

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

**BEFORE DR. BRR KUMAR, VICE PRESIDENT &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.272/Ahd/2025
(Assessment Year: 2012-13)

Dilip Mohandas Devani, M-103, Darshanam Antika, Opp. Heavy Water Towhship, Danteshwar, Tarsali Ring Road, Gujarat-390004	Vs.	Income Tax Officer, Ward-1(2)(1), Vadodara
[PAN No.ABOPD1457H]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Jigar Shah, AR
Respondent by:	Shri Rajenkumar M Vasavda, Sr. DR

Date of Hearing	12.08.2025
Date of Pronouncement	25.08.2025

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), ADDL/JCIT(A)-8, Delhi vide order dated 16.07.2024 passed for A.Y. 2012-13.

2. The assessee has raised the following grounds of appeal:

“1. *Disallowance of Indexed Cost of Improvement-The CIT(A) erred in confirming the disallowance of the cost of improvement amounting to Rs. 6,00,300/-, of which the indexed cost of improvement amounted to Rs. 11,08,780/-, where the appellant’s share was 2/5th (1/5th for himself and 1/5th for his minor daughter, whose income was clubbed with the appellant’s). The cost of improvement was paid in cash in instalments, which explains the absence of payments in the bank statement. The appellant provided sufficient evidence, including contractor bills and details of work performed.*

2. *Incorrect restriction of Deduction under Section 54-The CIT(A) erred in restricting the deduction under Section 54 to 50% of the investment in the new*

residential property, without considering the actual contributions made by the appellant and his spouse. The investment in the new property was made in the ratio 2:1, corresponding of the appellant's and Anju Devani's respective shares in the sale proceeds of the old property. The deduction should be allowed in this ratio, as the investment was made entirely out of the sale proceeds of the old property."

3. At the outset, we note that the assessee has filed an application for condonation of delay, along-with an Affidavit seeking condonation of delay of 140 days in filing the present appeal before us. In the Affidavit, the assessee has stated that although the order of the Ld. CIT(A) was passed on 6th August 2024, the assessee became aware of the order only on 10th December 2024 only upon receipt of the demand notice. The assessee has submitted that no physical copy of the order was received earlier and, upon gaining knowledge of the order passed by Ld. CIT(A), the appeal was filed on 24th January 2025, which is within the prescribed period of 60 days from the date of receipt of demand notice. Accordingly, the assessee submitted that the delay in filing the appeal is due to reasons beyond the control of the assessee, and there is no mala-fide intent on part of the assessee in the delay in filing of appeal before ITAT. Accordingly, in the interest of justice and considering the reasonable cause shown by the assessee, we hereby condone the delay in filing the appeal and admit the same for adjudication.

4. The brief facts of the case are that the assessee, Shri Dilip Mohandas Devani, had sold an immovable property on 16.01.2012. The sale deed showed the total consideration for the property at ₹41,00,151/-, which had been shared equally among five co-owners, including the assessee and his minor daughter. However, the Assessing Officer observed that the stamp duty paid on the transaction showed a higher stamp duty valuation of ₹67,14,284/- with respect to this property. The Assessing Officer noted that as per section

50C of the Income-tax Act (Act), the stamp duty value must be adopted as the full value of consideration for computing capital gains. The assessee had not filed his return of income for A.Y. 2012–13. Accordingly, reassessment proceedings were initiated under section 147 of the Act. In response to notice issued by the Assessing Officer, the assessee filed return of income on 27.05.2019 declaring total income of ₹1,690/- and claiming a long-term capital loss of ₹8,70,727/- after taking into account indexed cost of acquisition, cost of improvement, and after claiming exemption under section 54 of the Act. On verification of the assessee's records, the Assessing Officer found that the assessee had incorrectly computed capital gains by taking only the sale consideration of ₹41,00,151/- instead of the higher stamp duty value of ₹67,14,284/- as required under section 50C of the Act. The assessee also included the share of capital gain arising to his minor daughter and claimed deductions accordingly. Further, the Assessing Officer observed that the assessee's claim of ₹6,00,000/- towards cost of improvement was also not supported by sufficient or credible evidence of assessee having incurred such expenditure, such as proper documentation, payment details, or source of funds, and hence the Assessing Officer disallowed the same. The assessee had claimed exemption under section 54 of the Act on account of investment in a new residential property, but the Assessing Officer noted that since the new property was jointly purchased by the assessee with his wife without a clear share having been mentioned in the documents, only 50% of the total investment was considered as the assessee's share by the Assessing Officer. However, the Assessing Officer granted exemption to the extent of actual capital gain in the hands of the assessee. After considering the correct sale consideration under section 50C of the Act and disallowing the cost of

improvement, the total long term capital gain was computed at ₹15,99,618/-, which was added to the assessee's total income. Accordingly, the assessee's total income was determined at ₹16,01,310/-.

5. In appeal before Ld. CIT(A), he partly allowed the assessee's appeal. The CIT(A) first examined the applicability of section 50C of the Act. and upheld the Assessing Officer's view that the full value of consideration for the purpose of calculating capital gains should be taken as ₹67,14,284/-, being the stamp duty value, and not ₹41,00,151/- as stated in the sale deed. This was found to be in accordance with the mandatory provisions of section 50C of the Act. Regarding the assessee's claim for indexed cost of improvement, the CIT(A) found that although the assessee had submitted a contract copy mentioning the contractor's name and address, there was no bank statement, payment proof, or invoice to support the claim of expenditure. Hence, the CIT(A) upheld the disallowance of the indexed cost of improvement. The assessee also submitted before Ld. CIT(A) that he should be allowed exemption under section 54 of the Act to the extent of two-thirds of the investment made in the new residential property. However, the CIT(A) found this claim to be unjustified since the new house had been purchased jointly with the assessee's wife, and the minor daughter (whose capital gain income had been clubbed with the assessee) had made no investment in the property. Therefore, the exemption under section 54 of the Act was restricted to half of the investment amount being attributable to the assessee. However, the CIT(A) found certain discrepancies in the AO's computation of capital gains. After reworking the figures as per the correct application of section 50C of the Act and disallowing the indexed cost of

improvement, and restricting exemption under section 54 of the Act to the extent of the assessee's own investment, the CIT(A) recalculated the total long-term capital gain in the assessee's hands at ₹9,29,639/-, as against ₹15,99,618/- computed by the AO. Accordingly, the appeal was partly allowed.

6. The assessee is in appeal before us against the order passed by CIT(Appeals) dismissing the appeal of the assessee. Before us, the counsel for the assessee submitted that the assessee had sold an immovable property along with four co-owners. The sale consideration was ₹41,00,151/- as per the sale deed, but for the purpose of computation of capital gains, the stamp duty valuation of ₹67,14,284/- was adopted by the Assessing Officer under Section 50C of the Act. The assessee held a 1/5th share in the property, and another 1/5th share belonged to his minor daughter, Miss Juhi Devani, whose income was clubbed with the assessee's income. Thus, the assessee's effective share in the sale proceeds of the assessee was 2/5th. His spouse, Anju Devani, held the remaining 1/5th share individually. After the sale of property, the assessee and his wife jointly invested the proceeds in a new residential property. The investment was made in the ratio of 2:1 ratio, which was matching with the share of the sale proceeds of the property in question. However, the Assessing Officer, while finalizing the assessment, invoked Section 50C of the Act with a view to substitute the sale consideration with the stamp duty value and restricted the deduction under Section 54 to only 50% of the investment in the new house, solely on the basis that the new property was jointly owned-**ignoring the actual contribution ratio between the assessee and his wife**. Further, the assessee had claimed a cost of

improvement of ₹6,00,300/-, which, after applying indexation, came to ₹11,08,780/-. This computation, as per the assessee, was duly supported by contractor bills and supporting documents showing repairs and renovation work done. However, the payment was made in cash over time, which was the reason why it did not appear in the bank statements. Despite providing sufficient documentation, this claim was rejected both by the AO and the CIT(A) due to lack of payment through banking channels. The counsel for the assessee submitted that expecting records like passbooks or bank slips for a transaction that occurred nearly 24 years ago (in 2001) was unreasonable, especially when the bills and contractor details were already submitted. The counsel for the assessee submitted that the assessee had provided the best available evidence, and the disallowance made by the Assessing Officer was arbitrary and unfair. As for the deduction under Section 54 of the Act, the assessee contended that the CIT(A) wrongly limited the exemption to 50% of the total investment merely because the property was in joint names, without considering the fact that the investment was made in the ratio of 2:1 between the assessee and his wife. The counsel for the assessee pointed out that this contribution came directly from their respective shares in the original property which was sold, and the ratio is also duly supported by an Affidavit from both co-owners confirming ratio of investment in new property. The assessee further submitted that the CIT(A) erroneously presumed equal ownership simply based on joint registration of names, without looking at the source of funds.

7. We have heard the rival contentions and perused the material on record. As regards the application of Section 50C of the Act, we find that both

the Assessing Officer and the CIT(A) have rightly applied the provisions of the Act by adopting the stamp duty value of ₹67,14,284/- as the full value of consideration in place of the sale deed value of ₹41,00,151/-. The adoption of the stamp duty value is in accordance with the provisions of Section 50C of the Act we find no infirmity in the order of Ld. CIT(A) so as to call for any interference. The assessee has also not made any request for referring the matter to the file of DVO at any stage of hearing. However, with respect to the claim for exemption under Section 54 of the Act, we are of the view that the Assessing Officer and Ld. CIT(A) have not adequately appreciated the assessee's contention regarding the proportion of investment made in the new residential property. It is not in dispute that the assessee and his wife jointly purchased the new residential property. The assessee has however claimed that the investment was made in the ratio of 2:1, which was corresponding to their respective shares in the sale proceeds of the original property, which included the share of the minor daughter whose income is clubbed with that of the assessee. The assessee has also submitted that the investment in the new property was made entirely out of the sale proceeds of the old property and that an Affidavit from both the co-owners confirming this ratio of 2:1 has also been placed on record. In our view, the actual contribution towards the purchase of the new house is a relevant factor while determining the eligible exemption under Section 54 of the Act. Therefore, we are inclined to accept the assessee's claim in principle, subject to verification of the actual contributions made by the assessee and his wife towards the new property. Accordingly, we direct the Assessing Officer to verify the proportion of investment made by the assessee and allow the exemption under Section 54 of the Act accordingly. Further, with regard to the assessee's claim of indexed

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cost of improvement, we note that although the assessee has submitted contractor bills and supporting documentation for the amount of expenditure claimed to have been incurred by him, the payment was made in cash and the same is not reflected in the bank account. Considering the fact that the improvements were stated to have been carried out nearly two decades ago, we find merit in the assessee's contention that expecting banking records or passbooks for such an old transaction may not be reasonable. Since the assessee has provided the best available documentary evidence in the form of contractor bills and work details, we are of the view that the claim for indexed cost of improvement may be allowed to the assessee, in the interests of justice.

8. In the result, the appeal of the assessee is **partly allowed for statistical purposes**, in terms of our above directions.

This Order pronounced in Open Court on

25/08/2025

Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT

Ahmedabad; Dated 25/08/2025

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad