

**IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

ITA No.6714/Mum/2025
(Assessment Year: 2015-16)

Seeta Nayyar, Flat No.5, Rockdale, LD Ruparel Marg, Mumbai - 400006	Vs.	Asstt. Commissioner of Income Tax, In SITU, ITO, 19(3)(3), Mumbai
(Appellant)	:	(Respondent)
PAN NO. AJUPB 7841H		

Appellant by	:	Shri Prakash Jotwani, Advocate
Respondent by	:	Shri Swapnil Choudhary, Sr. AR
(Appellant)		(Respondent)

Date of Hearing	:	29.01.2026
Date of Pronouncement	:	20.02.2026

ORDER

Per Saktijit Dey, Vice President:

This appeal arises out of order dated 26.08.2025 passed by National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year (A.Y.) 2015-16.

2. The grounds raised by the assessee are concerning two issues. The first issue relates to disallowance of indexed cost of acquisition claimed by the assessee and second issue relates to claim of deduction under section (u/s.) 54 of the Income Tax Act, 1961 (in short the ‘Act’).

3. Briefly the facts are, the assessee is a resident individual. For the assessment year under dispute, assessee filed her return of income on 27.08.2015, declaring income of Rs.8,03,360/-. The return of income filed by the assessee was selected for scrutiny. While verifying the return of income, Assessing Officer noticed that the assessee had declared 'Long Term Capital Gain' of Rs.3,37,93,219/-. Whereas, she claimed deduction u/s. 54 of the Act for an amount of Rs.4,40,49,819/-. In other words, the capital gain computed by the assessee was set off against the deduction claimed u/s. 54 of the Act. While verifying assessee's claim, the Assessing Officer found that the assessee along with her husband were owner of an immovable property being land infrastructure. On 16.10.2012, assessee and her husband entered into an agreement with a builder/developer, M/s. Chetanya Buildcon for redevelopment. As per the terms of the said agreement, the old structure, being a residential house standing over a land admeasuring 500 sq. yds at Maharani baug, New Delhi was to be demolished and a new building was to be constructed in its place. As per the terms of the agreement, the builder was required to construct a three storied building consisting of ground floor plus three floors employing its own fund. In lieu of the construction cost, the builder was to receive the first floor of the building together with right, title and interest over 22.5% of the land area of said plot. Whereas, assessee and her husband being owner of the property will receive share in the building in the ratio of 77:25 and an amount of Rs.2.5 crores from the builder. Further, assessee's husband will receive the ground floor, whereas, the assessee would receive the second and third floor of the building. Both the assessee

and her husband to have right, title and interest in the remaining 77.5% of the plot area. On the analysis of the aforesaid facts, the Assessing Officer found that while the assessee and her husband have transferred only 22.5% of the plot of the land, they have claimed cost of acquisition of entire plot of land while computing capital gain.

4. In so far as claim of deduction u/s. 54 of the Act, the Assessing Officer observed that deduction u/s. 54 of the Act would be available only in respect of one residential house whereas the assessee and her husband have got three floors, hence, deduction would not be available. Accordingly, the Assessing Officer issued a show cause notice to the assessee to justify her claim. In response to the show cause notice, the assessee furnished a detailed reply reiterating her claim. In support of her claim, she also relied upon certain judicial precedents. However, the Assessing Officer remained unconvinced. Based on the reasoning on which the show cause notice was issued, the Assessing Officer allowed deduction on account of indexed cost of acquisition/construction to the extent of 22.5%. Further, he disallowed assessee's claim of deduction u/s. 54 of the Act. Resultant Long Term Capital Gain of Rs.3,55,61,609/- was added to the income of the assessee. Though, the assessee contested the aforesaid addition in an appeal preferred before learned First Appellate Authority, however, vide the impugned order, learned First Appellate Authorities upheld the addition.

5. Before us, learned counsel appearing for the assessee reiterated the stand taken before the Departmental Authorities. He submitted that entire property was given to the builder for redevelopment and in lieu of that, the assessee received three floors and undivided share over the land to the extent of the constructed area falling to their share. Thus, he submitted, the Assessing Officer was unjustified in disallowing assessee's claim of indexed cost of acquisition and restricting to the extent of 22.5%, being share in land falling to the developer/builder.

6. In so far as denial of deduction u/s. 54 of the Act is concerned, learned counsel submitted, in place of the existing residential house belonging to the assessee and her husband, the developer/builder constructed a new house having ground plus three floors. In lieu of the cost of construction, the developer received one floor. However, fact remains that it is one building and floors are part of that building. Therefore, it cannot be said that the assessee was owning more than one residential house.

7. Learned Departmental Representative (DR) strongly relied upon the observations of Departmental Authorities.

8. We have considered rival submissions and perused the materials on record. Undisputedly, the assessee and her husband were owners of an immovable property, being a residential house constructed over a land admeasuring 500 sq. yad. Being desirous of developing the property, the assessee and her husband entered into a agreement with a developer in terms of which, the old residential house was to be

demolished and in its place, a new residential house having ground plus three floors was to be constructed entirely with the investment of the developer. Further, in terms of the agreement, in lieu of the cost of construction, the developer was to receive one floor in the newly constructed building with undivided share in land to the extent of 22.5% commensurate with the constructed area falling into its share. Whereas, assessee and her husband were to receive three floors in the building along with the undivided share over the land to the extent of 77.5%. Thus, terms of the agreement clearly demonstrate that in lieu of the existing immovable property handed over to developer for redevelopment, the assessee and her husband received ground plus two floors and the undivided share in the land to the extent of constructed area falling into their shares. Of course, additionally, the monetary amount. Thus, in our view, there was a transfer of capital asset in terms of Section 2(47) of the Act. The capital asset transferred was the existing immovable property in lieu of which assessee and her husband received the constructed area along with undivided share over the land. Therefore, cost of acquisition with indexation benefit in terms of Section 48 of the Act would be available to the assessee over the entire property and cannot be limited to the 22.5% of the undivided share in land, corresponding to the constructed area falling to the share of the developer. Therefore, in our view, the disallowance of assessee's claim of indexed cost of acquisition/construction by the Assessing Officer is unsustainable, hence, deserves to be deleted. Accordingly, we do so.

9. In so far as claim of deduction u/s. 54 of the Act is concerned, undisputedly, in place of the old building used by the assessee and her husband for residential

purpose, the builder has developed a new building consisting of ground plus three floors. Because the developer invested own fund for the development of new building one floor was given to him in lieu of cost of construction. However, fact remains that except one floor given to the builder, rest of the building remained in the possession of assessee and her husband. It is not a case where the builder was given the authority and freedom to develop the property for sale to outsiders. Therefore, two floors given to the assessee are part of one residential house and cannot be considered as more than one in number. The following decisions relied upon by learned counsel for the assessee support the aforesaid view:-

1. Halesh K.C. vs. ITO, Ward-7(2)(1), ITA No. 194/Bang/2020.
2. Shri Ramiah Harish vs. ITO, Ward 7(2)(4), ITA No. 789/Bang/2019.
3. Bhaskar Pratapraj Shah vs. DCIT-16(2), ITA No. 3698/Mum/2023.
4. Late Shri Ram Kishor Seth vs. ITO, New Delhi, ITA No. 1154/Del/2024.
5. Mrs. Ratan Mahendra Jain vs. ITO, ITA No. 1669/Mum/2025.
6. Saroj Rani vs. The ITO Ward – 44(6), ITA No. 5472/Del/2024 (ITAT Delhi).
10. Pertinently on a query by the Bench, learned counsel appearing for the assessee submitted that in case of assessee's husband no such adjustment was made by the Assessing Officer. Though, he fairly submitted that the return was processed u/s. 143(1) of the Act and no scrutiny assessment had taken place. However, he submitted, no remedial measure was taken by the Department to make adjustments similar to the adjustment made at the hands of the present assessee. Thus, in on

overall consideration of facts and materials on record, we hold that the assessee is eligible to claim deduction u/s. 54 of the Act. The Assessing Officer is directed to factually verify the computation of deduction u/s. 54 of the Act and allow.

11. In the result, appeal is allowed.

Order pronounced in the open court on 20 /02/2026.

Sd/-
(Arun Khodpia)
Accountant Member

Sd/-
(Saktijit Dey)
Vice President

Mumbai; Dated : 20 /02/2026

Aks/-

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai