

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No.1205/DEL/2021
(Assessment Year: 2017-18)**

Deepak Kothari,
24/19, The Mall Kanpur,
Kanpur – 208 011 (Uttar Pradesh).

vs.

ACIT, Central Circle – 5,
New Delhi.

(PAN : AAYPK6101C)

**ITA No.1834/DEL/2021
(Assessment Year: 2017-18)**

ACIT, Central Circle – 5,
New Delhi.

vs.

Deepak Kothari,
24/19, The Mall Kanpur,
Kanpur – 208 011 (Uttar Pradesh).

(PAN : AAYPK6101C)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Dr. Rakesh Gupta, Advocate
Shri Somil Agarwal, Advocate
Shri Deepesh Garg, Advocate

REVENUE BY : Shri Dayainder Singh Sidhu, CIT DR

Date of Hearing : 05.06.2025

Date of Order : 06.08.2025

ORDER

PER S.RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. These cross appeals are filed by the assessee against the order of Id. Commissioner of Income-tax (Appeals)-24, New Delhi [hereinafter referred to as 'Id. CIT (A)] dated 29.07.2021 for Assessment Year 2017-18.
2. Since the issues are common and the appeals are connected, therefore, the same are heard together and being disposed off by this common order.
3. First we deal with Revenue's appeal and the Revenue has raised the following grounds of appeal :-
 - “1) The Ld. CIT(A) erred in deleting the addition of Rs.8,36,25,157/- made on account of Long Term Capital Gain.
 - 2) The Ld. CIT(A) has ignored the fact that the assessee has not determined the capital gain per the Income Tax Act considering the handing over the possession of the property to the buyer in the year of 2007 and complete consideration received in the year of 2007.
 - 3) The CIT(A) has ignored that the assessee was earning income from investment of the amount received from sale of the property for last ten years.
 - 4) The Ld. CIT(A) erred in law by deleting the addition of Rs.11,81,85,000/- made u/s 56(2)(vii)(c) of the Act.
 - 5) The Ld. CIT(A) erred in law by ignoring the provisions of section 49(4) of the Income Tax Act which was introduced to determine cost with reference to certain modes of acquisition and acquisition of bonus shares is not exempt therein.
 - 6) The Ld. CIT(A) erred in law by ignoring the judgment of various courts which has been referred in the assessment order.”
4. At the time of hearing, Id. DR of the Revenue submitted that the Ground of Appeal Nos.1 to 3 relate to the first issue of addition on account of Long

Term Capital Gain (LTCG). In this regard, he brought to our notice the relevant facts. He brought to our notice page 2 of the assessment order and submitted that during assessment proceedings, the AO observed that assessee had sold number of immovable properties being plots of land and had LTCG. On perusal of the computation of capital gains, it revealed that assessee had sold plot of land at KW-29/1 and 29/2, to his share of 50% for Rs.7.20 crores on 22.08.2016 to M/s. Adyashakti Realtors Pvt. Ltd.. On perusal of the documents submitted by the assessee, the AO observed that assessee has transferred the land under an Agreement to Sell on 28.12.2007 and determined the whole consideration amounting to Rs.7.20 crores. Further, the AO observed that assessee has claimed indexation cost in his computation of income upto FY 2016-17 even though the capital asset stood transferred during FY 2007-08. Accordingly, a notice was issued dated 30.11.2019 and it was asked to provide the utilisation of the abovesaid funds from December 2007. In response, assessee submitted that these were used for further investment. The AO after analyzing the facts on record proceeded to determine the fund enjoyed by the assessee for ten years, accordingly he applied the cost of interest and determined the interest of Rs.7.20 crores for 3161 days and which comes to Rs.8,36,25,157/-. Accordingly, he added the interest with the sale consideration and determined the actual sale consideration of Rs.15,56,25,157/- and after giving indexation cost of

acquisition of Rs.3,71,48,678/-, accordingly determined the LTCG of Rs.11,84,76,479/-. In the net result, he determined the interest calculated on the sale consideration received by the assessee in FY 2007-08 as the additional income not declared by the assessee to the extent of Rs.8,36,25,127/-.

5. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT (A) and Id. CIT (A) considered the submissions of the assessee and deleted the above addition by considering the detailed submissions of the assessee by observing as under :-

“4.1.11 I have considered facts of the case as well as written submission of the appellant. It is observed that the appellant signed 'agreement to sell' on 28.12.2007, handed over possession of property as well as received entire sale consideration in December 2007. The case of the appellant was selected for scrutiny in A Y 2008-09 and despite specific query the Assessing Officer did not hold it taxable in that year in order u/s 143(3) of Income Tax Act.

4.1.12 The sale deed has been executed during FY 2016-17 and the appellant has offered the capital gains to tax in A Y 2017-18. Section 48 of Income Tax Act prescribes the mode of computation of capital gains which is reproduced below:

"Mode of computation.

48. The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset- the following amounts, namely :-

- (i) expenditure incurred wholly and exclusively in connection with such transfer;

- (ii) the cost of acquisition of the asset and the cost of any improvement thereto;
- [(iii) in case of value of any money or capital asset received by a specified person from a specified entity referred to in subsection (4) of section 45, the amount chargeable to income-tax as income of such specified entity under that sub-section which is attributable to the capital asset being transferred by the specified entity, calculated in the prescribed manner:]

Provided that in the case of an assessee, who is a non-resident, capital gains arising from the transfer of a capital asset being shares in, or debentures of, an Indian company shall be computed by converting the cost of acquisition, expenditure incurred wholly and exclusively in connection with such transfer and the full value of the consideration received or accruing as a result of the transfer of the capital asset into the same foreign currency as was initially utilised in the purchase of the shares or debentures, and the capital gains so computed in such foreign currency shall be reconverted into Indian currency, so, however, that the aforesaid manner of computation of capital gains shall be applicable in respect of capital gains accruing or arising from every reinvestment thereafter in, and sale of, shares in, or debentures of, an Indian company:

Provided further that where long-term capital gain arises from the transfer of a long-term capital asset, other than capital gain arising to a non-resident from the transfer of shares in, or debentures of, an Indian company referred to in the first proviso, the provisions of clause (ii) shall have effect as if for the words "cost of acquisition" and "cost of any improvement", the words "indexed cost of acquisition" and "indexed cost of any improvement" had respectively been substituted:"

4 1.13 It is not the case of the Assessing Officer that the capital gain on sale of property was taxable in A Y 2008-09 since assessment for that year has already been completed in scrutiny u/s 143(3) of

Income Tax Act. If the amount is held to be taxable in AY 2017-18, then the mode of computation prescribed in section 48 of Income Tax is required to be followed. From full value of consideration, indexed cost of acquisition is required to be deducted. In its computation of capital gains, the appellant has taken full value of consideration at Rs.5,56,25,157/- from which Indexed cost of acquisition of Rs.3,71,48,678/- has been deducted to arrive at Long term capital gain of Rs.11,84,76,479/-. It is held that the appellant has rightly computed long term capital gain as per mode of computation prescribed in section 48 of Income Tax Act.

4.1.14 The Assessing Officer held that even though whole consideration was received in 2007- 08, the appellant had taken benefit of indexation upto 22.08.2016 and recognized the above receipts as income during AY 2017-18. He held that time value of money is added to the sale consideration by adding cost of borrowing of such funds by adopting BPLR of the State Bank of India from 28.12.2007 to 22.08.2016 and accordingly recomputed long term capital gain at Rs. 11,84,76,479/-. It is held that there is no such procedure for computation of capital gain prescribed under the Income Tax Act. The Assessing Officer has attempted to tax notional income which is incorrect since the Income Tax Act has specifically provided mode of computation of capital gain in section 48 of Income Tax Act. Moreover, income earned by the appellant on the amount received in December, 2007 has been declared by the appellant in respective years and tax has been paid thereon.

4.1.15 Hon'ble Supreme Court in the case of K.P.Varghese vs ITO 131 ITR 597 held as follows:

"15 It may be noted that section 52 is not a charging section but is a computation section. It has to be read along with section 48 which provides the mode of computation and under which the starting point of computation is "the full value of the consideration received or accruing". What in fact never accrued or was never received cannot be computed as capital gains under section 48, Therefore, sub-section (2) cannot be construed as bringing within the computation of capital gains an amount which, by no stretch of imagination, can be said to have accrued to the assessee or been received by him and it must be confined to cases where the actual consideration received for the transfer

is understated and since in such cases it is very difficult, if not impossible, to determine and prove the exact quantum of the suppressed consideration, subsection (2) provides the statutory measure for determining the consideration actually received by the assessee and permits the revenue to take the fair market value of the capital asset as the full value of the consideration received in respect of the transfer."

4.1.16 It is held that Income Tax Act permits the taxation of Real Income and not the notional Income as held in the following judgments:

- a) Hon'ble Supreme Court in the case of E.D. Sassoon & Co. Ltd.'s case 26 ITR 27 (SC)
- b) Hon'ble Supreme Court in the case of CIT v. Shoorji Vallabhdas & Co. 46 ITR 144 (SC)
- c) Hon'ble Supreme Court in the case of Excel Industries (SC) 358 ITR 0295

4.1.17 In view of above discussion, it is held that-the appellant has rightly computed long term capital gain as per mode of computation prescribed in section 48 of Income Tax Act and the Assessing Officer was not justified in computing income on notional basis taking into consideration time value of money. Accordingly, addition of Rs.8,36,25,157/- is hereby deleted and Ground Nos.1 to 4 of the appeal are allowed."

6. With reference to the findings of the Id. CIT (A), Id. DR objected to the same and submitted that assessee has taken double benefits i.e. claiming indexation upto 2016 on cost of acquisition of earned income from sale consideration. He supported the AO's finding and determination of actual sale consideration by applying BPLR of the State Bank of India for the 3161 days of benefit

enjoyed by the assessee and he submitted that the addition made by the AO is as per law, therefore, the findings of the ld. CIT (A) are not acceptable.

7. On the other hand, ld. AR of the assessee heavily relied on the findings of the ld. CIT (A) and he brought to our notice paras 14 to 19 of the appellate order. Further he submitted that the case of the AO was that a plot of land was sold by the assessee in AY 2008-09 and received the sale consideration of Rs.7.20 crores and also handed over the possession but the sale deed was executed only on 22.08.2018 i.e. AY 2017-18. The relevant capital gain was offered to tax in AY 2017-18. His case was that assessee ought to have increased the sale consideration by including the notional interest income on such sale consideration which was received in AY 2008-09. He submitted that ld. CIT (A) has deleted the abovesaid addition on the ground that if transfer had taken place in AY 2008-09, there was no question of recognizing any capital gain in AY 2017-18 and in any case, the methodology of computing sale consideration as adopted by the AO is not recognized by any provision of the Act including section 48 and he supported the findings of the ld. CIT (A) and submitted that various judicial decisions are enclosed in the paper book as under :-

- (i) CIT vs. Balbir Singh Maini – (2017) 398 ITR 0531 (SC);
- (ii) K.P. Varghese vs. ITO & Anr. (1981) 131 ITR 0597 (SC);
- (iii) E.D. Sasson & Co. Ltd. & Ors. vs. CIT (1954) 26 ITR 0027 (SC);

- (iv) CIT vs. Shoorji Vallabhdas & Co. (1962) 46 ITR 0144 (SC);
- (v) CIT vs. Excel Industries Ltd. (2013) 358 ITR 0295 (SC).

8. Considered the rival submissions and material placed on record. We observe that as per the facts brought on record, the assessee has sold the property by executing the sale deed on 22.08.2016, however as per the information brought on record, assessee has handed over the piece of land to the buyer and also received the sale consideration in AY 2008-09. As per the factual matrix, the actual sale has already been completed in AY 2008-09. Since the sale deed was executed in AY 2017-18, the assessee has offered to tax only in AY 2017-18. We observe that AO has gone one step ahead and determined the notional interest/income from the date of receipt of actual sale consideration in AY 2008-09. We observe that no doubt, assessee has benefited by receiving the sale consideration in AY 2008-09 and there is no mechanism to address such computation of income on the basis of determining notional interest to go back to the assessment year in which assessee has received the benefit. The provisions of Income-tax apply on the basis of real income not on the basis of notional income. We observe that the sale can be treated as complete when the relevant sale deed executed or a proper evidence be brought on record to show that actual property was handed over to the purchaser. In the given case, the AO has not brought on

record any evidence to show that assessee has already handed over the land to the purchaser. It is brought to our notice that no doubt assessee has received full sale consideration in FY 2007-08, however due to legal and other clearances & compliances on the land delayed the execution of the sale deed and no activity was taken so as to say that the land was handed over, it is further evident from the Agreement to Sell and sale deed with the condition of land was remained same in the year FY 2007-08 and 2016-17. The AO has merely observed that assessee has received the full consideration on the date of executing Agreement to Sale and proceeded to enhance the value of land for the reason that assessee has enjoyed the funds till the actual registration was completed by applying bank rate of 13.41% and enhanced the sale consideration to the extent of Rs.8,36,25,157/-. As per the computation of capital gain mechanism on the date of transfer, the capital gains will be determined based on the sale consideration mentioned in the sale deed executed and the law prescribes claim of deduction of expenditure incurred on such transfer, indexation cost of acquisition and improvement. Therefore, there is no mechanism to determine the notional income or deemed income earned by the assessee which can be taxed. It is not the case of the AO that the property was not sold in AY 2017-18. Be that be the case, there is no mechanism to go back to AY 2008-09 to determine the capital gain in AY 2017-18. We are in agreement with the Id. CIT (A)'s observation

that when the AO determines the notional benefit earned by the assessee, at the same time assessee has registered the document in AY 2017-18 even the assessee has incurred loss by registering the sale consideration as agreed in AY 2008-09. After considering the speaking order of the Id. CIT (A), we do not see any reason to disturb the findings of the Id. CIT (A). Accordingly, ground nos.1 to 3 raised by the Revenue are dismissed.

9. Coming to Ground Nos.4 to 6 raised by the Revenue, the relevant facts are brought on record by the Id. DR of the Revenue that during assessment proceedings, the AO observed that assessee has claimed Short Term Capital Gain (STCG) on sale of shares, namely, Hindustan Petroleum Corporation Limited (HPCL) and Gas Authority of India Limited (GAIL). It was observed that loss on sale of the shares was due to issue of bonus shares of these companies. He observed that assessee had sold shares after receiving the bonus shares and claimed the Short Term Capital Loss, claimed the above loss from sale of LTCG of land. A notice was issued to the assessee to explain the same and the assessee has responded to the same, the relevant extract of the submissions of the assessee are reproduced at pages 8 to 10 of the assessment order. After considering the same, AO rejected the same. He observed that the provisions of section 56(2)(vii)(c) are attracted in this case wherein assessee has claimed STCL of Rs.5,35,67,381/-. The AO observed that the assessee has received bonus shares in the ratio of 2 : 1 and 1 : 3 from

HPCL and GAIL respectively. A notice was issued to the assessee to explain when the difference between fair market value of bonus shares and actual consideration paid by the assessee for acquisition of bonus shares i.e. NIL should not be treated as assessee's income as per provisions of section 56(2)(vii)(c) of the Act. In response, assessee submitted that there is no taxable event on issue of bonus shares and the provisions of section 56(2)(vii)(c) are not applicable. The AO rejected the same and according to the AO, the provisions of section 56(2)(vii)(c) are attracted by relying on various case laws and determined the fair market value of the bonus shares at Rs.11,81,85,000/- which is chargeable to tax u/s 56(2)(vii)(c) of the Act.

10. Aggrieved by the above order, assessee preferred an appeal before the Id. CIT (A) and filed the detailed submissions as under :-

- “1. That the issue of bonus shares by a company is merely capitalization of the free reserves of the company.
2. That to contend that issue of bonus shares results in receipt of an 'asset without consideration' u/s 56(2)(vii)(c) is against the facts as the value of the balance shares remaining with the appellant diminishes.
3. That issue of bonus shares by a company results in decrease in value of the existing shares such that the value of the original and bonus shares together are generally equal to the value of the original shares as it stood prior to the bonus issue.
4. Thus the loss in value of the original shares is the consideration for issue of the bonus shares. The same has been held by various judicial rulings.

5. It may also be submitted that even otherwise bonus shares are not 'property' since the same are not even in existence until after they are issued by a company.
6. That it is for the same reason that the cost of bonus shares is defined as 'nil' under the express provisions of the Act. And once the 'cost' has been defined, there is no case for treating the ex-bonus market value of the shares as the value of the bonus shares since the said value is not even available on the date of the bonus issue.

The appellant begs to rely on the following further submissions

Why the Bonus shares are not property and no liable to tax as they are created only at the time of issue.

The Explanatory Memorandum to Finance Bill 2010 explaining the rationale of introduction of the said section 56(2)(viia), interalia provided that,

"In order to prevent the practice of transferring unlisted shares at prices much below their market value, it is proposed to amend Section 56(2) to also include within its ambit, transactions undertaken in shares of a company (not being a company in which public are substantially interested) either for inadequate consideration or without consideration where recipient is a Firm or a Company"

Thus it is amply clear and duly evident from above that the legislative intent of introduction of section 56(2)(viia) was to prevent the practice of transferring of unlisted shares at prices below their fair market value. The expression "transfer" has altogether different connotation and meaning than the expression "issuance" and as such the provisions of said section 56(2)(viia) were meant to be applicable in cases of receipt of shares by a company or a firm on subsequent transfer of unlisted shares after their initial issuance by the issuing company.

Hon'ble Supreme Court in the case of Khoday Distilleries Ltd. vs CIT reported in (2008) 307 ITR 312 has referred to the manner in which bonus shares are issued as under:

"When the company is prosperous and accumulates a large surplus, it converts its surplus into capital and divides the capital amongst the members in proportion to their rights. This is done by issuing fully paid-up shares representing the increased capital. The shareholders to whom the shares are allotted have to pay nothing. The purpose is to capitalise profits which may be available for division. Bonus shares go by the modern name of "capitalisation shares". If the articles of a company empower the company, it can capitalise profits or reserves and issue fully paid-up shares of nominal value, equal to the amount capitalised to its shareholders. The idea behind issue of bonus shares is to bring the nominal share capital into line with the excess of assets over liabilities. A company would like to have more working capital but it need not go into the market for obtaining fresh capital by issuing fresh shares. The necessary money is available with it and this money is converted into shares which really means that the undisturbed profit, have been ploughed back into the business and converted into share capital. Therefore fully paid-up bonus shares are merely a distribution of capitalised undivided profit. It would be a misnomer to call the recipients of bonus shares as donees of the shares from the company."

Hon'ble Supreme Court further held as under:

"when a shareholder gets a bonus shares the value of the original share held by him goes down. In effect, the shareholder gets two shares instead of one held by him in and the market value as well as the intrinsic value of the 2 shares put together will be same so nearly the same as the value of the original share before the bonus issue.. "

ITAT Mumbai Bench in the case of Sudhir Menon HUF vs Astd. CIT-21(2),

(i) The provisions of section 56(2)(vii) of the Act would not apply to bonus shares, and the argument alluding thereto arises only on account of mis-conception in respect thereof

(ii) Issue of bonus shares is by definition capitalization of its profit by the issuing company. There is neither any increase nor decrease in the wealth of shareholder (or of the issuing company) on account of a bonus issue and his percentage holding therein remains constant.

(iii) What in effect transpires is that a share gets split (in the same proposition for all the shareholders), as for example by a factor of two in case of a 1: 1 bonus issue.

(iv) Reference in this regard may be to the decision in CIT vs Dalmia Investment Co. Ltd. [1964] 52 ITR 567 (SC) as well as in Khoday Distilleries Ltd. (Supra), wherein reference stands made to the former, also quoting there from besides inter alia to Hunsur Plywood Works Ltd vs CIT [1998] 229ITR 112 (SC), where the same were referred to as 'capitalization shares'.

(v) In other words, there is no receipt of any property by the shareholder, and what stands received by him is the split shares out of his own holding. It would be akin to somebody exchanging a one thousand rupee note for two five hundred or ten hundred rupee notes. There is, accordingly, no question of any gift of or accretion to property; the shareholder getting only the value of his existing value per share, increasing its mobility and, thus, liquidity, in the sense that the shares become more accessible for transactions and, thus, trading, i. e. considered from the holders' point of view. We may though add a note of caution. There could be a case of bonus issue coupled with the release of assets (of the issuing company) in favour of the shareholders. The same would fall to be considered as dividend u/s 2(22)(a) of the Act.

(vi) In the case of issue of bonus shares (as also demerger), no property is being conveyed to the shareholder in as much as the property therein is comprised in the existing shareholding of the allottee. There is as such no case of a gift, the shareholder only receiving his own property.

(vii) No property however being passed on to the assessee in the instant case, i.e. on the allotment of the additional shares, no addition in terms of the provision itself shall arise in the facts of the case.

Thus from the above discussion, it is clear that issue of Bonus Shares was never envisaged to be taxed under the provisions of section 56(2)(vii) introduced in Finance Bill 2010. Further, the judgment discussed above further elaborates as to how the provisions of section 56(2) (vii) of the Act would not apply to bonus shares. Thus, it is clear,

that the addition made by the AO is not in accordance with law and hence deleted.

A very detailed order has been passed by the Delhi ITAT (our jurisdictional ITAT) in the case of DCIT, Faridabad vs Smt. Mamta Bhandari, Delhi on 10 July, 2019 Dcit, ITA.No.5681/Del.12016 Smt. Mamta Bhandari, which has held that provisions of section 56(2)(vii) are not applicable to bonus shares. The judgement of the ITAT is binding on your honour as the same is of the Jurisdictional ITAT and considering the principles of jurisprudence and judicial hierarchy it is mandatory for the subordinate authority to follow the judgement of the superior authority, and principle of following of judicial precedents have time and again been reiterated by the Hon'ble Apex Court.

In CIT v. Dalmia Investment Co. Ltd. [1964J 52 ITR 567 (SC), the Court held as under:

'Can we then say that the bonus shares are a gift and are acquired for nothing? At first sight, it looks as if they are so, but the impact of the issue of bonus shares has to be seen to realise that there is an immediate detriment to the shareholder in respect of his original holding. ... by the issue of bonus shares pro rata, which ranked pari passu with the existing shares, the market price was exactly halved, and divided between the old and the bonus shares. This will ordinarily be the case but not when the shares do not rank pari passu and we shall deal with that case separately. When the shares rank pari passu the result may be stated by saying that what the shareholder held as a whole rupee coin is held by him, after the issue of bonus shares, in two 50 nP. coins. The total value remains the same, but the evidence of that value is not in one certificate but in two. The bonus shares can be valued by spreading the cost of the old shares over the old shares and the new issue taken together, if the shares rank pari passu. When they do not, the price may have to be adjusted either in the proportion of the face value they bear (if there is no other circumstances differentiating them) or on equitable considerations based on the market price before and after the issue.

PCIT Vs Dr. Ranjan Pai (Karnataka High Court)

Section 56 of the Income-tax Act, 1961 - Income from other sources - Chargeable as (Gift) - Assessment year 2012-13 - Bonus shares can

never be considered as received without consideration or for inadequate consideration calling for application of sub-clause (c) of clause (vii) of section 56(2) [In favour of assessee]

An assessee who received bonus shares could never be considered as receiving something without consideration or for a consideration less than the fair market value of the property. When bonus shares are received, it is not something which has been received free or for a lesser fair market value. A consideration has flown out from the holder of the shares, may be unknown to him, which is reflected in the depression in the intrinsic value of the original shares held by him. Thus, section 56(2)(v),(vi) and (vii) brought in to the Act for addressing the vacuum caused due to withdrawal of the Gift-tax Act cannot be used for the purpose of taxing the value of bonus shares received by an assessee.

Held that the valuation of unquoted shares set out in rule 11 UA(b) will have applicability only on receipt of shares as gift or for inadequate consideration. Bonus shares can never be considered as received without consideration or for inadequate consideration calling for application of sub-clause (c) of clause (vii) of section 56(2).

DCIT Vs Veena Goyal (ITAT Jaipur) Appeal Number: ITA No. 751JPI2020 the same has been reiterated

Without prejudice to what has been stated above, the Ld. A.O, in complete haste, has made several errors while drawing the assessment order in as much that the number of bonus shares received by the appellant have not been mentioned correctly. That the details of bonus shares received were as under:

Name of the company	Number of bonus shares received	Number of bonus shares mentioned in the other	Difference	Rate	Difference value
HINDPETRO	100000	25000	75000	403.95	30296250
GAIL	33333	285000	-251667	379.25	-95444710
					-65148460

Thus the addition made by the Ld. A.O. is excessive by Rs.6,51,48,460.00.

In view of the above the appeal filed by the appellant be allowed in favour of the appellant as the additions made are wrong on facts and in law and if any adverse inference is to be drawn then a reason thereof and an opportunity of hearing be provided to the appellant for the same.”

11. Further assessee submitted written submissions through email dated 29.07.2021 on the ITBA Portal as under :-

"In continuation of our earlier submissions and as regards the disallowance pertaining to exemption claimed u/s 54F of the Act Amounting to Rs 2,09,07,085.00 it is also most humbly submitted that:

- a) That the Provisions of Section 54F of the Act are being reproduced hereunder:

54F.

(1) Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long- term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,-

- (a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;
- (b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:

Provided that nothing contained in this sub-section shall apply where-

(a) the assessee,-

- (i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or
 - (ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or
 - (iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and
- (b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".
- b) That in the case of the appellant the L.D A.O has disallowed the claim of the appellant under Section 54F of the Act stating that the appellant received a Residential Property by way of Will on the death of his mother and thus he owned more than "one" residential house before the transfer took place and therefor the exemption under Section 54F of the Act must not be allowed to the appellant.
- c) The appellants begs to state that the exemption under section "54F" is disallowed if the assessee "Owns" more than 1 residential house. That in the case of the appellant the appellant only had a proportionate 1/4th "Right" in the Property and the "Ownership" of the property was transferred on a later date in the month of March 2017 when the property was "mutated". The disallowance under Section 54F of the Act does not arises on having a "Right" in the property. The appellant has in his earlier submissions placed on record before your honour the judgments of the Hon'ble Supreme Court wherein the apex court has distinguished the "Right" and "Ownership" held in a property.

- d) Further, the disallowance is warranted in respect of a Residential House whose income is chargeable under the head "Income from House Property". That in the case of the appellant the L.D A.O has claimed the Residential Property at "New Friends Colony, New Delhi" to be owned by the appellant, though on facts the said property has been claimed as a "Self Occupied" property by the mother of the appellant in her return filed by her Legal heir. The copy of the computation of income of the mother of the appellant is attached as per Annexure No 1 wherefrom the facts stated by the appellant are evident.”

12. After considering the detailed submissions of the assessee, ld. CIT (A)

allowed the grounds raised by the assessee by observing as under :-

“4.3.14 I have considered facts of the case as well as written submission of the appellant. It is not disputed that the appellant received bonus shares of Hindustan Petroleum Corporation Limited and GAIL India Ltd during the year. The primary issue for consideration is whether receipt of these bonus shares was taxable u/s 56(2)(viic) of Income Tax Act.

4.3.15 Hon'ble ITAT Delhi in the case of DC IT Vs Smt. Mamta Bhandari [2019] 178 ITD 89 (Delhi - Trib.) held that Provisions of sub-clause (c) of clause (vii) of section 56(2) would not apply to bonus shares. The operative part of the judgment is reproduced below:

"5. We have considered the rival submissions and do not find any justification to interfere with the Orders of the Ld. CIT (A) in deleting the addition. The Ld. CIT (A) deleted the addition following the relevant provision if Law in the light of Order of ITAT, Mumbai Bench in the case of Sudhir Menon (HUF) in which it was held that provisions of Section 56(2)(vii)(c) of the IT Act, would not apply to bonus shares. The ITAT, Delhi Bench in the case of Meenu Satija (supra), on identical facts quashed the proceedings under section 263 of the I T Act. Therefore, ratio of the decision of the Tribunal in the case of Meenu Satija (supra), squarely apply to the facts and circumstances of the case. Whether this order have been passed under section 263 or merit would not make any difference. The

principle of law have been clearly decided in favour of the assessee on the identical facts. The Tribunal has also relied upon the decision of Mumbai Bench in the case of Sudhir Menon (HUF) (supra), which is relied upon by the Ld. CIT (A) as well. No infirmity have been pointed out in the Order of Ld. CIT (A). The issue is, therefore, covered by the Order of ITAT, Delhi Bench in the case of Meenu Satija (supra). The Departmental Appeal has no merit and the same is accordingly dismissed.

6. In the result, appeal of the Revenue dismissed. "

4.3.16 Hon'ble ITAT Mumbai in the case of Sudhir Menon HUF Vs ACIT [2014] 148 ITD 260 (Mumbai) held that where additional shares of a company were allotted pro rata to shareholders including assessee based on their existing shareholding, there was no scope for any property being received on said allotment of shares and, consequently, provisions of section 56(2)(vii)(c) did not apply to difference in book value and face value of additional shares. The operative part of the judgment is reproduced below:

"4.3 We observe no absurdity or unintended consequences as flowing from the per se application of the provision of s. 56(2)(vii)(c) to right shares, which by factoring in the value of the existing holding operates equitably. It would be noted that the section, as construed, would apply uniformly for all capital assets, i.e., drawing no exception for any particular class or category of the specified assets, as the 'right' shares. No addition u/s. 56(2)(vii)(c) would thus arise in the undisputed facts of the instant case, and the assessee succeeds.

Conclusion

4.6 We may finally discuss the issue from the stand point of interpretation of statutes, which was urged before us with reference to some case law, viz., C. Ws. (India) Ltd. v. CIT [1994]1208 ITR 649173 Taxman 174 (SC) ; CIT v. J H Gotla [1985]1156 ITR 323123 Taxman 14J (SC);Addl. CITv. Surat Art Silk Cloth Mfrs. Association [1980] 121 ITR 1/[1979] 2 Taxman 501 (SC), besides in the case of K. P. Varghese (supra), also concluding the matter. The gist thereof, or atleast to a substantial extent, stands in fact already brought out in the

earlier part of this order while discussing the several arguments urged before us. All that is logical relevant, yielding insight into the purpose and object for and toward which the amendment stands brought, should be admissible. A casus omissus cannot be readily inferred, and the courts eschew supplying the same except in the case of clear necessity. The court cannot read anything into a statutory provision which is plain and unambiguous; a statute being an edict of the Legislature. The language employed in a statute is a determinative factor of the legislative intent, the foundational basis of any interpretation, is to be found from the words used by the Legislature itself. The principle is in fact well settled and trite (refer Padmasundara Rao v. State of Tamil Nadu [2002] 255 ITR 147 (SC); and Britannia Industries Ltd. v. CIT [2005] 278 ITR 546/148 Taxman 468 (Se). As explained in Surat Art Silk Cloth Mfrs. Association (supra) (pg.17), the consequences cannot alter the meaning of a statutory provision where such meaning is plain and unambiguous, though could certainly help to fix its meaning in case of doubt and ambiguity. The amendment/s under reference, as explained in the Finance Minister's speech itself while introducing the provision, follows the abolition of the Gift Tax Act which, as also observed earlier, sought to bring the difference in the consideration to tax in the hands of the donor. That the said Act, together with the Wealth Tax Act and the Act form an integrated code is well settled. 'Income' under the Act, it is again well settled, is a word of widest amplitude, and could include gains derived in any manner. To our mind, therefore, the provisions/s, though no doubt a charging provision, is an extension of the deeming provisions of Chapter VI of the Act, laying down the statutory rules of evidence, incorporating the principles of common law jurisprudence. In sum, as also in fine, the provision, brought as an anti-abuse measure, only seeks to tax the understatement in consideration as the income in the hands of the recipient (of the corresponding asset) as against the donor in the case of Gift Tax Act, since no longer in force, particularly considering the burden that the Revenue would otherwise be called upon to discharge, i.e., to prove otherwise, even as the receipt of the asset by the assessee is established. No ambiguity or absurdity or unintended consequence has been either observed by us or brought to our notice, even as we have endeavoured to examine the provision from all angles; it being

well excepted, also excluding cases of business reorganization. The provision is well founded, even as it is settled that hardship in a case would not by itself lead to supplying casus omissus or reading down the provision. In fact, we have also observed the same to be in accord with the trend in the legislative field in the recent past where in view of the increasing complexity of business or economic transactions, fair market value, also providing rules for its determination, is being increasingly adopted for uniform application as a basis for commercial transactions for the purpose of taxing statutes. The reliance on the argument made in this regard would thus be of no assistance to the assessee. No property however being passed on to the assessee in the instant case, i.e., on the allotment of the additional shares, no addition in terms of the provision itself shall arise in the facts of the case. We accordingly answer the question raised at the beginning of this order (refer para 2) in the negative.

Decision

5.1 In view of the foregoing, therefore, the provision of s. 56(2)(vii) (c), in the facts and circumstances of the case, shall not apply and, hence, the amount of Rs.27,89,02,160/- cannot be assessed as income in the hands of the assessee on the ground of inadequate consideration. This answers ground nos. 2 to 4. Ground # 1 stands dismissed as not pressed. We decide accordingly. "

4.3.17 Hon'ble ITAT Delhi in the case of Meenu Satija Vs Pr.CIT in I.T.A. No. 3215/Del/2016 vide order dated 27.01.2017 deleted addition u/s 56(2)(vii)(c) of Rs. 1,61,05,704/- made in order u/s 263 of Income Tax Act. The operative part of the judgment is reproduced below:

"22. The issue in hand stands covered by this order of the co-ordinate bench. The sum and substance of the decision of Hon'ble Supreme Court in the case of Khoday Distilleries Ltd., (supra) is that, no properties being conveyed to a shareholder by issue of bonus/right shares inasmuch as the property therein is comprised in the existing shareholding of the allottee. Similarly no property however is being passed on to the assessee in the

instant case before us on allotment of bonus/right shares and the no addition could be made by applying provisions of section 56 (2) (vii) as the case may be.”

4.3.18 Hon'ble Karnataka High Court in the case of PCIT Vs Dr. Ranjan Pai [2021] 431 ITR 250 (Karnataka) held that when there is an issue of bonus shares, money remains with company and nothing comes to shareholders as there is no transfer of property, and thus, provisions of section 56(2)(vii)(c) are not attracted. The operative part of the judgment is reproduced below:

"6. We have considered the submissions made by learned counsel for the parties and have perused the record. The issue which arises for consideration in this appeal is as to whether the fair market value of bonus shares computed as per Rule 11 U and Rule 11UA of the Income-tax Rules can be considered as income from other sources as per section 56(2)(vii) of the Act. A careful scrutiny of section 56(2)(vii) of the Act contemplates two contingencies firstly, where the property is received without consideration and secondly, where it is received for consideration less than the fair market value. The issue of bonus shares by capitalization of reserves is merely a reallocation of the companies funds. There is no inflow of fresh funds or increase in the capital employed, which remains the same. The total funds available with the company remains the same and issue of bonus shares does not result in any change in respect of capital structure of the company. [See: 'General Insurance Corporation (supra)]. Thus, there is no addition or alteration to the profit making apparatus and the total funds available with the company remain the same. In substance, when a shareholder gets a bonus shares, the value of the original share held by him goes down and the market value as well as intrinsic value of two shares put together will be the same or nearly the same as per the value of original share before the issue of bonus shares. Thus, any profit derived. by the assessee on account of receipt of bonus shares is adjusted by depreciation in the value of equity shares held by him. In the instant case, there is no material on record to infer that bonus shares have been transferred with an intention to evade tax, which is the object of the provision in question. Therefore, the CIT (Appeals) as well as the tribunal have rightly held that when there is an issue of bonus shares, the

money remains with the company and nothing comes to the shareholders as there is no transfer of the property and the provisions of section under section 56(2)(vii)(c) of the Act are not attracted to the fact situation of the case.

In view of preceding analysis, the substantial question of law framed by a bench of this court are answered against the revenue and in favour of the assessee. In the result, we do not find any merit in this appeal, the same fails and is hereby dismissed. "

4.3.19 In view of the above judicial decisions, it is held that provisions of sub-clause (c) of clause (vii) of section 56(2) would not apply to bonus shares. Hence, the Assessing Officer was not justified in making addition of Rs.11,81,85,000/- on the ground that provisions of section 56(2)(viic) are applicable to bonus shares. Accordingly, addition of Rs.11,81,85,000/- is hereby deleted and Ground Nos. 7, 8, 9, & 10 of the appeal are allowed.”

13. Aggrieved with the above order, Revenue is in appeal before us. At the time of hearing, ld. DR submitted that the assessee was allowed bonus shares in lieu of huge investment in shares. He supported the findings of the AO to determine the value of bonus shares on the basis of price of the shares before issuing bonus shares. He objected to the findings of the ld. CIT (A) which is not acceptable to the Revenue. He prayed that the ground raised by the Revenue be allowed.
14. On the other hand, ld. AR of the assessee heavily relied on the findings of the ld. CIT (A) and brought to our notice pages 9 to 12 of the appellate order and also relied on several binding decisions as under :-

- (i) Sudhir Menon HUF vs. ACIT – ITA No.4887/Mum./2013 dated 12.03.2014;

- (ii) DCIT vs. Smt. Mamta Bhandari – ITA No.5681/Del/2016 dated 10.07.2019;
- (iii) Pr.CIT and Anr. Vs. Dr. Ranjan Pai – (2021) 431 ITR 0250 (Karn.); and
- (iv) DCIT vs. Smt. Veena Goyal & Anr.- ITA No.75/JP/2020 & Anr. Dated 15.09.2020 (JP).

15. Considered the rival submissions and material placed on record. We observe that AO had invoked the provisions of section 56(2)(vii)(c) of the Act by observing that assessee has received bonus shares from HPCL and GAIL. Since the assessee has acquired the bonus shares at Rs.NIL to the extent of value of bonus shares based on the price of shares existed on the date of issue of bonus shares. He brought to tax the value of bonus shares as income under section 56(2)(vii)(c) of the Act. After considering the submissions of both the parties, we observe that assessee has received 1,00,000 bonus shares from HPCL and 33,330 bonus shares from GAIL whereas the AO has considered in the assessment order 25,000 shares and 2,85,000 shares respectively. Based on the actual figure itself, the AO has proceeded to make the excess addition to the extent of Rs.6,51,48,460/- as determined by the Id. CIT (A). Further the issue is whether the provisions of section 56(2)(vii)(c) are attracted on receipt of bonus shares. In this regard, we observe that the coordinate Bench in the case of Smt. Mamta Bhandari (supra) held that the provisions of section 56(2)(vii)(c) would not apply to bonus shares. Further

similar findings were given by the ITAT, Delhi Bench in the case of Meenu Satija (supra) wherein they came to the conclusion that the provisions of section 56(2)(vii)(c) are not attracted in the case of issue of bonus shares by relying on the decision of Hon'ble Supreme Court in the case of Khoday Distilleries Limited (2008) 307 ITR 312. Further similar issue was decided by Hon'ble Karnataka High court in the case of PCIT vs. Dr. Ranjan Pai (supra) and held the same view. After considering the above decisions, we are inclined not to disturb the findings of the Id. CIT (A). Accordingly, Ground Nos.4 to 6 raised by the Revenue are dismissed.

16. In the result, the appeal of the Revenue is dismissed.
17. Now we deal with assessee's appeal wherein assessee has taken the following grounds of appeal :-

"1. The appellant during the year claimed an exemption of Rs.2,09,07,085.00 under section 54F of the Act w.r.t purchase of a residential property, against the long term capital gain earned in respect of transfer of land at Gujarat. The exemption was claimed in respect of a residential property acquired at Kanpur i.e the "new asset". That other than the "New Asset" the appellant was the legal owner of only one Residential Property at Sky lounge Pune. The L.D A.O however disallowed the exemption claimed by the appellant stating that during the year under appeal the mother of the appellant passed away and by the virtue of her will the appellant became the additional owner of 1/4th share of a residential property at New Delhi and therefore he owned more than 1 property other than the "new asset" and is therefore not eligible for exemption under Section 54F of the ACT. The Hon'ble CIT (A)-24 New Delhi erred in law as well as on facts in upholding the disallowance of exemption made by the L.D A.O.

2. The L.D CIT(A)-24 New Delhi erred in law as well as on facts in upholding the contention of the A.O that the Will of the appellant's mother was dated 11.07.2015 and therefore he had already received the rights in the property. The Hon'ble CIT(A) failed to consider the fact that mere creation of the Will does not entitles the beneficiary a "Right" in the asset, a will may be recreated several times cancelling the old will until the death of the testator, a will is executable only after the death of the testator and therefore mere drawing of a will does not entitles the beneficiary a "Right" in the asset.

3. The L.D CIT(A)-24 New Delhi erred in law as well as on facts in upholding the disallowance of exemption of Rs 2,09,07,085.00 made by the A.O without considering the fact that the death of the mother of the appellant happened during the year under appeal and the legal rights in the immovable property were transferred in the appellant's name only after the mutation of the property in March 2017 and therefore there was no violation of the conditions prescribed under Section 54F of the Act as on the date of the transfer of the original asset i.e. August 2016 the appellant was not in ownership of more than 1 property other than the "new asset".

4. The L.D CIT(A)-24 New Delhi erred in law as well as on facts in upholding the disallowance of exemption of Rs 2,09,07,085.00 made by the A.O without considering the fact that unless the property is mutated in the name of the appellant or any document of title is created in the favor of the appellant, the appellant us not the legal owner of the property. The Right in 1/4th share of a property is distinguishable from ownership of 1/4th property.

5. Without prejudice to the above it is stated that the L.D CIT(A)-24 New Delhi erred in law as well as on facts in upholding the disallowance of exemption of Rs.2,09,07,085.00 made by the A.O without considering the fact that the term "Property" as contained in Section 54F of the Act implies a complete property which is capable of being resided without infringement. 1/4th undivided and non-demarcated 1/4th share in one single property could not be held to be a property. "Residential Property for all practical purposes should be a complete identified and habitable property.

6. That the order appealed against is contrary to the facts, law, principals of natural justice and equity.”

18. At the time of hearing, ld. AR of the assessee brought to our notice the relevant findings from page 4 of the assessment order. During assessment proceedings, Assessing Officer observed that assessee had three residential houses at Flat No.C-727, New Friends Colony, Delhi, Flat No.1002, F Building, Lankad Skylounge, D-Wing, Pune, and Flat at Tirubala Tower (new asset). The Assessing Officer observed that assessee has claimed deduction u/s 54F of the Act, since the assessee had more than two flats, assessee is not eligible to claim deduction u/s 54 of the Act. After observing the above, a show-cause notice dated 20.12.2019 was issued to the assessee and in response, assessee has submitted as under :-

“As regards point number 3 of your honours showcause relating to allowance of exemption under section 54f of the Act of assessee has already made his submission on 25,12.2019 wherein the assessee has stated that as on the date of transfer of the original asset the assessee did not owned more that "one" property, The assessee was the owner of a single property at "Flat No, 1002 F building, Lankad Skylounge, D wing Pune" as on the date of transfer of the original asset.

The immovable property being "Flat at Tirubala Tower" is the new property purchased by the assessee and against which the exemption has been claimed by the assessee and which is duly as per the provisions of section 54 of the Act.

Thereafter owing to the death of the mother of the assessee received 25% share in the property at C-727 New Friends Colony, Delhi and which happened in the month of March 2017 on mutation of the property.

Therefore as on the date of transfer of the original asset i.e. Aug 2016 the assessee held only one property at "Flat no, 1002 Building, Lankad Skylounge, D Wing, Pune" and therefore the assessee is allowable for exemption under section 54 of the Act."

19. After considering the same, the Assessing Officer rejected the submissions of the assessee and observed that the property at New Friends Colony, Delhi, acquired by the assessee through Will dated 11.07.2015. As per the Will, the assessee had received the right in the above property w.e.f. 11.07.2015 for the purpose of section 22 of the Act. Since the assessee had a right to receive the rent, the position of law on right to receive rent is well settled and registration of the property is not a prerequisite for claiming right to receive income from house property. Therefore, the conditions specified in proviso to section 54F of the Act gets specified as soon as assessee has property whose income is chargeable to tax under the head income from house property. In view of the above, he rejected the clam of the assessee and proceeded to make the addition of Rs.2,09,07,085/-.
20. Aggrieved, assessee preferred an appeal before the ld. CIT (A). After considering the submissions of the assessee, ld. CIT (A) dismissed the grounds raised by the assessee by observing as under :-

"4.2.9 I have considered facts of the case as well as written submission of the appellant. The appellant sold the original asset i.e. land at KW-29/1 & 29/2 on 22.08.2016. Section 54F of Income Tax Act clearly states that deduction will not be available under this section if the assessee owns more than one residential house, other than the

new asset on the date of transfer of the original asset It is not disputed that the appellant was already owner of Flat No. 1002, F Building, Lankad Skylounge, D-Wing, Pune on the date of transfer of the original asset. The issue for consideration is whether the appellant was owner of Flat No, C-727, New Friends Colony, Delhi on the date of transfer. As per details available on record, the appellant became owner of 1/4th share of property in New Friends Colony through Will dated 11.07.2015 of Late Smt. Sharda M Kothari. The Assessing Officer held that the appellant received rights in the above property w.e.f. 11.07,2015 for the purposes of Section 22 of Income Tax Act. The claim of the appellant is that he became owner of 1/4th share of property in New Friends Colony on 3rd March, 2017 upon execution of the Will when the property was 'mutated' in the name of the appellant. It is held that the appellant became owner of 1/4th share of property in New Friends Colony on the date of demise of the Testator i.e. mother of the appellant. Since the Testator expired before the date of transfer of original asset i.e. 22,08,2016, it is held that the appellant was owner of more than one residential house, other than the new asset, on the date of transfer of the original asset. Hence; it is held that the Assessing Officer has rightly disallowed deduction u/s 54F of Rs.2,09,07,085/-. Ground Nos. 5 & 6 of the appeal are dismissed.”

21. At the time of hearing, ld. AR of the assessee submitted that the case of the assessee is that Flat No.C7/27, New Friends Colony, New Delhi was received by him as a result of the Will of the mother dated 11.07.2015 but it was mutated in his name in March, 2017 and further that assessee received only 25% share of the said property which in view of the several judicial decisions cannot be said to be ‘a’ residential house. He relied on the following case laws :-

- (i) Dr. P.K. Vasanthi Rangarajan vs. CIT (2012) 252 CTR 0336 (Mad);
- (ii) ITO vs. Rasiklal N. Satra (2005) 24 CCH 0620 (Mum.);

- (iii) ACIT vs. Shri K. Surendra Kumar – ITA No.1324/Mds/2010 dated 12.08.2011 (Mds);
 - (iv) Amit Gupta vs. ACIT (2015) 43 ITR 0427 (Del.);
 - (v) CIT vs. Gita Duggal (2013) 357 ITR 0153 (Del.);
 - (vi) Mukesh Arvindlal Vakharia vs. ITO (2023) 153 taxmann.com 55 (Surat-Trib.);
 - (vii) Manoj Tekriwal vs. DCIT – ITA No.4147/Mum/2015 dated 13.07.2022.
22. On the other hand, ld. DR of the Revenue relied on the findings of the lower authorities and relied on the decision of Hon'ble Supreme Court in the case of CIT vs. Podar Cement (P.) Ltd. (1997) 92 taxman 541 (SC).
23. Considered the rival submissions and material placed on record. We observe from the record that the Assessing Officer observed that the assessee was owner of two residential flats at the time of investment in new assets to claim deduction u/s 54F of the Act. Based on the above information, the Assessing Officer has denied the benefit claimed by the assessee u/s 54F of the Act. Before us, ld. AR of the assessee submitted that the property at C-7/27, New Friends Colony, New Delhi in which assessee is not the exclusive owner of the property. It was submitted that owing to the death of the mother of the assessee, he received 25% of the shares in the above property which happened in the month of March 2017 on mutation of the property.

Therefore, on the date of transfer or original assets in August 2016, the assessee held only one property at Flat No.1002, F Building, Lankad Skylounge, D-Wing, Pune, therefore, assessee is allowed to claim benefit u/s 54F of the Act. After considering the same, the assessee should be owner of a residential property and as per provisions not more than one house property. In the given case, the assessee was the owner of one house at the time of transfer and he became owner of the property at New Friends Colony after mutation in the month of March 2017. Therefore, at the end of FY 2016-17 (AY 2017-18), the assessee was the owner of only one house property. Merely because the assessee had right to receive the rent w.e.f. 11.07.2015, the position does not change. The absolute ownership acquired by the assessee only after mutation. The relevant rent may or may not be receivable. Mere rights will not get the absolute ownership. Therefore, on the date of transfer, the assessee was the owner of only one property, hence eligible to claim the benefit u/s 54F of the Act. For the sake of argument, in case assessee is the 25% owner of the property, still, he cannot be held to be absolute owner of the second property. We observe that ITAT, Surat Bench in the case of Mukesh Arvindlal Vakharia (supra) has held as under :-

“17. We have given our thoughtful consideration to rival contention. We have perused case file as well as paper books furnished by assessee. We note that assessee claimed deduction u/s 54F of the Act to the tune of Rs.48,96,993/- on the ground that assessee owns only one house at the Oberoi Palace Housing Society in this name at the

time of the sale. It is the contention of the assessee that the other two properties are owned jointly with others and therefore it is not required to be considered for the purpose of condition of section 54F of the Act. The assessing officer relied on the order of the Hon`ble Supreme Court in the case of M. J. Siwani v/s. CIT - 53 taxmann.com 318 (SC) where the SLP filed by the taxpayer was dismissed. The Id Counsel stated that by way of the SLP, the Hon`ble Supreme Court did not concur with the finding of the Hon`ble Karnataka High Court in the case of CIT v/s. M. J. Siwani - 366 ITR 356 (Kar.). Mere dismissal of the SLP does not constitute the judgment by the Supreme Court in the favour of the revenue. The Id Counsel placed reliance on the following judgments:

- i. Khoday Distilleries Ltd. vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd. – Civil Appeal No. 2432/2019
- ii. Smt. Tej Kumari vs. CIT (2001) 247 ITR 210 (Patna HC)

18. The Id Counsel further submitted that Hon`ble Madras High Court in case of Dr. (Smt.) P. K. Vasanthi Rangarajan Vs. CIT (2012) 23 taxmann.com (299) wherein it was held that where the assessee held the property jointly with her husband in equal proportion, it cannot be said that she is the owner of the house property at the time of the sale for availing the deduction u/s 54F of the Act. It is to be noted that w.e.f. 01.04.2001, there was the amendment in section 54F to the effect that assessee could be owner of one house at the time of the sale. Here in the case of the assessee he was sole owner of only one house and other houses under the joint ownership are not required to be considered as per the judgment of the Hon`ble Madras High Court in case of Dr. (Smt.) P. K. Vasanthi Rangarajan (supra).

19. We also note that on the identical facts, the Coordinate Bench of ITAT Mumbai, in the case of Ashok G. Chauhan, [2019] 105 taxmann.com 204 (Mumbai - Trib.) held that where Assessing Officer rejected assessee's claim for deduction under section 54F of the Act, on ground that at time of sale of capital asset, assessee was owner of more than one residential house properties, in view of fact that one residential property was co-jointly owned in name of assessee and his wife and he could not be treated as 'absolute owner' of said property, deduction under section 54F could not be denied to him. We note that Hon`ble Supreme Court in the case of CIT vs. Vegetable Products Ltd,

88 ITR 192(SC) held that if two reasonable constructions of a taxing provision are possible that construction which favours the assessee must be adopted. Therefore, respectfully following the judgment of the Hon`ble Madras High Court in case of Dr. (Smt.) P. K. Vasanthi Rangarajan (supra), we allow ground No.2 raised by the assessee.”

24. Respectfully following the aforesaid decision, we are inclined to allow the ground raised by the assessee.
25. In the result, the appeal filed by the assessee is allowed.
26. To sum up : the appeal filed by the Revenue is dismissed and the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 6th day of August, 2025.

Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 06.08.2025
TS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI