

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**
BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)

**I.T.A. No. 7189/Mum/2025
Assessment Year: 2013-14**

M/s. Dollar Chunilal Modi HUF B/2-302, Kamala Nagar M G Road Kandivali West Mumbai – 400067 [PAN: AACHD3750J]	Vs.	Income Tax Officer, Ward-42(1)(2)
(Appellant)		(Respondent)

Assessee by	Ms. Krupa Jinit Shah (virtually present)
Revenue by	Shri Vikas Chandra, Sr. DR

Date of Hearing	13.01.2026
Date of Pronouncement	19.01.2026

ORDER

Per Smt. Beena Pillai, JM:

Present appeal filed by assessee arises out of order dated 05/09/2025 passed by Ld. Commissioner of Income Tax (Appeals)/Addl./JCIT(A), Ranchi [hereinafter “the Ld.CIT(A)”), for Assessment Year 2013-14 on following grounds of appeal:-

“1. *The Hon'ble CIT (A), erred in law and on facts in upholding an addition of Rs.25,59,170-made by the Assessing Officer as Short term capital gains arising on assets subjected to Section 50 was not allowed for deduction u/s 54F on the grounds that the assessee had failed to furnish the deduction claims in the Return of Income filed by the assessee.*

2. *The Hon'ble CIT(A) erred in law and on facts in merely echoing the view of the AO without appreciating the submissions of the Appellant that the claim of additional deduction can be admitted by the appellate authority where the assessee has failed to furnish the claim of deduction in the return of income filed either u/s 139 (1) or 139(4) of Income Tax Act-1961.*

3. *The Ld. CIT (A) erred in law and on facts in not considering the submissions of the Appellant in proper perspective.”*

2.1. Assessee filed its return of income on 28/03/2014 declaring total income of Rs. 4,21,340/- . The said return was processed u/s 143(1) of the Act and subsequently, based on an information, assessment was reopened by recording following reasons:-

“During the course of assessment proceedings, in the case of Shri. Doltar C. Modi (Individual) and as per AIR information received by this office it has been found that assessee has made transaction of Rs.42,57,000/- for purchase of immovable property. In this regard, vide order sheet noting dated 22/01/2016, assessee's explanation was called and assessee vide letter dated 02/02/2016 has stated that the immovable property sold by him belong to Dollar C. Modi HUF. Further he has stated that while registering the agreement before the Joint Sub-Registrar he has produced his individual PAN card.

2. *On perusal of return of income of Dollar C. Modi HUF for A. Y.2013-14 and its computation of income it is seen that there is no capital gain shown by the assessee in his HUF capacity*
3. *In view of the above mentioned facts, I have reason to believe that the assessee's income has escaped assessment. Therefore, the case of the assessee is reopened as per the provisions of section 147 of the Income Tax Act, 1961. Notice u/s.148 of the Act is issued.”*

2.2. Ld.AO thereafter issued notice u/s148 on 09/03/2016 in response to which assessee filed letter dated 12/04/2016 stating the original return filed to be treated as return in response to notice u/s 148 of the Act. Subsequently, notice u/s143(2) and142(1) of the Act were issued in response to which the representatives of assessee attended and furnished details as required.

2.3. The Ld.AO noted that the assessee is a Hindu Undivided Family (HUF) and the proprietor of M/s. J. N. Jewellers, engaged in the business of manufacturing and export of imitation jewellery. It was further noted that during the year under consideration, the assessee

had disclosed income under the heads “Income from Business” and “Income from Other Sources.”

2.4. It was observed that the assessee had purchased an immovable property, namely IJMA, on 31.12.2004 for a consideration of ₹12,37,915/-. In the submissions made during the assessment proceedings, the assessee stated that the written down value (WDV) of the said property as on 01.04.2012 was Rs.9,40,830/-. It was further submitted that the said property was sold on 25.04.2012 for a sale consideration of ₹35,00,000/-, giving rise to capital gains.

2.5. The assessee further submitted that during the relevant previous year it had purchased another property for a consideration of ₹57,60,000/-, as evidenced from the fixed asset schedule furnished. In order to verify the allowability of the claim, the Ld.AO called for the purchase agreement of the new property and the sale agreement of the old property. In response, the assessee furnished the letter of allotment in respect of the newly purchased property along with the sale agreement relating to the old property.

2.6. Based on the aforesaid facts, the assessee claimed deduction under section 54F of the Act in respect of the reinvestment made in a residential flat against the capital gains arising from the sale of the shop.

2.7. The Ld.AO noted that the assessee had paid an advance of ₹25,00,000/- towards the purchase of a new residential flat. However, no supporting documentary evidence, such as a registered

purchase agreement or other conclusive proof, was furnished by the assessee in support of the said payment. The Ld.AO further observed that the claim of deduction under section 54F of the Act had not been made in the return of income originally filed by the assessee. Accordingly, the Ld.AO did not allow the said claim.

2.8. The Ld.AO further rejected the assessee's contention regarding addition of the new property to the block of assets and held that the gains arising from the sale of the asset were required to be taxed as short-term capital gains, on the ground that the block of assets had ceased to exist. The Ld.AO, therefore, computed the short-term capital gain on the sale of the depreciable asset and made an addition of ₹25,59,170/-, as detailed hereunder:

Sale Proceeds	:	Rs.35,00,000
Less: WDV	:	Rs. 9,40,830
Short Term Capital Gain	:	Rs. 25,59,170

Aggrieved by the order of Ld.AO, assessee preferred appeal before Ld.CIT(A).

3. Before Ld.CIT(A), assessee furnished following additional evidence to substantiate the eligibility of its claim u/s 54F of the Act:-

- “1. Agreement dated 31.12.2004 in respect of purchase of shop.
- 2. Agreement dated 25.04.2012 for sale of shop.
- 3. Purchase Agreement dated 12.02.2018.

4. Extract of Bank passbook showing payment of Rs. 25 lakhs on 19.01.2013.
5. Bank Statement of Modi's Nirman showing receipt of Rs. 25 lakhs from Dollar Modi HUF
6. Ledger confirmation from Builder.
7. Allotment letter from Builder dated 19.01.2013.

3.1. The assessee placed reliance on the decisions of *Hon'ble Supreme Court* in case of *CIT v. V.S. Dempo Company Ltd.*, reported in (2016) 366 ITR 635 as well as on the decision of *Hon'ble Bombay High Court* in case of *CIT v. Ace Builders Pvt. Ltd.*, reported in 281 ITR 210, in support of its claim that exemption under sections 54E/54F is available even in respect of capital gains arising from depreciable assets.

3.2. The Ld.CIT(A), however, noted that the assessee had not claimed the exemption under section 54F in the return of income originally filed. On this basis, the Ld.CIT(A) rejected the assessee's submissions and dismissed the claim, observing as under:

“5. Findings and Decision

- *The appellant failed to prosecute the appeal and did not comply with the notice dated 27.08.2025.*
- *On merits, the remand report confirms that the claim u/s 54F was not part of the return of income.*
- *No admissible additional evidence has been produced under Rule 46A.*
- *The addition of Rs. 25,59,170 as short-term capital gains is legally correct.”*

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

I have perused the submissions advanced by both sides in light of the records placed before us.

4. Admittedly, the claim for deduction under section 54F in respect of depreciable assets could not have been examined by the Ld.AO, as the same did not form part of the return of income filed by the assessee. Even before the Ld.CIT(A), such a claim could not have been entertained or verified, having regard to the decision of the *Hon'ble Supreme Court* in *Goetze (India) Ltd. v. CIT* reported in (2006) 284 ITR 323.

4.1. However, *Hon'ble Supreme Court* in *Goetze (India) Ltd. (supra)*, while restricting the power of the assessing officer to entertain a fresh claim otherwise than by way of a revised return, categorically clarified that such restriction does not impinge upon the powers of the appellate authorities to consider and adjudicate a claim in accordance with law. *Hon'ble Supreme Court* observed as under:

4. The decision in question is that the power of the Tribunal under section 254 of the Income Tax Act, 1961, is to entertain for the first time a point of law provided the fact on the basis of which the issue of law can be raised before the Tribunal. The decision does not in any way relate to the power of the assessing officer to entertain a claim for deduction otherwise than by filing a revised return. In the circumstances of the case, we dismiss the civil appeal. However, we make it clear that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of the Income Tax Appellate Tribunal under section 254 of the Income Tax Act, 1961. There shall be no order as to costs.

4.2. In view of the above discussion, this Tribunal find that although the assessee did not claim deduction under section 54F of the Act in the return of income originally filed, such omission cannot, by itself, be a ground to deny examination of the claim at the appellate stage. As clarified by the *Hon'ble Supreme Court* in *Goetze (India) Ltd. v. CIT (supra)*, the restriction laid down therein applies only to the powers of the assessing officer and does not curtail the jurisdiction of the appellate authorities to entertain a legal claim and adjudicate the same in accordance with law.

4.3. It is further noted that the assessee has placed reliance placed by the assessee on the decisions of *Hon'ble Supreme Court* in *CIT v. V.S. Dempo Company Ltd. (supra)* and *Hon'ble Bombay High Court* in case of *CIT v. Ace Builders Pvt. Ltd. (supra)*, lay down that, exemption under sections 54E/54F is available even in respect of capital gains arising from depreciable assets. However, the factual conditions prescribed under section 54F, including but not limited to the nature of the asset transferred, the character of the new asset, the timing of investment, the quantum of investment, and compliance with other statutory conditions, have not been verified by the authorities below.

4.4. In these circumstances, and in the interest of substantial justice, this Tribunal deem it appropriate to restore the issue of the assessee's claim under section 54F to the file of the Ld. AO for *de novo* verification of the statutory conditions laid down under the said provision. The Ld. AO shall examine the claim, after affording a

reasonable opportunity of being heard to the assessee, and shall pass a speaking order on the issue in accordance with law.

Accordingly, grounds raised by assessee stands partly allowed for statistical purposes.

In the result, appeal filed by assessee is allowed for statistical purposes.

Order pronounced in the open court on 19/01/2026

Sd/-

**(BEENA PILLAI)
Judicial Member**

Mumbai
Dated: 19/01/2026
SC Sr. P.S.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order

(Asstt. Registrar)
ITAT, Mumbai