

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"H (SMC)" BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.6991/MUM/2024**

**Assessment Year : 2012-13**

**Allauddin Noormohamed Kadiwala,**

302 Jogeshwari Anand CHS Ltd.,

Behram Baug, Jogeshwari (W)

Mumbai - 400102

..... Appellant

v/s

**ITO, Ward – 41(4)(1)**

Kautilya Bhavan, Bandra Kurla Complex,

Bandra (East),

Mumbai – 400051

PAN: AABPK6147K

..... Respondent

Assessee by : Ms. Manisha Ghind (virtually appeared)

Revenue by : Shri Pravin Salunkhe, Sr.DR

Date of Hearing – 17/06/2025

Date of Order – 19/06/2025

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The assessee has filed the present appeal against the impugned order dated 06/11/2024, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2012-13.

2. In this appeal, the assessee has raised the following grounds: -

*"1. The Hon'ble CIT(A) has erred in restricting the deduction claimed u/s 54 F of the I.T. Act, to an amount of Rs. 25,00,000/- as against an amount of Rs.*

*50,59,270/-, resulting into disallowance of Rs. 25.59.270/-, without appreciating the facts of the case as well law.*

*2. The Hon'ble CIT(A) has failed to appreciate the documentary evidence furnished before him (confirmation dated 01/06/2012) in proper perspective.*

*Without prejudice to the above:*

*3. The Hon'ble CIT(A) has failed to appreciate that once M/s Delta Ventures (appellant's debtor) and Shri Jaferali Jalal Momin (appellant's creditor) having agreed to adjust the account among themselves and having discharged appellant of the obligation, it amounts to appellant having invested the amount in purchase of property so as to fulfil the condition of Sec 54F of the I.T. Act.*

*4. The Hon'ble CIT(A) has failed to appreciate that appellant has received the possession of the flat, which further conclusively proves that appellant had discharged his obligation and as such is entitled/ eligible for deduction u/s 54 F of the I.T. Act.*

*5. The Hon'ble CIT(A) has failed to appreciate / interpret the provisions of sec. 54F of the IT Act in proper perspective."*

3. The solitary grievance of the assessee is against the restriction of deduction claimed under section 54F of the Act.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is an individual and is engaged in the dairy business. For the year under consideration, the assessee filed his return of income on 26.02.2013, declaring income under the head profits and gains of business and professions, long-term capital gain and income from other sources. The assessee was a member of the society called the Janta Co-operative Dairy Society Ltd. The society acquired an immovable property in District Thane, measuring 22,865 mtrs. The society permitted its members to construct cattle sheds and several other structures for storing grass and cattle feeds, etc. During the year under consideration, the society entered into a Joint Development Agreement dated 23.12.2011 with M/s. Delta Ventures for the development of 20,174 sq. mtrs. of the property. As per the agreement,

M/s. Delta Venture valued the entire land at ₹ 25,21,00,000/- and paid society a sum of ₹ 12,60,00,000/-, being 50% of the value of the land. Said 50% money received from the developers was distributed by the society in the ratio of 7.5% for the society and 42.5% for its members. Accordingly, the assessee received a sum of ₹ 50,59,270/-. The assessee claimed that the amount received from the developer on account of surrender of his tenancy rights/possessory rights is capital in nature, and accordingly, computed long-term capital gain from the transfer of tenancy/possessory rights and also claimed exemption under section 54F of the Act.

5. In the first round of assessment proceedings, the Assessing Officer ("AO") vide order dated 12.03.2015 passed under section 143(3) of the Act treated the amount received by the assessee from M/s. Delta Venture as income from other sources. However, in further appeal, the Co-ordinate Bench of the Tribunal, accepting the contention of the assessee, held that the surplus earned by the assessee on account of transfer of tenancy rights/possessory rights is assessable under the head "*capital gains*". The Co-ordinate Bench further directed the AO to make necessary enquiries to ascertain the facts with regard to the claim of exemption under section 54 of the Act.

6. In the second round of assessment proceedings, pursuant to the directions of the Co-ordinate Bench vide order dated 31.07.2019, the AO issued notice asking the assessee to show cause as to why the claim of deduction under section 54F of the Act should not be restricted only to ₹ 25 lakh and the remaining long-term capital gain of ₹ 25,59,270/- be not added to the total income of the assessee as the later amount was actually paid by

M/s. Delta Venture to the seller of the residential flat on 30.03.2015. In response, the assessee furnished a copy of the confirmation letter from M/s. Delta Venture dated 01.06.2012, which was countersigned by the seller of the flat, submitting that M/s. Delta Venture has agreed to pay a sum of ₹ 26 lakh to the seller for the flat purchased by the assessee. The AO, vide order dated 13.09.2021 passed under section 143(3) read with section 254 read with section 144B of the Act, disagreed with the submissions of the assessee and held that out of the total compensation of ₹ 50,59,270/- payable by M/s. Delta Venture to the assessee, only the sum of ₹ 83,229/- was paid to the assessee during the previous year 2011-12, and the remaining amount of ₹ 49,76,041/- was credited to the amount of assessee by M/s. Delta Venture. The AO further held that it is out of this credited amount that M/s. Delta Venture agreed to pay a sum of ₹ 26 lakh to the seller of the flat, which was actually paid only on 30.03.2015, i.e., beyond the time period permitted under section 54F of the Act. The AO further noted the fact that though M/s. Delta Venture had entered into an agreement with the society and its members on 23.12.2011, it did not have the requisite funds to pay the society/members, including the assessee, and therefore, the amount payable by M/s. Delta Venture to the society or its members was shown as a liability in its books of account for the assessment years 2012-13 and 2013-14. It is further noted by the AO that it is only after the Joint Venture constructed the flats and gave the flats to the members of the society that this liability was adjusted, and therefore, as on 01.06.2012, M/s. Delta Venture was not in a position to give any amount to the seller, and the letter given by the M/s. Delta Venture promising to pay the seller on behalf of the assessee is only to facilitate the assessee in claiming a

deduction under section 54F of the Act. Accordingly, the AO restricted the deduction claimed by the assessee to ₹ 25 lakh under section 54F of the Act and the remaining long-term capital gain of ₹ 25,59,270/- was added to the total income of the assessee.

7. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee on this issue and upheld the additions made by the AO on account of long-term capital gain earned by the assessee. Being aggrieved, the assessee is in appeal before us.

8. We have considered the submissions of both sides and perused the material available on record. In the present case, on 23.12.2011, a Joint Development Agreement was entered into with M/s. Delta Venture for the development of a land by a society, in which the assessee was one of the members. As a consideration, the assessee was entitled to receive a sum of ₹ 50,59,270/- from the developer on account of surrender of his tenancy/possessory rights. The assessee treated the said amount received from the developer as long-term capital gain, which stood affirmed by the Co-ordinate Bench of the Tribunal vide its order dated 31.07.2019 in ITA No.5105/Mum/2017 in the first round of proceedings. On 06.03.2012, the assessee entered into an agreement for sale with Mr. Jaferali Jalal Momin for the purchase of immovable property, i.e., Flat No. 302, Jogeshwari Co-operative Housing Society Ltd., for a total consideration of ₹ 51 lakh. There is no dispute amongst the parties regarding the aforementioned basic facts of the present case.

9. The assessee claimed deduction under section 54F of the Act on the basis that the long-term capital gain earned from the transfer of tenancy/possessory rights was invested for the purchase of a residential flat from Mr. Jaferali Jalal Momin. During the second round of assessment proceedings, the assessee was asked to prove the eligibility of the claim of deduction under section 54F of the Act by producing the documentary evidence of payments made towards the purchase of the aforesaid residential flat. In response, the assessee submitted that he paid a sum of ₹ 10 lakh on 09.03.2012 through cheque and another sum of ₹ 15 lakh on 10.3.3.2012 through cheque. The assessee further submitted that the balance amount of ₹ 26 lakh was paid by M/s. Delta Venture to Mr. Jaferali Jalal Momin.

10. Insofar as the payment of ₹ 25 lakh paid by the assessee through cheque, the lower authorities accepted the contention of the assessee since the payment was made within a period of one year from the date of transfer of the original asset (i.e., transfer of tenancy/possessory rights). However, as regards the payment of ₹ 26 lakh, which the assessee claimed was paid by M/s. Delta Venture to Mr. Jaferali Jalal Momin on behalf of the assessee, the lower authorities disagreed with the submission of the assessee as the said payment was actually made by M/s. Delta Venture to Mr. Jaferali Jalal Momin on 30.03.2015. Thus, the lower authorities restricted the deduction claimed by the assessee under section 54F of the Act to ₹ 25 lakh only and the remaining long-term capital gain of ₹ 25,59,270/- was added to the total income of the assessee.

11. In order to support its contention that the assessee's liability to pay the balance amount of ₹ 26 lakh to Mr. Jaferali Jalal Momin was discharged within the time prescribed under section 54F of the Act, the assessee placed on record a letter dated 01.06.2012, whereby M/s. Delta Venture agreed to pay a sum of ₹ 26 lakh to Mr. Jaferali Jalal Momin for the flat purchased by the assessee. From the perusal of the said letter dated 01.06.2012, forming part of the paper book at page 14, we find that the seller of the residential flat, i.e., Mr. Jaferali Jalal Momin has also countersigned the said letter and also agreed that no amount is outstanding from the assessee towards the sale of said flat. In this regard, Mr. Jaferali Jalal Momin has issued another confirmation on 01.04.2017, submitting as follows:-

### TO WHOSOEVER IT MAY CONCERN

This is to confirm that I have sold the Flat No 302, Jogeshwari Anand C H S L, Behram Baug, Jogeshwari(W), Mumbai 400 102 vide our agreement dated 06/03/2012 for Rs. 51,00,000/- to Allauddin Noormohd Kadiwala. I hereby confirm that I have received the above payment of Rs. 51,00,000/- as under :-

Date of Payment	Amount	Source
09/03/2012	10,00,000/-	Cheque
10/03/2012	15,00,000/-	Cheque
01/06/2012	26,00,000/-	Amount agreed to be received from Delta Ventures. (As agreed by confirmation dated 1-6-2012 by Delta Ventures)



(JAFFERRALI MOMIN)

Place:-Mumbai

Dated:-1/04/2017

12. Further, in order to support the contention that pursuant to the aforesaid arrangement M/s. Delta Venture was liable to pay ₹ 26 lakh to Mr. Jaferali Jalal Momin, the assessee has placed on record the balance sheet of M/s. Delta Venture for the year ending 31.03.2013 at page 5 of the paper book-II. From the perusal of the same, we find that M/s. Delta Venture has duly disclosed the outstanding liability of ₹ 26 lakh to be payable to Mr. Jaferali Jalal Momin. Thus, as per the assessee, the same proves beyond doubt that as far as the assessee is concerned Rs. 26 lakh stood invested as on 01.06.2012, i.e., the date on which the parties to the transaction signed the confirmation in discharging the assessee from any liability from making balance payment of ₹ 26 lakh to Mr. Jaferali Jalal Momin. During the hearing, the learned AR also placed reliance upon the agreement for sale dated 06.03.2012 entered into between the assessee and Mr. Jaferali Jalal Momin, forming part of the paper book from pages 23-27, to submit that the seller had delivered vacant and peaceful possession of the said flat to the assessee along with original share certificate upon execution of the agreement of sale with the assessee.

13. At this stage, it is pertinent to note that the AO, in the assessment order, specifically noted that as a compensation to the assessee for surrender of the tenancy/possessory rights, M/s. Delta Venture only paid ₹ 83,229/- to the assessee out of the total compensation of ₹ 50,59,270/-, during the previous year 2011-12, and the remaining amount of ₹ 49,76,041/- was credited to the accounts of the assessee by M/s. Delta Venture. Thus, from the facts recorded in the assessment order, it cannot be disputed that M/s. Delta Venture was required to pay a further sum of ₹ 49,76,041/- to the assessee,



and out of the said amount, M/s. Delta Venture agreed to pay a sum of ₹ 26 lakh to the seller of the flat on 01.06.2012. Further, it is pertinent to note that even though the seller of the flat actually received the sum of ₹ 26 lakh from M/s. Delta Venture only on 30.03.2015, however, no material has been brought on record which proves that the seller has ever disputed the sale transaction despite receipt of late payment. In any case, as noted in the foregoing paragraphs, the seller agreed vide letter dated 01.06.2012 that no amount is outstanding from the assessee towards the sale of said flat. During the hearing, learned DR, vehemently relying upon the assessment order, submitted that the entire transaction of agreeing to pay ₹ 26 lakh by M/s. Delta Venture to Mr. Jaferali Jalal Momin was a mere journal entry. However, at the same time, it is pertinent to note that the entire amount of ₹ 50,59,270/-, which was declared as long-term capital gain by the assessee, was also majorly a journal entry as per the admission of facts by the AO in the foregoing paragraphs.

14. Therefore, in the absence of any material which could dispute the fact that the assessee purchased a flat from Mr. Jaferali Jalal Momin on 06.03.2012, i.e., within a period of one year, from surrender of tenancy/possessory rights to M/s. Delta Venture, we do not find any merit in restricting the deduction claimed under section 54F of the Act to ₹ 25 lakh only. Accordingly, in view of the facts and circumstances of the present case as noted above, duly supported by the documentary evidence, we are of the considered view that the assessee is entitled to claim deduction even in respect of the balance long-term capital gain of ₹ 25,59,270/- under section

54F of the Act. We order accordingly. As a result, the grounds raised by the assessee are allowed.

15. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 19/06/2025

**Sd/-**

**OM PRAKASH KANT  
ACCOUNTANT MEMBER**

**Sd/-**

**SANDEEP SINGH KARHAIL  
JUDICIAL MEMBER**

**MUMBAI, DATED: 19/06/2025**

*Prabhat*

*Copy of the order forwarded to:*

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar  
ITAT, Mumbai