IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No.5882/Mum/2025
(Assessment Year: 2018-19)

Mr. Mukesh Babulal Shah, A/33, Kalpataru Solitaire, JVPD Scheme, N.S. Road No.5, Near Ecole Model School, Vile Parle (East), Mumbai – 400 049	Vs.	**Income Tax Officer,** Ward 42(1)(3), Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051
PAN:AHEPS7156C		
(**Appellant**)	:	(**Respondent**)

Assessee by	:	Shri Anant Pai, AR
Respondent by	:	Shri Annavaram Kosuri, Sr. AR

Date of Hearing	:	27.01.2026
Date of Pronouncement	:	22.04.2026

O R D E R

Per Kavitha Rajagopal, JM:

This appeal has been filed by the assessee, challenging the order of the Learned Commissioner of Income Tax (Appeals) ['Ld. CIT(A)' for short], National Faceless Appeal Centre ("NFAC" for short) passed u/s. 250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2018-19.

2. The assessee has raised the following grounds of appeal:

"1. On facts and circumstances of the case and in law, the learned Commissioner (Appeals) erred in sustaining the disallowance of deduction u/s 54 of Rs.3,69,01,341/- made by the learned Assessing Officer ground that the Appellant had not pre-deposited the capital gains in the Capital Gains Account Scheme.

In the process, the learned Commissioner (Appeals) failed to take note that the incentive provisions of section 54 should be interpreted beneficially as per its legislative intent.

The Appellant, having fulfilled the essentials of the legislative intent, ought to be allowed the deduction in appeal.

2. Both the lower authorities erred in passing their respective orders in contravention of principles of natural justice. Their actions require to be set right in appeal."

3. Brief facts of the case are that the assessee is an individual and had filed his return of income declaring total income at Rs.24,73,890/- after claiming deduction under chapter VI of the Act. The assessee's case was selected for limited scrutiny assessment under e-Assessment Scheme, 2019 on the issue of "capital gains deductions claimed". Notices u/s 143(2) and 142(1) of the Act were duly issued and served upon the assessee. The Learned Assessing Officer ("Ld. AO" for short) after duly considering the assessee's submission passed the assessment order u/s 143(3) r.w.s. 143(3A)(3B) of the Act vide order dated 31.03.2021 determining the total income at Rs.3,93,75,231/- after making an addition u/s 54 of the Act amounting to Rs.3,69,01,341/- by relying on the decision of the Hon'ble Jurisdictional Bombay High Court in the case of ***Humayun Suleman Merchant Vs. Chief Commissioner of Income Tax*** **in Income Tax appeal No.545 of 2002** ***vide order dated 18th August, 2016.***

4. Aggrieved, the assessee was in appeal before the first appellate authority, who vide order dated 01.08.2025 dismissed the appeal filed by the assessee on the ground that investment in the property for claiming deduction u/s 54 ought to be within the stipulated time prescribed under law.

5. Aggrieved, the assessee is in appeal before us, challenging the order of the Ld. CIT(A).

6. The Learned Authorized Representative ("Ld. AR" for short) for the assessee contended that the Ld. AO has denied the exemption claimed by the assessee u/s 54 of the Act on the ground that the capital gains earned by the assessee on sale of three properties were not deposited in the capital gain scheme account before the due date of filing of return of income as per section 54(2) of the Act. The Ld. AR contended that the assessee has utilised the sale consideration towards purchase of new property within the due date specified u/s 139 of the Act though the sale agreement was executed subsequently on a later date. The Ld. AR further contended that the Hon'ble Jurisdictional Bombay High Court in the case of ***Humayun Suleman Merchant (supra)*** relied upon by the lower authorities were distinguishable on the facts of the case and also the said decision has approved the decision of Hon'ble Guwahati High Court in case of ***Rajesh Kumar Jalan (2006) 286 ITR 274.*** The Ld. AR also relied on the decision of the Hon'ble Karnataka High Court in the case of ***CIT vs. K. Ramachandra Rao 277 CTR 522 (Kar)*** where this issue stands covered in favour of the assessee.

7. The Learned Departmental Representative ("Ld. D.R." for short), on the other hand, contended that this issue stands covered in favour of the Revenue by the decision of the Hon'ble Jurisdictional Bombay High Court in the case of ***Humayun Suleman Merchant (supra).*** Further, the Ld. DR argued that in case of two different views of the High Courts

on a particular issue, only the jurisdictional High Court's decision ought to be followed. The Ld. DR relied on the order of the lower authorities.

8. We have heard the rival submissions and perused the materials available on record. The only moot issue that requires adjudication is whether the assessee is entitled to claim deduction u/s 54 of the Act in case where the Department alleges that the assessee has failed to deposit the sale consideration in the capital gain account within the prescribed period as per the provisions of section 54(2) of the Act.

9. It is observed that the assessee has sold land or building or both for a total sale consideration of Rs.5,03,00,000/- on various dates ranging from 08.08.2017 to 22.12.2017 and had claimed deduction u/s 48 of the Act amounting to Rs.1,33,98,659/-. The assessee had claimed deduction u/s 54 of the Act on the balance amount of Rs.3,68,01,341/-. It is further observed that the assessee had filed his return of income on 28.12.2018 belatedly which according to the Ld. AO ought to have been filed on 31.10.2018 which was the extended due date for filing the returns u/s 139(1) of the Act. The Ld. AO denied the assessee's claim u/s 54 of the Act for the reason that the assessee had failed to deposit the capital gain amount in the capital gain account scheme nor had he made investment before the due date of filing of return of income u/s 139(1) of the Act. Pertinently, the assessee is said to have made investment in the new property on 24.12.2018, though the sale agreement was executed on 31.01.2019 which fact was also recorded by the lower authorities. The assessee's contention is that he had paid the entire sale consideration towards purchase of new property where the total investment was Rs.8,45,31,078/- before filing of the return of

income u/s 139(4) of the Act and hence there was no necessity to deposit the sale consideration in the capital gain account as there was no unutilised consideration left with the assessee as on the date of filing of the return of income. The Ld. DR's argument was that the assessee had not filed his return of income within the due date prescribed u/s 139(1) of the Act and hence is not entitled to claim deduction u/s 54 of the Act on a belated return filed u/s 139(4) of the Act. The Ld. DR extensively relied on the decision of the Hon'ble Jurisdictional High Court in the case of ***Humayun Suleman Merchant (supra).*** As the factual position has not been controverted by either sides, it is trite to delve into the legal issue of whether the assessee's claim u/s 54 of the Act is allowable or not in accordance with the proposition laid down by the Hon'ble High Courts. It is relevant to reproduce section 54 of the Act for ease of reference which is as under:

> *"**54.** [94][(1)] [95][[96][Subject to the provisions of sub-section (2), where, in the case of an assessee [97] being an individual or a Hindu undivided family], the capital gain arises from the transfer of a long-term capital asset [98][***], being buildings or [99]lands appurtenant thereto, and being a residential house [99], the income of which is chargeable under the head "Income from house property" (hereafter in this section referred to as the original asset), and the assessee has within a period of [1][one year before or two years after the date on which the transfer took place purchased [2]], or has within a period of three years after that date [3][constructed, one residential house in India], [2]then], instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,-*
>
> *(i) if the amount of the capital gain [4][is greater than the cost of [5][the residential house] so purchased or constructed (hereafter in this section referred to as the new asset)], the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or*

(ii) *if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain:*

[6]*[**Provided** that where the amount of the capital gain does not exceed two crore rupees, the assessee may, at his option, purchase or construct two residential houses in India, and where such option has been exercised,-*

(a) *the provisions of this sub-section shall have effect as if for the words "one residential house in India", the words "two residential houses in India" had been substituted;*

(b) *any reference in this sub-section and sub-section (2) to "new asset" shall be construed as a reference to the two residential houses in India:*

***Provided further** that where during any assessment year, the assessee has exercised the option referred to in the first proviso, he shall not be subsequently entitled to exercise the option for the same or any other assessment year:]*

[7]*[**Provided also**that where the cost of new asset exceeds ten crore rupees, the amount exceeding ten crore rupees shall not be taken into account for the purposes of this sub-section.]*

[8]*[***]*

[9]*[(2) The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised [10] by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme [11] which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall [12][, subject to the third proviso to sub-section (1)] be deemed to be the cost of the new asset :*

***Provided** that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,-*

(i) *the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and*

(ii) *the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid:*

[13]*[**Provided further** that the capital gains in excess of ten crore rupees shall not be taken into account for the purposes of this sub-section.]*

Explanation.- [14][Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.]"

10. On a bare perusal of the provision, it is observed that the assessee on transfer of a long term capital asset where capital gain arises from such transfer, the assessee within the specified period had invested in the purchase/construction of a new asset then the said capital gain is not chargeable to tax subject to fulfilment of the conditions specified in section 54(1) of the Act. Sub section 2 provides for depositing the unutilized amount for purchase or construction of new asset in a notified bank account which shall be deposited before furnishing such return which is not later than the due date for furnishing return of income u/s 139(1) of the Act. For the purpose of determining the capital gain tax the assessee's contention is that section 54 of the Act is a beneficial provision and should be interpreted liberally where the assessee is entitled to the benefit of section 54 of the Act when the basic conditions of the said provisions are satisfied. The assessee further contends that ultimately he had invested in the new residential house before filing of the return of income though ROI filed belatedly, thereby fulfilling the conditions specified in section 54 of the Act. The Ld. DR and the lower authorities have extensively relied on the decision of the Hon'ble Jurisdictional High Court in the case of ***Humayun Suleman Merchant (supra)*** which had also dealt with the decision of the Hon'ble Karnataka High Court in the case of ***K. Ramachandra Rao's*** case **(supra)** relied upon by the Ld. AR, where the claim of the assessee was denied for failure to deposit the unutilized amount in the notified bank accounts before filing of return of income in accordance with the provisions of section 54F(4) of the Act. Pertinently, section 54F(4) and section 54(2) of the Act are identically worded. Further, the proposition laid down by the Hon'ble Jurisdictional High

Court that even in case of beneficial provision the language of the taxing statute has to be construed strictly when there is no ambiguity in the provision and held that the decision of the Hon'ble Karnataka High Court in ***K. Ramachandra Rao (supra)*** has been rendered *sub-silentio* which cannot be relied upon and the same does not have a binding precedent upon another High Court unlike a decision of the Hon'ble Supreme Court. The relevant extract of the said decision is cited herein under for ease of reference:

> *"(i) On the basis of the above broad analysis, we shall now examine the facts of the present case. The sale of capital asset took place on 29th April, 1995 for a consideration of Rs. 85.33 lakhs. The agreement for purchase of construction of flat for consideration of Rs. 69.90 lakhs was entered into by the appellant on 16th July, 1996. An amount of Rs. 35 lakhs were utilized by the Appellant in purchase of flat before the return of income was filed on 4th November, 1996 under Section 139 of the Act. However, the mandate under sub-Section (4) of Section 54F of the Act is that the amount not utilized towards the purchase of the flat has to be deposited before the due date of filing return of Income under Section 139(1) of the Act in the specified bank account. In this case admittedly the entire amount of capital gains on sale of asset which is not utilized has not been deposited in a specified bank account before due date of filing of return under Section 139(1) of the Act. Therefore where the amounts of capital gains is utilized before filing of the return of income in purchase/construction of a residential house, then the benefit of exemption under Section 54F of the Act is available. Before us it is an undisputed position that except Rs. 35 lakhs, the balance of the amounts subject to capital gains tax has not been utilized before date of furnishing of return of income i.e. 4th November, 1996 under Section 139 of the Act. Therefore, on plain interpretation of Section 54F of the Act, it appears that the impugned order of the Tribunal cannot be faulted.*
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> *(j) However, the aforesaid view would be subject to the result of our examination of the submissions and case laws relied upon by Mr. Chatterji in support of the appeal to urge a view contrary to the plain meaning of Section 54F of the Act.*
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> *(k) Reliance placed by the Appellant upon the decision of this Court in Mrs. Hilla J. B. Wadia's case (supra) to contend that the issue stands concluded in favour of the appellant-assessee is not acceptable. This for the reason that the only issue for consideration before the Court in the above case was the interpretation of Section 54 of the Act. In the above case the assessee had sold her residential property and invested a substantial amount in a Society for construction of a residential flat in the building to be constructed. The assessee therein had paid substantial amounts to the society and also acquired domain over the flat within a period of 2 years from the date of the sale of her house. At that point of time i.e. for the Assessment Year 1973-74 there was no requirement of depositing any unutilized amount in a specified bank account as now*

provided under Section 54(2) of the Act (similar to Section 54F(4) of the Act). Therefore the Court had no occasion to consider the provisions of Section 54(2) of the Act which is similar to Section 54F(4) of the Act, with which we are concerned.

(l) Mr. Chatterji, then placed reliance on the observation of this Court in Mrs. Hilla J.B. Wadia's case (supra) that the Circular issued by the Central Board of Direct Taxes dated 15th October, 1986 in relation to construction of a home by Delhi Development Authority should also be extended to cities like Mumbai, as there is no control over the time taken by the developer/builder to construct the house and give possession of the same to the assessee. The Central Board of Direct Taxes Circular dated 15th October, 1986 was issued only in the context of Section 54 and 54(F) of the Act to clarify that an investment in a flat under the self-finance scheme of Delhi Development Authority would be treated as construction for the purpose of capital gain, where an allotment letter has been issued by the Authority and facility of payment in instalment is provided for the purchase of flat. It did not even remotely concern itself with the provision of Section 54(2) and/or 54F(4) of the Act with which we are concerned. The Circular only extended the meaning of constructing a residential house within a period of three years from the sale of the capital asset. The subsequent Circular issued in 16th December, 1993 by the Central Board of Direct Taxes relied upon by the Appellant, only extended the meaning of "constructed within a period of three years" to allotment letters issued by the Co-operative Housing Society or other similar institution for the purpose of section 54F of the Act. Therefore, it does not in any manner do away with and/or relax the statutory mandate of depositing the unutilized amount in the specified bank account as required by sub-section (4) of Section 54F of the Act. Therefore, neither the decision of this Court in Mrs. Hilla J. B. Wadia's case (supra) nor the Central Board of Direct Taxes Circulars dated 15th October, 1986 and 16th December, 1993 would govern the issue so as to conclude the issue in favour of the Appellant.

(m) The reliance upon the decision of the M.P. High Court in Smt. Shashi Varma's case (supra), also does not advance the case of the Appellant. We find that the facts in the above case are similar to the one in Mrs. Hilla J.B. Wadia's case (supra) and for the same reasons, will not govern the present dispute. In fact, the issue stood covered by the Circular dated 15th October, 1986 as the property purchased therein was of the Delhi Development Authority. Thus, the above decision has no application to the present facts.

(n) Mr. Chatterji, learned Senior Counsel appearing for the appellant assessee then contended on the basis of the two Circulars dated 15th October, 1986 and 16th December, 1993 of the Central Board of Direct Taxes that once an allotment letter has been issued to the assessee, then it follows that the title of the constructed house has passed on to the assessee. Therefore the payment made subsequent to allotment letter in instalments would not in any manner affect the assessee having satisfied Section 54F(1) of the Act. This submission ignores the fact that Sub-Section (1) of Section 54F has been made subject to Sub-Section (4) of the Act. The requirement under Section 54F(4) of the Act is the deposit of the unutilized amount in the specified bank account till it is utilized. This requirement has not been done away with in either of the above two

Circulars dated 15th October, 1986 and 16th December, 1993 relied upon by the Appellant-Assessee.

(o) *Mr. Chatterji, learned Senior Counsel next submitted that in any case the issue now stands concluded in favour of the Appellant by the decision of the Karnataka High Court in K. Ramachandra Rao's case (supra) wherein an identical question came up for consideration and it was held that even where the assessee had not deposited the unutilized Capital Gain in an account which was duly notified by the Central Government in terms of Section 54F(4) of the Act, the benefit of Section 54F(1) of the Act would still be available. The Court held that if the intention was not to retain the capital gains but was to invest it in construction of property within the period stipulated in Sub-Section (1) of Section 54(F) of the Act then Section 54F(4) of the Act is not at all attracted. We are with respect unable to accept the reasoning adopted by Karnataka High Court in K. Ramachandra Rao's case (supra). The mandate of Section 54F(4) of the Act is clear that amount which has not been utilized in construction and/or purchase of property before filing the return of income, must necessarily be deposited in an account duly notified by the Central Government, so as to be exempted.*

(p) *Further, Section 54F(4) of the Act specifically provides that the amounts which have not been invested either in purchase/construction of house have to be deposited in the specified accounts before the due date of filing of return of income under Section 139(1) of the Act. The aforesaid aspect it appears was not noticed by the Karnataka High Court. In any case, the entire basis of the decision of the Karnataka High Court in K. Ramachandra Rao's case (supra) is the intent of the parties. In interpreting a fiscal statute one must have regard to the strict letter of law and intent can never override the plain and unambiguous letter of the law. It is true that normally while construing an all India Statute like the Income Tax Act, we would not easily depart from a view taken by another High Court on an issue arising for our consideration. This on consideration of certainty and consistency in law. However, the view of the other High Courts are not binding upon us unlike a decision of the Apex Court or of Larger or a Co-ordinate Bench of this Court. Thus if on an examination of the decisions of the other High Court we are unable to accept the same, we are not bound to follow/accept the interpretation of the other High Courts leading to a particular conclusion. In this case we find that the decision of the Karnataka High Court in K. Ramachandra Rao's case (supra) was rendered sub-silentio i.e. no argument was made with regard to the requirement of deposit in notified bank account in terms of Section 54F(4) of the Act before the due date as provided in Section 139(1) of the Act. As observed in Salmond's Jurisprudence 12th Edition :*

> *"The rule that a precedent sub silentio is not authoritative goes back at least to 1661(m) when Counsel said : 'An hundred precedents sub-silentio are not material'; and Twisden J agreed : 'precedents sub-silentio and without argument are of no moment'. This rule has ever since been followed."*

(q) *In fact this Court in CIT v. Thana Electricity Supply Ltd. [1994] 206 ITR 727 (Bom.) has observed that a decision of one High Court is not binding as a precedent on another High Court unlike a decision of the Apex Court. In support, reliance was placed in the above*

order upon the decision of the Apex court in Valliamma Champaka Pillai v. Sivathanu Pillai AIR 1979 SC 1937 to hold that it is well settled that decision of one High Court is not a binding precedent upon another High Court and at best can only have persuasive value. However, at the cost of repetition we must emphasize that the decision of another High court rendered in the context of an all India Act would have persuasive value and normally to maintain uniformity and certainty we would adopt the view of the other High Court. However, with the greatest respect, we find that the decision of Karnataka High Court in K. Ramachandra Rao's case (supra) has been rendered sub-silentio. Therefore, we cannot place any reliance upon it to conclude the issue on the basis of that decision.

(r) *It was next contented by Mr. Chatterji, that liberal/beneficial construction should be given to the provision of Section 54F of the Act as its object was to encourage the housing sector which would result in the benefit being extended to the appellant assessee. In support, reliance was placed upon the decision of Delhi High Court in Ravinder Kumar Arora's case (supra). We find that observation of the Delhi High Court in Ravinder Kumar Arora's case (supra) that Section 54F of the Act should be liberally construed was in the context of the benefit being denied as the name of the wife was added to purchase made by the assessee of a new flat. This denial was even though all the requirements of Section 54F of the Act stood satisfied. Therefore the observation of the Delhi High Court would have no application to the present facts.*

(s) *It is a settled position in law that no occasion to give a beneficial construction to a statute can arise when there is no ambiguity in the provision of law which is subject to interpretation. Thus in the face of the clear words of the Statute the intent of parties and/or beneficial construction is irrelevant. In fact, the Apex court in Sales Tax Commissioner v. Modi Sugar Mills [1961] 12 STC 182 reiterated the well settled principle of interpretation in the following words:*

> *"In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statute be interpreted on any presumption or assumptions....It must interpret a taxing statute in the light of what is clearly expressed . . ."*

Recently, the Supreme Court in Mathuram Agrawal v. State of Madhya Pradesh [1999] 8 SCC 667 has observed as under :—

> *"The intention of the Legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the Legislature . . . " (Emphasis Supplied)*

Similarly this Court in Thana Electricity Supply Ltd's case (supra) had observed as under :—

> *"If the provision of a taxing statute can be reasonably interpreted in two ways, that interpretation which is favourable to the assessee has got to be accepted. This is a well-accepted view of law. It is the satisfaction of the court interpreting the law that the language of the taxing statute is ambiguous or reasonably capable of more meanings than one, which is material. If the court does not think so, the fact that two different views have been advanced by the parties and argued forcefully or that one such view which is favourable to the assessee has been accepted by some Tribunal or High Court, by itself will not be sufficient to attract the principle of beneficial interpretation"*

In the present facts the provision of Section 54F(4) of the Act are very clear. There is no ambiguity. Thus, there is no occasion to apply liberal/beneficial construction while interpreting the Section as contended by the Appellant.

(t) *It was next contended by Mr. Chatterji, learned Senior Counsel for the appellant that the word "appropriation" used in Section 54F(4) of the Act would also apply in the present case where the capital asset has been sold and sale proceeds are earmarked to be invested in construction of house. A plain reading of Section 54F(4) of the Act militates against it. As pointed out by Mr. Malhotra, learned Counsel appearing for the revenue, Section 54F(4) of the Act deals with two classes of cases, one where purchase of new residential house is within a period of one year before the date on which capital asset is sold by assessee and second class of cases where the amount subjected to capital gains are utilized for purchase/constructing a flat, post the sale of the capital asset. In the present facts we are concerned with the second class i.e. purchase post the sale of the capital asset.*

(u) *The parliament has used the word "appropriated" in the first class of cases i.e. where property has already been purchased prior to the sale of capital asset and the amount received on sale of capital asset is appropriated towards consideration which has been paid for purchase of the flat. In this case we are concerned with the purchase/construction of residential housing, after the sale of capital asset. This requires the amount which is to be subjected to capital gain has to be utilized before the date of filing of return of Income under Section 139 of the Act by the assessee. Section 54F(4) of the Act itself clearly states that the amount not utilized in purchase/construction of flat/house should be deposited in the specified Bank notified by the Government. Thus the plain language employed in Section 54F(4) of the Act makes a clear distinction between cases of appropriation (purchase prior to sale of capital asset) and utilization (purchase/construction after the sale of capital asset). Therefore the word "appropriated" would have no application in cases of purchase/construction of a house after the sale of capital asset with which we are concerned.*

(v) *Lastly and in the alternative, it is submitted by Mr. Chatterji, that as the entire amount has been paid to the developer/builder before the last date to file the return of Income under Section 139 of the Act, the exemption is available to the appellant under section*

54F(4) of the Act. In support, the decision of Gauhati High Court in Rajesh Kumar Jalan's case (supra) is relied upon. The Gauhati High Court in the above case was concerned with the interpretation of Section 54 of the Act. It construed the provision of sub-Section (2) of Section 54 of the Act which is identically worded to sub-section (4) of Section 54F of the Act The Court in the aforesaid decision held that the requirement of depositing before the date of furnishing of return of Income under Section 139 of the Act has not to be restricted only to the date specified in Section 139(1) of the Act but would include all sub-section of Section 139 including sub-section (4) of the Act. On the above basis it concluded that if the amount is utilized before the last date of filing of the return under Section 139 of the Act then the provision of Section 54(2) of the Act would not hit the assessee before it. It is not very clear in the above case whether the amounts were utilized before the assessee filed its return of income or not.

(w) However, the factual situation arising in the present case is different. The return of income is admittedly filed on 4th November, 1996. In terms of Section 54F(4) of the Act as interpreted by the Gauhati High Court in Rajesh Kumar Jalan's case (supra) the amounts subject to capital gain on sale of the capital asset for purpose of exemption, has to be utilized before the date of filing of return of income. In this case 4th November, 1996 is the date of filing the return of Income. It is not disputed that on 4th November, 1996 when the return of income was filed, the entire amount which was subject to capital gain tax had not been utilized for the purpose of construction of new house nor were the unutilized amounts deposited in the notified Bank Accounts in terms of Section 54F(4) of the Act before filing the return of income. It is also to be noted that in line with the interpretation of Gauhati High Court on Section 54F(4) of the Act, the Assessing Officer had taken into account all amounts utilized for construction of a house before filing the return of income on 4th November, 1996 for extending the benefit of exemption under Section 54F of the Act. Therefore, in the present facts, the decision of the Gauhati High Court in Rajesh Kumar Jalan's case (supra) would not apply so as to hold that the appellant had complied with the Section 54F(4) of the Act.

(x) In the above view question no. 2 is also answered in the affirmative i.e. in favour of the revenue and against the appellant-assessee."

11. From the above observation, it can be inferred that the deposit of the unutilized amount in specified bank account within the prescribed time limit is a mandatory condition which cannot be overlooked though the same being a beneficial provision. Further, it had also dealt with the decision of Hon'ble Karnataka High Court in ***K. Ramachandra Rao (supra)*** which had merely gone by the intention of the assessee to purchase or construct the house and not to retain the capital gain, rather than looking into the provision of the

Act where it had unambiguously specified that the unutilized consideration has to be deposited as per the capital gain scheme before the due date of filing of return of income u/s 139(1) of the Act. This tantamounts to a precedent *sub-silentio* and more so the decision of one High Court is not binding on another High Court as a precedent. Here in the present case, the facts are distinguishable to the extend that the assessee is said to have invested the entire sale consideration before filing of the return of income u/s 139 of the Act. In such case, the Hon'ble Jurisdictional High Court at para (v) & (w) had dealt with the decision of the Hon'ble Guwahati High Court in the case of ***Rajesh Kumar Jalan (supra)*** which held that if the sale consideration is utilised before the last date of filing of return u/s 139 of the Act, in that case though return was filed u/s 139(4) of the Act being a belated return the same was an allowable claim. It further distinguished the case where the amount was utilised for construction of a house before filing of the return of income be it under any sub section of section 139 of the Act, with the case where the unutilised amount which ought to have been deposited on or before the due date specified u/s 139(1) of the Act. This view taken by the Hon'ble Guwahati High Court in case of ***Rajesh Kumar Jalan (supra)*** was also considered by the Hon'ble Jurisdictional High Court in ***Humayun Suleman Merchant (supra).*** The assessee's case would squarely fall under the category where the amount was utilised for purchase of new property within the specified time and hence the assessee was not required to deposit any unutilised amount being not appropriated before the due date for filing of return of income u/s 139(1) of the Act. Hence, the assessee is entitled to the claim made u/s 54 of the Act subject to the verification that assessee has utilised the capital gain in the purchase of the new property before filing of

the return of income which is on 24.12.2018. As the details of the payments made by the assesse for purchasing the new property were not filed before us, we remand this issue to the file of the Ld. AO to the limited extent of verifying the said payments and direct the Ld. AO to allow the claim of the assessee u/s 54 of the Act thereafter. The grounds of appeal raised by the assessee are hereby allowed on the above terms.

12. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 22.04.2026

Sd/-	**Sd/-**
(VIKRAM SINGH YADAV)	**(KAVITHA RAJAGOPAL)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated: 22.04.2026

* Kishore, Sr. P.S.

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