

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 341/Del/2025
Assessment Year: 2016-17

Kusum Sahgal, Through LR Shri Viney Sagar Sahgal, MG-2002, The Magnolias, Golf Course Road DLF Phase-V, Gurugram, 122 002 Haryana	Vs.	ACIT, Circle-19(2), New Delhi
PAN :AATPS3766J		
(Appellant)		(Respondent)

Assessee by	Shri Sanjay Kumar Jain, CA & Shri Saurav Jain, Advs.
Department by	Shri Kailash Dan Ratnoo, CIT(DR)

Date of hearing	28.08.2025
Date of pronouncement	21.11.2025

ORDER

PER VIMAL KUMAR, JUDICIAL MEMBER:

The appeal filed by the assessee is against order dated 12.12.2024 of Learned Commissioner of Income Tax (Appeals)/National Faceless Assessment Centre (NFAC), Delhi (hereinafter referred as “the Ld. CIT(A)”) under Section 250 of the Income Tax Act, 1961 (hereinafter referred as “the Act”) arising out of Order dated 09.12.2018 of the Learned Assessing Officer/Learned Assistant

Commissioner of Income Tax , Circle 19(2), Delhi (hereinafter referred as “the Ld. AO”) under Sections 143(3) Act for assessment year 2016-17.

2. Brief facts of the case are that the assessee e-filed return of income on 28.07.2016 showing income of Rs.66,14,65,660/-. The case was selected for scrutiny assessment under CASS for limited scrutiny with reasons (i) Large long term capital gains (Schedule CG of ITR); (ii) Large deduction claimed u/s 54B,54C,54D,54G, 54GA (Schedule CG of ITR) and (iii) Large balance in foreign bank account (Schedule FA of ITR). Notice under Section 143(2) of the Act was issued on 13/07/2017 and served through email as well as speed post. Ld. Authorized Representative (A/R) of the assessee Sh. Vinay Malik, CA filed his Authorization to represent the case. During the relevant previous year, the assessee claimed to have earned income under the head Salary, Rental Income, Capital Gain and interest income etc. Further, notices under Section 142(1) of the Act was issued to the assessee through ITBA (Income Tax Business Application) on 31/01/2018 asking for various details which was responded by the assessee by filing details/submission on 15/02/2018. Notices under Section 142(1) of the Act were also issued on 15/09/2018, 22/11/2018 and thereafter asking to file various details/ evidences/clarification/explanation through ITBA and the assessee has duly responded the same. Notice under Section 133(6) of the Act were also issued to collect bank statements of the assessee. The issues relevant for determination of total income of the assessee were discussed.

Regarding claim of deduction on account of share transfer expenses and deduction under Section 54F of the Act, it was noted that during the relevant previous year, the assessee has received full value of consideration with respect to transfer of shares aggregating to Rs.118,22,67,206/- and claimed deduction on account of indexed cost of acquisition for Rs.36,70,555/- and "Expenditure wholly and exclusively in connection with transfer" for Rs.44,10,636/-. The assessee further claimed deductions u/s. 54EC for Rs.50,00,000/- and deduction under Section 54F of the Act for Rs.21,78,34,670/-. Thus, the assessee has arrived at long term capital gain of Rs.95,63,51,345/-arose on account of sale of Shares of M/s. Quality Needles Private Limited. On examination of details and evidences available on record as well as legal provisions of the Act, it is noted that claim of deduction u/s. 54F of the Act amounting to Rs.21,28,34,670/- was made by the assessee despite the fact that the assessee was holding more than one residential property as per submission filed. Also, the assessee found to have claimed share transfer expenses aggregating to Rs.44,10,636/- although bills with respect to such claim found to have been raised in the name of Sri Viney Sahgal as Managing Director of the Company M/s. Quality Needles Pvt. Ltd and the bills were not raised in name of the assessee. Hence, the assessee was confronted with these issues. It is noted from the computation of total income that the assessee has claimed deduction under Section 54F of Act for an amount of Rs.21,28,34,670/- on investment in residential property with "The Camellias"

in DLF Ltd. despite owning more than one residential property. Share transfer expenses of Rs.44,10,634/- were disallowed.

3. On completion of assessment proceeding, Ld. AO vide order dated 09.12.2018 made additions of Rs.21,28,34,670/- and Rs.44,10,636/-.

4. Against order dated 09.12.2018 of Ld. AO, the appellant/assessee filed appeal before Ld. CIT(A) which was partly allowed vide order dated 12.12.2024 and addition of Rs.44,10,636/- was deleted.

5. Being aggrieved, the appellant/assessee preferred present appeal with following grounds:

“1. That on the facts and circumstances of the case, the Id CIT Appeal as well as Id.AO have erred in not allowing deduction amounting to Rs. 21,28,34,670.00 u/s 54F.

2. That the Id Authorities below have erred in not appreciating that on the date of sale of Shares giving rise to Capital Gain, the Assessee did not own more than one residential house and thus entitled to deduction u/s 54F of the Income Tax Act, 1961.

3. That the Id AO has erred in not appreciating that the word "OWNS" as mentioned in proviso to Sec 54F means absolute owner and not a share in a property as has been held by various Courts of Law.

4. That the Id CIT Appeal, without giving any opportunity of being heard, has erred in coming to conclusion that the assessee is not able to establish joint and separate investment by co-owners in the property.

5. That the assessment order is bad in law and facts of the case.

6. Your Appellant Prays that he be allowed to add amend or withdraw any of the above at the time of hearing of appeal.”

6. Learned Authorized Representative for appellant/assessee submitted that Ld. CIT(A) as well as Ld. AO erred in not allowing deduction amounting to Rs.21,28,34,670.00 under Section 54F of the Act. Both the authorities below erred in not appreciating that on the date of sale of shares giving rise to capital gain. The assessee did not own more than one residential house. The word “ownership” mentions in proviso to section 54F(1) of the Act.

6.1 Reliance was placed on order dated 17.01.2024 in the case of Raman Chawla Vs. ACIT – Delhi Benches, Smt. C. Anuradha Vs. ITO Vs. ITO, Business Ward-1(1), Chennai (Madras High Court).

7. Learned Authorized Representative for the Department submitted that the assessee jointly owns more than one residential property on the date of transfer of residential assets, such as joint ownership consequentially fall within the majority of provisions of proviso to section 54F(1) of the Act. The assessee has claimed deduction on the capital gains arising from transfer of a long-term capital asset other than a residential house. However, it has been observed that, on the date of transfer of the original asset, the assessee was jointly owning more than one residential property and relied upon the statutory framework as under:

“II. Statutory Framework

Section 54F(1) allows exemption of capital gains if the net consideration is invested in purchase or construction of a residential house, subject to conditions.

The proviso to Section 54F(1) clearly stipulates that the exemption shall not be available if, on the date of transfer of the original asset, the assessee:

- (a) owns more than one residential house, other than the new asset; or
- (b) purchases any residential house, other than the new asset, within one year after the date of transfer; or
- (c) constructs any residential house, other than the new asset, within three years.

The crux of the present issue lies in the interpretation of the term "owns" - whether partial or joint ownership in more than one residential property amounts to ownership so as to disqualify the assessee from availing the exemption.

III. Legislative Intent

The legislative intent behind Section 54F is to promote investment in residential housing by taxpayers not already in possession of multiple residential properties. The proviso was specifically introduced to restrict the benefit only to those assesseees who, apart from the newly acquired house, do not own more than one residential property. Permitting assesseees holding shares or co-ownership in multiple houses to avail of the exemption would render the restriction nugatory and defeat the object of the legislation."

The said ownership was consistently rejected by the Courts where Revenue succeeded.

8. From examination of record in light of aforesaid rival contentions, it is crystal clear that the Ld. AO vide order dated 09.12.2018 held that assessee has fractional ownerships in more than one house property and so, deduction should have been allowed to her, cannot be accepted. Ld. CIT(A) vide order dated 12.12.2024 upheld the additions made by the Ld. AO amount to Rs.Rs.21,28,34,670/- .

8.1 As per order of Ld. AO, it is evident that assessee claimed deduction under Section 54F(1) of the Act for investment made in purchase of residential at the Camellias, Golf Drive DLF-5, Gurgaon-122009 for a consideration of Rs.21,28,34,670/- Lacs. The assessee invested this amount in the ongoing project of Camellias under construction by the DLF. The assessee had a commercial flat no.903 Rajendra Place Pragati Tower which is commercial in nature. The property at Mehrauli is agricultural and governed by DLR Act, 1954 under which there is no ownership on assessee in possession of the land. The property at Mehrauli is agricultural and not residential property. Flat No.903, Rajendra Place New Delhi, Jay Pee Greens, Greater Noida is the only residential property at 50% owned by assessee on the sale of original set.

9. Hon'ble ITAT , Mumbai in the case of ITO Vs. Sheriar Phirojsha Iraini in para nos. 11 to 14 has held under:

“11. We find that the Hon'ble Madras High Court in Dr. Smt. P.K.Vasanthi Rangarajan (supra) held that merely because the assessee jointly owned another property on the date of transfer of the asset, its claim for deduction under section 54F of the Act could not be rejected in respect of capital gains earned from transfer of original asset. The relevant findings of the Hon'ble Madras High Court, in the aforesaid decision, are reproduced as under:

“12. A reading of the provisions contained in Section 54F(1), as it stood at the relevant point of time, shows that exemption from payment of tax on the capital gains arising on the transfer of any long-term capital asset not being a residential house is available to an assessee being a Hindu Undivided Family or an individual, if the long-term capital gain is invested in purchasing a residential house or constructing the residential house within the time stipulated therein. Proviso to sub section (1) states that the exemption contemplated under sub section (1) would not be available where

an assessee owns a residential house as on the date of the transfer and that the income from the residential house is chargeable under the head "income from house property". The Finance Act, 2001 amended the proviso with effect from 2001-02 to permit exemption under Section 54F, even if the assessee has owned one residential house as on the date of transfer, other than the new asset, or purchase in investments any residential house other than the new asset within a period of one year or three years as the case may be, but after the date of transfer of the original asset and the income from such residential house other than the one owned on the date of transfer of the original asset is chargeable under the head "income from house property"

13. As far as the present case is concerned, contrary to the contention of the assessee, the assessee as well as her husband had offered 50% share each in the clinic in the income tax assessment and had claimed depreciation thereon. So too 50% share in the property in the wealth tax proceedings is offered by the assessee and her husband. The note submitted to the Assistant Commissioner of Income Tax, City Circle 5(1), Madras, by the assessee discloses that the assessee owned 50% of the 6 ITA No. 2835/Mum/2024 AY 2018-19 Sheriar Phirojsha Irani property in 828, Poonamallee High Road, Chennai, for use as residential property and 50% as clinic; so too for the property at Door No.828A, Poonamallee High Road, Chennai. The facts thus reveal that as joint owners of the property, the assessee and her husband had shown 50% share with reference to the clinic and the residential portion in their respective returns. Thus, it is clear that as on the date of the transfer, the assessee did not own a residential house in her name only, the income from which was chargeable under the head "income from house property", to bring into operation, the proviso to Section 54F. The rejection of the claim for exemption would arise if only the property stands in the name of the assessee, namely, individual or HUF. Given the fact that the assessee had not owned the property in her name only to the exclusion of anybody else including the husband, but in joint name with her husband, we agree with the submission of the learned senior counsel appearing for the assessee herein that unless and until there are materials to show that the assessee is the exclusive owner of the residential property, the harshness of the proviso cannot be applied to the facts herein. Apart from that, 50% ownership is with reference to the clinic situated in the ground

floor. As such, the entire property is not an exclusive residential property. Hence, we are inclined to agree with the assessee's contention that the joint ownership of the property would not stand in the way of claiming exemption under Section 54F.”

12. We find that while deciding a similar issue in favour of the taxpayer, the coordinate bench of the Tribunal in *Mukesh Arvindlal Vakharia v/s ITO*, [2023] 153 taxmann.com 55 (Surat-Trib), after considering the aforesaid decision of the Hon’ble Karnataka High Court as well as the Hon’ble Madras High Court, observed as under:

“17. We have given our thoughtful consideration to rival contention. We have perused case file as well as paper books furnished by assessee. We note that assessee claimed deduction u/s 54F of the Act to the tune of Rs. 48,96,993/- on the ground that assessee owns only one house at the Oberoi Palace Housing Society in this name at the time of the sale. It is the contention of the assessee that the other two properties are owned jointly with others and therefore it is not required to be considered for the purpose of condition of section 54F of the Act. The assessing officer relied on the order of the Hon'ble Supreme Court in the case of *M. J. Siwani v. CIT* [2015] 53 taxmann.com 318/232 Taxman 335 where the SLP filed by the taxpayer was dismissed. The Id Counsel stated that by way of the SLP, the Hon'ble Supreme Court did not concur with the finding of the Hon'ble Karnataka High Court in the case of *CIT v. M. J. Siwani* [2014] 46 taxmann.com 170/226 Taxman 394/366 ITR 356. Mere dismissal of the SLP does not 7 ITA No. 2835/Mum/2024 AY 2018-19 Sheriar Phirojsha Irani constitute the judgment by the Supreme Court in the favour of the revenue. The Id Counsel placed reliance on the following judgments:

- i. *Khoday Distilleries Ltd. v. Mahadeshwara Sahakara Sakkare Karkhane Ltd.* [2009] 104 taxmann.com 25/262 Taxman 279 (SC) [Civil Appeal No. 2432/2019]
- ii. *Smt. Tej Kumari v. CIT* [2001] 114 Taxman 404/247 ITR 210 (Patna) (FB)

18. The Id Counsel further submitted that Hon'ble Madras High Court in case of *Dr. Smt. P. K. Vasanthi Rangarajan v. CIT* [2012] 23 taxmann.com 299/209 Taxman 628 wherein it was held that where the

assessee held the property jointly with her husband in equal proportion, it cannot be said that she is the owner of the house property at the time of the sale for availing the deduction u/s 54F of the Act. It is to be noted that w.e.f. 1-4-2001, there was the amendment in section 54F to the effect that assessee could be owner of one house at the time of the sale. Here in the case of the assessee he was sole owner of only one house and other houses under the joint ownership are not required to be considered as per the judgment of the Hon'ble Madras High Court in case of Dr: Smt. P. K. Vasanthi Rangarajan (supra).

19. We also note that on the identical facts, the Coordinate Bench of ITAT Mumbai, in the case of Ashok G. Chauhan v. Asstt. CIT [2019] 105 taxmann. com 204/176 ITD 717 held that where Assessing Officer rejected assessee's claim for deduction under section 54F of the Act, on ground that at time of sale of capital asset, assessee was owner of more than one residential house properties, in view of fact that one residential property was co-jointly owned in name of assessee and his wife and he could not be treated as 'absolute owner of said property, deduction under section 54F could not be denied to him. We note that Hon'ble Supreme Court in the case of CIT v. Vegetable Products Ltd. [1973] 88 ITR 192 held that if two reasonable constructions of a taxing provision are possible that construction which favours the assessee must be adopted. Therefore, respectfully following the judgment of the Hon'ble Madras High Court in case of Dr. Smt. P. K. Vasanthi Rangarajan (supra). we allow ground No. 2 raised by the assessee.”

13. Further, we find that in Zainul Abedin Ghaswala v/s CIT, [2023] 152 taxmann.com 662 (Mum-Trib.), the coordinate bench of the Tribunal, after considering the aforesaid decision of the Hon'ble Karnataka High Court as well as the Hon'ble Madras High Court, observed as under:

“4. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The issue in dispute before us is whether the co-ownership of the assessee in more than one residential properties could make assessee liable for non-eligibility of deduction u/s 54F of the Act. The fact of the case as culled out from orders of lower authorities and submissions of the assessee are that the assessee's father late Shri Iqbal Ghaswala along with other five family members had inherited land being 142/148, Ghaswala Estate Jogeshwari (west), on which land, all the six members constructed 6 flats (ie one flat each on their own as per their requirements which were occupied by each owner namely Shri Mohd. Ali Suleman Ghaswalla (flat no. 201), Shri Sikander

Suleman Ghaswalla (flat no. 202), Shri Abdul Rahim Ghaswalla (flat no. 301), Shri Munaf & Moinuddin Anwar Ghaswalla (legal heirs of late Shri Anwar Ghaswalla) (flat no. 302), Shri Ilyas & Zainul Ghaswalla (legal heirs of late Shri Iqbal Ghaswalla) (flat no. 401) and Shri Abdul Suttar Suleman Ghaswalla (flat no. 402). According to assessee, all the members are owing/occupying one flat each for which they have been paying electricity bills. The assessee claimed to have filed those electricity bills before the Assessing officer coupled with confirmation letters from the owners of the other flats to the effect that none of them had any right/or interest of whatsoever nature in each other's flats. However, the Assessing Officer disregarded the submission of the assessee and held that since the assessee owned six residential house properties though jointly, therefore the conditions mentioned in section 54F of the Act are not fulfilled in this case hence, the assessee is not eligible for exemption u/s 54F of the Act. The Ld. Assessing Officer relied on the decision of the Hon'ble Karnataka High Court in the case of M..J. Siwani (supra). The relevant facts of the case and the finding reproduced by the Assessing Officer is extracted as under:

“Further, the above issue is already a settled law in view of decision of Hon'ble Supreme Court of India in the case of M.J. Stwani v. Commissioner of Income-tax [2015] 53 taxmann.com 318 wherein upholding the order of Hon'ble Karnataka High Court, Hon'ble Supreme Court of India held that:

"Where assessee on date of sale of long-term capital asset owns more than one residential house even jointly with another person, benefit under section 54F in respect of capital gain arising from sale of asset was to be rejected."

Facts of case M.J. Siwani v. Commissioner of Income-tax (2015) were as under:

1. During relevant assessment year, assessee sold their undivided interest in land. The assessee claimed deduction under sections 54 and 54F in respect of long-term capital gain arising from sale of land.

2 The revenue authorities finding that assessee had sold undivided share in land and not land plus residential house/apartments rejected assessee's claim for deduction under section 54.

3. As regards deduction under section 54F, revenue authorities having found that assessee's were having two residential houses having one half share each therein on date of sale of land, rejected assessee's claim.

4. The Tribunal, however, allowed assessee's claim for deduction under section 54F holding that 'a residential house, on date of sale of long term asset as mentioned in said section meant complete residential house and would not include shared interest in residential house.

On revenue's appeal to Hon'ble Karnataka High Court it was held as under:

"Section 54F provides that if the assessee has a residential house he cannot seek the benefit of long term capital gain. Under this provision, merely because, the words residential house are preceded by article 'a' would not exclude a house shared with any other person. Even if the residential house is shared by an assessee, his right and ownership in the house, to whatever extent, is exclusive and nobody can take away his right in the house without due process of law. In other words, co-owner is the owner of a house in which he has share and that his right, title and interest is exclusive to the extent of his share and that he is the owner of the entire undivided house till it is partitioned. The analogy applied by the Tribunal based on the judgment of the Supreme Court in Banarsi Dass Gupta (supra), wherein, the Supreme Court considered the provisions contained in section 32 of the Act, would not apply to the facts of the present case. The right of a person, may be one half, in the residential house cannot be taken away without due process of law or it continues till there is a partition of such residential house. Thus, the view expressed by the Tribunal on this issue cannot be accepted.

Thus, the order passed by revenue authorities rejecting assessee's claim was to be restored. Thus, High Court held that in terms of provisions of section 54F, where assessee on date of sale of long term capital asset owns a residential house even jointly with another person, his claim for deduction of capital gain arising from sale of asset has to be rejected."

5. Before us, the Ld. Counsel of the assessee has relied on the following three decisions of the Tribunal, Mumbai Bench to support that even if

the assessee co-owner is more than one house, since the fractional ownership in a property does not amounts to violating the conditions laid down u/s 54 of the Act, the assessee is entitled for deduction u/s 54 of the Act.:

1. Ashok G. Chauhan v. Asstt. CIT [2019] 105 taxmann.com 204/176 ITD 717 (ITAT Mumbai A Bench) [ITA No 1309/Mum/2016];

2. Dy. CIT v. Dawood Abdulhussain Gandhi [IT Appeal No 3788 (Mum) of 2016, dated 31-1-2018] (ITAT "F" Bench Mumbai)

3. ITO v. Rasiklal N Satra [2006] 98 ITD 335 [ITAT 'A' Bench Mumbai]

5.1 Further, the assessee also relied on the decision of the Hon'ble Madras High Court in the case of Dr. Smt. P.K. Vasanthi Rangarajan v. CIT [2012] 23 taxmann.com 299/209 Taxman 628/(2012) 252 CTR 0336. The relevant finding of the Hon'ble Madras High Court is reproduced as under:

"12. A reading of the provisions contained in section 54F(1), as it stood at the relevant point of time, shows that exemption from payment of tax on the capital gains arising on the transfer of any long-term capital asset not being a residential house is available to an assessee being a Hindu Undivided Family or an individual, if the long-term capital gain is invested in purchasing a residential house or constructing the residential house within the time stipulated therein. Proviso to sub-section (1) states that the exemption contemplated under sub-section (1) would not be available where an assessee owns a residential house as on the date of the transfer and that the income from the residential house is chargeable under the head "income from house property". The Finance Act, 2001 amended the proviso with effect from 2001-02 to permit exemption under section 54F, even if the assessee has owned one residential house as on the date of transfer, other than the new asset, or purchase in investments any residential house other than the new asset within a period of one year or three years as the case may be. but after the date of transfer of the original asset and the income from such residential house other than the one owned on the date of transfer of the original asset is chargeable under the head "income from house property".

13. As far as the present case is concerned, contrary to the contention of the assessee, the assessee as well as her husband had offered 50% share each in the clinic in the income tax assessment and had claimed depreciation thereon. So too 50% share in the property in the wealth tax proceedings is offered by the assessee and her husband. The note submitted to the Assistant Commissioner of Income Tax, City Circle 5(1), Madras, by the assessee discloses that the assessee owned 50% of the property in 828, Poonamallee High Road, Chennai, for use as residential property and 50% as clinic, so too for the property at Door No. 828A, Poonamallee High Road, Chennai. The facts thus reveal that as joint owners of the property. the assessee and her husband had shown 50% share with reference to the clinic and the residential portion in their respective returns. Thus, it is clear that as on the date of the transfer, the assessee did not own a residential house in her name only, the income from which was chargeable under the head "income from house property", to bring into operation, the proviso to section 54F. The rejection of the claim for exemption would arise if only the property stands in the name of the assessee, namely, individual or HUF. Given the fact that the assessee had not owned the property in her name only to the exclusion of anybody else including the husband, but in joint name with her husband, we agree with the submission of the learned senior counsel appearing for the assessee herein that unless and until there are materials to show that the assessee is the exclusive owner of the residential property, the harshness of the proviso cannot be applied to the facts herein. Apart from that, 50% ownership is with reference to the clinic situated in the ground floor. As such, the entire property is not an exclusive residential property. Hence, we are inclined to agree with the assessee's contention that the joint ownership of the property would not stand in the way of claiming exemption under section 54F."

5.2 Before us, the Ld. Counsel of the assessee submitted that where there are different views of non-jurisdictional High Court, then one favourable to the assessee has to be followed. The Ld. Counsel of the assessee relied on the decision of the Hon'ble Supreme Court in the case of CIT v. Vegetable Products Ltd. 119731 88 ITR 192. Further, the Tribunal in the case of ITO v. Upkar Retail (P.) Ltd. [2018] 94 taxmann.com 450/171 ITD 626 ITAT 'B' Bench Ahmedabad [ITA No. 2237/Ahd/2014] relying on the decision of the Hon'ble Supreme Court in the case of Vegetable Products Ltd.

(supra), which was followed by the Tribunal in the case of *Tej International (P) Ltd. v. Dy. CIT* [2000] 69 TTJ 650 (Delhi) held that in case of conflict in the decision of the non-jurisdictional High Court, the view which is favourable 11 ITA No. 2835/Mum/2024 AY 2018-19 *Sheriar Phirojsha Irani* to the assessee should be followed. The relevant finding of the Tribunal (supra) is reproduced as under:

“4. As to what should be the view to be taken in these circumstances, ie. when there are conflicting decisions of Hon'ble Courts above and when we do not have the benefit of the guidance by Hon'ble jurisdictional High Court, we find guidance from the decision of a co-ordinate bench in the case of *Tej International Pvt Ltd. v. DCIT* [(2000) 69 TTJ 650 (Del)] wherein the coordinate bench has, inter alia, observed as follows:-

“6. We have considered the rival submissions and perused the records. It is not in dispute that two High Courts, namely, Gauhati High Court and Karnataka High Court, have expressed conflicting views regarding levy of interest under sections 234B and 234C on deemed income under section 115J. Hon'ble Gauhati High Court has opined that when legal fiction is to be created for an obvious purpose, full effect to it should be given. Quoting Lord Asquith who said, "the statute says that you must imagine a certain state of affairs, it does not say that having done so, you must cause or permit your imagination to boggle when it comes to inevitable corollaries of that state of affairs", Hon'ble Gauhati High Court has held that there is no statutory exception excluding the operations of section 115J of the Act. Hon'ble Karnataka High Court, on the other hand, has held that the words 'for the purposes of this section' in Explanation to section 115J(1A) are relevant and cannot be construed to extend beyond the computation of liability to tax. In the opinion of the Hon'ble Karnataka High Court, when a deeming fiction is brought under the statute, it is to be carried to its logical conclusions but without creating further deeming fiction so as to include other provisions of the Act which are not made specifically applicable. It is

thus evident that views of these two High Courts are in direct conflict with each other. Clearly, therefore, there is no meeting ground between these two judgments and we are also unable to accept the suggestion that we can follow earlier decisions of this Tribunal, or such views, whichever seem more reasonable of one of these High Courts.

7. It may be mentioned that some Benches of the Tribunal have either taken independent view on the issue in this appeal or have later on followed Hon'ble Gauhati High Court, referred to above. However, with the latest judgment of Hon'ble Karnataka High Court in Kwaliti Biscuits Ltd.'s case (supra) the situation is materially different. In the hierarchical judicial system that we have, better wisdom of the this Tribunal has expressed an opinion on that issue, we are no longer at liberty to rely upon earlier decisions of this Tribunal even if we were a party to them. Such a High Court being a non-jurisdictional High Court does not alter the position as laid down by Hon'ble Bombay High Court in the matter of CIT v. Godavari Devi Saraf [1978] 113 ITR 589 (Bom.). Therefore, we do not consider it permissible to rely upon the earlier decisions of this Tribunal even if one of them is by a Special Bench. It will be wholly inappropriate to choose views of one of the High Courts based on our perceptions about reasonableness of the respective viewpoints as such an exercise will de facto amount to sitting in judgment over the views of the High Courts something diametrically opposed to the very basic principles of hierarchical judicial system. We have to, with our 12 ITA No. 2835/Mum/2024 AY 2018-19 Sheriar Phirojsha Irani highest respect of both the Hon'ble High Courts, adopt an objective criterion for deciding as to which of the Hon'ble High Court should be followed by us.

8. We find guidance from the judgment of Hon'ble Supreme Court in the matter of CIT v. Vegetable Products Ltd. [1973] CTR (SC) 177: [1972] 88 ITR 192 (SC) Hon'ble Supreme Court has laid down a

principle that "if two reasonable constructions of a taxing provision are possible, that construction which favours the assessee must be adopted. This principle has been consistently followed by the various authorities as also by the Hon'ble Supreme Court itself. In another Supreme Court judgment, *Petron Engg. Construction (P.) Ltd. & Anr. v. CBDT & Ors.* [1988] 75 CTR (SC) 20; [1989] 175 ITR 523 (SC). it has been reiterated ITA No. 2237/Ahd/2014 Assessment Year: 201112 that the above principle of law is well established and there is no adopt about that. Hon'ble Supreme Court had, however, some occasion to deviate from this general principle of interpretation of taking statute which can be construed as exception to this general rule. It has been held that the rule of resolving ambiguities in favour of tax- payer does not apply to deductions, exemptions and exceptions which are allowable only when plainly authorised. This exception, laid down in *Littman v. Barron* 1952 (2) AIR 393 and followed by apex Court in *Mangalore Chemicals & Fertilizers Lid. v. Dy. Commr. of CCT* [1992] Suppl (1) SCC 21 and *Novopa India Lad. v. CCE & C* 1994 (73) ELT 769 (SC), has been summed up in the words of Lord Lohen, "in case of ambiguity, a taxing statute should be construed in favour of a tax payer does not apply to a provision giving tax payer relied in certain cases from a section clearly imposing liability". This exception, in the present case, has no application. The rule of resolving ambiguity in favour of the assessee does not also apply where the interpretation in favour of assessee will have to treat the provisions unconstitutional, as held in the matter of *State of M.P. v. Dadabhoy's New ChirmiryPonri Hill Colliery Co. Ltd.* AIR 1972 (SC) 614. Therefore, what follows is that in the peculiar circumstances of the case and looking to the nature of the provisions with which we are presently concerned, the view expressed by the Hon'ble Karnataka High Court in the case of *Kwality Biscuits Ltd*, case (supra), which is in favour of assessee, deserves to be followed by us. We, therefore, order the deletion of interest under sections 234B and 234C in this case.

5. In view of the above discussion, quite clearly, even when the decision of Hon'ble non-jurisdictional High Courts are in conflict with each other, the only objective criteria which followed by us is to take a view favourable to the assessee. Hon'ble Calcutta High Court's decision in the case of Asian Financial Services Ltd. (supra), therefore, is required to be followed by us. Respectfully following the same, we uphold the conclusions arrived at by the learned CIT(A) and reject the grounds raised by the Revenue."

5.3 In view of the binding precedents referred above, we find that decision of the Hon'ble Madras High Court is in favour of the assessee and not a single decision of the Jurisdictional High Court, which is adverse to the assessee, has been referred by the Ld. DR and therefore decision of the Madras High Court being favourable to the assessee, the claim of deduction u/s 54F of the Act need to allowed, as there is no material to show that assessee is exclusively owner of the other five residential properties/flats which are occupied by the other family members. The grounds of appeal of the assessee are accordingly allowed."

14. In the present case also, not even a single decision of the Hon'ble jurisdictional High Court, which is contrary to the claim of the assessee, has been placed on record/referred by the Revenue. Therefore, respectfully following the decision of the Hon'ble Madras High Court and the coordinate bench of the Tribunal cited supra, we are of the considered view that the joint ownership at the time of sale of the original asset does not disentitle the assessee to claim the deduction under section 54F of the Act. Accordingly, we do not find any infirmity in the findings of the learned CIT(A) on this issue and the same is upheld. As a result, grounds raised by the Revenue are dismissed."

10. In view of above material facts, respectfully following the judicial precedents, it is held that the joint ownership at the time of sale of original assets do not disentitled the assessee to claim deduction under Section 54F of the Act. Therefore, the orders of the Ld. AO and Ld. CIT(A) are set aside. Ground of appeal nos. 1 to 3 are allowed. Ground of appeal nos. 4 to 6 being consequential in nature require no adjudication.

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

Order pronounced in the open court on 21st November, 2025.

Sd/-

**(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

Dated: 21st November, 2025.
Mohan Lal

Copy forwarded to:

1. Applicant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi