IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'F': NEW DELHI)

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

ITA No:-3092/Del/2024
(Assessment Year- 2017-18)

Raj Kumar G-249, 1st Floor Preet Vihar Delhi -92	Vs.	ITO Ward-58(4) Delhi
PAN No:ABMPK8647E		
APPELLANT		**RESPONDENT**

Appellant by : Shri Sandeep Sapra, Advocate
Respondent b : Ms.Harpreet Kaur Hansra, Sr.DR

Date of Hearing : 19.03.2025
Date of Pronouncement : 11.06.2025

ORDER

PER AMITABH SHUKLA, A.M,

This appeal filed by the assessee is directed against the order dated 14.05.2024 passed by National Faceless Appeal Centre, Delhi, arising out of the order passed by Assessing Officer dated 29.12.2019 for A.Y.2017-18. The reference to the word "Act" in this order hereinafter shall mean the Income Tax Act, 1961 as amended from time to time.

2.0 The assessee has contested the order of the Ld.CIT(A) raising grounds of appeal. As per brief factual matrix of the present case the assessee had filed its return of income on 11/08/2017 declaring total income

of Rs.10,90,520. Subsequently, the impugned return of income was revised on 27/03/2018 declaring total income of Rs.3,10,250. Assessment was completed vide assessment order dated 29/12/2019 passed u/s 143(3) of I.T. Act on total income of Rs.1,63,10,250 by making an addition of Rs.1,60,00,000 under the head 'Capital Gain' on sale of residential house for Rs.1,60,00,000. The appellant contested the additions made by the Ld.AO before the Ld. First Appellate Authority which allowed part relief. Before us the appellant assessee has contested disallowance of its claim of expense of Rs.8 lakhs paid as commission to a broker Ms Nikita Angirish u/s 48, expense of Rs.42,22,152/- on account of denial of indexed cost of acquisition u/s 48 and of Rs.94,50,000/- being exemption claimed u/s 54 of the Act. Before us the appellant has filed a detailed

3.0 The first issue raised by the appellant through the ground of appeal No.1(a) is regarding the disallowance of commission paid to broker. The Ld. Counsel for the assessee submitted that the Ld.AO has made the impugned disallowance by making following observations on page 2-3 of the assessment order *"The assessee has claimed commission of Rs.8 lakhs on sale of property which cannot be allowed in the absence of documentary evidences.". The Ld. Counsel submitted that* the Ld.CIT(A) sustained the disallowance of Rs. 8,00,000/- at page 23 by observing that "*however, the genuineness of the commission expenses is not explained during*

Assessment proceedings, remand proceedings and appellate proceedings, hence the same is not found acceptable".

3.1 The Ld. Counsel for the assessee drew our attention to the letter dated 19/12/2019 of assessee filed before AO wherein vide para 6, it was submitted that the Appellant has paid commission @ 2% amounting to Rs.8,00,000 on 17/02/2017 through RTGS from his Syndicate Bank account to the broker Ms. Nikita Angirish against sale of house No. B-131, Sector 105, Noida, U.P. for Rs.1,60,00,000. To prove that commission was paid through RTGS on 17/02/2017, Appellant assessee had filed relevant bank statement of Syndicate Bank for the period 20/08/2016 to 11/10/2017. It was submitted that before the Ld. First Appellate Authority, Appellant assessee had filed confirmation certificate dated 20/01/2020 of Ms. Nikita Angirish along with her PAN and Aadhaar Card , wherein Ms. Nikita Angirish confirmed that she had received commission of Rs.8,00,000 on 17/02/2017 through RTGS from the assessee against sale of house No. B-131, Sector 105, Noida, U.P. It was submitted that the fresh documents were submitted to the Ld.CIT(A) for admission u/s 46A. The Ld.CIT(A) sought remand report from the AO and copy of AO's remand report dated 09/02/2024 alluded that the Ld.AO has not commented on the submissions/confirmatory certificate of Ms. Nikita Angirish. It is the case of the appellant that in spite of admission of impugned additional evidences by the Ld. CIT(A), the Ld. AO's remand

report dated 09.02.2024 and appellant's rejoinder dated 29/02/2024 the Ld. CIT(A) did not give any finding on the issue of commission paid to Ms. Nikita Angirish. The Ld.Counsel has argued that lower authorities have neither controverted nor disproved the confirmatory certificate of Ms. Nikita Angirish that she received 2% commission of Rs.8,00,000/- through RTGS from the appellant on sale of appellant's residential house for Rs.1,60,00,000/-. In support of its contentions, the appellant assessee has filed a comprehensive paper book placing on record documents and submissions placed before lower authorities.

3.2 Per contra, the Ld.DR would like to place reliance upon the orders of lower authorities.

3.3 We have heard rival submissions in the light of material available on records. The appellant claims to have paid commission of Rs.8,00,000/- through RTGS to Ms. Nikita Angirish for sale of appellant's residential house for Rs.1,60,00,000/-. We have noted from the order of Ld.CIT(A) on page 23 that he has not given a recent finding on the merits of the matter except that genuineness of payment has not been explained during assessment, appellate and remand proceedings. We have noted that appellant has produced through its paper book copies of documents which were provided before the lower authorities. The identity of the recipient has been established through aadhaar card. The payment for commission was made

through banking channel. Therefore, there cannot be any scope of doubt when the identify of recipient and genuineness of transaction is prima face established. The rate of commission has also been found to be in proximity to prevalent market rate of 1 to 2@ of sale price. Accordingly, we are of the considered view that there is no merit in the impugned addition of Rs.8 lakhs made by the Ld.AO on account of commission payment and its confirmation by the Ld.CIT(A). We therefore set aside the order of the lower authorities and direct the Ld.AO to delete the impugned addition. **Ground of appeal no.1 raised by the assessee is allowed.**

3.4 The next issue raised by the appellant through ground of appeal No.1(b) is regarding the disallowance of Rs.42,22,152 u/s 48 of I.T. Act in respect of cost of construction of residential house for Rs.26,68,400 in FY-2010-11 as per registered valuer's report and indexed cost thereon of Rs.42,22,152 against sale of such house for Rs.1,60,00,000/-. The Ld. Counsel for the assessee invited our attention to order of the Ld.AO on page 3 of the assessment order stating that *"The assessee has claimed cost of acquisition amounting to Rs.1,36,69,735 but has not submitted any purchase deed and document in support of improvement/ construction made on the property sold for 1,60 Cr".* It was further argued that the Ld.CIT(A) sustained the disallowance on account of cost of construction and indexed cost thereon, holding that *"Regarding the cost of construction of Rs.26,68,400/-*

(after indexation Rs.42,22,152) the appellant have not produced the evidences for incurring the expenses but only produced valuation report. Since the appellant failed to prove with supporting evidences that he had actually incurred that much expenditure on construction of house, the same cannot be considered".

3.5 The Ld.Counsel has submitted that from the Certificate of Sanction of building plan, Completion Certificate along with drawing of built up area of 63 sq. mtr. of the residential house issued by Noida Authority, Government registered valuer's report estimating the cost of construction of the house, photograph of the house in the registered transfer cum sale deed, depositions of the Appellant and also depositions of Sh. Yogesh Kumar Bansal which it has produced before the lower authorities, it has been substantiated/proved that the Appellant had constructed a residential house. The appellant assessee has argued that the impugned documentary evidence has neither been controverted nor disproved by the authorities below and therefore indexed cost of construction of the residential house deserves to be allowed u/s 48 of I.T. Act. It was submitted that no adverse inference could be drawn against the Appellant for not producing bills/vouchers for construction of the residential house which was constructed in FY 2010-11 as the same were not traceable after a lapse of 8 years i.e. from FY 2010-11 when construction took place and assessment proceedings

u/s 143(3) which was completed vide assessment order dated 29/12/2019. In these circumstances, the cost of construction worked out at Rs. 26,68,400 in the financial year 2010-11 by the Government registered valuer deserves to be adopted. In support of its contentions, the assessee relied upon the decision of the SMC Bench of the Jaipur tribunal in the case of Shri Kanhaiya Lal lalvani in ITA No.364/JP/2022.

3.6 Per contra, the Ld.DR would like to place reliance upon the order of lower authorities.

3.7 We have heard rival submissions in the light of material available on records. It is the case of the assessee that because it had provided evidences towards construction of house, building plans, valuer's report etc and therefore mere non-production of bills and vouchers qua expenses cannot deny the claim. The issue seminal to the controversy is that the assessee is claiming cost of improvement of the property which has contributed to enhanced indexed cost of acquisition. Though the onus to establish a claim of its expenditure primarily rest upon the appellant. Yet we find force in the argument of the assessee regarding the time lag on account of which respective bills and vouchers were not available. We have also , noted that the valuation of the property was done way back in March-2011 and there is every probability that the valuer would have considered bills and vouchers while making his valuation. We have also noted the decision of

the Jaipur tribunal in the case of Shri Kanhaiya Lal lalvani supra wherein on nearly identical facts relief has been accorded. Accordingly, we are of the view that no interference is required to be made by the lower authorities. We therefore set aside the order of the lower authorities and direct the Ld.AO to allow the indexed cost of acquisition claimed by the assessee. **The ground of appeal no.1(b) is therefore allowed.**

4.0 The next issue raised by the assessee through its grounds of appeal no.2 & 3 are regarding denial of exemption of Rs.94,50,000/- claimed u/s 54 of I.T. Act on account of purchase of new residential flat G – 249 (1st Floor), Preet Vihar, Delhi purchased vide registered sale deed dated 13/10/2017 against sale of old residential house B – 131, sector – 5, Noida on 06/02/2017 for Rs.1,60,00,000/-. The Ld. Counsel invited reference to para 6 of the assessment order are reproduced below:

"As evident from above, assessee's share in the property purchased on 13/10/2017 comes to Rs.47,70,000/- (Rs.45 Lacs half share, stamp duty for sale Rs.1,35,000, stamp duty for corpn. Rs.1,35,000/-) this shows that the claim of the assessee for deduction of Rs.96 lacs is incorrect……..

The assessee sold the property for Rs.1.60 cr. and transferred this amount in fixed deposits with his Syndicate bank instead of transferring the gain into capital gains account scheme. The assessee remain silent on the question asked to him vide notice dated 17/12/2019 issued u/s.142(1) that whether the sale consideration of Rs.1.60 cr was deposited in capital gain scheme or not. In view of the above, the claim of the assessee regarding commission, dues paid, cost of acquisition and exemption u/s. 54 are not allowable…..".

The Ld. Counsel further submitted that the Ld.CIT(A) confirmed the disallowance of exemption u/s. 54 of I.T. Act, holding that *"Regarding the investment in new asset, I find that the appellant had not invested the eligible amount before the due date for filing the return of income and as such the appellant was required to deposit the relevant amount in the specified capital gains scheme to avail the benefit of deduction u/s.54. However, the appellant has fail to do so. Therefore the appellant is not eligible for deduction u/s.54 of the Act."*

4.1 The Ld.Counsel submitted that the assessee had sold his residential house No. B – 131, Sector 105 on 06/02/2017 for a total consideration of Rs.1,60,00,000/-. Appellant assessee had filed his I.T. Return on 10/08/2017 declaring income of Rs.10,90,520/-. Thereafter, appellant assessee purchased a residential apartment No. G-249, 1st Floor Preet Vihar for Rs.94,50,000/- (including stamp duty of Rs.4,50,000/-) on 13/10/2017 in the name of self and his wife Smt. Neeta as per registered sale deed. Thereafter, revised Income Tax return declaring income of Rs.3,10,250/- on 27/03/2018 was filed by claiming exemption of Rs.96,00,000/- u/s 54 of I.T. Act. Admittedly, the appellant had not invested in specified Capital Gain Scheme, however, it is evident that the Appellant purchased a residential apartment on 13/10/2017 i.e. within two years from the date of sale of his old residential house which was sold on 06/02/2017. The new residential house was also purchased before the due date of filing of I.T. return u/s 139(4) of I.T. Act i.e. 31/03/2018 (before the end of the assessment year). The Ld.Counsel argued that it is settled law now that even

if the sale proceeds of residential house are not deposited in specified Capital Gain Scheme but the sale proceeds are invested in a new residential house before the due date of filing of I.T. Return u/s 139(4) of I.T. Act, the exemption u/s 54(1) of I.T. Act ought to be allowed . In support of its contentions, the Ld.Counsel drew our attention to decision of a coordinate bench of this tribunal in the case of Smt. Harminder Kaur vs ITO and Uma Nandwani vs ITO,, of Hon'ble Punjab & Haryana High Court judgement in the case of CIT vs Jagtar Singh Chawla and ,in the case of CIT vs Ms. Jagriti Aggarwal as well as of Hon'ble Gauhati High Court judgement in the case of CIT vs Rajesh Kumar Jalan, and of jurisdictional Delhi High Court judgement in the case of CIT vs Ravinder Kumar Arora.

4.2 Per Contra, the Ld.DR would like to place reliance upon the orders of lower authorities.

4.3 We have heard rival submissions in the light of material available on records. We have noted the order of Hon'ble Coordinate Bench of this tribunal in the case of Smt. Harminder Kaur vs ITO which has been on the identical issue. We have also noted that in the case of Smt. Harminder Kaur supra, the Coordinate Bench has considered the decisions of Hon'ble Punjab and Hariyana High Court, Karnataka High Court, Rajasthan High Court and Gauhati High Court. No distinguishment of facts was pointed by the Ld. DR. The decisions of this tribunal in the case of Uma Nandwani vs

ITO and of jurisdictional Delhi High Court judgement in the case of CIT vs Ravinder Kumar Arora have also been considered pg. 11. In its decision in the case of Smt. Harminder Kaur supra the Coordinate Bench as under as under :

*"……**11.** We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record, including the decisions relied upon by the parties. In the instant case, the assessee has claimed deduction under section 54 of the Act against booking of flat before the due date of filing of return under section 139(4) of the Act. The chronological events of sale of the original asset and investment in new residential house submitted by the assessee are reproduced as under:*

Sl.No.	***Particulars***	***Remark***
1	*Sale of residential house Property at 211, Sector-6 , Panchkula*	*23.06.2010*
2	*Capital Gain arising there from*	*78,80,819*
3	*Date of agreement with M/S Hadapsar Infrastructure Pvt. Ltd.*	*15.10.2012*
4	*Due Date of Filling of Income Tax Return U/S 139(1)*	*31.07.2012*
5	*Date of Filling of Income Tax Return by assessee U/S 139(4)*	*31.10.2012*
6	*Due date of filing of Income Tax return u/s 139(4)*	*31.03.2013*

***11.1** The Assessing Officer and the Learned CIT(A) has denied the deduction on two grounds. Firstly, the amount of sale consideration has not been invested in the capital gain scheme, prior to due date of filing of return under section 139(1) of the Act and therefore, assessee is not entitled for deduction under section 54 of the Act. Secondly, construction of the flat was not completed within the period specified in section 54 of the Act i.e. three years after the sale of the property and therefore, the assessee is not entitled for the deduction under section 54 of the Act.*

***11.2** As far as condition of deposit of the sale consideration in capital gain scheme account is considered, the relevant provision of section 54 is reproduced as under:*

"Profit on sale of property used for residence.
***54.** (1) ……..*

(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 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 utilized 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 utilized 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."

11.2.1 For the purpose of above section, the due date for deposit under the capital gain has been held as due date of filing of return under section 139(4) Act in the case of **Principal Commissioner of Income-tax Vs Shankar Lal Saini** (supra). The relevant finding of the Hon'ble High Court of Rajasthan is reproduced as under:

"19. The contention of Mr. Singhi that under Section 139, investment is to be made before the return is filed otherwise it will render the provision nugatory is to be considered in the light that while considering the case, Karnataka High Court in para no. 6 & 7 (supra) has considered the provisions and interpreted the same. Even the same is accepted by the Punjab and Haryana High Court and Gauhati High Court which has taken the view contrary to Kerala High Court decision.
20. In that view of the matter, three High Courts have taken the view and the Tribunal has followed the Karnataka High Court which has followed the earlier Gauhati judgment which has been independently supported by the Punjab Harayana High Court."

11.2.2 In the above decision, Hon'ble High Court of Rajasthan has relied on the decision of the Hon'ble Karnataka High Court in the case of **Fatima Bibi Vs ITO (2009) 32 DTR 243 (Kar)**, Hon'ble Punjab and Haryana High Court in the cae of Jagtar Singh Chawala (2013) 87 DTR 217 (P & H) and CIt vs jagriti Aggarwal (supra). The relevant finding of Hon'ble Punjab and Haryana High Court in the case of **Jagriti Aggarwal** (supra) has held that "*Sub-s. (4) of s. 139 is in fact, a proviso to sub-s. (1) and provides for extension of period of due date for filing the return in certain circumstances and, therefore, exemption under s. 54 was allowable where the assessee had purchased new property before the extended due date of filing of return as per s. 139(4) and filed return within such extended time."* The relevant finding of the Hon'ble High Court is reproduced as under:

*"**5.** It may be noticed that the assessee sold her residential house on 13th Jan., 2006 for a sum of Rs. 45 lacs and purchased another property jointly with Mr. D.P. Azad, her father-in-law on 2nd Jan., 2007 for a consideration of Rs. 95 lacs. The due date of filing of return as per s. 139(1) of the Act was 31st July, 2006, but the assessee filed her return on 28th March, 2007 and that extended due date of filing of return as per s. 139(4) is 31st March, 2007.*

***6.** Sec. 54 of the Act contemplates that the capital gain arises from the transfer of a long-term capital asset, but if the assessee within a period of one year before or two years after the date on which the transfer took place purchases residential house, then instead of the capital gain, the income would be charged in terms of provisions of sub-s. (1) of s. 54. As per sub-s. (2), if the amount of capital gains is not appropriated by the assessee towards the purchase of new asset within one year before the date on which the transfer of the original asset took place, or which is not utilized by him for the purchase or construction of the new asset before the date of furnishing the return of income under s. 139, the amount shall be deposited by him before furnishing such return not later than due date applicable in the case of assessee for furnishing the return of income under sub-s. (1) of s. 139 in an account in any such bank or institution as may be specified. Relevant sub-s. (2) of s. 54 of the Act reads as under :*

"(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 utilized by him for the purchase or construction of the new asset before the date of furnishing the return of income under s. 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-s. (1) of s. 139 in an account in any such bank or institution as may be specified in, and utilized in accordance with, any scheme which the Central Government may, by notification in the Official Gazettee, frame in this behalf and such return shall be accompanied by proof of such deposit, and for the purposes of sub-s. (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 utilized wholly or partly for the purchase or construction of the new asset within the period specified in sub-s. (1), then,—
(i) the amount not so utilised shall be charged under s. 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."

***7.** The question which arises is; whether the return filed by the assessee before the expiry of the year ending with the assessment year is valid under s. 139(4) of the Act?*

***8.** Learned counsel for the Revenue has argued that the assessee was required to file return under sub-s. (1) of s. 139 of the Act in terms of sub-s. (2) of s. 54 of the Act. It is contended that sub-s. (4) is not applicable in respect of the assessee so as to avoid payment of long-term capital gain.*

9. *On the other hand, learned counsel for the respondent relies upon a Division Bench judgment of Karnataka High Court in Fathima Bai vs. ITO* ***(2009) 32 DTR (Kar) 243*** *where in somewhat similar circumstances, it has been held that time-limit for deposit under scheme or utilisation can be made before the due date for filing of return under s. 139(4) of the Act. Learned counsel for the respondent also relies upon a Division Bench judgment of Gauhati High Court in CIT vs. Rajesh Kumar Jalan (2006) 206 CTR (Gau) 361 : (2006) 286 ITR 274 (Gau).*

10. *Having heard learned counsel for the parties, we are of the opinion that sub-s. (4) of s. 139 of the Act is, in fact, a proviso to subs. (1) of s. 139 of the Act. Sec. 139 of the Act fixes the different dates for filing the returns for different assessees. In the case of assessee as the respondent, it is 31st day of July of the assessment year in terms of cl. (c) of the Expln. 2 to sub-s. (1) of s. 139 of the Act, whereas sub-s. (4) of s. 139 provides for extension in period of due date in certain circumstances. It reads as under: "(4) Any person who has not furnished a return within the time allowed to him under sub-s. (1), or within the time allowed under a notice issued under sub-s. (1) of s. 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment whichever is earlier :*
Provided that where the return relates to a previous year relevant to the assessment year commencing on the 1st day of April, 1988 or any earlier assessment year, the reference to one year aforesaid shall be construed as a reference to two years from the end of the relevant assessment year."

11. *A reading of the aforesaid sub-section would show that if a person has not furnished the return of the previous year within the time allowed under sub-s. (1) i.e., before 31st day of July of the assessment year, the assessee can file return before the expiry of one year from the end of the relevant assessment year.*

12. *The sale of the asset having taken place on 13th Jan., 2006, falling in the previous (sic—assessment) year 2006-07, the return could be filed before the end of relevant asst. yr. 2007-08 (sic— 2006-07) i.e. 31st March, 2007. Thus, sub-s. (4) of s. 139 provides extended period of limitation as an exception to sub-s. (1) of s. 139 of the Act. Sub-s. (4) is in relation to the time allowed to an assessee under sub-s. (1) to file return. Therefore, such provision is not an independent provision, but relates to time contemplated under sub-s. (1) of s. 139. Therefore, such sub-s. (4) has to be read along with sub-s. (1). Similar is the view taken by the Division Bench of Karnataka and Gauhati High Courts in Fatima Bai and Rajesh Kumar Jalan cases (supra) respectively.*

13. *In view of the above, we find that due date for furnishing the return of income as per s. 139(1) of the Act is subject to the extended period provided under sub-s. (4) of s. 139 of the Act."*

11.2.3 Further, the Hon'ble High Court of Punjab and Haryana in the case of **Jagtar Singh Chawla** (supra) has held that "*The unutilized portion of the capital gain on the sale of property used for residence should be deposited before the date of furnishing the return of the Income Tax under Section 139 of the Act and that would include*

extended period to file return in terms of Sub Section 4 of Section 139 of the Act." The relevant finding of the Hon'ble High Court is reproduced as under:

"9. A Division Bench of this Court in which one of us (Hemant Gupta, J.) was a member, had an occasion to consider the provisions of Section 54(2) of the Act, wherein it has been held that sub- section(4) of Section 139 of the Act is in fact a proviso to Section 139(1) of the Act. Therefore, since the assessee has invested the sale proceeds in a residential house within the extended period of limitation, the capital gain is not payable. The judgments in Rajesh Kumar Jalan's case and Fathima Bai's case (supra) were referred to. It has been held as under:-

"Having heard learned counsel for the parties, we are of the opinion that sub-section (4) of Section 139 of the Act is, in fact, a proviso to sub-section (1) of Section 139 of the Act. Section 139 of the Act fixes the different dates for filing the returns for different assesses. In the case of assessee as the respondent, it is 31st day of July, of the Assessment Year in terms of clause (c) of the Explanation 2 to subsection 1 of Section 139 of the Act, whereas sub-section (4) of Section 139 provides for extension in period of due date in certain circumstances. It reads as under:-

"(4) Any person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under sub- section (1) of Section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment whichever is earlier; Provided that where the return relates to a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, the reference to one year aforesaid shall be construed as a reference to two years from the end of the relevant assessment year."
A reading of the aforesaid sub-section would show that if a person has not furnished the return of the previous year within the time allowed under sub-section (1) i.e. before 31st day of July of the Assessment Year, the assessee can file return before the expiry of one year from the end of ever relevant Assessment Year."

10. In the present case, the assessee has proved the payment of substantial amount of sale consideration for purchase of a residential property on or before 31.3.2008, that is within extended period of limitation of filing of return. Only a sum of Rs.24 lacs was paid out of total sale consideration of Rs. Two Crores on 23.4.2008, though possession was delivered to the assessee on execution of the power of attorney on 30.3.2008. Since the assessee, has acquired a residential house before the end of the next Financial Year in which sale has taken place, therefore, the assessee is not liable to pay any capital gain. Such is the view taken by the Income Tax Appellate Tribunal."

11.3 In the case of the assessee, the agreement to purchase of flat has been made on 15/10/2012. The assessee has provided detail of payments made, which are available on page A-56 of the paper-book, and same are reproduced as under:

Particulars	Date	Mode of Payment	Amount (in Rs.)
Investment in yoo project	*5.02.2010*	*Cheque No. 153816 before the due date u/s 139(1)*	*700,000*

Investment in yoo project	*18.5.2011*	*RTGS before the due date u/s 139(1)*	*60,83,200*
Amount paid for stamp duty on registration of agreement to sell	*16.7.2012*	*Cheque No. 35875 entry in bank statement*	*7,50,000*
Investment in yoo project	*29.8.2012*	*RTGS*	*14,16,800*
Total			***89,50,000***

11.3.1 *On perusal of the paper-book pages A-57 to A-61, it is also evident that the all above payment have been cleared from the bank account of the assessee before the due date of the filing of return under section 139(4) of the Act which was 31/03/2013 in the case of the assessee.*

11.4 *As the investment in property has been made prior to due date of filing of return of income under section 139 (4) of the Act i.e 31/03/2013, therefore Respectfully following the decision of the Hon'ble High Court reproduced above, we are of the opinion that the assessee cannot be denied deduction on the ground that amount of sale consideration has not been invested in capital gain account scheme before the due date of the filing of return under section 139(1) of the Act.*

11.5 *Further, as per the provisions of section 54 for eligibility of deduction, the assessee is required to purchase or construct one residential house in India within following periods:*
- Purchase of residential house within one year before or two years after the date on which the transfer of original asset took place or
- Construction of residential house within three years after the date of transfer of original asset

11.6 *The assessee claimed that investment in flat is equivalent to construction of residential house and since investment has been made within three years from transfer of the original asset therefore assessee is entitled to deduction under section 54 of the Act. The Learned Counsel of the assessee has submitted that the CBDT in the Circular No. 471 dated 15/10/1986 and circular No. 672 dated 16/10/1993 has considered booking of the flat as construction for the purpose of section 54 of the Act, whereas according to the Learned DR, those circulars are only applicable to booking of flats under self financing schemes of Delhi Development Authority and similar institutions. For ready reference, the aforesaid Circular No. 471, dated 15.10.1986 is reproduced as under:*

"CIRCULAR NO. 471 DATED 15TH OCTOBER, 1986
Capital gains tax—Whether investment in a flat under the Self-Financing Scheme of the Delhi Development Authority would be construction for the purpose of ss. 54 and 54F of the IT Act, 1961

CAPITAL GAINS
SECTION 54

SECTION 54F

Secs. 54 and 54F of the IT Act, 1961, provide that capital gains arising on transfer of a long-term capital asset shall not be charged to tax to the extent specified therein, where the amount of capital gain is invested in a residential house. In the case of purchase of a house, the benefit is available if the investment is made within a period of one year before or after the date on which the transfer took place and in case of construction of a house, the benefit is available if the investment is made within three years from the date of the transfer.

2. *The Board had occasion to examine as to whether the acquisition of a flat by an allottee under the Self-Financing Scheme of the Delhi Development Authority amounts to purchase or its construction by the Delhi Development Authority on behalf of the allottee. Under the Self-Financing Scheme of the Delhi Development Authority the allotment letter is issued on payment of the first instalment of the cost of construction. The allotment is final unless it is cancelled or the allottee withdraws from the Scheme. The allotment is cancelled only under exceptional circumstances. The allottee gets title to the property on the issuance of the allotment letter and the payment of instalments is only a follow-up action and taking the delivery of possession is only a formality. If there is a failure on the part of the Delhi Development Authority to deliver the possession of the flat after completing the construction, the remedy for the allottee is to file a suit for recovery of possession.*

3. *The Board have been advised that under the above circumstances, the inference that can be drawn is that the Delhi Development Authority takes up the construction work on behalf of the allottee and that the transaction involved is not a sale. Under the Scheme, the tentative cost of construction is already determined and the Delhi Development Authority facilitates the payment of the cost of construction in instalments subject to the conditions that the allottee has to bear the increase, if any, in the cost of the construction. Therefore, for the purpose of capital gains tax, the cost of the new asset is tentative cost of construction and the fact that the amount was allowed to be paid in instalments does not affect the legal position stated above. In view of these facts, it has been decided that cases of allotment of flats under the Self-Financing Scheme of the Delhi Development Authority shall be treated as cases of construction for the purpose of capital gains."*

11.6.1 The relevant part of the circular no. 672 is reproduced as under:

"Attention is invited to Board's Circular No. 471, dated 15th October, 1986 (F. No. 207/27/85-ITA.II) [published in (1987) 59 CTR (St) 19]. It was clarified therein that cases of allotment of flats under the self financing scheme of the Delhi Development Authority (DDA) should be treated as cases of construction for the purposes of sections 54 and 54F of the Income-tax Act. The Board has since received representations that even in respect of allotment of flats/houses by co-operative societies and other institutions, whose schemes of allotment and construction are similar to those of Delhi Development Authority, a similar view should be taken.

2. *The Board has considered the matter and has decided that if the terms of the schemes of allotment and construction of flats/houses by the c-ooperative societies or other institutions are similar to those mentioned in Para 2 of Board's Circular No. 471, dated 15th October, 1986, such cases may also be treated as cases of construction for the purposes of sections 54 and 54F of the Incometax Act."*

11.6.2 Regarding applicability of the circulars for booking of flats, the Hon'ble Delhi High Court in the case of **RL Sood** (supra) has observed as under:

"2. *The assessee was the owner of a residential house which he sold on 22nd Sept., 1981, for a total consideration of Rs. 2,75,000. On 25th Sept., 1981, he entered into an agreement for purchase of a residential flat and by September, 1982 paid a sum of Rs. 2,39,850 to the builder of the said flat. The actual possession was delivered to the assessee on 17th Feb., 1983 and the sale deed in his favour was registered on 26th Feb., 1985.*

3. *During the course of the assessment proceedings for the relevant assessment year, the AO brought the difference between the sale price of the residential flat sold by the assessee and the cost of acquisition of the said house to tax as capital gains on the ground that the assessee had failed to satisfy the conditions laid down in s.54(1) of the Act inasmuch as he had failed to purchase the flat within the stipulated period of one year. The assessee's appeal to the CIT (A) was unsuccessful.*

4. *The assessee took the matter in further appeal to the Tribunal, who took the view that the assessee having purchased the new flat within one year of the sale of his old residential house, the provisions of s. 54(1) of the Act stood satisfied and, therefore, no income by way of capital gains could be taxed in the hands of the assessee. The Revenue's application under s. 256(1) having been dismissed by the Tribunal the present petition had been filed.*

5. *We have heard Mr. Sanjiv Khanna, the learned senior standing counsel on behalf of the Revenue.*

6. *In our view the Tribunal was justified in declining to make a reference on the proposed question to this Court. Admittedly, the assessee had paid a sum of Rs. 2,39,850 out of the total sale consideration of Rs. 2,75,000 for purchase of flat within the period of one year from the date of sale of his old residential house. Thus, on payment of a substantial amount in terms of the agreement of purchase dt. 25th Sept., 1981, i.e., within four days of the sale of his old property, the assessee acquired substantial domain over the new residential flat within the specified period of one year and complied with the requirements of s. 54. Merely because the builder failed to hand over possession of the flat to the assessee within the period of one year, the assessee cannot be denied the benefit of the said benevolent provision. This would not be in consonance with the spirit of s. 54 of the Act.*

7. *We may note that realising the practical difficulty faced by the assessee in such situations, the CBDT issued a Circular No. 471, dt. 15th Oct., 1986, clarifying that when the DDA issues the allotment letter to an allottee under its self-financing scheme, on payment of first instalment of cost of construction, the allottee gets title to the*

property and such allotment should be treated as cost of construction for the purpose of capital gains. On the same analogy, the assessee having been allotted the flat, he having paid a substantial amount towards its cost within the stipulate period of one year, he cannot be denied the benefit of the said section because the flat purchased by him had come into his full domain within the period of one year, though the sale deed in his favour was registered subsequently

11.6.3 Further, regarding eligibility of deduction 54 of the Act for booking of flat with private builders, the Tribunal in the case of **Rampraksh Miyan Bazaz** (supra) has held as under:

"11. Now coming to a concomitant situation that if booking of flats does not tantamount to ownership of the house then how come the assessee claim that by booking a flat it has acquired 'new house' and becomes entitle for this exemption. Similar situations repeatedly arose and to settled them, the CBDT issued a circular No. 471 dated 15/10/1986 clarifying that payment made to a builder/developer is a sufficient compliance for exemption under section 54F of the Act. Id. CIT(A) has gone by sheer technicalities to hold that the flat at Emaar-MGF, Gurgaon is not covered under section 54F of the Act. To meet such recurrence of situations in the modern days where properties are booked and thereafter purchased, the CBDT in their wisdom further clarifies vide circular No. 672 dated 16/12/1993 that if any amount out of net sale consideration of the original asset is paid to any builder or developer, this amount should be considered towards the terms 'purchase/construct' for the purpose of sections 54/54F of the Act. It is not disputed by the Revenue that the assessee has not made payment for purchase of residential house in Gurgaon in view of the above clarifications of CBDT, this is enough compliance of the provision of section 54F of the Act and the assessee became entitled to this exemption.

12. We have found that section 54F of the Act is a beneficial provision aimed at promoting existence of new residential houses to further the needs of the society. Thus, the intention of the Legislator is to encourage investment in the acquisition of residential houses and section 54F of the Act prescribes and proscribes the conditions for availing its benefit. The terms/words used in this section have been very selectively & prudentially used by the legislature. This benefit is against the capital gain arising out of transfer of any long term capital asset not being a residential house and which has been referred to as an 'original asset' subject to a condition that if the 'netsale-consideration' is invested either in purchasing/constructing a residential house or in constructing the same within the period prescribed in this section. However, if the assessee owned more than one residential house other than the new asset on the date of transfer of the original asset, this benefit is not available to him. In the given case, undisputedly, the assessee had sold a capital asset in the form of land on 03/10/2008 and earned long term capital gain of Rs. 2,03,76,237/- (this LTCG has been calculated by the Assessing Officer at Rs. 2,04,37,654/-) as there was some error in the computation filed by the assessee with the return because in the indexing of the cost of land in F. Y. 1991-92, the assessee's half share was not considered. The assessee has claimed exemption under section 54F (l)(b) of the Act to the extent of Rs. 1,26,52,789/- as against total investment ofRs. 1,29,66,275/-. Thus, by now we have come to the conclusion that the assessee did not own more than one residential house on the date of transfer of the original asset. Therefore, one condition of this provision stands satisfied."

11.7 *In the instant case also, the assessee has made entire payment within the period of three years from the date of the transfer of original asset, and therefore, the amount has to be treated as invested in purchase/construction. The provisions of section 54 nowhere prescribe construction of the house should be completed. The prime requirement is investment in new residential house within the prescribed period. Thus, respectfully following the Tribunal in the case of* ***Ramprakash Miyav Bazaz*** *(supra), we are of the opinion that the assessee has complied the provision of section 54 of the Act in substance and therefore Ld. CIT(A) is not justified in confirming rejection of deduction under section 54 of the Act.*

11.8 *In view of the above discussion, we set aside the finding of the Learned CIT(A) on the issue in dispute and direct the Assessing Officer to allow the deduction claim under section 54 of the Act. The grounds of the appeal of the assessee are accordingly allowed…."*

4.4 As the facts of the present case are identical to those in the decision in the case of Harminder Kaur supra, It is held that the assessee is entitled for its claim of deduction u/s 54. Accordingly, the order of lower authorities are set aside and the Ld.AO is directed to allow the assessee its claim of deduction u/s 54. The grounds of appeal nos. 2 & 3 are therefore allowed.

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

Order pronounced in the Open Court on 11.06.2025

(SATBEER SINGH GODARA)	**(AMITABH SHUKLA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Neha, Sr. PS
Dated: 11/06/2025.
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

1.	Date of dictation of Tribunal order	19.03.2025
2.	Date on which the typed draft Tribunal Order is placed before the Dictating Member	20.03.2025
3.	Date on which the typed draft Tribunal order is placed before the other Member	
4.	Date on which the approved draft Tribunal order comes to the Sr. PS/PS	
5.	Date on which the fair Tribunal order is placed before the Dictating Member for pronouncement	
6.	Date on which the signed order comes back to the Sr.PS/PS	
7.	Date on which the final Tribunal order is uploaded by the Sr.PS/PS on official website	
8.	Date on which the file goes to the Bench Clerk alongwith Tribunal order	
9	Date of killing off the disposed of files on the judisis Portal of ITAT by the Bench Clerks	
10.	Date on which the file goes to the Supervisor (Judicial)	
11.	The date on which the file goes to the Assistant Registrar for endorsement of the order	
12.	Date of Despatch of the order	