

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM &  
SHRI RAHUL CHAUDHARY, JM**

**I.T.A. No. 2377/Mum/2024  
(Assessment Year: 2013-14)**

<b>Margi Joy Desai</b> 1703/B, lady Ratan Towers, Danik Shivneri Marg, Worli, Mumbai-400018. <b>PAN : ABRPB3805E</b>	Vs.	<b>Asst Commissioner of Income Tax (Akhilesh Srivastava)</b> Piramal Chamber, Lalbaug, Parel, Mumbai-400012.
<b>Assessee)</b>	:	<b>Respondent)</b>

**Assessee/Appellant by** : Shri Shyam Saboo, CA  
**Revenue/Respondent by** : Shri Nayanjyoti Nath, Sr. DR

**Date of Hearing** : 22.07.2024  
**Date of Pronouncement** : 30.07.2024

**ORDER**

**Per Padmavathy S, AM:**

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [for short 'the CIT(A)'] dated 21.03.2024 for Assessment Year (AY) 2013-14. The assessee raised the following grounds of appeals:

- “1. CIT [A] has erred in confirming denying of exemption u/s 54 due to possession of under construction is not received within 3 years from the date of sale of original asset.
2. U/S 54 assessee has to invest sale consideration within three year.
3. Appellant has invested full capital gain with three years.

4. Appellant has invested by booking in under construction of flat in residence society appellant case come under construction applicable period of three years.
5. Provision of u/s 54 is beneficial provision to be construed liberally
6. Assess has obtained a right to take possession.”

2. The assessee is an individual and Doctor by profession. For the AY 2013-14, the assessee filed a return of income on 31.07.2013 declaring a total income of Rs. 20,34,549/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. In the return of income, the assessee has claimed deduction under section 54 of the Income Tax Act, 1961 (the Act) amounting to Rs.1,22,15,699/-. The detailed working of deduction claimed is given below:

“Long Term Capital Gains

Sale Consideration (15.03.2023)		2,15,00,000/-
Cost of acquisition (31.10.2009)	6585650/-	
Indexed cost 6586650 *852/632		8879471/-
Cost of improvement (2009-10)	286963/-	
Indexed cost of improvement 286963*852/632		386855/-
Cost of improvement (2010-11)	15000/-	
Indexed cost of improvement 15000*852/771		17975/-
Total Indexed cost	-----	92,84,301/-
		-----
Long Term Capital Gains		1,22,15,699/-
Less: Exemption u/s 54		1,22,15,699/-
		-----
Taxable Capital Gains		<u><u>NIL ”</u></u>

3. The AO called on the assessee to explain the allowability of deduction under section 54 of the Act and also to submit the completion details of the flat. The assessee submitted that he has booked flat no. B-3703 at Lodha Marquis by allotment letter dated 28.03.2013 and subsequently the agreement of sale was registered on 13.05.2013 for a consideration of Rs. 5,55,52,959/-. The assessee

also submitted that part payment towards construction of the new flat was made before the due date for filing the return of income to the tune of Rs. 2,42,95,657/-. Accordingly, the assessee submitted that he is entitled for deduction under section 54 of the Act. However, the AO did not accept the submissions of the assessee and held that as per the provisions of section 54 the assessee should have completed the construction of the flat within three years from the date of transfer and that in assessee's case the construction was completed much after the period of three years. The AO also held that the date of completion as per the agreement entered into by the assessee with the builder is beyond three years and therefore, the assessee is very much aware of the fact that the construction would not be completed within the stipulated period three years. Accordingly, the AO denied the benefit of section 54 to the assessee. The AO in this regard placed reliance on the decision of the jurisdictional High Court in the case of Mrs. Hilla J.B. Wadia (216 ITR 376) and the decision of the co-ordinate bench in the case of Kishore H. Galaiya Vs. ITO (137 ITD 229).

4. Aggrieved assessee filed further appeal before the CIT(A). The CIT(A) upheld the disallowance made by the AO and held that

*“7.7 In the instant case the appellant was also well aware of the fact that the date of possession of the flat towards which the deduction u/s. 54 is claimed, was not within the 3 years period from the date of the sale of the asset/s at the time of signing the agreement. The same is clearly evident from the agreement/allotment letter. This shows that this is not a case where the appellant has made the payment to the builder and the flat was not completed in time by the builder. The appellant having known the fact the construction of the flat will not be completed within the 3 years, went ahead with the agreement. Therefore the appellant's claim can not be accepted in this regard.*

*7.8 From the above discussion it is clear that the date of possession of the flat is the actual date of the purchase for claiming deduction u/s. 54 of the IT Act, whereas in the instant case the appellant has failed to follow the provisions.*

*Therefore the appellant's claim for deduction u/s. 54 of the IT Act cannot be allowed and disallowance made by the AO is sustained. In view of the same the appellant's grounds of appeal is dismissed herewith."*

5. The ld. AR submitted that the AO did not dispute the fact that the assessee has made a payment of Rs. 2,42,95,657/- upto the date of filing the return of income and it is also undisputed fact that the assessee has paid Rs. 4,10,59,019/- before the end of three years from the date of sale of the property. The ld. AR also brought to our attention that the letter of allotment is dated 28.03.2013 and the agreement for sale was registered on 13.05.2013 (page 18 to 70 of PB). The ld. AR submitted that as per section 54 of the Act, the requirement is to invest in the construction of new house within a period of three years from the date of transfer of asset and that the said section does not talk about completion of construction. The ld. AR further submitted that the reasons quoted by the lower authorities that the assessee is aware of the fact that the construction would be completed beyond three years for denying benefit under section 54 is not tenable. The ld. AR drew our attention to the relevant clause (clause-11 in page 32 of PB) in the agreement to submit that it is a standard clause which states that the construction would be completed on or before December 2019. The ld. AR also drew our attention to the payment schedule as specified in the registered agreement to submit that the assessee has made the payment as per the said schedule. The ld. AR relied on various judicial pronouncements to submit that for the purpose of claiming deduction under section 54 the completion / possession of the flat is not a pre-condition and that the assessee is entitled for deduction under section 54 provided he has invested the entire capital gain on or before the stipulated period three years.

6. The ld. DR on the other hand relied on the decision of the lower authorities.

7. We heard the parties and perused the material on record. The assessee has sold a house property on 15.03.2013 for a consideration of Rs. 2,15,00,000/- and has computed a LTCG of Rs. 1,22,15,699/- after deducting the indexed cost of acquisition and cost of improvement. The assessee had claimed the entire capital gain as exempt from tax under section 54 for the reason that he has invested the entire capital gain towards construction of the house property. The assessee has made a payment of Rs. 2,42,95,657/- upto the date of filing the return of income and a sum of Rs. 4,10,59,019/- before three years from the date of transfer i.e. 14.03.2016 which facts have not been disputed by the revenue. However, the benefit of section 54 has been denied for the reason that the assessee did not take possession of a flat / the construction of the flat was not completed within a period of three years from the date of transfer. The contention of the revenue for denying the benefit of deduction under section 54 is that the said section has the requirement that the assessee should have completed the construction within the period of three years from the date of the transfer. Therefore, before proceeding further, we will look at the provisions of section 54 of the Act.

***Profit on sale of property used for residence.***

<sup>58</sup>54. <sup>59</sup>[(1)] <sup>60</sup>[<sup>61</sup>Subject to the provisions of sub-section (2), where, in the case of an assessee<sup>62</sup> being an individual or a Hindu undivided family], the capital gain arises from the transfer of a long-term capital asset<sup>63</sup>[\*\*\*], being buildings or<sup>64</sup>lands appurtenant thereto, and being a residential house<sup>64</sup>, the income of which is chargeable under the head "Income from house property" (hereafter in this section referred to as the original asset), and the assessee has within a period of<sup>65</sup>[one year before or two years after the date on which the transfer took place purchased<sup>66</sup>], or has within a period of three years after that date constructed, a residential house, then], instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(i) if the amount of the capital gain<sup>67</sup>[is greater than the cost of<sup>68</sup>[the residential house] so purchased or constructed (hereafter in this section

referred to as the new asset)], the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or

(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain.

<sup>69</sup>[\*\*\*]

<sup>70</sup>[(2) The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme<sup>71</sup> which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

**Provided** that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—

(i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

8. From the plain reading of the above section, it is clear that the requirement as per section 54 for claiming the deduction is to construct the residential house within a period of three years is to utilize the capital gain arising from the transfer

of the Long Term Capital Asset towards purchase or construction of the house property within the stipulated time and that the amount not so utilized shall be chargeable to tax under section 45 of the Act. In assessee's case it is an undisputed fact that the assessee has utilized an amount which is more than the capital gains towards construction of the house property within the stipulated time of three year period. It is also not disputed that the assessee within the date of filing the return income under section 139(1) has also utilized an amount more than the capital gains.

9. The intention of the legislature behind section 54 of the Act is to encourage investments in the acquisition of a residential house and a beneficial provision for promoting the construction of residential house and requires to be construed liberally for achieving that purpose. The said benefit in our view cannot be denied based on the completion of construction or occupation which has not been specifically spelled out in the law and would go against the intention of the legislature. The words used in the section are 'purchased' or 'constructed' and the condition precedent for claiming benefit is that the capital gain should be parted / utilised by the assessee and invested either in purchasing a residential house or in constructing a residential house. Merely because the construction is not complete does not disentitle the assessee to claim section 54 deduction and that the assessee cannot be denied the benefit for the reason that he is aware of the fact that the construction would not be completed within three years. It is also relevant to note here that the construction was completed and the assessee took the possession of the property on 24.05.2019. As already mentioned it is undisputed fact that the assessee has invested more than the capital gain before the due date for filing the return of income and therefore, in our considered view the assessee should not be denied the benefit of section 54 for the reason that the

construction of the property was completed beyond the period of three years. Accordingly, we hold that the assessee is entitled for deduction under section 54 since he has invested an amount in excess of the capital gain derived from the transfer of the house property towards construction of new house. The AO is directed to delete the disallowance made in this regard. It is ordered accordingly.

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

*Order pronounced in the open court on 30-07-2024.*

*Sd/-*  
**(RAHUL CHAUDHARY)**  
**Judicial Member**

*\*SK, Sr. PS*

*Sd/-*  
**(PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

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

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**