

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT AND
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

ITA No. 8991/Mum/2025
(Assessment Year: 2012-13)

Vijay Krishnaji Sawant Vijay Niwas, Ceaser Road, Opp. Bombay Cambridge School, Amboli, Andheri Railway Station S.O., Mumbai-400 058	Vs.	Income Tax Officer-32(2)(1) Kautilya Bhavan, Mumbai-400 051
PAN/GIR No. AAPPS 7027 Q		
(Appellant)	:	(Respondent)

Appellant by	:	Shri Haridas Bhatt
Respondent by	:	Shri Ankit Tiwari

Date of Hearing	:	04.03.2026
Date of Pronouncement	:	18.03.2026

ORDER

Per Saktijit Dey, Vice President:

The present appeal by the assessee arises out of order dated 17.11.2025, passed by National Faceless Appeal Centre (‘NFAC’ for short), Delhi for the assessment year (A.Y. for short) 2012-13.

2. Basically, two issues arise for consideration in the present appeal. The first issue is what should be the sale consideration which the assessee is deemed to have received on sale of immovable property, keeping in view the provisions of section 50C of the Income Tax Act, 1961 (‘the Act’ for short) and the second issue is regarding assessee’s eligibility to claim deduction u/s. 54 of the Act.

3. Briefly the facts are, the assessee is a resident individual. For the assessment year under dispute, the assessee had filed his return of income on 11.07.2012, declaring income of Rs.93,900/-. The assessee in his capacity as a Member Legislative Counsel (MLC) was allotted an immovable property, being Flat No.A-3103, 31st Floor, A Tower, Shubhada CHS, Worli, Mumbai, having built up area of 1001.00 sq. ft. along with terrace no. 1, having 1000.00 sq. ft. The assessee was also given possession of the property on 28.02.2004. The occupancy certificate of the building was received on 16.10.2004. On 20.03.2005, the assessee entered into a Memorandum of Understanding (MOU) with Mrs. Abha Sumeet Kabara, for sale/transfer of the said immovable property through fully paid-up shares of the society for an aggregate consideration of Rs.1,60,00,000/-. As per the terms of MOU, the flat, which was a core house, was to be further developed by the vendor, i.e., the assessee by undertaking marble flooring, plumbing, electric work, furnishin etc. In terms with the MOU, the assessee received aggregate sale consideration of Rs.1,60,00,000/- through cheques between the period 26.12.2005 to 07.06.2006. However, the society issued NOC for transfer on 05.01.2011 and, since, the sale was subject to permission of Collector, such permission was received on 16.03.2011. Ultimately, the deed of transfer of the flat between the assessee and the purchaser was registered on 22.11.2011. The assessee purchased a new flat on 28.04.2012.

4. In the return of income filed for the impugned assessment year, the assessee offered LTCG of Rs.53,33,914/-, based on the sale consideration received of Rs.1,60,00,000/-. As against the long term capital gain ('LTCG' for short), the assessee claimed deduction u/s. 54 of the Act, towards investment made in the new flat. In course of assessment proceeding, the A.O. while verifying the documentary evidences found that as per the registered

transfer deed, the stamp duty authority has determined the value of the property at Rs.2,37,93,000/-. Thus, referring to the provisions of section 50C of the Act, he called upon the assessee to explain why the value determined by the Stamp Valuation Authority should not be treated as deemed sale consideration for computing capital gain. Though the assessee objected to such view of the A.O. by submitting that in terms with the first proviso to section 50C(1) of the Act, the stamp duty value prevailing on the date of MOU should be taken for computing capital gain, however, the A.O. was not convinced. Ultimately, he held that since as per the registered transfer deed, the property was transferred in F.Y. 2011-12, the value determined by the Stamp Valuation Authority has to be treated as sale consideration. As regards the assessee's claim of deduction u/s. 54 of the Act, the A.O. rejected such claim on two counts, firstly, the assessee having received the sale proceeds in F.Y. 2006-07 has neither invested them in a residential house nor invested in capital gain savings scheme before the due date mentioned in section 54 of the Act. According to him, taking benefit of delayed registration of the transfer deed, the assessee cannot claim deduction u/s. 54 of the Act. Thus, he proceeded to compute short term capital gain ('STCG' for short) at Rs.2,14,41,373/- and added back to the income of the assessee.

5. Though the assessee contested the addition before the first appellate authority, however, he was unsuccessful.

6. Before us, ld. Counsel appearing for the assessee submitted that in terms with the first proviso to section 50C(1) of the Act, the stamp duty valuation as on the date of MOU should have been considered for capital gain. He submitted, the A.O. has totally ignored the applicability of first proviso while invoking the provision of section 50C(1) of the Act.

He submitted, the A.O. committed gross error in treating the capital gain as STCG when the property was in possession of the assessee since the year 2004.

7. As regards the claim of deduction u/s. 54 of the Act, ld. Counsel submitted that since the assessee has offered the capital gain in the year under consideration, based on the registered transfer deed executed in the year under consideration, assessee is entitled to claim deduction u/s. 54 of the Act, as the investment in the new property was made within the stipulated period from the date of execution of registered transfer deed. In support of such contention, ld. Counsel relied upon the following decisions:

1. *ITO vs. K. C. Gopalan* [1999] 107 Taxman 591 (Kerala)
2. *Mrs. Prema P. Shah vs. ITO* [2006] 100 ITD 60

8. Per contra, the ld. Departmental Representation submitted that since the MOU was not registered, the valuation as on the date of MOU cannot be considered. As regards the claim of deduction u/s. 54 of the Act, ld. DR strongly relied upon the observations of the A.O. and first appellate authority.

9. We have considered rival submissions in the light of the judicial precedents cited before us and perused the materials on record. Undisputedly, on 28.02.2004, a flat, which was in the nature of a core house, was allotted to the assessee and was also given possession. Meaning thereby, the transfer of property subjected to capital gain tax in the impugned assessment year was held by the assessee since February, 2004. It is also a fact on record that the assessee had entered into an MOU with the ultimate buyer of the property on 20.03.2005 for selling the property on an aggregate sale consideration of Rs.1,60,00,000/-. It is also a fact on record that the entire sale consideration of Rs.1,60,00,000/- was received by the assessee between the period 2005 and 2006 through

account payee cheques credited to assessee's bank account. Because of procedural formalities and requirement of government permission, which took some time, the assessee received the clearance of the society and permission of government in January and March, 2011, respectively. Therefore, the transfer deed could only be executed on 23.02.2011. While registering the transfer deed, the Stamp Valuation Authority has determined the stamp duty value at Rs.2,37,93,000/-, which is the valuation as on the date of registration. However, fact remains the assessee entered into the MOU with the purchaser on 23.12.2005 and also parted possession in favour of the purchaser. The first *proviso* to section 50C(1) of the Act reads as under:

“Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer.”

10. Though, proviso was introduced by Finance Act, 2016 w.e.f. 01.04.2017, however, the *proviso* being a beneficial piece of legislation introduced to mitigate genuine hardship faced by assesseees on account of delay in registration of transfer deed, would apply retrospectively. This is the consistent view taken in various judicial precedents. Thus, in terms with the first proviso to section 50C(1) of the Act, the value of the property as on the date of execution of MOU needs to be taken into consideration. In the computation of capital gain, the assessee has adopted the value as on the date of execution of MOU and claimed indexation benefit. Since, the departmental authorities have ignored the first proviso to section 50C(1) of the Act, they have not factually verified the value of the property as on the date of MOU and indexation benefit claimed by the assessee.

11. Moreover, since the assessee has held the property for a period of more than 36 months it has to be treated as long term capital asset. We do not find any reasonable basis

on which the A.O. has treated it as STCG. Be that as it may, in our considered opinion, while applying the provisions of section 50C of the Act, the A.O. has to compute capital gain by taking stamp duty valuation of the property as on the date of execution of MOU. Since, assessee's claim in this regard has not been factually verified, A.O. has to recompute the LTCG based on the value of the property as on the date of execution of MOU between the assessee and the purchaser.

12. As regards assessee's claim of deduction u/s. 54 of the Act, what needs to be examined is the date of investment in new asset. Considering the fact that the assessee has offered capital gain in the year under consideration, based on the registered transfer deed, the date of execution of registered transfer deed has to be reckoned as the date of transfer from which the stipulated period for investment has to be counted. Since, the assessee has invested within the stipulated period, he is eligible to claim deduction u/s. 54 of the Act. In view of the aforesaid, we direct the A.O. to recompute the LTCG, keeping in view the observations made by us in the foregoing paragraphs and thereafter allow deduction u/s. 54 of the Act. Grounds are partly allowed.

13. In the result, the appeal is partly allowed.

Order pronounced in the open court on 18.03.2026

Sd/-

(Makarand V. Mahadeokar)
Accountant Member

Sd/-

(Saktijit Dey)
Vice President

Mumbai; Dated : 18.03.2026

Roshani, Sr. PS

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