

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "J(SMC)" Bench, Mumbai.

Before Shri Sandeep Gosain (JM) &  
Shri Omkareshwar Chidara (AM)

ITA No. 6302/MUM/2025 (Assessment Year : 2013-14)

Shaziya Moazzam Ali Khan Flat No. 71, A Wing, ST Andrew Apartment, Moraland Road, Mumbai-400 008.	Vs.	The CIT(A), Ward 19(3)(1), Piramal Chamber, Parel Mumbai-400 012.
PAN : AMNPK2105R		
Appellant		Respondent

Assessee by	:	Shri Amir H. Bohra, CA
Revenue by	:	Shri Aditya Rai
Date of Hearing	:	27/11/2025
Date of pronouncement	:	04/12/2025

O R D E R

Per Omkareshwar Chidara (AM) :-

In the above cited appeal, Ld. AR of the appellant raised a ground that Ld. CIT(A) erred in holding that the appellant is not eligible for claiming deduction to the extent of Rs. 20 lakh beyond time limit prescribed under provisions of section 54(2) of the Income Tax Act. In this case, Ld. CIT(A) confirmed the order of Ld. AO by stating that the appellant is not entitled to claim deduction under section 54 to the extent of Rs. 20 lakh because the same was not invested within the period of three years in construction of a residential house in India. Ld. CIT(A) held that the contention of appellant is not acceptable in view of the mandatory requirement of section 54(1) of the Act i.e., the amount was not invested within three years.

2. Aggrieved by the order of Ld. CIT(A) rejecting the contention of the appellant that he is not entitled for deduction under section 54 of the Act to the extent of Rs. 20 lakh, an appeal is filed before the ITAT with the following grounds of appeal :-

1. Based on facts and circumstances of the case and in law, the order u/s 250 passed by the Hon'ble Commissioner of Income tax (Appeals) is bad in

Law and against the principle of natural justice therefore needs to be quashed.

2. On the facts and circumstances of the case and in law, the learned CIT erred in holding that appellant is not eligible for claiming deduction to the extent of Rs.20 lakh paid on 20/03/15 which is beyond the time limit prescribed under provisions of section 54(2) of the I.T Act.

3. On the facts and circumstances of the case and in law, the learned CIT failed to appreciate that the appellant was required to deposit Rs. 10,58,331/-balance capital gain from the balance retaining in saving account.

4. Based on facts and circumstances of the case and in law, the learned CIT has not appreciated fact that the appellant needed the balance in saving account to pay builders on demand as per stage of construction so could not make deposit in capital gain account scheme as provided in section 54(2) of the I.T Act.

5. Based on facts and circumstances of the case and in law, the learned CIT failed to appreciate that it was not fault of appellant that construction was delayed as payment schedule provided in the agreement for sale but paid balance amount, within 3 years as provided in u/s 54 of income tax act.

6. Based on facts and circumstances of the case and in law, the learned CIT failed to appreciate that when construction resumed, ultimately balance capital gain was utilized against the consideration of flat only u/s 54 of income tax act.

3. During the hearing proceedings before the ITAT, Ld. AR of the appellant has stated that the builder has not constructed the property within the period of three years and he was unable to get possession of the invested property within three years and delay is attributable to builder which is beyond the control of appellant. So the amount of Rs. 20 lakh which is invested on 20.3.2015 should be taken as if it is invested within time limit of three years and he is entitled for deduction under section 54 of the Act. For the proposition Ld. AR of the appellant relied upon the decision of Hon'ble Karnataka High Court in the case of K. Ramchandra Rao (2015) 56 taxmann.com 163, wherein it was held that where appellant had not deposited unutilized capital gains in an account which was duly notified by Central Government in terms of section 54F(4) of the Act, benefit of section 54F(1) of the Act would still be available to the appellant. In this case, the Court held that if the intention not to retain the uninvested money but was to invest in the construction of property within the period stipulated in section 54F(1), then section 54(4) of the Act is not at all attracted. The appellant has kept the proceeds of sale of original in savings bank account of

Bank of Maharashtra, the payment before due date of filing of return was not done due to delay on the part of builder which was beyond her control and at the same time appellant had to keep amount in savings bank account as builder could demand the payment any time on resumption of construction work of building. Since the balance was available to her in the savings bank account, she is entitled to deduction under section 54 of the Act even though it is not kept in an account which was duly notified by the Central Government. As per section 54F(4) of the Act, the Ld. AR of the appellant relied on the decisions of the Coordinate Benches for the proposition that strict interpretation of the Act will defeat the purpose and object exemption provisions of section 54 of the Act.

4. Per contra, Ld. DR relied on the case of Humayun Suleman Merchant (73 taxman.com 2) for the proposition that where the appellant filed Return of Income and entire amount which was subjected to capital gains tax had not been utilized for the purpose of construction of a new house, nor were unutilized amounts deposited in the notified bank accounts before filing the Return of Income, the Ld. AO has rightly restricted the exemption under section 54F of the Act proportionate to the amount invested. In our case, time of three years period for construction of a residential house or investment in the notified scheme expires on 13.12.2015 and also it is an admitted fact that the amount was not invested before filing the Return of Income. The appellant paid amount of Rs. 20 lakh to builder after filing Return of Income and beyond three years period, hence, Ld. DR has argued that Ld. CIT(A) has correctly denied benefit under section 54 of the Act.

5. Heard both sides. The decision relied upon by Ld. DR in Hon'ble Jurisdictional High Court's case of Humayun Suleman Merchant (supra) is squarely applicable to the facts of this case because in our case also, the appellant has not invested full amount within three years period nor invested the amount in the scheme notified by the Central Government and not utilized full amount before filing the Return of Income. The Plea of the Ld. AR of the appellant that he could not invested the amount within period

of three years because the builder has delayed the construction of the house and the same is not her control cannot be accepted because of the mandatory requirement of section 54 which was interpreted in favour of the Revenue. It is an admitted fact that the amount was not fully utilized within the period of three years, nor invested the unutilized amount in the scheme notified by Central Government, action of Ld. AO/Ld. CIT(A) of disallowing proportionate amount is upheld.

6. The appeal of appellant is Dismissed.

Order pronounced in the open Court on 04/12/2025.

Sd/-  
(SANDEEP GOSAIN)  
JUDICIAL MEMBER

Sd/-  
(OMKARESHWAR CHIDARA)  
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

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

//True Copy//

PS

BY ORDER,  
(Asstt. Registrar) ITAT, Mumbai