

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH,
MUMBAI
BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER
ITA No.4222/MUM/2025
(Assessment Year: 2015-16)**

Colombia Co-operative Housing Society Limited C-486/B, Plot B, St. Domnie Road, Bandra (West), Mumbai 400050 PAN: (AAAAC2663A)	vs	ITO, Ward 23(1)(1), Mumbai 5 th Floor, Piral chamber, Churchgate, Mumbai 400012
Appellant		Respondent

Present for:

Appellant by : Shri Pradip Kapasi, CA

Respondent by : Shri Virabhadra Mahajan, Sr. DR
(Virtually Present)

Date of Hearing : 23.09.2025

Date of Pronouncement : 22.12.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA/NFAC/S/250/2025-26/1076003708(1) dated 02.05.2025 passed against the assessment order u/s. 147 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 18.03.2024 for AY 2015-16.

2. Grounds taken by the assessee are reproduced as under:

“GROUND NO. 1: Reopening and Reassessment

A. The Ld. CIT(A) erred in law and on facts in confirming the action of the Ld.AO of reopening and reassessment. Your appellant prays that the reopening and

the consequent reassessment be held to be bad in law and the order of reassessment be quashed in as much as there was gross violation of the provisions of s. 147, 148A, 148, 149 and 151 and 151A of the Income Tax Act besides the provisions of s.142(1) and 143(2) of the Act.

B. The Ld. CIT(A) again erred in law and on facts in not appreciating the fact The consideration was originally received under an agreement of 2002 from the said builder for the said development rights and was not brought to tax in the hands of the society and he further failed to appreciate that the additional consideration of Rs. 2.28 crores during the year under the Supplementary Agreement of 2014 was of the same colour and the character and therefore the order of reassessment passed by AO was based on the change of opinion not permissible in law and not following rule of consistency.

C. The Ld.AO erred in law and on facts in passing an order beyond the time limit permitted u/s. 149(1) and (2) without establishing that he was in possession of Books of Account, etc to which he revealed that the income chargeable to tax that escaped assessment represented any asset, etc and the amount of escaped income exceeded Rs. 50 lakh.

D. The Ld.AO/CIT(A) erred in passing / upholding the order passed in violation of the provisions of s. 144B of the Act.

GROUND NO. 2: Taxability of Receipt of Rs. 2,28,00,000

A. The Ld. CIT(A) again erred in law and on facts in taxing an amount of Rs. 2,28,00,000 under the head Capital Gains in the hands of the appellant society altogether ignoring and overlooking the fact that the said amount was due to taxable in the hands of the appellant society. and was received by the 40 members of the appellant society and was not

B. The Ld.AO/CIT(A) failed to appreciate that the said amount of Rs. 2.28 crores was received in respect of the permission to construct the building that was made possible on account of the change in the Development Control Rules, 1991 for which there was no cost of acquisition in the hands of the society or the members and therefore such receipt was not taxable u/s. 45 under the head capital gains at all for the year under consideration in view of the decisions of the Bombay High Court in the cases of Sambhaji Nagar CHSL, Bhatia Nagar CHSL and Maheshwar Prakash No.2 CHSL.

C. The Ld. CIT(A) again erred in law and on facts in not appreciating that the said amount of Rs. 2,28,00,000 so received by the members was offered for tax by the members and was taxable and/or was taxed in the hands of the members as per law and also in terms of various decisions of the Court and the Circular of the CBDT including in the case of Raj Ratan Palace CHSL, 362 ITR 1 (SC) (St) and Circular No. 9 dt. 25.03.1969 of the CBDT.

D. The Ld. CIT(A) again erred in law and on facts in not appreciating the fact that an amount of Rs. 36,00,000 received by the society in 2 instalments of Rs. 18,00,000 each represented refundable security deposit.

E. The Ld. CIT(A) again erred in law failing to appreciate that the receipts under the original agreement of 2002 were taxed in the hands of the members for A.Y. 2003-04 and thereby erred in not following the Rule of consistency.

GROUND NO. 3: Violation of Natural Justice

A. The Ld. CIT(A) again erred in law and on facts in completely denying the opportunity of being heard during the course of appeal, virtually or physically as was required by the law, rules, SOP and the decisions of the Court and further erred in not appreciating and considering the overwhelming evidences appeal. and the detailed submissions made before him by the society in writing in the appeal.

B. The Ld. CIT(A) again erred in law and on facts in not appreciating that the order passed by the Ld.AO suffered from gross violation of Natural Justice including on account of; i) in altogether ignoring the detailed submissions and explanations by alleging that the appellant had not submitted any explanations or evidence in support of its claim, ii) the failure of the AO to afford an opportunity of hearing to inquire and examine the facts with the members, developer and other related parties and iii) more particularly when he denied the request of the opportunity of hearing of virtual conference.

C. Your appellant prays that the order passed by the AO and the CIT(A) be held to be bad in law and be quashed.

GROUND NO. 4: Deduction u/s. 80P

The Ld. CIT(A) again erred in law and on facts in denying the deduction u/s. 80P of the Income Tax Act for reasons not tenable in law and your appellant prays that the deduction u/s. 80P be allowed in computing the total income.

GROUND NO. 5: Assessment of Total Income and assessment in wrong status

A. The Ld. CIT(A) again erred in law and on facts in confirming the action of the Ld.AO in reassessing the total income at Rs. 2,32,35,084 under the head capital gains in violation of various provisions of the Income Tax Act, express or otherwise and therefore your appellant prays that such an order be quashed and the income assessed / reassessed at Rs. NIL.

B. The Ld. CIT(A) erred in passing the order of reassessment in the residential status of an AOP (Association of Persons) ignoring the fact that your appellant is a cooperative society which is a separate assessable entity and for which special rates of taxation are provided in the finance act.

GROUND NO. 6: Interest u/s. 234A to 234D

A. The Ld. CIT(A) again erred in law and on facts in upholding the levy of interest u/s. 234A to 234D in reassessment and ignoring the fact that the levy suffered from computational errors and the interest was levied without affording an opportunity to the appellant for challenging the levy and ignoring the fact that the interest was levied without passing a speaking order.

B. Your appellant prays that the interest so levied by the Ld.AO and confirmed by the CIT(A) be deleted.”

2.1. The above stated grounds raised by the assessee are not in accordance with the prescribed rules and, therefore, assessee was asked to furnish concise grounds of appeal which were furnished vide covering letter dated 23.09.2025. The concise grounds are as under which shall be dealt with while adjudicating on the matter:

“GROUND NO. 1: Reopening and Reassessment

A. The Ld. CIT(A) erred in law and on facts in confirming the action of the Ld AO of reopening and reassessment which was in violation of the provisions of s.147 to 151A of the Act.

B. The Ld. CIT(A) again erred in law and on facts in upholding the AO's order that was passed beyond the time limit u/s 149 without establishing that there was escapement of income exceeding Rs. 50 lakhs represented by an asset, etc

C. The Ld. CIT(A) again erred in law and on facts in upholding the order of the AO passed by violating Rule of Consistency in as much as the income if any arising on the original agreement of 2002 was not taxed in the hands of the society appellant.

D. The Ld.AO / CIT(A) erred in passing upholding the order passed in violation of the provisions of s. 144B of the Act.

GROUND NO. 2: Taxability of Receipt of Rs. 2,28,00,000

A. The Ld. CIT(A) erred in law and on facts in confirming the action of the Id. AO of taxing an amount of Rs. 2,28,00,000 under the head Capital Gains in the hands of the appellant society ignoring that no such amount was received by the society but was received by the members and that Kamla Landmark, the developer, was required as per internal pg. 19 of the Supplementary Agreement dt 11.04.2014 to make individual agreements with 40 members and the case was covered by Circular No.9 of 1969 of the CBDT and the decision of the SC in case of Raj Ratan Palace CHSL, 362 ITR 1 (SC)

B. The Ld. CIT(A) again erred in law and on facts in confirming the order of the AO which ignored the fact that the rights if transferred had no cost of acquisition and the receipt was not taxable at all in view of the decisions of the Bombay High Court in the case of Sambhaji Nagar CHSL 370 ITR 325 (Bom) and Maheshwar Prakash No.2 CHSL dt 24.09.2009.

C. The Ld. CIT(A) again erred in law and on facts in confirming the erroneous finding of the AO that the appellant had received the consideration while in fact the appellant had received only Rs. 36,00,000 towards refundable security deposit for permission to park the cars.

D. The Ld. CIT(A) erred in law and on facts in confirming the actions of the AO that ignored the fact that the amounts were received as compensation for bearing the hardship and inconvenience.

GROUND NO. 3: Violation of Natural Justice

A. The CIT(A) erred in law and on facts by denying the appellant an opportunity of being heard (virtual/physical), ignoring detailed written submissions and evidence, and upholding an assessment order vitiated by gross violation of principles of natural justice. The assessment and appellate orders deserve to be quashed as bad in law

GROUND NO. 4: Deduction u/s. 80P

The Ld. CIT(A) again erred in law and on facts in denying the deduction u/s. 80P of the Income Tax Act for reasons not tenable in law and your appellant prays that the deduction u/s. 80P be allowed in computing the total income.

GROUND NO. 5: Assessment of Total Income and assessment in wrong status

A. The Ld. CIT(A) again erred in law and on facts in confirming the actions of the Id. AO in reassessing the total income at Rs. 2,34,35,084 in the residential status of AO.

GROUND NO. 6: Interest u/s. 234A to 234D

A. The Ld. CIT(A) again erred in law and on facts in upholding the levy of interest u/ss. 234A-234D in reassessment despite computational errors, absence of opportunity to contest the levy, and failure to pass a speaking order.”

3. Brief facts of the case are that assessee is a Co-operative Housing Society registered under the Maharashtra Co-operative Societies Act, 1960 under Registration No. BOM/HSG/2674 of 1970 having its registered office at Mumbai. Assessee functions solely for the benefit and maintenance of its members. Assessee did not file its return of income u/s. 139. Specific information in respect of assessee was flagged as per the Risk Management Strategy (RMS) formulated by CBDT through its ITBA software under the head “NMS”. As per the specific information, assessee had carried out transaction in relation to sale of immovable property amounting to Rs. 2,28,00,000/-.

3.1. In this respect, proceedings u/s. 147 r.w.s. 148 under the new regime of reassessment proceedings was initiated. Notice u/s.148 was issued dated 31.03.2022. Assessee filed its return of income on 06.06.2022, in response to the said notice u/s.148, reporting total income at NIL after claiming deduction u/s. 80P of Rs. 4,35,084/- in relation to interest income. The major issue which needs to be dealt with in the present appeal before us, is in respect of taxation of Rs.2,28,00,000/- made by ld. AO under the head capital gains, which was received by the members of the assessee society from the developer Kamala Landmark Construction Private Limited, in respect of permission to construct building made possible on account of change in the Development Control Rules, 1991, for which there was no cost of acquisition in the hands of the assessee society or its members. Claim of the assessee is that it never received the said amount in its bank account as it was paid directly by the developer to the individual 40 members of the society.

3.2. Relevant facts in respect of this issue are that assessee for and on behalf of its 40 members maintain a building containing 40 apartments, constructed on a plot of land in the year 1970 or their about. These 40 apartments are acquired, occupied and owned by the 40 members for the purpose of residence of their families. Each of the 40 members or their predecessors had purchased the premise for a valuable consideration paid to the developer who after constructing the building conveyed the land and building to the society for no monetary consideration in the year 1970 or their about. Entire consideration was paid and contributed by the 40 members. The building so constructed is named as "Colombia" on land bearing Survey No.183/184 admeasuring 2817.45 square yards equivalent to 2355 square meters approximately. Development Control Regulation (DCR) for greater

Mumbai, 1991 as amended on 15.10.1997, allowed construction of extensions to existing floors and additional floors on the said building by utilising Transferrable Development Rights (TDR) to the extent of 100% area of said property. This TDR benefit belonging to 40 existing members of the assessee society was availed through the developer Kamala Landmark Construction Private Limited as per the terms agreed with the members. To this effect a development agreement was entered into on 07.10.2002 between the assessee society and the developer which was registered with Sub-registrar of Assurance. Developer agreed to pay Rs.1,37,00,000/- to the existing 40 members of the assessee society for grant of rights to construct additional area in the said building by acquiring TDR at its own cost. Receipt of Rs.1,37,00,000/- was shared by the 40 members and no payment was received by the assessee. This amount was not taxed in the hands of the assessee as the payments were made to the members in the relevant years.

3.3. Utilisation of FSI on 230 Square meters remained incomplete and suspended due to non-approval of plan earlier and on being duly cleared and approved, a supplementary agreement dated 11.04.2014 followed by a deed of confirmation dated 27.01.2015 was drawn in continuation to the development agreement dated 07.10.2002 for completion of construction on the area on 11th floor against the available FSI of 230 square meters. There were disputes with the developer regarding incomplete work which was finally resolved whereby it was agreed for construction of balance part relating to FSI of 230 square meters in lieu of developer making further payment of Rs. 2.28 Cr to the 40 members (original members as per the development agreement of 2002). As per clause (1) of the supplementary agreement each of the original 40 members of the society were to be paid out total of Rs. 2.28 Cr in the

breakup specified in annexure thereto. Further, in terms of para 3(1)(b), interest free security deposit was also given to the assessee amounting to Rs. 36 lacs. The annexure specifying breakup of amount to each of the 40 members is extracted below from the supplementary agreement:

COLOMBIA CO-OPERATIVE HOUSING SOCIETY
C/486-B, ST. DOMINIC ROAD, BANDRA(W), MUMBAI 400030
(Registration no: BOM/HSG/2674 OF 1971)

ANNEXURE - B

List of the present 40 members who get a share from Rs 2.28 cr (INR)



Flat no:	Name	Amounts Rs (INR)
5	N. Hooda	5,00,000
6	Irene Fernandes	7,00,000
7	N.N. Moolchandani	5,00,000
8	Anchal Alreja	5,00,000
9	Bimla Dua	7,00,000
10	Pushpa Ghatge	5,00,000
11	Annie Sansare	5,00,000-
12	Raj Bijlani	7,00,000
12-A	K.S. Tolani	5,00,000
14	Pushpa Khubchandani	5,00,000
15	S.R. Karamchandani	7,00,000
16	Raj Kanuga	5,00,000
17	R. Viegas	5,00,000
18	Sunder Golani	7,00,000
19	Cedric D'silva	5,00,000
20	H.M. Shivdasani	5,00,000
21	Rani Dua	7,00,000
22	Suzie D'silva	5,00,000
23	Kiran Bharwani	5,00,000
24	Neeta Shirodkar	7,00,000
25	Merlyn Menezes	5,00,000
26	Manjunath Shenoy	5,00,000
27	S.S. Tulsiani	7,00,000
28	Ronald Heredia	5,00,000
29	Kamla Kotwani	5,00,000
30	Ramakant Kubal	7,00,000
31	Gregory Misquita	5,00,000
32	Raynah Braganza	5,00,000
33	Kishin D. Karamchandani	7,00,000
34	Devki Hukmani	5,00,000
35	H. Sharma	5,00,000
36	Asha Sachanandani	7,00,000
37	H.I. Lewis	5,00,000
38	Madanlal Kumbhandas Thuthija	5,00,000
39	C.D. Karamchandani	7,00,000
40	Sunder Gursahani	5,00,000
42	O.T. Miranda	7,00,000
43	Lynette Mergulhao	5,00,000
44	F.E.T Rebello	5,00,000
45	Abraham Judah	7,00,000



227-8		
ERB	50	EU
2024		

3.4. Payment of this amount of Rs. 2.28 Cr. was made to 40 members through cheques dated 15.03.2014 i.e. before the dated of executing supplementary agreement. Details in this respect is tabulated below whereby it is submitted that these amounts were paid from the bank account of the developer by issuing individual cheques to each of the 40 members.

PAYMENTS MADE TO ORIGINAL 40 MEMBERS OF COLOMBIA HOUSING SOCIETY

BY JITENDRA JAIN, DIRECTOR, KAMLA LANDMARC
VIDE SUPPLEMENTARY AGREEMENT DATED 11 APRIL, 2014NAME OF BANK: CORPORATION BANK
ACCOUNT NUMBER: 049501601000060
ACCOUNT HOLDER: KAMLA LANDMARC CONSTRUCTION PRIVATE LIMITED
DATE OF PAYMENT: 15.03.2014

FLAT NO.	NAME OF MEMBER	CHEQUE NUMBER	AMOUNT	PAN Number	ADDRESS	COMMENTS
1	O.T. MIRANDA	185975	700,000.00	AKPM0947B	42, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Deceased
2	LYNETTE MERSELHO	185976	500,000.00	AAHPM7584I	43, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Deceased
3	F.E.T. REBELLO	185977	500,000.00			
4	ABRAHAM JUDAH	185978	700,000.00	AAFP11229D	45, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Investment proof provided / Since Deceased Flat Sold / Since Deceased
5	J. HOODA	185936	500,000.00			
6	IRENE FERNANDES	185938	700,000.00	AAKPF9009Q	06, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Deceased
7	N. N. MOOLCHANDANI	185939	500,000.00			
8	ANCHAL SANJAY ALREJA	185941	500,000.00	AKSPA4123G	08, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Deceased
9	BIMLA DUJA	185979	700,000.00	AVIPD6634Q	09, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Deceased
10	PUSHPA GHATGE	185943	500,000.00	AAALPG9139P	10, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Capital Gains Investment proof provided
11	ANNIE SANSARE	185944	500,000.00	AAAPTS707L	11, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Bank Statement / Proof of Receipt provided
12	RAJ BIJLANI	185946	700,000.00	ABNP89271E		Deceased
13	K.S. TOLANI	185947	500,000.00			Deceased
14	PUSHPA KHUBCHANDANI	185948	500,000.00	ASLPK6245I	14, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Deceased
15	S.R. KARAMCHANDANI	185949	700,000.00	AXLPK8451F	15, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Flat Sold / Transferred
16	RAJ KANUGA	185950	500,000.00	AIKPK4978P	16, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Flat Sold / Transferred
17	R. VEIGAS	185951	500,000.00			
18	SUNDER GHUMANMAL GOLANI	185952	700,000.00	AAAPG2993R	18, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Deceased
19	CEDRIC DSILVA	185953	500,000.00	AAACPD8010F	19, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Deceased
20	H. M. SHIVDASANI	185954	500,000.00			
21	RANI DUJA	185955	700,000.00	AAEPD7595H	21, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Deceased
22	SUZIE DSILVA	185956	500,000.00	AAACPB7705R	22, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Bank Statement & Capital Bonds provided
23	KIPAN KUMAR RAM BHARWANI	185957	500,000.00	AELPB2530F	23, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Bank Statement & Capital Bonds provided
24	NEETA SHIRODKAR	185958	700,000.00	AHLP50478C	24, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Deceased
25	MERYLN MENEZES	185959	500,000.00	AOKPM4680F	25, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Deceased
26	MANJUNATH SHENOY	185960	500,000.00			
27	S. S. TULSIANI	185961	700,000.00	AICPT7017M	27, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Deceased
28	RONALD HEREDIA	185962	500,000.00	AAAPH6914L	28, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	In a facility - Unreachable
29	KAMLA KOTWANI	185963	500,000.00			Deceased
30	RAMAKANT KUBAL	185964	700,000.00			Flat Sold
31	GREGORY MISOLITA	185965	500,000.00	AAFPB1602A	32, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Capital Gains Investment proof provided
32	RAYNAH BRAGANZA	185966	500,000.00	AENPK0121K	33, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Capital Gains Investment proof provided
33	KISHIN D. KARAMCHANDANI	185967	700,000.00	AAAPH7446M	34, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Flat Transferred
34	DEVKI HUKMANI	185968	500,000.00	AAAPHS1720L	35, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Deceased
35	HANRAJ SHARMA	185969	500,000.00			
36	ASHA SACHANANDANI	185970	700,000.00	ABWPL2677B	36, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Flat Transferred
37	H. LEWIS	185971	500,000.00			Deceased
38	MADANJAL KUMBHANDAS THUTHIA	185972	500,000.00	AAAPT3996N	38, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Deceased
39	C.D. KARAMCHANDANI	185973	700,000.00	AGVPH8220F	39, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Deceased
40	SUNDER GURSAHANI	185974	500,000.00	ADXP67640Q	40, Colombia, St. Dominic Road, Bandra West, Mumbai 400050	Deceased
		TOTAL	22,800,000.00			

3.5. Also, relevant clause (1) from the aforesaid supplementary agreement is extracted in respect of this above stated amount, for ready reference:

“1) The Society has agreed and accepted the proposal of the Developers as contained in the offer letter dated 27th May 2013 and dated 3rd August 2013 and accordingly the Developers agree to pay to each of the 40 Members of the Society named in column 2 of Annexure "B" hereto amounts shown opposite their respective names in column 3 of Annexure "B" hereto aggregating to Rs.2,28,00,000/- (Rupees Two Crore Twenty Eight lacs only) in the ratio of 5:7. The Developers have agreed to give these further amounts to the original 40 members for damages, Inconvenience and sufferings.

2) Each of the 40 original members of the Society have agreed to pay to the Society 5% out of the monetary consideration (received towards damages, inconvenience & sufferings) by way of contribution of the member to the fees and expenses of Architects, Advocates, and other professionals appointed by the Society for advising the Society under the said agreement.”

4. On the above stated facts, ld. AO in the impugned assessment order observed that the said amount was paid by the developer to the assessee society and that the amount paid to the members is only on the directions of the assessee society. Ld. AO referred to two entries in the bank statement of the assessee dated 11.03.2015 and 17.03.2015, showing credit of two amounts of Rs. 18 lacs each, received from the developer and opined that this constituted receipts in the hands of the society. Ld. AO took an adverse view treating the amount of Rs. 2.28 Cr. as Long Term Capital Gain (LTCG) in the hands of the assessee society and made the addition thereof to the total income. Aggrieved, assessee went in appeal before the ld. CIT(A) who confirmed the addition so made. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, ld. Counsel for the assessee at the outset, pointed out that ld. AO relied on incorrect fact by relating the receipt of refundable deposit of Rs. 36 lacs (Rs. 18 lacs each on two days) credited in the bank account of the assessee to hold that assessee received the amount agreed from the developer. In respect of completion of the construction relating to FSI for 230 square meters, he clarified by referring to the bank statement placed in the paper book as well as relevant clause from the supplementary agreement that the said amounts were received by

the assessee on account of refundable security deposit for stilt parking and had nothing to do with the construction of area relating to FSI for 230 square meters. He further, demonstrated that there are no receipts recorded or no entries made in the bank statement of the assessee relating to Rs. 2.28 Cr. as alleged by the ld. Assessing Officer. This is a verifiable fact from the bank statements already on record. Thus, the allegation of ld. AO that assessee received this amount is baseless and devoid of any merit.

5.1. It is also submitted that, the incremental FSI which arose is on account of amendment to the Development Control Rules (DCR), 1991 and thus, there is no cost of acquisition in respect of the said rights transferred to the developer under the supplementary agreement for the purpose of construction. These rights had arisen without any cost, but on account of amendments brought into the DCR for which the cost of acquisition cannot be ascertained making computation provisions non-applicable in absence of provisions contained in Section 55 of the Act. In this respect, reliance is placed on the decision of Hon'ble Jurisdiction High Court of Bombay in the case of CIT vs. Sambhaji Nagar Co-operative Housing Society Limited [2015] 54 taxmann.com 77 (Bom), wherein it was held that were assessee had not incurred any cost to acquire TDR attached to land own by society, transfer of same to developer for consideration for construction of floors pace index would not be eligible to capital gains tax. Hon'ble Court in para 11 noted that:

“It was not a case of sale of development rights already embedded in the land acquired and owned by the assessee. The Tribunal concluded that the assessee had not incurred any cost of acquisition in respect of the right which emanated from 1991 Rules, making the assessee eligible to additional FSI. The land and building earlier in the possession of the assessee continued to remain with it. Even after the transfer of the right or the additional FSI, the position did not undergo any change. The revenue could not point out any particular asset as specified in sub-section (2) of section 55. The conclusion of the Tribunal is imminently possible and in the given facts. That is also possible in the light of the legal position as noted by language of section 55(2) and the judgment of the

Supreme Court in CIT v. B.C. Srinivasa Shetty [1981] 128 ITR 294/5 Taxman 1, which is in the field.)”

5.2. It is also contended that the said amount received is towards damages, inconvenience and sufferance as per clause (1) of the supplementary agreement for which it has been held in long line of judicial precedents that these are capital receipts or personal receipts not liable to tax. For this, reference is made to one such decision of Hon'ble Jurisdiction High Court of Bombay in the case of Sarfraz S. Furniturewala 467 ITR 230 (Bom), wherein it was held that compensation received from a developer for displacement and inconvenience during redevelopment is a capital receipt as it relates to loss of peaceful occupation and personal hardship hence, not taxable as income.

5.3. He also referred to the following documents which were placed on the record and forms part of the paper book to demonstrate that the members alone had received the said amount and hence, was not taxable in the hands of the assessee. These documents include returns of income filed by the members, wherein they have reported receipt of their share as income in the return and claimed deduction u/s. 54EC.

The list of the documents include:

- i. Supplementary Agreement dated 11.04.2014
- ii. Resolution dated 22.09.2013 signed by all the members
- iii. Letter dated 27.05.2013
- iv. Letter dated 03.08.2013
- v. Ann B to Supplementary Agreement
- vi. Affidavits of members
- vii. Cheques issued to 40 members
- viii. Table/Chart showing that the members have received the amount invested the same in bonds u/s 54EC and have filed Return of Income.
- ix. Investment in bonds u/s 54EC by members
- x. Return of Income filed by members.

5.4. Per contra, ld. DR placed reliance on the orders of the authorities below to assert the sustenance of addition made.

6. Having heard both the parties and perused the material on record, the undisputed facts is that amount paid by the developer is in respect of TDR towards FSI of 230 square meters for which construction remained pending. The amount of Rs. 2.28 Cr. has been paid by the developer from its bank account directly to each of the 40 members of the assessee society into their respective bank accounts by issuing individual cheques, details of which are already tabulated above. Terms of supplementary agreement, more specifically clause (1) mentions details in this respect which is already extracted above. From the perusal of the bank statement of the assessee, it could not be pointed out that assessee received credit in its bank statement of this amount of Rs. 2.28 Cr. paid by the developer to it. Credit of two entries of Rs.18 lacs each is pursuant to refundable security deposit relating to parking area and not in respect of FSI of 230 square meters which finds specific mention in the supplementary agreement on record. Also, assessee has evidently demonstrated by furnishing documentary evidence to submit that members have offered their respective share of receipt from the developer in their respective returns and claimed eligible deductions against the same.

7. We also refer to resolution passed by the members of the assessee society in the General Body Meeting held on 22.09.2013, wherein assessee entered into a supplementary agreement representing its members for their beneficial entitlement. Relevant extract from the resolution are as under:

"IT IS HEREBY RESOLVED THAT: MEMBERS OF THE SOCIETY HAVE CONSIDERED THE OFFER OF THE DEVELOPER AND ACCEPTED THE OFFER OF THE DEVELOPER AS PER HIS LETTERS DATE 27/5/2013 AND 03/8/2013. MEMBERS HAVE ALREADY AGREED THAT THE MONETARY CONSIDERATION

RECEIVED FROM THE DEVELOPERS SHALL BELONG TO AND WILL BE RECEIVABLE BY THE ORIGINAL 40 MEMBERS OF THE SOCIETY AND SHALL BE DISPERSED ON THE BASIS SIMILAR TO THAT ADOPTED FOR DIVISION FOR THE AMOUNT UNDER THE TERMS OF THE DEVELOPMENT AGREEMENT DATED 7/10/2002 AND ALLOTTEES OF THE NEW FLATS WILL NOT BE ENTITLED TO SHARE THEREIN."

7.1. For understanding the nature of transaction, it is noted that there are two types of co-operative housing Society i.e. "Tenant Ownership Housing Society" and "Tenant Co-partnership Housing Society". For Tenant Ownership Housing Society commonly known as plot owner's society, land is held by the society as a lessee/owner and members are the owners of the building on such plot of land. In such cases of development agreements, whatever is received by the member as new constructed area will accrue to the member only as he is the owner of the building. However, in the second category of Tenant Co-partnership Housing Society which are in the nature of flat owner's society in which flats are acquired by members from the builder on ownership basis and thereafter, a society is formed. Upon formation of such a society, land and building is conveyed to the society and the members have what is known as occupation rights. In respect of such societies, CBDT came up with a circular vide Circular No.9 [F.No.8/2/69-IT(A-I)] dated 25.03.1969, which clarified the position that the legal ownership in the flats in such type of societies can be said to vest in the individual members themselves, and not in the co-operative society and hence, for all purposes including attachment and recovery of tax etc. individual members should be regarded as legal owners of the property in question. Relevant extract from the said circular are as under for ready reference:

"1. Instructions were issued in 1955 to the effect that in the case of tenant co-partnership co-operative housing societies, the income from each building should be assessed in the hands of the individual members to whom it had been allotted, notwithstanding the facts that the technical legal ownership in the property in such cases vested in the society. However, it has now been represented to the Board that in the case of tenants co partnership co-operative

housing societies, the societies are usually only lessees of the flats and the legal ownership of the flats really vests in the Individual members themselves.

2. The normal procedure in such cases is that an agreement is entered into between the builder und each purchaser of the flat in the branding proposed to be constructed. The purchaser pays the entire cost of the flat in instalments spread over the period of the construction. As soon as the building is completed, the builder gives the possession of flats to the various purchasers, who then join together to form a co-operative society. the builder who had originally purchased the land or taken it on lease, transfers the land and the building thereon to the co-operative society. The society then allots the tenancy in the flats to the members in such a way that each member gets the tenancy rights over the flat which he has purchased

3. The Board are advised that under the above arrangement, the legal ownership in the flats can be said to vest in the individual members themselves and not in the co-operative society. Hence, for all purposes (including attachment and recovery of tax, etc.) the individual members should be regarded as the legal owners of the property in question.”

7.2 Thus, from the above clarification by CBDT, it is noted that legal ownership vests in individual members and not in the society in the case of Tenant Co-partnership Housing Societies. In the present case before us, the status of assessee is Tenant Co-partnership Housing Society formed by the 40 flat owners after having acquired their respective flats. Similar issue relating to this type of society had come up before the Co-ordinate Bench in the case of Raj Ratan Palace Co-operative Housing Society Limited vs DCIT [2011] 12 taxmann.com 172 (Mum), which held that consideration received by members in co-operative housing society redevelopment is taxable in the hands of members and not in the hands of the assessee. In another decision by the Co-ordinate Bench of the case of ITO vs Lotia Court Co-operative Housing Society Limited (2009) 118 TTJ 199 (Mum), wherein it was held that when TDR are owned by flat owners individually and society does not receive consideration, capital gain tax cannot be levied on the societies.

8. It is also undisputed that the FSI relating 230 square meters came into the existence because of concept of loading of TDR introduced by DCR, 1991 to make further construction on plots of land where entire basic FSI is exhausted. Hon'ble Jurisdictional High Court of Bombay in the case of Sambhaji Nagar Co-operative Housing Society Ltd. (Supra) held that where pursuant to development agreement, right to construct by loading TDR is transferred to the developer by society formed before 1991, there will be no capital gains tax liability as additional FSI had its origin in DCR for which there was no cost of acquisition paid or ascertainable u/s. 55 and thus, the computation machinery failed, resulting into no capital gains tax as per the decision by Hon'ble Supreme Court in the case of CIT vs B.C. Srinivasa Setty [1981] 128 ITR 494 (SC). Accordingly, on the admitted position of fact and law, in reference to judicial precedents discussed above, addition made by the ld. AO in the hands of the assessee society by treating it as Long Term Capital Gain (LTCG) is not tenable. Accordingly, the addition so made is deleted. Grounds raised by the assessee is in this respect are allowed.

9. Assessee has also contested on claim of deduction u/s. 80P claimed by it in the return filed in response to notice u/s. 148 on account of interest income earned by it. Claim of the assessee is that it has earned income on deposits with co-operative bank/society which is an allowable deduction u/s. 80P. The claim so made has been denied since, assessee did not claimed it originally as no return was filed u/s. 139(1), in view of provisions of section 80A(5).

9.1. Before us, it is submitted that a fresh claim can always be made before the appellate authority, in view of decision of Hon'ble Supreme Court in the case of Gotez India Limited, according to which nothing impinges on the appellate authorities to accept the fresh claim.

Considering the present position, we remit this matter for limited purpose of verification by the Id. Jurisdictional Assessing Officer (JAO) to verify receipt of interest by the assessee from co-operative banks/ societies and allow the claim of the assessee based on the verification. Assessee in this respect is directed to furnish the details of interest income received by it. Accordingly, Ground No. 4 raised by the assessee in this respect is allowed for statistical purpose.

10. Through Ground No. 5, assessee has contended that it has been assessed under a wrong status as Association of Persons (AOP), though it is a co-operative society which is a separate assessable entity for which special rates of taxation are provided under the Act.

10.1. In this respect, the factual position demonstrated by the assessee is that it is a co-operative housing society incorporated under the Maharashtra Co-operative Societies Act, 1961 which is a corporate body having independent status. It is not engaged in any business and therefore, cannot be classified as AOP and, therefore, has to be assessed in the status of a society having separate PAN and distinct legal status. In view of this factual position, Id. AO is directed to consider the status of the assessee for the purpose of assessment under the Act as a society. Accordingly, ground raised by the assessee in this respect are allowed.

11. Ground No.6 is in respect of levy of interest which is consequential in nature and, therefore, needs no separate adjudication. Ground No.1 and 3 raised by the assessee are on the jurisdictional issues which need no separate adjudication as appeal of the assessee has already been allowed by dealing on the merits of the case and accordingly left open.

11. In the result, appeal of the assessee is partly-allowed.

Order pronounced in the open court on 22.12.2025.

Sd/-
[Sandeep Gosain]
Judicial Member

Sd/-
[Girish Agrawal]
Accountant Member

Dated: 22.12.2025.

Divya Ramesh Nandgaonkar
Stenographer

Copy to:

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai