

आयकर अपीलीय अधिकरण, 'ए' (एस एम सी), न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' (SMC) BENCH, CHENNAI**

श्री जॉर्ज जॉर्ज, उपाध्यक्ष के समक्ष
BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT

आयकर अपील सं./ITA No.: 2398/CHNY/2025

निर्धारण वर्ष/Assessment Year: 2016-17

Shri Indihaf Jamal Mohamed,
804, Tower-2,
Lake Dugar Apartments,
Kallikuppam, Ambattur,
Chennai – 600 063.

The Income Tax Officer,
Vs. Non-Corporate Ward 10(6),
Chennai.

PAN: AAHPI 8061N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri S.R. Srikrishna, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri P. Krishna Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 02.12.2025

घोषणा की तारीख/Date of Pronouncement

: 03.12.2025

आदेश/ ORDER

This appeal filed by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 24.06.2025 passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2016-17.

2. Though the assessee has raised two legal grounds, the Ld.AR for the assessee at the time of hearing submitted that the ground raised on merit may only be adjudicated and the legal grounds may be left open. Therefore, the only ground argued by the Ld.AR is that the First Appellate Authority has erred in confirming the order of the AO disallowing the deduction claimed u/s.54 of the Act.

3. Brief facts of the case are as follows: The assessee is an individual and has not filed his income for the assessment year 2016-17. The Department received information that assessee had sold an immovable property for a sum of Rs.60,00,000/-. Since assessee had not filed his return of income, the AO issued notice u/s.148 of the Act on 27.03.2023. In response to notice issued, the assessee filed his return of income on 02.08.2023 declaring total income of Rs.7,65,720/- after claiming deduction u/s.54 of the Act stating that he has sold his residential house property for Rs.60,00,000/- on 21.09.2015 and purchased a new property on 25.12.2015.

4. The AO completed the assessment u/s.147 r.w.s.144B of the Act by disallowing the deduction claimed u/s.54 of the Act. The

AO held that the assessee has not furnished the copy of sale deed to prove the date of sale and 'transfer has not been taken place for the new property' within one year as per section 54 of the Act.

5. Aggrieved by the assessment order, the assessee preferred appeal before the First Appellate Authority (FAA). Before FAA, though various notices of hearing have been issued, there was no compliance from the assessee and hence, the FAA passed ex-parte order. The FAA confirmed the disallowance made by the AO.

6. Aggrieved by the order of the FAA, the assessee has filed the present appeal before the Tribunal. The assessee has filed a paper-book consisting of 276 pages enclosing therein the sale deed of old property, construction agreement, deed of new property, bank statements, order u/s.271D dropping penalty proceedings, 148A(d) of the Act and various case laws relied on.

7. The Ld.AR for the assessee submitted that the assessee is a retired Assistant Registrar in University of Madras. He has sold his residential house property at Rangiah Naidu Street, Ayanavaram, Chennai – 600 023 for a consideration of Rs.60,00,000/- on 16.09.2015 and reinvested the sale consideration in purchase of

residential apartment at Flat No.804, Tower No.2, Eighth Floor in "Lake Dugar" at Ambattur – Puzal Road, Opp. Tata Communications Ltd., Ambattur, Chennai - 53. The assessee has claimed deduction u/s.54 of the Act of Rs.38,70,267/- since he had reinvested Rs.48,00,114/- in residential apartment in the same assessment year 2016-17. The Ld.AR submitted that the AO had disallowed the deduction since the date of registration of new property is 24.01.2019, which is after three years from the date of sale of old property (i.e, 16.09.2015). The Ld.AR submitted that the consideration for purchase of apartment was made within 5 months with last payment on 18.02.2016, which is within one year from the date of sale of property. The registration of property was delayed only due to the reasons of the builder. The Ld.AR submitted that the assessee has utilized the sale amount for purchase of new asset within the stipulated time, though the registration has been executed after the stipulated time. The Ld.AR placed reliance on the judgment of Hon'ble Jurisdictional High Court in the case of CIT vs. Sardarmal Kothari reported in [2008] 302 ITR 286 and the order of the Chennai Bench of the Tribunal in the case of ITO vs. Shri Pravin Kumar Jain & 3 others in ITA Nos.495 to 498/Chny/2020 (order dated 11.01.2023).

8. The Ld.DR supported the orders of the AO and the FAA.

9. I have heard rival submissions and perused the material available on record. The proceeding before the FAA remained ex-parte due to non-compliance of hearing notices issued. The Ld.AR has stated that assessee was not well versed in operation of computers and without real time alerts, the hearing notices issued from the office of the FAA was accidentally omitted to be taken note which resulted in ex-parte proceedings before the FAA. I strongly deprecate the non-challant attitude of the assessee in not responding to the notices issued from the office of the FAA. However, in the interest of justice and equity, I'm of the view that one opportunity ought to be provided to the assessee for proper representation of his case. I find, before the AO the requisite documents/evidence were not fully furnished. Therefore, I deem it appropriate to restore the matter to the files of the AO.

10. As regard the issue on merits, I find that the assessee has sold his residential property on 16.09.2015 and has purchased a residential flat on 24.01.2019. Though the new property was registered on 24.01.2019, it was stated by the assessee that he had paid the total purchase consideration within one year from the

date of sale of old property. The Ld.AR submitted that the construction agreement for the new property was entered on 24.12.2015 and payments have been made during the assessment year 2015-16. The Ld.AR has submitted the sale deed and copy of bank statements in support of his contention. The reason for denial of exemption u/s 54 of the Act is that the purchase of new property has not materialized within one year as per section 54 of the Act.

11. The Hon'ble Jurisdictional High Court in the case of CIT vs. Sardarmal Kothari reported in [2008] 302 ITR 286 had held that the only requirement for claiming exemption u/s.54 of the Act is the assessee must have invested the entire capital gains in construction of house and it is not necessary that the house must be complete. The relevant finding reads as under:-

“5. In the second question of law formulated, a reference is made to the Board Circular No.667 dated 18.10.1993. On a reading of the circular, we are of the view that the Circular would not in any way advance the case of the revenue to come to the conclusion that in order to have the benefit under Section 54F of the Income Tax Act, the construction should have been completed.

6. The Tribunal has also taken note of its own earlier order in the case of Seetha Subramanain vs. Assistant Commissioner of Income Tax reported in 59 ITR 94, wherein the Tribunal has held that, in order to get the benefit under Section 54F, the assessee need not complete the construction of the house and occupy the same. It is enough if the assessee establish that the assessee had invested the entire net

consideration within the stipulated period. The said view taken consistently by the Tribunal has been applied in these cases also. The Tribunal has distinguished the Delhi High Court Judgement in the case of D.P.Mehta vs. Commissioner of Income Tax reported in 251 ITD 259, relied on by the revenue in their favour to non suit the assessee for exemption. In our view the Tribunal has distinguished the same rightly because in the cited case, there was a factual finding by the authorities that the assessee himself has admitted that the construction put up was only a garage and service quarters and it was not fit enough for occupation of the assessee. That factual finding is totally absent in these cases. There is no material to entertain these appeals. The appeals fail and the same are dismissed. Consequently, connected miscellaneous petition is also dismissed.”

12. The Hon'ble Karnataka High Court in the case of CIT vs. Shakuntala Deli reported in [2016] 389 ITR 366 (Kar) had held that 'entire amount of long-term capital gains having been invested by assessee in purchasing new asset within two years as contemplated by section 54, assessee was entitled to exemption u/s.54 of the Act. It is immaterial that sale deed of property was not executed in favour of assessee within two years. The relevant finding reads as under:-

“11. A reading of the above Section would make it explicitly clear that proceeds of sale of the property is to be reinvested within a period of two years, which would not be chargeable to tax. The intention of Legislature was to encourage the investment in the acquisition of residential house or construction thereof. The condition precedent for claiming benefit under said provision is that the capital gains realized from sale of a capital asset should be reinvested either in purchasing a residential house or utilised for constructing a residential building. If it is established that consideration so received on alienation of property has been invested in either purchasing a residential building or spent on construction of residential building, an assessee would be entitled to the

benefit flowing from Section 54 of the Act irrespective of the fact that transaction not being complete in all respects. In other words, it has to be examined or discerned from the facts of each case as to whether the assessee had undertaken such an exercise or not?

12. The main purpose of Section 54 of the Act is to give relief in respect of profits on the sale of a residential house. Necessary conditions to be fulfilled for the applicability of Section 54 are:

- (i) Assessee should be an individual or a Hindu Undivided Family;*
- (ii) Capital assets should result from the transfer of a long term capital asset;*
- (iii) Capital gain must arise from transfer of building which is chargeable as 'income from house property';*
- (iv) Property should be a residential house;*
- (v) Assessee must have within a period of two years after that date purchased another property;*
- (vi) Property purchased must be residential;*
- (vii) Exemption would be available only to the extent the sale proceeds are utilized;*
- (viii) Where re-investment in a residential property is not made before due date for filing report, amount not so utilized till such date is required to be deposited in Capital Gain Account Scheme.*

Thus, if the above conditions are satisfied, assessee is entitled to claim benefit of the provision of Section 54.

13. Facts on hand would disclose that assessee had owned a flat at Mumbai and sold the same on 04.02.2003 for a total consideration of ` 1,70,00,000/-. Subsequent to such sale she entered into an agreement for purchasing another property for a total consideration of ` 3,25,00,000/- by agreement dated 08.09.2003. Said agreement came to be entered into within six months from the date of sale i.e., 04.02.2003 and assessee had paid a total consideration of ` 2,40,00,000/- between April' 2003 to September' 2003. After making the payment, a registered sale deed had not been executed in favour of the assessee before completion of two years period pursuant to Memorandum of Understanding dated 08.09.2003. The consideration received by her under sale dated 04.02.2003 has been paid by the assessee for purchasing another property and reinvestment has been made within two years as contemplated under Section 54 of the Act. These facts are not in dispute. Thus, long- term capital gains computed by virtue of sale deed stood adjusted by virtue of payment made by assessee for purchasing another property under Memorandum of Understanding dated 08.09.2003. As such, Tribunal has rightly held that date of

purchase was to be taken as the basis for reckoning the period of two years prescribed under Section 54 of the Act for extending the benefit flowing therefrom. In the instant case consideration paid by assessee under Memorandum of Understanding dated 08.09.2003 would fully cover the consideration of capital gains portion for being eligible to claim exemption under Section 54 of the Act.

14. Coordinate Bench of this Court in the case of Pr.CIT vs. C. Gopalaswamy reported in [2016] 384 ITR 307 (KAR) has held that utilization of capital gains in construction of residential house would suffice to claim the benefit of Section 54 of the Act.

15. Following the same and for the reasons aforesaid, we are of the considered view that substantial question of law is to be answered in the affirmative i.e., in favour of assessee and against the revenue and accordingly, it is answered.”

13. The Chennai Bench of the Tribunal in the case of ITO vs. Shri Pravin Kumar Jain & 3 others in ITA Nos.495 to 498/Chny/2020 (order dated 11.01.2023) has held as under:-

“8. From the table as extracted in para-4, the undisputed position that emerges is that up-to 31.03.2011, the owners has received sale consideration of Rs.1844 Lacs out of which an amount of Rs.1152.70 Lacs was re-invested towards purchase of another property and the amount of Rs.630 Lacs was earmarked for construction and the balance amount was offered to tax by the joint owners. It could thus be seen that substantial portion of net consideration so received was re-invested within stipulated period from the date of transfer of capital asset. Certain amount was retained for construction of property whereas the remaining portion was offered to tax.

9. It could also be seen that the assessee entered into construction agreement on 05.03.2012 wherein the contractor was required to complete the construction within a period of 12 months. Considering the same, the construction would have been completed well within the stipulated time. However, the delay in construction is nowhere attributed to the assessee and the assessee could not be penalized for delay on the part of the contractor to complete the construction particularly considering the fact that the provisions of Sec.54F are beneficial provisions to promote investment in housing sector and encourage

investments in acquisition of residential property. Once the assessee is found eligible to claim the same, the benefit should be granted to full extent as held in various judicial pronouncements. Therefore, the deduction could not be denied simply because there was delay on the part of contractor to complete the construction. The decision of Hon'ble High Court of Madras in CIT vs Sardarmal Kothari and Shanthilal Kothari (302 ITR 286) supports the case of the assessee.

10. The issue of depositing the unappropriated capital gains in capital gain account scheme before date of filing of return u/s 139(1) has been dealt with by Ld. CIT(A) in correct perspective and we concur with the adjudication made therein. The Ld. CIT(A) has relied on the binding judicial precedent of Chennai Tribunal in ACIT vs T.S. Arunachalam, (ITA No.2455/Mds/2017 dated 30.01.2018) wherein it was held that it was enough if the assessee had invested substantial portion of net consideration in new asset within the stipulated period. No contrary decision has been placed on record. The revenue has referred to the decision of Hon'ble High Court of Madras in CIT vs. Venkata Dilip Kumar Kartha-HUF (WA No.414 of 2020 and CMP No.6477 of 2020 dated 15.10.2020). Upon study we find that this question of law has been left open since writ appeal has been held to be infructuous. Further, from the factual matrix, it could be seen that the assessee has received the sale consideration in installments up-to financial year 2013- 14 and entire funds were not even otherwise available for the assessee to deposit the same into capital account scheme during this year. The assessee is only claiming part exemption. The same is evident from payment and investment schedule as extracted by us in preceding para4 of this order.

11. Therefore, considering the facts and circumstances of the case, we see no reason to interfere in the impugned order. Concurring with adjudication made therein, we dismiss all the appeals of the revenue."

14. In light of the above judicial precedents, if the assessee has utilized the sale proceeds within the stipulated time, the assessee is entitled for deduction u/s.54 of the Act provided the assessee has satisfied the other conditions stipulated u/s.54 of the Act. In order to examine the above factual aspects, I remit the matter

back to the file of the AO. The assessee is directed to file all the required documents before the AO. It is ordered accordingly.

15. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 3rd December, 2025 at Chennai.

Sd/-

(जॉर्ज जॉर्ज के)

(GEORGE GEORGE K)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 3rd December, 2025

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.