

आयकर अपीलीय न्यायाधिकरण न्यायपीठ, मुंबई।
IN THE INCOME-TAX APPELLATE TRIBUNAL “C” BENCH,
MUMBAI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 3647/MUM/2025
(निर्धारण वर्ष / Assessment Year: 2012-2013)

Payal Kishore Kulchandani 1201, Badrinath, Opp. Khar Gymkhana, 15 th Road, Khar West, Mumbai 400052.	v/s. बनाम	Income Tax Officer Ward22(2)(5), Mumbai Piramal Chamber, Lalbaug, Parel, Mumbai - 400012.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAPPK0518C		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

निर्धारिती की ओर से /Assessee by:	Shri Vijay Mehta
राजस्व की ओर से /Revenue by:	Shri Virabhadra S. Mahajan

सुनवाई की तारीख / Date of Hearing	16.07.2025
घोषणा की तारीख/Date of Pronouncement	18.08.2025

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 09.04.2025 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for AY 2012-2013.

2. The assessee has raised the following grounds in these appeals.

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1. *The CIT(A) has erred in upholding the assessment order passed u/s.143(3) of the Act which is illegal and bad in law.*
2. *The CIT(A) has erred in confirming the disallowance of claim of exemption of Rs.91,33,892/- made u/s.54 of the Act”*

3. Brief facts of the case are that the assessee filed return declaring total income of Rs.4,03,770/-. The case was selected for scrutiny and statutory notices were issued. The assessee had claimed Long Term Capital Gains (LTCG) of Rs.91,33,892/- on sale of old flat which was claimed as exempt u/s.54 of the Income Tax Act (the Act). The assessee had sold the old flat on 21.07.2011 for a total consideration of Rs.2,85,00,000/- of which the assessee was a joint holder along with her husband. Accordingly, the assessee's share of profit on sale was computed at Rs.91,33,892/- and the same was claimed as exempt u/s.54 of the Act as she had purchased another flat jointly with her husband for a total consideration of Rs.3,05,00,000/-. The agreement to purchase the new flat was entered into on 28.08.2009 and since the date of purchase was beyond the prescribed period of 'one year before the date of sale', Ld. AO sought to disallow the claim of exemption u/s.54 of the Act. In this regard, Ld. AO noted that almost entire payment had been made before 14.12.2009 which was more than one year prior to the date of sale of the old property and, therefore, exemption u/s.54 of the Act could not be claimed. Accordingly, the claim of exemption u/s.54 of the Act amounting to Rs.91,33,982/- was disallowed and assessment was completed at an income of Rs.96,07,966/- u/s. 143(3) of the Act.

3.1. Aggrieved with the order to the Ld. AO, the assessee preferred an appeal before the CIT(A). After considering the assessee's submissions, Ld. CIT(A)

dismissed the appeal vide order dated 09.04.2025. The assessee has now filed an appeal before the Tribunal.

4.1. Before us, Ld. AR has submitted the following chronology of events:

<i>Sr. No.</i>	<i>Date</i>	<i>Particulars</i>
1.	28.08.2009	Agreement entered into for purchase of new 'under construction' flat
2.	On or before 14.12.2009	Part payment for purchase of new 'under construction' flat (Rs.3,05,00,000/-)
3.	07.02.2011	Part payment for purchase of new 'under construction' flat (Rs.1,80,000/-)
4.	05.04.2011	Final payment for purchase of new flat (Rs.5,00,351/-)
5.	06.04.2011	Possession of new flat
6.	21.07.2011	Sale of Old flat (Gain of which is being claimed as exempt u/s.54 of the Act)

4.2. It was further explained that even though the agreement for purchase of flat was entered into on 28.08.2009, the assessee acquired possession of the new flat only on 06.04.2011. He, therefore, argued that the date of last payment and possession is relevant for determining the date of purchase of new flat for computing exemption u/s.54 of the Act. Ld. AR also, submitted that the final payment of Rs.5,00,351/- was made only on 05.04.2011 after which the possession was handed over to the assessee on 06.04.2011. He, therefore, argued that considering the date of possession as the date of acquisition of property, the assessee is entitled to claim exemption u/s.54 of the Act in respect of sale of old flat made on 21.07.2011.

4.3. Reliance has also been placed by the Ld. AR on various decisions of the Co-ordinate Benches which have in turned relied on the order of the Hon'ble

Jurisdictional High Court in the case of *CIT v. Smt. Beena K. Jain* 217 ITR 363 (Bom). In this case, Hon'ble Jurisdictional High Court has upheld the decision of the ITAT wherein it had come to the conclusion that the date of possession of the new residential premises was the relevant date of purchase for the purposes of allowing exemption u/s.54 of the Act instead of the date of agreement and the date of registration for purchase of new property beyond the purchases period of one year prior to and two years after the sale of old property.

5. Ld. AR has also relied on judgement of the Hon'ble Apex Court in the case of *Sanjeev Lal V. CIT* [2014] (365 ITR 389) (SC) wherein the meaning of term 'transfer' was examined in the context of provisions of section 54 of the Act. The relevant observations of the Hon'ble Apex Court relied upon by the Ld. AR are reproduced below:

"In addition to the fact that the term "transfer" has been defined under section 2(47) of the Act, even if looked at the provisions of section 54 of the Act which gives relief to a person who has transferred his one residential house and is purchasing another residential house either before one year of the transfer or even two years after the transfer, the intention of the Legislature is to give him relief in the matter of payment of tax on the long-term capital gain. If a person, who gets some excess amount upon transfer of his old residential premises and thereafter purchases or constructs a new premises within the time stipulated under section 54 of the Act, the Legislature does not want him to be burdened with tax on the long term capital gain and, therefore, relief has been given to him in respect of paying income-tax on the long-term capital gain. The intention of the Legislature or the purpose with which the said provision has been incorporated in the Act, is also very clear that the assessee should be given some relief. Though it has been very often said that common sense is a stranger and an income-patible partner to the Income-tax Act and it is also said that equity and tax are strangers to each other, still this court has often observed that purposive interpretation should be given to the provisions of the Act ."

6. On the other hand, Ld. DR has strongly relied on the orders of the lower authorities and has argued that going strictly by the provisions of section 54, the transaction of purchase of new property falls outside the time period prescribed

u/s. 54 of the Act for claiming exemption of the LTCG. He has, therefore, submitted that the decision of the Ld. CIT(A) confirming the disallowance made by the AO deserved to be upheld.

7. We have heard the rival submissions and perused the information available on record as well as judicial pronouncements relied upon by the Ld. AR.

8. We find that the facts in this case are similar to the case of the *CIT v. Smt. Beena K. Jain* (Supra) wherein the agreement for purchase of the new property was entered into before the prescribed period of “one year before the sale of the old asset”. Substantial, payments had also been made before this period. However, the possession was handed over within the prescribed window u/s. 54 of the Act. Under these facts and circumstances, the Hon’ble jurisdiction High Court held that the relevant date to be taken into account is the date when the assessee paid full consideration of the flat and it became ready for occupation and the assessee had obtained possession of the flat.

8.1. Since the possession of the flat was given during the prescribed period of less than one year before the sale of old flat, the assessee would be entitled to claim deduction u/s 54 of the Act in respect of LTCG.

9. Respectfully following the decisions of the Hon’ble Jurisdiction High Court, we hold that in the present case, the assessee is entitled to claim the deduction u/s. 54 of the Act as possession of the new property has been received

on 06.04.2011 which is within the prescribed period of one year prior to the sale of old flat which took place on 21.07.2011. Accordingly, the AO is directed to allow the claim of deduction u/s. 54 of the Act in respect of LTCG shown by the assessee.

10. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 18.08.2025.

Sd/-
AMIT SHUKLA
(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-
RENU JAUHRI
(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai
दिनांक /Date 18.08.2025
Milan, LDC

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण/
ITAT, Bench, Mumbai.