

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.4974/Mum/2025 & 4975/Mum/2025
(Assessment Year :2014-15)**

Kishore Anand Shetty A-4502, 45 th Floor Tower A, Oberoi Esquire Off Western Express Highway Goregaon East Mumbai- 400 063	Vs.	ACIT, Circle-32(2), Mumbai
PAN/GIR No.AAGPS2681D		
(Appellant)	..	(Respondent)

Assessee by	Shri Subodh Ratnaparkhi
Revenue by	Shri Hemanshu Joshi, Sr.DR
Date of Hearing	03/02/2026
Date of Pronouncement	09/02/2026

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

These two appeals have been preferred by the assessee against separate orders dated 24.07.2025 passed by the National Faceless Appeal Centre, Delhi, one arising out of the quantum assessment framed under section 143(3) of the Income-tax Act, 1961 for Assessment Year 2014-15 and the other arising out of the penalty proceedings initiated and levied under section 271(1)(c) of the Act for the same

assessment year. Since the penalty proceedings are purely consequential and arise directly out of the additions made in the quantum assessment, both the appeals were heard together and are being disposed of by this consolidated order.

2. We shall first take up the quantum appeal in ITA No. 4975/Mum/2025. In this appeal, the assessee has challenged, firstly, the addition of ₹13,47,925/- made by invoking the provisions of section 50C of the Act and, secondly, the disallowance of exemption claimed under section 54F amounting to ₹1,12,30,723/-.

3. At the outset, it is noted that the ground relating to short-term capital gain of ₹19,06,317/- was expressly not pressed by the learned counsel for the assessee at the time of hearing. The same is accordingly dismissed as not pressed.

4. The material facts relating to the addition of ₹13,47,925/- are that the assessee had sold a plot of land situated at Kaman, Vasai, for a total consideration of ₹1,19,79,240/-. The deed of conveyance in respect of the said plot was registered on 08.07.2013. For the purposes of stamp duty, however, the stamp valuation authority had initially adopted the market value of the said plot of land at ₹1,88,21,500/-.

5. The assessee's share in the said plot of land was 19.70%. Accordingly, the assessee considered his proportionate sale consideration at ₹23,59,770/- and offered

the same to tax in the return of income. The Assessing Officer, however, noticing the difference between the declared consideration and the stamp duty valuation, invoked the deeming provisions of section 50C and substituted the proportionate stamp duty value as the full value of consideration, thereby making an addition of ₹13,47,925/-.

6. Before the learned Commissioner of Income-tax (Appeals), the assessee categorically contended that the stamp duty valuation of ₹1,88,21,500/- itself was fundamentally erroneous. It was explained that while valuing the property for stamp duty purposes, the stamp valuation authority had wrongly included a substantial area of an approach road, which neither formed part of the plot actually conveyed nor was transferred to the purchasers under the deed of conveyance.

7. It was further brought on record that upon realisation of this mistake, a Supplementary / Clarification Deed was executed, pursuant to which the stamp valuation authority itself revised the stamp duty valuation of the property to ₹81,18,000/- by excluding the area of the approach road which had been wrongly included earlier. The said Supplementary / Clarification Deed has been placed at page 186 of the paper book.

8. The relevant clause of the Supplementary / Clarification Deed, which clearly brings out the factual error in the original

conveyance and its subsequent rectification, is reproduced hereunder:

“8. That while drafting the said Conveyance Deed as above one mistake had crept in and that the purchasers do not have any of the exclusive rights over the approach road to the said plot as they are meant for agents and ingress to the larger parcel of the land. That the area of 1567.10 sq. meters (16882 sq. fts.) approach road included in the S. No. 124 was wrongly included in the conveyance deed and thereby its market value got increased. Actual area of the said plot of land should now be read as 5302.4 sq. meters (57050 sq. fts.). Possession of the plot having area of 5302.4 sq. meters has been given to the purchasers through Deed of Conveyance dated 08.07.2013 registered under serial no. Vasai-1-8255-2013 dated 08.07.2013.”

9. It is further evident from the record that the learned CIT(A), having been apprised of the aforesaid factual developments, called for a remand report from the Assessing Officer. However, despite the clarification having emanated from the stamp valuation authority itself, neither did the Assessing Officer meaningfully examine the legal implications of the revised stamp duty valuation, nor did the learned CIT(A) render any reasoned or cogent finding on this crucial aspect while sustaining the addition.

10. At this stage, it becomes necessary to examine the applicability of the deeming fiction contained in section 50C in the backdrop of the aforesaid undisputed facts. Section 50C is a special deeming provision which permits substitution of the declared consideration with the stamp duty value only where such stamp duty value represents the

fair market value of the capital asset transferred. The provision does not operate in vacuum, nor does it authorise adoption of a value which is demonstrably erroneous or factually incorrect. In the present case, the stamp valuation authority itself has categorically acknowledged that the original valuation was vitiated by a fundamental factual error, namely, the inclusion of a substantial area of an approach road which neither formed part of the plot conveyed nor was transferred to the purchasers under the deed of conveyance.

11. Once the competent stamp valuation authority, upon verification of facts, has itself rectified the error by executing a Supplementary / Clarification Deed and has consequently revised the stamp duty valuation to ₹81,18,000/-, the earlier valuation of ₹1,88,21,500/- loses all legal sanctity and ceases to have any evidentiary or statutory relevance. The deeming fiction under section 50C can only be triggered on the basis of a legally valid and factually correct stamp duty valuation. It cannot be pressed into service on the basis of a valuation which stands corrected and nullified by the very authority empowered under the stamp laws to determine such value.

12. In the present case, it is an admitted and undisputed position that the sale consideration declared by the assessee, even on a proportionate basis, is substantially higher than the revised stamp duty value determined under the Supplementary / Clarification Deed. Once this factual position is established, the sine qua non for invoking section

50C completely disappears. The provision is intended to bring to tax understatement of consideration vis-à-vis stamp duty valuation. It is not intended to artificially enhance income by relying upon a valuation which has been conclusively found to be erroneous and has been corrected on record.

13. Therefore, in the peculiar facts of the present case, where the stamp valuation authority itself has clarified that the earlier valuation was inflated on account of inclusion of an area which was not part of the transferred asset, and where the corrected stamp duty value is admittedly far below the actual sale consideration declared by the assessee, there remains no occasion whatsoever to invoke the deeming provisions of section 50C. The addition of ₹13,47,925/- made by the Assessing Officer on the basis of the original and incorrect stamp duty valuation is thus wholly unsustainable in law as well as on facts and is accordingly deleted.

14. We now take up the second and substantive issue raised in the quantum appeal, namely, the disallowance of exemption claimed by the assessee under section 54F of ₹1,12,30,723/-. The brief facts, as emanate from the assessment order and as recorded by the learned CIT(A), are that the assessee had sold an industrial property (Gala) by way of a registered deed dated 02.09.2013, on which long-term capital gain was declared at ₹1,40,18,317/-. Against such capital gain, the assessee claimed deduction/exemption under section 54F, in respect of a residential premises

purchased by the assessee under a registered agreement dated 29.03.2011. The Assessing Officer disallowed the exemption on the reasoning that the new house was acquired by the assessee beyond the period prescribed under section 54F, since the agreement for purchase of the new house was dated 29.03.2011, which was more than one year prior to the date of transfer of the original asset, i.e., 02.09.2013. The learned CIT(A) confirmed the disallowance, firstly, on the premise that for the purposes of section 54F, it is the agreement/registration which is decisive and not the date of possession, and secondly, upholding the Assessing Officer's further observation that the assessee owned another residential property on 02.09.2013 and therefore, according to the authorities below, the assessee owned more than one residential house and was hit by the restrictive proviso to section 54F(1).

15. Before us, the learned counsel for the assessee reiterated the claim and, in a structured manner, placed on record the relevant factual matrix and legal submissions. It was submitted that the assessee had claimed exemption of ₹1,12,30,723/- under section 54F of the Act, but the lower authorities denied such exemption on two grounds: first, that the new residential house was "purchased" on 29.03.2011, i.e., more than one year before the date of sale of the original asset on 02.09.2013; and second, that the assessee owned more than one residential house on the date of transfer and therefore was not eligible for exemption under section 54F.

The learned counsel submitted that both these grounds are contrary to the settled legal position, as also contrary to the admitted factual record.

16. The learned counsel submitted that during the year under consideration, the assessee sold industrial premises at Vasai under an agreement dated 02.09.2013, and the assessee had 32% share in such industrial premises. The working of the long-term capital gains as declared by the assessee, and as noted to be undisputed by the Assessing Officer, is as under.

(i) Sale of industrial premises as per the registered sale agreement dt. 02.09.2013 Rs. 6,70,23,000/- Share of the appellant 32%.	Rs. 2,14,47,360/-
(ii) <u>Less: Indexed Cost of acquisition</u> Share of the appellant	Rs. 74,29,043/-
(ii) Long Term Capital Gain (undisputed by the Id AO)	Rs. 1,40,18,317/-
(iv) <u>Exemption u/s 54F</u> Investment in a new residential house property -Flat no. 1001, Estonia B Kandivli, Mumbai vide registered agreement for sale dt. 29.03.2011 with M/s. Hiranandani Constructions Pvt. Ltd. Restricted to the extent of capital gains	Rs. 1,40,18,317/- -----
(v) Taxable long term capital gains	NIL =====

17. The learned counsel further submitted that the exemption under section 54F was claimed in respect of investment in a new residential house property, being Flat No.

1001, Estonia B, Kandivali, Mumbai, purchased from M/s. Hiranandani Constructions Pvt. Ltd. vide registered agreement for sale dated 29.03.2011, and that the claim was restricted to the extent of capital gains. It was emphasised that the authorities below proceeded solely on the date of the agreement and ignored the substance of the transaction, namely, that the property was under construction, that payments were made over a span of years, and that actual possession was received within the statutory time from the date of transfer of the original asset.

18. In support of this, the learned counsel placed on record the relevant dates and factual particulars. It was pointed out that though the registered agreement for sale was entered with the builder M/s. Hiranandani Constructions Pvt. Ltd. on 29.03.2011, the payments were made to the builder in instalments over multiple years, culminating in actual possession being handed over on 02.02.2015. The year-wise details of payments made to the builder towards purchase of the flat, as forming part of the record, are required to be noted.

Sr.no.	Particulars	Date	Appears in the paper book at pg nos.
(i)	Registered agreement for sale entered with the builder M/s. Hiranandani Constructions Pvt. Ltd.	29.03.2011	52 to 146

(ii)	Year wise details of payments made to the builder towards the purchase of flat (i) Ass. Yr. 2010-11 (ii) Asst.yr. 2011-12 (iii) Asst.yr. 2012-13 (iv) Asst.yr. 2013-14 (v) Asst.yr. 2014-15 (vi) Asst.yr. 2015-16 Total Rs.	33,96,200/- 88,86,711/- 25,54,659/- 1,85,268/- 28,01,540/- 25,40,617/- 2,03,64,995/-	48 to 50
(iii)	Possession of the flat received from the builder on	02.02.2015	51

19. The learned counsel submitted that the possession of the flat was received from the builder on 02.02.2015, and therefore, in substance and in law, the purchase/construction of the new residential house stood completed within a period of two years from the date of transfer of the original asset on 02.09.2013. It was further highlighted that as on 29.03.2011, the assessee had only entered into an agreement for sale with the builder for purchase of a residential flat which was then under construction; the amount paid at that stage was merely earnest money of ₹16,98,100/-; the total cost price of the flat was ₹1,69,30,500/- (exclusive of stamp duty, registration charges and other dues as per the record); and possession was to be granted upon completion of construction and payment of entire consideration. It was thus urged that on the date of agreement, the house property was undisputedly not even in existence as a completed and habitable residential

unit, and therefore, the mere execution of an agreement could not be equated with “purchase” for section 54F in a rigid, hyper-technical sense, ignoring the settled jurisprudence.

20. In support, the learned counsel relied upon a line of decisions, including the judgment of the Hon’ble Bombay High Court in CIT vs. Smt. Beena K. Jain, 75 Taxman 145 (Bom) [1994], and also various decisions of the Tribunal, namely: Sunil Amritlal Shah vs. ITO, 162 taxmann.com 676 (Mumbai-Trib) [2024]; Bastimal K. Jain vs. ITO, 76 taxmann.com 368 (Mumbai) [2016]; Reji Easow vs. ITO, 194 ITD 384 (Mumbai-Trib) [2022]; Mustansir I. Tehsildar vs. ITO, 88 taxmann.com 275 (Mumbai-Trib) [2017]; Sanjay Vasant Jumde vs. ITO, 148 taxmann.com 34 (Pune-Trib) [2023]; and Sompalsingh J. Kataria vs. ITO, ITA No. 2326/Mum/2024, order dated 25.07.2024 (ITAT Mumbai).

21. Per contra, the learned Departmental Representative strongly relied upon the orders of the Assessing Officer and the learned CIT(A). It was submitted that the statutory language of section 54F prescribes “purchase within one year before or two years after” the date of transfer and therefore, once the agreement for purchase was dated 29.03.2011, the condition stood violated. It was further submitted that the assessee owned another residential house on the date of transfer and therefore, the bar under the proviso to section 54F(1) squarely applied.

22. We have heard the rival submissions, carefully perused the orders of the authorities below, and examined the record placed before us. The controversy, in our view, lies in a narrow compass but requires a correct appreciation of the substance of the transaction and the settled legal meaning assigned by judicial precedent to the expressions “purchase” and “construction” in the context of section 54F, especially where the new residential house is an under-construction property acquired from a builder and the assessee makes staged payments culminating in possession.

23. The first objection of the Revenue is premised entirely on the date of the registered agreement, i.e., 29.03.2011, treating the same as the determinative date of “purchase”, irrespective of the nature of the asset at that stage, irrespective of the payment structure, and irrespective of the date when the assessee, in reality and in substance, became entitled to occupy and enjoy a completed residential unit. Such an approach, in our considered opinion, is contrary to the well-settled principle that, for the purposes of beneficial provisions like section 54F, the law has consistently looked to the substance and completion of the transaction, namely, the stage when the assessee has substantially effected purchase by payment of consideration and has obtained possession of a ready residential house, rather than the mere date of an initial agreement for an under-construction flat.

24. In the present case, it is an admitted position on record that the assessee entered into a registered agreement for sale on 29.03.2011 with M/s. Hiranandani Constructions Pvt. Ltd. for an under-construction flat. It is equally borne out from the record that payments were made over different years in instalments, and the total payments made by the assessee aggregate to more than approximately ₹2.03 crores as per the chart furnished. It is also a matter of record that actual possession of the flat was received on 02.02.2015. Thus, when one looks at the transaction in a realistic manner, the assessee's acquisition of a completed residential house, i.e., a house ready for occupation with possession in hand, materialised only on 02.02.2015. This date falls within two years from the date of transfer of the original asset on 02.09.2013, and therefore, the statutory time condition stands satisfied in substance and in law.

25. This very principle stands authoritatively supported by the judgment of the Hon'ble Bombay High Court in CIT vs. Smt. Beena K. Jain (supra), wherein the Court upheld the Tribunal's view that, for the purposes of section 54F, the relevant date would be the date when the assessee paid the full consideration and obtained possession of the flat becoming ready for occupation, and that the Tribunal was justified in looking to the substance of the transaction. The ratio laid down is that the purchase is substantially effected

when the agreement is carried out or completed by payment of consideration and handing over of possession, and that a rigid insistence on the date of an earlier agreement, ignoring when the flat becomes ready and possession is obtained, defeats the legislative intent of granting exemption upon reinvestment in a residential house.

26. Applying the said principle to the facts before us, it is evident that on 29.03.2011, the assessee merely entered into an agreement for an under-construction flat and paid only earnest money of ₹16,98,100/-. The flat, at that stage, was not a completed residential house capable of being occupied. The assessee thereafter made instalment payments across years, and only upon completion of construction and consequential fulfilment of contractual conditions, possession was handed over on 02.02.2015. Therefore, treating 29.03.2011 as the rigid “purchase date” for section 54F, without considering the factual nature of the asset and the completion of the transaction, would be to elevate form over substance and to read the beneficial provision in a manner that has already been disapproved by binding precedent.

27. We also find that this principle has been consistently followed by the Tribunal in a catena of decisions, including the decisions cited by the learned counsel, which recognise that in cases of under-construction flats purchased from builders, the relevant considerations are the completion of

construction, substantial payment, and receipt of possession within the stipulated period. We therefore hold, respectfully following the jurisdictional High Court and the consistent Tribunal view, that the assessee's claim cannot be denied merely because the initial agreement is dated beyond one year prior to the sale, when the possession and completion, which constitute the real and effective purchase in such cases, occurred within the permissible statutory period reckoned from 02.09.2013. Accordingly, the first ground on which exemption was denied fails.

28. We now come to the second objection of the Revenue, namely, that the assessee owned more than one residential house on the date of transfer of the original asset and therefore, the proviso to section 54F(1) was violated. On a careful appreciation of the record, we find that the authorities below have proceeded on a factual and legal misapprehension. The assessee's immovable property, as reflected, shows one flat at Regal valued at ₹12,55,670/- and also the new flat from M/s. Hiranandani Constructions, Kandivali, being the "new asset" for which exemption under section 54F is claimed. The proviso to section 54F(1), clause (a)(i), provides that the exemption shall not be available where the assessee owns more than one residential house, other than the new asset, on the date of transfer of the original asset. Thus, the statutory restriction is not that the assessee should own no other house at all; rather, it is that the

assessee should not own more than one residential house, other than the new asset, on the date of transfer.

29. When the statute itself mandates exclusion of the “new asset” from the counting for the restrictive condition, the flat purchased from M/s. Hiranandani Constructions cannot be included for determining whether the assessee owned more than one residential house on 02.09.2013. If the new asset is rightly ignored, then on the date of transfer the assessee admittedly had only one other residential house, namely, the flat at Regal. In that view of the matter, the condition under clause (a)(i) of the first proviso to section 54F(1) is not breached. Therefore, the second ground on which exemption was denied is also untenable, both on the correct reading of the statutory proviso and on the admitted factual position.

30. In view of the foregoing discussion, and for the reasons recorded hereinabove, we hold that the assessee has satisfied the conditions of section 54F. The purchase/construction of the new residential house, in the facts of this case involving an under-construction flat, stands substantially effected within the statutory time, when viewed from the perspective of completion and possession, and the restrictive proviso is not attracted since the assessee did not own more than one residential house other than the new asset on the date of transfer. Accordingly, the disallowance of exemption under

section 54F amounting to ₹1,12,30,723/- is deleted and the claim of the assessee is allowed.

31. In the result, the quantum appeal of the assessee is partly allowed, inasmuch as the addition under section 50C has already been deleted in Part I and the exemption under section 54F is allowed as above, while the ground relating to short-term capital gain was dismissed as not pressed.

Penalty Appeal – ITA No. 4976/Mum/2025

32. We now take up the penalty appeal, wherein penalty under section 271(1)(c) has been levied on the additions/disallowances made in the quantum assessment, namely, the addition under section 50C and the disallowance of exemption under section 54F.

33. Since we have already deleted the addition under section 50C and allowed the exemption under section 54F, the very foundation for levy of penalty does not survive. It is a settled position that where the quantum additions forming the sole basis of penalty are deleted, the penalty cannot stand independently on the same substratum.

34. Even otherwise, on the facts as borne out from the record, it is evident that the issues were purely legal and interpretational, resting upon the correct understanding of

deeming provisions and beneficial exemption provisions, supported by documentary evidence and judicial precedent. The assessee had disclosed all material facts and the claim was made on the basis of the record and settled legal principles. Therefore, on either footing first, that the quantum additions do not survive; and second, that the controversy itself was not one warranting penal consequences the penalty levied by the Assessing Officer and sustained by the learned CIT(A) is liable to be deleted.

35. Accordingly, the penalty levied under section 271(1)(c) is deleted.

36. In the result, both the appeals of the assessee are allowed in terms indicated above.

Order pronounced on 9th February, 2026.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 09/02/2026
KARUNA, sr.ps

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai