

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI
BEFORE SHRI SANDEEP GOSAIN, (JUDICIAL MEMBER) AND
SHRI GIRISH AGRAWAL, (ACCOUNTANT MEMBER)**

**I.T.A. No.2050/Mum/2025
Assessment Year: 2017-18**

Poonam Dhananjay Sandu 7 th Road, Sandu Wadi, Chembur PAN: AAPQPS7175D	Vs	ITO, Ward -27(2)(1) Vashi Rly Stn Bldg, Navi Mumbai
(Appellant)		(Respondent)

Appellant by	Mr. Viraj Mehta
Respondent by	Mr. Virabhadra S. Mahajan, Sr. DR

Date of Hearing	29.09.2025
Date of Pronouncement	26.11.2025

ORDER

Per: SHRI. SANDEEP GOSAIN, J.M.:

The present appeal filed by the assessee challenging the impugned orders dated 27.01.2025 passed under section 250 of the Income Tax Act, 1961 ('the Act'), by the National Faceless Appeal Centre (NFAC) / CIT(A) for the assessment year 2017-18. The assessee has raised the following grounds of appeal:

Ground No. 1: Denial of Deduction Under Section 54

a. The Learned Assessing Officer (AO) erred in disallowing the deduction under Section 54 of the Income Tax Act, 1961, on the grounds that the conditions of Section 54 were not satisfied.

b. The Learned AO failed to consider the submissions made by the Assessee.

c. *The Commissioner of Income Tax (Appeals) [CIT(A)] erred in upholding the order of the Learned AO.*

d. *The Appellant contends that the Learned AO passed the order without properly considering the facts of the case. The disallowance is against the principles of natural justice and should be deleted.*

Ground No. 2: Non-Allowance of Deduction of Cost of Acquisition

a. *The Learned AO erred in not allowing the deduction of the cost of acquisition while computing income from capital gains.*

b. *The Learned CIT(A) erred in upholding the order of the Learned AO.*

c. *The Appellant contends that the property was received as a gift from her mother. As per the provisions of the Income Tax Act, the cost to the previous owner should be allowed as a deduction for the computation of capital gains.*

d. *The order passed by the Learned AO is contrary to the principles of natural justice and should be quashed, with the addition being deleted.*

Ground No. 3: Credit worthiness of the Assessee

a. *The Learned AO failed to properly appreciate the facts of the case and incorrectly held that the Assessee lacked the creditworthiness to purchase the new flat.*

b. *The Learned CIT(A) erred in upholding the order of the Learned AO.*

c. *The Appellant contends that the order passed by the Learned AO violates the principles of natural justice and should be set aside.*

Ground No. 4: Incorrect Initiation of Penalty Proceedings

The Learned AO erroneously initiated penalty proceedings under Section 270A(3) read with Section 270A(9) for alleged under-reporting and misreporting of income, despite the Appellant's full compliance with tax provisions.

Ground No. 5: Levy of Interest u/s 234B and 234C.

a. *The Learned AO erred in levying interest under Sections 234B and 234C.*

b. The Learned CIT(A) erred in upholding the order of the Learned AO.

c. The Appellant contends that no interest under Sections 234B and 234C is leviable in this case.

Ground No. 6: Right to Amend Grounds of Appeal

The Appellant reserves the right to add, amend, or delete any of the above grounds of appeal.

2. The brief facts of the case are that the assessee being an individual filed return of income for the year under consideration admitting total loss of Rs. 555264/-. The case was selected for scrutiny and after serving statutory noticed and seeking reply of the assessee, order of assessment was passed u/s 143(3) of the Act, whereby the deduction claimed u/s 54 of the Act of Rs. 9,00,00,000/- was denied, thereby assessing the total income at Rs. 89444736/-.

3. Aggrieved by the said order, the assessee preferred appeal, however Ld. CIT(A) dismissed the same. Against the said order of Ld. CIT(A), the assessee has preferred the present appeal before us on the grounds mentioned herein above.

Ground No. 1

4. This ground raised by the assessee relates to challenging the order of Ld. CIT(A) in upholding the denial of deduction claimed by the assessee u/s 54 of the Act.

5. Ld. AR appearing on behalf of the assessee reiterated the same arguments as were raised by him before the

revenue authorities and also relied upon his brief notes which are reproduced herein below:

Facts of the Case:

1. *The Appellant sold a long-term capital asset, being a residential flat at Radha Mandir, via an Agreement for Sale dated 01.12.2016 (Pg. 1-8 of Paper Book), for a total consideration of Rs. 9,00,00,000. The Deed of Transfer was registered on 30.03.2017. (Pg. 9-32 of Paper Book)*

2. *The Appellant purchased a new residential property at Ganesh Smruti on 04.12.2015, i.e., within 12 months prior to the transfer. (Pg. 61-123 of Paper Book)*

3. *Accordingly, the Appellant was the legal and rightful owner of the Radha Mandir property as on 01.12.2016, and hence, was fully competent to enter into the sale transaction on that date.*

4. *The Appellant received consideration of ₹2,47,50,000 on 28.07.2016, well prior to registration, clearly evidencing part-performance and contractual enforcement. (Pg. 124 of Paper Book)*

Ground No. 1: Denial of Deduction Under Section 54

Our Submissions:-

Proposition 1 :- Agreement for Sale dt. 01.12.2016 is to be construed as date of Transfer as right in personam has been created in favour of the purchaser and hence section 54 is to be allowed :-

5. Under Section 54(1) of the Income-tax Act, 1961:

"... where the capital gain arises from the transfer of a long-term capital asset, being a residential house ... and the assessee has within a period of one year before or two years after the date on which the transfer took place purchased... one residential house in India ..."

6. *Further, as per Section 2(47)(ii), "transfer" includes any transaction which has the effect of transferring or extinguishing rights in a capital asset.*

7. *Before lower authorities, it has been erroneously adopted the date of registration (30.03.2017) as the date of transfer, ignoring the fact that the Agreement for Sale dated 01.12.2016, supported by substantial advance of Rs. 2.47 crs and*

enforceability through specific performance, constitutes transfer as per Section 2(47) and settled judicial principles.

8. The Agreement for Sale:

Created a binding obligation on the seller.

Was accompanied by substantial advance consideration.

Enabled the buyer to seek specific performance in case of breach.

9. Judicial Precedents Supporting the Appellant's Claim: (Case Law Paper Book Submitted during the course of hearing)

<i>Sr. No.</i>	<i>Particulars</i>	<i>Page No</i>	<i>Relevant Para</i>
1	<i>Sanjeev Lal Vs. CIT (2014) 365 ITR 389 (SC)</i>	1-16	<i>Para 17-25 Pg 12-16</i>
2	<i>CIT Vs. Shimbhu Mehra (2016) 236 Taxmann.com 295 (All. HC)</i>	17-16	<i>Para 12-14 pg 25-26</i>
3	<i>Kishorbhai Harjibhai Patel Vs. ITO (2019) 107 taxmann.com 295</i>	27-51	<i>Para 13-38 pg 38-51</i>
4	<i>Gautam Jhunhunwala Vs. ITO (2018) 173 ITD 93 (Kol ITAT)</i>	52-62	<i>Para 6-8, Pg 59-62</i>
<i>Suit for specific performance can be enforced in case of agreement to sale</i>			
5	<i>S Kalbadevi V. R Somasundaram & Ors. (2010) 5 SCC 401 (SC)</i>	63-75	<i>Para 15-16, Pg 74-75</i>

Above judgments consistently affirm that the date of agreement to sell, when enforceable and accompanied by transfer of possession or rights, is to be considered the date of transfer under section 2(47).

10. Further, Apex Court in case of Suraj Lamp & Industries (P) Ltd. v. State of Haryana (2012) 340 ITR 1 (SC) had held that

Section 54 makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. It is, thus, clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance

(duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

11. Above decision of Supreme Court is distinguishable on following points:-

a. As per Apex Court, registration is must while buying and claiming section 54 allowance i.e. agreement for sale cannot be treated as purchase for claiming exemption u/s 54

b. It does not decide anything on what is date transfer as per Section 2(47). Said is discussed in Apex Court Decision of Sanjeev Lal v. CIT (2014) 365 ITR 389 (SC).

c. Our proposition is that transfer occurs when agreement for sale is entered as per section 2(47). Said proposition is discussed as well in Apex Court Decision of Sanjeev Lal v. CIT (2014) 365 ITR 389 (SC). Suraj Lamps case has not at considered such aspect as the issue was different as pointed out in point a.

d. Decision of Suraj Lamps was decided in year 2011 and Sanjeev Lals Case was decided in year 2014 and facts of the case in case of Sanjeev Lals is squarely same as of the Appellant. Without prejudice, as per Apex Court decision of CIT v. Vegetable Products Ltd. [1973] 88 ITR 192, view which is beneficial to the assessee has to be taken.

12. In our case, The Agreement for Sale dated 01.12.2016 created a legally enforceable right in favor of the purchaser, including:

Receipt of substantial advance consideration of ₹2.47 crores.

Irrevocable commitment to sell the property.

Transfer of rights enforceable by specific performance.

13. The new property was purchased on 04.12.2015, i.e., within one year prior to the date of transfer.

14. Hence, appellant be allowed to claim exemption u/s 54.

Without prejudice to above, our Proposition 2: Even if date of transfer is considered as 30.03.20217 then for claiming exemption u/s 54, Date of Possession i.e. 20.03.2017 can be considered to be as date of purchase:-

15. While the Agreement to Sale for the Ganesh Smruti property was executed on 04.12.2015, it is submitted that the effective

date of purchase should be considered as the date of possession, i.e., 20.03.2017 (Pg. 125-127 of Paper Book)

16. Possession notice was issued on 20.03.2017, indicating delivery of possession within 15 days.

17. Thus, actual acquisition was completed upon possession, and not merely by agreement.

18. Therefore, it is submitted even if the date of transfer of Radha Mandir property is considered from the date of execution of Deed of Transfer i.e. 30.03.2017, the appellant is still entitled to deduction under section 54 of the Act on acquisition of flat in Ganesh Smruti Property, possession of which handed over within a period of 15 days from 20.03.2017.

19. Judicial Precedents Supporting the Appellant's Claim: (Case Law Paper Book Submitted during the course of hearing)

Sr. No.	Particulars	Page No	Relevant Para
6	CIT Vs. Been Jain (1996) 217 ITR 363 (Bom HC)	76-77	Para 2-3, pg 76-77
7	Prateek Rajendra Kapadia Vs. ITO (2024) 164 taxmann.com 762 (Mum.ITAT)	78-84	Para 6, Pg. 76-77
8	Sunil Amritlal Shah Vs. ITO 162 taxmann.com 676 (ITAT)	85-91	Para 20-25 Pg 90-91
9	Ramdas Sitaram Patil Vs. ACIT (2024) 208 ITD 620 (Pune ITAT)	92-95	Para 9-10 Pg 95
10	ITO Vs. Sunil Shiv Khanna (ITA No. 5857/M/2016) Mum ITAT	96-102	Para 8, Pg 100-101
11	Bastimal K Jain Vs. ITO (ITA No. 2896/M/2014) (Mum ITAT)	103-109	Para 8, Pg 108
<i>Suit for specific performance can be enforced in case of agreement to sale</i>			
5	S Kalbadevi V. R Somasundaram & Ors. (2010) 5 SCC 401 (SC)	63-75	Para 15-16, Pg 74-75

20. Hence, appellant be allowed to claim exemption u/s 54.

Without prejudice to Ground No. 2: Non-Allowance of Deduction of Cost of Acquisition

The learned Assessing Officer has erred in computing the capital gains by adopting 'Nil' as the cost of acquisition in respect of the property transferred. The property in question was acquired by the Appellant through gift and inheritance, which falls under the scope of Section 49(1) of the Income- tax Act, 1961.

The Appellant, in accordance with Section 55(2)(b)(ii), has opted to adopt the Fair Market Value (FMV) as on 01.04.2001 as the cost of acquisition, since the property became the asset of the previous owner prior to 01.04.2001. In support of this, a Registered Valuer's Report was obtained, which determined the FMV of the property as on 01.04.2001 at ₹38,94,000. (Pg. 140-165 of Paper Book)

As per the provisions of the Explanation to Section 48(iii), the Indexed Cost of Acquisition has been rightly computed by applying the Cost Inflation Index (CII) of 264 for AY 2020-21, resulting in an Indexed Cost of ₹1,02,80,160 (i.e., ₹38,94,000 × 264/100, where 264 is CII for AY 2020-21 and 100 is the base CII for 2001-02).

Despite this, the AO has ignored the valuation and has mechanically taken the cost of acquisition as Nil, thereby violating express statutory provisions and causing grave prejudice to the Appellant.

Legal Position:

1. Section 55(2)(b)(ii) of the Act clearly states:

Where the capital asset became the property of the assessee by any of the modes specified under Section 49(1), and the asset was acquired by the previous owner before 01.04.2001, the cost of acquisition shall be either the cost to the previous owner or the FMV as on 01.04.2001, at the option of the assessee.

2. Explanation to Section 48(iii) further entitles the assessee to claim indexation of such cost from 01.04.2001, being the base year.

3. The FMV determined by the Registered Valuer is well-supported, and no contrary evidence has been brought on record by the AO to discard or dispute this valuation.

Judicial Precedent:

Novartis AG V. Addl. CIT [2006] 100 ITD 42 (ITAT Mum): The Hon'ble Tribunal held that where the cost of acquisition is not ascertainable due to inheritance or gift, the FMV as on 01.04.2001 should be considered, especially when supported by a valuation report.

Conclusion:

The action of the AO in disregarding the FMV and treating the cost of acquisition as Nil is contrary to law and settled judicial precedents. The Appellant respectfully submits that the Indexed Cost of Acquisition of 1,02,80,160 must be allowed while computing the capital gains.

Ground No. 3: Creditworthiness of the Assessee

Facts of the Case:

1. Lower Authorities has casted unwarranted doubts on the creditworthiness of the Appellant, alleging that she did not possess adequate income to fund the acquisition of the new residential property (Ganesh Smruti), thereby questioning the genuineness of the purchase.

2. This observation has been made despite the Appellant furnishing comprehensive documentary evidence demonstrating the financial means, ownership, and source of funding for the property.

Our Submissions:

1. The Appellant submits that the entire acquisition was financed by a sanctioned home loan from IIFL Home Finance Ltd., jointly with her husband. The sanction letter, loan agreement, and repayment schedule are part of the record. (Pg. 128-130 of Paper Book)

2. The EMIs for the housing loan have been paid from a joint IDBI Bank account, in which the Appellant is the primary holder. These repayments are duly reflected in the bank statements and the said account has also been disclosed in the Appellant's Income Tax Return. (Pg. 131-136 of Paper Book)

3. The AO has not brought any contrary material on record to show that the loan was not availed or serviced by the Appellant. The mere perception of "low income" cannot override concrete documentary evidence such as:

Loan sanction and disbursal documents.

Consistent EMI payments from the Appellant's bank account.

Disclosure of the loan and bank account in ITRs.

4. Further, the Appellant has declared income from house property in respect of Ganesh Smruti, and this has been assessed and taxed in her hands. This is conclusive evidence of ownership, affirming the Appellant's financial interest in and control over the property. (Pg. 137-139 & 192-198 of Paper Book)

5. In the absence of any adverse evidence or contradiction of documentation, merely alleging insufficiency of income is not a valid ground to deny the legitimacy of an acquisition or to question the Appellant's creditworthiness.

6. Courts have consistently held that ownership and funding through identifiable sources, particularly loan finance, are valid explanations under the Income-tax Act. The AO has failed to dislodge the material on record with any counter-evidence.

Lalitikumar Kesarimal Jain v. DCIT (2020) 77 ITR(T) 394 (Pune ITAT) (Pg. 110-118 of Legal Paper Book & Relevant Para 9-10)

Conclusion and Prayer:

Our Proposition 1:- Agreement for Sale dt. 01.12.2016 is to be construed as date of Transfer as right in personam has been created in favour of the purchaser and hence section 54 is to be allowed.

Without prejudice to above, our Proposition 2: Even if date of transfer is considered as 30.03.20217 then for claiming exemption u/s 54, Date of Possession i.e. 20.03.2017 can be considered to be as date of purchase and hence section 54 is to be allowed.

On above basis, Ground No. 1 be allowed and exemption ought to be given to the appellant.

6. On the contrary Ld. DR relied upon the orders passed by the revenue authorities.

7. We have heard the counsels for both the parties, perused the material placed on record, judgments cited

before us and also the orders passed by the revenue authorities.

8. From the records, we noticed that the assessee filed its revised return on 31.10.2017 thereby declaring a loss of ₹5,55,264. Thereafter, the case was selected for scrutiny under CASS and the assessment u/s 143(3) of the Act was made which resulted in assessing the total income at ₹8,94,44,740. In this way addition of Rs. 9,00,00,000/- was made by denying the deduction claimed u/s 54 of the Act and thus long term capital gain of Rs. 9,00,00,000/- was added to total income of the assessee.

9. As per the facts of the present case, the assessee had sold a residential flat at *RadhaMandir*, through an Agreement to Sell dated 01.12.2016 for a total consideration of Rs. 9,00,00,000 regarding which the *Deed of Transfer* of the same was registered on 30.03.2017. The assessee had also *purchased* a *new* residential property at *Ganesh Smruti* on 04.12.2015, i.e., within 12 months **prior** to the Agreement for Sale dated 01.12.2016. But the department denied the claim by adopting the date of registration i.e 30.03.2017 as date of transfer. However we noticed that assessee had already received part consideration of ₹2,47,50,000 on 28.07.2016 through banking channel, in respect of sale of residential flat at *Radha Mandiri* well prior to the registration, clearly evidencing part-performance and contractual enforcement.

10. Now the Question before us is as to whether the Agreement for Sale dated 01.12.2016 be construed as date of Transfer since the *Right in Personam* has been created in favour of the purchaser and in this way then the assessee will be eligible to claim benefit of section 54 of the Act.

11. It is thus necessary to firstly evaluate the provisions of Sec. 54 of the Income Tax Act, which reads as under:

"... where the capital gain arises from the transfer of a long-term capital asset, being a residential house ... and the assessee has within a period of one year before or two years after the date on which the transfer took place purchased ... one residential house in India ..."

12. As per Section 2(47)(ii) of the Act, the "**transfer**" includes any transaction which has the effect of transferring or extinguishing rights in a capital asset.

13. After having perused the terms of the Agreement for Sale, we are of the view that the Agreement for Sale creates a *binding obligation* on the seller, accompanied by substantial advance consideration and enabling the buyer to seek specific performance in case of breach constitutes transfer as per Sec. 2(47) of the Act. As the assessee was the legal and rightful owner of the *Radha Mandir* property as on 01.12.2016 and therefore was fully competent to enter into the sale transaction on that date. But the revenue authorities had erroneously adopted the date of registration as the date of transfer, ignoring the fact that the Agreement for Sale dated 01.12.2016, supported by substantial advance of Rs. 2.47 crs and enforceability

through specific performance, constitutes transfer as per Section 2(47) of the Act.

14. In this regard it was pleaded that the issue is also *squarely covered* by the decision of Hon'ble Supreme Court in the case of **Sanjeev Lal v. CIT (2014) 365 ITR 389 (SC)** and also by the decision in other cases i.e **CIT v. Shimbhu Mehra (2016) 236 Taxman 561 (All. HC)**, **Kishorbhai Harjibhai Patel v. ITO (2019) 107 taxmann.com 295 (Guj. HC)** and **Gautam Jhunjhunwala v. ITO (2018) 173 ITD 93 (KOLITAT)** wherein it was held *that agreement to sale constitutes "transfer u/s 2(47) of the Act"*

15. Apart from above the decision in the case of **S. Kaladevi v. V.R. Somasundaram & Ors. (2010) 5 SCC 401 (SC)**, was also relied upon wherein it was held that *suit for specific performance can be enforced in case of agreement to sell.*

16. We have also gone through the decision of Hon'ble Supreme Court in the case of **Sanjeev Lal v. CIT (2014) 365 ITR 389 (SC)**, wherein it was held as under:

"17. Upon plain reading of Section 54 of the Act, it is very clear that so as to avail the benefit under Section 54 of the Act, one must purchase a residential house/new asset within one year prior or two years after the date on which transfer of the residential house in respect of which the long term capital gain had arisen, has taken place.

18. In the instant case, the following three dates are not in dispute. The residential house was transferred by the appellants and the sale deed had been registered on 24th September, 2004. The sale deed had been executed in pursuance of an agreement to sell which had been executed on 27th December, 2002 and out of the total consideration of Rs.1.32 crores, Rs. 15 lakhs had been received by the appellants by way of earnest money when the agreement to sell had been executed and a new residential house/new asset had been purchased by the appellants on 30th April, 2003. It is also not in dispute that there was a litigation wherein the Will of late Shri Amrit Lal had been challenged by his son and the appellants had been

restrained from dealing with the house in question by a judicial order and the said judicial order had been vacated only in the month of May, 2004 and therefore, the sale deed could not be executed before the said order was vacated though the agreement to sell had been executed on 27th September, 2002.

19. If one considers the date on which it was decided to sell the property, i.e. 27th December, 2002 as the date of transfer or sale, it cannot be disputed that the appellants would be entitled to the benefit under the provisions of Section 54 of the Act because long term capital gain earned by the appellants had been used for purchase of a new asset/residential house on 30th April, 2003 i.e. well within one year from the date of transfer of the house which resulted into long term capital gain.

*20. The question to be considered by this Court is whether the agreement to sell which had been executed on 27th December, 2002 can be considered as a date on which the property i.e. the residential house had been transferred. In normal circumstances by executing an agreement to sell in respect of an immovable property, a right in personam is created in favour of the transferee/vendee. When such a right is created in favour of the vendee, the vendor is restrained from selling the said property to someone else because the vendee, in whose favour the right in personam is created, has a legitimate right to enforce specific performance of the agreement, if the vendor, for some reason is not executing the sale deed. Thus, by virtue of the agreement to sell some right is given by the vendor to the vendee. The question is whether the entire property can be said to have been sold at the time when an agreement to sell is entered into. In normal circumstances, the aforesaid question has to be answered in the negative. However, looking at the provisions of Section 2(47) of the Act, which defines the word "transfer" in relation to a capital asset, one can say that if a right in the property is extinguished by execution of an agreement to sell, the capital asset can be deemed to have been transferred. Relevant portion of Section 2(47), defining the word "transfer" is as under:
'2(47) "transfer", in relation to a capital asset, includes,-*

*(i) ** ** **

*(ii) the extinguishment of any rights therein; or.
'*

21. Now in the light of definition of "transfer" as defined under Section 2(47) of the Act, it is clear that when any right in respect of any capital asset is extinguished and that right is transferred to someone, it would amount to transfer of a capital asset. In the light of the aforesaid definition, let us look at the facts of the present case where an agreement to sell in respect of a capital asset had been executed on 27th December, 2002 for transferring the residential house/original asset in question and a sum of Rs. 15 lakhs had been received by way of earnest money. It is also not in dispute that the sale deed could not be executed because of pendency of the litigation between Shri Ranjeet Lal on one hand and the appellants on the other as Shri Ranjeet Lal had challenged the validity of the Will under which the property had devolved upon the appellants. By virtue of an order passed in the suit filed by Shri Ranjeet Lal, the appellants were restrained from dealing with the said residential house and a law-abiding citizen cannot be expected to violate the direction of a court by executing a sale deed in favour of a third party while being restrained from doing so. In the circumstances, for a justifiable reason, which was not within the control of the

appellants, they could not execute the sale deed and the sale deed had been registered only on 24th September, 2004, after the suit filed by Shri Ranjeet Lal, challenging the validity of the Will, had been dismissed. In the light of the aforesaid facts and in view of the definition of the term "transfer", one can come to a conclusion that some right in respect of the capital asset in question had been transferred in favour of the vendee and therefore, some right which the appellants had, in respect of the capital asset in question, had been extinguished because after execution of the agreement to sell it was not open to the appellants to sell the property to someone else in accordance with law. A right in personam had been created in favour of the vendee, in whose favour the agreement to sell had been executed and who had also paid Rs.15 lakhs by way of earnest money. No doubt, such contractual right can be surrendered or neutralized by the parties through subsequent contract or conduct leading to non-transfer of the property to the proposed vendee but that is not the case at hand.

22. In addition to the fact that the term "transfer" has been defined under Section 2(47) of the Act, even if looked at the provisions of Section 54 of the Act which gives relief to a person who has transferred his one residential house and is purchasing another residential house either before one year of the transfer or even two years after the transfer, the intention of the Legislature is to give him relief in the matter of payment of tax on the long term capital gain. If a person, who gets some excess amount upon transfer of his old residential premises and thereafter purchases or constructs a new premises within the time stipulated under Section 54 of the Act, the Legislature does not want him to be burdened with tax on the long term capital gain and therefore, relief has been given to him in respect of paying income tax on the long term capital gain. The intention of the Legislature or the purpose with which the said provision has been incorporated in the Act, is also very clear that the assessee should be given some relief. Though it has been very often said that common sense is a stranger and an incompatible partner to the Income Tax Act and it is also said that equity and tax are strangers to each other, still this Court has often observed that purposive interpretation should be given to the provisions of the Act. In the case of Oxford University Press v. CIT [2001] 247 ITR 658/115 Taxman 69 this Court has observed that a purposive interpretation of the provisions of the Act should be given while considering a claim for exemption from tax. It has also been said that harmonious construction of the provisions which subserve the object and purpose should also be made while construing any of the provisions of the Act and more particularly when one is concerned with exemption from payment of tax. Considering the aforesaid observations and the principles with regard to the interpretation of Statute pertaining to the tax laws, one can very well interpret the provisions of Section 54 read with Section 2(47) of the Act, i.e. definition of "transfer", which would enable the appellants to get the benefit under Section 54 of the Act.

23. Consequences of execution of the agreement to sell are also very clear and they are to the effect that the appellants could not have sold the property to someone else. In practical life, there are events when a person, even after executing an agreement to sell an immovable property in favour of one person, tries to sell the property to another. In our opinion, such an act would not be in accordance with law because once an agreement to sell is executed in favour of one person, the said person gets a right to get the property transferred in his favour by filing a suit for specific performance and therefore, without hesitation we can say that some right, in respect of the said property,

belonging to the appellants had been extinguished and some right had been created in favour of the vendee/transferee, when the agreement to sell had been executed.

24. Thus, a right in respect of the capital asset, viz. the property in question had been transferred by the appellants in favour of the vendee/transferee on 27th December, 2002. The sale deed could not be executed for the reason that the appellants had been prevented from dealing with the residential house by an order of a competent court, which they could not have violated.

25. In view of the afore stated peculiar facts of the case and looking at the definition of the term 'transfer' as defined under Section 2(47) of the Act, we are of the view that the appellants were entitled to relief under Section 54 of the Act in respect of the long term capital gain which they had earned in pursuance of transfer of their residential property being House No. 267, Sector9-C, situated in Chandigarh and used for purchase of a new asset/residential house."

17 The decisions in the above cases consistently affirms that the date of agreement to sell, accompanied by transfer of possession or rights to enforce the agreement is to be considered as the date of transfer u/s 2(47) of the Act.

18. On the other hand Ld. DR relied upon the decision of Hon'ble Supreme Court in the case of **Suraj Lamp & Industries (P) Ltd. v. State of Haryana (2012) 340 ITR 1 (SC)**, wherein it was held that

Section 54 makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. It is, thus, clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

19. However, after having considered the respective decisions relied upon by the respective parties, we found

that the assessee's case is squarely covered by the decision of Hon'ble Supreme Court in the case of **Sanjeev Lal (supra)**, whereas the decision relied in the case of **Suraj Lamp and industries (supra)**, is clearly distinguishable from the facts of the present case as in the case of *Suraj Lamp*, the **Apex Court** had said that registration is must while buying and claiming exemption u/s 54 of the Act. But it does not decide anything on the *date of transfer* as per Section 2(47) of the Act. However, the said proposition has been discussed by Hon'ble Supreme Court in the case of *Sanjeev Lal's* case and it was held that transfer occurs when the agreement for sale is entered as per section 2(47) of the Act.

19. Even otherwise, as per the decision of Hon'ble Supreme Court in the case of **CIT v. Vegetable Products Ltd. [1973] 88 ITR 192**, wherein it was held that the view which is **beneficial** to the assessee has to be taken.

20. Therefore, taking into consideration the entire facts and circumstances as discussed by us above and also considering the fact that Agreement for Sale dated 01.12.2016 created a *legally enforceable right* in favour of the purchaser, as substantial advance consideration of ₹2.47 crores had already been received accompanied with irrevocable commitment to sell the property which creates right in favour of the purchaser to enforce specific performance which constitutes *transfer* under the provisions of Sec. 2(47) of the Act. Thus in this way the

property purchased on 04.12.2015, i.e., within one year *prior* to the date of transfer i.e 01.11.20216 therefore assessee is eligible for claim exemption u/s 54 of the Act. Accordingly this ground raised by the assessee stands allowed.

21. Since we have allowed ground No. 1 raised by the assessee therefore other grounds raised by the assessee needs no adjudication as they become academic in nature.

22. In the result, the appeal filed by the assessee partly allowed.

Order pronounced in the open court on 26/11/2025

Sd/-
(GIRISH AGRAWAL)
(ACCOUNTANT MEMBER)

Sd/-
(SANDEEP GOSAIN)
(JUDICIAL MEMBER)

Mumbai:
Dated: 26/11/2025

KRK, Sr. PS

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)
ITAT, Mumbai