आयकर अपीलीय अधिकरण न्यायपीठ मुंबईमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JM
&
SHRI ARUN KHODPIA, AM

I.T.A. No. 3358/Mum/2026
(Assessment Year: 2022-23)

Ritu Wadhwa Makhija 301, Platina, 3rd Floor, Plt No.C-59, G Block, Bandra Kurla Complex, Bandra (East), Mumbai-400098	Vs.	**ACIT, Central Circle 5(4)** 4th Floor, Kautilya Bhavan, G Block, Bandra Kurla Complex, Bandra (East), Mumbai-400051
PAN: AAJPW9485C		
Assessee- अपीलार्थी / Appellant	:	**Revenue-**प्रत्यर्थी/ Respondent

Assessee by	:	Shri Ravi Kant Pathak
Revenue by	:	Shri Amit Kumar Singh, Sr. DR
Date of Hearing	:	23.07.2026
Date of Pronouncement	:	16.10.2026

O R D E R

Per Arun Khodpia, AM:

This appeal is preferred by the assessee, directed against the order of the Commissioner of Income Tax Appeals – 53, Mumbai [in short, "the Ld. CIT(A)"], dated 31.01.2026 for the Assessment Year (AY) 2022-23, arises from the assessment order under section 143(3) of the Income Tax Act, 1961 [in short, "the Act"] dated 28.03.2024, passed by Assistant Commissioner of Income Tax, Central Circle 5(4), Mumbai [in short, "the Ld. AO"].

2. The grounds of appeal raised by the assessee are as under:

> *"1. The CIT(A) erred in confirming addition of Rs.80,00,000/- being difference in sale consideration and the cost of acquisition of property under the head "Income from Other Source" as against Rs. 58,824/- declared by the Appellant in its return of income under the head "Capital Gain" by holding that the Appellant failed to establish the existence of any capital assets or/any genuine transfer therof.*
>
> *The Appellant submits that on the facts and circumstance of the case, the right in property constitutes an asset and gain on transfer thereof is assessable as Capital Gains, thus addition made by the AO and confirmed by the CIT(A) shall be deleted.*
>
> *Your Appellant craves leave to add, to alter or to amend the aforesaid ground of appeal."*

3. Brief Facts of the Case are, that the assessee filed her return of income for Assessment Year 2022–23 on 02.11.2022, declaring total income of Rs.29,56,480. The assessee derives income from salary, capital gains and other sources and is associated as a director/partner and promoter/shareholder with entities forming part of the Wadhwa Group, engaged in the business of real estate development. The return was processed under section 143(1) of the Income-tax Act, 1961 ("the Act"), and the case was selected for scrutiny under CASS. Notices under sections 143(2) and 142(1) were issued during the course of assessment proceedings, in response to which the assessee furnished details and explanations.

4. The principal dispute arose from the assessee's transaction concerning Flat No. 602, Panorama Residency, Ghatkopar, Mumbai. The assessee had booked the flat with M/s Wadhwa Residency Pvt. Ltd., a group concern in which she was a promoter and shareholder, vide allotment letter dated 30.10.2017, for an agreed

consideration of Rs.9.10 crore. Against the agreed consideration, the assessee had paid Rs.4.80 crore. During the relevant previous year, the developer bought back the flat under an agreement dated 20.03.2022 for a consideration of Rs.9.90 crore. The assessee stated that part of the consideration was received after deduction of tax at source and the balance was adjusted against the amount payable towards the original booking.

5. In the return of income, the assessee offered long-term capital gains of Rs.58,824 on the transaction, computed after taking into account the cost of acquisition and the benefit of indexation. During the assessment proceedings, the Assessing Officer questioned the treatment of the transaction as a transfer of a capital asset, primarily on the ground that no registered agreement for purchase had been executed and the assessee had neither acquired possession of the flat nor established ownership rights therein.

6. In response, the assessee contended that the allotment letter, read with the part payment made towards the agreed consideration, created enforceable contractual rights in the flat. It was submitted that such rights constituted a capital asset within the meaning of section 2(14) of the Act and that their extinguishment upon the subsequent buy-back amounted to a transfer under section 2(47). The assessee relied upon CBDT Circular Nos. 471 dated 15.10.1986 and 672 dated 16.12.1993, and various judicial decisions, including the decision of the Hon'ble

Bombay High Court in PCIT vs. Vembu Vaidyanathan ITA No. 1459/2016 [Bombay High Court], in case of Shri Girish P. Rupani. vs Acit 23(1) (ITA No. 1028 Mum 2018), Shri Keyur Hemant Shah, ITA No. 6710/Mum/2017 [ITAT Mumbai], Praveen Gupta v. Assistant Commissioner of Income Tax, (2012) 20 Taxmann 308 [ITAT Delhi], in support of the contention that the date of allotment could be recognised as the date of acquisition for capital gains purposes.

7. The Assessing Officer, however, rejected the assessee's explanation, observing that the flat had never been registered in the assessee's name, possession had not been taken, and the property continued to remain under the ownership and control of the developer. The Assessing Officer further noted that the flat had not been reflected as an investment in the assessee's books in earlier years and treated the arrangement with the group concern as a financial transaction lacking commercial substance. Accordingly, the surplus of Rs.80,00,000, being the difference between the buy-back consideration of Rs.9.90 crore and the agreed purchase consideration of Rs.9.10 crore, was assessed under the head "Income from Other Sources" instead of "Capital Gains". The claim of indexation was also rejected. The assessment was completed under section 143(3) read with section 147 of the Act, determining the total income at Rs.1,08,97,652 and initiating penalty proceedings under section 270A.

8. Aggrieved by the assessment, the assessee preferred an appeal before the Ld. CIT(A), challenging, inter alia, the treatment of the surplus as income from other sources, the consequential levy of interest under sections 234B and 234D, the non-grant of TDS credit of Rs.18,951, and the initiation of penalty proceedings under section 270A. The assessee reiterated that the allotment letter created a valuable and transferable right in the property, which constituted a capital asset, and that the extinguishment of such right on buy-back attracted the provisions relating to capital gains.

9. The Ld. CIT(A), vide order dated 31.01.2026 passed under section 250 of the Act, dismissed the ground challenging the addition of Rs.80,00,000. The Ld. CIT(A) held that, in the absence of a registered agreement and possession of the flat, the assessee had failed to establish the existence of an enforceable capital asset or its transfer. The addition under the head "Income from Other Sources" was accordingly upheld. The grounds relating to interest under sections 234B and 234D and initiation of penalty proceedings under section 270A were also dismissed. However, in respect of the assessee's claim for TDS credit of Rs.18,951, the Assessing Officer was directed to allow the credit, after verification in accordance with law. Consequently, the appeal was partly allowed.

10. Being aggrieved with the affirmation of disallowance by the Ld. CIT(A), the assessee preferred an appeal before us.

11. At the outset, the Ld. Authorised Representative of the assessee (in short, "Ld. AR") reiterated the facts of the case and referred to the relevant paragraphs of the assessment order as well as the order passed by the Ld. CIT(A). He drew our attention to the allotment letter dated 30.10.2017, evidencing the allotment of the subject flat to the assessee for an agreed consideration of Rs.9.10 crore. Against the said consideration, the assessee had paid Rs.4.80 crore, while the balance amount of Rs.4.30 crore was payable before taking possession of the flat. The allotment letter specified 30.10.2017 as the date of allotment. The Ld. AR also referred to the assessee's ledger account, which recorded payment of Rs.4.80 crore on 30.10.2017 through ICICI Bank Limited, vide cheque No. 000366 dated 30.10.2017.

12. Further, the Ld. AR referred to the letter dated 20.03.2022 issued by the director of M86 Residency Pvt. Ltd., stating that the subject flat allotted to the assessee had been bought back for a lump-sum consideration of Rs. 9.90 crore. It was contended that, upon allotment, the assessee had acquired rights in the capital asset, which were subsequently surrendered in consideration of the amount received from the developer. Accordingly, the transaction was claimed to be in the nature of a transfer of a capital asset, and the resultant capital gain was computed after deducting the indexed cost of acquisition and offered to tax.

13. To support the aforesaid contention, the Ld. AR relied upon CBDT Circular No. 471 dated 15.10.1986 and Circular No. 672 dated 16.12.1993. It is submitted that, in terms of the principles explained in the said circulars, where an allotment letter is issued upon payment of the first instalment towards the cost of construction, the allotment is to be regarded as final, unless the allotment is cancelled or the allottee withdraws from the scheme. On this basis, the Ld. AR contended that the assessee had acquired rights in the subject flat on 30.10.2017 and that the subsequent surrender of such rights gave rise to capital gains.

14. The Ld. AR further placed reliance on the decision of the Hon'ble Bombay High Court in PCIT v. Vembu Vaidyanathan (2019) 101 taxmann.com 436 (Bom.), wherein it was held that, for the purposes of computation of capital gains, the date of allotment of a flat by the Delhi Development Authority (DDA) constitutes the date on which the assessee is deemed to have acquired the property. It was further submitted that the Special Leave Petition preferred by the Revenue against the said decision was dismissed by the Hon'ble Supreme Court, as reported in (2019) 108 taxmann.com 339 (SC).

15. The Ld. AR also relied upon the decision of the Mumbai Bench of the Tribunal in Mukesh Sohanraj Vardhan v. ITO (ITA No. 4255/Mum/2018) for Assessment Year 2012–13, order dated 28.08.2020, wherein the Tribunal held that the extinguishment of the assessee's rights in the proposed building, acquired

pursuant to an earlier allotment letter, constitutes a transfer of a capital asset within the meaning of Section 2(47) of the Income-tax Act, 1961, attracting the provisions of Section 45 of the Act. On the strength of the aforesaid judicial precedents, the Ld. AR contended that the consideration received upon surrender of the allotment rights was chargeable to tax under the head "Capital Gains".

16. The Ld. AR submitted that the assessee had correctly computed the income arising from the surrender of rights in the flat allotted in October 2017, which was subsequently bought back by the promoters of the building on 20.03.2022. It was contended that the surrender of the allotment rights constituted a transfer of a capital asset within the meaning of Section 2(47) of the Income-tax Act, 1961, and that the resultant gains were chargeable to tax under the head "Capital Gains", in accordance with Section 45 of the Act. In support of this contention, reliance was placed on the aforesaid decision of the Tribunal and the judicial precedents cited in support thereof. The Ld. AR accordingly submitted that the finding of the Ld. AO, treating the difference between the consideration received and the cost of acquisition as income under the head "Income from Other Sources", was contrary to the applicable legal position. It was, therefore, contended that the impugned addition made under the said head was liable to be deleted.

17. In rebuttal, the Ld. Senior Departmental Representative (in short, "Ld. Sr. DR"), representing the Revenue, submitted that the subject flat was allotted to the assessee in 2017 and that the assessee was also one of the promoters of the building. It was contended that the assessee had not satisfactorily explained before the Revenue authorities the accounting treatment accorded to the transaction in her books of account. The Ld. Sr. DR further submitted that the CBDT circulars relied upon by the assessee were distinguishable on facts and were not applicable to the assessee's case, having regard to the nature of the entities and transactions contemplated therein. It was also contended that the judicial precedents relied upon by the assessee were distinguishable on facts and, therefore, did not govern the issue under consideration.

18. The Ld. Sr. DR further alleged that the allotment of the flat followed by its buyback by the promoters or builders constituted a colourable device intended to evade tax. It was also submitted that the computation of the cost of acquisition adopted by the assessee was not in accordance with the applicable provisions of law and required verification. Accordingly, the Ld. Sr. DR opposed the assessee's claim for computation of the resultant income under the head "Capital Gains" and submitted that the correctness of the computation of the cost of acquisition warranted examination.

19. In rejoinder, the Ld. AR submitted that the complete computation of the cost of acquisition and the resultant capital gains had been furnished before the Ld. AO and was available at pages 3 and 45 of the assessee's paper book. In response to the objection raised by the Ld. Sr. DR regarding the correctness of the computation, the Ld. AR reiterated that the computation had been placed on record before the lower authorities. For the sake of completeness, the relevant computation is reproduced hereunder:

Statement showing amount received by the assessee on the sale of Property

Date	Particulars	Amount	Remarks
20-03-2022	Sale Consideration	9,90,00,000	
20-03-2022	Less: TDS	9,90,000	Refer Form 26QB
	Receivable	9,80,10,000	
02-03-2022	Less: Amount payable to the builder (Balance Consideration)	4,25,70,000	The assessee has to pay balance amount of rs. 4,25,70,000 to the builder for the purchase of property, which is Set-off from the receiveble of sale of Property. (refer Note 3 - Below)
20-06-2022	**Total Payment received by the assessee**	**5,54,40,000**	Refer the ledger attached

Note 3

statement showing Amount payable to the builder for the Purchase of Property

Date	Particulars	Amount	Remarks
30-10-2017	Total Cost of Acquisition	9,10,00,000	
30-10-2017	Amount Paid	4,75,20,000	Net amount of Rs. 4,75,20,000 was paid after deducting TDS of Rs. 4,80,000
30-10-2017	TDS on above	4,80,000	
	Balance consideration adjusted	4,30,00,000	
02-03-2022	TDS on above	4,30,000	Refer Form 26QB
02-03-2022	**Amount payable to the builder**	**4,25,70,000**	

STATEMENT OF LONG TERM CAPITAL GAIN

Particular	Date of Purchase/ Year	Date of Sale/ Year	Sales Price	Indexed Cost	Transfer Expenses	Indexed Cost of Improvement	Exempt	Capital Gain	Stamp Value	Sale Value	Purchase Cost	Improvement Cost
602, PANAROMA	30/10/2017	20/03/2022	99000000.00	55941176.00	0.00	43000000.00	0.00	58824.00	10514748 4.00	99000000.00	48000000.00	43000000.00
Total			99000000.00	55941176.00	0.00	43000000.00	0.00	58824.00	10514748 4.00	99000000.00	48000000.00	43000000.00

602, PANAROMA - Value of property as per stamp valuation authority: 105147484; Cost: 48000000 * (317/272) = 55941176; Cost of Improvement: BALANCE CONSIDERATION-43000000 * (317/317) = 43000000

20. We have considered the rival submissions, perused the orders of the lower authorities and examined the material available on record, including the allotment letter dated 30.10.2017, the details of payment made by the assessee, the

correspondence evidencing the subsequent buy-back of the flat, and the computation of capital gains placed at pages 3 and 45 of the assessee's paper book. The issue for our consideration is whether the rights acquired by the assessee pursuant to the allotment letter constitute a capital asset, whether the subsequent extinguishment of such rights gives rise to a transfer within the meaning of section 2(47) of the Income-tax Act, 1961, and whether the resultant surplus is assessable under the head "Capital Gains" or "Income from Other Sources".

21. At the outset, it is pertinent to note that section 2(14) of the Act defines a "capital asset" to include property of any kind held by an assessee, subject to the exclusions specified therein. The expression "property of any kind" is of wide import and is not confined to ownership of immovable property evidenced by a registered conveyance. Accordingly, the absence of a registered sale deed or delivery of possession, by itself, does not conclude the question whether the assessee acquired a capital asset. The nature and enforceability of the rights created under the allotment letter, considered in conjunction with the terms of allotment and the surrounding circumstances, require examination.

22. For a proper appreciation of the legal position governing the issue under consideration, the relevant observations from the judicial precedents relied upon by the Ld. AR are reproduced hereunder:

(i) PCIT vs. Vembu Vaidyanathan ITA No. 1459/2016

[Bombay High Court]

4. Having heard learned counsel for the parties, we notice that the CBDT in its circular No.471 dated 15th October, 1986 had clarified this position by holding that when an assessee purchases a flat to be constructed by Delhi Development Authority ("D.D.A." for short) for which allotment letter is issued, the date of such allotment would be relevant date for the purpose of capital gain tax as a date of acquisition. It was noted that such allotment is final unless it is cancelled or the allottee withdraw from the scheme and such allotment would be cancelled only under exceptional circumstances. It was noted that the allottee gets title to the property on the issue of allotment letter and the payment of installments was only a follow-up action and taking the delivery of possession is only a formality.

5. This aspect was further clarified by the CBDT in its later circular No.672 dated 16th December, 1993. In such circular representations were made to the board that in cases of allotment of flats or houses by co-operative societies or other institutions whose schemes of allotment and consideration are similar to those of D.D.A., similar view should be taken as was done in the board circular dated 15th October, 1986. In the circular dated 16th December, 1993 the board clarified as under:

> *"2. The Board has considered the matter and has decided that if the terms of the schemes of allotment and construction of flats/houses by the co-operative societies or other institutions are similar to those mentioned in para 2 of Board's Circular No.471, dated 15-10-1986, such cases may also be treated as cases of construction for the purposes of sections 54 and 54F of the Income-tax Act."*

It can thus be seen that the entire issue was clarified by the CBDT in its above mentioned two circulars dated 15th October, 1986 and 16th December, 1993. In terms of such clarifications, the date of allotment would be the date on which the purchaser of a residential unit can be stated to have acquired the property. There is nothing on record to suggest that the allotment in construction scheme promised by the builder in the present case was materially different from the terms of allotment and construction by D.D.A.. In that view of the matter, CIT appeals of the Tribunal correctly held that the assessee had acquired the property in question on 31st December, 2004 on which the allotment letter was issued.

6. Learned counsel for the revenue has also argued that in any case the assessee was not entitled to exemption under Section 54F of the Income Tax Act, 1961 ("the Act" for short). Since the assessee had held multiple residential units which would disqualify the assessee from claiming the exemption on it as was held by the Assessing Officer. From the record we notice that before the CIT appeals the assessee had produced additional evidence to suggest that the other units previously held by the assessee were discarded earlier and that at the relevant time the assessee did not hold any other residential unit. Quite apart from it being a pure question of fact, we do not find any indication in the

impugned judgment of the Tribunal though the revenue had argued such a contention in its appeal before the Tribunal.

(ii) Mrs. Urmila Jagdish Mehta Vs. ACIT, (2026) 182 Taxmann.com 12 (Mumbai- Trib)

11. We have carefully considered the rival submissions, perused the orders of the Assessing Officer and the CIT(A), and examined the material placed before us in the paper book to which our attention was drawn during the course of hearing.

12. The short controversy before us is with regard to the determination of the holding period of the residential flat sold by the assessee on 31.12.2013 and, consequentially, whether the capital gains arising there from are chargeable as long-term capital gains or short-term capital gains.

13. We reiterate the material facts, which are largely undisputed, as under:

(i) The assessee was the owner of a residential flat in New Sarvottam Co-operative Housing Society Ltd., Mumbai, originally acquired in the year 1988.

(ii) Pursuant to redevelopment of the society, a Development Agreement dated 02.02.2006 was entered into between the society and M/s Kumar Builders, whereby the members, including the assessee, became entitled to a new flat in the redeveloped building with enhanced area.

(iii) An allotment letter dated 24.11.2006 was issued by the society in favour of the assessee, allotting Flat No. B-1008 in the redeveloped building.

(iv) A Personal Alternate Accommodation Agreement dated 27.12.2010 was entered into between the assessee and the builder, pursuant to which the assessee became entitled to the redeveloped flat admeasuring 900 sq. ft., comprising exchange area and additional purchased area of 161 sq. ft.

(v) The assessee claims to have received possession of the redeveloped flat vide possession letter dated 22.11.2010 issued by the builder.

(vi) The flat was ultimately sold by the assessee vide registered sale agreement dated 31.12.2013.

(vii) The Assessing Officer treated the capital gains arising from the sale of the flat as short-term capital gains, primarily on the ground that the building was completed only in May 2012, that the last instalment towards the additional area was paid on 01.04.2013, and that the possession prior thereto was improbable.

(viii) The CIT(A), after calling for a remand report and considering the reply of the builder under section 133(6), upheld the action of the Assessing Officer and confirmed the addition of Rs. 2,11,44,607/-as short-term capital gains.

14. At this stage, it is relevant to note that 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. The Hon'ble Bombay High Court in

Vembu Vaidyanathan (supra), after considering CBDT Circular Nos. 471 and 672, has categorically held that:

> *"In terms of such clarifications, the date of allotment would be the date on which the purchaser of a residential unit can be stated to have acquired the property." (Para-5)*
>
> *It was also noted in para 4 that "the allottee gets title to the property on the issue of allotment letter and the payment of installments was only follow-up action and taking the delivery of possession is only a formality."*

15. The Hon'ble High Court further held that where the allotment scheme is akin to the DDA scheme, the date of allotment is to be treated as the date of acquisition for the purpose of computing the holding period under the Income-tax Act. The aforesaid decision is a binding jurisdictional precedent and squarely applicable to the facts of the present case.

16. In the present case, the record clearly shows that the assessee's rights in the redeveloped flat crystallized pursuant to the allotment letter dated 24.11.2006 and the agreement dated 27.12.2010. The redevelopment arrangement was not a fresh purchase in isolation but was a continuation of ownership rights flowing from the original flat held since 1988. Mere payment of installments towards additional area, including the last installment paid on 01.04.2013, does not postpone the date of acquisition, as held by the Hon'ble jurisdictional High Court. The emphasis placed by the lower authorities on the date of completion of construction or alleged improbability of possession prior to May 2012 cannot override the settled legal position governing allotment-based acquisition.

17. In view of the binding ratio laid down in Vembu Vaidyanathan (supra), the approach adopted by the Assessing Officer and affirmed by the CIT(A) in reckoning the holding period from May 2012 or from the date of last instalment is legally unsustainable.

18. 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 prior to its sale on 31.12.2013. Consequently, the asset qualifies as a long-term capital asset, and the gains arising therefrom are liable to be assessed as long-term capital gains.

19. In the light of the above discussion, we hold that the capital gains arising on sale of the residential flat are long-term capital gains and not short-term capital gains. Accordingly, the addition of Rs. 2,11,44,607/- made under the head "Short Term Capital Gain" and confirmed by the CIT(A) is hereby deleted.

20. In the result the appeal by the assessee is allowed.

(iii) Mukesh Sohanraj Vardhan v. ITO (ITA No. 4255/Mum/2018) for Assessment Year 2012–13, order dated 28.08.2020

4. We have heard rival contentions and gone through the facts and circumstances of the case. We have noted that the above narrated facts are undisputed. The facts clearly show that the extinguishment of assessee's right in Flat No. 1703, 1704 and 1705 proposed building known as "shubh Residency" allotted vide allotment letter dated 20.06.2008 is actually extinguishment of any right in relation to capital asset in view of the provisions of section 47 of the Act and falls in the definition of transfer and hence, result in capital gain chargeable under section 45 of the Act. It is a fact that assessee held this right for more than 3 years for a reason that this flats were subject to allotment vide allotment letter dated 20.06.2008 and assessee received compensation of 1.10 crores and in lieu of that acquired flat No. 301 and 305 in the same project vide agreement dated 28.02.2012, which period is more than three years. The assessee has made payment of 1.10 crores on various dates mentioned above and this is eligible for the claim of deduction under section 54 of the Act also. We find that the CIT(A) has rightly deleted addition made by the AO in regard to disallowance of the claim of the assessee disallowing deduction of long term capital gain under section 54 of the Act on the premise that the compensation received is income from other sources. We noted that the CIT(A) has rightly allowed the claim of the assessee and we confirm the same."

7.1 Facts being identical, we follow the above order of the Co-ordinate Bench and allow the appeal. As the appeal is allowed, the additional ground "that the compensation received from the builder on cancellation of flat is a capital receipt and not chargeable to tax" becomes infructuous.

23. In **PCIT v. Vembu Vaidyanathan** (supra), the Hon'ble Bombay High Court, while considering CBDT Circular Nos. 471 dated 15.10.1986 and 672 dated 16.12.1993, recognised the date of allotment as the relevant date of acquisition where the allotment and construction scheme was materially similar to the scheme contemplated in the said circulars. The Hon'ble High Court observed that the allottee acquires rights upon issuance of the allotment letter and that subsequent instalment payments and delivery of possession are consequential steps. The dismissal of the Revenue's Special Leave Petition, reported in (2019) 108 taxmann.com 339 (SC), was also relied upon by the Ld. AR.

24. The ratio of **Vembu Vaidyanathan** is material to the present controversy. However, its application requires consideration of whether the terms and conditions governing the allotment in the present case are comparable to those of the schemes considered therein. CBDT Circular No. 672 extends the principle explained in Circular No. 471 to allotments by co-operative societies and other institutions where the terms of allotment and construction are similar to those of the DDA scheme. The applicability of the circulars, therefore, cannot be determined merely by reference to the legal status of the allottee; the governing allotment terms and the rights actually conferred assume significance.

25. In the present case, the allotment letter dated 30.10.2017 records an agreed consideration of Rs.9.10 crore, against which the assessee paid Rs.4.80 crore on the same date through banking channels, as evidenced by the ledger account and cheque particulars. The balance consideration of Rs.4.30 crore was payable before possession. These documents constitute relevant contemporaneous evidence of the allotment and the payment made pursuant thereto. The subsequent buy-back, stated to have been effected on 20.03.2022 for Rs.9.90 crore, is relied upon by the assessee as evidence of the extinguishment of the rights arising from the original allotment.

26. Section 2(47) of the Act includes within the definition of "transfer" the extinguishment of any rights in a capital asset. Therefore, if the allotment letter

created identifiable and enforceable rights in favour of the assessee, the subsequent surrender or extinguishment of those rights for consideration would require consideration under section 2(47), notwithstanding that the flat was neither registered in the assessee's name nor delivered into her possession. The relevant fact is the existence and extinguishment of rights in the capital asset, rather than the transfer of legal ownership of the completed flat alone.

27. The aforesaid legal position finds further support in the decision of the Mumbai Bench of the Tribunal in **Mukesh Sohanraj Vardhan v. ITO** (supra), wherein the extinguishment of rights arising from an allotment letter in respect of flats in a proposed building was treated as a transfer of a capital asset, with the resultant gain falling within section 45 of the Act. The decision is relevant to the present issue because it recognises that rights arising from an allotment may themselves constitute a capital asset, distinct from ownership of the completed immovable property. The applicability of this decision must, however, be examined with reference to the nature of the rights acquired and the circumstances in which they were extinguished in the present case.

28. The Ld. AR has also relied upon the decision of the Mumbai Bench of the Tribunal in **Mrs. Urmila Jagdish Mehta v. ACIT** (supra), which reiterates the principle laid down in **Vembu Vaidyanathan** concerning the date of acquisition under an allotment-based scheme. The factual setting of that decision involved

redevelopment of a residential property and the determination of the holding period. While the underlying principle is relevant, the issue in the present appeal extends beyond the date of acquisition and requires consideration of the existence of the assessee's rights, their subsequent extinguishment and the tax character of the consideration received.

29. We now advert to the objections raised by the Ld. Sr. DR. The contention that the assessee was associated with the developer as a promoter, director or shareholder does not, by itself, negate the existence of rights acquired under the allotment letter. Nor does the fact that the allotment and subsequent buy-back involved related or associated parties automatically establish that the transaction was a colourable device. Such an allegation must be supported by relevant material demonstrating that the transaction lacked commercial substance or that the documents did not reflect the actual arrangement between the parties. In the present case, the allotment letter, the contemporaneous payment of Rs. 4.80 crore through banking channels, the recorded agreed consideration of Rs. 9.10 crore and the subsequent correspondence concerning the buy-back for Rs. 9.90 crore constitute material evidence supporting the assessee's explanation. In the absence of cogent material establishing that these documents were fictitious or that the transaction was otherwise a sham, the allegation of a colourable device cannot be sustained merely on account of the assessee's association with the developer.

30. The objection concerning the absence of a registered conveyance and delivery of possession is also not decisive. As explained in Vembu Vaidyanathan, Tata Services Ltd. and Vijay Flexible Containers (supra), the right to obtain conveyance may constitute a capital asset independently of ownership of the completed property. The relevant consideration is whether the allotment created enforceable rights in favour of the assessee and whether such rights were subsequently extinguished for consideration. The material placed before us supports the assessee's contention on these aspects. We, therefore, find no merit in the Revenue's contention that the absence of registration or possession, in itself, precludes the existence of a capital asset.

31. We are also unable to accept the contention that the CBDT circulars relied upon by the assessee are inapplicable merely because the assessee is an individual. Circular No. 471 explains the treatment of allotments under the DDA self-financing scheme, while Circular No. 672 extends the stated principle to allotments by co-operative societies and other institutions where the terms of allotment and construction are similar. The applicability of these circulars depends upon the similarity of the relevant scheme and the rights created thereunder, rather than solely upon the status of the allottee. In any event, the assessee's claim is supported independently by the judicial principles laid down in Tata Services Ltd., Vijay Flexible Containers and Mukesh Sohanraj Vardhan (supra).

32. As regards the cost of acquisition and computation of capital gains, the Ld. AR specifically submitted that the relevant working had been furnished before the Ld. AO and was available at pages 3 and 45 of the paper book. The computation has to be considered in conjunction with the original allotment terms, the payments made, the outstanding consideration and the subsequent settlement or adjustment of the amounts payable. The mere assertion by the Ld. Sr. DR that the computation requires verification, without demonstrating a specific defect in the working furnished by the assessee, does not justify disregarding the transaction altogether or assessing the entire surplus of Rs. 80 lakh under the head "Income from Other Sources". Having regard to the material referred to by the Ld. AR and the legal character of the rights transferred, the computation of capital gains furnished by the assessee is required to be considered under the applicable provisions governing cost of acquisition and indexation.

33. In view of the foregoing discussion, respectfully following the jurisprudence placed before us, we hold that the rights acquired by the assessee under the allotment letter dated 30.10.2017 constitute a capital asset within the meaning of section 2(14) of the Act and that the subsequent extinguishment of such rights upon the buy-back dated 20.03.2022 falls within the ambit of "transfer" under section 2(47) of the Act. The resultant gain is, therefore, assessable under the head "Capital Gains", subject to the applicable statutory

provisions governing the computation thereof, and not under the head "Income from Other Sources" merely because the flat was not registered in the assessee's name or possession was not delivered.

34. Accordingly, the objections raised by the Ld. Sr. DR regarding the absence of a capital asset, the alleged colourable nature of the transaction and the inapplicability of the judicial precedents are rejected, de hors any corroborative support of evidence, to say so. The contentions advanced by the Ld. AR, supported by the aforesaid judicial precedents and the material placed on record, are accepted. The addition of Rs. 80,00,000 made under the head "Income from Other Sources" and sustained by the Ld. CIT(A) cannot be upheld on the basis adopted by the lower authorities. The assessee's ground of appeal is, accordingly, allowed.

35. Resultantly, the appeal of **assessee stands allowed** in above terms.

Order pronounced in the open court on 16-10-2026.

Sd/-	**Sd/-**
(CHALLA NAGENDRA PRASAD)	**(ARUN KHODPIA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dated : 16-10-2026.
Ankit K., 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,

ABHINAV ANANT GAVANDE

Digitally signed by ABHINAV ANANT GAVANDE
Date: 2026.11.05 13:26:03 +05'30'

(Dy./Asstt. Registrar)
ITAT, Mumbai