IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

AND

SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.3050/MUM/2026
Assessment Year: 2016-17

Hardinge House Co Op Hsg Soc Limited Survey No 540, Malbar & Cumballa Hill Division, 56/62A, Gowalia Tank, Mumbai - 400036 (PAN: AAAAH2504D)	vs	ITO Ward- 19(1)(5), Mumbai
Appellant		Respondent

Present for:

Appellant by : Shri Rahul Sarda, Advocate
Respondent by : Shri Hemanshu Joshi, Sr. DR
Date of Hearing : 09.06.2026
Date of Pronouncement : 31.08.2026

O R D E R

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by assessee is against the order of the Ld. Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre ['NFAC'], Delhi, Order No. ITBA/NFAC/S/250/2025-26/1085872435(1) dated 11.02.2026 passed against the assessment order by Income Tax Officer, Ward - 19(1)(5), Mumbai u/s 143(3) of the Income-tax Act, 1961 ('the Act') dated 28.12.2018 for Assessment Year 2016-17.

2. The sole issue raised by the assessee in its grounds of appeal relates to the addition of ₹18,40,18,300/- made on account of long-term capital gains in the hands of the assessee-society, arising out of transactions reported in the Annual Information Return (AIR) in connection with a redevelopment agreement executed by the society on behalf of its members.

3. Briefly stated, the facts are that the assessee is a cooperative housing society consisting of 14 members. Assessee filed its return of income on 26.07.2016 reporting the total income at ₹91,000/-. The case was selected for limited scrutiny under CASS to examine capital gains/loss on the sale of property. Ld. Assessing Officer noted from the AIR details that certain immovable property transactions totaling ₹18,40,18,300/- were registered under the PAN of the society. Ld. Assessing Officer treated the entire consideration of ₹18,40,18,300/- as long-term capital gains in the hands of the society and made an addition accordingly in the assessment order passed u/s 143(3) of the Act. Aggrieved, assessee went in appeal before the ld. CIT(A), who confirmed the addition.

4. Before us, the ld. Counsel for the assessee invited our attention to ld. Assessing Officer's order, where the factual matrix of the society entering into a redevelopment project was noted. It was submitted that the assessee entered into a Development Agreement dated 04.07.2015 with Sambhavparshva Developers Pvt. Ltd. This Development Agreement (DA) was registered by the developer and valuation done for the purpose of stamp duty payment amounting to Rs.13,95,86,500/- As per terms of DA, there is no transfer/sale of land and assessee society continues to be the

owner of land. Assessee society has not received any consideration from the developer. Since there is no transfer/sale, no capital arises. It had given only the re-development rights to the developer as per clause no. 2 of the DA. Pursuant to the DA, developer further entered into Permanent Alternate Accommodation Agreements with individual existing society members for providing alternate accommodation in the redeveloped building in lieu of existing premises and the same were also registered. In these agreements society is only a confirming party. Relevant Clause no. 2 of the DA reads as under:

> *"The society and its members have unanimously appointed the developer to redevelop the said property and the said society has granted only development rights and no other rights to the said developer and the society has followed the guidelines laid down in law and have passed all the necessary resolutions as required in law"*

4.1. Developer also entered into a permanent alternate accommodation agreement with the members of the assessee society. It is a party to the said agreements. Details of such agreements are tabulated below:

Sr. No.	Particulars of Agreement	Market Value for the purpose of stamp duty	Page Nos. of paperbook
1.	Development Agreement dated 09.07.2015	13,95,86,500	47-122
2.	PAAA dated 30.03.2016	84,49,000	147-213
3.	PAAA dated 30.03.2016	78,52,500	214-314
4.	PAAA dated 30.03.2016	67,59,800	315-405
5.	PAAA dated 30.03.2016	60,79,600	406-495
6.	PAAA dated 30.03.2016	59,92,500	496-572

7.	PAAA dated 30.03.2016	46,52,100	573-661
8.	PAAA dated 30.03.2016	46,46,300	662-701
	Total.	18,40,18,300	

4.2. Attention was drawn to the notification issued by the Government of Maharashtra under section 79A of the Maharashtra Co-operative Societies Act, 1960, placed in the paper book, read with Clause 11 therein, which lays down mandatory guidelines requiring a cooperative housing society to execute the builder agreement on behalf of its members. The Development Agreement executed by the society on behalf of its members unequivocally demonstrates that the society acted in a representative capacity. Reference was also made to Clause 28 read with Schedule 5, containing specific details in respect of hardship compensation/rent available to the individual members of the society on account of redevelopment under the builder agreement.

4.3. Ld. Assessing Officer has added income from capital gain only on the basis of information received from AIR which reflects the details of DA. Case of the assessee is that even after entering into the DA, the assessee society continues to be the owner of the land/plot and there is no sale/transfer of the land/plot. What has been given to the developers is only the development rights for the purpose of redevelopment of the old building. No sale consideration has been received by the assessee society. To substantiate this fact, copy of bank statements were furnished by the assessee society.

5. We have heard the rival contentions and perused the material available on record. Before we delve into the issue, specific reference is made to Clause 28 of the DA which mentions that Society represents all its members in this agreement. Also, the terms of Clause 24 of this DA mentions that members of the said society confirm the terms and conditions of this DA and agrees to abide by the same. Schedule II, Schedule V, and Schedule IV of this DA lists down the details of existing members and the units and area held by them in the existing building known as 'Hardinge House', as well as details of hardship compensation payable by the developer to the members and details of monthly displacement compensation payable by the developer to the members. These schedules are extracted below for ready reference.

SCHEDULE – II

DETAILS OF EXISTING MEMBERS AND THE UNITS AND AREA HELD BY THEM IN THE EXISTING BUILDING KNOWN AS "HARDINGE HOUSE"

Sr. No.	FLOOR	FLAT/SHOP NO	Name of Member	carpet area (In Sq.ft)	Shares held with Member
1	GROUND	Shop No. 1	BALDEV M GUPTA	419.76	10
2	GROUND	Shop No. 2	Dr. JAMSHED ADI LALKAKA & Dr.NAVROZE ADI LALKAKA	460.69	10
3	GROUND	Shop No. 3	KUTUB B. DHARIWALA & BATUL KUTUB DHARIWALA	429.48	10
4	GROUND	Shop No. 4	M/s. B. BAMBOAT & CO PVT LTD	2128.15	10
5	GROUND	Shop No. 5	PYARALI HABIB KUTCHI	40	10
6	GROUND	Shop No. 6	ASHOK MEHARCHAND GUPTA	561.88	10
7	FIRST	FLAT NO. 3	HARMAAN R. A. J. MADON & HAVANA F. AIBARA	2198.86	5
8	FIRST	FLAT NO. 4	RATI SOLI BATLIBOI	1958.94	5
9	SECOND	FLAT NO. 5A	MR ASHOKKUMAR R SHAH & MRS NIRMALA A SHAH	998.1	5
		& 5B	MR ASHISH A SHAH & MRS RINA A SHAH	1202.96	
10	SECOND	FLAT NO. 6A	MR RAJENDRA K SAVANI & MRS MEENA R SAVANI	851.85	5
		& 6B	MR RASHMIKANT K SAVANI & MRS ARNIKA R SAVANI	1568.9	
[illegible]	THIRD	FLAT NO. 7A	ROMIL D. PARIKH & NISHA.R.PARIKH	1568.9	5
12	THIRD	FLAT NO. 7B	NILESHKUMAR RASIKLAL SHAH & DIMPLE NILESHKUMAR SHAH	1749.62	5
13	THIRD	FLAT NO. 8A	UTTAMBHAI P SHAH	1188.14	5
14	THIRD	FLAT NO. 8B	DILIPKUMAR HARILAL SHAH, PARESH HARILAL SHAH & KISHOR HARILAL SHAH	1189.62	5

SCHEDULE – V

DETAILS OF HARDSHIP COMPENSATION PAYABLE BY THE DEVELOPER TO THE MEMBERS

S. No.	NAME OF MEMBER	EXISTING FLAT/SHOP NO.	HARDSHIP COMPENSATION AMOUNT (Rs.)
1	BALDEV M GUPTA	Shop No. 1	1372020/-
2	Dr. JAMSHED ADI LALKAKA & Dr. NAVROZE ADI LALKAKA	Shop No. 2	1417645/-
3	KUTUB B. DHARIWALA & BATUL KUTUB DHARIWALA	Shop No. 3	1417645/-
4	M/s. B. BAMBOAT & CO PVT LTD	Shop No. 4	6935056/-
5	PYARALI HABIB KUTCHI	Shop No. 5	130358/-
6	ASHOK MEHARCHAND GUPTA	Shop No. 6	1795684/-
7	HARMAAN R. A. J. MADON & HAVANA F. AIBARA	FLAT NO. 3	3532707/-
8	RATI SOLI BATLIBOI	FLAT NO. 4	3213330/-
9	MR ASHOKKUMAR R SHAH & MRS NIRMALA A SHAH	FLAT NO. 5A	1495860/-
	MR ASHISH A SHAH & MRS RINA A SHAH	& 5B	1717470/-
10	MR RAJENDRA K SAVANI & MRS MEENA R SAVANI	FLAT NO. 6A	1373649/-
	MR RASHMIKANT K SAVANI & MRS ARNIKA R SAVANI	& 6B	2160687/-
11	ROMIL D. PARIKH & NISHA R PARIKH	FLAT NO. 7A	1406239/-
12	NILESHKUMAR RASIKLAL SHAH & DIMPLE NILESHKUMAR SHAH	FLAT NO. 7B	2178611/-
13	UTTAMBHAI P SHAH	FLAT NO. 8A	[illegible]
14	DILIPKUMAR HARILAL SHAH, PARESH HARILAL SHAH & KISHOR HARILAL SHAH	FLAT NO. 8B	1634365/-

THE SEAL OF THE JOINT SUB-REGISTRAR, MUMBAI CITY-3

Secretary

SCHEDULE VI

DETAIL OF RESERVED PREMISES

Flat No. 1304 on 13th floor having carpet area 1000 sq ft

FOR HARDING HOUSE CO-OP. HSG. SOCIETY LTD.

CHAIRMAN SECRETARY TREASURER

For SAMBHAVPARSHVA DEVELOPERS PVT

Dir

SCHEDULE – IV

DETAILS OF MONTHLY DISPLACEMENT COMPENSATION PAYABLE BY THE DEVELOPER TO THE MEMBERS

Sr. No.	FLOOR	FLAT/SHOP NO	Name of Member	FIRST YEAR (12 Months)
1	GROUND	Shop No. 1	BALDEV M GUPTA	1263000
2	GROUND	Shop No. 2	Dr. JAMSHED ADI LALKAKA & Dr. NAVROZE ADI LALKAKA	1305000
3	GROUND	Shop No. 3	KUTUB B. DHARIWALA & BATUL KUTUB DHARIWALA	1305000
4	GROUND	Shop No. 4	M/s. B. BAMBOAT & CO PVT LTD	6384000
5	GROUND	Shop No. 5	PYARALI HABIB KUTCHI	120000
6	GROUND	Shop No. 6	ASHOK MEHARCHAND GUPTA	1653000
7	FIRST	FLAT NO. 3	HARMAAN R. A. J. MADON & HAVANA F. AIBARA	2861760
8	FIRST	FLAT NO. 4	RATI SOLI BATLIBOI	2603040
9	SECOND	FLAT NO. 5A	MR ASHOKKUMAR R SHAH & MRS NIRMALA A SHAH	1211760
		& 5B	MR ASHISH A SHAH & MRS RINA A SHAH	1391280
10	SECOND	FLAT NO. 6A	MR RAJENDRA K SAVANI & MRS MEENA R SAVANI	1112760
		& 6B	MR RASHMIKANT K SAVANI & MRS ARNIKA R SAVANI	1750320
11	THIRD	FLAT NO. 7A	ROMIL D. PARIKH & NISHA.R.PARIKH	1139160
12	THIRD	FLAT NO. 7B	NILESHKUMAR RASIKLAL SHAH & DIMPLE NILESHKUMAR SHAH	1763520
13	THIRD	FLAT NO. 8A	UTTAMBHAI P.SHAH	1230240
14	THIRD	FLAT NO. 8B	DILIPKUMAR HARILAL SHAH, PARESH HARILAL SHAH & KISHOR HARILAL SHAH	1323960

FOR HARDING HOUSE CO-OP. HSG. SOCIETY LTD.

CHAIRMAN SECRETARY TREASURER

For SAMBHAVPARSHVA DEVELOPERS PVT. LTD

Director

5.1. We also take note of the directive issued by the Cooperation, Marketing and Textiles Department of the Government of Maharashtra under Section 79A of the Maharashtra Cooperative Societies Act, 1960, to all the cooperative housing societies in the State of Maharashtra regarding redevelopment of buildings of cooperative housing societies, which is dated 03.01.2009. Among other things, Clause 11 of this directive deals with the agreement to be entered into with the developer. In this clause, it is stated that, subject to the terms and conditions approved by the general body meeting of the society, an agreement should be entered into with the developer within one month under the guidance from the architect and public project management consultant appointed by the society.

5.2. Admittedly, it is a fact on record that the assessee society, as a representative of its members, executed a development agreement with the developer, since its members decided to go for redevelopment of their building. The developer also entered into permanent alternate accommodation agreements with the members of the assessee society. It is also a fact on record that the assessee society did not receive any part of sale consideration into its bank account. Ld. AO has merely placed reliance on the AIR information wherein the sale transactions were reported, and thus he took the same as sales made by the assessee society.

5.3. In the given set of facts as stated above, the moot point for consideration is whether the capital gains, if any, arising out of the redevelopment transaction can be taxed in the hands of the cooperative housing society or in the hands of its individual members. It is a wellsettled principle of law that direct tax liability cannot be transferred or foisted upon another entity when the underlying transaction demonstrates that the rights in the flats belong to the individual members. The society merely holds the legal title to the land/building as a collective representative of its members. The redevelopment agreement executed by the society, pursuant to the directives issued u/s 79A of the Maharashtra Co-operative Societies Act, 1960, was undertaken strictly for and on behalf of its members. Since direct tax liability cannot be transferred to another person, and given that the redevelopment project undertaken by the assessee-society is evidently demonstrated to be on behalf of its members, the taxability, if any, would arise only in the hands of its members and not in the hands of the society.

5.4. It was also pointed out by the ld. Counsel for the assessee that for the subsequent assessment year, i.e. AY 2017-18, ld. Assessing Officer dropped the reassessment proceedings after accepting the explanation of the assessee society regarding identical permanent alternate accommodation agreements executed between the developer, the respective members, and the assessee society.

5.5. In the conspectus of the above detailed discussion, both on fact and law, as well as considering the development in the subsequent assessment year AY 2017-18, we find that the addition made by ld. AO is not justified as he has considered the said transaction in the hands of the assessee society. The addition so made is deleted. Grounds raised by the assessee in this regard are allowed.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 31st August, 2026.

Sd/-	Sd/-
[Amit Shukla]	[Girish Agrawal]
Judicial Member	Accountant Member

Dated: 31st August, 2026

MP, Sr. PS
Copy to :

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

BY ORDER,
(Dy./Asstt.Registrar)
ITAT, Mumbai