

**IN THE INCOME TAX APPELLATE TRIBUNAL “H(SMC)” BENCH,
MUMBAI
BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER
ITA No. 8246/MUM/2025
Assessment Year: 2022-23**

Nikesh Bhagwandas Mehta Row House No 8, Green Lawns Society, Mulji Nagar, Borivali (West), Mumbai - 400092 (PAN: AGKPM4983E)	vs	Income Tax Officer- 42(1)(3), Mumbai
Appellant		Respondent

Present for:

Appellant by : Shri Himanshu Gandhi, CA
Respondent by : Shri Pravin Salunkhe, Sr. DR

Date of Hearing : 28.01.2026
Date of Pronouncement : 15.04.2026

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Addl. CIT/Jt.CIT (A)-1 Surat, vide order no. ITBA/APL/S/250/2025-26/1081087627(1), dated 24/09/2025, passed against the intimation issued by the Central Processing Centre of the Income-tax Department, Bengaluru, (CPC) u/s. 143(1) of the Income-tax Act (hereinafter referred to as the “Act”), dated 26.02.2024, for Assessment Year 2022-23.

2. Grounds taken by the assessee are reproduced as under:

“1. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming the action of Ld CPC, Bengaluru in denying the carried forward long term capital loss amounting to Rs. 37,72,601/-

2. On the facts and circumstances of the case and law, the Ld CIT(A) failed to consider that the gross long term capital gain on sales of shares amounted to Rs. 69,84,283/- and the same was claimed as exemption under section 54F of the Income Tax Act, 1961.

3. On the facts and circumstances of the case and law, the Ld CIT(A) failed to consider that the appellant has incurred gross long term capital loss on sale of shares amounting to Rs. 37,72,601 and the same has been carried forward by the appellant in the return of income.

4. On the facts and circumstances of the case and law, the Ld CIT(A) erred in confirming the action of Ld CPC, Bengaluru by assuming and considering that the appellant has earned NET long term capital gain on sales of shares amounting to Rs. 32,11,682- and the excess amount of exemption amounting to Rs 37,72,601 being the difference between 32,11,682 and 69,84,283 claimed under section 54F is not allowed to be carry forward as long term capital loss.”

3. The sole grievance of the assessee in the present appeal is against denial of carry forward of long term capital loss of Rs. 37,72,601/-. Assessee has incurred the said loss during the year under consideration which has been carried forward to the subsequent year as per claim made in his return of income. Assessee filed his return of income on 29.08.2022 reporting total income at Rs.49,53,740/-. During the year, assessee earned long term capital gain of Rs.69,84,283/- which was claimed as exempt u/s. 54F. Return of the assessee was processed by the CPC wherein carry forward of long term capital loss of the stated amount was not allowed to the subsequent years.

3.1. In the first appeal before the ld. CIT(A), it was submitted by the assessee that exemption u/s.54F of Rs.69,84,283/- is claimed against the long term capital gain of equal amount and therefore, long term capital loss of Rs.37,72,601/- cannot be adjusted against the long term capital gain of Rs.69,84,283/-. The view adopted by the ld. CIT(A)

is that first inter head loss is adjusted and then only, exemption u/s. 54F can be claimed on the amount of net capital gain. By taking this view, long term capital loss of Rs.37,72,601/- was adjusted against the long term capital gain of Rs.69,84,283/- and the net capital gain was worked out to Rs.32,11,682/- which the assessee was allowed to claim as exempt u/s. 54F. He thus, upheld the disallowance of carry forward of long term capital loss of Rs.37,72,601/- processed by CPC u/s. 143(1).

4. Before us, Id. Counsel for the assessee submitted that assessee earned long term capital gain on sale of equity shares. He has also incurred long term capital loss on sale of certain equity shares. Exhaustive detail for each of the sale transaction undertaken by the assessee giving rise to capital gain/loss is placed on record in the paper book from page 81 to 100. Contention of the assessee is that it is not necessary that one should apply section 70(3) and thereafter only the assessee could invest the capital gain arising from the long term capital asset to avail the benefit u/s. 54F. According to him, provision of section 54F prevails over the provision of section 70(3).

5. Before we delve on the issue raised by the assessee, we refer to the provisions of section 45, section 54F and section 70 for our better understanding. Relevant extracts of these sections are reproduced as under:

A. "Capital gains.

Section 45. (1) Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections 54, 54B, 54D, 54E, 54EA, 54EB, 54F, 54G and 54H, be chargeable to income-tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place.

B. Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.

54F. (1) Subject to the provisions of sub-section (4), where, in the case of an assessee being an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house thereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India (hereafter in this section referred to as the new asset). the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say

(a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45:

(b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45

C. Set off of loss from one source against income from another source under the same head of income.

70. (1) Save as otherwise provided in this Act, where the net result for any assessment year in respect of any source falling under any head of income, other than "Capital gains", is a loss, the assessee shall be entitled to have the amount of such loss set off against his income from any other source under the same head.

(2) Where the result of the computation made for any assessment year under sections 48 to 55 in respect of any short-term capital asset is a loss, the assessee shall be entitled to have the amount of such loss set off against the income, if any, as arrived at under a similar computation made for the assessment year in respect of any other capital asset.

(3) Where the result of the computation made for any assessment year under sections 48 to 55 in respect of any capital asset (other than a short-term capital asset) is a loss, the assessee shall be

entitled to have the amount of such loss set off against the income, if any, as arrived at under a similar computation made for the assessment year in respect of any other capital asset not being a short-term capital asset.”

5.1. From section 45(1), it is noted that the chargeability of profit or gain arising from the transfer of capital asset is subject to what is provided in section 54 to 54H, which includes section 54F. Thus, the chargeability itself factors in the benefit available to the assessee u/s. 54F (section relevant to the present case). Heading of the section 54F mentions that capital gain on transfer of certain capital assets is not to be charged in case of investment in residential house. Thus, when the conditions as prescribed u/s. 54F are complied with by the assessee, the capital gain arising out of the transfer of certain capital assets gets an exit from the charging section 45. Clause (a) of section 54F(1) prescribes that the whole of capital gain shall not be charged u/s.45 when the cost of new asset is more than the net consideration in respect of the original asset which was transferred, giving rise to capital gain. Thus, the scheme of section 45 to 55A provide for computation of capital gains and the effect has to be given first as per series of exemption section of 54.

5.2. Section 70, sub-section (3) mentions that where there is a loss as a result of computation made u/s. 48 to 55, assessee is entitled to set off such a loss against income, if any arrived at under similar computation for any other capital asset not being short term capital asset. Thus, section 70, sub-section (3) will apply once capital gain has been computed as per the provisions of section 48 to 55 wherein exemption available under section 54F is subsumed for the purpose of computation. Accordingly, provisions of section 54F will prevail over the provisions of section 70(3).

6. In the present set of facts before us, the factual matrix remains uncontroverted in respect of quantification of long term capital gain and long term capital loss as well as exemption claimed u/s.54F as reported in the return of income by the assessee. Going by the scheme of the Act, we are of the view that assessee is eligible for exemption u/s.54F towards long term capital gain of Rs. 69,84,283/- earned on sale of certain long term equity shares. At the same time, assessee is also eligible to carry forward long term capital loss of Rs.37,72,601/- incurred by him on sale of another set of long term equity shares. It is not necessary that one should first apply section 70(3) and thereafter only the assessee could invest the capital gain/net consideration arising from the transaction of long term capital asset as required u/s. 54F. Scheme of section 45 to 55A provides for computation of capital gains and the effect has to be given first to the provision of capital gains as provided under the said sections and then apply the provisions of section 70. To put it in other words, section 70 would come into the computation of total income only when the capital gains has been computed in accordance with the provisions of section 45 to 55A.

6.1. To buttress our findings, we draw force from the decision of Hon'ble High Court of Madras in the case of CIT vs. Vijay M. Mahtaney [2013] 35 taxmann.com 228 (Mad) wherein it was held that assessee could first claim exemption u/s. 54EC and then set off capital loss. The Coordinate Bench of ITAT, Jaipur in the case of Naresh Jain vs. ACIT [2020] 118 taxmann.com 519 (Jpr) gave its finding that section 70 would come into play only when capital gains have been computed in accordance with provisions contained in section 45 to 55A by placing reliance on the said decision of Hon'ble High Court of Madras

(supra). Accordingly, carry forward of long term capital loss claimed by the assessee in his return is directed to be allowed. Grounds raised by the assessee in this regard are allowed.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 15.04.2026.

Sd/-
[Sandeep Singh Karhail]
Judicial Member

Sd/-
[Girish Agrawal]
Accountant Member

Dated: 15 April, 2026

MP, Sr.P.S.

Copy to:

- 1 The Appellant
- 2 The Respondent
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BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai