आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENTAND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.: 1976/CHNY/2025**

निर्धारण वर्ष/Assessment Year: 2010-11

Shri Krishnamoorthy Vijayaraghavan, 2A, Tulive Antara, Old No.4, New No.9, Karpagambal Nagar, Mylapore, Chennai – 600 004.	Vs.	**The Income Tax Officer,** Non-Corporate Ward 5(1), Chennai.
PAN: ACPPV 0131J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by	:	Shri N. Arjun Raj, Advocate
प्रत्यर्थी की ओर से/Respondent by JCIT	:	Ms. Gouthami Manivasagam,
सुनवाई की तारीख/Date of Hearing	:	18.09.2025
घोषणा की तारीख/Date of Pronouncement	:	19.09.2025

आदेश/ O R D E R

PER GEORGE GEORGE K, VICE PRESIDENT:

This appeal filed by the assessee is directed against the order of the Addl/JCIT(A), Nashik dated 31.03.2025, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2010-11.

2. There is a delay of 45 days in filing this appeal. The assessee has filed a petition for condonation of delay and also a supporting affidavit. On perusal of the reason stated in the petition for condonation of delay, we are of the view that there is sufficient cause in belated filing of this appeal and no latches can be attributed to the assessee. Hence, we condone the delay in filing this appeal and dispose of the same on merits.

3. The solitary issue argued by the Ld.AR is whether the First Appellate Authority (FAA) is justified in confirming the AO's action in disallowing the claim of deduction u/s.54 of the Act amounting to Rs.10,27,558/-.

4. Brief facts of the case are as follows:

The assessee, for the assessment year 2010-11, had not filed his return of income. The Department was having information that assessee had sold an immovable property during the relevant assessment year. Since assessee had not filed his return of income admitting long term capital gains, the AO issued notice u/s.148 of the Act on 31.03.2017 calling upon the assessee to file the return of income. The assessee, in response to notice issued u/s.148 of the Act, filed his return of income on 27.04.2017 admitting income of Rs.6,89,617/-. Thereafter notice u/s.143(2) of the Act was issued. In

response to notice issued u/s.142(1) of the Act, the assessee furnished the working of Long-Term Capital Gains and investment details vide letter dated 20.11.2018. The AO noted from the details filed that assessee had made investment in the new asset only on 19.01.2012 and show-cause the assessee, why the claim of deduction u/s.54 of the Act cannot be denied for the reason that unutilized sale proceeds of the original asset were not invested in the capital gains account scheme (CGAS) before the due date of filing of return of income u/s.139(1) of the Act. The assessee in response vide letter dated 27.11.2018 submitted that he had invested the sale proceeds of the original asset within three years from the date of sale and hence, eligible for exemption u/s.54 of the Act. The AO however rejected the objection of the assessee and denied the benefit of deduction u/s.54 of the Act by observing as under:-

> *"4. In this case, the due date for furnishing the return of income was 31-07-2010 and the assessee has not made any deposit under the capital gain deposit scheme before this date nor utilized the capital gain for purchase or construction of property before the due date for furnishing the return of income. Hence, the assessee has not satisfied the provisions of section 54(2) of the Income-tax Act, 1961 and therefore not eligible to claim exemption u/s 54 of the Income-tax Act, 1961. Accordingly the deduction claimed u/s.54 of the Income-tax Act, 1961 is disallowed and added to the income returned."*

5. Aggrieved by the assessment order, assessee filed appeal before the FAA. The FAA confirmed the disallowance made by the

AO. Further, the FAA at para 7.4 of the impugned order also observed that assessee has not provided proof with regard to utilization of sale proceeds of original asset on investment of new asset within the period of three years from the date of sale of the original asset.

6. Aggrieved by the order of the FAA, assessee has filed the present appeal before the Tribunal. The assessee has filed a paper-book enclosing therein the sale deed of original asset dated 01.04.2009, purchase deed dated 19.01.2012 of the new property (undivided share) and construction agreement dated 11.11.2012 entered by the assessee and builder.

