

**IN THE INCOME TAX APPELLATE TRIBUNAL
'SMC' BENCH : BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No. 127/Bang/2025
Assessment Year : 2015-16

Ms. Usha Mohan, C-1112, Brigade Gardenia, Magnifica Block, RBI Layout, J P Nagar 7 th Phase, Bangalore – 560 078. PAN: AQFPM2182E	Vs.	The Income Tax Officer, Ward -3(2)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Zain Ahmed Khan, CA
Revenue by	:	Shri Ganesh R Ghale, Advocate, Standing Counsel for Revenue

Date of Hearing	:	28-08-2025
Date of Pronouncement	:	24-11-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 19/01/2024 in respect of the A.Y. 2015-16.

2. The brief facts of the case are that the assessee is an individual and not filed her return of income. Based on the TDS statement filed by the

buyer, the department came to know that the assessee had sold an immovable property for a total consideration of Rs. 54 Lakhs. Therefore notice u/s. 148 was issued and the statutory notices u/s. 142(1) was issued but the assessee had not responded to any of the notices. Therefore the AO had approached the buyer and got the details about the sale and based on that the AO had computed the long term capital gains. Since the assessee had not responded to any of the notices, the AO had concluded the proposals and determined the capital gains at Rs. 26,70,896/-. As against the said order, the assessee filed an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee submitted that she had not received any notices issued by the department since she has not used the email ID mentioned in the e-filing portal. The assessee also submitted that out of the sale proceeds of the flat, she purchased another flat within a month of sale and therefore the said investment is an allowable deduction u/s. 54 of the Act. The assessee also submitted the copies of the sale deed and the purchase deed in support of her claim. The Ld.CIT(A) called for a remand report from the AO and based on the remand report, the appellate authority had concluded that the capital gains arrived by the AO is in order. The assessee had also raised legal grounds and also raised the ground about the non-receipt of the notices. The Ld.CIT(A) had rejected all the legal grounds as well as the non-service of the notice.

3. As against the said order, the assessee is in appeal before this Tribunal.

4. At the time of hearing, the Ld.AR submitted that the entire proceedings initiated u/s. 148 is not correct since the statutory notice u/s. 148A(b) of the Act was issued on 21/03/2022 and granted time till 25/03/2022. Therefore as per section 148A(b) of the Act, the AO had not given minimum 7 days time for responding the said notice. The Ld.AR also submitted that the notice issued u/s. 148 on 31/03/2022 is beyond the 3 years period and therefore the consequential proceedings are bad in law. Further, the Ld.AR also relied on the remand report in which the AO had

accepted that the claim of deduction u/s. 54 is a prima facie genuine. On that basis, the Ld.AR submitted that the AO had erred in passing the assessment order de horse the explanation offered by the assessee as well as the finding given by the AO in his remand report.

5. The Ld.DR relied on the orders of the lower authorities and prayed to dismiss the appeal.

6. We have heard the arguments of both sides and perused the materials available on record.

7. From the documents, we came to know that the assessee is a non-filer and based on the information received by the department, the case was reopened and the notices were served to the email ID mentioned in the portal. Before issuing notice u/s. 148, the AO had issued notice u/s. 148A(b) of the Act but not granted the required 7 days for filing the objections. Therefore this could be taken as a violation committed by the AO and therefore on that score also, it can be concluded that the assessment made u/s. 147 is bad in law. In order to decide the issue on merits, we have also considered the fact that the assessee is a housewife and she has no other income, to file the return of income u/s. 139(1) of the Act. The only transaction effected by the assessee is that she had sold her flat on 12/03/2015 for a total consideration of Rs. 54 Lakhs. The said copy of the sale deed is available on record. Similarly, the purchase deed towards the purchase of another flat by the assessee on 06/04/2015 for a total consideration of Rs. 1,03,00,000/- is also on record. Therefore the assessee had rightly invested the sale proceeds by purchasing an another flat which is more value than the flat sold by her. Therefore the assessee had satisfied the condition mentioned in section 54 of the Act and therefore she is entitled for claiming the deduction u/s. 54 of the Act.

8. The AO had also in his remand report had accepted the said facts and gave the finding that the claim of assessee towards deduction u/s. 54 appears prima facie genuine and acceptable.

9. In spite of the said facts, the Ld.CIT(A) had concluded that the assessee is not entitled for claiming the said deduction when the assessee had not filed her original return of income and also not filed the written response to the notice issued u/s. 148 of the Act and therefore as per the judgment of the Hon'ble Supreme Court reported in (2006) 284 ITR 323 in the case of Goetz India Ltd. vs. CIT, the assessee can claim the said deduction only by filing a revised return within the time allowed. We are of the view that the above judgment relied on by the Ld.CIT(A) cannot be cited as precedent for the reason that the AO himself had accepted in the remand report that the assessee is entitled for deduction u/s. 54 of the Act. When the AO had considered the documents and gave such a finding, the said claim can be considered by the Ld.CIT(A) who is an appellate authority. The Hon'ble Supreme Court has, in the facts and the circumstances of the said case, had only concluded that the AO had no authority to consider the said claim of deduction when the assessee had not filed her return of income both u/s. 139(1) and 148 of the Act. The judgment of the Hon'ble Supreme Court does not prohibit the appellate authorities from considering the said claims if the claims are otherwise in order while deciding the appeal.

10. In the present facts there is no dispute that the assessee is not having some other income exceeding the limit prescribed under the Statute, to file the returns. Further, it was also proved that the sale proceeds of the flat was utilised within a period of one month for purchasing another flat which is more than the value fetched by her while selling flat. The AO also accepted the documents and gave a finding in his remand report that the transactions seems to be genuine and therefore assessee is entitled for deduction u/s. 54 of the Act. We are therefore of the view that the issue has to be allowed in favour of the assessee.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 24th November, 2025.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 24th November, 2025.
/MS /

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| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore