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

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT AND
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

ITA No.7418/Mum/2025
(Assessment Year: 2018-19)

Jigar Sevantilal Shah, 503, 5th Floor, Praman Heritage, VP Road, Sikka Nagar, Girgaon, Mumbai - 400004	Vs.	Income Tax Officer, Ward 19(1)(5), Mumbai - 400012
(**Appellant**)	:	(**Respondent**)
PAN NO. ALKPS 6823J		

Appellant by	:	Shri Rajesh Shah
Respondent by	:	Shri Nayanjoti Nath, Sr. AR

Date of Hearing	:	09.03.2026
Date of Pronouncement	:	17.04.2026

O R D E R

Per Saktijit Dey, Vice President:

This is an appeal by the assessee against order dated 26.09.2025 passed by National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year (AY) 2018-19.

2. In Ground No.1, the assessee has challenged the validity of the assessment order on the ground that though the case was selected for limited scrutiny, however, the Assessing Officer ('AO') has expanded its scope without following the instructions/guidelines issued by Central Board of Direct Taxes (CBDT).

3. Briefly the facts are, the assessee is a resident individual. For the assessment year under dispute, the assessee filed its return of income on 28.09.2019, declaring income of Rs.19,08,090/-. Assessee's case was selected for limited scrutiny under the e-assessment Scheme, 2019 to verify the following:

"Investment in Immovable Property".

4. In course of assessment proceeding, the AO noticing that in the year under consideration, assessee had made investments in immovable property, decided to verify the source of investments and other details. Therefore, the AO called upon the assessee to furnish the necessary documentary evidences. Upon verification of details furnished by the assessee, he found that the assessee received Flat No. 502 at Praman Heritage, Sikka Nagar, Mumbai in lieu of surrender of tenancy rights, vide agreement dated 18.12.2017. He further found that the possession of the said flat was handed over to the assessee in April, 2019. On perusal of the tripartite agreement between the developer, the landlord and the assessee being a tenant, executed on 18.12.2017, the Assessing Officer noticed that for stamp duty purpose, the Stamp Valuation Authority has determined the value of the property at Rs.1,49,10,000/-. He, therefore, called upon the assessee to explain why the value determined by the Stamp Valuation Authority should not be treated as 'Short Term Capital Gain' and brought to tax in terms with Section 56(2) r.w.s. 50D of the Income Tax Act, 1961 (in

short the 'Act'). In response to the query raised by the Assessing Officer, the assessee submitted a detailed reply stating that as per terms of the agreement surrender of tenancy rights would happen only upon receiving possession over the new premises. He submitted, since the assessee had acquired the tenancy rights in the year 2015 and the surrender of tenancy rights happened on acquiring the possession of new premises in April, 2019, the gain from surrender of tenancy rights would be "Long Term Capital Gain' and assessable in Assessment Year (AY) 2020-21. The Assessing Officer, however, did not agree with the submissions of the assessee and proceeded to compute 'Short Term Capital Gain' ('STCG') at Rs.1,10,32,000/- after allowing deduction on cost of acquisition and stamp duty paid by the assessee while acquiring the tenancy rights. Though, the assessee contested the addition made, by filing an appeal before learned First Appellate Authority, however, he was unsuccessful.

5. Before us, learned counsel appearing for the assessee submitted that the case was selected for limited scrutiny to verify the investment made in immovable property. Whereas, the AO has added a new source of income of 'STCG'. Thus, he submitted, the AO has travelled beyond the scope of the limited scrutiny, which renders the assessment order invalid. In this context, he drew our attention to CBDT Circular F.No.225/169/2019/ITA-11, dated 05.09.2019 explaining the scope of limited scrutiny as also Circular No. F.No.DGIT(Vig.)HQ/SI/2017-18, dated 30.11.2017, explaining the

consequences of expanding the scope of limited scrutiny without seeking prior approval of the competent authority. Thus, he submitted, the AO having travelled beyond the scope of limited scrutiny, the assessment order is invalid.

6. The ld. Departmental Representative (DR) submitted, the Assessing Officer has confined himself to the scope of limited scrutiny.

7. We have considered rival submissions and perused the materials on record. As discussed earlier, the case of the assessee was selected for limited scrutiny to examine the investment in immovable property. It is a fact on record that the assessee had executed a sale deed on 30.03.2017 for purchase of a property under construction. Further, the assessee has entered into a separate agreement on 18.12.2017 with the landlord and developer regarding redevelopment of another property, whereunder the assessee was to receive a permanent alternative residential accommodation against surrender of tenancy rights held by him. Thus, it is a fact that in the year under consideration, the assessee had entered into transactions relating to immovable properties. When assessee's case was selected for limited scrutiny to verify investment in immovable property, it encompasses all issues relating to such investment including the issue of income under the head capital gain. Therefore, in our view, assessee's contention that the AO has travelled beyond the scope of limited scrutiny is unacceptable. Accordingly, we dismiss the ground.

8. In Ground Nos. 2 and 3, the assessee has contested the addition of Rs.1,10,32,000/- as STCG. As discussed earlier, on 31.12.2015, the assessee acquired tenancy rights of an immovable property being a flat from M/s. Nayvad Trading Pvt. Ltd. for a consideration of Rs.30,00,000/-. The assessee further incurred expenditure of Rs.8,78,000/- towards registration charges. Subsequently, the landlord entered into an agreement with a developer for redevelopment of the property wherein the assessee had acquired the tenancy rights. As a confirming party, the assessee entered into an agreement with the developer and the landlord on 18.12.2017. As per the terms of the said agreement, the assessee supposed to handover the vacant possession of the tenancy premises to the developer to facilitate demolition of the existing building for redevelopment purposes. At this stage, it is necessary to look into certain important clauses of the tripartite agreement:

- Clause No.2 of the agreement recognizes the fact that the assessee was the sole tenant/occupant of the tenanted premises which he acquired through registered deed dated 22.03.2016.

- Clause No.3 of the agreement provides that the assessee as a tenant agreed to surrender his tenancy rights in respect of the tenanted premises.

- Clause 4 of the agreement reads as under:

"4. SURRENDER OF TENANCY IN THE EXISTING PREMISES AND HANDING OVER QUIET VACANT AND PEACEFUL POSSESSION OF THE TENANTED PREMISES TO THE DEVELOPERS:

It is agreed that after execution of this agreement the TENANT/OCCUPANT shall vacate and hand over quiet, vacant and peaceful possession of the tenanted premises to the DEVELOPERS for demolition and for redevelopment of the said property. The tenancy rights of THE TENANT/OCCUPANT in THE Tenanted PREMISES shall not be deemed to have been surrendered and/or extinguished at the time or by virtue of he/she handing over possession of THE Tenanted PREMISES to THE DEVELOPERS for demolition and redevelopment thereof, or otherwise. Such tenancy rights shall stand automatically surrendered/cease to exist only upon and at the time of THE DEVELOPERS handing over and putting the TENANT/OCCUPANTS in quiet vacant and peaceful possession of THE Permanent alternate accommodation together with the amenities listed in Annexure 'B' after obtaining part/full occupation certificate in respect of the said permanent alternate accommodation with proper municipal water connection and separate electric connection and completion of the RCC structure with all slabs and external walls in respect of the entire building."

- Clause 5 of the agreement provides that in lieu of surrender of tenancy rights in the existing building, the assessee would receive permanent alternate accommodation being Flat Nos. 21 and 22 in the newly developed building.

- Clause 7, provides that till the time the tenant is offered possession of the new premises with amenities, he shall continue to remain a tenant of the landlord in respect of the tenanted premises and the tenant shall not in any way be deemed to have surrendered the tenancy of the tenanted premises to the landlord/developer.

- Clause 8 of the agreement reads as under:-

  "8. POSSESSION OF NEW PREMISES

On obtaining the full /part occupation certificate in respect of the new building, the DEVELOPERS shall notify to the TENANT/OCCUPANT and offer him possession of the new premises. TENANT/OCCUPANT shall accept the possession of the new premises within one month (30 days) from date of such notice as owner thereof. In case TENANT/OCCUPANT fails or is otherwise unable take/accept the possession of the new premises within the said period of one month (30 days), then in that event the DEVELOPERS liability to pay transit accommodation expenses shall stand terminated/ceased. Simultaneously with the TENANT/OCCUPANT taking possession of the new premises as provided herein, his/her tenancy rights in respect of the existing tenanted premises shall automatically stand surrendered and shall be deemed to have come to an end."

9. Reading of Clauses 4, 7 and 8 reproduced above, make it amply clear that the tenancy rights of the assessee in the existing (old premises) would come to end only upon receiving possession over pre-identified alternative permanent accommodation in the new building. It is a fact on record that possession of alternative permanent accommodation in the new building was handed over to the assessee in April, 2019. Therefore, the taxable event of capital gain qua the surrender of the tenancy rights if at all, can only happen in Financial Year (FY) 2019-20 and not in the impugned assessment year. When the tripartite agreement between the assessee, the developer and the landlord, in specific terms provide that the tenancy rights will continue to remain with the assessee till the handing over of possession of alternative permanent accommodation in the newly developed building, the Departmental Authorities cannot interpret the terms of the agreement in a different manner. Thus, in our considered opinion, there being no transfer/surrender of tenancy rights in the year under

consideration, the AO cannot tax the capital gain on alleged surrender of tenancy rights in the impugned assessment year, as, the capital gain, if any, has to be assessed in the year of surrender tenancy rights in AY 2020-21. The AO is directed to delete the addition.

10. In the result, appeal is partly allowed.

Order pronounced in the open court on 17/04/2026.

Sd/-	Sd/-
(Makarand Vasant Mahadeokar)	(Saktijit Dey)
Accountant Member	Vice President

Mumbai; Dated : 17/04/2026
Aks/-

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai