

**IN THE INCOME-TAX APPELLATE TRIBUNAL “C” BENCH,
MUMBAI
BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No.2663/MUM/2025
(निर्धारण वर्ष/Assessment Year :2015-16)**

Paresh Manubhai Desai Budling No.8, Flat No. 90, Ramkrishna Nagar, Near Khar Police Station, Mumbai 400052	v/s. बनाम	Income Tax Officer Ward 22(2)(1), Mumbai Pratishtha Bhava, 3 rd & 4 th Floor, 101 M. K. Road, Mumbai 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AHLPD1616K		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

निर्धारिती की ओर से /Assessee by:	Shri. Dnyanesh Patade
राजस्व की ओर से /Revenue by:	Mr. Virabhadra S. Mahajan, Sr. DR

सुनवाई की तारीख / Date of Hearing	26.06.2025
घोषणा की तारीख/Date of Pronouncement	21.07.2025

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as “CIT(A)”] dated 21/03/2025 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2015-16.

2. The assessee has raised the following grounds of appeal:

“1. On the based-on circumstances and facts, the Learned AO erred in treating entire sales consideration of Rs. 2,09,22,187/- under the head STCG instead of LTCG, thereby not allowing the exemption u/s 10(38) to the assessee.

2. On the based-on circumstances and facts, the Learned AO erred in appreciating the facts that the shares were received from parents of the assessee, which can be observed clearly from the NSDL demat statement, thereby treating entire sales consideration of Rs. 2,09,22,187/- and no COA, under the head STCG instead of LTCG.

3. The appellant craves to leave, to add, to alter or modify the grounds of appeal, as stated above, at any time on or before the hearing of appeal.”

3. Brief facts of the case are that the assessee filed his return declaring total income of Rs. 11,61,320/- on 29.08.2015 for AY 2015-16. The case was selected for scrutiny on the basis of information available regarding the share trading account of the assessee. Ld. AO noticed that the assessee had received sale proceeds from sale of equity shares amounting to Rs.2,09,36,220/- through HDFC Securities. The same was treated as short term capital gains in the hands of the assessee and the assessment was completed at income of Rs. 2,20,82,510/- vide order u/s. 143(3) dated 31.12.2017. Aggrieved with the order, the assessee preferred an appeal before Ld. CIT(A). It was contended by the assessee that the shares were received by him from his parents which were transferred to his accounts after their death. It was pointed out that from the demat account statement, it was clear that all the shares sold by the assessee during the year were either shown as opening balance or were transferred from the family members demat accounts and were, therefore, held for a period of more than one year. The assessee was therefore entitled to claim the exemption on account of Long-Term Capital Gains (LTCG) received from such sale u/s. 10(38) of the Act. During the course of appellate proceedings, Ld. CIT(A) sought a remand report from the Ld. AO on the submissions filed by the assessee. Vide

remand report dated 27.07.2024. Ld. AO submitted that from the details made available, it was not possible to ascertain that the assessee was holding the impugned shares for more than two years. Further, no documentary evidence with respect to transmission of shares from his father to his mother and finally to him had been furnished by the assessee. Based on this remand report, Ld. CIT(A) provided an opportunity to the assessee to submit necessary evidences. However, in the absence of any such document any evidences in support of his claim regarding LTCG, Ld. CIT(A) confirmed the addition made by the Ld. AO. The assessee has filed an appeal before the ITAT against the order of Ld. CIT(A).

4. Before us, Ld. AR has submitted a copy of the HDFC Securities transmission certificate as well as copies of the assessee's demat accounts, individual as well as joint with his parents, alongwith a chart explaining the computation on LTCG. It has been submitted that all these documents were submitted before the lower authorities and only the transmission certificate was not furnished as the same was not available at that time. The assessee has furnished before us a fresh reconciliation chart of shares sold and their receipt in the demat account along with a copy of the transmission certificate received from the HDFC Bank. The reconciliation chart is reproduced below:

Paresh Desai

A.Y. 2015-16

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"C" Bench

Reconciliation of quantity of shares sold and there receipt in demat data

Scrip Name	B/ S	Exch	Sale Qty (total)	Sale Date	Selling Demat Account no.		Receipt entries in 28024590 (A)			Receipt entries in 28016567 (B) from			
					28024590	28016567	Demat account no	Qty	Date of receipt	Demat account no	Qty	Date of receipt	
1 ASHOK LEYLAND LTD	S	NSE	2,440	14.08.2014	1,220	1,220							
							28016567	610	30.10.09	41407337	1,220	19.09.09	
							Bonus	610	09.08.11	to 28024590	-610	30.10.09	Contra
										Bonus	610	09.08.11	
								1,220			1,220		
2 DCM SHRIRAM LIMITED	S	NSE	1,020	14.08.2014	510	510				41407337	1,020	19.09.09	
							28016567	510	30.10.09	to 28024590	-510	30.10.09	Contra
								510			510		
3 DCW LIMITED	S	NSE	10,690	14.08.2014	5,345	5,345				41407337	10,690	19.09.09	
							28016567	5,345	30.10.09	to 28024590	-5,345	30.10.09	Contra
								5,345			5,345		
4 DLF LTD	S	NSE	1,680	14.08.2014	840	840	41407362	293	19.09.09	41407337	1,387	19.09.09	
							28016567	587	30.10.09	to 28024590	-587	30.10.09	Contra
							to 28016567	-40	03.11.09	28024590	40	03.11.09	Contra
								840			840		
5 EIH LIMITED	S	NSE	9,225	14.08.2014	4,612	4,613				41407337	9,225	19.09.09	
							28016567	4,612	30.10.09	to 28024590	-4,612	30.10.09	Contra
								4,612			4,613		
6 EIMCO ELECON (INDIA) LTD	S	BSE	300	14.08.2014	150	150				41407337	300	19.09.09	
							28016567	150	30.10.09	to 28024590	-150	30.10.09	Contra
								150			150		
7 ELECON ENGINEERING CO LTD	S	NSE	7,860	14.08.2014	3,945	3,945	41407382	480	19.09.09	41407337	7,410	19.09.09	
							28016567	3,465	30.10.09	to 28024590	-3,465	30.10.09	Contra
								3,945			3,945		
8 GRASIM INDUSTRIES LTD	S	NSE	290	14.08.2014	145	145	41407362	44	19.09.09	41407337	240	19.09.09	
							28016567	101	30.10.09	to 28024590	-101	30.10.09	Contra
								145			145		
9 GUJ STATE FERT & CHEM LTD	S	NSE	700	14.08.2014		700				By trade	700	14.01.13	
								-			700		
10 HINDUSTAN UNILEVER LTD	S	NSE	2,470	14.08.2014	1,235	1,235				41407337	2,470	19.09.09	
							28016567	1,235	30.10.09	to 28024590	-1,235	30.10.09	Contra
								1,235			1,235		
11 ICICI BANK LTD	S	NSE	206	14.08.2014	103	103				41407337	206	19.09.09	
							28016567	103	30.10.09	to 28024590	-103	30.10.09	Contra
								103			103		
										41407337			Received as JK
										Received as JK			

[illegible]

Demat Account Ownership details :

- 1 Demat account no **41407337** Joint Ownership - Madhrika Manubhai Desai & Paresb Manubhai Desai | Demat account pg. no Paperback 1 - A 058
2 Demat account no **41407362** Joint Ownership - Paresb Manubhai Desai & Madhrika Manubhai Desai | Demat account pg. no Paperback 1 - A 052



5. We have heard the rival submissions. From the above reconciliation as well as the transmission certificate submitted by the assessee, it is clear that the he has indeed earned LTCG on the shares sold during the year which have been received earlier from his parents. The assessee is therefore, entitled to claim LTCG exemption u/s. 10(38) of the Act. Accordingly, addition made by the Ld. AO on account of short-term capital gains from these transactions is hereby deleted.

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

Order pronounced in the open court on 21.07.2025.

Sd/-

BEENA PILLAI

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 21.07.2025

दिव्या रमेश नांदगावकर/ स्टेनो

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

**सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,**

**सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.**