

आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH KOLKATA

**Before Shri Rajesh Kumar, Accountant Member and
Shri Pradip Kumar Choubey, Judicial Member**

ITA No.2129/Kol/2025

Assessment Year: 2021-22

Saroj Goenka.....Appellant

**110A, Ekya, 1, Queens Park,
P.S. Ballygunge, Kolkata-700019,
West Bengal**

[PAN: ADXPG1677K]

vs.

ITO, Ward-30(1), Kolkata.....Respondent

Appearances by:

Shri Akkal Dudhwewala, FCA, appeared on behalf of the appellant.

Shri Sanat Kr. Raha, CIT- DR, appeared on behalf of the Respondent.

Date of concluding the hearing : November 20, 2025

Date of pronouncing the order : January 12, 2026

ORDER

Per Rajesh Kumar, Accountant Member:

This is an appeal preferred by the assessee against the order of the NFAC, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 18.08.2025 passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act') for the AY 2021-22.

2. The only effective issue raised in the grounds of appeal is against the order of the Ld. CIT(A) wrongly upholding the order of AO wherein the AO has denied the benefit of exemption claimed u/s 54F of the Act of Rs.26,77,72,881/-.

3. The facts in brief are that, the assessee had filed her return of income on 20.12.2021 declaring total income of Rs.1,87,69,130/-. The case of the assessee was selected for scrutiny under CASS and

notice u/s 143(2) and u/s 142(1) of the Act along with questionnaire were issued and served to the assessee. The reason for selection in scrutiny in this case was large deduction claimed u/s 54F of the Act. The assessee during the year had sold 36,00,000 shares of Emami Ltd. on 13.07.2020 at total sale consideration of Rs. 33,77,64,511/- resulting in long term capital gain of Rs.26,77,72,881/-. The assessee claimed that, she had spent Rs.53,86,80,198/- upto 31.03.2021 towards construction of her new residential property at 1 Queens Park, whose completion certificate was received on 09.06.2022 i.e. within three years from the date of long-term capital gain and therefore the entire capital gain earned from sale of shares was exempt u/s 54F of the Act. The AO during the course of assessment observed that, the assessee owned two immovable properties at 110, Southern Avenue and No.13, BT Road, both of which the assessee had claimed to have let out. The AO was of the view that, since the assessee already owned two residential properties, she was in violation of sub-clause (i) of the proviso to Section 54F of the Act, and therefore she was not entitled to claim exemption u/s 54F of the Act. The AO further observed that, the assessee had commenced the construction of the residential property more than five years ago and therefore the assessee is not entitled to benefit of section 54F in respect of investment made by the assessee in purchasing capital asset(land) before period of one year prior to sale of another capital asset. The AO also held that, the cost of construction of the house property was not directly met from the proceeds derived from sale of shares and therefore on this score also, the assessee was not entitled to benefit of exemption u/s 54F of the Act. With these observations,

the AO concluded that the assessee is not eligible for deduction u/s 54F of the Act.

5. In the appellate proceedings, the Ld. CIT(A) after considering the submissions of the appellant upheld the action of the AO. The Ld. CIT(A) additionally observed that, the assessee had acquired the shares of Emami Ltd by way of gift from her spouse few months prior to the sale and therefore according to him, this was a colourable device deployed to avail benefit of Section 54F of the Act.

6. The Ld. AR appearing for assessee vehemently assailed the findings of the lower authorities that, the assessee was already the owner of two residential properties and therefore not eligible to claim exemption u/s 54F of the Act. The Ld. AR, by referring to evidences on records, pointed out that, the property at 110, Southern Avenue was a jointly held property and therefore as she was not the exclusive owner of the property, the bar set out in proviso to Section 54F did not apply to the same. The Ld. AR further submitted that, the assessee was not the owner of any residential property but an industrial land at 13, BT Road and that the tenant had constructed and owned the commercial super structure / factory over the said land and therefore this property also was not hit by the proviso to Section 54F of the Act.

7. The Ld. AR thereafter assailed the findings of the lower authorities denying the exemption u/s 54F of the Act on the ground that the construction had begun much prior to one year from the date of sale and the proceeds from capital gains was not directly utilized for construction. The Ld.AR took us through the provisions of Section 54F of the Act and submitted that, Section 54F does not

postulate that the construction has to begin on a particular date. According to Ld. AR, the only condition to be satisfied to avail the exemption is that, construction of house must be completed within three years from the date of sale of long-term capital asset, which has been met in the present case. The Ld. AR placed reliance on the following decisions wherein it was held that, even if the construction began much prior to the sale of capital asset, but where the construction of residential property has been completed within three years from the date of sale of capital asset, the assessee is eligible for deduction u/s 54F of the Act:

- CIT v. Smt. Beena K. Jain (75 taxmann.com 145) [Bom HC]
- CIT v. Bharti Mishra (41 taxmann.com 50) [Del HC]
- CIT v. J. R. Subramanya Bhat (28 taxmann.com 578) [Kar HC]
- Bindu Premanandh v. CIT (144 taxmann.com 194) [Kerala HC]
- C. Aryama Sundaram v. CIT (97 taxmann.com 74) [Mad HC]
- ACIT v. Subhash Sevaram Bhavnani (23 taxmann.com 94) [ITAT Ahm]
- ITO v. Narasimha Reddy Duthala (174 taxmann.com 1073) [ITAT Hyd]

8. The Ld. AR also relied on the following judicial precedents wherein it has been held that, there is no such condition laid down in Section 54/54F that the sale proceeds from sale of capital asset should be directly utilized in purchase/construction of property. Rather, as long as the assessee has invested equivalent amount in purchase/ construction of property, the exemption u/s 54/54F of the Act has been held to be allowable.

- CIT v. Anandraj (56 taxmann.com 176) [Kar HC]
- CIT v. Kapil Kumar Agarwal (66 taxmann.com 191) [Punjab & Haryana HC]
- Gouli Mahadevappa v. ITO (33 taxmann.com 47) [Kar HC]
- Smt. Sabita Devi Agarwal v. ITO (104 taxmann.com 12) [ITAT Kol]

- Amit Parekh v. ITO (92 taxmann.com 295) [ITAT Kol]

9. Lastly, the Ld. AR argued that, the Ld. CIT(A) had proceeded on a mistaken fact that the assessee had received gift of shares from her spouse. The ld. AR submitted that; the shares were received as gift from the assessee's husband's brother. He further argued that the Ld. CIT(A)'s allegation that the gift was a colourable device intended to evade tax was not only unjustified but based on conjectures. He brought to our notice that, the assessee's husband's brother was also one of the co-owners of 1 Queens Park, who had claimed exemption u/s 54F of the Act towards the cost of acquisition of land and construction of the same property and therefore it cannot be alleged that the gift was a facade to evade tax. Even if, had the shares been otherwise sold by assessee's husband's brother directly, he could have availed further exemption u/s 54F of the Act, as because there was no limit on the quantum of exemption which could be claimed in the relevant assessment year. The Ld. AR further took us through the complete details of the ownership held in the impugned constructed property and submitted that, being a residential property for the purposes of family occupation, it was felt auspicious if the property is registered in the name of female members who are considered as "Laxmi" of the home and it was with that intent and purpose that the assessee and other female members of the family largely contributed towards the construction of residential property. The Ld. AR placed before us the copy of the assessment order passed in the matters of another family member, Smt. Rashmi Goenka, who had similarly sold gifted shares of M/s Emami Cement Ltd and claimed

exemption u/s 54F of the Act towards the cost of acquisition of land and construction of the same property, 1 Queens Park and the same was examined and allowed by the NFAC.

10. The Ld. DR appearing for the Revenue vehemently supported and reiterated the findings made in the orders of the lower authorities. The ld. DR added that, the fact that the AO of another member of the assessee's family had allowed exemption u/s 54F of the Act cannot be said to have any persuasive value in the present case.

11. After hearing the rival contentions and perusing the material on record, the undisputed facts as culled out from the records as placed before us are that, the assessee sold 36,00,000 shares of Emami Ltd on 13.07.2020 which yielded long term capital gain of Rs.26,77,72,881/-, which was claimed as exempt u/s 54F of the Act. We note that the assessee have jointly constructed a new residential property at 1 Queens Park along with other family members which spanned over the year 2015 to 2022 and was completed on 09.06.2022. It is observed that, the cost of construction incurred upto 31.03.2021 was Rs.53,86,79,823/- and therefore the entire capital gain derived from sale of shares was claimed exempt u/s 54F of the Act. The AO however denied the exemption on three grounds. The first and foremost reason given by the AO is applicability of proviso to Section 54F(1) of the Act. The proviso below sub-section (1) of Section 54F lays down certain disqualification for claiming exemption under the said section. As per the said proviso, the benefit of exemption shall not be available to an assessee, if the assessee owns more than one residential

house [other than the new asset] as on the date of transfer of original asset and further, purchase of any residential house [other than the new asset] within one year of transfer or construction of another residential house. This is subject to further condition that the income from such other residential house is chargeable to tax under the Head "Income from house property". In the present case, it was the case of the AO that, the assessee owns more than one residential house as on the date of transfer of original asset viz., two residential properties, in the present case. The assessee has however claimed that, she did not own any residential property and that the AO had acted on mistaken assumption of fact. The first property in question is located at 13 BT Road. According to the AO, the assessee owned a building over the said land which was leased out to tenant, M/s Sneh Enclave Pvt Ltd (successor to M/s Diwakar Viniyog Private Limited). The assessee however has brought to our notice that, she had acquired vacant land parcel at 10 BT Road in 1982. The said land was originally leased out vide tenancy agreement dated 31.03.1997 and the tenant is found to have been permitted to construct and use super structure on the said land. It is also seen from the confirmation issued by M/s Sneha Enclave Private Limited, copy of which was placed at Page 114 of Paper Book, which clearly stated that the assessee had leased vacant land at 13 BT Road and that a factory was constructed by them upon such land. Though the AO acknowledged this confirmation issued by the tenant, but he refused to accept the same because of certain terms in the renewal tenancy agreement wherein it was stated that, the rent was inclusive of electric charges, corporate taxes, and maintenance, if any. The Ld. AR pointed out that, these terms

incorporated were general in nature and that the contemporaneous fact was that the assessee was owner of the land alone and that the super structure was constructed and owned by the tenant, which was verifiable from the contents of original agreement dated 31.03.1997 and the recitals of the renewal agreement dated 01.04.2018, whose relevant extracts are as follows:-

Original Agreement dated 31.03.1997

"The Lessor has agreed to grant lease of the said plot to the Lessee and lessee has agreed to take on lease the same on the terms and conditions hereunder contained.

.....

The Lessee shall bear and pay all existing and future municipal rates and taxes, outgoings and impositions of whatsoever nature on compensation thereof owner's and the occupier's share on or in respect of the demised premises and all further and /or other constructions that may be made in future thereon during the period of the lease.

.....

The Lessee shall at its own costs have the right to demolish existing structures constructed by the Lessor and construct build re-build and re-construct and/or make additions and/or alterations to any existing or new building or buildings, constructions structures and/or erections of the demised premises or any part thereof and to do all acts deeds and things as be required thereof and/or in connection therewith. Provided however that, once the lessee demolishes any existing or future constructions, structures or erections on the demised premises then and in such event the Lessee shall, within a year from the date of demolition, construct or erect such structures, erections or constructions on the demised premises which shall be or at least the value of the structures constructions or erections so demolished.

.....

The Lessee shall be entitled to get plans or sketches submitted to and sanctioned by the appropriate authority or authorities from time to time for demolition making additions and/or alterations constructions and/or reconstructions on the demised premises or any portion thereof including the raising or further stories thereon and/or obtaining electricity gas telephone filtered and unfiltered water containing electricity gas telephone filtered and unfiltered water connections drain and/or sewer connections and all other utilities and permissions including those required for obtaining building materials in the Lessee's own name.

.....

The Lessor declares that the Lessor has no objection in case the Lessee constructs one building on the demises premises and adjoining plot being No1 containing by measurement an area of 5 Cottahs 7 Chittacks and 9 Square Feet be the same a little more or less in premises No. 13, Barrackpore Trunk Road, Calcutta which is owned by one Suresh Goenka and who Suresh Goenka is also granting a lease of the adjoining plot to the Lessee Simultaneously herewith such right and for such and other purposes both the demised premises and the Adjoining plot shall be deemed to be under one lease.

THAT the brick built sheds and structures together with the piece or parcel of Mourasi Mocarari Land or ground thereunto belonging whereon or on parts whereof the same are erected and built containing by admeasurement an area of 5 (five) Cottahs 4 (four) Chittacks and 29 (twenty nine) Sq. Ft. be the same a little more or less situate lying at being plot No.2 in premises No.13 Barrackpore Trunk Road in Mouza Belgharia, Police Station.”

Renewal agreement dated 01.04.2018

“WHEREAS the First Party is the lawful Lessee in respect of ALL THAT the piece and parcel of land measuring 5 Cottahs 4 Chittacks 29 Square Feet being part of the premises no. 13, BT Road, Kolkata 7000106, free from all encumbrances whatsoever. duly and regularly paying the Lease rent to the present owners cum Lessors of the said land.

AND WHEREAS the Lease Deeds executed between the First Party as Lessee and the owners of the said land as the Lessors empowered the First Party to construct, build, reconstruct and rebuild new building over and upon such leased land upon demolition of structures existing on the aforesaid land during the relevant time, and accordingly, new building was constructed over and upon the said land area.

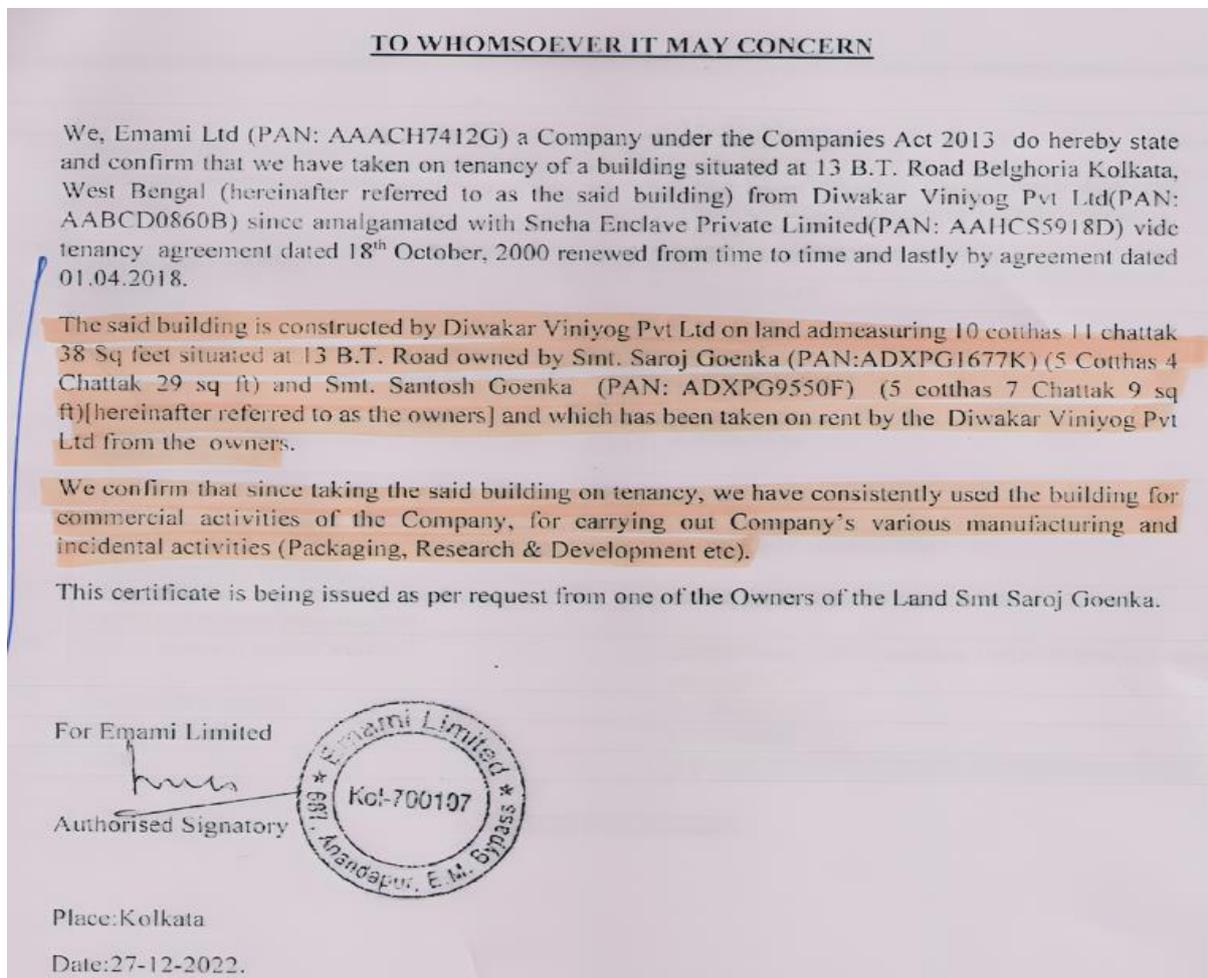
.....

That the Landlord and the Tenant hereby agree that the instant Tenancy in respect of ALL THAT the piece and parcel of land measuring 5 Cottahs 4 Chittacks 29 Square Feet TOGETHER WITH structures / buildings standing thereupon being part of the premises no. 13, BT Road, Kolkata 7000106.”

12. We further observe that the AO was also unable to disprove the confirmation issued by the tenant that it was the owner of the super-structure / factory constructed over the said land. Therefore, the AO had proceeded on mistaken fact that, the assessee had constructed and was the owner of the super structure on the said vacant land. In our considered view, the property at 13 BT Road comprised of vacant land owned by the assessee and therefore did

not qualify as residential property for the purposes of sub-clause (i) of proviso to Section 54F of the Act.

13. It was also brought to our notice that, the nature and usage of land was industrial in nature and the super structure constructed was a factory, which had been leased out by M/s Sneh Enclave Pvt Ltd (successor to M/s Diwakar Viniyog Private Limited to M/s Emami Limited. The relevant confirmation issued by Emami Limited dated 27.12.2022 is reproduced below:-



14. Viewed from any angle therefore, the immovable property at 13 BT Road did not qualify as residential house property and

therefore it was to be excluded for the purposes of proviso to Section 54F of the Act.

15. Coming to the property located at 110 Southern Avenue, it is not in dispute that, this was a family-owned property and that the assessee was one amongst several co-owners of the property. We find that, the Hon'ble Madras High Court in the case of Dr. Smt. P .K. Vasanthi Rangarajan (23 taxmann.com 299), has held that if a residential property is jointly owned by two persons, that would not preclude the person (as an assessee) from claiming exemption under section 54F of the Act, as the assessee would not be hit by the proviso to section 54F of the Act, being not the exclusive owner of the residential property. The decision of Madras High Court (supra) is found to have been followed by the coordinate bench , Delhi in the case of Deepak Kothari Vs ACIT (177 taxmann.com 219) wherein on similar facts as involved in the present case, it was held that jointly held family property cannot be regarded as 'residential house' exclusively owned by the assessee for purposes of sub-clause (i) of proviso to Section 54F of the Act. The relevant findings taken note of are as follows: -

"23. Considered the rival submissions and material placed on record. We observe from the record that the Assessing Officer observed that the assessee was owner of two residential flats at the time of investment in new assets to claim deduction u/s 54F of the Act. Based on the above information, the Assessing Officer has denied the benefit claimed by the assessee u/s 54F of the Act. Before us, Id. AR of the assessee submitted that the property at C-7/27, New Friends Colony, New Delhi in which assessee is not the exclusive owner of the property. It was submitted that owing to the death of the mother of the assessee, he received 25% of the shares in the above property which happened in the month of March 2017 on mutation of the property.

Therefore, on the date of transfer or original assets in August 2016, the assessee held only one property at Flat No.1002, F Building, Lankad Skylounge, D-Wing, Pune,

therefore, assessee is allowed to claim benefit u/s 54F of the Act. After considering the same, the assessee should be owner of a residential property and as per provisions not more than one house property. In the given case, the assessee was the owner of one house at the time of transfer and he became owner of the property at New Friends Colony after mutation in the month of March 2017. Therefore, at the end of FY 2016-17 (AY 2017-18), the assessee was the owner of only one house property. Merely because the assessee had right to receive the rent w.e.f. 11.07.2015, the position does not change. The absolute ownership acquired by the assessee only after mutation. The relevant rent may or may not be receivable. Mere rights will not get the absolute ownership. Therefore, on the date of transfer, the assessee was the owner of only one property, hence eligible to claim the benefit u/s 54F of the Act. For the sake of argument, in case assessee is the 25% owner of the property, still, he cannot be held to be absolute owner of the second property. We observe that ITAT, Surat Bench in the case of Mukesh Arvindlal Vakharia (supra) has held as under :-

"17. We have given our thoughtful consideration to rival contention. We have perused case file as well as paper books furnished by assessee. We note that assessee claimed deduction u/s 54F of the Act to the tune of Rs.48,96,993/- on the ground that assessee owns only one house at the Oberoi Palace Housing Society in this name at the time of the sale. It is the contention of the assessee that the other two properties are owned jointly with others and therefore it is not required to be considered for the purpose of condition of section 54F of the Act. The assessing officer relied on the order of the Hon'ble Supreme Court in the case of M. J. Siwani v/s. CIT - 53 taxmann.com 318 (SC) where the SLP filed by the taxpayer was dismissed. The Id Counsel stated that by way of the SLP, the Hon'ble Supreme Court did not concur with the finding of the Hon'ble Karnataka High Court in the case of CIT v/s. M. J. Siwani - 366 ITR 356 (Kar.). Mere dismissal of the SLP does not constitute the judgment by the Supreme Court in the favour of the revenue. The Id Counsel placed reliance on the following judgments:

i. Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd. - Civil Appeal No. 2432/2019

ii. Smt. Tej Kumari v. CIT (2001) 247 ITR 210 (Patna HC)

18. The Id Counsel further submitted that Hon'ble Madras High Court in case of Dr. (Smt.) P. K. Vasanthi Rangarajan v. CIT (2012) 23 taxmann.com (299) wherein it was held that where the assessee held the property jointly with her husband in equal proportion, it cannot be said that she is the owner of the house property at the time of the sale for availing the deduction u/s 54F of the Act. It is to be noted that w.e.f. 01.04.2001, there was the amendment in section 54F to the effect that assessee could be owner of one house at the time of the sale. Here in the case of the assessee he was sole owner of only one house and other houses under the joint ownership are not required to be considered as per the judgment of the Hon'ble Madras High Court in case of Dr. (Smt.) P. K. Vasanthi Rangarajan (supra).

19. We also note that on the identical facts, the Coordinate Bench of ITAT Mumbai, in the case of Ashok G. Chauhan, [2019] 105 taxmann.com 204 (Mumbai - Trib.) held that where Assessing Officer rejected assessee's claim for deduction under section 54F of the Act, on ground that at time of sale of capital asset, assessee was owner of more than one residential house properties, in view of fact that one residential property was co-jointly owned in name of assessee and his wife and he could not be treated as 'absolute owner' of said property, deduction under section 54F could not be denied to him. We note that Hon'ble Supreme Court in the case of CIT v. Vegetable Products Ltd, 88 ITR 192(SC) held that if two reasonable constructions of a taxing provision are possible that construction which favours the assessee must be adopted. Therefore, respectfully following the judgment of the Hon'ble Madras High Court in case of Dr. (Smt.) P. K. Vasanthi Rangarajan (supra), we allow ground No.2 raised by the assessee."

24. Respectfully following the aforesaid decision, we are inclined to allow the ground raised by the assessee."

16. For the above discussed reasons, we hold that the condition stipulated in clause (i) of proviso to Section. 54F (1) disentitling claim u/s 54F is not satisfied in the present case before us.

17. The next reason given by the AO was that, though the assessee had completed the construction of the new property [09.06.2022] within three years from the date of sale of capital asset [13.07.2020], but since the construction had begun much prior to the date of sale, the assessee could not avail the benefit of exemption u/s 54F of the Act. According to the AO, the proceeds received from the sale of shares ought to have been directly utilized for construction of property, which was not done in the present case. In order to appreciate this issue the relevant provisions of section 54F of the Act is reproduced as under:

"54F. (1) Subject to the provisions of sub-section (4), where, in the case of 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 (hereafter 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,-”

18. Section 54F(1) thus states that the assessee being an individual or Hindu Undivided Family, who had earned capital gains from transfer of any long-term capital not being a residential house could claim benefit under the said Section provided, any one of the following three conditions were satisfied; (i) the assessee had within a period of one year before the sale, purchased a residential house; (ii) within two years after the date of transfer of the original capital asset, purchased a residential house and (iii) within a period of three years after the date of sale of the original asset, constructed a residential house. For the satisfaction of the third condition, it is not stipulated or indicated in the Section that, the construction must begin after the date of sale of the original/old asset. Rather, it only refers to a construction of a residential house within three years, which in our view is the date of completion of the constructed residential house habitable for the purpose of residence. According to us therefore, the fact that the assessee begun construction of the property much prior to the date of sale of capital asset will not disentitle her from claiming exemption u/s 54F of the Act, given the fact that the construction was completed within three years from the date of sale of capital asset. The case of the assessee finds support from the following decisions. In the case of CIT Vs. Bharti Mishra (supra) it was held as under:

“5. Thus, the only issue, which is raised and has to be examined, is whether the respondent-assessee can be denied benefit of Section 54F because construction of the house had commenced before the sale of the shares i.e., on 17th September, 2008.

6. Commissioner (Appeals) and the tribunal have relied upon decisions of Allahabad High Court and Karnataka High Court in CIT v. H.K. Kapoor [1998] 234 ITR 753 (All.) and CIT v. J.R. Subramanya Bhat [1987] 165 ITR 571/[1986] 28 Taxman 578 (Kar). These two cases deal with interpretation of Section 54 of the Act. The said Section is *pari materia* to Section 54F. The only distinction being that Section 54 applies to investment in a new house where the original asset sold was/is residential property and provisions of Section 54F were/are applicable to all other assets, not being a residential house. In J.R. Subramanya Bhat (*supra*), Karnataka High Court noticed language of Section 54 which stipulated that the assessee should within one year from the date of transfer purchase, or within a period of two years thereafter, construct a residential house to avail of concession under the said Section. The contention of the Revenue that construction of the new building had commenced earlier to the sale of the original asset, it was observed, cannot bar or prevent the assessee from taking benefit of Section 54. It was immaterial when the construction commenced, the sole and important consideration as per the Section was that the construction should be completed within the specified period. It was accordingly held as under:—

"So too was the next conclusion reached by the Tribunal. The date of the sale of the old building was February 9, 1977. The completion of the construction of the new building was in March, 1977, although the commencement of the construction started in 1976. It is immaterial, as the Tribunal, in our opinion, has rightly observed, about the date of commencement of the construction of the new building. Since the assessee has constructed the building within two years from the date of sale of the old building, he was entitled to relief under section 54 of the Act."

7. The aforesaid judgment was pronounced on 9th June, 1986 and was followed by Allahabad High Court in H.K. Kapoor (*supra*) and it has been held as under:—

"The question for consideration is whether exemption on capital gains could be refused to the assessee simply on the ground that the construction of the Surya Nagar, Agra house, had begun before the sale of the Link house. Similar question came up for consideration before the Karnataka High Court in the case of CIT v. J.R. Subramanya Bhat [1987] 165 ITR 571. In the case before the Karnataka High Court, the date of the sale of the old building was February 9, 1977. The completion of the construction of the new building was in March, 1977, although the commencement of construction started in 1976. On these facts, the Karnataka High Court held that it was immaterial that the construction of the new building was started before the sale of the old building. We fully agree with the view taken by the Karnataka High Court. The Appellate Tribunal was right in holding that capital gains arising from the sale of the Golf Link house to the extent it got invested in the construction of the Surya Nagar house, will be exempted under section 54 of the Act."

8. Commissioner (Appeals) in his order while accepting the plea of the assessee has referred to several judgments of the Tribunal thereafter in which the aforesaid reasoning and interpretation of Section 54/54F has been followed. Reference has been made to the judgment of Madras High Court in CIT v. Sardarmal Kothari, [2008] 302 ITR 286 in which it has been held as under:—

"3. There is no dispute about the fact that the assesseees have invested the entire net consideration of sale of capital asset in the land itself and subsequently the assesseees have invested large sums of money in the construction of the house. The cost of investment in land and the cost of expenditure towards the construction of the houses is not in dispute. The one and only ground on which the Assessing Officer has non-suited the assesseees for the claim of exemption was that the houses have not been completed. There remains some more construction to be made.

4. The requirement of the provision is that the assessee, within a period of three years after the date of transfer, has to construct a residential house in order to become eligible for exemption. In the cases on hand, it is not in dispute that the assesseees have purchased the lands by investing the capital gain and they have also constructed residential houses. In order to establish the same, the assesseees submitted before the Commissioner of Income-tax (Appeals) several material evidence, viz., invitation card printed for the house-warming ceremony to be held on July 12, 2003. The assesseees have also produced the completion certificates from the municipal authority on January 30, 2004. On the basis of the above documents, the Commissioner of Income-tax (Appeals) concluded that the requirement of the statutory provision has been complied with by the assesseees and that was reconfirmed by the Tribunal in the orders impugned."

9. The aforesaid ratio is being followed and accepted since 1986. It will not be fair and in the interest of justice to interfere/alter the said interpretation and interpret beneficial provision differently after almost two decades.

....

12. Section 54F(1) if read carefully states that the assessee being an individual or Hindu Undivided Family, who had earned capital gains from transfer of any long-term capital not being a residential house could claim benefit under the said Section provided, any one of the following three conditions were satisfied; (i) the assessee had within a period of one year before the sale, purchased a residential house; (ii) within two years after the date of transfer of the original capital asset, purchased a residential house and (iii) within a period of three years after the date of sale of the original asset, constructed a residential house.

13. For the satisfaction of the third condition, it is not stipulated or indicated in the Section that the construction must begin after the date of sale of the original/old asset. There is no condition or reason for ambiguity and confusion which requires moderation or reading the words of the said sub-section in a different manner. The apprehension of the Revenue that the entire money collected or received on transfer of the original/capital asset would not be utilised in the construction of the new capital asset, i.e., residential house, is ill-founded and misconceived. The requirement of sub-section (4) is that if consideration was not appropriated towards the purchase of the new asset one year before date of transfer of the original asset or it was not utilised for purchase or construction of the new asset before the date of filing of return under Section 139 of the Act, the balance amount shall be deposited in an authorized bank account under a scheme notified by the Central Government. Further, only the amount which was utilised in construction or purchase of the new asset within the specified time frame stand exempt and not the entire consideration received.

14. Section 54F is a beneficial provision and is applicable to an assessee when the old capital asset is replaced by a new capital asset in form of a residential house. Once an assessee falls within the ambit of a beneficial provision, then the said provision should be liberally interpreted. The Supreme Court in *CCE v. Favourite Industries*, [2012] 7 SCC 153 has succinctly observed:—

'21. Furthermore, this Court in *Associated Cement Companies Ltd. v. State of Bihar* [(2004) 7 SCC 642], while explaining the nature of the exemption notification and also the manner in which it should be interpreted has held: (SCC p. 648, para 12)

"12. Literally 'exemption' is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. In fact, an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden of progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking, liberal and strict construction of an exemption provision is to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in the nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. (See *Union of India v. Wood Papers Ltd.* [(1990) 4 SCC 256 : 1990 SCC (Tax) 422] and *Mangalore Chemicals and Fertilisers Ltd. v. Dy. CCT* [1992 Supp (1) SCC 21] to which reference has been made earlier.)"

22. In *G.P. Ceramics (P.) Ltd. v. Dy. Commissioner, Trade Tax* (2009) 2 SCC 90], this Court has held: (SCC pp. 101-02, para 29)

29. It is now a well-established principle of law that whereas eligibility criteria laid down in an exemption notification are required to be construed strictly, once it is found that the applicant satisfies the same, the exemption notification should be construed liberally. [See *CTT v. DSM Group of Industries* [(2005) 1 SCC 657] (SCC para 26); *TISCO Ltd. v. State of Jharkhand* [(2005) 4 SCC 272] (SCC paras 42-45); *State Level Committee v. Morgardshammar India Ltd.* [(1996) 1 SCC 108] ; *Novopan India Ltd. v. CCE & Customs* [1994 Supp (3) SCC 606] ; *A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala* [(2007) 2 SCC 725] and *Reiz Electrocontrols (P.) Ltd. v. CCE.* [(2006) 6 SCC 213]'

15. In view of the aforesaid position, we do not find any merit in the present appeal and the same is dismissed."

(ii) In the case of C. Aryama Sundaram v. CIT (supra) the operative part is as under:

“20. What has to be adjusted and/or set off against the capital gain is, the cost of the residential house that is purchased or constructed. Section 54(1) of the said Act is specific and clear. It is the cost of the new residential house and not just the cost of construction of the new residential house, which is to be adjusted. The cost of the new residential house would necessarily include the cost of the land, the cost of materials used in the construction, the cost of labour and any other cost relatable to the acquisition and/or construction of the residential house.

21. A reading of Section 54(1) makes it amply clear that capital gain is to be adjusted against the cost of new residential house. The condition precedent for such adjustment is that the new residential house should have been purchased within one year before or two years after the transfer of the residential house, which resulted in the capital gain or alternatively, a new residential house has been constructed in India, within three years from the date of the transfer, which resulted in the capital gain. The said section does not exclude the cost of land from the cost of residential house.

22. It is axiomatic that Section 54(1) of the said Act does not contemplate that the same money received from the sale of a residential house should be used in the acquisition of new residential house. Had it been the intention of the Legislature that the very same money that had been received as consideration for transfer of a residential house should be used for acquisition of the new asset, Section 54(1) would not have allowed adjustment and/or exemption in respect of property purchased one year prior to the transfer, which gave rise to the capital gain or may be in the alternative have expressly made the exemption in case of prior purchase, subject to purchase from any advance that might have been received for the transfer of the residential house which resulted in the capital gain.

23. At the cost of repetition, it reiterated that exemption of capital gain from being charged to income tax as income of the previous year is attracted when another residential house has been purchased within a period of one year before or two years after the date of transfer or has been constructed within a period of three years after the date of transfer of the residential house. It is not in dispute that the new residential house has been constructed within the time stipulated in Section 54(1) of the said Act. It is not a requisite of Section 54 that construction could not have commenced prior to the date of transfer of the asset resulting in capital gain. If the amount of capital gain is greater than the cost of the new house, the difference between the amount of capital gain and the cost of the new asset is to be charged under Section 45 as the income of the previous year. If the amount of capital gain is equal to or less than the cost of the new residential house, including the

on which the residential house is constructed, the capital gain is not to be charged under Section 45 of the said Act

24. For the reasons discussed above, the appeal is allowed. The questions framed above are answered in favour of the appellant assessee and against the respondent revenue. The first question is answered in the affirmative and the second question is answered in the negative. No costs."

(iii) Similarly in the case of Bindu Premanandh v. CIT (supra), it was held as under:

"6. We have taken note of the rival contentions and examined the ratio laid down in the cases relied on by Mr A. Kumar. To appreciate the argument made in law, first, we would prefer to excerpt the consideration of the issue by the CIT (Appeals) which reads as follows:

"In the instant case, there is no doubt about the fact, that the appellant started construction of a residential house, albeit prior to receipt of sale consideration from sale of land and the construction continued. The appellant deposited part of sale consideration in capital gains Accounts. Section 54 stipulates that a new residential house can be purchased either one year before the sale of asset or 2 years after the sale of asset. In case of construction, the construction should be completed within 3 years of sale of asset. From the plain reading of this provision, it is clear that it is not necessary to invest from the sale consideration as a new house can be purchased one year before the sale. In my opinion, on the basis of the facts on record, the appellant has fulfilled the conditions stipulated in section 54 F and therefore eligible for deduction u/s 54F on the entire amount of Rs. 2,14,87,000/-. The A.O. is directed accordingly. These grounds of appeal of the appellant are treated as allowed."

The Tribunal reversed the said conclusion of the CIT (Appeals) and the operative portion reads thus:

"7.4 Now the assessee claims deduction u/s. 54F in respect of investment in construction of residential house made by the assessee before the date of sale, i.e., before 22nd March, 2013. This provision provides that construction of the residential house should be done after the date of transfer but within three years from such date. If the date of sale is considered as the date of transfer of capital asset, the case of the assessee would not fall within the parameters of the said provision. These investments are made before one year of sale of the residential house which cannot be allowed as deduction u/s. 54F of the Act."

Now the ratio relied on by the assessee lays down that,

(i) the spending for construction need not be from the very sale consideration received from the sale of the original asset.

(ii) the requirement is ie. within one year before or two years after the date on which the transfer took place purchased, or has within three years after that date constructed a residential house in three years from the date of sale of the original asset.

(iii) The new asset includes both the value of the plot and the construction of the residential house.

6.1 The CIT (Appeals) has not noted all the sequential events in the explanation given by the assessee. But has arrived at a quick finding for extending the relief under section 54F of the Act. Turning to the findings of the Tribunal, we are of the view that the Tribunal has given importance only to the time of the payments made by the assessee or sanction of the loan by the ICICI Bank in favour of the assessee's husband. The test ought to be when the residential house was completed. Either the finding on the crucial aspect is incomplete or not satisfactory. As rightly argued by Mr Kumar relevant to the consideration is when the assessee has completed the residential house. Even assuming the loan was sanctioned in February 2012, that by itself is not conclusive. According to him, the conclusive circumstance is the completion of construction of a residential house three years from the sale of the original asset..."

19. The lower authorities are found to have placed reliance on the decision of the coordinate bench , Bangalore in the case of Parswanath Padmarajah Jain vs. ACIT (102 taxmann.com 92). We however find that the said decision is per incuria in light of the above judgments of the Hon'ble High Court(s). The Ld. AR has also placed before us a copy of the decision subsequently rendered by coordinate bench , Bangalore in the case of Shree Ramakrishna Nishtala vs. DCIT (ITA No. 164/Bang/2020) dated 30.09.2021 wherein the aforesaid decision of Parswanath Padmarajah Jain (supra) has been distinguished and it has been held that, even if the construction of the new residential property began much prior to the date of sale but where the construction is completed within

three years from the date of sale, it would amount to substantive compliance of the condition laid down in Section 54F(1) of the Act.

20. We find that the above reasoning given by the lower authorities was influenced by the fact that the proceeds received upon sale of capital assets was not directly utilized from the construction of property because the construction began prior to the date of sale. It is seen that, on similar facts, the Hon'ble Karnataka High Court in the case of CIT vs. Anandraj (supra) has held that, there is no requirement for the assessee to directly utilize the sale proceeds for construction / purchase of the property and as long as the amount spent towards construction of the residential house is more than the consideration received upon sale of capital asset, the assessee is entitled to the benefit of Section 54F of the Act. The Ld. AR has also rightly relied upon the following observations of the Punjab & Haryana High Court in the case of Kapil Kumar Agarwal (supra) wherein it was held as under:

"14. The assessee has to purchase or construct a house property during the period specified under Section 54F of the Act in order to get benefit thereunder. Section 54F of the Act nowhere envisages that the sale consideration obtained by the assessee from the original capital asset is mandatorily required to be utilized for the purchase or construction of a house property. No provision has been made by the statute that in order to avail benefit of Section 54F of the Act, the assessee has to utilize the amount received by him on sale of original capital asset for the purposes of meeting the cost of the new asset. Once that is so, the assessee was entitled for benefit under section 54F of the Act.

.....

16. Adverting to the judicial pronouncements, in K.C. Gopalan's case (supra), while considering identical issue, it was observed by the Kerala High Court as under:—

". . . . The assessee has to construct or purchase a house property for his own residence in order to get the benefit of section 54. The wording of the section itself

would make it clear that the law does not insist that the sale consideration obtained by the assessee itself should be utilised for the purchase of house property. The main part of section 54 provides that the assessee has to purchase a house property for the purpose of his own residence within a period of one year before or after the date on which the transfer of his property took place or he should have constructed a house property within a period of two years after the date of transfer. Clauses (i) and (ii) of section 54 would also make it clear that no provision is made by the statute that the assessee should utilise the amount which he obtained by way of sale consideration for the purpose of meeting the cost of the new asset.

6. A reading of sections 53 and 54 of the Act would make it clear that a special provision is made in respect of capital gains arising out of transfer of particular type of capital asset, namely, house property which was being used by the assessee or a parent of his for the purpose of their residence. Entitlement of the exemption under section 54 relates to the cost of the acquisition of a new asset in the nature of a house property for the purpose of his own residence within the specified period."

17. Further, following the judgment of the Kerala High Court in K.C.Gopalan's case (supra), the Gauhati High Court in Rajesh Kumar Jalan's case (supra) [2006] held as under:—

"11 We are of the view that the assessee had already appropriated the entire capital gain for purchase of the new asset within the stipulated time. In this regard, we find support from the decision of the Kerala High Court in the case of K.C. Gopalan wherein it was held that the assessee is entitled to exemption under Section 54 even though for the construction of the new house, the amount that was received by way of sale of his old property as such was not utilised. It was held by the Kerala High Court that no provision is made by the statute that the assessee should utilise the amount which he obtained by way of sale consideration for the purpose of meeting the cost of the new asset. It was held that Section 54 only provides that the assessee has to purchase a house property for the purpose of his own residence within a period of one year before or after the date on which the transfer of his property took place or he should have constructed a house property within a period of two years after the date of transfer. It was further held that entitlement of exemption under Section 54 relates to the cost of acquisition of a new estate in the nature of a house property for the purpose of his own residence within the specified period."

21. Respectfully following the above decision (supra), we are of the view that there is no stipulation set out in Section 54F which

requires the assessee to directly utilize the capital gains for purchase / construction of the residential property. It is seen that the assessee had complied with the primary conditions of Section 54F viz., she had incurred cost of construction towards a new residential property which was completed within three years from the date of sale of capital asset and therefore the lower authorities were unjustified in denying the benefit of exemption u/s 54F of the Act.

22. We next take up the Revenue's contention that, the transaction involving sale of shares of M/s Emami Ltd was a colourable device to avoid tax. According to the Ld. DR, the shares of Emami Limited were acquired by way of gift by the assessee from her spouse, to which clubbing provisions contained in Section 64 would have applied and that the spouse was ineligible to claim exemption u/s 54F of the Act. The Ld. AR had pointed out that, the foundational premise of this allegation was based on mistake of fact presumed by the Ld. CIT(A) that the assessee had shares in question was gifted to her by the spouse. It was brought to our notice that the shares were received by way of gift from the assessee's husband's brother and therefore, the clubbing provisions had no application. The Ld. AR also pointed out to us that, the assessee's husband's brother himself had claimed benefit of exemption u/s 54F in his return of income and therefore it was also not a case that the shares were gifted to the assessee as because the assessee's husband's brother was not eligible to claim exemption u/s 54F of the Act. It is seen from the material placed before us that, the newly constructed property was acquired by the

family of the assessee wherein the lead members were the females of the family and that, the act of acquiring and constructing a property in the name of the female members was influenced by their Hindu culture and traditions, where holding residential property in the name of the females of the house is considered to be auspicious. We also find that on similar facts, another female member, Smt. Rashmi Goenka had also claimed exemption u/s 54F in respect of the cost of construction incurred towards the property at 1 Queens Park against the long term capital gains derived on sale of shares of Emami Limited in AY 2020-21, and the NFAC after considering the same factual matrix, had accepted and allowed the exemption so claimed by the said assessee.

23. Considering the facts and circumstances of the assessee in the light of the above discussions, we hold that the assessee is entitled to exemption of capital gain invested in the construction of new property. Therefore, we are inclined to set aside the Ld. CIT(A) and direct the AO to delete the addition by allowing exemption u/s 54F as claimed by the assessee.

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

Kolkata, the 12th January, 2026.

Sd/-
[Pradip Kumar Choubey]
Judicial Member

Sd/-
[Rajesh Kumar]
Accountant Member

Dated: 12.01.2026.

RS

Copy of the order forwarded to:

1. Appellant -
2. Respondent -
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches