

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, MUMBAI  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER  
ITA No. 6529/MUM/2025 (AY: 2016-2017)  
(Physical hearing)**

Charly Rocky Chitteth 1502, Claramount C Lodha Complex, Majiwada Road, Thane Mumbai- 400601. [PAN: ABLPC0520D]	Vs	Income Tax Officer Ward 1(3), Thane Mumbai- 400604.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Tanzil Padvekar, Advocate
Revenue by	Shri B. Laxmikanth- Sr. DR
Date of hearing	28.01.2026
Date of pronouncement	10.04.2026

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of Ld. CIT(A) / NFAC dated 22.09.2025 for A.Y. 2016-17. The assessee has raised following grounds of appeal;

- i. *On the facts and in law, the Learned Assessing officer [Ld. AO] erred in making addition of Rs. 34,55,915/- rejecting deduction claimed under section 54 by the appellant without considering the facts and circumstances of the case. The addition made is bad in law and liable to be deleted.*
- ii. *On the facts and in law, the Learned Commissioner of Income Tax (Appeals) [CIT(A)] erred in dismissing the appeal filed by the Appellant for claim of exemption under Section 54 of the Act without appreciating correct provisions of law and facts.*
- iii. *On the facts and in law, the learned CIT(A) erred in confirming the order passed by the learned Assessing Officer without appreciating that the actual date of possession and handover of the purchased property was 14/04/2017, which is much after the date of sale of the original property. Therefore, the date of handover of the property ought to be considered as*

*the relevant date for the purpose of Section 54, since the final payment was made by the Appellant on 06/02/2016 and possession was handed over on 14/04/2017, which is within the prescribed time limit under Section 54.*

*iv. On the facts and in law, the learned CIT(A) erred in misinterpreting the provisions of Section 54 of the Act by treating the date of the registration deed as the date of transfer. The registration was merely an act of part performance of the contract and did not, by itself, signify that the Appellant had taken possession of the property. Therefore, the date of taking possession of the property ought to be considered as the relevant date for the purposes of Section 54 of the Act.*

2. Rival submissions of both the parties have been heard and record perused. The Ld. Authorised Representative (in short 'Ld.AR') of the assessee submits that very short question is involved in the present appeal. In November, 2014, the assessee agreed to purchase under construction flat. The assessee made various payments to the builder as per terms and conditions. The assessee made total payment of Rs. 38,87,600/- from 24.03.2015 to 06.02.2016. The assessee sold this flat said flat on 13<sup>th</sup> January, 2016 for total consideration of Rs. 49,80,000/-. On sale of such capital, the assessee earned long term capital gain of Rs. 34,55,915/-, which was invested in purchase of new residential flat. The assessee claimed exemption under Section 54 of Income Tax Act. The AO disallowed such long-term capital gain by taking view that the assessee is not eligible for such capital gain. The Ld. CIT(A) confirms the action of AO. The Ld. AR of the assessee submits that on identical facts in Bastimal K. Jain vs. ITO [2016] 76 taxmann.com 368 (Mumbai-Trib), the Tribunal allowed exactly similar relief to that assessee holding that vital condition of Section 54 are fulfilled as per the time limit prescribed under Section

54. The Ld. AR of the assessee furnished the detail of proceed of sale of flat and purchase of flat along with payment details.
3. On the other hand, the Ld. Sr. DR for the revenue supported the order of lower authorities. Ld. Sr. DR submits that the assessee was not having clear title of the property. The assessee got enforceable right in the property only when agreement was registered. Thus, the assessee does not fulfil the requisite conditions.
4. I have considered the rival submissions of both the parties and gone through the orders of lower authorities carefully. I find that during the assessment, the AO noted that the assessee has sold an immovable property for a consideration of Rs. 49,80,000/- on 13.01.2016 being flat No. 203, situated at 2<sup>nd</sup> Floor, Om Krishna Darshan Cooperative Housing Society. The AO further noted that the assessee purchased under construction property which was registered on 28.11.2014 bearing Flat No. 1502, 15<sup>th</sup> Floor, Cleremont, C-wing, Lodha Luxeria, Majiwade, Thane (W) for a consideration of Rs. 1.22 Crore. The assessee computed long term capital gain of Rs. 34,55,915/-, sale of property on 13.06.2016. The assessee claimed exemption of such long-term capital gain of investment new residential flat i.e. Flat No. 1502 at Cleremont, Thane. The AO was of the view that exemption under Section 54 is not available to the assessee as the flat was transferred to assessee only on 13.01.2016 i.e. more than one year after purchase of under construction property. The AO again issued show cause notice dated 19.11.2018 to justify claim of exemption under section 54. In response to such show cause notice, the

assessee filed reply. The assessee in its reply submitted that purchase agreement was registered on 28.11.2014, however, payment was deferred as it was purchased under construction. The assessee made payment of Rs. 38,87,600/- from March, 2015 to February, 2016, which falls within the condition of Section 54 of the Act. The reply of assessee was not accepted by the AO by taking view that the assessee became owner of flat only on registration on 28.11.2014. Thus, the assessee has not acquired new property within a period of one year before the sale of flat and accordingly, exemption under Section 54 was not allowed. I find that on coordinate bench of Mumbai Tribunal in Sunil Amrit Lal Shah Vs ITO (2024) 162 taxmann.com 676(Mum -Trib) held that where the assessee sold a flat which was booked as under construction, which was handed over to the assessee on completion of construction, date of possession of new flat should be considered as date of its acquisition for assessee's claim of deduction under section 54F. I further find that on similar set of facts, coordinate bench of Mumbai Tribunal in Bastimal K. Jain v. ITO (supra) also allowed similar relief. In the result, the grounds of appeal raised by the assessee are allowed.

5. In the result, all the grounds of appeal are allowed.

Order was pronounced on 10/04/2026 in open Court.

Sd/-

**PAWAN SINGH**  
**JUDICIAL MEMBER**

MUMBAI, Dated: 10/04/2026  
Zu, P.S

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