

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No. 2482/KOL/2025
(Assessment Year:2016-17)**

Ramautar Saraf (HUF)
BF-256, Block-BF, Salt Lake,
Bidhan Nagar, Kolkata-700064
West Bengal

Vs.

ITO, Ward 59(3)
Income Tax Office, Uttarapan
Complex, DS-IV, Manicktala Civil
Centre, Kolkata-700067,
West Bengal

(Appellant)

(Respondent)

PAN No. AADHR1153A

Assessee by : Shri S.K. Tulsian &
Ms. Puja Somani, ARs
Revenue by : Shri S.B. Chakraborty, DR

Date of hearing: 06.01.2026
Date of pronouncement: 20.01.2026

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 09.09.2025 for the AY 2016-17.

2. The assessee has raised following grounds of appeal:-

"1. That, on the facts and circumstances of the case, the Ld. CIT(A), NFAC, Delhi erred in law in having upheld the disallowance of deduction of Rs.2,86,42,500/- on the alleged ground of the appellant's failure to meet the statutory conditions of sec. 54 of the Act when it has been established by filing evidence that the capital gains on transfer had been invested in the construction of a residential house and even though the construction was not completed within 3 years, exemption u/s 54 of the Act cannot be denied.

2. That, the Ld. CIT(A) further erred in upholding the disallowance of deduction of Rs.2,86,42,500/- claimed u/s 54 of the Act without properly appreciating that the provisions of sec. 54 are beneficial in nature and the investment made by the appellant in purchasing the plot of land for the purpose of construction of a residential house has to be held to be an investment, thus satisfying the conditions of sec. 54 of the Act.”
3. The only issue raised in the grounds of appeal is against the order of Id. CIT (A) confirming the disallowance of deduction of ₹2,86,42,500/- as made by the Id. AO on account of failure of the assessee to satisfy the conditions u/s 54 of the Act.
4. The facts in brief are that the assessee filed the return of income on 02.08.2016, declaring total income at ₹8,87,100/-. The case was selected for scrutiny. The notice u/s 143(2) and 142(1) of the Act along with questionnaire were issued and served upon the assessee. During the course of assessment proceedings, the Id. AO noted that the assessee has sold a house property acquired in F.Y. 2004-05, situated at 76, Cotton Street, Kolkata-700007 to M/s Vidhi Vyapaar Pvt. Ltd. for a consideration of ₹6,25,00,000/-. It was also noted by the Id. AO that the assessee computed the capital gain from sale of the property at ₹5,48,40,817/-, on which the deduction u/s 54 of the Income-tax Act, 1961 (the Act) has been claimed in the return filed in form ITR-2 and only Long-Term Capital Gain to the extent of ₹1,88,317/- was offered to tax. The Id. AO noted that the said capital gain was utilized by purchase of land amounting to ₹2,80,70,000/- for construction of residential house. The said amounts utilized out of capital gain are as under:-

SL No.	Amount Invested	Amount (Rs.)
1.	Purchased of Land	2,80,70,000
2.	Architect Fees	5,72,500
3.	Deposit in Capital Gains Account Scheme	2,60,10,000
4.	Total deduction claimed u/s 54 of the Act,	5,46,52,500

4.1. The Id. AO further noted that the assessee made payment of ₹2,80,70,000/- to Bangalore NRI Complex Ltd. (Urbana Township) for purchase of land for construction of residential house at 783, Anandapur, Kolkata-700107 which was claimed by the assessee as investment for construction of residential house eligible for deduction u/s 54 of the Act. The Id. AO noted that the assessee was granted provisional allotment of land. The Id. AO did not accept the contention of the assessee on this issue, so far as the purchase of land and payment to architect are concerned. Accordingly, same was disallowed and added to the income of the assessee amounting to ₹2,86,42,500/-.

5. In the appellate proceedings, the Id. CIT (A) also dismissed the appeal of the assessee after taking into consideration the additional evidences filed by the assessee under Rule 46A of the IT Rules, 1962. The Id. CIT (A) noted that the assessee has not constructed a residential house within a period of three years after the date of transfer. The Id. CIT (A) noted the date of transfer as on 15.06.2016, and the statutory period for consideration of the house expired on 15.06.2018. The Id. CIT (A) in Para no.9 noted that the assessee himself confirmed that the KMC building permit and structural plan, foundational legal document required for the commencement of bonafide construction in a Municipal area was only approved on 07.03.2019, which falls approximately 9 months after the statutory deadline. The Id. CIT (A) noted that it is a fundamentally legal principle that construction carried out without sanctioned plan is illegal and unauthorized. The Id. CIT (A) further noted that Act cannot be interpreted for grant of exemption for

action which are not a legally compliant and thus, dismissed the appeal.

6. After hearing the rival contentions and perusing the materials available on record, we find that the assessee sold a residential house to M/s M/s Vidhi Vyapaar Pvt. Ltd. for consideration of ₹6,25,00,000/- from which the assessee earned the long-term capital gain of ₹5,48,40,817/-. The assessee applied the capital gain to the extent of ₹5,46,52,500/- on payment of purchase of land, architect fee and deposit in capital gain account scheme as detailed above. The assessee was granted provisional allotment of land as per agreement with Urbana on 01.09.2015, to whom ₹2,80,70,000/- was paid. We also note that the assessee started the construction of the house on the said land. However, the construction could not be completed within three years upto 15.06.2018, since the building plan were sanctioned by the KMC not in time. Consequently, the Id. AO disallowed the payment made on account of purchase of land as well as payment of architect fee thereby making an addition of ₹2,86,42,500/-. The assessee claimed to have started the construction of the house by furnishing bill of construction of Shri Akhil Mondal dated 03.04.2018, for an amount of ₹2,55,200/- and construction bill of M/s AGS Construction dated 27.04.2018, for an amount of ₹11,05,000/-, copy of which are available at page no. 16 and 17 of the Paper Book but the construction of the house could not be completed within stipulated period of three years, since there were problems in the plans design of the property. We note that the assessee has started the construction of the house within three years and therefore, the exemption u/s 54 of the Act cannot be denied to the assessee on the ground that the

construction of the house was not completed within the stipulated period. The case of the assessee find support from the decision of the Hon'ble Karnataka High Court in case of CIT Vs. Smt. B.S. Shanthakumari reported in (2015) 60 taxmann.com 74 (Karnataka), wherein it has held as under:-

"8. Section 54F of the Act is a beneficial provision which promotes for construction of residential house. Such provision has to be construed liberally for achieving the purpose for which it is incorporated in the statute. The intention of the legislature, as could be discerned from the reading of the provision, would clearly indicate that it was to encourage investments in the acquisition of a residential plot and completion of construction of a residential house in the plot so acquired. A bare perusal of said provision does not even remotely suggest that it intends to convey that such construction should be completed in all respects in three (3) years and/or make it habitable. The essence of said provision is to ensure that assessee who received capital gains would invest same by constructing a residential house and once it is established that consideration so received on transfer of his Long Term capital asset has invested in constructing a residential house, it would satisfy the ingredients of Section 54F. If the assessee is able to establish that he had invested the entire net consideration within the stipulated period, it would meet the requirement of Section 54F and as such, assessee would be entitled to get the benefit of Section 54F of the Act. Though such construction of building may not be complete in all respect "that by itself would not disentitle the assessee to the benefit flowing from Section 54F". In fact, appellate Commissioner has not only taken note of the judgment of the co-ordinate bench of this Court in Sambandam's Uday kumar case (supra), but had also taken note of the judgment of High Court of Madras in the case of CIT v. Sardarmal Kothari[2008] 302 ITR 286, which was on similar facts as obtained in Sambandam Uday kumar's case (supra) and as such in the instant case, Appellate Commissioner allowed assessee's appeal noting that the appeal filed by the revenue against the order of High Court of Madras before Apex Court in CC Nos.3953-3954/2009 had been dismissed on 06.04.2009."

6.1. Similarly, the case of the assessee is squarely covered by the decision of the Hon'ble Chandigarh High Court in case of Bhavna Cuccria Vs. ITO (2017) 82 taxmann.com 306 (Chandigarh) wherein it was held as under: -

"11.5 Even otherwise we find that section 54 gives a window period of three years, from the date of transfer of original asset, for the construction of a new house and two years for purchasing a new house. Further as per the section the amount utilized for the said purpose along with the amount deposited in a specified bank account for the purpose, before the date of filing of return of income, is treated as cost of construction of the new

asset and exemption granted thereof. The fulfilment of the condition of completion of construction or purchase of house is to be looked into only in the year in which the window period ends and if it is then found that the assessee has not constructed/purchased the house, to the extent the amount deposited in specified bank account is not utilized for the said purpose, it is treated as capital gains of the previous year in which the period of three years expires. The provisions of section 54 are reproduced hereunder for clarity:

"54. Profit on sale of property used for residence.-(1) Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of a long-term capital asset , being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (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, a residential house, then, instead of the capital gain being charged to income tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(i) if the amount of the capital gain is greater than the cost of the residential house so purchased or constructed (hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or

(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain.

(2) The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139 in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme 11 which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for

the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—

- (i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and*
- (ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid."*

Thus clearly, as per section 54(2), exemption to the extent of amount utilized for construction is to be granted in the year of transfer of asset and the condition of completion of construction is to be looked into only after the window period provided by the Act of three years expires . The Hon'ble Supreme Court in the case of Fibre Boards (supra), has interpreted identically worded provisions of section 54G, which grants exemption on account of investment of capital gain earned from sale proceed of industrial undertaking, in another industrial undertaking, and has held that "advance" paid for the purpose of acquiring plant and machinery, land and building would amount to utilization by assessee of capital gain made by him for the purpose of purchasing or acquiring aforesaid assets. The Hon'ble Supreme Court has held that as per section 54G the assessee has been given a window of three years after the date on which transfer takes place, to purchase a new machinery or plant or acquire building. The Hon'ble Supreme Court has further held that section 54G(2) states that amount which is not "utilized" for the said purpose is to be denied exemption. The Hon'ble Supreme Court held that the assessee is entitled to avail exemption under the said section if it utilizes the amount of capital gain for purchase or acquisition of new plant and machinery and buildings and the said condition would be fulfilled when advances are paid for the purpose of purchase or acquisition of assets. The relevant findings of the apex court in the case of Fibre Boards (supra) is as under:

'36. A reading of Section 54G makes it clear that the assessee is given a window of three years after the date on which transfer has taken place to "purchase" new machinery or plant or "acquire" building or land. We find that the High Court has completely missed the window of three years given to the assessee to purchase or acquire machinery and building or land. This is why the expression used in section 54G(2) is "which is not utilized by him for all or any of the purposes aforesaid...". It is clear that for the assessment year in question all that is required for the assessee to avail of the exemption contained in the Section is to "utilize" the amount of capital gains for purchase and acquisition of new machinery or plant and building or land. It is undisputed that the entire amount claimed in the assessment year in question has been so "utilized" for purchase and/or acquisition of new machinery or plant and land or building.

37. The High Court is not correct when it states:-

"31. The word 'purchase' is not defined under the Act and therefore, has to be construed in the commercial sense. In many dictionaries, the word 'purchase' means the acquisition of property by party's own act as distinguished from acquisition by act of law. In the context in which the expression issued by the Legislature requires first to be understood and interpretation that suits the context requires to be adopted. Exemption of capital gains under Section 54G of the Act can be claimed on transfer of assets in cases of shifting of industrial undertaking from urban area to any other non-urban area. This exemption may be claimed if the capital gains arising on transfer of any of assets of existing industrial unit is utilized within one year or three years after the date on which the transfer took place for purchase of new machinery or plant for the purposes of the business of the industrial undertaking in the area to which the said undertaking is shifted. The Legislature consciously has not used the expression 'towards the purchase of plant and machinery' as in Section 54(4) of the Act in contrast to Section 54(2) of the Act wherein the words 'towards' is used before the word 'purchase'. The expression 'purchased' used in sub-clause (a) of section 54G of the Act requires to be understood as the domain and control given to the assessee. In the present case, it is not in dispute that the assessee has paid advance amount for acquisition of land, plant, building and machinery, etc., within the time stipulated in the Section, but it is not the case of the assessee that after such payment of advance amount, it has taken possession of land and building, plant and machinery. In our view, if the argument of the learned Senior Counsel for the assessee is accepted, it would defeat the very purpose and object of the Section itself. By merely paying some amount by way of advance towards the cost of acquisition of land for shifting its industrial unit from urban area to non-urban area, an assessee cannot claim exemption from payment of tax on capital gains. This cannot be the intention of the Legislature and an interpretation, which would defeat the very purpose, and the object of the Act requires to be avoided." (at para 31 of the impugned judgment)

38. We are of the view that the aforesaid construction of Section 54G would render nugatory a vital part of the said Section so far as the assessee is concerned. Under sub-section (1), the assessee is given a period of three years after the date on which the transfer takes place to purchase new machinery or plant and acquire building or land or construct building for the purpose of his business in the said area. If the High Court is right, the assessee has to purchase and/or acquire machinery, plant, land and building within the same assessment year in which the transfer takes place. Further, the High Court has missed the key words "not utilized" in sub-section (2) which would show that it is enough that the capital gain made by the assessee should only be "utilized" by him in the assessment year in question for all or any of the purposes aforesaid, that is towards purchase and acquisition of plant and machinery, and land and building. Advances paid for the purpose of purchase and/or acquisition of the aforesaid

assets would certainly amount to utilization by the assessee of the capital gains made by him for the purpose of purchasing and/or acquiring the aforesaid assets. We find therefore that on this ground also, the assessee is liable to succeed. The appeals are, accordingly, allowed and the judgment of the High Court is set aside.'

12. *In view of the interpretation given to the word "utilized" used in section 54G of the Act by the Supreme Court and considering that the condition specified in section 54G(2) are identical to that in section 54(2) it is clear that for the purpose of claiming exemption under section 54 the assessee is only required to invest the amount for the purpose of purchase or construction of a property without completing the same in the impugned year and all amount advanced for the said purpose would be treated as being utilized for the purpose of section 54.*

13. *In view of the above we hold that the assessee is entitled to claim deduction for the amount invested in the purchase of a new asset amounting to Rs. 62,10,000 and the AO is directed to grant the same.*

14. *The order of the Id. CIT(A) is therefore set aside and the appeal of the assessee is allowed in above terms.*

15. *In the result, appeal of the assessee is allowed."*

6.2. Similarly, the co-ordinate Bench in case of **Narasimha Raju Rudra Raju vs. Assistant Commissioner of Income-tax, Circle - 8(1) [2013] 26 ITR(T) 681 (Hyderabad - Trib.)/[2013]** held as under:-

"11. *We have heard the contentions of the parties and perused the materials on record. It is not in dispute that the assessee on 29/10/2007 has sold a property and declared a capital gain of Rs. 58,90,114/-. However, the assessee claimed exemption u/s 54F by stating that he has invested an amount of Rs. 64 lakhs towards purchase of land and construction of house property by virtue of agreement entered into with M/s Dhatri Construction Pvt. Ltd. on 19/03/2008. Perusal of the agreement of sale dated 19/03/2008 between the assessee and M/s Dhatri Constructions Pvt. Ltd. reveals that the assessee has paid an amount of Rs. 52 lakhs to M/s Dhatri Constructions Pvt. Ltd. towards sale consideration of plot No. 40, in Survey No. 18/P, admeasuring 279.55 sq.yards with built up area of 2500 to 2700 sft. situated at Bandlaguda village, Rajendra Nagar Mandal and Municipality, RR Dt. Clause (1) of the agreement of sale states that the aforesaid sale consideration of Rs. 52 lakhs comprises of Rs. 7 lakhs towards plot and the balance amount of Rs. 45 lakhs towards the construction of the house. Clause (2) of the agreement reveals that the entire amount of Rs. 52 lakhs was paid by the assessee to M/s Dhatri Constructions Pvt. Ltd. through cheque bearing Nos. 118744, 118748, 118749, dated 08/01/2008, 13/03/2008, 14/03/2008 drawn on SBH, Banjara Hills, Hyderabad. On the very same day i.e. on 19/03/2008, the assessee entered into another agreement with M/s Dhatri Constructions Pvt. Ltd. for construction of a residential house over the said plot for a total consideration of Rs. 45 lakhs. However,*

as it appears, this agreement ultimately were not acted upon and the assessee on 18/01/2010 entered into another agreement of sale with M/s Fima Properties Pvt. Ltd. and M/s Dhatri Constructions Pvt. Ltd. for purchase of flat admeasuring 2528 sft. in Block B Tower 12 in Fima Hilltop Project in survey No. 129/77 TS No. 26, Ward No. 12, Syed Nagar, Fast Lancer, Shaikpet Village, Hyderabad as described in the 2nd Schedule of the agreement of sale. Part B of the aforesaid 2nd Schedule further reveals that the total consideration for sale of the aforesaid flat is Rs. 1,15,35,000/- out of which the assessee having already paid Rs. 64 lakhs to M/s Dhatri Constructions Pvt. Ltd. agreed to pay the balance of Rs. 51,35,000/- in the name of M/s Dhatri Constructions Pvt. Ltd. On the very same day i.e. on 18/01/2010 a registered sale deed was executed between the assessee and with 7 other persons being represented by their development agreement-cum-general power of attorney holder M/s Fima Properties Pvt. Ltd. for purchase of undivided share of land 92.7 sq.yds., flat No. 1203 on 3rd floor in the residential complex Fima Hilltop at Survey No. 129/77, TS No. 26, Ward No. 12, Syed Nagar, Fast Lancer, Shaikpet Village, Hyderabad for a lumpsum consideration of Rs. 40 lakhs. The aforesaid documents reveal the fact that the property for which initial investment of Rs. 64 lakhs was made with M/s Dhatri Constructions Pvt. Ltd. is not the same which the assessee finally purchased vide registered sale deed dated 18/01/2010 i.e. the property being Flat No. 1203 in the residential complex, Fima Hilltop. Furthermore, though the assessee claimed that he has paid an amount of Rs. 64 lakhs to M/s Dhatri Constructions Pvt. Ltd. while claiming exemption u/s 54F whereas Part B of the 2nd schedule of the agreement of sale dated 18/01/2010 between the assessee and M/s Fima Properties Pvt. Ltd. speaks of the total consideration of Rs. 1,15,35,000/-. The registered sale deed however has been executed for a total consideration of Rs. 40 lakhs. These discrepancies with regard to the exact amount of investment made by the assessee towards purchase/construction of property has not at all been reconciled by the assessee before the revenue authorities. Further, the assessee is also required to explain why and under what circumstances the agreement executed with M/s Dhatri Constructions Pvt. Ltd. on 19/03/2008 was not acted upon and M/s Dhatri Constructions Pvt. Ltd., as claimed by the assessee transferred the amount of Rs. 64 lakhs to Fima Properties Ltd., Hyderabad. It is seen from the order of the CIT(A), though, he has accepted the fact that the assessee has executed a registered sale deed for purchase of residential flat no. 1203 in Fima Hilltop building for a consideration of Rs. 40 lakhs but since the flat was under construction on the date of execution of sale deed wherein it was further stipulated that the possession of that premises can be given within a period of 36 months, he held that it cannot be construed that the assessee has purchased or constructed the residential house within the stipulated period as mentioned in section 54F of the IT Act. We agree with the contention of the learned AR that provision contained u/s 54F being a beneficial provision has to be construed liberally. In various judicial precedents as also in the decision cited before us by the learned AR, it has been held that the condition precedent for claiming benefit u/s 54F is the capital gain realized from the sale of capital asset should have been parted by the assessee and invested either in purchasing a residential house or in constructing a residential house. If the assessee has invested the money in construction of residential house merely because the construction was not complete in all respects and it was not in a fit condition to be occupied within the period stipulated that would not disentitle the assessee from claiming the benefit u/s 54F of the Act. Once the assessee demonstrates that the consideration received on transfer has been invested

either purchasing a residential house or in constructing a residential house even though the transactions are not complete in all respects and as required under the law that would not disentitle the assessee from availing benefit u/s 54F of the Act. Even investment made in purchasing a plot of land for the purpose of construction of a residential house has been held to be an investment satisfying the conditions of section 54F of the Act. Though there cannot be any dispute with regard to the above said proposition of law, the assessee is required to prove the actual date of investment and the amount invested towards purchase/construction of the residential house with supporting evidence. Since the primary facts relating to which date should be reckoned as the actual date of investment and which is the actual amount of investment have not been properly brought on record, we are inclined to remit the matter back to the file of the Assessing Officer who shall determine the issue with regard to assessee's claim u/s 54F of the Act afresh after considering all the facts and materials available before him. The Assessing Officer shall afford a reasonable opportunity of being heard to the assessee and shall pass the order after considering all material facts and evidences that may be produced by the assessee and also taking note of the decisions that may be relied upon by the assessee. With aforesaid directions, we set aside the order of the CIT(A) and restore the matter to the file of the Assessing Officer. The ground raised by the assessee is allowed for statistical purposes."

6.2.1. The co-ordinate Bench of Chennai in case of B. Sivasubramanian vs. Income-tax Officer, Ward I (1), Salem [2014] 45 taxmann.com 74 (Chennai - Trib.)/[2015] held as under:-

"6. We have heard the submissions made by the representatives of both the sides. We have also perused the orders of the authorities below as well as the documents placed on record by the Id.Counsel for the assessee. It is not disputed that the assessee is not in possession of plot on which a residential building is in existence. The assessee has allegedly utilized the Long Term Capital Gain arising from the sale of shares towards the construction of a new residential house after demolition of old building on the plot-in-question. The assessee has claimed exemption u/s.54F on the ground that the assessee has invested Long Term Capital Gains arising from sale of shares towards construction of a new house within the prescribed period as mentioned in the Act. However, the contentions of the assessee has been rejected by the authorities below for the reason that the assessee has not placed on record the approved building plan from the Municipal Corporation. The assessee has admitted the fact that the new residential house has been constructed without the approval of the Municipal Corporation. Rather, in support of his contentions, the Id.Counsel for the assessee has placed on record an interim order dated 08-02-2007 from the Corporation of Salem, wherein it has been stated that the assessee has constructed a new building without the permission of the Commissioner of Salem Corporation. The assessee has also placed on record the building plan and the estimation for the construction of a new house of demolition of the existing building.

Reliance cannot be placed on the building plan as it is not approved by any statutory authority. However, the fact that the assessee has constructed a new house is proved by the interim order issued by the Corporation of Salem wherein it has been stated that

the assessee has put up a new construction without permission of the Commissioner, Salem Corporation.

The provisions of section 54F mandates the construction of a residential house, within the period specified. However, there is no condition that the building plan of the residential house constructed should be approved by the Municipal Corporation or any other competent authority. If any person constructs a house without approval of building plan, he will be raising construction at his own risk and cost. As far as for availing exemption u/s.54F, approval of building plan is not necessary. The approved building plan, certificate of occupation etc. are sought to substantiate the claim of new construction. In the present case, the fact that the assessee has raised new construction is evident from the interim order issued by the Corporation of Salem.”

6.3. Therefore, considering the ratio laid down in the above decisions vis a vis fact of the assessee, we are inclined to set aside the order of Id. CIT (A) and direct the Id. AO to delete the addition.

7. We also find merit in the without prejudice the contention made by the assessee which is in any case is not relevant as we allow the appeal of the assessee on the main contention. But we would like to mention that this is not correct year in which the issue whether the construction has been completed within three years window period or not. In our opinion the issue has to be determined F.Y. 2018-19, relevant to A.Y. 2019-20.
8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 20.01.2026.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 20.01.2026
Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

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

True Copy//

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata