IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI

BEFORE SHRI SANDEEP GOSAIN (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)

ITA No. 5944/MUM/2025
Assessment Year: 2015-16

Sanjay Gopaldas Bajaj 17/702 Indra Darshan, Oshiwara, Andheri (W), Mumbai- 400 053. Mumbai- 400 053 **PAN NO. ADQPB 6965 J** **Appellant**	***Vs.***	ITO. Ward- 12(1)(1), Aayakar Bhavan, Mumbai- 400 020. **Respondent**

Assessee by	:	Mr. Mihir Naniwdekar/ Mr. Ruturaj Gurjar
Revenue by	:	Mr. Kavita P. Kaushik, SR-DR
Date of Hearing	:	17/11/2025
Date of pronouncement	:	20/01/2026

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 18.09.2025 passed by the Ld. Commissioner of Income-tax (Appeals)-National Faceless Appeal Centre- Delhi [in short 'the Ld.CIT'] for assessment year 2015-16, raising following grounds:-

> *"1. On the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) (NFAC) erred in upholding the denial of deduction claimed u/s.54 of the Income Tax Act, 1961, amounting to Rs.67,91,537/-The appellant contends that the entire Long Term Capital Gain (LTCG) was reinvested in another residential*

property within the prescribed time frame, and the deduction should have been allowed despite the delay in filing the original return u/s.139 due to unforeseen circumstances. That the order passed by the NFAC (Appeals), Delhi dated 18.09.2025, confirming the addition of Long-Term Capital Gains (LTCG) and denying deduction under section 54 of the Income-tax Act, 1961 ("the Act"), is illegal, bad in law, contrary to facts, and liable to be quashed. The deduction claimed u/s.54 of the Income Tax Act of Rs.67,91,537/- should be allowed.

2. On facts and circumstances of the case and in law, the NFAC (Appeals) failed to appreciate that the appellant had duly discharged the tax liability in 2018 itself, and the omission to file return in time occurred due to unavoidable circumstances (sudden disappearance of accountant), which is a reasonable cause and establishes bona fides of the appellant.

3. On the facts and circumstances of the case and in law the NFAC (appeals) misinterpreted the Supreme Court judgment in CIT vs. Sun Engineering Works (P) Ltd. (198 ITR 297) (1992). The appellant contends that the reassessment proceedings were initiated to assess escaped income, and the claim of deduction u/s 54 was directly related to the LTCG arising from the sale of the residential property, which was part of the reassessment proceedings.

4. On the facts and circumstances of the case and in law, the Assessing Officer erred in calculating the tax on LTCG at 30% instead of the applicable rate of 20%. The NFAC (A) did not address this error made by the AO, which has resulted in an incorrect tax demand. The correct rate of 20% in respect of LTCG on capital gains should be granted.

5. On the facts and circumstances of the case and in law the NFAC (appeals) erred in concluding that the appellant attempted to evade taxes on rental income. The appellant had correctly shown the rental incomes of the two co owned properties in the return of income filed by him and had correctly claimed credit for TDS in respect of his co-owned share. The AO incorrectly made an observation in respect of making an addition of Rs. 4,14,649/. The Appellant also produced additional evidences with reference to the rental incomes before the before the NFAC (appeals) which have been ignored to by the first appellate authority which is against the principles of natural justice.

6. On the facts and circumstances of the case and in law the appellant contends that the Assessing Officer did not provide adequate opportunity of being heard during the assessment proceedings, as the notices issued were not sufficient to address all concerns raised by the appellant. The action of the AO vitiates the principles of natural justice.

7. On facts & circumstances of the case and in law the NFAC (Appeals) has erred in giving a finding that the appellate did not respond to the notices dtd.31.12.2014 & 29.08.2025. All the notices have been complied with and there is gross mis-application of mind by NFAC (Appeals) to hold that the appellant did not respond to the notice dtd.31.12.2014, which is factually incorrect, since the appeal itself was filed on 04.04.2022.

8. The Appellant reserves his right to add to alter amend or modify any of the grounds taken in this appeal"

2. Briefly stated facts of the case are that the assessee is a director of M/s. Abby Lighting and Switchgears Ltd. The assessee did not file his return of income for the assessment year under consideration within the time prescribed under section 139(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). The Assessing Officer was in possession of information emanating from quarterly TDS statements filed by the deductor, which reflected that the assessee had received salary income of ₹60,95,500/- and ₹59,00,000/-, rental income amounting to ₹12,00,000/-, and had entered into transactions involving purchase and sale of immovable property for considerations of ₹3,15,50,000/- and ₹1,00,00,000/- respectively.

On the basis of the aforesaid information, the Assessing Officer recorded reasons to believe that income chargeable to tax had

escaped assessment and, accordingly, issued notice under section 148 of the Act on 30.03.2021. In response thereto, the assessee filed his return of income on 10.04.2021.

2.1 During the reassessment proceedings, the Assessing Officer noticed that the salary income of ₹60,95,500/- was duly declared in the return filed in response to the notice under section 148 and, therefore, no separate addition was made on that count. With regard to rental income of ₹12,00,000/-, it was observed that the assessee had declared only 50% thereof, contending that the remaining 50% belonged to his mother, Smt. Saroj Bajaj. Though the Assessing Officer noted that the assessee had claimed credit for the entire tax deducted at source of ₹1,20,000/-, no separate addition was ultimately made on this issue.

2.2 The Assessing Officer further noticed that the assessee had declared long-term capital gain of ₹67,91,537/- arising from the sale of a residential property. While the computation of long-term capital gain was accepted, the Assessing Officer rejected the assessee's claim of deduction under section 54 of the Act amounting to ₹67,91,537/-. The sole reason for denial of deduction was that the assessee had not filed a return of income under section 139(1) of the Act and, therefore, according to the Assessing Officer, the claim under section 54 could not be entertained in the return filed in response to notice under section 148 of the Act.

Consequently, by order dated 19.03.2022 passed under section 147 read with section 144B of the Act, the long-term capital gain was brought to tax in full. The learned Commissioner of Income-tax (Appeals) affirmed the action of the Assessing Officer.

3. In grounds Nos. 1 to 4, the assessee has assailed the disallowance of deduction claimed under section 54 of the Act. The limited issue for our consideration is whether the assessee is entitled to claim deduction under section 54 of the Act in the return of income filed in response to notice under section 148, despite not having filed the original return under section 139(1) of the Act.

4. We have heard the rival submissions and carefully perused the material available on record. It is not in dispute that the assessee did not file his regular return of income within the time prescribed under section 139(1) of the Act. It is also undisputed that in the return filed pursuant to notice under section 148, the assessee disclosed the long-term capital gain arising from sale of a residential property amounting to Rs.67,91,537/-and simultaneously claimed deduction under section 54 amounting to Rs. 67,91,537/- on the ground that the capital gain had been invested in purchase of another residential property within the stipulated period.

4.1 The assessee contended that though return of income was not filed in terms of section 139(1) of the Act due to sudden disappearance of the accountant, but taxes were duly paid in the relevant year itself. It was further claimed that in return of income filed response to notice u/s 148, the assessee duly included the Long Term Capital Gain from the sale of the residential property and which was further invested in the another residential property within the time frame as specified under section 54 of the Act.

4.2 The claim of the assessee was rejected by the lower authorities solely on the ground that such deduction was not claimed in the original return, which admittedly was never filed. The learned Commissioner of Income-tax (Appeals) placed reliance on the decision of the Hon'ble Supreme Court in *CIT v. Sun Engineering Works (P.) Ltd.* (198 ITR 297) to hold that a claim not made in the original proceedings cannot be permitted in reassessment proceedings. The relevant findings of the Ld. CIT(A) is reproduced as under:

> *"7.4 It is seen that the appellant has not offered the above discussed income in the regular ITR as no return had been filed voluntarily thereby willfully attempting to evade tax. It was only after the re assessment proceedings initiated against the appellant, filed its ITR and claimed the deductions u/s 54 of the Act. Reliance is placed on the Supreme Court judgment in 198 ITR 0297, (1992) CIT vs SUN ENGINEERING WORKS (P) LTD, where in the apex court held that the object and purpose of the proceedings under Section 147 of the Act is for the benefit of the revenue and not for the benefit of the assessee and, therefore, in the reassessment proceedings, the assessee cannot be permitted to convert the reassessment proceedings as his appeal or revision in disguise and seek relief in*

respect of items earlier rejected or claim relief in respect of items not claimed in the original assessment proceedings, unless relatable to 'escaped income', and reagitate the concluded matters. Even in cases where the claims of the assessee during the course of reassessment proceedings related to the escaped assessment are accepted, still the allowance of such claims has to be limited to the extent to which they reduce the income to that originally assessed. The income for purposes of 'reassessment' cannot be reduced beyond the income originally assessed."

4.3 In our considered view, the reliance placed by the learned Commissioner of Income-tax (Appeals) on the aforesaid decision is misplaced and founded on an incomplete appreciation of the ratio laid down by the Hon'ble Supreme Court. A careful reading of the judgment in *Sun Engineering Works (P.) Ltd.(supra)* makes it abundantly clear that while reassessment proceedings cannot be converted into a forum for reopening concluded matters unrelated to escaped income, the assessee is not precluded from raising claims which are directly relatable to the income that has escaped assessment. The Supreme Court has categorically observed that, in reassessment proceedings, it is open to the assessee to put forth claims for deduction or non-taxability in respect of such escaped income. The relevant observation of the Hon'ble Supreme Court in the reproduced as under:

"39. As a result of the aforesaid discussion we find that in proceedings under section 147 the ITO may bring to charge items of income which had escaped assessment other than or in addition to that item or items which have led to the issuance of notice under section 148 and where reassessment is made under section 147 in respect of income which has escaped tax, the ITO's jurisdiction is confined to only such income which has escaped tax or has been under-assessed and does not extend to revising, reopening or reconsidering the whole assessment or permitting

the assessee to reagitate questions which had been decided in the original assessment proceedings. It is only the under-assessment which is set aside and not the entire assessment when reassessment proceedings are initiated. The ITO cannot make an order of reassessment inconsistent with the original order of assessment in respect of matters which are not the subject matter of proceedings under section 147. An assessee cannot resist validly initiated reassessment proceedings under this section merely by showing that other income which had been assessed originally was at too high a figure except in cases under section 152(2). The words 'such income' in section 147 clearly refer to the Income which is chargeable to tax but has 'escaped assessment and the ITO's jurisdiction under the section is confined only to such income which has escaped assessment. It does not extend to reconsidering generally the concluded earlier assessment. Claims which have been disallowed in the original assessment proceeding cannot be permitted to be reagitated on the assessment being reopened for bringing to tax certain income which had escaped assessment because the controversy on reassessment is confined to matters which are relevant only in respect of the income which had not been brought to tax during the course of the original assessment, A matter not agitated in the concluded original assessment proceedings also cannot be permitted to be agitated in the reassessment proceedings unless relatable to the item sought to be taxed as 'escaped income, Indeed, in the reassessment proceedings for bringing to tax items which had escaped assessment, It would be open to an assessee to put forward claims for deduction of any expenditure in respect of that income or the non-taxability of the items at all. Keeping in view the object and purpose of the proceedings under section 147 which are for the benefit of the revenue and not an assessee, an assessee cannot be permitted to convert the reassessment proceedings as his appeal or revision, in disguise, and ***seek relief in respect of items earlier rejected or claim relief in respect of items not claimed in the original assessment proceeding, unless relatable to 'escaped income*** *and reagitate the concluded matters. Even in cases where the claims of the assessee during the course of reassesament proceedings related to the escaped assessment are accepted, still the allowance of such claims has to be limited to the extent to which they reduce the income to that originally assessed. The income for purposes of 'reassessment' cannot be reduced beyond the income originally assessed."*

(emphasis supplied externally)

4.4 In the present case, the escaped income is the long-term capital gain arising from sale of a residential property. The deduction claimed under section 54 is intrinsically and directly connected with such capital gain. Therefore, the claim is not extraneous or unrelated to the subject matter of reassessment but goes to the computation of the very income brought to tax in the reassessment proceedings. We also find support for this view from the decision of the Coordinate Bench in **Smt. Amina Ismil Rangari V/s. Income Tax Officer wd-17 (2)(4) [2017] 86 taxmann.com 160 (Mumbai-Trib.),** wherein it has been held that the provisions of section 54F do not prescribe filing of a return within the time stipulated under section 139 as a condition precedent for claiming the exemption, and that a claim raised in a return filed in response to notice under section 148 cannot be rejected merely on the ground of delay in filing the return. The relevant finding of the coordinate Bench is reproduced as under:

> *"9. We now in the backdrop of our aforesaid observations that the 'return of income filed by the assesse after the expiry of the time period specified in the notice as 148 continues to be a 'return of income filed u/s 148, though involving some delay, would now deliberate upon the validity of the claim of the assessee raised u/s 54F. We have perused the statutory provision contemplated u/s 54F and are of the considered view that the same does not cast any statutory obligation on the part of assessee to file his return of income within the stipulated time period contemplated u/s 139 or 148 of the 'Act', as a precondition for entitling him to claim exemption under the said statutory provision. We are of the considered view that the reference to the term dues date' for furnishing of return of income u/s. 139 as contemplated in section 54F(4) is in context of the time limit within which the amount which had not been*

appropriated by the assessee towards making of investment in the purchase and/or construction of the new residential house is permitted to be deposited in the Capital Gains Account Scheme, 1998, which thereafter is to be withdrawn and utilized as per the terms contemplated in the said statutory provision. We are of the considered view that Section 54F, neither provides as a pre-condition the requirement of filing of the 'return of income by the assessee within the stipulated time period, nor places any embargo as regards claim of such exemption in a case the return of income filed by the assessee involves some delay. We thus in the backdrop of our aforesaid observations are of the considered view that now when the assessee had raised the claim u/s 54F in the 'return of income' filed by her in compliance to notice u/s 148, therefore, it was obligatory on the part of the A.O to have deliberated on the entitlement of the assessee towards claim of exemption u/s 54F, on merits. We do not find ourselves to be in agreement with the observations of the A.O that the claim towards exemption u/s 54F raised by the assessee in her 'return of income' was liable to be scrapped solely for the reason that the filing of such 'return of income involved some delay. We thus in light of our aforesaid observations set aside the order of the CIT (A), who we find had concurred with the view taken by the A.O that the assessee was not entitled towards claim of exemption u/s 54F. We however not being oblivious of the fact that due to dismissal of the claim of exemption in limine by the A.O, there had been no occasion for the lower authorities to have deliberated upon the satisfaction of the requisite conditions contemplated u/s 54F by the assessee, therefore, in all fairness restore the matter to the file of A.O for making the necessary verifications. We may however observe that as the assessee had during the course of the hearing of the appeal submitted complete details as regards his entitlement towards claim of exemption u/s 54F, which we find had been reproduced by the CIT (A) in his order dated. 29.03.2013, therefore, the A.O is directed to verify the genuineness and veracity of the claim of the assessee in the backdrop of the said facts and figures provided by the assessee. That in case the facts and figures provided by the assessee are found to be in order, then claim of exemption u/s 54F, as raised by the assessee shall be allowed. Needless to say, the A.O shall during the course of the set aside proceedings afford an opportunity of being heard to the assessee to substantiate his aforesaid claim. The Ground of appeal no. 1 raised by the assessee is allowed for statistical purposes."

4.5 Further, it has been brought to our notice that in the case of the assessee's wife, Smt. Ritu Bajaj, arising out of similar facts, the Assessing Officer has accepted the claim of deduction under section 54 made for the remaining 50% part of the investment in new residential property in the return filed pursuant to notice under section 148. This also lends support to the assessee's contention that the claim cannot be rejected in *limine.*

4.6 In view of the foregoing discussion, we hold that the assessee is entitled, in law, to claim deduction under section 54 of the Act in the return of income filed in response to notice under section 148, provided the substantive conditions prescribed under the said section are duly satisfied. The lower authorities were, therefore, not justified in rejecting the claim solely on the ground that no original return under section 139(1) was filed.

4.7 Accordingly, we set aside the orders of the lower authorities on this issue and restore the matter to the file of the Assessing Officer for the limited purpose of verifying whether the assessee has fulfilled the conditions stipulated under section 54 of the Act. If the conditions are found to be satisfied, the deduction shall be allowed in accordance with law.

4.8 In view of the above direction, the ground relating to application of tax rate of 30% as against 20% on long-term capital gain becomes infructuous. The Assessing Officer shall apply the

appropriate rate of tax only if, upon verification, the assessee is found not entitled to deduction under section 54.

4.9 The ground No. 1 to 4 of the assessee are allowed accordingly for statistical purposes.

5. Ground Nos. 5 and 7 relate only to certain observations made by the Assessing Officer and the learned Commissioner of Income-tax (Appeals), without any corresponding addition having been made. In view of our decision on the substantive issue, these grounds do not survive for adjudication and are dismissed as infructuous. Ground No. 6 was not pressed by the assessee and is also dismissed.

6. In the result, appeal of the assessee is allowed partly for statistical purposes.

Order pronounced in the open Court on 20/01/2026.

Sd/-	**Sd/-**
(SANDEEP GOSAIN)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai;
Dated: 20/01/2026
Disha Raut, Stenographer

Copy of the Order forwarded to :

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

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai