

IN THE INCOME TAX APPELLATE TRIBUNAL
JAIPUR BENCH "A", JAIPUR
**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**
ITA No. 701/JPR/2024 (A. Y. 2016-17)

Kuldeep Singh Shekhawat,

11, Samridhi Traders, Police Line,

Gopal Vihar, Baran Road-324001

PAN No. ARAPS0973M

..... Appellant

Vs.

Income Tax Officer,

Ward-2(1),

Kota

..... Respondent

Appellant by : Mr. Mahendra Gargieya, Adv., Ld. AR
(Through V.C.) & Mr. Devang Gargieya,
Adv., Ld. AR
Respondent by : Mr. Manoj Kumar, JCIT, Ld. DR
Date of hearing : 04/02/2025
Date of pronouncement : 06/03/2025

ORDER

PER GAGAN GOYAL, A.M:

This appeal by the assessee is directed against the order of NFAC, Delhi dated 30.05.2023 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act'). The assessee has raised the following grounds of appeal:-

1. *The impugned order u/s. 143(3) dated 30.11.2018 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be quashed.*

2. *Deduction claimed u/s. 54F not allowed Rs. 29,16,856/-: The Ld. CIT(A) further erred in law and on the facts of the case in assessing Long Term Capital Gain by disallowing the deduction claimed u/s. 54F of the Act of Rs. 29,16,856/-. The disallowance so made and confirmed by the Ld. CIT (A), being contrary to the provisions of law and the established facts, kindly be deleted in full.*

3. *Deduction claimed u/s. 54B not allowed Rs. 33,56,070/-: The Ld. CIT(A) further erred in law and on the facts of the case in assessing Long Term Capital Gain by disallowing the deduction claimed u/s. 54B of the Act of Rs. 33,56,070/- (i.e. Rs. 32,76,000/ cost of new house and Rs. 1,63,830/- being registry charges). The disallowance so made and confirmed by the Id. CIT (A), being contrary to the provisions of law and the established facts, kindly be deleted in full.*

4. *Registry charges not included in COA - Rs. 4,55,540/-: The Ld. CIT(A) further erred in law and on the facts of the case in assessing Long Term Capital Gain by not allowing the registry charges of Rs. 4,55,540/-(while allowing the deduction claimed u/s. 54B of the Act for purchase of agriculture land of Rs. 70,00,000/-). The disallowance so made and confirmed by the Id. CIT (A), being contrary to the provisions of law and the established facts, kindly be deleted in full.*

5. *The Id. CIT (A) further erred in law as well as on the facts of the case in confirming of charging interest u/s. 234A & 234B of the Act. The appellant totally denies its liability of charging and withdrawal of any such interest. The interest so charged/withdrawn, being contrary to the provisions of law and facts, kindly be deleted in full.*

6. *The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing."*

2. The brief facts of the case are that the assessee individual filed his return of income at Rs. 5, 58,440/- u/s. 139(4) of the Act on 30.03.2017. The case of the assessee was selected for limited scrutiny under CASS for the reason that the sale consideration of property in ITR is less than sale consideration reported in Form No. 26QB, and large claim of deduction claimed u/s. 54 of the Act. The case of the assessee was assessed after disallowing deduction claimed by the assessee u/s.

54F of the Act amounting to Rs. 29,16,856/- and deduction claimed u/s. 54B of the Act amounting to Rs. 32,76,000/-. The assessee being aggrieved with the same preferred an appeal before the Ld. CIT (A), who in turn confirmed the action of the AO and dismissed the appeal of the assessee. The assessee being further aggrieved preferred the present appeal before us.

3. We have gone through the order of the AO, order of the Ld. CIT (A) and submission of the assessee and found that **the appeal of the assessee was time barred by 292 days**. For this delay the assessee filed an application for condonation of delay along with an affidavit duly attested. Before we proceed to decide the matter substantively, we need to address the issue of delay condonation. We have gone through the application filed by the assessee and as submitted by the counsel of the assessee it is found that the assessee is a farmer and not conversant and compatible with the technologies etc. It is also observed that the assessee actively participated in the proceedings before the lower authorities and this delay occurred due to the communication gap/negligence on the part of the previous counsel and assessee came to know about negative outcome before the Ld. CIT (A) only after hiring another Chartered Accountant, i.e. Mr. Sakar Jain. An affidavit in this regard is placed on record signed by Mr. Sakar Jain, CA.

4. Considering the past track record of the assessee before the lower authorities and the affidavits filed by the assessee and his new counsel, **we deem it fit to condone the delay of 292 days in filing of appeal**.

5. It is observed that during the year under consideration the assessee sold property situated at Village Deoli Arab Road, Tehsil Ladpura, and Kota for Rs. 3.08

Cr. Which was jointly owned by the assessee himself and some Mr. Naveen Kumar in 50:50, meaning thereby the share of the assessee in sale consideration was Rs. 1.54 Cr. Issue here for our consideration was allowability of deductions u/s. 54F and 54B of the Act, as the assessee filed return belatedly u/s. 139(4) of the Act. The property purchased by the assessee for the purposes of section 54F of the Act was purchased on 31.03.2017 and property for the purposes of section 54B of the Act on 25.08.2016, i.e. after the due date of filing the return and money was not deposited in the Capital Gain Account Scheme (CGAS).

6. We have gone through the order of the AO, Order of the Ld. CIT (A) and various submissions of the assessee and observed that the figures of sales, purchase, and cost of acquisition/improvement are not under challenge. The only issue under challenge is allowability of deduction u/s. 54B and 54F of the Act. We have gone through the legal citations relied upon by both the sides and refer the pronouncements of the coordinate benches also in this regard. Identical issue has been discussed by the coordinate bench, Mumbai in the case of Dr. Dharmista Mehta [2022] 144 taxmann.com 136 (Mumbai - Trib.), where in the coordinate bench held as under:

"2. Brief facts of the case are that assessee has filed her return of income on 28-7-2012 declaring total income of Rs. 3,19,812/-. The case was selected for scrutiny under CASS to examine large deduction claimed under section 54 of the Act. During the course of proceeding, it was observed by Assessing Officer (AO) that assessee has sold immovable property on 26-5-2011 for Rs. 1.7 Cr. and purchased a new property on 30-4-2013 for Rs. 1.66 Cr.

3. It is also observed that assessee has failed to deposit the amount in Capital Gains Accounts Scheme (CGAS) and also failed to purchase House Property before the due date of filing of return as per section 139(1) of the Act i.e. 31-7-2012. Based on these observations, AO issued a show-cause that why Rs. 1, 19, 45,236/- should not be taxed under the head "Long Term Capital Gain (LTCG)".

4. during the course of hearing, assessee relied upon the judgment in the case of CIT v. Ms. Jagriti Aggarwal [2011] 15 taxmann.com 146/203 Taxman 203/339 ITR 610 (Punj. & Har.) and CIT v. Rajesh Kumar Jalan [2006] 157 Taxman 398/286 ITR 274 (Gau.) to substantiate its claim under section 54 of the Act. Whereas AO relied upon the literal interpretation of section 54 of the Act which speaks about section 139(1) only. AO was not convinced with the argument advanced by the assessee in her favour and disallowed the claim of the assessee. Being aggrieved, assessee preferred an appeal before the Ld. CIT (A)-46, Mumbai.

5. Ld. CIT (A) also affirmed the view of AO. Against this order of Ld. CIT (A), assessee preferred this appeal before us. We observed that certain facts are not under challenge from both the sides i.e. (1) amount of LTCG arisen (2) Nature of Capital Gain & (3) Availability of section 54 to the assessee subject to our final decision on the issue of entitlement of section 54 of the Act.

6. During the course of hearing, ld. counsel of the assessee filed a Paper Book (PB) and in support of his contentions filed following Rulings of Jurisdictional Bench of ITAT as well as other Co-ordinate Bench and Hon'ble High Courts as under:

	<p>i. Ms. Madhu Kaul v. CIT [2014] 43 taxmann.com 417/225 Taxman 86/363 ITR 54 (Punj. & Har.).</p> <p>ii. CIT v. Smt. Bharati C. Kothari [2001] 117 Taxman 538/ [2000] 244 ITR 352/160 CTR 0165 (Cal. HC).</p>
	<p>iii. Ms. Jagriti Aggarwal (supra).</p> <p>iv. CIT v. Manjula J. Shah [2011] 16 taxmann.com 42/ [2012] 204 Taxman 691/ [2013] 355 ITR 474 (Bom.).</p> <p>v. Mrs. Seema Sabharwal v. ITO [2018] 91 taxmann.com 2/169 ITD 319 (Chd. - Trib.).</p>
	<p>vi. Rajendra Pal Verma v. Asstt. CIT [2019] 104 taxmann.com 303/176 ITD 211 (Mum. - Trib.).</p>
	<p>vii. ITO v. Mrs. Pamela Pritam Ghoseh [IT Appeal No. 5644 (Mum.) of 2016, dated 27-7-2018].</p> <p>viii. Hasmukh N. Gala v. ITO [2017] 83 taxmann.com 49 (Mum. Trib.)</p>

7. *Ld. CIT (A) relied upon the decision of Hon'ble Jurisdictional High Court in the case of Humayun Suleman Merchant v. Chief CIT [2016] 73 taxmann.com 2/242 Taxman 189/387 ITR 421 (Bom.) after considering various other judgements on the time available for investment, the Court has adjudicated a similar issue- time limit upto which the invested amount is to be considered for exemption u/s.54F. The condition of 54(2) & 54F(4) are identical with respect to the time limit except that 54F required entire sale proceeds to be invested and 54 stipulates only the amount of capital gain to be invested. All other conditions of timelines are identical. The Court has held that only the amount invested before filing return of income is eligible for exemption.*

8. *Section 54 of the Income-tax Act, 1961 ("Act") provides for exemption of capital gains arising to a specified assessee from transfer of a long-term capital asset to the extent capital gains are invested in a residential house within a prescribed period. The said exemption is available if the residential house is purchased or constructed within the prescribed period of one year before or two years after (in case of purchase); or three years after (in case of construction) the date of transfer of the long-term capital asset.*

9. *Invariably, a person is not able to utilize the entire amount of capital gains on or before the due date of filing of return for the year in respect of which such capital gains arose. Such a situation is addressed by sub-section (2) by providing for deposit of unutilized funds in a Capital Gains Account Scheme before the prescribed date so that an assessee may not lose upon the exemption of unutilized funds. Section 54(2) reads as under:*

"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 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 :"

10. *Section 54(2) provides for an interesting proposition that the amount of capital gains which is not appropriated by the assessee for prescribed purposes within one year before; or on or before the due date of filing of return of income under section 139 shall be deposited in the capital gains account scheme. It needs to be emphasized that the literal reading of section 54(2)*

provides for the two dates i.e. the due date under section 139 and the due date under section 139(1). Pertinently, section 139 cannot be said to mean only section 139(1), but it means all sub-sections of section 139.

11. It may be noted that the aforesaid provision mandates that the period of utilization or appropriation of the capital gains in purchase or construction of the new residential house is to be considered till the due date under section 139 [which also covers sub-section (4) and (5) of section 139]. However, for the purpose of taking the benefit of Capital Gains Account Scheme, the time limit for making such deposit has been prescribed to be till the due date under section 139(1) [see the text of section 54(2) as contained in the parenthesis].

12. In other words, the sub-section (2) clearly provides a pigeonhole in the sense that the investment by way of purchase or construction, without resorting to the Capital Gains Account Scheme, can be made till the date of belated return under section 139(4) or revised return under section 139(5) as the wordings used in section 54(2) is "section 139", and not section 139(1), which covers all sub-sections of section 139". The Supreme Court, in the context of interpretation of provisions of 276CC, in *Prakash Nath Khanna v. CIT* [2004] 135 Taxman 327/266 ITR 1 (SC) had observed that "...Had the Legislature intended to cover sub-section (4) also, use expression "section 139" alone would have sufficed." Therefore, in terms of the decision of the Supreme Court, since the legislature in section 54(2) used the words "section 139" only, the interpretation as discussed above seems plausible.

13. Section 54(2) is a subject matter of extensive litigation. Further, the view of various High Courts and Tribunals of the country in the following cases clearly outlines that the judicial consensus is that the exemption to be allowed regarding the amount invested in purchase or construction of the residential house under section 54 or 54F is to be considered till the date of filing return of income under section 139(4) of the Act. Reliance in this regard has been placed on the following decisions:

1. *CIT v. Smt. Umayal Annamalai* [2020] 118 taxmann.com 80/273 Taxman 146 (Mad.).
2. *Dr. Kushagra Kataria v. Dy. CIT* [2019] 101 taxmann.com 359/174 ITD 648 (Delhi - Trib.).
3. *Rajendra Pal Verma* (supra).
4. *ITO v. Nilima Abhijit Tannu* [2019] 106 taxmann.com 256/177 ITD 308 (Mum.).
5. *Nand Lal Sharma v. ITO* [2015] 61 taxmann.com 271 (JP. - Trib.).
6. *CIT v. Jagtar Singh Chawla* [2013] 33 taxmann.com 38/215 Taxman 154 (Punj. & Har.).
7. *Ms. Jagriti Aggarwal* (supra).

8. *Rajesh Kumar Jalan (supra)*.

9. *Fathima Bai v. ITO [2010] 32 DTR 243 (Kar.)*

10. *R.K.P. Elayarajan v. Dy. CIT [2012] 23 taxmann.com 206/52 SOT 159 (Chennai) (URO)*.

11. *ITO v. Smt. Sapana Dimri [2012] 19 taxmann.com 15/50 SOT 96 (Delhi)*

14. *Interestingly, none of the decisions referred above rely upon a binding precedent of the Supreme Court which has settled this issue. The aforesaid interpretation has been approved by the Hon'ble Supreme Court in the case of Xavier J. Pulikkal v. Dy. CIT [2016] 73 taxmann.com 34/242 Taxman 59/[2015] 379 ITR 535 (Mag.) when the Hon'ble Apex Court, while allowing the civil appeal, modified (or so to say - reversed) the reasoning of the Kerala High Court in the underlying order reported in Dr. Xavier J. Pulikkal v. Dy. CIT [2015] 64 taxmann.com 457/[2016] 242 Taxman 206. The Kerala High Court held as under:*

"So far as the facts of the present case, we have already stated above, it is possible that facts of the other appeal considered by the Appellate Tribunal along with appeal of the revenue may be different. The scheme for depositing capital gain is contemplated under section 54F (4) and it depends upon when the property of the assessee is sold and when exactly the amounts were invested, whether it was invested in a residential house or otherwise. All these facts have to be considered with reference to provisions of section 54F (4) along with section 139 (1) of the Act, as the due time would be under section 139(1) only not under section 139(4) of the Act."

15. *Tribunal, as a matter of fact, has accorded one more opportunity to the appellant assessee to place on record relevant facts for consideration and if his case were to be different from the facts of the other case and makes a vast difference altogether. So far as provisions of law are concerned, it is always open to him to place such facts before the Assessing Officer for consideration. However Assessing Officer, while applying the provisions of law, to the facts of a case without interdependent on facts of the other case has to consider the same. With these modifications, we dispose of the appeal directing the Assessing Officer to dispose of the matter in the light of the above observations.*

16. *It is to be noted that the Hon'ble Supreme Court, in Xavier J. Pulikkal (supra), while remanding the matter for de-novo consideration to the assessing officer has clearly modified the aforesaid observations of the Hon'ble Kerala High Court. The purported effect of the decision of the Hon'ble Supreme Court is that it has modified the "modifications" made by the Kerala High Court in the civil appeal after granting the SLP under Article 136 of the Constitution of India. Pertinently, the Supreme Court has allowed the appeal of the assessee and the effect of allowing an appeal by the Hon'ble Apex Court is to vacate a preceding order of the Kerala High Court containing a specific position taken by the Revenue. Also, the Supreme Court has to be*

understood to have differed in law with the Kerala High Court. The following verdict of the Hon'ble Supreme Court in the case of Kunhayammed v. State of Kerala [2000] 113 Taxman 470/245 ITR 360 supports the aforesaid proposition:

"Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one. Whenever this Court has felt inclined to apply its mind to the merits of the order put in issue before it though it may be inclined to affirm the same, it is customary with this Court to grant leave to appeal and thereafter dismiss the appeal itself (and not merely the petition for special leave) though at times the orders granting leave to appeal and dismissing the appeal are contained in the same order and at times the orders are quite brief. Nevertheless, the order shows the exercise of appellate jurisdiction and therein the merits of the order impugned having been subjected to judicial scrutiny of this Court."

17. *It is also submitted that the order passed by the Hon'ble Supreme Court, albeit in brief, is the declaration of law in terms of Article 141 of the Constitution of India, the exemption needs to be allowed if the amount is invested on or before the due date of filing of return under section 139(4).*

18. *We have deliberated at length the issue under consideration i.e. the entitlement of the assessee's claim of exemption under section 54. In our considered view in the backdrop of the facts of the case considered in the light of judicial pronouncements relied upon by the Revenue and by the assessee, particularly the ratio laid down by the Hon'ble Supreme Court of India in the matter of Xavier J. Pulikkal (supra), It can be safely be concluded that the assessee in the case before us is entitled to claim exemption under section 54 to the extent she had invested towards the purchase of new residential property under consideration upto the date of filing of belated return under section 139(4) i.e. 31-3-2014. In the case before us assessee purchased new property well before the deadline given in section 139(4) i.e. 30-4-2013 for Rs. 1, 66, 74,200/-. Which we find is much in excess of LTCG of Rs. 1, 19, 45,236/-. We, therefore, in terms of our aforesaid observations set-aside the order of the CIT(A) and vacate the disallowance of the assessee's claim of exemption under section 54 of Rs. 1,19,45,236/- as was sustained by him."*

6. In view of the decision of the coordinate bench, Mumbai on similar facts, wherein all the applicable judicial pronouncements have been discussed (Both

relied upon by the revenue and the assessee, i.e. in favour and against the assessee), we respectfully follow the same and relying on the decision of the Hon'ble Apex Court in the case of the Xavier J. Pulikkal (supra), without hesitation we set aside the orders of the authorities below and allowed the grounds taken by the assessee.

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

Order is pronounced in the open court on the 6th day of March 2025.

Sd/-

Sd/-

(SANDEEP GOSAIN)

(GAGAN GOYAL)

JUDICIAL MEMBER

ACCOUNTANT MEMBER

Jaipur, दिनांक/Dated: 06/03/2025

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., Sr. DR., ITAT,
5. गार्ड फाइल/Guard file.

BY ORDER,

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(Asstt. Registrar)
ITAT, Jaipur

	Details	Date	Initials	Designation
1	Draft dictated on PC on	06.03.2025		Sr.PS/PS
2	Draft Placed before author	06.03.2025		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			

