आयकरअपीलीयअधिकरण, मुंबई पीठें, मुंबई

INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCHES, MUMBAI

BENCH: B

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER AND SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

ITA 4342/MUM/2026 निर्धारण वर्ष/AssessmentYear:**2021-22**)		
Neha Karan Motwani Bunglow no. 13, Udadhi Tarang, Juhu tara road, Mumbai, Juhu S.O. Mumbai-400049, Maharashtra	**Vs.**	**Income Tax Officer – 34(3)(2)** Kautilya Bhavan, G Block BKC, Bandra Kurla Complex, Bandra East, Mumbai-400051, Maharashtra
अपीलार्थी **Appellant**		प्रत्यर्थी **Respondent**
Permanent Account Number of Assessee:		**AEOPV 7678 B**
अपीलार्थीद्वारा/Appellant represented by:		**Shri Rahul Hakani**
प्रत्यर्थीद्वारा/Respondentrepresented by:		**Shree Kumar C., (SR AR)**

सुनवाईकीतारीख/Date of conclusion of hearing:	**17/06/2026**
घोषणाकीतारीख/Date of pronouncement:	**17/07/2026**

आदेश / ORDER

PER SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER:

This appeal is filed by the assessee against the order of the learned Commissioner of Income-tax (Appeals) / NFAC-Delhi [“*Ld. CIT(A)*”], dated 25.02.2026 for the assessment year 2021-22 in sustaining the disallowance of deduction claimed u/s 54F of the Act.

2. Briefly stated the facts are that the assessee, an individual, filed her return of income for A.Y. 2021-22 on 24.12.2021 declaring total

income of Rs. 1,92,59,430/-. The income disclosed comprised income from salary, house property, capital gains and other sources. In the computation of Income for AY 2021-022 [Pg 164-169] [Pg 165, 167] assessee disclosed long term capital gains of Rs. 8,31,47,788/- from transfer of unlisted /unquoted shares on 31/3/2026 of M/s Fitternity Health E-Solutions Private Limited against other shares and on the said Long-Term Capital Gain the Assessee claimed exemption under Section 54F of the Act amounting to Rs. 6,91,52,369/- on account of investment in residential house property purchased vide Deed of Transfer dated 30/3/2021 registered on 30/6/2021 from HP Trading, sole proprietory of her husband Shri Karan Haresh Motwani for a total consideration of Rs. 7,50,00,000/-. The property is situated at Flat No. 102, Usha Sundar Premises CHSL, Juhu Tara Road, Santacruz (West), Mumbai. The consideration of Rs 7,50,00,000/- was paid on 27/5/2021 - Copy of registered Deed of Transfer registered on 30/6/2021 [Pg 109-161].

3. Before AO assessee made submissions dated 19/12/2022 [Pg 314 318] filed on 21/12/2022. Assessee submitted that she has not purchased the house in which she is residing but a different house. It was further submitted that the house was purchased for her future security as the house in which she is residing was the parental property of her husband. She further stated that she intended to let out the property. It was also stated that she and her husband are both entrepreneurs in their own right. She had also explained the funds raised by her for making the investment. Assessee on 21/12/2022 also

filed the Computation of income of her Husband for AY 2022-2023 wherein he had disclosed short term capital gain from sale of the property (of Rs 4,85,41,828/-) [Pg 321-323]. The Return of income was filed on 7/11/2022 disclosing income of Rs. 2,64,82,740/- [Pg 323-324]. The Assessing Officer completed the assessment under Section 143(3) read with Section 144B of the Act vide order dated 30.12.2022 and disallowed the exemption claimed u/s 54F amounting to Rs. 6,91,52,369/-, thereby making an addition of the said amount to the total income of the Assessee. The deduction was denied on the ground that Assessee had purchased the property from her husband with a view to avoid taxes by claiming exemption u/s 54 and the husband would be able to adjust the short term capital gains against his business losses. Before the Ld. CIT(A) assessee filed written submissions dated 19.12.2024 setting out the factual and legal position of the case [Page No. 8 to 25 of the Paperbook]. It was specifically submitted before the learned CIT(A) that the impugned property was purchased from the Appellant's husband in June 2021, whereas the business losses in his hands arose only on 31.03.2022. Consequently, the finding of the Assessing Officer that the transaction was undertaken to enable the husband to set off business losses is factually unsustainable, as on the date of purchase neither had the losses accrued nor could they have been contemplated. The learned CIT(A), however, confirmed the action of the Assessing Officer and upheld the disallowance of exemption under Section 54F amounting to Rs. 6,91,52,369/-.

4. Being aggrieved by the order of the learned CIT(A), the Assessee has preferred the present appeal before us challenging the disallowance of exemption u/s 54F and the consequential addition of Rs. 6,91,52,369/- made by the Assessing Officer while completing the assessment.

5. Before us, the learned Counsel for the assessee submitted that the assessee has fulfilled all the prescribed conditions for claiming deduction u/s 54F of the Act. Ld. Counsel for the assessee submitted that assessee had categorically stated in her submission dated 19/12/2021 which is placed at Page 314-320 of the paper book that (i) she has not purchased the house in which she is residing but a different house, (ii) the house was purchased for her future security, (iii)the house in which she is residing was the parental property of her husband, (iv) she further intended to let out the property and (v) she and her husband are both entrepreneurs in their own right. Ld. Counsel submitted that the purchase was duly registered, stamp duty was paid, transaction was carried out at market value and actual consideration was paid. Assessee had also explained the funds raised by her for making the investment. The ld. AO and ld. CIT(A) wrongly held that the purchase was carried out with a view to avoid taxes as the husband had claimed set-off of business loss against short term capital gains. Ld. Counsel submitted that both the authorities failed to appreciate that the impugned property was purchased from the Appellant's husband in June 2021, whereas the business losses in his hands arose only on 31.03.2022 and thus as on the date of purchase

neither he had the losses accrued nor could they have been contemplated.

6. Ld. Counsel for the assessee placing reliance on the decisions of ***Kavita Manoj Damani v ITO (2025) 175 taxmann.Com 723(Mum)(Trib)*** & ***Nidhi Siddharth Kejriwal v DCIT ITA No 5043/M/25 AY 22-23 dtd 9/4/2026(Mum)(Trib)*** submitted that the decision of the Hon'ble Supreme Court in the case of ***McDowell & Co. Ltd. V. CTO***, (***154 ITR 148)*** on which reliance was placed by the A.O. to treat the transaction as a devise to evade tax, was considered by the above Mumbai Benches of the Tribunal and claim for deduction u/s 54/54F was allowed on purchase of flat by assessee from her husband. Ld. Counsel submitted that these decisions squarely applies to the facts of the assessess's case.

7. Ld. Counsel further placing reliance on the decision of Hon'ble the Supreme Court in the case of ***Vodafone International Holdings B.V. v. Union of India [2012] 341 ITR 1 (SC)*** submitted that the Hon'ble Supreme Court held that if an assessee plans his affairs by way of genuine tax planning available to him within four corners of the taxing structure, such transaction cannot be considered as sham or bogus amounting the tax evasion.

8. Ld. Counsel placing reliance on the decision of Hon'ble Madras High Court in the case of ***M.V. Valliappan v. ITO [1988] 170 ITR 238 (Mad.)*** submitted that the Hon'ble High Court held that the decision in ***McDowell & Co. Ltd. V. CTO*** cannot be read as laying

down that every attempt at tax planning is illegitimate and must be ignored, or that every transaction or arrangement which is perfectly permissible under law, which has the effect of reducing the tax burden of the assessee, must be looked upon with disfavour.

9. On the other hand, the learned D.R. strongly placed reliance on the orders of the authorities below.

10. Heard, rival submissions, perused the orders of the authorities below and the materials placed before us, the decisions relied on. During the assessment year under consideration the assessee sold unquoted equity shares of M/s Fitternity Health E-solutions Pvt. Ltd. and M/s Curefit Healthcare Pvt. Ltd. and reported long term as well as short term capital gains from sale of such shares. The assessee also claimed deduction u/s 54F on the property purchase by her from her husband. However, the Assessing Officer denied the deduction claimed u/s 54F of the Act, observing that the spouse of the assessee Shri Karan Haresh Motwani reported short term capital gain of 4.85 crore on the house property sold and this gain was set off against business loss of Rs. 3.56 crore and therefore, the assessee had made an arrangement to purchase the house property owned by her husband thereby entered into family transaction to avoid payment of tax. A.O. placed reliance on the decision of the Hon'ble Supreme Court in the case of ***McDowell & Co. Ltd. V. CTO*** *(supra)*. On appeal the Ld. CIT(A) sustained the action of the Assessing Officer in denying the deduction claimed u/s 54F of the Act to the assessee.

11. On perusal of the assessment order we find that the only reason for disallowance of deduction claimed by the assessee was that the spouse of the assessee had claimed set of the short term capital gain against the business loss and the assessee and her spouse made an arrangement of purchase and sale of property to avoid tax.

12. We find no merit in the contentions of the Assessing Officer. It is pertinent to note that the impugned property was sold to the assessee in June, 2021 whereas the business loss in the hands of the spouse of the assessee arose only on 31.03.2022 and therefore as on the date of purchase/sale neither (the assessee's spouse) at the loss was accrued to nor he could have anticipated such loss. Therefore, setting of business loss against short term capital gain by the assessess's spouse was in the normal course of business. We also observed that the spouse of the assessee did not set off entire gain against business loss that only a partial amount was set off against the business losses. The transactions between the assessee and the spouse of the assessee are made in the normal circumstances and it cannot be termed as a colourable devise specially when such transaction is made within the four corners of law.

13. We observed that identical issue has been addressed by the Mumai Bench of the Tribunal in the case of ***Nidhi siddharth Kejriwal v DCIT in ITA NO. 5043/M/2025 dated 09.04.2026*** wherein the Tribunal held as under:

"13. We have considered the rival submissions, perused the material available on record and case laws relied upon by the assessee. Admittedly, the transaction of sale of shares and in turn purchase of residential property has been effected by the assessee and a deduction u/s 54F of the Act for "Capital Gain on transfer of certain capital assets not to be charged in case of investment in residential house" was claimed. It is observed that the entire transactions in the chain to complete the transaction of purchase of property are duly supported by the corroborative evidence of purchase/sale. In support of sale of shares, copy of demat account furnished. To support the transaction of purchase of flat registered agreement as well as confirmation of developer Indiabulls in response to notice u/s 133(6) of the Act was submitted. Maintenance bill from Indiabulls, copy of electricity bills after purchase by the assessee are placed on record. The sale deed was signed by the seller in the capacity of purchaser also for which power of attorney is produced in the paper book, which had not been disputed by the Stamp Duty Authority, while registering the said document. The AO has denied the claim u/s 54F, however, there was no adverse finding qua the transaction of purchase of flat and Long Term Capital Gain on sale of shares of Parksons Packaging Limited.

14. In Rebuttal to the contention of Assessing Officer that the sellers and purchasers are residing in the same flat before and after the transfer,ld. AR submitted that the above observation is erroneous as Mr. Ramesh Kejriwal and Mrs. Anjali Kejriwal are not residing in Flat No.4001, but they are residing in Flat No.4101 with Chaitanya Kejriwal and Shaili Kejriwal. It is submitted that there is no bar in the Act for purchase of property from a relative. Ld. AR further opposed the objection of Ld. AO that the agreement is sham because it was signed by Ramesh Kejriwal himself and on behalf of the assessee. It is submitted that such grounds raised by the Ld. AO are not justified. It is submitted by Ld. AR that the deduction u/s 54 was just incidental, the transaction between the family members was with the intention to preserve unity and peace within the family by avoiding differences that arise when living jointly in the same premises. The allegation of AO that the seller has not paid any tax cannot be the reason for denial of deduction u/s 54F, as the sellers, in their computation of income are not required to pay tax computed under the scheme of law.

15. Regarding the finding of AO that purchase of flat by assessee was not a colourable device, it is squarely covered by the settled principles of law that tax planning may be legitimate, provided it is within the framework of law. Ld. AR placed reliance on various decisions, wherein the findings supporting the contentions of assessee are as under:

> ***In the ITAT Hyderabad Bench 'B', Girish Dharod v. Assistant Commissioner of Income-tax, Circle 1(2), Hyderabad [2013] 40 taxmann.com 282 (Hyderabad - Trib.)***
>
> *"Liberal interpretation of statutory provisions taken by Courts to extend exemption available under section 54 to assessee, even in cases of investments in names of spouse and minor children of assessee cannot be extended beyond a point so to cover*

investments made in names of other blood relations or other relations"

In the case of Kavita Manoj Damani vs. ITO Ward 2(1)(1), ITA No.2648/Mum/2024 (AY 2020-21)

"19. In the context of Ground No. 6, wherein the AO has denied the exemption u/s 54 on the ground that the assessee had adopted a colourable device to evade tax, it was submitted that the gift deed in favour of the assessee was executed and also registered on 1-4-2017. The said property was then sold on 9-1-2020. By no stretch of imagination, it can be said that the gift was made with the intention to evade the tax. This is for a simple reason that it could not have been imagined in 2017 that the property would be sold. With respect to the purchasing of the residential property from the husband, it was submitted that it was a legitimate transaction wherein a registered agreement was executed, stamp duty as applicable was fully paid, procedure for obtaining the certificate for deducting the tax at lower rate was fully completed and certificate was granted and consideration was fully paid to the husband from the bank account of the assessee.25. We have heard the rival contentions and purused the material available on record. The Assessing officer has brought to tax long term capital gains of Rs 4,21,83,273/- on sale of two flats without allowing the exemption claimed by the assessee u/s 54 amounting to Rs 3,96,55,000/-. The sale of flats have been executed vide agreements to sell dated 9/1/2020 and the said flats were initially purchased vide agreement to purchase dated 14/03/2002 read with registered gift deed dated 1/04/2017. The contents of these sale agreements (and purchase/gift deed) are not in dispute and the same have been executed by the assessee in her individual capacity and the consideration has been received by her in her bank account and which has been duly offered to tax by the assessee and has been brought to tax by the AO in the hands of the assessee.

26. Now, coming to exemption claimed by the assessee u/s 54 amounting to Rs 3,96,55,000/-, the same relates to purchase of another flat by the assessee from her husband vide registered agreement to sell dated 18/03/2021 for a stated consideration of Rs 3,85,00,000/- on which the assessee has paid stamp duty of Rs 11,55,000/-. The factum of ownership of the said flat in the name of the husband of the assessee vide agreement to sell dated 27/03/2015 is not in dispute nor the contents of the subject registered agreement to sell dated 18/03/2021 wherein the title in the property has been transferred by him in the name of the assessee."

In the case of ITO Ward 6 (3), Pune vs. Kalawati Vijaykumar Agarwal, ITA No.979/Pun/2023 (AY 2021-22)

"11. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and the Ld. CIT(A)/NFAC and the paper book filed by both the sides. We find the assessee claimed deduction u/s 54F of the Act towards investment in the residential property purchased from her husband Shri Vijaykumar Satyanarayan Agarwal Shri Vijaykumar Satyanarayan Agarwal had acquired the said property from his HUF Vijaykumar Satyanarayan Agarwal in which the assessee is also a member. All the members of HUF including the assessee gave consent for transfer of the property between Shri Vijaykumar Satyanarayan Agarwal and Vijaykumar Satyanarayan Agarwal, HUF. We find the Assessing Officer disallowed the deduction claimed by the assessee on the ground that the purchase of the property by the assessee is a circular transaction and therefore, the assessee is not entitled to the claim of deduction u/s 54F of the Act. We find the CIT(A)/NFAC allowed the claim of deduction u/s 54F of the Act. the reasons of which are reproduced in the preceding paragraphs.

12. We find the provisions of section 47(i) of the Act read as under:

"47. Nothing contained in section 45 shall apply to the following transfers-

(1) any distribution of capital assets on the total or partial partition of a Hindu undivided family

13. From the above, it is clear that any distribution of capital assets on the total or partial partition of HUF shall not be regarded as transfer. The CIT(A)/NFAC in our opinion has rightly held that the assignment of the property on 28.07.2011 between Vijaykumar Satyanarayan Agarwal and Vijaykumar SatyanarayanAgarwal, HUF was not in connection with the partition and therefore, the same is a transfer and therefore, the property acquired by Shri Vijaykumar Satyanarayan Agarwal is an independent one. We also agree with the findings of the CIT(A)/NFAC that the provisions of section 47 of the Act have not provided for any clauses relating to the transfer of capital asset between the wife and husband and vice-versa for adequate consideration. It is also an undisputed fact that the assessee has purchased the property for a consideration of Rs.3,50,00,000/- and the amount has been paid through banking channel. In this view of the matter and in view of the detailed discussion by the CIT(A)/NFAC on this issue, we do not find any infirmity in the order of the CIT(A)/NFAC allowing the claim of deduction u/s 54F of the I.T. Act, 1961. Accordingly, the same is upheld and the grounds raised by the Revenue are dismissed."

16. In backdrop of aforesaid discussion, fact, circumstances and legal principles, we are of the considered view that the assessee is entitled for

> *deduction u/s 44F of Act, which cannot be denied only because the transaction of purchase/sale was between the relatives or related parties, while the entire transactions are under the permissible legal framework, which could not be dislodged or contradicted by the revenue authorities. Further, the allowable deduction to assessee cannot be denied only on the ground of doubt or surmise that the transaction was an artificial transaction for the purpose of tax evasion in absence of any cogent reasonings, whereas the outcomeof transaction in the form of deduction u/s 54F was only incidental or may be a tax planning, as there was no legal flaw in the transactions undertaken, so far as concerned authorities have not raised any dispute for such transactions.*
>
> *17. Consequently, we direct the AO to delete the entire addition made on account of denial of deduction u/s 54F of the Act."*

14. Further, we observe that in the case of ***Kavita Manoj Damani v ITO (2025) 175 taxmann.com 723 (Mum) (Trib)*** the Tribunal held that when the assessee sold two residential flats and claimed deduction u/s 54 on capital gains arising from sale of flats and invested in purchase of another new flat from her husband, since the assessee had purchased new flat within stipulated time period of two years after date on which transfer of original asset took place, the claim of exemption u/s 54 was to be allowed to the assessee. In this decision also the Assessing Officer doubted the transaction of purchase and sale of properties as the assessee purchased house from her husband and the Assessing Officer was of the view that the whole transaction between the assessee and her husband was nothing but rotation of money just to evade tax. However, the Tribunal after considering the ratio of the decisions of the Hon'ble Supreme Court in the case of ***McDowell & Co. Ltd. V. CTO*** and various other decisions in the cases of ***ITO v. Kalawati Vijaykumar Agarwal [ITA No. 979/PUN/2023 dated 13.09.2024 (Pune ITAT), ITO v. Rajesh Sharma (Jaipur ITAT), Surjeet Singh v. PCIT (Chandigarh ITAT)*** wherein it was

held that exemption u/s 54/54F is to be granted with respect to the residential property purchased by the assessee from his relative/family member, held that the assessee was entitled to exemption u/s 54 of the Act. These decisions apply to the facts of the assessee's case.

15. Thus, in view of the above discussion we hold that the assessee is entitled for deduction u/s 54F of the Act and accordingly, we direct the Assessing Officer to delete the disallowance of deduction claimed by the assessee u/s 54F of the Act.

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

Order pronounced in the open court on 17/07/2026

Sd/-	**Sd/-**
MAKARAND VASANT MAHADEOKAR **ACCOUNTANT MEMBER**	**CHALLA NAGENDRA PRASAD** **JUDICIAL MEMBER**

Mumbai, Dated: 17/07/2026
Kunal

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3	THE PCIT / CIT,
4	THE D.R., ITAT, MUMBAI BENCH
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