

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'I' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

**ITA No. 2648/MUM/2024  
(Assessment Year : 2020-21)**

Kavita Manoj Damani 5 <sup>th</sup> Floor, Dhiraj Chambers, 9 H.S. Marg, Mumbai-400001.	Vs.	ITO INT Tax Ward 2(1)(1), Air India Building, Nariman Point, Mumbai-400021.
<b>PAN/GIR No.AEYPD6472P</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri. Bhadresh Doshi
Revenue by	Shri. Krishna Kumar, Sr. DR
<b>Date of Hearing</b>	<b>11/03/2025</b>
<b>Date of Pronouncement</b>	<b>09/06/2025</b>

**आदेश / O R D E R**

**PER VIKRAM SINGH YADAV (A.M):**

This appeal has been preferred against the impugned order dated 07.03.2024 passed in Appeal no. CIT(A) 56, Mumbai/10315/2019-20 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-Tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2020-21 wherein the assessee has taken the following grounds of appeal:

*“1 On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in upholding the finding of the Assessing Officer that the real / economic /deemed owner of the property (Flat No. 402A/402B, Glen Classic CHS, Hiranandani Gardens, Powai, Mumbai) was not the appellant but her husband, Mr. Manoj Damani and further erred in denying the exemption u/s. 54 to the appellant in respect of the long-term capital gains arising from the sale of that property which has been assessed in the hands of the appellant.*

*2. On the facts and circumstances of the case and in law, without prejudice to the above, the very fact that the long-term capital gains of ₹ 4,21,83,273 arising from sale of the said property (Flat No. 402A/402B, Glen Classic CHS, Hiranandani Gardens, Powai, Mumbai) has been assessed fully in the hands of the appellant by the lower authorities implies that the appellant was the only real / economic/deemed owner of the said property and not her husband.*

*3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in agreeing with the decision of the Assessing Officer to disallow the exemption claimed by the appellant u/s.54 in respect of 50% of the long-term capital gains on the ground that the 50% share in the said property was gifted by her husband to her and, therefore, the provisions of Section 64(1)(iv) were applicable making her husband as the deemed owner but without appreciating that at the most only the net income after considering the eligible exemption could have been clubbed.*

*4. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in disallowing the exemption u/s. 54 on the ground that the appellant had not deposited the unutilized amount of capital gains into an account under the Capital Gains Account Scheme as required under the provisions of sub-section (2) of Section 54.*

*5. On the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have appreciated that the appellant had made the payments in respect of purchase of another residential property well before the date of filing of her return of income u/s. 139.*

*6. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the finding of the Assessing Officer that the appellant had adopted a colourable device to evade tax and thereby disallowing the exemption claimed by the appellant u/s. 54.”*

2. Briefly the facts of the case are that the assessee filed her return of income declaring total income of Rs. 29,60,520/- which was selected for complete scrutiny under CASS and one of the issues for which the case was selected for scrutiny was to examine capital gains deduction claimed by the assessee in her return of income. Notices u/s. 143(2) and 142(1) were issued and after

calling for necessary information/documentation including issuing of notices u/s. 133(6) to the husband of the assessee Shri. Manoj Damani and issuing a show-cause to the assessee, the assessment order was passed u/s. 143(3) r/w 144C of the Act vide order dated 29.11.2022 wherein claim of exemption u/s. 54 amounting to Rs. 3,96,55,000/- was denied to the assessee.

3. As per the Assessing officer, the assessee has purchased flat N. 402A for Rs.34,51,000/- and flat No.402B for Rs. 17,40,000/- at Glen Classic CHS Ltd., Hiranandani, Powai on 14.03.2002 in the joint name with her Husband Mr Manoj Damani. Assessee was asked to provide documentary evidence regarding payment made in respect of purchase of property i.e flat No. 402A/402B. Assessee and her husband failed to prove that the assessee had made any payment in respect of the purchase of the said flats. In the absence of same, it is proved that all the payment was made by her husband and name of the assessee was added just for the name sake. Hence the real economic owner of the said flats was her husband and not the assessee. As the real /economic/deemed owner of the property flat No. 402A/402B was Mr Manoj Damani and owner of property situated at Lodha Estella (on which the exemption u/s.54 was claimed) is also Mr. Manoj Damani, it is well established in law that to constitute sale, there must be two separate parties/entities to the transaction and no person can transact with oneself. Here, seller and purchaser are the same person. Accordingly, the sale agreement was held as void and the exemption claimed by the

assessee of Rs.3,96,55,000/- cannot be accepted hence the same was disallowed by the AO.

4. It was held by the AO that on 01st April 2017, Mr Manoj Damani has gifted his share of 50% to her wife Kavita Damani. As husband gifted his share of property to his wife, husband is considered as the deemed owner of the said property. Without prejudice to above, if it presumed that the assessee has made the payment in respect of her share at the time of purchase of the said property i.e flat No. 402A/402B, then also her husband is the deemed owner of 50% of the said property as per section 64(1)(iv) of the I.T. Act.
5. It was held by the AO that in this case since the assessee's husband Mr. Manoj Damani is the deemed owner of the said property i.e, flat No. 402A/402B, as per clubbing provision, the capital gain earned on sale of property is the income of her husband i.e Mr. Manoj Damani. One cannot claim exemption u/s.54 on purchase of its own property. Accordingly, half of the exemption claimed by assessee of Rs.1,98,27,500/- u/s.54 of the IT Act is liable to be disallowed as purchaser and seller (property situated at Lodha Estella, on which the exemption u/s.54 was claimed) are the same person and it is a well settled law that one cannot purchase anything from himself.
6. It was further held by the AO that on perusal of records, it is seen that the assessee sold an immovable property i.e, flat No.

402A/402B Hiranandani, Powai for Rs.5,98,00,000/- on January, 2020 and earned capital gain of Rs.4,21,83,273/-. The assessee has claimed exemption u/s.54 of the IT Act in respect of the immovable property purchased from her husband of Rs.3,85,00,000/-. In this regard, the assessee has stated that she had made a payment of Rs. 10,00,000/- on 30.09.2019. However, this payment was not reflected in the bank account statement of the assessee. Assessee has submitted copy of agreement of sale dated 24.02.2020. As per agreement to sale, the assessee has to pay the balance amount by 30th September, 2020, but the remaining payment was made by the assessee as under :-

Sr No	Date	Bank	Amount
1	12.03.2021	Bank of Baroda	1,50,00,000
2	12.03.2021	Bank of Baroda	70,00,000
3	12.03.2021	Bank of Baroda	1,50,00,000
4	26.03.2021	Bank of Baroda	4,49,950

7. It was held by the AO that the seller of the new property i.e Mr. Manoj Damani (husband of the assessee) received the payment in his bank account maintained with Vijaya bank. On scrutiny of bank account statement of the assessee and her husband for the said period reveals that on 12.03.2021, Mrs. Kavita Damani (assessee) received Rs.70,00,000/- from M/s. Altan Engineering Pvt Ltd, a company in which she and her husband Mr. Manoj Damani are common directors. Then on the same day, Mrs. Kavita Damani made the payment of Rs.70,00,000/- to her husband Mr. Manoj Damani in his account maintained Vijaya bank. Then Mr. Manoj Damani

transfer the said Rs.70,00,000/- to M/s. Altan Engineering Pvt Ltd. The same rotation was followed for the another payment of Rs.3,00,00,000/- (1,50,00,000 and 1,50,00,000/-) on the same day i.e 12.03.2021. Hence, it is seen that the payment of Rs.3.7 crore was moved from M/s. Altan Engineering Pvt Ltd and reached to M/s. Altan Engineering Pvt Ltd through Kavita Damani and Manoj Damani in a single day. In view of the above, it is clear that no actual consideration was paid by the assessee for purchase of new property from her husband, but moved the fund of M/s. Altan Engineering Pvt Ltd/ her husband from one hand to another. This is nothing but the rotation of money just to evade tax, no actual transfer of money, no right to use the property changed, only title of the property has changed. In view of the above, it is nothing but a colourable device used to evade tax and reliance was placed on the Hon'ble Supreme Court Order in McDowell and Company Ltd. Vs Commercial Tax Officer, 154 ITR 148 wherein it was held that the "Tax planning may be legitimate provided within the framework of law and the colourable device cannot be a part of the tax planning."

