

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: DR. BRR Kumar, Vice President
And Shri T. R. Senthil Kumar, Judicial Member**

**ITA No: 1546/Ahd/2025
Assessment Year: 2015-16**

The DCIT Circle-2(1)(1), Ahmedabad (Appellant)	Vs	Vijay Hathising Shah C/o M/s Shah Enterprise, Dena Bank Building, Pritam Nagar, Ahmedabad-380006, Gujarat PAN: ADFPS0868J (Respondent)
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**Revenue Represented: Shri Abhijit, Sr. DR
Assessee Represented: Ms. Arti N Shah, A.R.**

Date of hearing : 05-03-2026
Date of pronouncement : 22-04-2026

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Revenue as against the appellate order dated 16-06-2025 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the assessment order passed under section 143(3) r.w.s. 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2015-16.

2. Brief facts of the case is that the assessee is an individual filed his Return of Income for the Asst. Year 2015-16 on 31-10-2015 showing total income of Rs.16,43,52,760/- including Long Term Capital Gain of Rs.15,85,25,949/-. The return was selected for scrutiny assessment and regular assessment u/s. 143(3) was made on 22-08-2017 accepting the returned income. Subsequently the assessment was revised u/s. 263 of the Act. The assessee along-with other owners sold two non-agricultural lands at Ambli village and the assessee claimed deduction u/s. 54F of Rs.3,96,79,796/- on account of purchase of new residential house. Whereas the assessee was having two residential houses namely (1) Ambli Gam Tal House with book value of Rs.15,73,000/- and (2) Residential Bungalow with Book value of Rs.1,02,53,518/-. Therefore Ld. PCIT denied the claim of deduction u/s. 54F of the Act. This Revision order was giving effect by the Assessing Officer vide order dated 31-03-2022 and determined the Long Term Capital Gain as Rs.19,82,05,745/- and denied benefit of deduction u/s. 54F of Rs.3,96,79,796/- on the ground that the assessee is having more than one residential unit during this financial year.

3. Aggrieved against the giving effect order, assessee filed appeal before Ld. CIT(A) who allowed the deduction u/s. 54F of the Act by observing as follows:

“.....6.1 The submissions of the appellant and order of the AO on the said issue has been considered. The appellant during the course of appellate proceedings has submitted a copy of agreement alongwith photographs of the property. The appellant further submitted that the property was not habitable though originally it was not a residential premises, however, considering the condition of the property all the walls, kitchen, bed room etc. were demolished and the appellant wanted to construct the new house, however, due to certain technical difficulties, the property has remained as it is and it is only a land and there is no structure on the said land. The appellant also stated that since it was a plot of land, he has not shown any value of this property as the income under the house property as per section 22 of the I.T Act, 1961. Even the AO has accepted

and has not made addition on account of income from House Property. As per the I.T act, 1961, only one house is exempt under the head 'Income from House Property'. The photograph submitted by the appellant clearly shows that there is no structure on the property. The appellant has also submitted the sale agreement which was made subsequently wherein it was clearly mentioned that he is selling open plot. The affidavit submitted of the purchaser said land that he has purchased open land from the appellant.

6.2 Reliance in this regard is placed upon the decision of the Hon'ble Hyderabad Tribunal in the case of Smt. Usharani Kalidindi vs. ITO 37 taxmann.com (Hyderabad Trib.); Ashok Sayal vs. CIT, Central Circle, Jalandhar 24 taxmann.com, 274 (Punj. & Haryana).

6.3 Considering the above fact that though originally, the appellant might have purchased residential premises, however, at the time of sale, all the structures were demolished. Considering the above facts and the fact that the property is not habitable, the same cannot be treated as a residential premises. In view of the above, it is very clear that appellant was holding one residential premise and, therefore, the condition of section 54F are met and appellant is entitled to the said deduction.

7. In the result, the appeal is allowed."

4. Aggrieved against the appellate order, the Revenue is in appeal before us raising 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. 3,96,79,796/- on account of disallowance of deduction u/s 54F of the Act, without considering the facts of the case, that the conditions u/s. 54F of the Act were not fulfilled entitling the appellant to claim 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?"

5. Ld. Sr. D.R. appearing for the Revenue in support of the orders passed by Lower Authorities and requested to disallow the deduction u/s. 54F of the Act, since the assessee was holding two residential units during the relevant time.

6. Per contra, Ld. Counsel appearing for the assessee submitted before us three Paper Books at Page Nos. 162 to 171 brought to our notice that translated copy of the Sale Deed dated 29-05-2014. Ld. Counsel appearing for the assessee submitted that the registered Sale Deed makes it very clear the property namely land is inhabitation admeasuring 49.72 Sq. Mtrs. within the border village of Ambli Sub-district Bopal, Ahmedabad. The registered Sale Deed wherein Page No. 7 & 8 carries the photograph of the vacant land with adjacent owners building wall. Thus Ld. Counsel claimed that this property is unfit for habitation and cannot be construed as a residential property. Ld. Counsel also brought to our notice at the time of sale, there was no residential structure however both sides of the property, the neighboring walls were there and no roof over the land, thus it is not a residential property. Therefore the assessing officer was not correct in denying deduction u/s. 54F of the Act that two residential properties were there during this Financial Year.

7. Heard rival submissions and perused the materials available on record including Paper Books filed by the assessee. This giving effect to the Revision order was passed by the Assessing Officer on 31-03-2022 by observing as follows:

“...7. The submissions of the assessee has been considered but is not acceptable for the following reasons:

a. The assessee has claimed that the said property was inhabitable at the time of purchase of the property. However, the assessee has included the asset in his balance sheet for a value of Rs.15,73,600/-

b. The assessee has produced photographic evidence in support of his claim, however it is not ascertainable whether the photographs were taken recently or the condition of the structure was dilapidated at the time of purchase of the property in 2013.

c. It is unlikely that the property was inhabitable at the time of purchase, otherwise the assessee would not have valued the property at Rs.15,73,600/- and included in his class of assets.

In view of the same, the worth of the property is determinable only from the valuation of Rs. 15,73,600/- assigned to it by the assessee himself. It is therefore established that the assessee was the owner of two residential properties at the time of sale of land in the relevant period and is therefore, not eligible to get deduction u/s 54F of the Act.”

7.1. Further the Revision order passed u/s. 263 of the Act by Ld. PCIT was confirmed by Co-ordinate Bench of this Tribunal vide order dated 21-12-2022 in ITA No.97/AHD/2021.

7.2. Perusal of records and the registered Sale Deed (Purchase Deed) dated 29-05-2014 also clearly states that no residential building in the premises and the Schedule of the property described as follows:

SCHEDULE

*“The property of **land of inhabitation admeasuring 49.72 Sq.Mtr.** of City Survey No.382 within the border of Village Ambli of City Taluka of Registration Sub-District Ahmedabad-9 (Bopal) of District Ahmedabad which is running as Tenement No.0654-17-1960-001-K in Ahmedabad Municipal Corporation, the said property together with the constructions having **Roofs made from soil and mud of about 80-50 sq.mtrs.** and, together with the rights of going and coming into the same, rights of disposal and, for bringing and taking the pipes of water and drainage, cables of electric and, telephone, etc. the details of its four khuntas is as under:-*

*East: Road
West: Open Space
North: House of Vasubhai
South: House of Ganpatbhai*

Accordingly, the entire property situated in between the four khuntas.”

8. The assessee purchased the above property in 2014 for a consideration of Rs.15,00,000/- whereas he sold the same property on 05-03-2020 for a consideration of Rs.8,51,000/- only thereby incurred capital loss. The purchaser of the above property also confirmed by way of an Notarized Affidavit that the aforesaid property is open land of inhabitation and at present there does not exist any construction as on 05-03-2020. Even this

registered Sale Deed dated 05-03-2020 also describes the property as open land of inhabitation admeasuring 49.72 sq. mtrs. at Ambli. Thus it is clear the above property is not a residential property. Therefore the question of denying benefit of deduction u/s. 54F does not arise. Thus the ground raised by the Revenue is devoid of merits and liable to be dismissed.

9. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 22 -04-2026

Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT

Ahmedabad :

Dated 22/04/2026

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

True Copy

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद