

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No.7177/Mum/2025
(Assessment Year: 2017-18)

Mr. Rajesh Saluja, A-4201, Lodha Bellissimo, Near Apollo Mills Compound, N.M. Joshi Marg, Mahalaxmi, Mumbai- 400011	Vs.	Office of the Deputy Commissioner of Income Tax, Circle 6(1)(2), Aayakar Bhavan, Maharishi Karve Road, Mumbai – 400 020
PAN: ANEPS5070P		
(Appellant)	:	(Respondent)

Assessee by	:	Shri Malik Girish Anand , AR
Respondent by	:	Shri Annavaram Kosuri, Sr. AR

Date of Hearing	:	12.02.2026
Date of Pronouncement	:	23.02.2026

ORDER

Per Kavitha Rajagopal, JM:

This appeal has been filed by the assessee, challenging the order of the Learned Commissioner of Income Tax (Appeals) [‘Ld. CIT(A)’ for short], National Faceless Appeal Centre (“NFAC” for short) passed u/s. 250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2017-18. The assessee has challenged the order of the Ld. CIT(A) in upholding the disallowance of exemption u/s 54F of the Act made by the Learned Assessing Officer (“Ld. AO” for short).

2. Brief facts of the case are that the assessee is an individual and an employee in M/s. Ask Wealth Advisors Pvt. Ltd. and had filed his return of income dated 01.08.2017 declaring total income at Rs.22,94,95,320/- out of income under the head ‘Salaries’,



‘Capital Gains’ and ‘Income from Other Sources’ and the return of income was processed u/s 143(1) of the Act. The assessee’s case was selected for scrutiny through CASS and notices u/s 143(2) and 142(1) of the Act were duly issued and served upon the assessee. The Ld. AO observed that the assessee had earned Long Term Capital Gain (‘LTCG’ for short) on sale of shares of M/s. Ask Wealth Advisors Pvt. Ltd. for which the assessee has claimed exemption u/s 54F of the Act at Rs.13,24,69,813/- towards the consideration of Rs.15,40,11,250/-. Further, it was observed that the assessee had claimed Rs.1,50,00,000/- deposited in the capital gain account scheme “towards making house in liveable condition” and further Rs.2,00,000/- claimed u/s 54F of the Act towards payment made to architect and Rs.4,40,000/- towards brokerage paid in cash to Mr. Manharlal Dhanjibhai Barbhaya HUF in addition to the brokerage paid by cheque to Durga Estate Agency amounting to Rs.11,21,250/-. After duly considering the assessee’s submission the Ld. AO made an addition/disallowance u/s 54F of the Act amounting to Rs.1,52,00,000/- towards Rs.1.5 crore out of capital gain account scheme and Rs.2 crores paid to architect towards interior design charges which were claimed u/s 54F of the Act on the ground that the said expenses were not towards renovation or improvement but was for decorative and luxury purposes. The Ld. AO further held that these are costs not incurred for the acquisition of the property u/s 54F of the Act but for renovation/decoration of the property incurred subsequent to the purchase which is not permissible u/s 54F of the Act. In an appeal, before the first appellate authority challenging the said disallowance, the Ld. CIT(A) upheld the addition/disallowance made by the Ld. AO on the same contention as that of the Ld. AO.

3. Aggrieved, the assessee is in appeal before us, challenging the impugned order of the Ld. CIT(A).

4. The Learned Authorized Representative (“Ld. AR” for short) for the assessee made a detailed submission along with the relevant supporting documentary evidences in support of the assessee’s contention. The Ld. AR contended that the assessee has sold the shares which is the original asset which had given rise to LTCG, against which exemption u/s 54F of the Act was claimed by the assessee. The assessee is said to have invested the capital gains in a residential property for which certain renovation works were carried out for making the property in a habitable condition which includes civil work, fittings, fixtures and allied works and the same was expended within the statutory period of two years from the date of transfer of the original asset which was in accordance with section 54F of the Act. The Ld. AR further stated that the assessee had furnished the capital gain account scheme pass book to the Ld. AO, where it reflects that the assessee had incurred the expenditure within the two years from the date of sale of the asset, for claiming exemption u/s 54F of the Act. The Ld. AR contended that the lower authorities have rejected the assessee’s claim, for the reason that the expenditure incurred by the assessee was not in the nature of construction neither was it for purchase of the property but the same was for the decorative or luxurious purposes. The Ld. AR relied on the decision of the Tribunal in the case of *Nayan Kirit Parikh vs. ACIT – ITA No.2832/M/2013*, which on identical facts allowed such expenditure to be for the purpose of making the property in a habitable form thereby entitling such expenditure for claiming deduction u/s 54F of the Act.

5. The Learned Departmental Representative (“Ld. DR” for short), on the other hand, controverted the same and filed a written submission stating that the total purchase value of the flat was for Rs.12,90,00,000/- and according to the sale deed the said fact was fully furnished which was rented out to tenants who allowed time till 20.02.2017 for handing over the vacant possession, thereby implying that the flat was very much in a habitable condition which required no major renovation work as claimed by the assessee. The Ld. DR further argued that the rental value of the said property, as per the municipal rental value, would be around Rs.5.3 lakhs per month which can be afforded only by tenants who would definitely prefer the flat to be well furnished and in a habitable condition. The Ld. DR reiterated that the expenses incurred by the assessee are only towards the purpose of making the property more luxurious than it was earlier and there can be no chances of the property being in a dilapidated condition as argued by the Ld. AR. The Ld. DR vehemently argued that the expenses incurred by the assessee are merely for the purpose of claiming deduction u/s 54F of the Act for the purpose of avoiding payment of tax on the capital gains. The Ld. DR relied on the order of the Ld. CIT(A).

6. We have heard the rival submissions and perused the materials available on record. The only moot issue that requires adjudication is whether the assessee is entitled to claim deduction u/s 54F of the Act towards the expenditure incurred for the purpose of renovating the newly acquired property and whether or not the same would amount to the expenses towards purchase of the new residential house qualifying for deduction u/s 54F of the Act. It is observed that the assessee has earned LTCG on sale of shares dated 16.12.2016 and the assessee had purchased a residential property from Shri Dinesh Aggarwal dated

21.12.2016 for a sale consideration of Rs.13.90 crores which was originally purchased from the builder on 08.09.2009. Subsequent to the purchase of the said property the assessee had incurred expenditure of Rs.1.52 crore from the amount deposited in the capital gain account scheme specified as “towards making house in liveable condition” qua the flooring, walls, painting, tiles, bathroom work etc. The Ld. AO observed that the said property was not an under constructed flat but a property which was already constructed in 2009 and had been rented out to various tenants till 2016. According to the Ld. AO the flat was very much in habitable condition whereas the assessee’s version was that since it was continuously rented out the property was a dilapidated condition not habitable and therefore the assessee had to incur the alleged expenditure for making it conducive for living. The assessee’s contention was that the provision of section 54F of the Act is worded in such a way that it includes cost of new property and not merely cost of acquisition of new property which would include the cost incurred for renovation. The assessee further relied on the provisions of section 54F of the Act where cost of improvement would include all the expenditure which is capital in nature for the purpose of making addition or alternation to the capital asset.

7. On the contrary, the Ld. AO’s contention was that section 54F of the Act pertains to cost of new asset and not cost of improvement of new asset and since the costs incurred are not for basic civil work but was towards luxurious items which does not make it a requirement for making the property in a liveable condition. The Ld. AO’s view is that the cost would mean cost till the acquisition of the property and not the expenses towards renovation/decoration subsequent to the purchase, thereby making a disallowance of

Rs.1,52,00,000/- being Rs.1.5 crore towards expenditure incurred for renovation and Rs.2,00,000/- pertains to the fees paid to the architect for the purpose of renovation.

8. In the above factual matrix of the case, it is pertinent to extract the relevant provision of section 54F of the Act herein under for ease of reference:

“Section 54F: (1) Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (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, one residential house in India (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

(a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;

(b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:

Provided that nothing contained in this sub-section shall apply where—

(a) the assessee,—

(i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or

(ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or

(iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property":

59[Provided further that where the cost of new asset exceeds ten crore rupees, the amount exceeding ten crore rupees shall not be taken into account for the purposes of this sub-section.]

Explanation.—For the purposes of this section,—

"net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(2) Where the assessee purchases, within the period of two years after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a), or, as the case may be, clause (b), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.

(3) Where the new asset is transferred within a period of three years from the date of its purchase or, as the case may be, its construction, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a) or, as the case may be, clause (b), of sub-section (1) shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such new asset is transferred.

(4) The amount of the net consideration 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 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 60[, subject to the second proviso to sub-section (1)] 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 by which—

(a) the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of the new asset as provided in clause (a) or, as the case may be, clause (b) of sub-section (1), exceeds

(b) the amount that would not have been so charged had the amount actually utilised by the assessee for the purchase or construction of the new asset within the period specified in sub-section (1) been the cost of the new asset, shall be charged under section 45 as 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 the unutilised amount in accordance with the scheme aforesaid:

60[Provided further that the net consideration in excess of ten crore rupees shall not be taken into account for the purposes of this sub-section.] Explanation.—[Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.]”

9. On a bare perusal of the said provision, it is observed that the capital gain arising from a transfer of a long term capital asset other than a residential house for which the assessee has purchased within a period of one year before or two years after the transfer or within a period of three years constructed a residential house in India, then capital gain shall not be charged on the cost of new assets. It further states that when the assessee has not utilized the net consideration for purchase or construction of a new asset before the date of filing of return of income u/s 139 of the Act, it shall be deposited in an account in accordance with the scheme notified by the Central Government and if any amount is already utilized for purchase or construction of new asset together with the amounts so deposited shall be deemed to be the cost of the new asset. From the said explanation it can be inferred that the provision of the Act specifies that the consideration has to be used for the cost of new asset which can be either for purchase or for construction of the asset. There is no embargo in the provision that the same cannot be utilized for renovation of the new asset purchased by the assessee for the reason that the provision fixes the time limit as to when the consideration has to be utilized in case of purchase or construction of the new asset. The contention of the Revenue that the flat was very much in a habitable condition is not convincing for the reason that for a person who could buy an asset for such high value the habitable condition varies in accordance with the requirement and convenience of each individual which can be determined whether the expenses are towards



necessity or towards luxury. The cost incurred in the new asset would definitely include expenses towards civil work, electrical work, carpenter, painting, flooring and tiles, hardware, lights and fans, partitions etc. which cannot be categorized as merely luxurious in nature. The intention of the legislature was clear that the assessee can take benefit of deduction u/s 54F of the Act towards the capital gain earned from sale of a capital asset only if the assessee invests the same in a new asset within the stipulated time and for which the cost of “new asset” mentioned does not specify whether it is incurred for the purpose of purchasing the property and not thereafter. In the absence of such explanation on incurring expenses post purchase, we deem it fit to reject the contention of the Revenue. Further, the reliance placed by the Ld. AR on the decision of the Tribunal in the case of *Nayan Kirit Parikh (supra)* and another Tribunal’s decision in the case of *Shri G. Siva Rama Krishna Vs. DCIT – ITA No.755/Hyd/2013* which, on identical facts, have held that these are allowable expenditure u/s 54F of the Act.

10. On the above observation, we deem it fit to allow the grounds of appeal raised by the assessee thereby directing the Ld. AO to delete the impugned addition/disallowance made in the hands of the assessee.

11. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 23.02.2026

Sd/-
(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai; Dated: 23.02.2026

* Kishore, Sr. P.S.



ITA No.7177/Mum/2025
Mr. Rajesh Saluja

Copy of the Order forwarded to:

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai