

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "C" BENCH : MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 6548/Mum/2025
Assessment Year : 2014-15

Prakash Devidas, Flat No. 201, F Wing, Octacrest C.H.S., Lokhandwala Township, Akurli Road, Kandivali East, Mumbai-400101. PAN : AEUPD0326E	vs.	Asst. Commissioner of Income Tax-32(2), Mumbai.
(Appellant)		(Respondent)

For Assessee :	Ms. Rutuja Pawar <i>(virtually appeared) a/w.</i> Ms. Sneha More
For Revenue :	Shri Virabhadra Mahajan, Sr.DR

Date of Hearing :	09-02-2026
Date of Pronouncement :	13-02-2026

ORDER

PER VIKRAM SINGH YADAV, A.M :

This is an appeal filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’], dated 16-09-2025, pertaining to Assessment Year (AY) 2014-15, wherein the assessee has taken the following grounds of appeal:

“1) That on the facts and in the circumstances of the case of the appellant and in law Ld. NFAC has erred in upholding the disallowance of exemption

claimed u/s. 54 of the Act on sale of residential flat at Rs. 62,31,962/- for A.Y. 2014-15.

2) That on the facts and in the circumstances of the case of the appellant and in law Ld. NFAC has failed to consider that the appellant has duly followed the pre-requisite conditions stated u/s. 54 of the Act and has taken possession of the new flat within 2 years i.e. on 07.01.2015.

3) That the impugned order being contrary to law, evidence and facts of the case may kindly be set aside, amended and modified in the light of the grounds of appeal enumerated above and the appellant be granted such relief as is called for on the facts and in the circumstances of the case of the appellant and in law.

4) That each of the grounds of appeal enumerated above is without prejudice to and independent of one another.

5) That the appellant craves leave to reserve to himself the right to add, to alter or amend any of the grounds of appeal before or at the end of the hearing and to produce such further evidence, documents and papers as may be necessary.”

2. Briefly, the facts of the case are that the assessee has filed his return of income declaring total income of Rs. 33,13,550/- and as a part of the same, has shown the Long Term Capital Gain of Rs. 62,31,962/- on sale of flat and exemption u/s. 54 of the Act on account of purchase of a new residential house was claimed, which was denied by the AO vide order dt. 29-12-2016 passed u/s. 143(3) of the Act. Against the said order, the assessee carried the matter in appeal before the Ld.CIT(A), who has since sustained the findings of the AO and against the said order and findings, the assessee is in appeal before us.

3. During the course of hearing, the Ld.AR submitted that the assessee has sold a residential flat No. C/504 at Anand Heritage Building on 28-10-2013 for Rs. 80 lakhs and earned Long Term Capital Gain of Rs. 62,31,962/-, which was invested in new under-construction house property at Flat No. 201, F-Wing, Octacrest, Akurli, Kandivali East before filing of income tax return. It was submitted that the assessee booked the

new under-construction house vide agreement dt. 23-05-2012 and the construction of the flat was completed on 26-12-2014 and possession was handed over and taken by the assessee on 07-01-2015 i.e., within a period of two years from sale of the property which happened on 28-10-2013. Therefore, the assessee satisfies the requirement of section 54 of the Act and has accordingly claimed exemption u/s 54 while filing his return of income. In this regard, our reference was drawn to the copy of the allotment letter dt. 21-05-2012 issued by M/s. Lokhandwala Nestings Pvt. Ltd., copy of the purchase agreement dt. 23-05-2012, copy of the bank statement reflecting the construction linked payments made from time to time towards purchase of a new flat, copy of receipts of payment made towards purchase of a new flat and copy of possession letter dt. 26-12-2014 issued by M/s. Lokhandwala Nestings Pvt. Ltd.

4. It was submitted that the assessee received possession of the flat in January, 2015, after making final payment of Rs. 5,18,611/- on 07-01-2015 as demanded by the developer in its possession letter dt. 26-12-2014. It was submitted that the AO has wrongly construed the purchase agreement dt. 23-05-2012 as date of purchase. It was submitted that by virtue of entering into the said agreement, the assessee has agreed to purchase a flat and made only the initial booking payment. However, further payments were linked to the construction being undertaken by the builder which were made from time to time and thereafter, the possession was finally agreed to be handed over on 26-12-2014 and thereafter, after making the final payment, the possession was handed over to the assessee on 07-01-2015. It was submitted that there is no dispute regarding the factual position in terms of the fact that the construction was completed on 26-12-2014 and possession was handed over on 07-01-2015 and the Ld.CIT(A) has also taken cognizance of the same and, therefore, the same

is not under dispute and at the same time, he has summarily upheld the order and the findings of the AO. It was submitted that mere fact that the booking of flat was done in May, 2012 does not amount to purchase of property rather the possession of house property as received in January, 2015 gives the assessee full right to use and enjoy the house property and deduction u/s. 54 of the Act has accordingly been claimed. It was submitted that by mere entering into agreement for purchase of flat, the same does not give any right of ownership till the time all the payments are made and physical possession of the flat is handed over to the assessee and, therefore, the actual right to use the property is acquired after possession is taken by the assessee and in this regard, our reference was drawn to the decision of the Hon'ble Bombay High Court in the case of CIT vs. Smt. Beena K. Jain [1994] 74 Taxman 145 (Bom.HC), wherein the Hon'ble High Court has affirmed the finding of the Tribunal in allowing the exemption u/s. 54F of the Act considering the date of possession of the new residential premises instead of date of sale agreement and date of registration. It was submitted that in that case, Tribunal has held that the relevant date was when the assessee paid the full consideration amount on the flat becoming ready for occupation and obtained possession of the flat. The Tribunal had looked at the substance of the transaction and came to the conclusion that the purchase was substantially effect when the agreement of purchase was carried out or completed by payment of full consideration and handing over of possession of the flat on the next day. It was submitted that similar findings have been recorded by the different Co-ordinate Benches of the Tribunal in various other decisions. As far as the decision of the Hon'ble Delhi High Court in the case of CIT vs. R.L.Sood [2000] 108 Taxman 227 (Delhi) is concerned, which has been relied upon by the AO, it was submitted that the same is clearly distinguishable on facts. It was submitted that in the said case, the assessee has paid

substantial amount in terms of agreement of purchase within four days of the sale of old property and basis that it was held that the assessee acquired substantial domain over the new residential flat within the specified period of one year and complied with the requirements of section 54 of the Act. It was submitted that in the instant case, the assessee has only made a payment towards booking amount of Rs. 8,77,625/- and the remaining amount was linked to the construction of flat, which has been made over the period of time and, therefore, the assessee did not acquire substantial domain over the new residential flat at the time of entering into the purchase agreement and, therefore, the said decision is clearly distinguishable on facts.

5. Per contra, the Ld.DR has been heard, who has relied on the orders passed by the AO as well as that of the Ld.CIT(A). It was submitted that provisions of section 54 of the Act limit the time period for purchase of new residential house to one year before or two years after the sale of the old residential house and this section does not provide for any further relaxation, which can be allowed by the AO. It was submitted that in the instant case, the assessee has entered into an agreement for purchase of new residential house on 23-05-2012 and given that the original residential flat was sold on 28-10-2013, and the assessee purchased new property i.e., flat before one year from the sale of the old flat and took possession in the month of January, 2015, which is clear violation of provisions of section 54 and, therefore, the AO has rightly denied the claim, which has been rightly upheld by the Ld.CIT(A).

6. We have heard the rival contentions and perused the material available on record. The limited issue under consideration relates to claim

of exemption u/s 54 of the Act. The undisputed facts and sequence of events are as under:

Transaction	Date
Date of agreement for the new flat no. 201, F – Wing, Octacrest, Akurli, Kandivali East, Mumbai	23 rd May 2012
Date of transfer of the residential property at flat no. C/504 at Anand Heritage Bldg	28 th Oct 2013
Completion of Construction of the new flat no. 201, F – Wing, Octacrest, Akurli, Kandivali East, Mumbai	26 th Dec 2014
Possession taken of the new flat no. 201, F – Wing, Octacrest, Akurli, Kandivali East, Mumbai on making the final payment to the developer M/s. Lokhandwala Construction	07 th January 2015

7. On perusal of the agreement for purchase of new flat dated 23-05-2012, it is noted that the subject matter of purchase transaction is an under-construction flat in respect of which the consideration of Rs 1,75,52,500/- has been fixed and which is payable in installments, based on construction to be carried out, from time to time. It is therefore not a case of purchase of fully built and ready to move-in flat rather a case of under-construction flat which is to be built over a period of time as part of the overall housing project. At the time of entering into the agreement, the assessee has paid booking amount of Rs 8,77,625/- and the remaining amount has been paid over a period of time, the flat was ready for handing over and possession as part of Builder letter dated 26-12-2014 and the last of the payment has been made and possession taken over by the assessee on 07-01-2015. Therefore, in terms of section 54 of the Act, where the assessee within a period of two years after the date on which transfer of original asset took place, has purchased a residential house in India, he shall be eligible for claim of exemption. The emphasis is on purchase of a residential house whereby the assessee discharges its obligation of paying the requisite purchase consideration and has taken

over the possession of fully constructed residential house. Similar proposition has been laid down by the Hon'ble Bombay High Court in case of Beena K Jain (*supra*). Therefore, the relevant date to be considered for the purposes of section 54 is 07-01-2015 and not 23-05-2012. The original flat was transferred on 28-10-2013 and therefore, where the assessee has taken possession of the new flat on 07-01-2015, the same is well before the expiry of the prescribed period of two years and thus, the assessee is clearly eligible for exemption u/s 54 of the Act and the AO is directed accordingly.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 13-02-2026

Sd/-
[SANDEEP SINGH KARHAIL]
JUDICIAL MEMBER

Mumbai, Dated: 13-02-2026

TNMM

Sd/-
[VIKRAM SINGH YADAV]
ACCOUNTANT MEMBER

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai