बेंगलुरू

INCOME TAX APPELLATE TRIBUNAL, BANGALORE BENCHES, BANGALORE

BENCH: A

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT AND SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA 1917/BANG/2025 (निर्धारण वर्ष/Assessment Year: **2018-19**)		
KAMLESH PUKHRAJ TALERA NO. 11, KASTURBA ROAD, BANGALORE-560011, KARNATAKA	**Vs.**	**DEPUTY COMMISSIONER OF INCOME TAX,** CIRCLE-5(1)(1) BMTC BUILDING, 80 FEET ROAD, KORAMANGALA BANGALORE-560095, KARNATAKA
अपीलार्थी **Appellant**		प्रत्यर्थी **Respondent**
Permanent Account Number of Assessee**:**		**AARPP0177C**

अपीलार्थी द्वारा/Appellant represented by:	**Shri Padam Chand Khincha, CA and Shri Sudheendra B, Advocate**
प्रत्यर्थी द्वारा/Respondent represented by:	**Sri Somanath S Ukkali, CIT DR**

सुनवाई की तारीख/Date of conclusion of hearing:	**18-Jun-2026**
घोषणा की तारीख/Date of pronouncement:	**14-Aug-2026**

आदेश / ORDER

PER SHRI PRASHANT MAHARISHI, VICE PRESIDENT:

1. This appeal is filed by Shri Kamlesh Pukhraj Talera, [the assessee/appellant], for Assessment Year 2018-19 against the appellate order dated 8 July 2025 passed by the National Faceless Appeal Centre, Delhi [the learned CIT(A)]. By the said order, the Ld. CIT(A) dismissed the assessee's appeal against the assessment order dated 27 September 2021 passed by the National Faceless Assessment Centre, Delhi [the learned AO] under section 143(3) read with section 144B of the Income-tax Act,

1961 [the Act]. The assessment determined the assessee's total income at ₹10,53,04,555, as against the returned income of ₹4,63,12,620, by confirming an addition of ₹6,01,53,500 on account of sale of transferable development rights. This addition is the matter of appeal before us.

2. The issue in this appeal is that the assessee sold transferable development rights for Rs 60153500/-, received in exchange for land surrendered by him. Therefore, the sale consideration from those rights is exempt on the ground that the TDRs had no ascertainable cost of acquisition and, consequently, the computation of capital gains fails, and the amount is not chargeable to tax.

3. The Assessee has raised the following grounds of appeal:

1. **<u>General ground:</u>**

1.1 The learned Commissioner of Income Tax (Appeals), NFAC (hereinafter referred to as CIT (A) for short) has erred in passing the order under section 250 in the manner passed by him. The order so passed to the extent prejudicial to the appellant is bad in law and liable to be quashed.

2. **<u>Addition of long-term capital gains on sale of TDR amounting to Rs. 6,01,53,500</u>**

2.1 The learned Assessment Unit erred in assessing the long-term capital gains on sale of TDR amounting to Rs. 6,01,53.500 and the learned CIT(A), NFAC erred in confirming the said addition.

2.2 The learned Assessment Unit and CIT(A) erred in not appreciating that cost of acquisition of TDR is not capable of ascertainment and hence the computation mechanism as per section 48 fails. Consequently, no capital gains are chargeable to income tax on sale of TDR.

2.3 The learned CIT(A) erred in holding that cost of acquisition of TDR is taken as NIL even after concluding that the amendment to section 55(2)(a) by Finance Act 2023 w.e.f. 1.4.2024, providing for cost of acquisition of any other intangible asset or any other right for which no consideration has been paid, shall be taken as NII., is applicable prospectively effective from AY 2024-25.

2.4 The reasons adduced by the learned AO and CIT(A) in assessing the impugned sum of Rs. 6,01,53,500 is bad in law and liable to be quashed.

2.5 On facts and circumstances of the case and law applicable, impugned addition of long-term capital gains on sale of TDR amounting to Rs. 6,01,53,500 should be deleted.

3. **<u>Levy of interest under section 234A, 234B and 234D:</u>**

3.1 The levy of interest under section 234A, 234B and 234D is bad in law and liable to be quashed.

4. In brief, the facts are that the assessee, an individual, filed his return of income for the year under consideration on 2 October 2018, declaring a

total income of ₹46,312,620, which included income from house property by way of rent. On perusal of the return, it was found that in Schedule EI the assessee had disclosed a sum of ₹60,153,500, said to have been received on the sale of transferable development rights, and had claimed the same as exempt, contending that it was a capital receipt not chargeable to tax. The learned Assessing Officer accordingly issued a notice calling upon the assessee to furnish particulars of the said claim, together with documentary evidence in support thereof.

5. The assessee argued that transferable development rights are not a capital asset and that the amount received from their sale is a capital receipt, which should be exempt from tax. To support this claim, he cited several judicial precedents; however, the Ld. Assessing Officer, after reviewing these submissions and precedents, found no merit in the argument. He determined that transferable development rights fall under the definition of "capital asset" as per section 2(14) of the Act. Consequently, he considered the ₹60,153,500 received from the sale liable to tax as long-term capital gains under "Capital gains." He treated the entire sale amount as long-term capital gains and calculated taxable gains at ₹58,989,310. A draft assessment order and a show-cause notice were issued, and the final assessment order was passed on September 27, 2021, under sections 143(3) and 144 B of the Act, assessing total income at ₹105,304,555, compared with the returned income of ₹46,312,620.

6. Aggrieved by the assessment order, the assessee filed an appeal before the Ld. CIT(A). In paragraph 6.4 of the order, the Ld. CIT(A) concluded that the transferable development rights, the sale of which generated the disputed receipt, are considered a "capital asset" under section 2(14) of the Income-tax Act, 1961. He further stated that the consideration for this transfer is subject to tax as long-term capital gains under section 45 of the Act, with the cost of acquisition deemed nil for purposes of section 48 of the

Act. Consequently, he upheld the addition made by the Assessing Officer and dismissed the assessee's grounds in this regard.

7. Being aggrieved by the order passed by the learned CIT(A), the assessee is in appeal before us, assailing the order on the grounds enumerated in paragraph 2 hereinabove.

8. We have heard Shri Padamchand Khincha, Chartered Accountant, and Shri Sudheendra B., Advocate, the learned authorised representatives appearing on behalf of the assessee, as also Shri Somanath S. Ukkali, the learned CIT-DR appearing on behalf of the Revenue and have perused the material available on record.

9. The learned authorised representative submitted a paper book detailing facts across 147 pages [factual paper book], along with a compilation of 15 judicial precedents spanning 276 pages [case law compilation]. He also presented the deed of relinquishment dated 20 October 2010, executed between the assessee and the Bruhat Bengaluru Mahanagara Palike, along with a general overview of transferable development rights in Bengaluru real estate.

10. Additionally, reliance was placed on the assessment order dated 10 February 2021 in the case of Shri Dinesh K. Talera [brother of the assessee] for Assessment Year 2018-19. There, on similar facts and after considering the explanation dated 19 February 2021, the Assessing Officer did not tax income of ₹110,069,668 from transferable development rights. It was argued that the rule of parity should apply, and since this income was not taxed in the hands of the assessee's brother, it should also not be taxed in the assessee's hands either. Support was drawn from the Honourable Karnataka High Court's decision in Chittharanjan A. Dasannacharya vs. Commissioner of Income Tax-V, Bangalore [2020] 122 taxmann.com 162 (Karnataka)/ [2021] 276 Taxman 433 (Karnataka)/ [2020] 429 ITR 570 (Karnataka) [23-10-2020], particularly paragraph 9, where the Court noted

the Revenue's acceptance of similar treatment in other cases based on decision of coordinate benches with a contrary stance in the case before it.

11. The learned authorised representative submitted that the transfer of TDR is not taxable in the hands of the assessee because no cost of acquisition was incurred or is not capable of being determined. Consequently, the capital gains cannot be computed, and the charging provision fails as the computation mechanism itself breaks down. Referring to section 55(2)(a) of the Income-tax Act, he contended that, in the absence of any ascertainable cost of acquisition for the transferable development rights, no capital gains can be brought to tax.

12. The learned authorised representative further referred to page 119 of the paper book, which contains the notice dated 23 September 2019 issued under section 143(2) of the Income-tax Act, 1961 for Assessment Year 2018-19. The notice states that the return was selected for scrutiny to verify the 'refund claim '. He submitted that the assessee had disclosed, in the return of income, exempt income of ₹60,153,500 from the sale of TDR, treating it as a capital receipt. Since the case was selected only for limited scrutiny to verify the refund claim, he contended that making an addition in respect of the exempt income was beyond the scope of the assessment proceedings.

13. The assessee also contended that the learned CIT(A) erred in treating the cost of acquisition of the transferable development rights as Rs Nil despite holding that the amendment to section 55(2)(a) by the Finance Act, 2023, effective from 1 April 2024, applies prospectively from Assessment Year 2024-25.

14. Referring to the case-law compilation, the learned authorised representative relied on the decision of the coordinate bench in Land Breeze Co-operative Housing Society Ltd. v. ITO, Ward 19(3)(2) (2012) 20 taxmann.com 196 (Mumbai). He submitted that paragraph 15 of that decision treats

transferable development rights as an intangible asset. He also referred to section 14B of the Town and Country Planning Act to explain the circumstances in which such TDRs are granted, the purpose for which land is surrendered, and the way transferable development rights are issued.

15. The learned authorised representative also confirmed that no further legal arguments were required, apart from those already advanced on the merits of the issue.

16. The learned CIT-DR vehemently supported the orders of the lower authorities. He submitted that the assessee allegedly earned exempt income of ₹60,153,500 from the sale of transferable development rights, arising from a deed of relinquishment under which the assessee surrendered his land to the corporation free of cost and without encumbrances. According to him, the transferable development rights received by the assessee had a definite cost, namely, the value of the land surrendered. Therefore, the assessee was entitled only to deduction of such cost of acquisition while computing capital gains.

17. He further contended that computation of capital gains was possible, as the assessee had incurred a cost by surrendering land in exchange for the transferable development rights. Referring to section 55(2)(a) of the Act, he submitted that the provision had no application because this was not a case where the cost of acquisition could not be determined; rather, the cost was the value of the land surrendered.

18. He also argued that reliance on the assessment order in the case of another assessee could not confer any benefit on the present assessee, since the Income-tax Act does not recognise a principle of parity in this manner, and it was not even known whether that assessment order had attained finality. In any event, taxation must be determined separately for each assessee and for each assessment year.

19. He further submitted that the decision of the Hon'ble Karnataka High Court reported in 429 ITR 570 was distinguishable, as that case concerned the tax treatment of capital gains arising on cashless exercise of stock options, where in some cases the amount was taxed as salary income and in others as short-term capital gains. In paragraph 10 of that decision, the High Court merely noted that the Revenue could not take one stand in the assessee's case and challenge the same position in another assessee's case where coordinate bench decisions were involved. According to the learned CIT-DR, accepting the assessee's argument would mean that if the Revenue failed to tax income in one assessee's case, it could never tax similar income in any other case, in eternity and eternally, even where the law permits taxation. Such an interpretation, he submitted, is not supported by law.

20. We have carefully considered the rival contentions and perused the orders of the lower authorities. The relevant facts, briefly stated, are that the assessee, in his return of income, claimed ₹60,153,500 received from the sale of transferable development rights as a capital receipt not chargeable to tax. The learned Assessing Officer questioned this claim because transferable development rights constitute a capital asset under section 2(14) of the Income-tax Act, and their transfer during the year attracts capital gains tax under section 45. In response, by letter dated 3 April 2021, the assessee submitted that income chargeable under the head "Capital gains" must be computed in accordance with section 48, and that sections 49 and 55 prescribe rules for determining the cost of acquisition in specified cases. According to the assessee, the assets referred to in section 55(2), such as goodwill, trademarks, brand names, rights to manufacture or process goods, business rights, tenancy rights, stage carriage permits and loom hours, did not cover TDRs. Therefore, in the absence of a specific provision prescribing the cost of acquiring TDRs, the computation mechanism failed, and no capital gains could be charged. The assessee also contended that several courts had held that where an asset has no

ascertainable cost of acquisition, any amount received on its transfer cannot be brought to tax. Reliance was placed on the decision of the Hon'ble Supreme Court in CIT v. B.C. Srinivasa Setty (1981) 128 ITR 294, the amendment to section 55(2), the decision of the Hon'ble Bombay High Court in CIT v. Sambhaji Nagar Co-operative Housing Society Ltd. (2015) 370 ITR 325, and other judicial precedents. The assessee also relied on the decision of the Hon'ble Supreme Court in PNB Finance Ltd. v. CIT. After considering the submissions, the learned Assessing Officer held that transferable development rights are capital assets within the meaning of section 2(14) and that the amount of ₹60,153,500 received on their sale was taxable as long-term capital gains under the head "Capital gains."

21. As per Section 14B of the Karnataka Town and Country Planning Act, 1961 empowers the State Government to provide for the transfer of development rights from one parcel of land or building to another. Further, the notification dated 7 April 2017 in UDD 66 PPC 2017 lays down the policy, standards and detailed procedure governing transferable development rights in Karnataka. The Director of Town and Country Planning, Karnataka, is the authority empowered to issue transferable development rights certificates. Such rights are incorporeal and movable property rights, ordinarily transferred through contract. The relationship between the owner of the sending property and the owner or developer of the receiving property is governed by a TDR agreement. Where land or a building fall within a notified TDR zone and has unused development potential, the owner may apply to the Director of Town and Country Planning, who, upon verification, issues a TDR certificate specifying the quantum of development rights, including the built-up area and balance rights available for transfer. The certificate may then be sold or transferred to the owner or developer of a receiving property through a TDR agreement, and the transferee may use the rights on receiving property in the same TDR zone, subject to applicable rules. TDR certificates may also be mortgaged, charged or used as security for loans and are generally valid for a specified period from the date of

issue. The underlying agreement for the transfer or sale of TDRs must be registered under the Registration Act, 1908. Thus, transferable development rights facilitate planned and sustainable urban development within a specified region.

22. In the present case, the assessee owned land and a building admeasuring 2,839.55 sq. mtrs. at SY No. 10, situated at Harlur Village, Jala Hobli, Bangalore North Taluk, Ward No. 05. The property was required by the Commissioner, Bruhat Bengaluru Mahanagara Palike, for widening the existing 30-feet road on the 250 Double Road stretch from Bellandur Cross to Bangalore Road, and for widening Road from National Highway 72 to Country Club, in accordance with the terms of the Government notification dated 18 January 2005. The assessee agreed to receive a development rights certificate under the terms and conditions of that notification and, in turn, to surrender his above-stated land. Accordingly, the assessee transferred the land free of cost and without encumbrances to the Bruhat Bengaluru Mahanagara Palike and, in return, received transferable development rights certificates. It appears that the assessee subsequently sold those transferable development rights to a builder/developer and received consideration of ₹60,153,500.

23. Section 45 of the Income-tax Act provides that profits or gains arising from the transfer of a *capital asset* are chargeable to income-tax under the head "Capital gains" and are deemed to be the income of the previous year in which the transfer takes place. Therefore, for section 45 to apply, there must be a *capital asset*, a t*ransfer* of that asset during the relevant previous year should happen, and gains arising from such transfer then can be taxed.

24. Section 2(14)(a) defines "capital asset" broadly to include property of any kind held by an assessee, whether or not connected with his business or profession. This wide definition includes transferable development rights and there is no dispute on this.

25. In the present case, the assessee transferred such development rights during the year and received consideration of ₹60,153,500, which he claimed as exempt income. The issue, therefore, is the cost of acquisition of the transferable development rights sold by the assessee. As noted above, the assessee surrendered 2,839 sq. mtrs. of land. Thus, this is not the case where the assessee received transferable development rights in respect of his own property without transferring any asset in return.

26. Under section 2(47) of the Act, the definition of “transfer” in relation to a capital asset includes an exchange. In the present case, the assessee exchanged land measuring 2,839 sq. mtrs. for transferable development rights. Upon transfer of those rights, the assessee received cash consideration of ₹60,153,500.

27. Thus, in the present case, all requirements of section 45 are satisfied. The transferable development rights constituted a capital asset; the assessee transferred those rights during the relevant year and received consideration of ₹60,153,500. The cost of acquiring those rights is attributable to the 2,839 sq. mtrs. of land surrendered by the assessee. Accordingly, the capital gain is capable of computation under section 48 and is chargeable to tax under the head “Capital gains.”

28. However, we find that there are two transfers during the year, one of land and consideration received is TDRs and second of TDR for which cash is received. Though, while computing capital gains on the sale of transferable development rights for ₹60,153,500, the learned Assessing Officer did not allow the cost of acquisition of those rights. Such cost is attributable to the 2,839 sq. mtrs. land owned by the assessee and surrendered to the Bruhat Bengaluru Mahanagara Palike. The learned Assessing Officer is therefore directed to compute capital gain correctly by allowing proper deductions and cost of acquisition while computing the capital gains.

29. We now consider the decision of the Hon'ble Bombay High Court in CIT v. Sambhaji Nagar Co-operative Housing Society Ltd. (2015) 54 taxmann.com 77 (Bombay), relied upon by the learned authorised representative. The foundational legal architecture rests on decision of Honourable supreme court in Commissioner of Income-tax vs. B.C. Srinivasa Setty [1981] 5 Taxman 1 (SC)/ [1981] 128 ITR 294 (SC) [19-02-1981]. Honourable Supreme Court held, unambiguously, that all transactions encompassed by Section 45 of the Income-tax Act, 1961 must necessarily fall under the governance of its computation provisions. An asset in the acquisition of which no cost "at all can be conceived" cannot be subjected to capital gains tax. The computation mechanism under Section 48 of the Act — which requires deduction of "cost of acquisition" from full value of consideration — becomes unworkable where cost is conceptually impossible to determine, and the charging provision in Section 45 accordingly fails.

30. Applying this principle to self-generated TDR, the Honourable Bombay High Court in Commissioner of Income-tax-18 vs. Sambhaji Nagar Co-op. Hsg. Society Ltd. [2015] 54 taxmann.com 77 (Bombay)/ [2015] 229 Taxman 226 (Bombay)/ [2015] 370 ITR 325 (Bombay)/ [2015] 273 CTR 430 (Bombay) [11-12-2014] held that where TDR was generated by the plot or property itself by virtue of the 1991 Development Control Regulations, and the assessee did not part with any identified asset to acquire the TDR, no cost of acquisition was determinable. Accordingly, on transfer of such TDR to a developer, no capital gains were assessable. The Revenue's SLP against this decision was dismissed by the Honourable Supreme Court. The ratio of Sambhaji Nagar was followed by the coordinated benches in ITO v. Lotia Court Co-operative Housing Society Ltd., (2008) 12 DTR 396 (Mum-Trib): 118 TTJ 199 (Mum-Trib), ITO v. Kirit Raojibhai Patel, ITA No. 2339/Mum/2017 (Order dated 14.02.2022), New Shailaja CHS v. ITO (ITAT Mumbai), and Maheshwar Prakash-2 Co-operative Housing Society Ltd. v. ITO, (2009) 313 ITR (AT) 103 (Mum-Trib): 20 DTR 269 (Mum-Trib) and many more decisions.

31. These decisions share a common factual thread that in each case, the TDR accrued to the assessee from its pre-existing land holding by operation of regulatory entitlement, with no separately identifiable asset parted with and no separately incurred cost. Thus, in those cases, the assessee, a co-operative housing society, acquired additional construction rights in the form of transferable development rights due to the promulgation of the Development Control Regulations, 1991. Instead of exercising those rights, society transferred them to a developer in exchange for consideration. The rights arose from a change in law and the grant of additional floor space index under the Development Control Regulations, and not from the assessee's transfer or exchange of any existing property. On those facts, it was held that the transfer of such rights did not give rise to taxable capital gains.

32. The present case is materially different. Here, the assessee received transferable development rights in exchange for surrendering his existing land and building. The cost of acquisition of those rights is therefore ascertainable, the cost attributable to the land surrendered by the assessee being the cost of acquisition of TDRs.

33. The learned authorised representative also relied on the decision of the coordinate bench in Land Breeze Co-operative Housing Society Ltd. v. ITO, 28 taxmann.com 196, which was upheld by the Hon’ble Bombay High Court on 11 March 2015 in Tax Appeal No. 624 of 2013. That decision also arose under the Development Control Regulations, 1991. Therefore, its facts are similar to those in Sambhaji Nagar Co-operative Housing Society Ltd., which we have already distinguished in the preceding paragraph. Thus, other Several other judicial precedents have also been relied upon before us. However, none of those decisions applies to a case where the assessee incurred an identifiable cost by surrendering existing land and, in consideration thereof, received transferable development rights that were later sold to a developer for ₹601 lakhs.

34. As the situation under consideration is materially different. Here, the assessee parts with a quantifiable, identifiable capital asset i.e. land and building in exchange for TDR. TDR is not self-generated; it is received as consideration or compensation for the transfer of the land. Therefore, two immediate consequences flow from this *(a) There is a transfer of land as* surrender or relinquishment of land is "transfer" within Section 2(47) of the Act, which includes "relinquishment of the asset." On such transfer, capital gains (if any) in respect of the land itself become chargeable in the year of surrender, computed by reference to the fair market value of the TDR received (which constitutes the full value of consideration). Section 50C and Section 48 would apply to the land transfer in the usual manner. *Secondly (b) The TDR has an identifiable cost as* cost of acquisition of the TDR received in exchange for the land is the fair market value of the land surrendered, or the value attributed to the TDR, as the case may be. This is the critical point of departure from the self-generation cases.

35. Further When the TDR is subsequently transferred, the question of "no cost of acquisition" being the entire basis of the judicial precedents relied up on before us does not arise. The assessee has paid a price for the TDR, namely, the land surrendered. The cost of the TDR is the cost of the land so surrendered (or such portion thereof as is attributable to it). Accordingly, the computation mechanism under Sections 45 and 48 of the Act is fully operable, and the capital gains on subsequent sale of TDR must be computed by deducting from the sale consideration the cost of the TDR being the value of the land given up.

36. Thus, where TDR is received against surrender of a portion of land, the cost of the land surrendered is the cost of the TDR, and transfer of TDR would accordingly give rise to capital gains i.e. LTCG or STCG depending on the holding period of the land. Thus, in this case the cost is not merely difficult to determine but it is ascertainable with reasonable precision as it is the cost of the land surrendered (proportionately, if only a part of the land was

given up). The doctrine of computation failure as propounded by the Honourable supreme court in *B.C. Srinivasa Setty* [supra] has no application where the computation mechanism, though complex, remains operative. Thus, where TDR is acquired by actual payment of consideration, in this case, by surrender of land, the TDR is not a "right for which no consideration has been paid for acquisition." The amendment targets self-generated assets where cost is conceptually absent. Where the assessee has paid a price (land), Section 55(2)(a) as amended does not override that actual cost. The cost of acquisition of the TDR in this scenario remains the value of the land surrendered and is not rendered nil by the 2023 amendment.

37. The facts of the case though look simple but have two different events. *The event no 1 is Surrender of land in exchange for TDR*. This is a transfer of a capital asset (land) within Section 2(47) of The Act. The full value of consideration is the fair market value of the TDR received (the exchange value). Capital gains on the land are to be computed in the year of surrender. Section 50C would apply if the stamp duty value of the land exceeds the consideration attributed. The question of whether the TDR received constitutes "money or money's worth" has been answered affirmatively in the context of exchange transactions by the honourable supreme court in case of Commissioner of Income-tax vs. D.P. Sandu Bros. Chembur (P.) Ltd. [2005] 142 Taxman 713 (SC)// [005] 273 ITR 1 (SC)/ [2005] 193 CTR 578 (SC) [31-01-2005] affirming *Cadell Wvg. Mill Co. (P.) Ltd*. v. *CIT* [2001] 116 Taxman 77 (Bom.) which dealt with tenancy rights, is instructive in that rights received in exchange for relinquishment were treated as consideration for the capital gains computation. Second event is *Subsequent transfer of TDR where* Capital gains arise in the year of transfer of TDR. Cost of acquisition of TDR is equal to value of land surrendered to acquire it (or fair market value of TDR at the time of its acquisition, as that is what was given up). Holding period of TDR runs from the date of acquisition of TDR (i.e., date of surrender of land). Whether

LTCG or STCG depends on whether TDR is held for more than 24 months (it being immovable property within the extended definition, or a right therein). The sale consideration on subsequent transfer is to be brought to tax net of this cost. Thus, we do not find any merit in the case of assessee about the non-taxability of the above sum under the head capital gains.

38. We next consider the learned authorised representative's contention that the notice dated 23 September 2019 issued under section 143(2) was only for verification of the refund claim and, therefore, the assessment should have been confined to limited scrutiny of Refund due to the assessee. On this basis, it was argued that the learned Assessing Officer could not examine the taxability of the exempt income from sale of transferable development rights. We find no merit in this contention. The notice placed on page 119 of the paper book does not state that the case was selected for limited scrutiny. It merely records that the return of income was selected for scrutiny and that the <u>initial issue</u> for verification was the refund claim. This cannot be read as restricting the Assessing Officer from examining the taxability of the consideration received on sale of transferable development rights. It is also relevant that the assessee paid self-assessment tax of ₹1 crore and claimed a refund of ₹9,171,930, which substantially represents the self-assessment tax amount, with a minor variation as a refund due. The reason for paying self-assessment tax and then claiming refund thereof is not apparent. In these circumstances, we reject the assessee's contention that the case was selected only for limited scrutiny. In our view, the assessment was open to complete scrutiny; the notice did not indicate in any manner that this was a limited-scrutiny case; further, the initial reason for verification was a refund due to the assessee. Thus, the learned Assessing Officer was competent to examine the chargeability of ₹60,153,500 received on sale of transferable development rights.

39. The next argument of the learned authorised representative concerns the assessment order in the case of Shri Dinesh Pukhraj Talera, stated to be

the assessee's brother, for Assessment Year 2018-19. In that case, the Assessing Officer noted that the assessee had not produced proof in support of income of ₹60,153,400 from the sale of transferable development rights, which was claimed as an exempt capital receipt. The Assessing Officer obtained copies of two sale deeds relating to the transfer of such development rights and, after verification, treated the claim as in order. The learned authorised representative also produced a letter dated 19 February 2021 addressed by that assessee to his Assessing Officer in response to a notice issued under section 142(1) dated 10 February 2021. On perusal of that notice, we find that the Assessing Officer merely called for proof of sale of transferable development rights for ₹60,153,400, the dates of receipt of the consideration, and the statutory provision under which the exemption was claimed, along with its extract. The Assessing Officer did not examine the provisions of the Act, the facts of that case and whether there was a transfer of a capital asset or whether capital gains were chargeable. Further, the assessment order in that case was passed by the Assessing Officer, and its finality is not known. In any event, for the reasons discussed above, the amount cannot be held non-taxable in the hands of the present assessee merely because similar income was not taxed in the hands of another assessee. The record also indicates that, in that case, the Assessing Officer accepted the assessee's claim without properly examining the facts and the law. Although the decision in CIT v. Sambhaji Nagar Co-operative Housing Society Ltd., 370 ITR 325, was cited before him, he accepted the claim without comparing the facts of that case with those before him; we have shown those are quite different. In our view, such acceptance was incorrect.

40. Now we consider the decision of the Hon'ble Karnataka High Court in Chittharanjan A. Dasannacharya vs Commissioner of Income Tax-V, Bangalore [2020] 122 taxmann.com 162 (Karnataka)/ [2021] 276 Taxman 433 (Karnataka)/ [2020] 429 ITR 570 (Karnataka) [23-10-2020], relied upon by the learned authorised representative. In that case, the issue concerned

the taxability of employee stock options granted to a consultant and whether the receipts were taxable as salary, as contended by the Assessing Officer, or as capital gains, as claimed by the assessee. Since the Revenue had accepted the same treatment as capital gains in the cases of several other assessees in tribunal decisions, the Honourable Court held that the Revenue could not adopt a contrary stand in that case.

41. Relying on that principle, the learned authorised representative argued that, because the Assessing Officer in the case of Shri Dinesh Pukhraj Talera for Assessment Year 2018-19 had accepted ₹60,153,400 from the sale of transferable development rights as an exempt capital receipt, the Revenue could not take a different view in the present assessee's case.

42. We are unable to accept this contention. The Honourable Karnataka High Court relied on the decision of the Hon'ble Supreme Court in Berger Paints India Ltd. v. CIT (2004) 266 ITR 99, where it was held that, if the Revenue has accepted the c*orrectness of a legal position laid down by a High Court in the case of one assessee,* it cannot, without just cause, challenge that position in the case of another assessee.

43. In the present case, there is no binding High Court decision on identical facts holding that capital gains are not chargeable where there is a capital asset, a transfer of that asset, consideration received, and an ascertainable cost of acquisition represented by the land surrendered in exchange for transferable development rights. What is relied upon here is only an assessment order in another assessee's case, which may still be subject to revision, rectification or reopening. Further, unlike the case before the Karnataka High Court, there is no accepted line of coordinate bench decisions in favour of the assessee.

44. According to us an assessment order in one case cannot be treated as the Revenue's final acceptance of the legal position in all such cases eternally and its entirety. An assessment order may be erroneous and therefore

subject to revision, may be upset by reopening, and is also susceptible to rectification. If the assessee's argument were accepted, the statutory powers of revision, reassessment and rectification under sections 263, 147 and 154 of the Act would be rendered ineffective. Such an interpretation is neither warranted nor permissible.

45. Though, the broader principle of "consistency" or "parity in treatment" by the recognised by the Supreme Court in *Radhasoami Satsang vs. Commissioner of Income-tax [1992] 60 Taxman 248 (SC)/ [1992] 193 ITR 321 (SC)/ [1991] 100 CTR 267 (SC) [15-11-1991] and* the decision of Honourable Karnataka high court do propounded the principles of good governance in taxation but they have their own Limitations too. Honourable supreme court itself recognised the same in para 15 of those decisions as under: -

> **"15.** The counsel for the revenue had told us that the facts of this case being very special, nothing should be said in a manner which would have general application. We are inclined to accept this submission and would like to state in clear terms that the decision is confined to the facts of the case and may not be treated as an authority on aspects which have been decided for general application."

Moreover, the argument of non-taxation by a co-assessee's AO does not create legal right in the assessee is also not acceptable because Revenue consists of multiple AOs, each having independent jurisdiction over their respective assessees. An error committed or a concession made by the AO of the brother — whether by oversight, lack of material, or incorrect application of law or for any other reasons, does not bind the AO of the assessee and does not confer a vested right on the assessee to be similarly treated. The Supreme Court has consistently held that the Revenue cannot be estopped from <u>correctly applying the law</u> merely because it applied it incorrectly in another case or in the case of a co-assessee. The principle of estoppel does not run against a statute as held by the Honourable supreme court in Dai-Ichi Karkaria Ltd. vs. Union of India 2000 taxmann.com 1350 (SC)/ [2000] 119 ELT 516 (SC) [11-04-2000] (1999) 7 SCC 448 (SC). Further If the AO of the brother erred in not taxing the amount as the assessee himself seems to concede, since he acknowledges the "law is against him" then the correct response in law by revenue is to bring that error to the attention of the appropriate revisionary authority (Section 263 or Section 147, as the case may be) rather than to extend the error to the assessee's case or to other cases. The maxim *ex dolo malo non oritur actio* i.e. no right arises from a wrong applies with strong and full force. Further what is indefensible in law cannot be defended by pointing to another's error. Further, the principle enunciated in *Chittharanjan A. Dasannacharya* [Supra] and in the broader line of parity and consistency principle operates where the Revenue actively takes contradictory positions on the same transaction i.e. taxing one party while granting relief to the other for inconsistent reasons or accepting one characterisation on one hand and rejecting the identical characterisation on the other hand. It does not foster mere non-taxation by inaction, oversight, or limitation and it does not constitute the Revenue "taking a position." For the principle to apply, there must be a conscious Revenue acceptance which should be ideally evidenced by an order that the amount is not taxable. A scrutiny order that is silent on a point, or an order that has been passed without the AO independently applying his mind to that specific question, does not amount to an "acceptance" of the assessee's position.

46. It is also true that Income tax Act taxes income in the hands of the person who receives it or in whose hands it is assessable under the charging provisions. The fact that the brother was not taxed does not alter the liability of the assessee under the Act. Each person's income is independently assessed under Section 139/143, and the Act does not contemplate a principle of derivative exemption based on another taxpayer's assessment. Accordingly, the assessee's contention is rejected.

47. In the result, we find no merit in the assessee's appeal. So, we confirm the orders of the ld. lower authorities taxing the sale consideration of a TDR as capital gain. Though the assessee has not made any plea for granting the cost of land as the cost of acquisition of TDR, In the interest of justice, we direct the learned Assessing Officer to compute the capital gains on the sale consideration of ₹60,153,500 from transferable development rights after reducing the cost of acquisition attributable to the land exchanged, as discussed above in terms of Section 48(ii) of the Act. Accordingly, ground No. 2 is dismissed.

48. Ground No. 1 is general in nature, and ground No. 3 is consequential. Both grounds are therefore dismissed.

49. Accordingly, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 14.08.2026.

Sd/-	Sd/-
SOUNDARARAJAN K. **JUDICIAL MEMBER**	**PRASHANT MAHARISHI** **VICE PRESIDENT**

Bangalore

Dated: 14th August, 2026.

/DSM/

Copy to:

1	**KAMLESH PUKHRAJ TALERA** NO. 11, KASTURBA ROAD, BANGALORE-560011, KARNATAKA
2	**DEPUTY COMMISSIONER OF INCOME TAX,** CIRCLE-5(1)(1) BMTC BUILDING, 80 FEET ROAD, KORAMANGALA BANGALORE-560095, KARNATAKA
3	THE PCIT / CIT,
4	THE CIT(APPEALS)
5	THE D.R., ITAT, BANGALORE BENCH

BY ORDER

ASSISTANT REGISTRAR
I.T.A.T., BANGALORE