8. It was further held by the AO that without prejudice to above, in view of the above, it is clear that for claiming of exemption u/s.54(2) of the IT Act, one has to invest in the new property or deposit the same in the capital gain account scheme before furnishing the return of income. However, in his case, on perusal of bank account statement, it is seen that the assessee received Rs.5,98,00,000/- in January, 2020 as sales

consideration of immovable property i.e flat No. 402A/402B, instead of investing the same or deposit it in the capital gain account scheme, the assessee has utilized the same for payment of bills, making FDs and investing in her company i.e. M/s. Altan Engineering Pvt Ltd. as evident from bank account statement furnished by the assessee. It was further held by the AO that the claim of the assessee that she had made a payment of Rs. 10,00,000/- (vide cheque No. 181392) on 30.09.2019 to her husband is not supported by any evidence. Perusal of bank account statement shows that the assessee has made a payment of only Rs 1,00,000/- on 03.10.2019 from her Vijaya Bank account vide cheque No.28181393. It is not cleared that this amount is actually related to purchase of property as cheque number mentioned in the agreement of sale (dated 24.02.2020) is different from this.

9. In view of the above, the AO held that total long term capital gain of Rs.4,21,83,273/- earned during the said transaction should be taxed under LTCG without giving any benefit of exemption claimed by the assessee u/s. 54 of the IT Act and therefore the exemption claimed of Rs.3,96,55,000/- was disallowed and added back to the income of the assessee.

10. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has sustained the findings of the AO and the findings of the Ld. CIT(A) read as under:

*“4.3 The findings of the AO in the assessment order, written submissions of the appellant and the case laws relied upon by the appellant as well as the AO have been carefully examined.*

*The fact of the case is that the assessee has purchased flat N. 402A for Rs. 34,51,000/- and flat No. 402B for Rs. 17,40,000/- at Glen Classic CHS Ltd., Hiranandani, Powai on 14.03.2002 in the joint name with her Husband Mr Manoj Damani. Later on 01st April 2017 Mr Manoj Damani has gifted his share of 50% to her wife Kavita Damani. The said flats were sold by the assessee on 03.10.2019 for Rs 5,98,00,000/- Capital gain in the said transaction was calculated by the assessee at Rs. 4,21,83,273/-. Further, the assessee claim exemption u/s. 54 of the Act by investing in a new residential property of Rs.3,96,55,000/-. This new property has been purchased by the assessee from her husband. The case of assessee was selected for complete scrutiny under CASS and the notice u/s. 143(2) of the I T Act, 1961 was issued on 29.06.2021 by NaFAC. The assessee being a non resident, his case was transferred to the assessment work list of the undersigned in ITBA for completion of the scrutiny assessment. The major issues based on which the case was selected are as follows:*

- 1. Increase in TDS in Revised Return*
- 2. Refund Claim*
- 3. Capital Gains Deduction Claim*

*Assesse has purchased purchased flat N. 402A for Rs 34,51,000/- and fat No.402B for Rs 17,40,000/- at Glen Classic CHS Ltd., Hiranandani, Powai on 14.03.2002 in the joint name with her Husband Mr Manoj Damani). Assessee was asked to provide documentary evidence regarding payment made in respect of purchase of property ve flat No. 402A/402B Assessee and her husband were failed to prove that the assessee had made any payment in respect of the purchase of the said flats. In the absence of same, it is proved that all the payment was made by her husband and name of the assessee was added just for the name sake. Hence the real/ economic owner of the said flats was her husband and not the assessee. As the real /economic/deemed owner of the property flat No. 402A/402B was Mr. Manoj Damani and owner of property situated at Lodha Estella (on which the exemption u/s.54 was claimed) is also Mr. Manoj Damani. Assessee has claimed exemption u/s.54 of the IT Act in respect of the immovable property purchased from her husband of Rs.3,85,00,000/-. In this regard, the assessee has stated that she had made a payment of Rs. 10,00,000/- on 30.09.2019. However, this payment was not reflected in the bank account statement of the assessee. Assessee has submitted copy of agreement of sale dated 24.02.2020. Hence, it is seen that the payment of Rs.3.7 crore was moved from M/s. Altan Engineering Pvt Ltd and reached to Mis. Allan Engineering Pvt Ltd through Kavita Damani and Manoj Damani in a single day. In view of the above, it is clear that no actual consideration was made by the assessee for purchase of new property from her husband, but moved the fund of M/s. Altan Engineering Pvt Ltd/ her husband from one hand to another. This is nothing but the rotation of money just to evade tax. No actual transfer of money, no right to use the property changed, only title of the property has changed. As per Supreme Court Order in McDowell and Company Ltd. Vs Commercial Tax Officer, 154 ITR 148 held that the "Tax planning may be legitimate provided within the framework of law and the colourable device cannot be a part of the tax planning." In view of the above, total long term capital gain of Rs.4,21,83,273/- earned during the said transaction should be taxed under LTCG without giving any benefit of exemption claimed by the assessee u/s.54 of the IT Act*

*On the facts and circumstances of the case and in law, I uphold the decision of the AO. The exemption u/s.54 of the Act claimed by the appellant should be disallowed. In view of*

*the above, and taking into consideration the Supreme Court Order in McDowell and Company Ltd. V/s commercial Tax Officer, 154 ITR 148, it is clear that for claiming of exemption u/s.54(2) of the IT Act, one has to invest in the new property or deposit the same in the capital gain account scheme before furnishing the return of income. However, in his case, rotation of money has been made to evade the tax. Taking into the consideration all the aspects of this case, I uphold the decision of the AO and agree with the decision of disallowing the exemption claimed by the appellant u/s 54 of the Act. Accordingly, this ground of appeal is dismissed.”*

11. Against the said findings and directions of the 1d CIT(A), the assessee is in appeal before us.

12. During the course of hearing, the Ld. AR submitted that on 14-3-2002, two adjacent residential flats (402A & 402B, Glen Classic, Hiranandani Gardens, Powai, Mumbai) were purchased vide Agreements for Sale. The agreements were executed jointly by the assessee and her husband (Manoj Damani) and the assessee's name being the first. It was submitted that on 1-4-2017, a registered gift deed was executed whereby husband of the assessee gifted his undivided share in the said property to the assessee whereby the assessee became the exclusive owner of the said property. Thereafter, the rental income earned from the said residential property was also fully offered by the assessee in her ITR.

13. It was submitted that on 9-1-2020, the assessee sold this property vide Agreement for Sale which were executed by her in her individual capacity and also the consideration for which was fully received in her bank account. The long-term capital gains of ₹ 4,21,83,273 had arisen upon transfer of this residential property.

14. It was submitted that Mr. Manoj Damani (husband of the assessee) was owning another residential property viz. Flat No. B-3901, Tower-B, Lodha Estrella, New Cuffe Parade, Mumbai 400 022. This property was purchased by him vide Agreement to Sell dated 27-3-2015 which was executed exclusively in his name. On 18-3-2021, the assessee purchased this residential property from her husband by executing a registered agreement for sale for a total consideration of Rs. 3,85,00,000. The assessee also paid this consideration fully (after deducting the applicable TDS u/s. 195) to her husband. The assessee claimed the exemption u/s. 54 amounting to Rs. 3,96,55,000 (purchase consideration of 3,85,00,000 plus stamp duty of 11,55,000) against the long-term capital gains arising from the transfer of the residential property as mentioned above.

15. It was submitted that the consideration aggregating to Rs 3,80,00,000 in respect of the residential flat purchased from husband was paid by the assessee by 12-3-2021. It is after making the payment of consideration, the return of income for the year under consideration was filed by the assessee on 24-3-2021 u/s 139(4) claiming the exemption u/s 54 of the Act.

16. In the aforesaid factual background, in the context of Ground No. 1 & 2 wherein the AO has denied the exemption claimed u/s 54 on the ground that the assessee's husband was the real / economic/deemed owner of the property sold (i.e. 402A & 402B, Glen Classic, Hiranandani Gardens, Powal, Mumbai), it

was submitted that where the contention of the Revenue is accepted, then the capital gain itself (arising on sale of the said property at Powai) was required to be assessed in the hands of the husband of the appellant. Having assessed the capital gains in the hands of the assessee fully, it would not be justified to deny the exemption claimed thereon u/s. 54 on this ground. Irrespective of the fact that the details of the payments made while purchasing the said property in 2002 were not available, the husband of the appellant had gifted his rights/interest in the said property to the assessee on 1-4-2017. By virtue of the said gift, the assessee had become the owner of the said property. Further, the rent income earned from the said property was also offered to tax by the assessee fully in her hands right from the day on which the husband of assessee gifted her share to the assessee. The sale agreement in respect of the said property was executed by the assessee in her individual capacity. The certificate to deduct tax at source at the lower rate in respect of the entire sale consideration was also issued in favour of the assessee. The sale consideration was fully received by the assessee and it was being credited to her bank account. Therefore, the assessee was only required to be considered as the real and economic owner of the said property.

