आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

सुश्री पदमावती यस, लेखासदस्य एवं श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष
BEFORE MS. PADMAVATHY.S, ACCOUNTANT MEMBER AND
SHRI MANU KUMAR GIRI, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos.2451 & 2452/Chny/2025
निर्धारण वर्ष /Assessment Years: 2017-18 & 2018-19

Kesavan Vanithamani, Old No.19, New No.49, Landons Road, Kilpauk, Chennai – 600 010. PAN: AAAPV 4253G	**Vs.**	The Income Tax Officer, Non Corporate Ward-19(4), Chennai.
(अपीलार्थी/Appellant)		**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by	:	Mr. R. Sivaraman, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Ms. Gouthami Manivasagam, Addl. CIT
सुनवाई की तारीख/Date of Hearing	:	29.01.2026
घोषणा की तारीख /Date of Pronouncement	:	10.02.2026

आदेश / O R D E R

PER PADMAVATHY.S, A.M:

These appeals by the assessee are against the order of the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi, (in short "CIT(A)") passed u/s. 250 of the Income Tax Act, 1961 (in short "the Act") both dated 22.07.2025 for Assessment Years (AYs) 2017-18 & 2018-19. The grounds raised by the assessee for A.Y 2017-18 are as under:

"The order of the Ld. Commissioner of Income Tax (Appeals), Chennai ("CIT(A)") u/s. 250 of the Income Tax Act, 1961 ("Act") is opposed to law, facts and circumstances of the case.

2. The order of the Ld. CIT(A) is bad in law in as much as it is a non-speaking order on the aspect of the Appellant's claim of exemption u/s. 54F of the 2. Act and that it is trite that an order in exercise of its quasi-judicial function, must record reasons in support of the order it makes.

3. The Ld. CIT(A) erred in confirming the denial of exemption by the Assessing Officer by invoking the First Proviso to Section 54F of the Act which is inapplicable to the facts and circumstances of the Appellant's case.

4. The Ld. CIT(A) failed to note that the Appellant was in possession of only one residential property and one Tannery, other than the new asset, at the date of transfer of the original asset thereby not warranting the applicability of the First Proviso to Section 54F of the Act.

5. The Ld. CIT(A) ought to have appreciated that the Appellant had duly produced lease agreements, electivity bills and corporation tax receipts before the Assessing Officer to establish that they were only in possession of a commercial property in the nature of a tannery and not a residential property thereby rendering the trigger of the First Proviso to Section 54F of the Act invalid and baseless.

6.. For the aforesaid grounds and for other grounds to be raised at the time of hearing, the order of CIT(A) may be quashed and justice be rendered."

2. The assessee is an individual and filed the return of income for AY 2018-19 on 28.10.2018 declaring total income of Rs.3,83,50,340/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The assessee owned a land admeasuring 31731 sq. ft. and the assessee entered into a joint venture agreement with M/s. Jain Housing and Construction Ltd. for construction of residential flats. As per the terms of the agreement, 52% of the land is to be transferred to M/s. Jain Housing and Construction Ltd. as against the delivery of 23 residential flats to the assessee. The agreement was entered into on 16.12.2015 and the possession was given for construction in April, 2016. During the assessment year 2017-18, the developer started construction and sold the UDS allotted to them while the construction was in progress. The assessee in the said A.Y offered

Rs.3,60,00,796/- as sale consideration and capital gains tax after claiming exemption u/s. 54F of the Act towards investment residential property. During AY2018-19, the assessee has entered into outright sale agreement on 18.04.2017 for the sale of the allotted portion of 19814 sq. ft. (23 flats) and 1285 sq. ft. UDS for a consideration of Rs.8,16,50,000/- with the developer. The assessee offered the said consideration after adjusting the consideration already offered in AY 2017-18. The A.O for AY 2017-18 had held that the entire consideration of Rs. 8,16,50,000/- need to be considered as the income and the A.O also denied the benefit of exemption u/s. 54F of the Act on the ground that the assessee is owner of two properties and therefore not eligible for exemption. Accordingly, the A.O for AY 2017-18 made an addition of Rs. 6,50,47,549/- towards the difference in the capital gain offered by the assessee. The A.O. treated Long Term Capital Gain in A.Y. 2018-19 of the same amount on protective basis. Aggrieved the assessee filed further appeal before the CIT(A).

3. The CIT(A) gave partial relief to the assessee by holding that:

"5. DECISION: I have carefully considered the facts of the case, the grounds of appeal, statement of facts, remand report, as well as the submissions of the appellant made during the course of appeal proceedings and to remand report. The grounds of appeal are adjudicated as under:

5.1 Grounds of appeal No 2 to 6 for A.Y. 2017-18 and grounds of appeal no 1 to 3 for A. Y. 2018-19 are common and interlinked related to Long Term Capital Gain on sale of sale of land and therefore adjudicated together.

5.1.1: The issue involved is Long Term Capital Gain from sale of land at New Door No.43, KamarajarSalai, Kodungaiyur, Chennai-600118. The appellant offered the amount of Long Term Capital Gain as under: -

5.1.2. A.Y. 2017-18
Gross Long Term Capital Gain Rs.3,38,07,046/-

less Investment in new Property *Rs.2,17,22,000*
Deduction u/s 54F
Taxable Long Term Capital Gain *Rs. 1,34,08,701/-*

5.1.3 A.Y. 2018-19
Taxable Long Term Capital Gain Rs. 3,18,60,714/-

5.1.4: The A.O. taxed the complete Capital gain in A.Y. 2017-18 at Rs. 7,94,56,250/-after denying the deduction u/s 54F of Rs. 2,17,22,000/-.

The A.O. treated Long Term Capital Gain in A.Y. 2018-19 of the same amount i.e. Rs. 7,94,56,250/- on protective basis Though the A.O. did not write protective basis but stayed the recovery proceedings as the same issue was pending before CIT(A).

5.1.5 Timeline of the transaction and undisputed facts are as under. -
10.10.1971 Properties were acquired on 10.10.1971 through settlement deed.

ii. 12.10.2008 The appellant entered into JDA with A K Properties Promoters (AK hereafter)

iii. 16.12.2015 pellant and AK Proper moters iii. entered in JDA with M/s Jain Housing and Construction Ltd. (M/s Jain hereafter)

iv. 16.12.2015 The appellant received refundable deposits of Rs. 1 Cr. From iv. M/s Jain.

v. 10.03.2016 The appellant issued Power of Attorney in favour of M/s Jain.

vi. 16.07.2016 All three parties entered into allocation agreement.

vii. 18.04.2017 The appellant agreement to sell her complete share of area to M/s Jain for Rs. 8,16,50,000/-

viii. 18.04.2017 The appellant handed over possession of the land to M/s Jain. The appellant was paid consideration by M/s Jain as under:

Refundable deposit of Rs. 1 Cr. was adjusted

Rs. 2 Cr. On 30.04.2017
Rs. 5,16,50,000/-on 31.12.2017

ix. The appellant handed over possession of the land to AK pursuant to the JDA dated 12.10.2008. AK constructed building number 2 which was complete up to 80% when the appellant and AK entered into new JDA.

5.1.6 The A.O. taxed the whole capital gain in A.Y. 2017-18 on the ground revenue has been recognised in AY 2017-18 since the exercise of handing over possession has occurred during FY 2016-17. However, the entire deemed value of sale consideration as a result of the transfer should be recognized in AY 2017-18 itself and there is no reason for postponement of major portion of sale consideration and the corresponding capital gain to the ensuing year.

5.1.7 It is seen that the appellant handed over her complete rights including possession in the property pursuant to the agreement dated 18.04.2017 to M/s Jain. Further, 90% of the payment were received in PY relevant to A.Y. 2018-19 only. Therefore, it can be concluded that the transaction was complete in PY relevant to A.Y. 2018-19 only. Hence, the Capital gain is required to be charged in A.Y. 2018-19 only. However, the appellant offered part of the amount in A.Y. 2017-18. Since the amount is already in A.Y. 2017-18 and if the samens taxed in A.Y. 2018-19, the income declared in the return of income would go below the returned income. Hence, no change is made to the income declared in AY 2017-18, However, the Capital gain in A.Y. 2018-19 would be charged after reducing the income already offered in A.Y. 2017-18. Hence, the AO is directed to tax the Long Term Capital Gain in A.Y. 2017-18 as offered by the appellant subject to allowability of deduction u/s 54F which is discussed below. The A.O. is also directed to tax the remaining Capital gain in A.Y. 2018-19.

5.2 Deduction u/s 54F: -

Grounds of appeal no 7 of A.Y. 2017-18 and no 4 of A.Y. 2018-19 are common and interlinked and decided together.

The appellant offered income from house property as under: -

The appellant stated that the other property was tannery and therefore she is entitled to deduction u/s 54F in respect of another property. It is seen that the appellant had offered the income from this other property under the head income from house property and claimed deduction of 30% from annual property. Therefore, the appellant's contention that this property cannot be considered under Proviso to Section 54F is not acceptable. Since the appellant held two properties on the date of transfer of land, the appellant is not entitled to deduction u/s 54F in respect of new investment. Therefore, the action of the A.O. in the impugned assessment order is hereby confirmed."

4. The Ld. Authorized Representative (AR) of the assessee submitted that the assessee during A.Y 2017-18 has offered the capital gains based on the

sale of UDS by the developer while the construction is in progress. The Ld. AR further submitted that the possession of the property was handed over to the developer in FY 2016-17 and therefore, the assessee has offered the sale consideration towards UDS in AY 2017-18. The Ld. A.R also submitted that once the construction was completed the assessee offered the balance sale consideration after entering into outright sale of the agreement with the developer. The Ld. AR argued that the A.O for AY 2017-18 has made the addition for the entire sale consideration based on the incorrect understanding of the fact that the entire land has been sold by the assessee. With regard to the claim of deduction u/s. 54F, the Ld. AR submitted that the property at Anna Nagar is a tannery building and is not a residential house as has been held by the A.O. The Ld. AR in this regard further submitted that the ground for denying the benefit of Section 54F to the assessee is that the income from letting out of the tannery building is offered to tax by the assessee under the head 'income from house property'. The Ld. AR also submitted that the offering of income under the head 'income from house property' is not the deciding factor for allowing the benefit of section 54F of the Act and that the same can be denied only if the assessee is owning more than one "Residential property". The Ld. AR in this regard placed reliance on the decision of the Hon'ble Madras High Court in the case of CIT v. I.Ifthiquar Ashiq (2016) 68 taxmann.com 25 (Mad.), where it has been held that:

> *"12. A careful look at the proviso to Section 54F(1) would show that clause (a) of the proviso gives three alternatives. But clause (a) and clause (b) are intertwine with the use of a conjunction "and".*
>
> *13. In other words, to attract the proviso under Section 54F(1), the conditions stipulated in clause (a)(i) together with clause (b) should be satisfied. Alternatively the contingency stipulated in clause (a)(ii) together with clause (b) should be satisfied or at least the contingency stipulated in clause (a)(iii) together with clause (b) should be satisfied.*

14. It is not a case of the Department that the case of the assessee would fall under any one of the three sub-clauses of clause (a) together with clause (b). The case of the Department is that the assessee had income from a commercial property that was treated as income from house property. To be precise, the assessee had one residential house in Chennai, one commercial flat in Chennai, from out of both of which, he was deriving a total income of Rs.4,25,131/-. He also had a land in Neelankarai which was sold and a house property was purchased in Kodaikanal.

15. Under Section 22 of the Act, any income from any buildings, irrespective of which the use which has to be treated under the head "income from house property". Therefore, the Revenue cannot take above all the terminology use in clause (b) under the proviso. This is a mistake into which the Revenue has fallen to treat the case of the assessee as falling within the purview of the proviso.

16. The facts of the case as narrated in the order of assessment would show that the assessee did not own more than one residential house other than the new asset on the date of transfer of the original asset so as to fall clause (a)(i) of the proviso. The assessee did not purchase any residential house other than the new asset within one year of the transfer of the original asset. Therefore, his case did not also fall within clause (a)(ii) of the proviso. The assessee did not construct any residential house other than the new asset, so as to fall under clause (a)(iii). Therefore, the assessee did not satisfy any of the three sub-clauses contained in clause (a). Hence, the question of applying clause (b) of the proviso independent of the clause (a) of the proviso did not arise.

17. In view of the above, the substantial question of law is answered in favour of the assessee. Accordingly, the appeal is dismissed.

18. Before parting with, we should record that the Tribunal has wrongly indicated the address of the respondent/assessee as that of his counsel. Since the counsel does not want to take care the Original Order of Assessment and the order of the Appellate Authority contained the correct address of the assessee. Therefore, while issuing a certified copy of the order, the Registry shall indicate the correct address of the assessee as shown in the Original Order of Assessment without showing the address of the counsel for the assessee.

5. We have heard the parties, and perused the material available on record. The assessee has entered into a joint development agreement and as part of the agreement transferred 52% of the undivided share of land to the developer. The assessee as per agreement is to receive 23 flats. Since, the

possession of the land was handed over during the FY relevant to AY 2017-18, the assessee offered to tax to portion of the consideration attributable to the transfer of UDS to the builder in AY 2017-18. The balance amount out of the total consideration was offered to tax during the AY 2018-19. The CIT(A) while considering the appeal for AY 2017-18 has factually examined these details and accordingly held that the addition made by the A.O in AY 2017-18 is not correct. We find no infirmity in the said findings of the CIT(A) and the revenue did not bring any material on record for us to decide otherwise. The CIT(A) however denied the benefit Section 54F to the assessee stating that the assessee is owning more than one residential house. From the observations of the CIT(A), we notice that the ground for denying the benefit of Section 54F is that the assessee has offered the income from the tannery income under the head 'income from house property'. An identical issued has been considered by the Hon'ble Juridi8ctional high Court in the case of I.Ifthiquar Ashiq, supra, and the relevant observations of the Hon'ble High Court is extracted in the earlier part of this order. From the above observations of the Hon'ble High Court, we notice that the ratio laid down is that offering of income under the head "income from House Property" is not the determinative factor and that if the assessee does not own more that one "residential house" other than the new the new asset then he cannot be denied the deduction u/s.54F. In the given case it is an admitted position that the assessee is owning one residential house that is self occupied and one tannery that is being let out. Considering the ground on which the revenue has denied the benefit u/s.54F to the assessee we are of the view that the ratio laid in the above case is applicable to the assessee's case also. Accordingly we hold that the lower authorities are not correct in denying the deduction u/s.54F to the

assessee and we direct the AO to allow the deduction in AY 2017-18 as claimed by the assessee.

6. The ground raised by the assessee for AY 2018-19 pertain to the protective addition made by the AO towards capital gains where substantive addition is made in AY 2017-18. We have while deciding the appeal for AY 2017-18, held that there is no infirmity in the finding of the CIT(A) that the offering of sale consideration in AY 2017-18 towards UDS of land is correctly done by the assessee. Therefore the addition made by the AO on protective basis in AY 2018-19 does not survive. Accordingly the grounds raised by the assessee in this regard have become academic.

7. In result the appeals of the assessee for AY 2017-18 and AY 2018-19 are allowed.

Order pronounced on 10th day of February, 2026 at Chennai.

Sd/-	**Sd/-**
(मनु कुमार गिरि)	**(पदमावती यस)**
(Manu Kumar Giri)	**(Padmavathy.S)**
न्यायिक सदस्य / Judicial Member	**लेखा सदस्य /Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: *10th February, 2026.*
EDN, Sr. P.S

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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