

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
And
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

**ITA No.7998/M/2025
Assessment Year: 2017-18**

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| Mohd Azam Hasan Sheikh, Flat No. B 306 Plot No. 30, Sukhkarata Co. Op. Hsg. Soc, Sector 42 Nerul, Navi Mumbai – 400706 PAN – BIOPS8470H | Vs. | Ward 42(2)(4), Kautilya Bhavan, Mumbai, Maharashtra - 400051 |
| (Appellant) | | (Respondent) |

Present for:

Assessee by : Shri Imran Khan, Ld. A.R.
Revenue by : Shri Tushar Mohite, Ld. Sr. D.R.

Date of Hearing : 02.04.2026
Date of Pronouncement : 09.04.2026

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 30.09.2025, impugned herein, passed by the National Faceless Appeal Centre (NFAC)/Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2017-18.

2. In the instant case, as per the information available with the Income Tax Department, the Assessee during the year under consideration has purchased an immovable property showing a value of Rs. 45,00,000/-. However, the Assessee has not filed his return of income and therefore, the case of the Assessee was selected for scrutiny and/or reopened under section 147 of the Act

by issuing notice dated 24.03.2024 under section 148 of the Act, in response to which the Assessee filed his return of income on dated 04.04.2024, as it appears from the acknowledgment, inter alia claiming exemption under section 54 of the Act to the tune of Rs.49,00,000/- having received by sale of a joint owned residential property along with Ms. Binu Azmi, PAN No. GJEPS9367D, situated at Sukhartha Cooperative Housing Society, Sector 42, Navi Mumbai, sold through sale agreement dated 04.05.2016, and having re-invested the entire sale consideration in acquisition of a new residential property jointly purchased with Ms. Binu Azmi at Thakur Residency, Ulwe, Navi Mumbai on 05.07.2016 having been purchased on a total consideration of Rs. 45,00,000/-.

3. Though the AO considered the claim of the Assessee, however, by observing "that the Assessee has not filed original return of income and therefore, the exemption under section 54D is not allowable", eventually made the addition of Rs.31,38,256/- by disallowing the exemption claimed by the Assessee under section 54 of the Act, as not allowable under section 54D of the Act.

4. On appeal, the Ld. Commissioner affirmed the aforesaid addition more or less on the same reason as of the AO. Thus, the Assessee has preferred the instant appeal.

5. Heard, the parties and perused the material available on record. The only controversy involved in the instant case relates to the consideration of exemption claimed under section 54 of the Act, which has been declined to be entertained by the authorities below mainly on the reason that the Assessee failed to file original return of income and/or without filing original return of income, the claim under section 54 of the Act is not sustainable and/or the long term capital gain disclosed/claimed by way of return filed in response to

the notice under section 148 of the Act is not entertainable/allowable. We observe from the impugned order that the Ld. Commissioner while affirming the aforesaid addition and/or the decision of the AO for not allowing the deduction claimed under section 54 of the Act, has also relied on judgment passed by the Hon'ble Apex Court in the case of Commissioner of *Income Tax Vs. Sun Engineering Works (P.) Ltd.* 198 ITR 297 (SC), whereas the Hon'ble Coordinate Bench of the Tribunal in the case of *Sanjay Gopaldas Bajaj Vs. ITO* (ITA No. 5944/M/2025 decided on 20.01.2026) has recently dealt with identical issue and also considered the judgment in the case of *Sun Engineering Works (P.) Ltd. (Supra)* and ultimately restored back the matter to the file of the AO to consider the case of the Assessee, within the parameters stipulated under section 54 of the Act, by observing and holding as under :-

"4. We have heard the rival submissions and carefully perused the material available on record. It is not in dispute that the assessee did not file his regular return of income within the time prescribed under section 139(1) of the Act. It is also undisputed that in the return filed pursuant to notice under section 148, the assessee disclosed the long-term capital gain arising from sale of a residential property amounting to Rs.67,91,537/-and simultaneously claimed deduction under section 54 amounting to Rs. 67,91,537/ on the ground that the capital gain had been invested in purchase of another residential property within the stipulated period.

4.1 The assessee contended that though return of income was not filed in terms of section 139(1) of the Act due to sudden disappearance of the accountant, but taxes were duly paid in the relevant year itself. It was further claimed that in return of income filed response to notice u/s 148, the assessee duly included the Long Term Capital Gain from the sale of the residential property and which was further invested in the another residential property within the time frame as specified under section 54 of the Act.

4.2 The claim of the assessee was rejected by the lower authorities solely on the ground that such deduction was

not claimed in the original return, which admittedly was never filed. The learned Commissioner of Income-tax (Appeals) placed reliance on the decision of the Hon'ble Supreme Court in CIT v. Sun Engineering Works (P.) Ltd. (198 ITR 297) to hold that a claim not made in the original proceedings cannot be permitted in reassessment proceedings. The relevant findings of the Ld. CIT(A) is reproduced as under:

"7.4 It is seen that the appellant has not offered the above discussed income in the regular ITR as no return had been filed voluntarily thereby willfully attempting to evade tax. It was only after the re assessment proceedings initiated against the appellant, filed its ITR and claimed the deductions u/s 54 of the Act. Reliance is placed on the Supreme Court judgment in 198 ITR 0297, (1992) CIT vs SUN ENGINEERING WORKS (P) LTD, where in the apex court held that the object and purpose of the proceedings under Section 147 of the Act is for the benefit of the revenue and not for the benefit of the assessee and, therefore, in the reassessment proceedings, the assessee cannot be permitted to convert the reassessment proceedings as his appeal or revision in disguise and seek relief in respect of items earlier rejected or claim relief in respect of items not claimed in the original assessment proceedings, unless relatable to 'escaped income, and reargue the concluded matters. Even in cases where the claims of the assessee during the course of reassessment proceedings related to the escaped assessment are accepted, still the allowance of such claims has to be limited to the extent to which they reduce the income to that originally assessed. The income for purposes of 'reassessment cannot be reduced beyond the income originally assessed.

4.3 In our considered view, the reliance placed by the learned Commissioner of Income-tax (Appeals) on the aforesaid decision is misplaced and founded on an incomplete appreciation of the ratio laid down by the Hon'ble Supreme Court. A careful reading of the judgment in Sun Engineering Works (P.) Ltd.(supra) makes it abundantly clear that while reassessment proceedings cannot be converted into a forum for reopening concluded matters unrelated to escaped income, the assessee is not precluded from raising claims which are directly relatable to the income that has escaped assessment. The Supreme Court has categorically observed that, in reassessment proceedings, it is open to the assessee to put forth claims for deduction or non-taxability in respect of such

escaped income. The relevant observation of the Hon'ble Supreme Court in the reproduced as under:

"39. As a result of the aforesaid discussion we find that in proceedings under section 147 the ITO may bring to charge items of income which had escaped assessment other than or in addition to that item or items which have led to the issuance of notice under section 148 and where reassessment is made under section 147 in respect of income which has escaped tax, the ITO's jurisdiction is confined to only such income which has escaped tax or has been under-assessed and does not extend to revising, reopening or reconsidering the whole assessment or permitting the assessee to reargue questions which had been decided in the original assessment proceedings. It is only the under-assessment which is set aside and not the entire assessment when reassessment proceedings are initiated. The ITO cannot make an order of reassessment inconsistent with the original order of assessment in respect of matters which are not the subject matter of proceedings under section 147. An assessee cannot resist validly initiated reassessment proceedings under this section merely by showing that other income which had been assessed originally was at too high a figure except in cases under section 152(2). The words 'such income' in section 147 clearly refer to the Income which is chargeable to tax but has 'escaped assessment and the ITO's jurisdiction under the section is confined only to such income which has escaped assessment. It does not extend to reconsidering generally the concluded earlier assessment. Claims which have been disallowed in the original assessment proceeding cannot be permitted to be reargued on the assessment being reopened for bringing to tax certain income which had escaped assessment because the controversy on reassessment is confined to matters which are relevant only in respect of the income which had not been brought to tax during the course of the original assessment, A matter not agitated in the concluded original assessment proceedings also cannot be permitted to be agitated in the reassessment proceedings unless relatable to the item sought to be taxed as 'escaped income, Indeed, in the reassessment proceedings for bringing to tax items which had escaped assessment, It would be open to an assessee to put forward claims for deduction of any expenditure in respect of that income or the non-taxability of the items at all. Keeping in view the object and purpose of the proceedings under section 147 which are for the benefit of the revenue and not an assessee, an assessee cannot be permitted to convert the reassessment proceedings as his appeal or revision, in

*disguise, and **seek relief in respect of items earlier rejected or claim relief in respect of items not claimed in the original assessment proceeding, unless relatable to 'escaped income** and reargue the concluded matters. Even in cases where the claims of the assessee during the course of reassessment proceedings related to the escaped assessment are accepted, still the allowance of such claims has to be limited to the extent to which they reduce the income to that originally assessed. The income for purposes of 'reassessment' cannot be reduced beyond the income originally assessed."*

(emphasis supplied externally)

4.4 In the present case, the escaped income is the long-term capital gain arising from sale of a residential property. The deduction claimed under section 54 is intrinsically and directly connected with such capital gain. Therefore, the claim is not extraneous or unrelated to the subject matter of reassessment but goes to the computation of the very income brought to tax in the reassessment proceedings. We also find support for this view from the decision of the Coordinate Bench in Smt. Amina Ismil Rangari V/s. Income Tax Officer wd-17 (2)(4) [2017] 86 taxmann.com 160 (Mumbai-Trib.), wherein it has been held that the provisions of section 54F do not prescribe filing of a return within the time stipulated under section 139 as a condition precedent for claiming the exemption, and that a claim raised in a return filed in response to notice under section 148 cannot be rejected merely on the ground of delay in filing the return. The relevant finding of the coordinate Bench is reproduced as under:

"9. We now in the backdrop of our aforesaid observations that the 'return of income filed by the assessee after the expiry of the time period specified in the notice as 148 continues to be a 'return of income filed u/s 148, though involving some delay, would now deliberate upon the validity of the claim of the assessee raised u/s 54F. We have perused the statutory provision contemplated u/s 54F and are of the considered view that the same does not cast any Statutory obligation on the part of assessee to file his return of income within the stipulated time period contemplated u/s 139 or 148 of the 'Act', as a precondition for entitling him to claim exemption under the said statutory provision. We are of the considered view that the reference to the term 'due date' for furnishing of return of income u/s. 139 as contemplated

in section 54F(4) is in context of the time limit within which the amount which had not been appropriated by the assessee towards making of investment in the purchase and/or construction of the new residential house is permitted to be deposited in the Capital Gains Account Scheme, 1998, which thereafter is to be withdrawn and utilized as per the terms contemplated in the said statutory provision. We are of the considered view that Section 54F, neither provides as a pre-condition the requirement of filing of the 'return of income by the assessee within the stipulated time period, nor places any embargo as regards claim of such exemption in a case the return of income filed by the assessee involves some delay. We thus in the backdrop of our aforesaid observations are of the considered view that now when the assessee had raised the claim u/s 54F in the 'return of income' filed by her in compliance to notice u/s 148, therefore, it was obligatory on the part of the A.O to have deliberated on the entitlement of the assessee towards claim of exemption u/s 54F, on merits. We do not find ourselves to be in agreement with the observations of the A.O that the claim towards exemption u/s 54F raised by the assessee in her 'return of income' was liable to be scrapped solely for the reason that the filing of such 'return of income involved some delay. We thus in light of our aforesaid observations set aside the order of the CIT (A), who we find had concurred with the view taken by the A.O that the assessee was not entitled towards claim of exemption u/s 54F. We however not being oblivious of the fact that due to dismissal of the claim of exemption in limine by the A.O, there had been no occasion for the lower authorities to have deliberated upon the satisfaction of the requisite conditions contemplated u/s 54F by the assessee, therefore, in all fairness restore the matter to the file of A.O for making the necessary verifications. We may however observe that as the assessee had during the course of the hearing of the appeal submitted complete details as regards his entitlement towards claim of exemption u/s 54F, which we find had been reproduced by the CIT (A) in his order dated. 29.03.2013, therefore, the A.O is directed to verify the genuineness and veracity of the claim of the assessee in the backdrop of the said facts and figures provided by the assessee. That in case the facts and figures provided by the assessee are found to be in order, then claim of exemption u/s 54F, as raised by the assessee shall be allowed. Needless to say, the A.O shall during the course of the set aside proceedings afford an opportunity of being heard to the assessee to substantiate his aforesaid claim. The Ground of appeal

no. 1 raised by the assessee is allowed for statistical purposes."

4.5 Further, it has been brought to our notice that in the case of the assessee's wife, Smt. Ritu Bajaj, arising out of similar facts, the Assessing Officer has accepted the claim of deduction under section 54 made for the remaining 50% part of the investment in new residential property in the return filed pursuant to notice under section 148. This also lends support to the assessee's contention that the claim cannot be rejected in limine.

4.6 In view of the foregoing discussion, we hold that the assessee is entitled, in law, to claim deduction under section 54 of the Act in the return of income filed in response to notice under section 148, provided the substantive conditions prescribed under the said section are duly satisfied. The lower authorities were, therefore, not justified in rejecting the claim solely on the ground that no original return under section 139(1) was filed.

4.7 Accordingly, we set aside the orders of the lower authorities on this issue and restore the matter to the file of the Assessing Officer for the limited purpose of verifying whether the assessee has fulfilled the conditions stipulated under section 54 of the Act. If the conditions are found to be satisfied, the deduction shall be allowed in accordance with law."

5. In the above judgment, the reliance was also placed on the judgment of the Hon'ble Coordinate Bench of the Tribunal in the case of *Smt. Amina Ismail Rangari V/s. Income Tax Officer wd-17 (2)(4) [2017] 86 taxmann.com 160 (Mumbai- Trib.)*, wherein it has been held that the provision of section 54F do not prescribe filing of return within the time stipulated under section 139, as a condition precedent for claiming the deduction and that claim raised in the return in response to notice under section 148 of the Act cannot be rejected merely on the ground of delay in filing the return. We thus, respectfully relying on the above judgments are inclined to allow the appeal of the Assessee, therefore, remand the case to the file of

the AO for decision afresh on the claim of the Assessee under section 54 of the Act within the parameters and/or conditions set out in section 54 of the Act but not otherwise. And On fulfilling the conditions as prescribed under section 54 of the Act by the Assessee, to allow the exemption claimed accordingly.

6. In the result, Assessee's appeal is allowed in the above terms.

Order pronounced in the open court on 09.04.2026.

**Sd/-
(ARUN KHODPIA)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

**(Tarun Kushwaha)
Sr. Private Secretary**

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.