17. In the context of Ground No. 3, wherein the AO has denied the exemption claimed u/s. 54 to the extent of 50% on the ground that the provisions of Section 64(1)(iv) were applicable to that extent on account of gift made by the husband of the

assessee to the assessee, it was submitted that once again, even if the provisions of Section 64(1)(iv) are to be invoked, then the capital gain itself (arising on sale of 50% rights in the said property at Powai) was required to be assessed in the hands of the husband of the appellant. It was submitted that having assessed the capital gains in the hands of the assessee fully, it would not be justified to deny the exemption claimed thereon u/s. 54 on this ground to the extent of 50%. Without prejudice, the provisions of Section 64(1)(iv) require the clubbing of the income arising from the asset transferred without consideration. For this purpose, the income is first required to be computed by applying all the provisions of the Act. Section 2(24) defines 'Income' which includes the capital gain which is chargeable to tax u/s. 45, Section 45 provides for the chargeability of the capital gains but subject to the provisions of Section 54 etc. (which provide for the exemption). Therefore, the capital gain if exempt u/s. 54 then does not fall within the chargeability provision of Section 45 at all and, therefore, does not fall within the definition of the 'income' at all. Section 64(1)(iv) would fail to operate with respect to something which cannot be regarded as 'income' at the first place. In support, reliance was placed on the decisions in case of CIT vs. Ajit Thomas (Madras High Court), Hemant Shah vs. ACIT (Mumbai ITAT) and ACIT vs. Madan Lal Bassi (Chandigarh ITAT)

18. In the context of Ground No. 4 & 5, where the AO has denied the exemption on the ground that the assessee did not

deposit the unutilised amount of the capital gains in CGAS A/c as required under the provisions of sub-section (2) of Section 54, it was submitted that the time limit for making the investment for the purpose of claiming the exemption u/s. 54 was extended upto 31-3-2021 vide Section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. The assessee had invested the amount of capital gains well before 31-3-2021. The Ld. AO and CIT (A) have failed to take into consideration this aspect of the extension granted by the TOLA.

19. In the context of Ground No. 6, wherein the AO has denied the exemption u/s 54 on the ground that the assessee had adopted a colourable device to evade tax, it was submitted that the gift deed in favour of the assessee was executed and also registered on 1-4-2017. The said property was then sold on 9-1-2020. By no stretch of imagination, it can be said that the gift was made with the intention to evade the tax. This is for a simple reason that it could not have been imagined in 2017 that the property would be sold. With respect to the purchasing of the residential property from the husband, it was submitted that it was a legitimate transaction wherein a registered agreement was executed, stamp duty as applicable was fully paid, procedure for obtaining the certificate for deducting the tax at lower rate was fully completed and certificate was granted and consideration was fully paid to the husband from the bank account of the assessee.

20. It was further submitted that the only point on the basis of which the AO alleged that it was a colourable device was the rotation of funds between the assessee, Altan Engineering Pvt. Ltd. and assessee's husband. In this respect, a summary of how the sale consideration received by the assessee was being utilized by her was submitted as under:

<i>Date of Receipt</i>	<i>Consideration Received</i>	<i>Date of Payment</i>	<i>Nature of Payment</i>	<i>Amount Paid</i>
3-10-2019	5,50,000	5-10-2019	Manoj Damani-against purchase of flat	10,00,000
3-10-2019	5,50,000	5-10-2019	Altan Engineering Pvt. Ltd.	1,00,000
14-1-2020	1,02,51,101.40	15-1-2020	Altan Engineering Pvt. Ltd.	25,35,000
14-1-2020	2,74,74,102.40	20-1-2020	Remittance of Dubai	71,23,567
14-1-2020	1,02,51,101.40	22-1-2020	Altan Engineering Pvt. Ltd.	27,00,000
		22-1-2020	Fixed Deposit	99,00,000
		22-1-2020	Fixed Deposit	1,00,00,000
		12-2-2020	Altan Engineering Pvt. Ltd.	1,00,00,000
<i>Total</i>	<i>4,90,76,305.20</i>			<i>4,33,58,567</i>

21. It was submitted that these Fixed Deposits were matured on 9-10-2020 and the funds aggregating to 2,03,14,369 were credited to the bank account of the assessee out of which the amount of 1,80,00,000 was given as loan to Altan Engineering Pvt. Ltd. Thus, it can be observed that the assessee had parked the funds aggregating to ₹ 3,33,35,000 with Altan Engineering

Pvt. Ltd. which she received back on 12-3-2021 and she made the payment of the consideration payable to her husband against the purchase of the residential property on which the exemption u/s. 54 was being claimed. It may also be noted that the assessee could not utilise the sale consideration immediately for the purpose of buying the residential property from her husband only for the reason that the application for deducting tax at lower rate was pending with the Income-tax Authorities and it was granted only on 24-2-2021.

22. In support, reliance was placed on the following decisions wherein the exemption u/s. 54/54F was being granted with respect to the residential property purchased by the assessee from his relative / family member-

- i. ITO vs. Kalawati Vijaykumar Agarwal (Pune ITAT)
- ii. ITO vs. Rajesh Sharma (Jaipur ITAT)
- iii. Surjeet Singh vs. PCIT (Chandigarh ITAT)

23. It was submitted that in the first decision mentioned at (i) above, the revenue itself had agreed that the relationship between the purchaser and seller is not relevant and that there is no restriction on purchase of the said residential property from the spouse. In view of the above, it was submitted that the exemption claimed by the assessee u/s. 54 may thus be allowed.

24. Per contra, Ld DR is heard who has relied on the findings of the lower authority which we have already taken note of and not been repeated for the sake of brevity.

25. We have heard the rival contentions and pursued the material available on record. The Assessing officer has brought to tax long term capital gains of Rs 4,21,83,273/- on sale of two flats without allowing the exemption claimed by the assessee u/s 54 amounting to Rs 3,96,55,000/-. The sale of flats have been executed vide agreements to sell dated 9/1/2020 and the said flats were initially purchased vide agreement to purchase dated 14/03/2002 read with registered gift deed dated 1/04/2017. The contents of these sale agreements (and purchase/gift deed) are not in dispute and the same have been executed by the assessee in her individual capacity and the consideration has been received by her in her bank account and which has been duly offered to tax by the assessee and has been brought to tax by the AO in the hands of the assessee.

26. Now, coming to exemption claimed by the assessee u/s 54 amounting to Rs 3,96,55,000/-, the same relates to purchase of another flat by the assessee from her husband vide registered agreement to sell dated 18/03/2021 for a stated consideration of Rs 3,85,00,000/- on which the assessee has paid stamp duty of Rs 11,55,000/-. The factum of ownership of the said flat in the name of the husband of the assessee vide agreement to sell dated 27/03/2015 is not in dispute nor the contents of the subject

registered agreement to sell dated 18/03/2021 wherein the title in the property has been transferred by him in the name of the assessee.

27. In terms of utilisation of capital gains and discharge of whole of purchase consideration by the assessee within the stipulated time frame as so mandated u/s 54, it has been submitted that the assessee has discharged the whole of the consideration well before 31/03/2021, the extended time limit for making the investment under the TOLA which the AO and the ld CIT(A) have failed to consider. Further, in the interim, as the matter relating to withholding tax was pending before the tax authorities and certificate was finally issued on 24/02/2021, the assessee parked the funds in fixed deposits/with Altan Engineering Pvt Ltd and the same were liquidated/received back and thereafter, the amount was paid to the husband of the assessee after taxes were withheld and deposited. We find that the AO alleging the rotation of funds has merely looked at the transactions on 12/03/2021 when the majority of the purchase consideration has been discharged and has not considered the transactions prior to that date where the money has been initially parked by the assessee in fixed deposits/with Altan Engineering and thereafter, received back and out of which, the amount was paid to the husband of the assessee towards the purchase consideration. Further, we find that the capital gains which have been brought to tax relates to the flats that have been sold/ transferred by the assessee vide agreement to sell

dated 9/1/2020 and the assessee has thereafter purchased another flat vide agreement to sell dated 18/03/2021 wherein the consideration has been discharged by 12/03/2021, the said purchase is thus within the stipulated time period of two years after the date on which transfer of the original asset took place as prescribed u/s 54, the claim of exemption u/s 54 cannot be denied to the assessee.

28. In light of aforesaid discussion and in the entirety of facts and circumstances of the case, the AO is hereby directed to allow the exemption claimed by the assessee u/s 54 of the Act.

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

Order pronounced in open court on 09.06.2025.

**Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER**

**Sd/-  
(VIKRAM SINGH YADAV)  
ACCOUNTANT MEMBER**

Mumbai; Dated 09/06/2025  
Anandi Nambi, *Steno*

**Copy of the Order forwarded to:**

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

//True Copy//

*ITA no. 2648/MUM/2024*  
*Kavita Manoj Damani*

BY ORDER,

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