आयकर अपीलीय अधिकरण, मुंबई पीठें, मुंबई
INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCHES, MUMBAI

BENCH: A

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND SHRI JAGADISH, ACCOUNTANT MEMBER

<table>
<tr><td colspan="3">ITA 9066/MUM/2025
निर्धारण वर्ष/Assessment Year: 2018-19)</td></tr>
<tr><td>ASHWIN CHHOTALAL PAURANA
B-102, AAKAR RAJHANS COMPLEX BEHIND D .G NAGAR VASAI ROAD, WEST, PALGHAR-401202, MAHARASHTRA</td><td rowspan="2">Vs.</td><td>INCOME TAX OFFICER WARD 4(1)
QURESHI MANSION , GOKHALE ROAD, THANE-400602, MAHARASHTRA</td></tr>
<tr><td>अपीलार्थी Appellant</td><td>प्रत्यर्थी Respondent</td></tr>
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<tr><td colspan="2">Permanent Account Number of Assessee:</td><td>ACKPP1530E</td></tr>
<tr><td colspan="3"></td></tr>
<tr><td colspan="2">अपीलार्थी द्वारा/Appellant represented by:</td><td>Shri K. Gopal, Advocate & Shri Akhilesh Deshmukh, Advocate</td></tr>
<tr><td colspan="2">प्रत्यर्थी द्वारा/Respondent represented by:</td><td>Shri Surendra Mohan (SR. DR.)</td></tr>
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सुनवाई की तारीख / Date of conclusion of hearing:	**02-Jul-2026**
घोषणा की तारीख / Date of pronouncement:	**27-Jul-2026**

आदेश / ORDER

PER SMT. BEENA PILLAI, JUDICIAL MEMBER:

Present appeal filed by the assessee arises out of the order dated 03/10/2025 passed by NFAC, Delhi [hereinafter referred to as "Ld.CIT(A)"] for A.Y. 2008-09 on following grounds of appeal:-

"Reopening is bad in law:

1. Reassessment Proceedings Void Ab Initio

On the facts and in the circumstances of the case, the learned Assessing Officer ("Ld. AO") has erred in law and on facts in initiating the reassessment proceedings and issuing notice under section 148 dated 31.03.2022. The entire reassessment proceedings are bad in law and void ab initio.

2. Notice issued by Jurisdictional AO is in Violation of Section 151A

The notice issued under section 148 of the Income-tax Act, 1961 dated 31.03.2022, having been issued in violation of the mandatory provisions of section 151A of the Act, is without jurisdiction and bad in law. Consequently, the reassessment proceedings initiated pursuant thereto and the assessment order dated 24.03.2023 are void ab initio and unsustainable in law. Hence, the notice issued under section 148 and the consequent assessment order deserve to be quashed as being illegal and without authority of law.

Grounds on Merits

***3.** The Learned National Faceless Appeal Centre (NFAC) erred in law and on facts in confirming the action of the AO by assessing the total income at ₹1,04,93,000/- as against the total income of ₹1,73,000/-. The disallowance made under section 54F is not all justified and the same may be deleted.*

***4.** The learned NFAC has erred in law and on facts in confirming the addition of ₹1,03,20,000/- by disallowing the exemption claimed under section 54F of the Income-tax Act, 1961, on the alleged ground that the appellant had not purchased a new residential house property within the time period prescribed under section 54F. The appellant submits that the finding of the learned NFAC is incorrect and contrary to the facts on record as well as settled judicial principles. The appellant had duly complied with the conditions prescribed under section 54F of the Act, and therefore, the disallowance of exemption is unjustified and liable to be deleted.*

***5.** The Appellant denies the liability on account of interest levied under section 234A, 234B and 234C of the Act. The levy of such interest is unjustified and deserves to be deleted.*

***6.** That the Appellant craves leave to add, alter, amend, substitute, or withdraw any of the above grounds of appeal at the time of hearing, if so required."*

The assessee has raised the following additional grounds of appeal:-

> *"1. The capital gains arising on account transfer of his rights in the immovable - property vide an agreement dated 31.03.2017 registered on 07.06.2017 are not taxable in thee impugned assessment year i.c. AY 2018-19. Thus, the assets were transferred during the previous year relevant to AY 2017-18 and not during the AY 2018-19. Thus, the capital gains arising out of such transfer are not taxable in the AY 2018-19. Thus, the addition to the income on account of disallowance of claim under section 54F of the Act is not at all justified and the same may deleted.*
>
> *2. Without prejudice to the other grounds of appeal, the authorities below failed to appreciate that income can be assessed only in the correct assessment year as prescribed under the Income-tax Act, 1961. Since the alleged transfer took place on 31.03.2017 upon execution of the Deed of Conveyance, no capital gain could be brought to tax in Assessment Year 2018-19. The impugned addition is therefore without jurisdiction and liable to be deleted in entirety.*
>
> *3. The Appellant craves leave to add, amend alter and / or debut any of the Grounds of Appeal."*

2. <u>Brief facts of the case are as under:-</u>

The assessee is an individual. Admittedly, no return of income was filed for the year under consideration. Subsequently, based on information available with the Department regarding the sale of an immovable property by the assessee during the relevant previous year, the case was reopened by initiating proceedings under the provisions of section 148A of the Act.

2.1. In response to the notice issued under section 148A(b) of the Act, the assessee filed a reply dated 17/03/2022, wherein it was submitted that the assessee was merely a confirming party to the agreement for sale of an immovable property dated 17/06/2017, for a total sale consideration of Rs.5,35,00,000/-. It was contended that out of the total consideration, the assessee received

Rs.1,10,00,000/- as his share. It was further submitted that the said amount was invested in accordance with the provisions of section 54F of the Act and, was claimed as exempt.

2.1.1. However, the Ld.AO, while passing the order under section 148A(d) of the Act on 31/03/2022, observed that the assessee had failed to satisfactorily explain and substantiate the claim of deduction u/s 54F of the Act by furnishing cogent documentary evidence. Accordingly, the Ld.AO held that, income chargeable to tax escaped assessment and proceeded on the premise that the sale consideration of Rs.5,35,00,000/- was liable to be assessed in the hands of the assessee.

2.2. Pursuant to the order passed under section 148A(d) of the Act, notice u/s 148 dated 31/03/2022 was issued. In response thereto, the assessee filed its return of income declaring total income of Rs.1,73,000/-. Subsequently, statutory notices u/s 143(2) and 142(1) were issued to the assessee, in compliance with which the assessee furnished various details and documentary evidences, inter alia, comprising of the copy of the registered agreement dated 31/03/2017, copy of the allotment letter dated 10/06/2017 issued by M/s SR Developers, copy of the bank statements reflecting the receipt of sale consideration, and copy of the registered sale agreement dated 18/12/2003.
It was submitted by the assessee that aforesaid documents clearly establish that it had received Rs.1,10,00,000/- from the property transaction executed between M/s Hare Krishna Developers (vendor) and M/s Prime Group LLP (purchaser), wherein the

assessee was only a confirming party. It was further submitted that the transaction constituted a transfer of a capital asset and, accordingly, the assessee computed the long-term capital gains at Rs.1,03,20,000/- after claiming indexed cost of acquisition of Rs.6,80,000/-. The assessee further submitted that the entire net consideration was invested towards the purchase of a residential house property and, therefore, claimed deduction under section 54F of the Act amounting to Rs.1,03,20,000/-.

2.3. The Ld. AO, however, observed that, in support of the claim for deduction under section 54F of the Act, the assessee had not furnished any documentary evidence except an allotment letter dated 10/06/2017 issued by M/s SR Developers, whereby a residential flat in the project "Grandeur" had been allotted to the assessee for a total consideration of Rs.1,40,00,000/-.

2.4. The Ld. AO further observed that the assessee failed to furnish any documentary evidence to establish his ownership in the immovable property that was the subject matter of the sale transaction. According to the Ld.AO, although the assessee claimed to be a confirming party to the transaction and to have received Rs.1,10,00,000/- therefrom, no material was placed on record to substantiate the ownership rights of the assessee in the property. Accordingly, the Ld.AO held that the amount of Rs.1,10,00,000/- could not be regarded as consideration received on transfer of a long-term capital asset.

The Ld. AO further observed that the asset in question was transferred on 11/04/2017 and that the assessee failed to furnish documentary evidence establishing the purchase of a new residential house in support of the claim for exemption. Consequently, the Ld.AO denied the exemption claimed by the assessee under section 54F of the Act and completed the assessment accordingly.

Aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A).

2.5. The Ld.CIT(A), after considering the submissions of the assessee and examining the material available on record, observed and held as under:-

> *"6.6 The appellant pointed out that he became entitled for Rs.1,10,00,000/- on extinguishment of his right in land admeasuring 46.4515 sq. meters due the transfer of the land under reference to M/s. Prime Group LLP. M/s S.R. Developers, is a sister concern of M/s. Prime Group LLP and was developing a slum redevelopment project at village Dahisar, Taluka Borivali, Dist. Mumbai. The appellant in lieu of the sum of Rs. 1,10,00,000/- due to him from M/s. Prime Group LLP was offered a residential flat in the slum redevelopment project under of the sister concern M/s S.R. Developers.The appellant accepted the said offer and M/s S.R. Developers allotted to the appellant under letter of allotment dt. 10.06.2017, a residential flat admeasuring 1268.85 sq ft., being flat no. 402, building no. 2, Grandeur at Dahisar (E), Mumbai. The appellant was also informed under the said allotment letter dt. 10.06.2017 that the amount due to him from M/s. Prime Group LLP i.e Rs. 1,10,00,000/- is adjusted in the purchase consideration of Rs. 1,40,00,000/- payable for the new residential house property. Copy of the cited letter dt.10.06.2017 is enclosed at page no. 86. It is thus the case that on 10.06.2017, the entire consideration of Rs.1,10,00,000/- stood adjusted against the purchase consideration of the new flat being Rs. 1,40,00,000/-. The appellant therefore submits that the long term capital gain arising on 11.04.2017 is deployed towards purchase of new residential house property on 10.06.2017. Thus, the conditions of investment towards purchase of new house property stood fulfilled and appellant is also eligible for exemption u/s 54F of the I.T. Act, 1961.*
>
> *6.7 Admittedly, due to certain regulatory issues with regards to the said slum redevelopment project, the construction of the new house property was delayed as building plans got amended from time to time. The said project was also required to registered under RERA. This resulted in delay in registering the flat purchase agreement which was ultimately executed on 31.03.2021. Thereafter, the said M/s.*

Prime Group LLP issued cheques to the appellant, which were immediately paid to M/s S.R. Developers. This was to complete the transaction of receipt and payment through banking channels amongst the two sister concerns.

6.8 Considering all relevant facts and circumstances of the case, it appears that on 10.06.2017 there was no flat in existence on 10.06.2017 [not in existence flat admeasuring 1268.85 sq ft., being flat no. 402, building no. 2, Grandeur at Dahisar (E), Mumbai. As on 10.06.2017] which the appellant has claimed to have purchased in exchange of long-term capital asset. There was only an agreement to have a flat in exchange of the right of the appellant that extinguished due to transfer of landed property or immoveable property under reference. The construction of the new residential unit, i.e., flat was not complete within the period stipulated in section 54F of the I.T.Act. The appellant did not become the owner of the new asset i.e, the residential unit or flat within a period of three years from the date of transfer.Therefore, by following the correct interpretation law the AO has made disallowance of claim of deduction u/s 54F of Rs. 1,03,20,000/- only. Hence, the action of the AO is confirmed."

Aggrieved by the order of Ld.CIT(A), assessee is in appeal before us.

3. Before this *Tribunal*, the Ld.AR submitted that Ground Nos. 1 & 2 raised by assessee is challenging the validity of re-assessment proceedings. However, the Ld.AR chose to argue on merits of the case. The Ld.AR submitted that there is an application for an additional ground raised by assessee dated 23/06/2026 wherein a specific claim of deduction u/s 54F of the Act was raised. The Ld.AR submitted that assessee wrongly offered the capital gains that arose out of the agreement dated 31/03/2017 in the year under consideration instead of A.Y. 2017-18 based on the date of agreement. He submitted that no new evidence needs to be looked into to adjudicate this additional ground raised. He thus submitted that, application for admission of additional ground may be admitted.

3.1. We have considered the submissions advanced. We find that the additional ground raised by the assessee pertains to the claim of deduction u/s 54F of the Act and arises from the facts already borne out from the record. No fresh evidence is required to be brought on record for adjudication of the issue. The *Hon'ble Supreme Court* in *National Thermal Power Co. Ltd. v. CIT [(1998) 229 ITR 383 (SC)]* has held that the *Tribunal* has jurisdiction to examine a question of law arising from the facts as found by the authorities below and having a bearing on the tax liability of the assessee, notwithstanding that such a question was not raised before the lower authorities. Similarly, in *Jute Corporation of India Ltd. v. CIT [(1991) 187 ITR 688 (SC)],* the *Hon'ble Supreme Court* held that an appellate authority has the jurisdiction to entertain an additional ground if the same is necessary for determining the correct tax liability and the relevant facts are already on record.

<u>Respectfully following the aforesaid decisions of the *Hon'ble Supreme Court*, we admit the additional ground raised by the assessee for adjudication.</u>

4. The Ld.AR submitted that, assessee had acquired from one, M/s Hare Krishna Developers, rights in respect of 46.4515 sq. meters of land situated at CTS no.314, at Sarojini Naidu Road, Kandivali west, Mumbai, 400067 on which building of Hare Rama Hare Krishna CHS Ltd. was earlier constructed. The rights acquired by the assessee were in respect of portion of undeveloped land in the said complex. A consideration of Rs.5,00,000/-was paid by the assessee for the same on 29/12/2012. All these facts are well documented. Even though, valuable rights in respect of the said parcel of land were granted to the assessee as evidenced by letter dt. 29/12/2012 from M/s Hare Krishna Developers, final conveyance of the land was not executed in the name of the assessee till 2017 due to procedural issues. Subsequently, M/s Hare Krishna Developers with the consent of the assessee sold the entire parcel of land with existing building under registered Deed of Conveyance deed dt.31/03/2017 to one M/s Prime Group LLP for total consideration ofRs.5,35,00,000/-. Since, the rights in respect of 46.4515 sq. meters were with assessee, he was made a confirming party to the said Deed of Conveyance dt.31/03/2017 and granted share in consideration amounting toRs.1,10,00,000/-.

4.1. The Ld. AR submitted that the right to obtain conveyance in respect of 46.451 sq. mtrs. in the proposed project constituted a capital asset in the hands of the assessee. It was submitted that such right accrued to the assessee on 29/12/2012 pursuant to a letter issued by M/s Hare Krishna Developers, Pune.

4.2. The Ld. AR further submitted that the assessee, under the Deed of Conveyance dated 31/03/2017, surrendered the aforesaid rights in favour of M/s Prime Group LLP, which had purchased the entire land from M/s Hare Krishna Developers. In consideration of such surrender of rights, the assessee received a sum of Rs.1,10,00,000/-.

4.2.1. It was contended that the Deed of Conveyance dated 31/03/2017 was registered before the Sub-Registrar on 07/06/2017. Accordingly, the Ld. AR submitted that the capital gains arising from the transfer of the aforesaid rights were liable to be assessed in A.Y. 2017-18 and not in the year under consideration. It was, therefore, argued that the Ld. AO had erred in bringing the said amount to tax in the impugned assessment year.

4.3. Without prejudice to the above contention, the Ld. AR submitted that, pursuant to the redevelopment undertaken by M/s Prime Group LLP, the assessee was allotted a residential flat against the consideration of Rs.1,10,00,000/- received by him. In this regard, reliance was placed on the Letter of Allotment dated 10/06/2017, whereby the assessee was allotted Flat No. 402, Building No. 2, "Grandeur", Dahisar (East), Mumbai, admeasuring 1268.85 sq. ft. It was submitted that the said allotment letter specifically recorded that the amount of Rs.1,10,00,000/- payable to the assessee by M/s Prime Group LLP had been adjusted against the total purchase consideration of Rs.1,40,00,000/- payable towards the new residential house property.

4.4. In support of the aforesaid submissions, the Ld. AR invited our attention to page 83 of the paper book and submitted that the entire consideration of Rs.1,10,00,000/- received by the assessee on surrender of his rights stood adjusted against the purchase consideration of Rs.1,40,00,000/- payable to M/s Prime Group LLP towards the new residential flat. It was, therefore, contended that the assessee had satisfied the conditions prescribed u/s 54F of the Act and was entitled to the exemption claimed.

4.5. The Ld. AR further submitted that the redevelopment project was delayed on account of various regulatory approvals and consequential amendments to the sanctioned plans from time to time in accordance with the provisions of RERA. According to the Ld. AR, such circumstances resulted in a delay in the execution and registration of the conveyance/sale deed in respect of the residential flat allotted to the assessee. It was submitted that the delay was attributable to factors beyond the control of the assessee and, therefore, could not be made a ground for denying the benefit of deduction u/s 54F of the Act.

4.6. The Ld. AR submitted that the sale deed in respect of the residential flat was ultimately executed on 31/03/2021. It was contended that the mere delay in execution or registration of the conveyance deed, occasioned by circumstances beyond the assessee's control, could not disentitle the assessee from claiming the benefit of deduction u/s 54F of the Act, particularly when the entire consideration received had already been appropriated towards the acquisition of the new residential house.

In support of the aforesaid proposition, the Ld. AR placed reliance on the following decision of the *Hon'ble Bombay High Court* in the case of *PCIT vs. Vembu Vaidyanathan [2019] 101 taxmann.com 436 (Bombay)* which was affirmed by the *Hon'ble Supreme Court* in *[2019] 108 taxmann.com 339 (SC).*

4.7. On the contrary, the Ld.DR relied on the order passed by authorities below.

We have considered the submissions advanced by both sides in the light of the records placed before us.

5. The only issue requiring adjudication is whether the assessee is entitled to exemption u/s 54F of the Act. It is observed that there is no dispute by the authorities below regarding the Letter of

Allotment dated 10/06/2017, which specifically records that the consideration of Rs.1,10,00,000/- received by the assessee stood adjusted towards the purchase consideration of the new residential house. The exemption claimed by the assessee has been denied by the Ld. AO only on the ground that the assessee had not furnished documents evidencing the purchase of the new residential property. It is also not the case of the Revenue that there has been any violation of the conditions prescribed u/s 54F of the Act.

5.1. We find merit in the reliance placed by the assessee on *CBDT Circular No. 471 dated 15/10/1986*, which clarifies that where an allotment letter is issued in respect of a flat under a construction scheme, the date of allotment is to be considered as the relevant date for determining the acquisition of the property for the purposes of the Act. It is not the case of the Revenue that the allotment made in favour of the assessee vide letter dated 10/06/2017 was ever cancelled. It is also an admitted position that the assessee subsequently executed the conveyance/sale agreement in respect of the said flat on 31/03/2021, upon payment of the requisite stamp duty. In such circumstances, merely because the conveyance deed came to be executed at a later date, it cannot be held that the assessee had not acquired the new residential house pursuant to the allotment letter.

5.2. In view of the aforesaid facts and the settled legal position, we do not find any justification for denying the assessee's claim for exemption u/s 54F of the Act in respect of the capital gains arising on surrender of his rights in the property. The Ld.AO is, accordingly, directed to compute the deduction in the hands of assessee in accordance with law.

Accordingly, the additional Ground Nos. 1 & 2 and main Ground Nos. 3 and 4 raised by the assessee are allowed.

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

Order pronounced in the open court on 27/07/2026.

Sd/-	***Sd/-***
JAGADISH	**BEENA PILLAI**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai
Dated: 27/07/2026
SC, Sr. P.S.

Copy to:

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