7. The Ld.AR submitted that the issue involved in this appeal is the denial of deduction under Section 54 of the Act to the extent of ₹10,27,558/-, sustained by the FAA. The Ld.AR submitted that the order of the NFAC is erroneous both on facts and in law. Firstly, the fact of reinvestment of the capital gains into a new residential property within the prescribed time limit is not in dispute. The assessee has complied with the substantive requirement of Section 54 of the Act. Once this fact is admitted, the deduction cannot be denied merely on account of a technical lapse. The only objection of the learned authorities is that the assessee did not deposit the

unutilised capital gains in the Capital Gain Account Scheme before the due date. The Ld.AR submitted that this requirement is only directory, not mandatory. It was stated that courts have consistently held that where the assessee has utilised the capital gains for the purchase or construction of a residential house within the prescribed period, the benefit of Section 54 of the Act cannot be denied merely for not depositing the amount in the specified account. It was submitted that Section 54 of the Act is a beneficial provision intended to promote investment in housing. Therefore, it has to be interpreted liberally and purposively, not in a restrictive or technical manner. The Ld.AR submitted that the AO himself has not disputed the creation of the new asset. In such circumstances, sustaining disallowance solely on the basis of non-deposit under the Capital Gain Account Scheme is contrary to both the letter and spirit of the law. Therefore, he prayed that the disallowance sustained under Section 54 of the Act amounting to Rs.10,27,558/- be deleted and the assessee's claim of deduction be allowed in full.

8. The Ld.DR submitted that assessee had not given any details with regard to the cost of construction of new asset and when construction was completed. Therefore, it was submitted that the matter needs to be remanded back to the AO for the assessee to produce the necessary evidence.

9. We have heard rival submissions and perused the material on record. The AO has denied the benefit of deduction u/s.54 of the Act solely for the reason that assessee has not invested the unutilized portion of sale consideration of original asset before the due date of filing of return u/s.139(1) of the Act. The view taken by the AO was endorsed by the FAA. The FAA has also stated at para 7.4 of the impugned order that assessee has not given any details with regard to investment made in the new asset.

10. The Chennai Bench of the Tribunal in the case of Avanasiyappan Eswaran vs. ITO in ITA No.1666/CHNY/2025 (order dated 08.09.2025) by following the judgment of Hon'ble Jurisdictional High Court in the case of Venkata Dilip Kumar vs. CIT reported n (2019) 419 ITR 298 (Madras) had held that non-deposit of unutilized sale consideration of the old asset before filing of return u/s.139(1) of the Act in the capital gain account scheme is not fatal and deduction u/s.54F of the Act cannot be denied solely for the said reason. The relevant finding of the Tribunal reads as follows:

> *"8. We have heard rival submissions and perused the material on record. Before we adjudicate the issues raised, it is necessary to bring on record the relevant dates, consideration received, deemed sale value u/s.50C of the Act, etc., as detailed below:-*
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> | | | |
> |---|---|---|
> | Date of sale of the Agricultural Land | : | 16.06.2015 |
> | Due date for filing the ITR u/s 139(1) | : | 31.07.2016 |
> | Due Date for filing the ITR u/s.139(4) | : | 31.03.2018 |
> | Date of filing of the ITR (within 139(4) | : | 15.09.2017 |

Due date for completion of the house - (3 yrs from the date of Original Transfer)	:	15.06.2018
Period of construction (within the time)	:	11.09.2016 to 31.03.2018
House-warming ceremony	:	22.01.2018
Cost of construction	:	Rs.62,50,000
Actual Sale consideration of asset sold	:	Rs.60,00,000
Deemed Sale value u/s 50C	:	Rs.96,13,000
LTCG (before 54F) Returned & Accepted	:	Rs.91,47,514
Deduction claimed u/s 54F (not allowed)	:	Rs.91,47,514

9. The assessee's claim of deduction u/s.54F of the Act was denied by the assessee solely for the reason that the details of construction of new asset were not furnished during the course of assessment proceedings. The FAA on the other hand denied the benefit of deduction u/s.54F of the Act only for the reason the assessee did not deposit the sale consideration of the old asset namely, the agricultural land into the bank account under CGAS scheme. The assessee has produced cost of construction of new asset certified from an approved valuer and also proof that the construction of the new house has been completed well within the stipulated time namely three years from the date of sale of original asset. The Hon'ble Jurisdictional High Court in the case of Venkata Dilip Kumar vs. CIT reported in (2019) 419 ITR 298 (Madras) had held at para 17 of the judgment as under:-

> 17. The claim of the assessee for deduction of the disputed sum towards the additional construction cost was rejected only on the ground that the said sum was not deposited in the capital gain account. In view of my findings rendered supra, the Revenue is not justified in making such objection. On the other hand, it has to verify as to whether the said sum was utilised by the petitioner within the time stipulated under Section 54(1) for the purpose of construction. If it is found that such utilisation was made within such time, the Revenue is bound to grant deduction. Therefore, this Court is of the view that the matter needs to go back to the first respondent for considering the issue as to whether the disputed amount, claimed by the assessee as deduction, has been utilised by the petitioner towards the additional construction within the time limit prescribing under Section 54(1) and thereafter, to pass fresh order accordingly in the light of the findings and observations rendered supra. Accordingly, the writ petition is allowed and the matter is remitted back to the first respondent to pass a fresh order accordingly. Such exercise shall

be done by the first respondent within a period of eight weeks. No costs.

10. The above judgment of the Hon'ble Madras High Court was taken up in Writ Appeal by the Revenue and the same was dismissed by the Division Bench in the case reported in 437 ITR 137. Similar view was held by the Hon'ble Madras High Court in the case of CIT vs. Smt.Umayal Annamalai and CIT vs. Sardarmal Kothari (supra). In light of the above judicial pronouncements of the Hon'ble Jurisdictional High Court, we hold that non-deposit of sale consideration before filing of return u/s.139(1) of the Act in the capital gains account scheme is not fatal and deduction u/s.54F of the Act cannot be denied solely for the said reason."

11. In light of the above judicial pronouncement, we hold that non-deposit of unutilized sale consideration of the old asset before filing of return u/s.139(1) of the Act in the capital gains account scheme is not fatal and deduction u/s.54F of the Act cannot be denied solely for the said reason. In the instant case, the original asset has been sold on 01.04.2019. The new asset has been purchased on 19.01.2012 (i.e., undivided share of land) and assessee had entered into the construction agreement on 11.01.2012. The three years from the date of sale of original asset ends on 31.03.2012. In the instant case, the assessee had invested a sum of Rs.34,15,040/- in purchase of undivided share of land and entered into construction agreement of an apartment. The builder has acknowledged receipt of payment of Rs.34,15,040/- which was paid by way of cheque drawn on ICICI Bank. This fact is also acknowledged by the AO in the impugned assessment order dated 27.11.2018 at para 2, which reads as under:-

"2. In response to notices u/s.143(2) and 142(1) of the Income-tax Act, 1961, the assessee appeared and furnished the details called for. The assessee has also furnished a working of long term capital gain and investment details vide letter dated 20-11-2018. It is noticed from the details filed that the assessee has made investments in properties only on 19-01-2012."

12. Since, in this case, assessee had made investment / utilized the sale proceeds of the original asset in purchase of a new asset within the stipulated period i.e, three years from the date of sale of original asset, assessee is entitled to claim deduction u/s.54 of the Act amounting to Rs.10,27,558/-. It is ordered accordingly.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 19th September, 2025 at Chennai.

Sd/-	*Sd/-*
(एस.आर. रघुनाथा)	(जॉर्ज जॉर्ज के)
(S.R. RAGHUNATHA)	**(GEORGE GEORGE K)**
लेखा सदस्य/ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 19th September, 2025

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.