

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No.3028/KOL/2025
(Assessment Year: 2017-18)**

Ricky Chandra
68A, Pearey Mohan Roy Road,
Chetla, Kolkata-700027,
West Bengal

Vs.

ACIT
2 Gariahat Road (south),
Dhakuria, Kolkata-700068,
West Bengal

(Appellant)

(Respondent)

PAN No. ADOPC8548E

Assessee by : S/Shri Soumitra Choudhury &
Jaydeep Chakraborty, Ars
Revenue by : Ms. Monalisa Pal Mukherjee, DR

Date of hearing: 25.02.2026
Date of pronouncement: 15.04.2026

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Commissioner of Income-tax (Appeals)-3, Chennai(hereinafter referred to as the "Ld. CIT(A)") dated 31.10.2025 for the AY 2017-18.

2. The only issue raised by the assessee in the various grounds of appeal is against the order of Id. CIT (A) upholding the order of the Id. AO wherein the assessee was denied the exemption u/s 54 of the Income-tax Act, 1961 (in short "the Act") on the ground that the assessee has not claimed the said exemption in the original return filed u/s 139(1) of the Act nor in the revised return and consequently the assessee is not entitled to the refund of capital gain tax paid amounting to ₹16,70,809/-.

3. The facts in brief are that the assessee filed the return of income for the impugned assessment year showing total income of ₹1,66,36,326/-, which was processed u/s 143(1) of the Act on 5.11.2017. The income returned during the year was comprising long capital gain of ₹83,54,045/- beside the other income. The said capital gain arose from the sale of house property on 25.10.2016. The assessee purchased new property on 16.05.2017, after the end of the F.Y. 2016-17. The assessee realized his mistake of not having claimed exemption u/s 54 of the Act and therefore moved a rectification petition before the Id. AO dated 23.03.2019 and also after again 23.04.2021, requesting the Id. AO to allow exemption u/s 54 of the Act in respect of purchase of new property on 16.05.2017 as the assessee has fulfilled all the conditions as envisaged in section 54 of the Act by purchasing a new house within two years from the date of sale of old property,. Thus, the assessee claimed the refund of capital gain tax paid amounting to ₹16,70,809/- as stated above. However, the Id. AO dismissed the petition of the assessee vide following order:-

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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT
COMMISSIONER OF INCOME TAX
CIRCLE 29, KOLKATA

To, RICKY CHANDRA 68A, PEAREY MOHAN ROY ROAD CHETLA KOLKATA 700027, West Bengal India	
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PAN: ADOPC8548E	Assessment Year: 2017-18	Dated: 25/08/2021	DIN & Letter No : ITBA/COM/F/17/2021-22/1035082888(1)
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Sir/ Madam/ M/s,

Subject: Proceedings under section 154 - Letter

Please refer to your rectification petition dated 23/04/2021.

Please note that the deduction u/s 54 against the Capital Gain arising out of sale of house, was not claimed in the ITR filed on 30-10-2017.

In this regard the decision of Apex Court in the case of Goetze (India) Ltd vs. CIT 24/03/2016 [284 ITR 323 (SC)] may be referred.

In view of the above, the rectification petition is found to be not acceptable.

Please treat this as order u/s 154 of the Income Tax Act, 1961.

SOUMITRA GHOSH
CIRCLE 29, KOLKATA

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

4. In the appellate proceedings, the Id. CIT (A) dismissed the appeal of the assessee by observing and holding as under:-

"7.7 As the appellant has not claimed any exemption u/s 54 in the original return of income filed, the assessee ought to have filed the revised return within the prescribed time to claim exemption u/s 54. However, no revised return was filed within the time prescribed under Section 139(5) to rectify such omission. As per the provisions of

Section 139(5) of the Income Tax Act, any omission or wrong statement in the Return of Income (RoI) can be rectified only by filing a revised return. The relevant extract of the section is reproduced below:-

"If any person, having furnished a return under sub-section (1) or sub-section (4), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier."

7.8 However, the appellant filed a rectification petition under Section 154 to claim exemption u/s. 54, which is not the appropriate mechanism for such a correction. It is pertinent to note that Section 154 permits rectification only in cases of mistakes apparent from the record in an order or intimation issued under the provisions of the Act. The Return of Income itself does not qualify as such a record for rectification under this section. Therefore, the assessing officer was correct in rejecting the appellant's request in the order passed under Section 154, Accordingly, the order under Section 154 is hereby upheld. Accordingly, this ground of appeal is dismissed."

5. After hearing the rival contentions and perusing the materials available on record, we find that during the year the assessee has sold its residential house on 25.10.2016. We note that the assessee paid the capital gain tax at the rate of 20% on the Long-Term Capital Gain of ₹83,54,045/-. We also note that a new house was purchased on 16.05.2017, by the appellant. Both the sale deed dated 24.10.2016 and purchase deed dated 16.05.2017 are available at page no.153 and page no.182 of the Paper Book of the assessee. Therefore, in terms of provisions of Section 54 of the Act, the assessee is entitled to exemption u/s 54 of the Act in respect of long-term capital gain which arose from the sale of property on 25.10.2016 and invested in the new house property. We note that the assessee has wrongly paid the tax on the long term capital gain on sale of property amounting to ₹16,70,809/-. In our opinion, the Id. CIT (A) has grossly erred in rejecting the claim of the assessee in respect of exemption u/s 54 of the Act qua long capital gain invested in the purchase of new property. In our opinion, the appellate authority can admit any new claim in the appellate proceedings, which was not claimed by the assessee in the return of income filed.

Therefore, we are inclined to disagree with the conclusion drawn by the Id. CIT (A) on this issue. Further, we are of the considered view that the assessee is entitled to the exemption u/s 54 of the Act in respect of long-term capital gain invested in the new house property within two years from the date sale of property. Accordingly, following the decisions of the Hon'ble Apex Court in the case of Goetze (India) Ltd. vs. Commissioner of Income-tax [2006] 157 Taxman 1 (SC)/[2006] 284 ITR 323 (SC)/[2006] 204 CTR 182 (SC)[24-03-2006], we are inclined to admit this issue and decide the same in favour of the assessee. However, for the purposes of calculation the issue is restored to the file of the Id. JAO with a direction to allow the same after doing necessary verification.

6. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced on 15.04.2026.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 15.04.2026
Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

True Copy//

BY ORDER,

Asst. Registrar
Income Tax Appellate Tribunal, Kolkata