

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
& SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

I.T.A. No.1366/Ahd/2025
(Assessment Year: 2017-18)

Deputy Commissioner of Income Tax, Circle-2(1)(1), Ahmedabad	Vs.	Bharat Lakhaji Nandwana, 701-A, Pragati Apartment, Opp. Sampati Flats, Maharashtra Society, Ahmedabad-380006
[PAN No.AGAPN4641A]		
(Appellant)	..	(Respondent)

Appellant by :	Shri C Dharani Nath, Sr. DR
Respondent by:	Shri S. N. Soparkar, Sr. Adv. & Ms. Ukti Shah, ARs

Date of Hearing	09.03.2026
Date of Pronouncement	12.03.2026

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Department against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 13.06.2025 passed for A.Y. 2017-18.

2. The Department has taken the following grounds of appeal:

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,39,34,924/- on account of disallowance of exemption u/s 54 and 54EC of the Act as the assessee does not fulfill the basic conditions prescribed under sections 54 and 54EC of the Act for claiming such exemption.

2. The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary.

3. *It is, therefore, prayed that the order of Ld. CIT(A) may be set aside and that of the Assessing Officer be restored?"*

3. The brief facts of the case are that the assessee is an individual who filed his return of income for Assessment Year 2017–18 on 05.08.2017 declaring total income of ₹20,89,430/-. During the course of assessment proceedings, the Assessing Officer observed that the assessee had declared long-term capital gain on sale of a residential house and had claimed exemption under section 54 as well as section 54EC of the Income-tax Act, 1961 ("the Act").

4. The Assessing Officer asked the assessee to substantiate the claim of exemption under section 54 and section 54EC of the Act. In response, the assessee submitted that the property sold during the year originally belonged to **L.K. Nandwana**, the father of the assessee, and that after his demise a family trust namely **L.K. Nandwana Family Trust** was created under his will in the year 1984. The assessee along with his brothers were beneficiaries of the said trust. The trust held the residential property for a specified period and thereafter by a deed of transfer dated 04.02.2017 the trust transferred the property to the beneficiaries, which included the assessee. The share of the assessee in the said property was 22.45%. Subsequently, the said property was sold by the assessee along with other co-owners by way of sale deed dated 10.02.2017.

5. The assessee submitted that before the Assessing Officer that since the property was originally held by the trust and the assessee had acquired the property by virtue of devolution of the trust, the cost of acquisition and

the period of holding of the previous owner i.e. the trust should be considered while computing capital gains in terms of section 49 of the Act. The assessee also submitted that the capital gains arising from the sale of the residential property were invested partly in specified bonds eligible under section 54EC of the Act and partly in a new residential property for which the assessee had entered into an agreement to purchase a flat from a builder on 13.02.2017.

6. The Assessing Officer however did not accept the explanation of the assessee. According to the Assessing Officer, the property had been transferred by the trust to the assessee only on 04.02.2017 and the same was sold on 10.02.2017. Therefore, the Assessing Officer held that the property had been held by the assessee only for a period of a few days and consequently the asset was a short-term capital asset. Accordingly, the Assessing Officer treated the gains arising from sale of the property as **short-term capital gains** and denied the benefit of exemption under section 54 as well as section 54EC of the Act.

7. Aggrieved by the assessment order, the assessee preferred an appeal before the Commissioner of Income-tax (Appeals). Before the CIT(A), the assessee raised several grounds of appeal challenging the action of the Assessing Officer in treating the capital gain as short-term capital gain and in denying exemption under section 54 and section 54EC of the Act.

8. With respect to Grounds of Appeal Nos.1 to 4, the assessee contended that the property in question was originally owned by his late

father and thereafter vested in the family trust created under the will. Upon dissolution of the trust, the property devolved upon the beneficiaries (including the assessee) and therefore the provisions of section 49 of the Act were clearly applicable. The assessee submitted that the period of holding of the previous owner and the trust should be included while determining the nature of the capital asset. The CIT(A) examined the factual background and observed that the property was originally owned by Late Shri L.K. Nandwana who had created a family trust and vested the property in the said trust in the year 1984. Upon dissolution of the trust, the property was transferred to the assessee on 04.02.2017 and was subsequently sold on 10.02.2017. The CIT(A) held that in view of **Explanation 1(b) to section 2(42A) read with section 49(1)(iii)** of the Act, the period of holding of the previous owner is required to be included in determining the period of holding of the asset in the hands of the assessee. Therefore, the CIT(A) held that the property constituted a **long-term capital asset** and not a short-term capital asset as held by the Assessing Officer.

9. With respect to Grounds of Appeal Nos.5 and 6 relating to exemption under section 54 of the Act, the CIT(A) held that once the asset is treated as a long-term capital asset being a residential property, the assessee would be eligible to claim exemption under section 54 of the Act subject to fulfillment of the prescribed conditions. The CIT(A) noted that the assessee had invested the capital gains towards acquisition of a residential property and therefore held that the exemption claimed by the

assessee under section 54 was allowable. Similarly, the CIT(A) also accepted the claim of the assessee with respect to exemption under section 54EC of the Act on the ground that the assessee had invested the capital gains in specified bonds within the prescribed time period.

10. Accordingly, the CIT(A) held that the capital gain arising from the sale of the property was long-term capital gain and allowed the claims of exemption under section 54 as well as section 54EC of the Act. Consequently, Grounds of Appeal Nos.1 to 7 raised by the assessee were allowed.

11. The Department is in appeal before us against the order passed by CIT(Appeals) allowing the appeal of the assessee.

12. We have heard the rival submissions and perused the material available on record. The Revenue is in appeal against the order passed by the learned CIT(A) allowing the assessee's claim with respect to long-term capital gains and the exemptions claimed under section 54 and section 54EC of the Act.

13. The primary contention of the Revenue is that the property was transferred to the assessee by the family trust only on 04.02.2017 and the same was sold on 10.02.2017 and therefore the asset was held by the assessee only for a few days and consequently the gain arising from its transfer should be treated as short-term capital gain.

14. We do not find any merit in the contention advanced by the Revenue. A combined reading of **Explanation 1(b) to section 2(42A)** and **section 49(1)(iii)** of the Act clearly provides that where a capital asset becomes the property of the assessee through succession, inheritance or devolution, the period for which the asset was held by the previous owner shall also be included while determining the period of holding of the asset.

15. Section 2(42A) Explanation 1(b) specifically provides that:

“in determining the period for which any capital asset is held by the assessee, there shall be included the period for which the asset was held by the previous owner in the circumstances mentioned in section 49(1).”

16. Similarly, section 49(1)(iii) of the Act provides that where the capital asset becomes the property of the assessee by way of succession, inheritance or devolution, the cost of acquisition shall be deemed to be the cost for which the previous owner acquired the property.

17. In the present case, it is undisputed that the property originally belonged to Late Shri L.K. Nandwana (father of the assessee) and thereafter vested in the family trust created under his will. Upon dissolution of the trust, the property devolved upon the beneficiaries including the assessee. Therefore, the provisions of section 49(1)(iii) of the Act are clearly attracted and consequently the period of holding of the previous owner as well as the trust is required to be included for determining the nature of the capital asset.

18. This legal position has been affirmed by the Hon'ble Supreme Court in **CIT v. Manjula J. Shah (2012) 204 Taxman 42 (SC)** wherein it was held that where the property is acquired through inheritance or similar modes specified under section 49(1), the period of holding of the previous owner must be taken into consideration for determining whether the asset is long-term or short-term. Similar view has been taken in **CIT v. Arun Shungloo Trust (2012) 205 Taxman 456 (Delhi HC)**. The Hon'ble Bombay High Court in the case of **CIT v. Manjula J. Shah (2011) 16 taxmann.com 42 / 355 ITR 474 (Bom.)** had occasion to consider this precise issue. The Hon'ble High Court held that when the legislature by introducing the deeming fiction under section 49(1) seeks to tax the gains arising on transfer of a capital asset acquired under gift or will, the capital gains under section 48 must necessarily be computed by applying the same deeming fiction. The Court further held that the expression "asset held by the assessee" appearing in Explanation (iii) to section 48 must be interpreted in the light of Explanation 1(i)(b) to section 2(42A), which provides that the period for which the asset was held by the previous owner must be included in the period of holding of the assessee. Consequently, the Hon'ble High Court held that while computing the capital gains arising on transfer of a capital asset acquired by the assessee through gift or will, the indexed cost of acquisition has to be computed with reference to the year in which the previous owner first held the asset and not the year in which the assessee became the owner of the asset.

19. The aforesaid principle has been reiterated by the Hon'ble Bombay High Court in **Rohan Developers (P.) Ltd. v. ITO (2022) 139 taxmann.com 32 (Bom.)**, wherein it was held that where property is acquired through inheritance or will, the cost of acquisition in the hands of the assessee shall be deemed to be the cost at which the previous owner acquired the property and the period of holding of the previous owners must also be included in determining the indexed cost of acquisition. The Hon'ble Court held that indexation in such cases would be available from the year in which the original owner first held the asset.

20. A similar view has also been taken by the Hon'ble Madras High Court in **CIT v. Saroja Naidu (2021) 128 taxmann.com 127 (Mad.)**, wherein the Hon'ble Court followed the decision of the Hon'ble Bombay High Court in Manjula J. Shah (supra) and held that while computing capital gains arising on transfer of a capital asset acquired through inheritance, the indexed cost of acquisition has to be computed with reference to the year in which the previous owner first held the asset.

21. Respectfully following the aforesaid judicial precedents, we hold that the property sold by the assessee constituted a **long-term capital asset** and therefore the capital gain arising from its transfer was rightly treated as long-term capital gain by the learned CIT(A). Accordingly, the ground raised by the Revenue on this issue is dismissed.

22. With respect to the issue relating to investment in bonds under section 54EC of the Act, the assessee has invested part of the capital gains

in specified bonds eligible under section 54EC of the Act within the prescribed time period. The Revenue has not brought any material on record to demonstrate that the investment in bonds was not made in accordance with the provisions of section 54EC. Therefore, we find no infirmity in the order of the CIT(A) allowing the exemption claimed under section 54EC of the Act. The ground raised by the Revenue on this issue is also dismissed.

23. However, with regard to the exemption claimed by the assessee under section 54 of the Act, we find that the assessee has only placed on record an **Agreement for Purchase** dated 13.02.2017 entered into with the builder for purchase of a residential flat. No documentary evidence such as **final conveyance deed or registered purchase deed** evidencing the actual purchase of the residential property has been placed on record.

24. Section 54(1) of the Act provides that:

*where the capital gain arises from transfer of a long-term capital asset being a residential house and the assessee has **within a period of one year before or two years after the date of transfer purchased**, or within three years constructed, a residential house, the capital gain shall be exempt to the extent specified in the section.*

25. Thus, the statutory requirement under section 54 clearly stipulates that the assessee must have **“purchased”** a residential house within two years from the date of transfer of the original asset. In the absence of a registered conveyance deed or purchase deed showing the actual purchase of the property, the mere existence of an “agreement to purchase” cannot by itself establish that the conditions prescribed under section 54 of the Act have been fully satisfied.

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26. In the present case, since the assessee has only produced an agreement for purchase and no evidence of a registered conveyance deed or final purchase deed has been brought on record, the allowability of exemption under section 54 of the Act requires verification.

27. Accordingly, we deem it appropriate to restore this issue to the file of the Assessing Officer with a direction to verify whether the assessee has actually entered into a **registered conveyance deed / purchase deed** for acquisition of the residential property within the time period prescribed under section 54 of the Act. The Assessing Officer shall examine the relevant documents and decide the issue in accordance with law after providing reasonable opportunity of being heard to the assessee.

28. In the result, the appeal filed by the Department is allowed for statistical purposes.

This Order is pronounced in the Open Court on

12/03/2026

Sd/-

**(NARENDRA P. SINHA)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 12/03/2026

TANMAY, Sr. PS

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1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad