

/IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

**BEFORE SHRI ANIKESH BANERJEE, JM
AND
SHRI ARUN KHODPIA, AM**

ITA No.7525/MUM/2025
(Assessment Year: 2017-18)

Shashank Merchant 1001, Jeevan Sathi, 18 CD, Barfiwala Marg, Juhu Lane, Andheri West, Mumbai 400058.	Vs.	Income Tax Officer, Circle 26(1) Mumbai. Kautilya Bhavan, Mumbai 400051.
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PAN/GIR No. ABNPM8184D		
(Appellant)	:	(Respondent)

Assessee by	:	Shri Piyush Chhajed, C.A. & Shri Veetrag Chhajed – CA.
Respondent by	:	Shri Sanjeev Bhagat – Sr. AR

Date of Hearing	:	04/03/2026
Date of Pronouncement	:	06/03/2026

ORDER

Per Anikesh Banerjee, JM:

The instant appeal of the assessee was preferred against the order of the National Faceless Appeal Centre (NFAC), Delhi (for brevity the “Ld. CIT(A)”), order passed u/s. 250 of the Income Tax Act, 1961 (further for brevity, “the Act”) for Assessment Year 2017-18, date of Order 30/07/2025. The impugned Order emanated from the order of the Ld. Assistant Commissioner of the Income Tax, Circle 25(1), Mumbai, order passed u/s. 143(3) of the Act, date of the order 16/12/2019.

2. Brief facts of the case are that the assessee filed the return of income declaring a total income of Rs. 2,03,91,960/-, which was processed under section 143(1) of the Act. Subsequently, the case was selected for scrutiny. During the course of the assessment



proceedings, the Learned Assessing Officer (Ld. AO) observed that the assessee had sold a flat situated at “Love Dale” for a consideration of Rs. 4.61 crores on 26.04.2016, which was duly registered on 26.06.2016. On the other hand, the assessee claimed deduction in respect of the purchase of a residential property at “Jeevan Sathi”, purchased on 28.04.2015, and the possession of the said property was received on 09.11.2015. The assessee claimed deduction amounting to Rs. 3,37,72,765/- under section 54 of the Act. However, the Ld. AO, in the assessment order, erroneously referred to the relevant provision as section 54F of the Act. The Learned Authorised Representative (Ld. AR) raised an objection regarding the incorrect reference to section 54F, contending that the applicable provision in the present case was section 54 of the Act. During the assessment proceedings, the Ld. AO rejected the assessee’s claim of deduction under section 54/54F on the ground that the property had not been acquired within one year from the date of sale of the original property, thereby allegedly contravening the provisions of section 54/54F of the Act. Aggrieved by the said action, the assessee preferred an appeal before the Ld. CIT(A). However, the Ld. CIT(A) upheld the impugned assessment order. Being further aggrieved, the assessee has filed the present appeal before us.

3. The Ld. AR advanced arguments and filed a paper book comprising **pages 1 to 142**, which has been taken on record. The Ld. AR placed on record the chronology of relevant dates, events, and the schedule of payments relating to the sale and purchase of the immovable properties, which is reproduced as under:



Purchased flat - Jeevan Saathi		
Sr.No.	Particular	Date
1.	<i>Date of Purchase Agreement of the under construction flat.</i>	28-04-2015
2.	<i>Date of Registration of purchase agreement</i>	28-04-2015
3.	<i>Date of possession and letter of date of possession.</i>	09-11-2015

Payment Schedule				
Purchased Flat – Jeevan Sathi				
Sr. No	Cheque No.	Cheque Date	Receipt	Amount
1	000021	25-09-2014	25-09-2014	11,00,000.00
2	000023	02-10-2014	02-10-2014	59,00,000.00
3	000030	30-10-2014	31-10-2024	25,00,000.00
4	000032	14-11-2014	14-11-2014	1,00,00,000.00
5	000040	08-03-2015	22-03-2015	50,00,000.00
6	946771	12-05-2015	12-05-2015	4,00,00,000.00
7	000078	26-08-2015	28-08-2015	15,00,000.00
8	000088	28-11-2015	02-12-2015	16,89,086.00
9	000092	04-03-2016	05-03-2016	25,60,224.00
TOTAL AMOUNT PAID TO BUILDER				7,02,49,310.00

Society Maintenance Vat and Service Tax.

Sold flat- Love Dale		
Sr. No.	Particular	Date
1	<i>Date of sale agreement of the residential flat</i>	26-04-2016
2	<i>Date of actual possession given of transferred flat</i>	26-04-2016
3	<i>Date of signing of possession letter</i>	26-06-2016
Payment Schedule		
Sold Flat – Love Dale		
Sr. No.	Particular	Date



1	03-03-2016	37,66,842.00
2	03-03-2016	42,39,188.40
3	03-03-2016	37,67,030.85
4	21-03-2016	57,11,046.26
5	21-03-2016	38,07,217.63
6	22-04-2016	85,44,338.19
7	22-04-2016	85,44,020.26
8	25-04-2016	76,55,063.66
9	06-05-2016	65,253.00
	Total	4,61,00,000.25

Exchange Difference.

4. The Ld. AR further submitted that, in relation to the sale of the property, the assessee had executed the sale agreement on 26.04.2016. However, the possession letter was issued by the assessee after the receipt of the entire sale consideration on 25.04.2016, a copy of which is placed at **APB page 107**, evidencing the handing over of possession of Flat No. 302 in the society known as “Lovedale CHS Ltd.” situated at Juhu Tara Road, Mumbai – 400049. Although the said possession letter was formally issued on 26.06.2016, the document clearly records that the effective date of possession was 26.04.2016, upon receipt of the full consideration for the said property. With regard to the purchase of the new property, the Ld. AR contended that Flat No. 1001 in the building known as “Jeevan Sathi” was duly acquired by the assessee, and the purchase agreement is placed on record at **APB pages 39 to 91**. The Ld. AR further submitted that the possession of the said flat was handed over to the assessee on 09.11.2015, as evidenced by the possession letter issued by the developer, “Kabra Estate and Investment Consultants.” It was also brought to our notice that the “Occupation Certificate” for the



said building was issued by the Executive Engineer (Building Proposal), W.S. (K Ward), on 09.11.2015. In view of the above facts, the Ld. AR submitted that the assessee had acquired the new residential property and transferred the original property within the period prescribed under section 54 of the Act, and therefore the assessee was rightly entitled to claim the deduction under section 54 of the Act. In support of the above contention, the Ld. AR placed reliance on the judgment of the Hon'ble Bombay High Court in the case of **CIT vs. Smt. Beena Jain [1994]** reported in **217 ITR 363 (Bom.) dated 23.11.1993**, wherein the Hon'ble Court observed as under:

"The assessee who is the respondent before us had sold office premises on 23-7-1987 which resulted in long-term capital gains of Rs. 24,05,050. Prior to the sale she had entered into an agreement for purchase of a residential flat which agreement was dated 4-9-1985. The agreement was for purchase of a flat for the total consideration of Rs. 12,26,751. On the date of agreement of sale the assessee paid a sum of Rs. 1,35,000 as earnest money. This agreement was registered on 27-10-1985. The construction of the flat was finally completed in July 1988. The assessee paid the consideration amount of Rs. 10,44,375 plus Rs. 47,376 on 29-7-1988 and she was put in possession of the said flat on 30-7-1988. The assessee claimed the benefit of exemption under section 54F of the Income-tax Act, 1961 ('the Act'). She has accordingly been granted by the Tribunal exemption of Rs. 11,04,423 under section 54F. The department has made this application under section 256(2) of the Act for raising the following question :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in allowing exemption of Rs. 11,04,423 under section 54F of the Income-tax Act, 1961 considering the date of possession of the new residential premises instead of date of sale agreement and date of registration ?"

2. Under section 54F in the case of an assessee if any capital gain arises from the transfer of any long-term capital asset, not being a residential house and the assessee has, within a period of



one year before or two years after the date of which the transfer took place purchased a residential house, the capital gain shall be dealt with as provided in that section. As per the section certain exemption has to be allowed in respect of the capital gains to be calculated as set out therein. The department contends that the assessee did not purchase the residential house either one year prior to or two years after the sale of the capital asset which resulted in long-term capital gains. According to the department, the agreement for purchase of the new flat was entered into more than one year prior to the sale. Hence, the petitioner is not entitled to the benefit under section 54F. In our view the Tribunal has rightly negated this contention and has held that the new residential house had been purchased by the assessee within two years after the sale of the capital asset which resulted in long-term capital gains. The Tribunal has held that the relevant date in this connection is 29-7-1988 when the petitioner paid the full consideration amount on the flat becoming ready for occupation and obtained possession of the flat. This has been taken by the Tribunal as the date of purchase. The Tribunal has looked at the substance of the transaction and came to the conclusion that purchase was substantially effected when the agreement of purchase was carried out or completed by payment of full consideration on 29-7-1988 and handing over of possession of the flat on the next day.

3. In the premises the application is dismissed and the rule is discharged with costs.”

5. The Ld. AR further placed reliance on the decision of the coordinate bench of the ITAT, Mumbai in the case of **Bastimal K. Jain vs. ITO** reported in [2016] 76 **taxmann.com 368 (Mumbai - Trib.)**, wherein the Tribunal held that for the purpose of claiming deduction under section 54 of the Act, the relevant date is the date on which possession of the flat is handed over by the builder to the assessee, and not the date of registration of the flat. In the said case, relating to AY 2010–11, the Tribunal observed that where the assessee claims deduction under section 54 in respect of capital gains arising from the sale of a residential property, the date of acquisition of the new residential property is to be reckoned from the date of possession of the flat by the



builder, and not from the date of execution or registration of the purchase agreement. Accordingly, the Ld. AR submitted that, in the present case also, the date of possession of the new flat should be considered for determining the eligibility of deduction under section 54 of the Act, and not the date of registration, and therefore the assessee's claim was in accordance with the provisions of the Act.

6. The Ld. DR argued and stands on favour of the orders of revenue authorities.

7. We have heard the rival submissions and carefully perused the material available on record. The assessee sold the residential property on 26.06.2016 and claimed the benefit of exemption from capital gains under section 54 of the Act on account of purchase of a new residential property within the prescribed period. The purchase agreement for the new property was executed on 28.04.2015, and the possession of the said flat was handed over on 09.11.2015. On perusal of the records, it is observed that the assessee had executed the sale agreement on 26.04.2016, and the possession of the property was also effectively handed over on 26.04.2016. However, the formal possession letter was issued on 26.06.2016, wherein it has been clearly mentioned that the possession was effective from 26.04.2016. The revenue authorities rejected the said possession letter and treated it as an afterthought on the part of the assessee to claim the benefit under section 54 of the Act, and consequently denied the exemption claimed by the assessee. On the other hand, with regard to the purchase of the new residential property, it is evident from the record that the agreement for Flat No. 1001 in the building known as "Jeevan Sathi" was duly registered on 28.04.2015, while the possession of the



flat was handed over by the promoter/developer on 09.11.2015. We further note that the Occupation Certificate was also issued by the Municipal Authority on 09.11.2015, which substantiates the fact that the property was ready for occupation and possession was legitimately handed over to the assessee on the said date. In our considered view, the date of registration of the agreement cannot be regarded as the sole or determinative factor for establishing the acquisition of the property. The relevant and material date is the date of actual possession of the property. In the present case, the possession of the original property was handed over by the assessee after receiving the full consideration on 25.04.2016, and only a minor exchange difference remained outstanding, which was subsequently paid on 06.05.2016. In this regard, we find support from the decision of the Hon'ble Bombay High Court in the case of **Smt. Beena K. Jain** (supra) as well as the decision of the coordinate bench of the Tribunal in the case of **Bastimal K. Jain** (supra), wherein it has been held that for the purpose of claiming deduction under section 54 of the Act, the relevant date is the date of handing over of possession of the flat, and not the date of registration of the agreement. It is also well settled that the builder can issue the possession certificate only after obtaining the Occupation Certificate from the competent municipal authority. Considering the above facts and the judicial precedents, we find that the assessee had acquired the new residential property and obtained possession thereof prior to the transfer of the original property, and the transfer of the original property was effected within one year from the date of acquisition/possession of the new property. Therefore, there is no violation of the provisions of section 54 of the Act. Accordingly, we set aside the impugned appellate order and hold that the assessee is entitled to the



deduction claimed under section 54 of the Act. Consequently, the addition made by the Ld. AO amounting to Rs. 3,37,72,765/- is hereby deleted.

8. In the result, the appeal of the assessee bearing **ITA No.7525/Mum/2025** is allowed.

Order pronounced in the open court on 06.03.2026.

Sd/-
(ARUN KHODPIA)
ACCOUNTANT MEMBER

Sd/-
(ANIKESH BANERJEE)
JUDICIAL MEMBER

Mumbai; Dated: 06.03.2026
Aditi N. Pandare (Private Secretary)

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