ISSUES IN SECTION 54, 54EC AND 54F R.W.S 50C

Presentation by :
CA. Naveen Khariwal G
Chartered Accountant
No. 248, 3rd Main Road,
Chamrajpet, Bangalore – 560 018.

naveenkhariwalg@gmail.com
Mob No : 9880683725

Profit on sale of property used for residence.

54. (1) Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (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, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say-

(*i*) if the amount of the capital gain is greater than the cost of the residential house so purchased or constructed (hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be *nil*; or

(*ii*) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain:

[**Provided** that where the amount of the capital gain does not exceed two crore rupees, the assessee may, at his option, purchase or construct two residential houses in India, and where such option has been exercised,—

(*a*) the provisions of this sub-section shall have effect as if for the words "one residential house in India", the words "two residential houses in India" had been substituted;

(*b*) any reference in this sub-section and sub-section (2) to "new asset" shall be construed as a reference to the two residential houses in India:

Provided further that where during any assessment year, the assessee has exercised the option referred to in the first proviso, he shall not be subsequently entitled to exercise the option for the same or any other assessment year.]

(2) The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—

(*i*) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(*ii*) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

Explanation.—[*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993*.]

Capital gain not to be charged on investment in certain bonds.

54EC. (1) Where the capital gain arises from the transfer of a long-term capital asset, being land or building or both, (the capital asset so transferred being hereafter in this section referred to as the original asset) and the assessee has, at any time within a period of six months after the date of such transfer, invested the whole or any part of capital gains in the long-term specified asset, the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

(*a*) if the cost of the long-term specified asset is not less than the capital gain arising from the transfer of the original asset, the whole of such capital gain shall not be charged under section 45;

(*b*) if the cost of the long-term specified asset is less than the capital gain arising from the transfer of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the long-term specified asset bears to the whole of the capital gain, shall not be charged under section 45 :

Provided that the investment made on or after the 1st day of April, 2007 in the long-term specified asset by an assessee during any financial year does not exceed fifty lakh rupees :

Provided further that the investment made by an assessee in the long-term specified asset, from capital gains arising from transfer of one or more original assets, during the financial year in which the original asset or assets are transferred and in the subsequent financial year does not exceed fifty lakh rupees.

(2) Where the long-term specified asset is transferred or converted (otherwise than by transfer) into money at any time within a period of three years from the date of its acquisition, the amount of capital gains arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such long-term specified asset as provided in clause (*a*) or, as the case may be, clause (*b*) of sub-section (1) shall be deemed to be the income chargeable under the head "Capital gains" relating to long-term capital asset of the previous year in which the long-term specified asset is transferred or converted (otherwise than by transfer) into money:

Provided that in case of long-term specified asset referred to in sub-clause (*ii*) of clause (*ba*) of the *Explanation* occurring after sub-section (3), this sub-section shall have effect as if for the words "three years", the words "five years" had been substituted.

Explanation.—In a case where the original asset is transferred and the assessee invests the whole or any part of the capital gain received or accrued as a result of transfer of the original asset in any long-term specified asset and such assessee takes any loan or advance on the security of such specified asset, he shall be deemed to have converted (otherwise than by transfer) such specified asset into money on the date on which such loan or advance is taken.

(3) Where the cost of the long-term specified asset has been taken into account for the purposes of clause (*a*) or clause (*b*) of sub-section (1),—

(*a*) a deduction from the amount of income-tax with reference to such cost shall not be allowed under section 88 for any assessment year ending before the 1st day of April, 2006;

(*b*) a deduction from the income with reference to such cost shall not be allowed under section 80C for any assessment year beginning on or after the 1st day of April, 2006.

Explanation.—For the purposes of this section,—

(*a*) "cost", in relation to any long-term specified asset, means the amount invested in such specified asset out of capital gains received or accruing as a result of the transfer of the original asset;

(*b*) "long-term specified asset" for making any investment under this section during the period commencing from the 1st day of April, 2006 and ending with the 31st day of March, 2007, means any bond, redeemable after three years and issued on or after the 1st day of April, 2006, but on or before the 31st day of March, 2007,—

(*i*) by the National Highways Authority of India constituted under section 3 of the National Highways Authority of India Act, 1988 (68 of 1988); or

(*ii*) by the Rural Electrification Corporation Limited, a company formed and registered under the Companies Act, 1956 (1 of 1956),[49]

and notified by the Central Government in the Official Gazette for the purposes of this section with such conditions (including the condition for providing a limit on the amount of investment by an assessee in such bond) as it thinks fit:

Provided that where any bond has been notified before the 1st day of April, 2007, subject to the conditions specified in the notification, by the Central Government in the Official Gazette under the provisions of clause (*b*) as they stood immediately before their amendment by the Finance Act, 2007, such bond shall be deemed to be a bond notified under this clause;

(*ba*) "long-term specified asset" for making any investment under this section -

(*i*) on or after the 1st day of April, 2007 but before the 1st day of April, 2018, means any bond, redeemable after three years and issued on or after the 1st day of April, 2007 but before the 1st day of April, 2018;

(*ii*) on or after the 1st day of April, 2018, means any bond, redeemable after five years and issued on or after the 1st day of April, 2018,

by the National Highways Authority of India constituted under section 3 of the National Highways Authority of India Act, 1988 (68 of 1988) or by the Rural Electrification Corporation Limited, a company formed and registered under the [50]Companies Act, 1956 (1 of 1956) or any other bond notified in the Official Gazette by the Central Government in this behalf.

Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.

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,—

(*a*) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45 ;

(*b*) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:

Provided that nothing contained in this sub-section shall apply where—

(*a*) the assessee,-

(*i*) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or

(*ii*) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or

(*iii*) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(*b*) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".

Explanation - For the purposes of this section -

"net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(2) Where the assessee purchases, within the period of two years after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (*a*), or, as the case may be, clause (*b*), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.

(3) Where the new asset is transferred within a period of three years from the date of its purchase or, as the case may be, its construction, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (*a*) or, as the case may be, clause (*b*), of sub-section (1) shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such new asset is transferred.

(4) The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—

(*i*) the amount by which—

(*a*) the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of the new asset as provided in clause (*a*) or, as the case may be, clause (*b*) of sub-section (1), exceeds

(*b*) the amount that would not have been so charged had the amount actually utilised by the assessee for the purchase or construction of the new asset within the period specified in sub-section (1) been the cost of the new asset,

shall be charged under section 45 as income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(*ii*) the assessee shall be entitled to withdraw the unutilised amount in accordance with the scheme aforesaid.

Explanation - [*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.*]

Special provision for full value of consideration in certain cases.

50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer :

Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed[40]], on or before the date of the agreement for transfer:

Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and [41][*ten*] per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.

(2) Without prejudice to the provisions of sub-section (1), where—

(*a*) the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;

(*b*) the value so adopted or assessed or assessable by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (*i*) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

Explanation 1.—For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (*r*) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

Explanation 2.—For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed or assessable by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed or assessable by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.

ISSUE - 1

Whether benefit of exemption u/s. 54/54F is available in case the new asset is used partly for residential and partly for commercial purpose?

IN THE ITAT INDORE BENCH Ashok Kukreja v. Income-tax Officer [2021] 132 taxmann.com 102 (Indore - Trib.)

8. As per the permission granted by the Municipal Corporation, Bhopal, **the ground floor is to be utilized for commercial activities and thus shops are constructed on ground floor and first floor to be utilized for residential purpose.** We also find that **the assessee has purchased a property as a residential property and registering authority have also registered the said purchase after charging expenses valuing the said property for stamp duty value as a residential property**. Copy of registration papers and guidelines for stamp duty valuation are placed on record. **It is noteworthy that Electricity Department had also considered the use of the said premises as a residential use and has charged the electricity rates accordingly.** Perusal of record also shows that the assessee has submitted the copy of the Municipal receipt and return during the course of assessment proceedings itself. **Municipal authorities have charged the property tax treating it as a residential property.**

Further from perusal of the purchase deed placed at pages 11 to 19 we find that the complete details of the property purchased by the assessee is mentioned which is measuring 864 sq.ft. and consists of residential rooms all located at first floor. Copies of electricity bills relating to the property in question are also placed in the paper book which also supports the contention that the property is used for residential purpose.

9. We, therefore, in the given facts and circumstances of the case and various documentary evidences filed before us, are satisfied with the contention made by the Ld. counsel for the assessee and Ld. DR being unable to place any contrary material to prove otherwise, are of the considered view that the **assessee has rightly claimed exemption u/s 54F of the Act for Rs. 18,98,561/- for purchase of residential house property located at first floor of a complex having shops constructed on ground floor.** We, accordingly set aside the finding of ld. CIT(A) and allow the sole ground raised by the assessee.

ISSUE - 2

Whether benefit of exemption u/s 54/54F is available in case the new asset is used for commercial purpose in future.

HIGH COURT OF MADRAS Commissioner of Income Tax, Chennai v. Ramesh Shroff [2020] 120 taxmann.com 403 (Madras)

15. With regard to the **eligibility of the assessee to claim deduction under section 54(F) of the Act**, the Tribunal, in our view, rightly, took note of the certificate issued by the Executive Engineer, Greater Chennai Corporation, showing that the **building is situated in primary residential zone and the building plan has been sanctioned for residential purpose only**. Even in the re-opening proceedings, the **assessing officer did not dispute the fact that the property which was purchased was a residential property situated at the distance of more than 18 Kms away from the outer limits of the nearest municipality, but held against the assessee on the ground that within few months, the property, which was a residential property was let out for commercial purpose to run the restaurant.**

16. <u>There are several instances where residential properties are put to use for non-residential purposes and this cannot be a test to decide the nature of the property under the provisions of the Income-tax Act, especially, in assessee's case, where the letting out of the property for non-residential purpose was much after the purchase on 03-2-2011 and the lease agreement was on 21-3-2011.</u>

So far as the Wealth-Tax assessment is concerned, it may be true that in the assessment, the property is shown as commercial complex, as on the relevant date, 31-3-2011, the property was leased out for commercial purpose. Therefore, the Tribunal was right in holding that the assessee would be entitled to claim deduction under section 54F of the Act and also rightly restricted to the residential portion only.

For all the above reasons, the appeal filed by the revenue is dismissed and the substantial questions of law are answered against the revenue. No costs.

***S K Luthra* v. *ITO* [2007] 11 SOT 646 (Mumbai)[30-08-2006]**

Once the residential house property has been purchased within the stipulated time, the assessee is entitled for exemption u/s 54F irrespective of subsequent use of the property which is irrelevant. In this case the assessee purchased new asset and obtained exemption u/s 54F but subsequently used it for coaching classes and later let out the same to a company for business purpose.

9. *Leave it apart, let us come to the provisions of law contained in section 54F. Section 54F says that where in the case of an assessee being an individual, the capital gain arises from the transfer of any long-term capital asset, not being a residential house, 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, a residential house qualified as new asset, assessee shall be excluded from the levy of capital gains subject to other conditions specified in the section. The only condition laid down by section 54F is that the assessee must either purchase a residential house or he must construct a residential house within the specified period.* ***The law has not stated anything on the matters relating to which the property is put to use. A residential property purchased or constructed by the assessee in such circumstances may be kept unoccupied for a quite long time. In that case, the benefit cannot be denied on the ground that the assessee and his family did not stay in that property for a long time. Therefore, the insistence of the Assessing Officer that the assessee and his family did not stay in the new residential flat is not sufficient to decide the matter.***

10. *There is no doubt regarding the fact that the new asset purchased by the assessee was a residential flat. The residential flat in a housing co-operative society is apartment buildings. Under the provisions of the Maharashtra Housing Co-operative Societies, Act and the relevant rules, an apartment in a housing society is invariably identified as a residential flat. There is no condition that the assessee must stay there immediately.* ***The only condition specified in section 54F is that the consideration received on sale of the old asset is not diverted but used for acquiring or constructing a residential property. This legal aspect was not considered by the Assessing Officer either in the first proceedings or in the second proceedings. There may be a situation where the assessee has later on, after purchase of the property put the property for commercial use. That may be a violation of the rules governing Housing Co-operative Societies or the Apartment Rules. It has no direct bearing with the provisions of the Income-tax Act. Therefore, there is no sanctity in probing into the intention of the assessee in purchasing the residential property. They are all ifs and buts quite unwanted in interpreting the provisions of law contained in section 54F. Nothing is permanent for that matter in this world.***

A residential property today may be a commercial property tomorrow and the commercial property of the present day may be a residential property tomorrow. It all depends upon the contemporaneous circumstances. *What the law required under section 54F is that the sale consideration of the old property must be used by the assessee to acquire or construct, a new asset in the form of a residential property within the specified period. Take a hypothetical case. An assessee purchases a property within the prescribed time and after that the property gets destroyed. Is not the assessee entitled for the benefit of section 54F?* ***The crucial test to be applied is whether the assessee has applied the sales consideration for acquiring or purchasing the new asset in the form of residential property. The two conditions are important; application of fund and the new asset in the nature of residential property. Subsequent developments or future events are not crucial in deciding the matter.*** *In the present case, the assessee has sold an old asset and realised the consideration and applied the consideration for acquiring a new asset. That new asset is in the nature of a residential flat comprised in a Co-operative Housing Society apartment building. Therefore, we find that the assessee has satisfied the provisions contained in section 54F.*

ISSUE - 3

Whether after purchase of residential house expenditure incurred on making the house habitable would also qualify for deduction u/s 54/54F

Mumbai Bench of ITAT in the case of ***Saleem Fazelbhoy*** **v.** ***Dy. CIT*** **[2006] 9 SOT 601/ [2007] 106 ITD 167 (Mum.) 29.06.2006** held that expenditure incurred in making the house habitable will also qualify for exemption u/s 54/54F as unless a house purchased is fit enough for living, it cannot be said to be a residential. However no exemption is allowable if expenditure is incurred to make the house comfortable as there is a difference between 'habitable' and 'comfortable'.

7. In view of the above discussion, we are of the view that **investment in residential house would not only include the cost of purchase of the house but also the cost incurred in making the house habitable.** An inhabitable premises, in our opinion, cannot be equated with a residential house. If one person cannot live in a premises, then such premises cannot be considered a residential house. **In the modern age, the builder may provide semi-finished house or complete house depending upon the price agreed to between the parties. In case of semi-finished house, the purchaser will have to invest on flooring, wooden work, sanitary work, etc., to make it habitable**. Therefore, in our view, the **investment in house would be complete only when such house becomes habitable. Similar view has also been taken by "SMC" Bench of the Tribunal in the case of *Mrs. Sonia Gulati* v. *ITO* [2001] 115 Taxman 232 (Mum.)(Mag.).** Accordingly, we hold in principle that expenditure incurred on making the house habitable should be considered as investment in purchase of the house subject to the condition that payment was made during the period specified in section 54F.

8. Before parting with this issue, we would like to mention that **there is distinction between expenditure incurred on making the house habitable and the expenditure on renovation. We may visualize a situation where assessee may buy a habitable house but the assessee may like to incur expenditure by way of renovation to make it more comfortable. He may not be happy with the quality of material used by the builder and, therefore, he may incur the expenditure on improvement of the house. Such expenditure cannot be equated with the expenditure on making the house habitable. Whether the house purchased by the assessee was in a habitable condition or not would depend on the state of condition of the house at the time of purchase.** Hence, this aspect would have to be kept in mind while adjudicating such issue.

In the present case, the Assessing Officer as well as the learned CIT(A) had rejected the claim of the assessee on the ground that no expenditure could be considered for exemption under section 54F which was incurred after the date of purchase. The Assessing Officer had no occasion to examine the state of the condition of the house purchased by the assessee. Though, the list of expenditure has been provided by the assessee, yet it is to be examined whether such expenditure was incurred to make the house habitable or just to make the house more comfortable. This aspect of the matter requires examination by the Assessing Officer.

In view of the above discussion, we hold that the assessee is entitled to exemption under section 54F with reference to the expenditure incurred for making the house habitable. However, the factual matrix requires examination. Accordingly, the order of the learned CIT(A) is set aside and the Assessing Officer is directed to re-adjudicate the issue in accordance with the guidelines given by us and after considering the entire material produced by assessee before him. The assessee shall be given proper opportunity to represent his case.

9. In the result, assessee's appeal stands allowed *protanto.*

IN THE ITAT Chennai Bench 'C' Assistant Commissioner of Income-tax v. Sambandam Dorairaj [2021] 133 taxmann.com 40 (Chennai - Trib.)

8. We have heard both the sides, perused the materials available on record and gone through the orders of the authorities below. We find that the case of the **assessee** is that he **is residing at Mumbai and he has purchased an old house at Chennai and subsequently, repairs are carried in the house. The counsel for the assessee has submitted before us that the repairs carried by the assessee long back, five years ago and therefore, he is not able to produce evidence before the A.O. He further submitted that the entire repair works/improvements carried out by his relatives and he is not able to collect the bills and vouchers since he is residing at Mumbai.**

We have gone through the assessment order and the report of the Inspector. We find that the **Inspector has enquired with the neighbours and the neighbours has stated before him that they are not aware of the improvements carried out by the assessee. Mainly, based on the enquires made with the neighbours, he came to the conclusion that the assessee has not carried out any improvement work and disallowed the entire expenditure claimed by the assessee.**

On appeal, **the Ld. CIT(A) is of the opinion that if the A.O wanted to know exactly about the improvement works carried out by the assessee, he should have been enquired through a builder who constructed the building inspite of neighbours.**

Further, the Ld. CIT(A) **keeping in view the above and also by considering all other factors and also take into consideration that the assessee is not residing at Chennai he is only residing at Mumbai, he disallowed an amount of Rs. 5,00,000/- for lack of evidence and directed the A.O to allow the benefit u/s. 54 of the Act to the extent of Rs. 18,00,000/-.**

We have gone through the entire order of the Ld. CIT(A), we find that the **disallowance made by the Ld. CIT(A) to the extent of Rs. 5,00,000/- is fair and reasonable and we find that no interference is called for.** In view of the above, the appeal filed by the Revenue is dismissed.

[Gulshanbanoo R. Mukhi v. JCIT 83 ITD 649 (ITAT- Mum) (2002)]

Whether the expenditure to make a residential house habitable will be included in the cost of new asset?

The words used about the amount spent on purchase of new asset are ‘cost thereto’ and not ‘price thereto’. The cost includes purchase as well. Consequently, the words used signify that the amount of purchase will include other necessary expenditure in this behalf to make a residential house habitable and taken together that will be the cost of the new asset. The Tribunal had perused the items of the report of the architect. The residential house was in a state of general disrepair and was inhabitable. Consequently, the necessary repairs carried out to make the same habitable would constitute part of the cost of new house.

ISSUE - 4

Whether, in claim of section 54/ 54F extent of construction of residential building and facilities provided in such building are relevant?

Commissioner of Income-tax v. Dr. R. Balaji [2014] 41 taxmann.com 411 (Karnataka)
HIGH COURT OF KARNATAKA

In terms of section 54F, when assessee invests sale consideration in purchase of a residential property within prescribed time period, he is entitled to claim deduction and, in such a case, extent of construction of residential building and facilities provided in such building are not relevant

4. The orders by the lower Authorities are **based on the report submitted by the Inspector who visited the place three years after the sale.** On the day he inspected, there was a shed constructed for living of the watchman and to store the building material of the neighbour of the assessee who was putting up a construction. That is not the building, which is referred to in the sale deed.

On the day the property was purchased, a residential structure measuring about 200 sq.ft. was in existence. The photograph which was produced by the assessee even before the Authorities demonstrate the said fact. May be, that structure is not palatial, it does not have all civic amenities, that was the status of the vendor of the assessee. He sold the site to the assessee who is a doctor by profession.

What the law contemplates is, after selling the property, if the assessee invest the sale consideration in purchase of a residential property, he is entitled to exemption under Section 54F of the Act.

What should be the extent of construction of residential building, what facilities should be provided in such constructions to be eligible for the exemption, is not set out in the Act. All that the Authorities have to look into is, whether what is purchased is a residential construction or not?

If the material on record shows, prior to sale, the vendor lived there with his family and he has sold the site along with the residential construction, merely because the property is not suitable to the assessee and construction material are kept there, is not a ground to deny exemption under Section 54F of the Act.

What the Tribunal has held is on careful consideration of the entire material on record. In that view of the matter, we do not see any justification to entertain this appeal. No substantial question of law arises for consideration in this appeal, no merits, accordingly, dismissed. In view of the appeal being dismissed, I.A. No. 1/2013 is also dismissed.

ISSUE - 5

Whether deduction can be allowed under Ss.54 and 54F when capital gains are invested in re-modelling or addition of floors to an existing property.

In the case of **CIT v A. R. Mathavan Pillai 43 (Ker HC)**, the court held that the interpretation of the word ‘construction’ used in section 54 cannot be restricted only to new construction but it can be used to denote constructions which are in the nature of remodeling

Whether exemption under section 54 is allowable for addition of floor to the existing house from the sale proceeds of residential house sold? Assessee owned two residential houses. He sold one house and utilized its sale proceeds to construct first floor on his second house after demolishing old structure, in this case exemption will be allowable under section 54. **[CIT vs P.V. Narsimhan [1989] 47 Taxman 89 (Mad.)**

In the case of **ACIT v. Vidya Prakash Talwar (Delhi HC) 44 1981 132 ITR 661** the assessee started construction of first floor and barasati of an already existing property, subsequent to the transfer of the original asset. It was held that the first floor and the barsati constituted a separate ‘independent residential unit’. According to the Delhi High Court, the meaning of ‘residential house property’ in section 54 has the same meaning as in Sec.22-27 and includes ‘independent house units’.

In **B.B. Sarkar v. CIT [1981] 132 ITR 150** the question before Calcutta High Court was whether exemption under section 54 can be claimed on the construction of an additional floor in the new asset purchased. The Court allowed the assessee’s claim.

ISSUE - 6

Whether agreement to sell amounts to sale of immovable property entitling the assessee for claiming exemption u/s 54F:

[2014] 46 taxmann.com 300 (SC) SUPREME COURT OF INDIA Sanjeev Lal *v.* Commissioner of Income-tax, Chandigarh

20. The question to be considered by this Court is **whether the agreement to sell which had been executed on 27th December, 2002 can be considered as a date on which the property i.e. the residential house had been transferred.**

In normal circumstances by executing an agreement to sell in respect of an immovable property, a right in personam is created in favour of the transferee/vendee. When such a right is created in favour of the vendee, the vendor is restrained from selling the said property to someone else because the vendee, in whose favour the right in personam is created, has a legitimate right to enforce specific performance of the agreement, if the vendor, for some reason is not executing the sale deed. Thus, by virtue of the agreement to sell some right is given by the vendor to the vendee.

The question is whether the entire property can be said to have been sold at the time when an agreement to sell is entered into.

In normal circumstances, the aforestated question has to be answered in the negative.

However, looking at the provisions of Section 2(47) of the Act, which defines the word "transfer" in relation to a capital asset, one can say that if a right in the property is extinguished by execution of an agreement to sell, the capital asset can be deemed to have been transferred.

Relevant portion of Section 2(47), defining the word "transfer" is as under:

'2(47) "transfer", in relation to a capital asset, includes,-

*(i)***

(*ii*) **the extinguishment of any rights therein; or. . . . . .'**

21. Now in the light of definition of "transfer" as defined under Section 2(47) of the Act, it is clear that when any right in respect of any capital asset is extinguished and that right is transferred to someone, it would amount to transfer of a capital asset. In the light of the aforestated definition, let us look at the facts of the present case where an agreement to sell in respect of a capital asset had been executed on 27th December, 2002 for transferring the residential house/original asset in question and a sum of Rs. 15 lakhs had been received by way of earnest money. It is also not in dispute that the sale deed could not be executed because of pendency of the litigation between Shri Ranjeet Lal on one hand and the appellants on the other as Shri Ranjeet Lal had challenged the validity of the Will under which the property had devolved upon the appellants. By virtue of an order passed in the suit filed by Shri Ranjeet Lal, the appellants were restrained from dealing with the said residential house and a law-abiding citizen cannot be expected to violate the direction of a court by executing a sale deed in favour of a third party while being restrained from doing so.

In the circumstances, for a justifiable reason, which was not within the control of the appellants, they could not execute the sale deed and the sale deed had been registered only on 24th September, 2004, after the suit filed by Shri Ranjeet Lal, challenging the validity of the Will, had been dismissed.

In the light of the aforestated facts and in view of the definition of the term "transfer", one can come to a conclusion that some right in respect of the capital asset in question had been transferred in favour of the vendee and therefore, some right which the appellants had, in respect of the capital asset in question, had been extinguished because after execution of the agreement to sell it was not open to the appellants to sell the property to someone else in accordance with law.

A right *in personam* had been created in favour of the vendee, in whose favour the agreement to sell had been executed and who had also paid Rs.15 lakhs by way of earnest money. No doubt, such contractual right can be surrendered or neutralized by the parties through subsequent contract or conduct leading to no transfer of the property to the proposed vendee but that is not the case at hand.

22. In addition to the fact that the term "transfer" has been defined under Section 2(47) of the Act, even if looked at the provisions of Section 54 of the Act which gives relief to a person who has transferred his one residential house and is purchasing another residential house either before one year of the transfer or even two years after the transfer, the intention of the Legislature is to give him relief in the matter of payment of tax on the long term capital gain.

If a person, who gets some excess amount upon transfer of his old residential premises and thereafter purchases or constructs a new premises within the time stipulated under Section 54 of the Act, the Legislature does not want him to be burdened with tax on the long term capital gain and therefore, relief has been given to him in respect of paying income tax on the long term capital gain.

The intention of the Legislature or the purpose with which the said provision has been incorporated in the Act, is also very clear that the assessee should be given some relief. Though it has been very often said that common sense is a stranger and an incompatible partner to the Income Tax Act and it is also said that equity and tax are strangers to each other, still this Court has often observed that purposive interpretation should be given to the provisions of the Act. In the case of **Oxford University Press v. CIT [2001] 247 ITR 658/115 Taxman 69** this Court has observed that a purposive interpretation of the provisions of the Act should be given while considering a claim for exemption from tax.

It has also been said that harmonious construction of the provisions which subserve the object and purpose should also be made while construing any of the provisions of the Act and more particularly when one is concerned with exemption from payment of tax.

Considering the aforestated observations and the principles with regard to the interpretation of Statute pertaining to the tax laws, one can very well interpret the provisions of Section 54 read with Section 2(47) of the Act, i.e. definition of "transfer", which would enable the appellants to get the benefit under Section 54 of the Act.

23. Consequences of execution of the agreement to sell are also very clear and they are to the effect that the appellants could not have sold the property to someone else.

In practical life, there are events when a person, even after executing an agreement to sell an immovable property in favour of one person, tries to sell the property to another.

In our opinion, such an act would not be in accordance with law because once an agreement to sell is executed in favour of one person, the said person gets a right to get the property transferred in his favour by filing a suit for specific performance and therefore, without hesitation we can say that some right, in respect of the said property, belonging to the appellants had been extinguished and some right had been created in favour of the vendee/transferee, when the agreement to sell had been executed.

24. Thus, a right in respect of the capital asset, viz. the property in question had been transferred by the appellants in favour of the vendee/transferee on 27th December, 2002. The sale deed could not be executed for the reason that the appellants had been prevented from dealing with the residential house by an order of a competent court, which they could not have violated.

25. In view of the aforestated peculiar facts of the case and looking at the definition of the term 'transfer" as defined under Section 2(47) of the Act, we are of the view that the appellants were entitled to relief under Section 54 of the Act in respect of the long term capital gain which they had earned in pursuance of transfer of their residential property being House No. 267, Sector 9-C, situated in Chandigarh and used for purchase of a new asset/residential house.

26. The appeals are, therefore, allowed with no order as to costs. The impugned judgments are quashed and set aside and the Authorities are directed to re-assess the income of the appellants for the Assessment Year 2005-2006, after taking into account the fact that the appellants were entitled to the relief, subject to fulfilment of other conditions.

Gautam Jhunjhunwala *v.* Income Tax Officer Ward-25(4), Kolkata [2018] 98 taxmann.com 220 (Kolkata - Trib.) IN THE ITAT KOLKATA BENCH 'B'

Where assessee had purchased a new residential property within one year prior to date of execution of agreement to sell residential property owned by him, assessee's claim for deduction under section 54 was to be allowed.

Section 54, read with section 2(47), of the Income-tax Act, 1961 - Capital gains - Profit on sale of property used for residence (Purchase) - Assessment year 2012-13 - Assessee entered into an agreement to sell a flat on 16-9-2011 and out of agreed sale consideration, certain amount was received by way of advance money - Sale deed of said flat was registered on 27-12-2011 - Assessee had purchased a new residential flat on 4-10-2010 - Assessee's claim for deduction under section 54 was denied by Assessing Officer on ground that assessee did not purchase residential flat within one year of sale of old asset - For said purpose, Assessing Officer had taken date of registration of property sold as date of transfer, i.e., 27-12-2011 - Whether once assessee executed agreement to sell property in favour of vendee, said vendee got a right to get property transferred in his favour by filing a suit under Specific Performance Act and, therefore, some right in respect of said property had been transferred in favour of vendee on date of execution of agreement to sell - Held, yes - Whether since it was undisputed that assessee had purchased a new residential property within one year prior to date of execution of agreement to sell, impugned order was to be set aside and assessee's claim for deduction under section 54 was to be allowed - Held, yes [Para 6][In favour of assessee]

6. So, in the light of the definition of 'transfer' as defined u/s. 2(47) of the Act it is clear that when any right in respect of any capital assets is extinguished and that right is transferred to someone, it would amount to transfer of a capital asset.

In the light of the aforesaid definition and taking into consideration the facts of the present case we note that the assessee executed an agreement to sell for Rs. 30 lakhs consideration in respect of its capital asset on 16.09.2011 for transferring the old residential house/original asset in question and a sum of Rs. 1 lac in cheque was received as advance consideration though encashed only on 21.11.2011, we note that the said cheque has not bounced/dishonoured.

So, as per the ratio decidendi of the Hon'ble Supreme Court decision in *Sanjeev Lal's* case (*supra*), we note that in the light of the aforesaid facts and in view of the definition of the term 'transfer' it can be concluded that some right in respect of capital asset (old asset) in question had been transferred in favour of the vendee and, therefore, some right which the assessee had in respect of the capital asset in question had been extinguished because after execution of the agreement to sell, it would not open to the assessee to sell the property to someone else in accordance with law.

As observed by the Hon'ble Supreme Court a right in personam had been created in favour of the vendee in whose favour the agreement to sale had been executed and who had also paid Rs. 1 lac by way of advance/earnest money.

It is not the case of the AO/Ld. CIT (A) that the vendee as per agreement to sale is not the vendee when the registration of conveyance deed was executed on 26.12.2011 and, therefore, **as per the ratio laid by the Hon'ble Supreme Court in *Sanjeev Lal's* case (*supra*), we find force in the claim made by the assessee to claim exemption u/s. 54 of the Act and we hold that once an agreement to sale is executed in favour of vendee, the said vendee gets a right to get the property transferred in his favour by filing a suit under Specific Performance Act and, therefore, some right in respect of the said property (old residential property) belonging to the assessee had extinguished and some rights have been created in favour of the vendee/transferee when the agreement to sale has been executed.**

Thus, a right in respect of the capital asset (old residential property in question) has been transferred by the assessee in favour of the vendee/transferee on 16.09.2011 and, therefore, since purchase of the new property on 04.10.2010 which fact has been disputed by the AO/Ld. CIT (A) the purchase of the property is well within one year from the date of transfer as per sec. 2(47) of the Act, therefore, we allow the appeal of the assessee.

We also note that the Ld. CIT (A) erred in understanding the ratio decidendi laid by the Hon'ble Supreme Court in *Sanjeev Lal's* case (*supra*) and, therefore, he erred in passing the impugned order, so we set aside the order of the Ld. CIT (A) and we allow the appeal of the assessee and direct AO to grant exemption u/s. 54 of the Act in accordance to law.

9. In the light of the discussion, we are of the opinion that though the agreement to sell is not registered, the vendee can seek decree of specific performance on the basis of unregistered agreement to sell in accordance to law as laid by **the Hon'ble Delhi High Court in *Devinder Singh* v. *Hari Singh* (decision on 26.04.2017) and Hon'ble M.P. High Court in *Akshay Doogad* v. *Dr. Laxmanrao Dhole* (decision on 18.08.2015)**. So as discussed in paras 5 & 6 *supra*, in the facts and circumstances of the case, we allow the appeal of the assessee and direct grant of exemption u/s. 54 of the Act.

ISSUE – 7

Whether exemption u/s 54/54F is available to the assessee if the new asset is purchased in the joint name of the assessee together with some family member such as husband, wife, daughter, son or legal heir?

It has been held in the following cases that where entire consideration has been paid by the assessee himself, he is entitled to full exemption u/s 54 even if property has been purchased in joint name with other family members.

CIT v. Kamal Wahal [2013] 30 taxmann.com 34/214 Taxman 287/351 ITR 4 (DELHI) (Wife)

CIT v. Ravinder Kumar Arora [2011] 15 taxmann.com 307/203 Taxman 289/[2012] 342 ITR 38 (Delhi),

Laxmi Narayan v. CIT [2018] 89 taxmann 334 /402 ITR 117 (Raj.), (Wife)

CIT v. Gurnam Singh [2008] 170 Taxman 160/[2010] 327 ITR 278 (Punj. & Har.) (Son)

CIT v. Ravinder Kumar Arora [2012] 342 ITR 38/[2011] 203 Taxman 289/15 taxmann.com 307.

Karnataka High Court in DIT, International Taxation v. Mrs. Jennifer Bhide [2011] 203 Taxman 208/15 taxmann.com 82 dated 26.09.2011 (Husband)

Shri N. Ram Kumar vs. ACIT 73 ITA No.1901/HYD/2011, (ITAT Hyd) dated 10.08.2012. (minor daughter)

IN THE ITAT BANGALORE BENCH 'A' Krishnappa Jayaramaiah v. Income Tax Officer, Ward 6(3)(4), Bangalore [2021] 125 taxmann.com 110 (Bangalore - Trib.) (widowed daughter)

Mir Gulam Ali Khan v. CIT [1987] 165 ITR 228/[1986] 28 Taxman 572 dated 17.12.1984. (legal heir)

[2021] 131 taxmann.com 307 (Chandigarh - Trib.) IN THE ITAT CHANDIGARH BENCH 'B‘ Income-tax Officer, Ward-4(3), Chandigarh v. Smt. Rachna Arora (assesse, daughter and son in law)

***Laxmi Narayan* v. *CIT* [2018] 89 taxmann 334 /402 ITR 117 (Raj.) dated 07.11.2017 (wife)**

7.2 <u>On the ground of investment made by the assessee in the name of his wife, in view of the decision of Delhi High Court in Sunbeam Auto Ltd. and other judgments of different High Courts, the word used is assessee has to invest it is not specified that it is to be in the name of assessee</u>.

7.3 It is true that the contentions which have been raised by the department is that the investment is made by the assessee in his own name but the legislature while using language has not used specific language with precision and the second reason is that view has also been taken by the Delhi High Court that it can be in the name of wife. In that view of the matter, the contention raised by the assessee is required to be accepted with regard to Section 54B regarding investment in tubewell and others. In our considered opinion, for the purpose of carrying on the agricultural activity, tubewell and other expenses are for betterment of land and therefore, it will be considered a part of investment in the land and same is required to be accepted.

***CIT* v. *Kamal Wahal* [2013] 30 taxmann.com 34/214 Taxman 287/351 ITR 4 (DELHI) (wife)**

5. On appeal, the CIT (Appeal) accepted the assessee's contention based on the judgment of the Madras High Court in ***CIT* v. *V. Natarajan* [2006] 287 ITR 271/154 Taxman 399** and that of the Andhra Pradesh High Court in ***Mir Gulam Ali Khan* v. *CIT* [1987] 165 ITR 228/[1986] 28 Taxman 572 dated 17.12.984**.

6. The revenue preferred an appeal before the Tribunal questioning the decision of the CIT(Appeals). The Tribunal, however, by the impugned order, agreed with the decision of the CIT (Appeals) and in doing so followed the judgment of the Madras and Andhra Pradesh High Courts cited supra and also another judgment of the **Karnataka High Court in *DIT, International Taxation* v. *Mrs. Jennifer Bhide* [2011] 203 Taxman 208/15 taxmann.com 82 dated 26.09.2011**. It also noted the judgment of the **Bombay High Court in *Prakash* vs. *ITO*[2008] 173 Taxman 311** in which a contrary view was taken but preferred the view taken by the Madras and Karnataka High Courts adopting the rule laid down by the **Supreme Court in *CIT* v. *Vegetable Products Ltd* [1973] 88 ITR 192** which says that if a statutory provision is capable of more than one view, then the view which favours the tax payer should be preferred. The Tribunal also observed that Section 54F being a beneficial provision enacted for encouraging investment in residential houses should be liberally interpreted.

***CIT* v. *Kamal Wahal* [2013] 30 taxmann.com 34/214 Taxman 287/351 ITR 4 (DELHI) (Wife)**

7. We have no hesitation in agreeing with the view taken by the Tribunal. Apart from the fact that the judgments of the Madras and Karnataka High Courts (*supra*) are in favour of the assessee, the revenue fairly brought to our notice a similar view of this Court in ***CIT* v. *Ravinder Kumar Arora* [2012] 342 ITR 38/[2011] 203 Taxman 289/15 taxmann.com 307.** That was also a case which arose under Section 54F of the Act. The new residential property was acquired in the joint names of the assessee and his wife. **The income tax authorities restricted the deduction under Section 54F to 50% on the footing that the deduction was not available on the portion of the investment which stands in the name of the assessee's wife. This view was disapproved by this Court. It noted that the entire purchase consideration was paid only by the assessee and not a single penny was contributed by the assessee's wife. It also noted that a purposive construction is to be preferred as against a literal construction, more so when even applying the literal construction, there is nothing in the section to show that the house should be purchased in the name of the assessee only. As a matter of fact, Section 54F in terms does not require that the new residential property shall be purchased in the name of the assessee; it merely says that the assessee should have purchased/constructed "a residential house".**

***CIT* v. *Kamal Wahal* [2013] 30 taxmann.com 34/214 Taxman 287/351 ITR 4 (DELHI) (Wife)**

8. This Court in the decision cited alone also noticed the judgment of the Madras High Court (*supra*) and agreed with the same, observing that though the Madras case was decided in relation to Section 54 of the Act, that Section was in pari materia with Section 54F. The judgment of the Punjab and Haryana High Court in the case of ***CIT*v. *Gurnam Singh*** **[2010] 327 ITR 278/[2008] 170 Taxman 160** in which the same view was taken with reference to Section 54F was also noticed by this Court.

9. It thus appears to us that the predominant judicial view, including that of this Court, is that for the purposes of Section 54F, the new residential house need not be purchased by the assessee in his own name nor is it necessary that it should be purchased exclusively in his name. It is moreover to be noted that the assessee in the present case has not purchased the new house in the name of a stranger or somebody who is unconnected with him. He has purchased it only in the name of his wife. There is also no dispute that the entire investment has come out of the sale proceeds and that there was no contribution from the assessee's wife.

***CIT*v. *Gurnam Singh* [2010] 327 ITR 278/[2008] 170 Taxman 160 (son)**

3. Feeling aggrieved against the aforesaid order, the respondent filed an appeal before the Commissioner of Income-tax (Appeals), who *vide* his order dated 17-12-2002 allowed the same and set aside the action of the Assessing Officer in denying the deduction under section 54F of the act to the respondent. Against the said order, the revenue filed an appeal before the ITAT, who *vide* its order dated 24-4-2006 has dismissed the appeal, while observing as under :—

"The issue before us revolves around allowability of deduction under sections 54B and 54F of the Act. The land in question was purchased by the assessee in the name of his son. The learned Assessing Officer disallowed the deduction on the ground that the land is in the name of the son of the assessee, so the deduction cannot be allowed, specially when the land was purchased by Sh. Gurnam Singh out of the sale proceeds of agricultural land and since Palwinder Singh was bachelor and was not having any independent source of income was dependent upon his father even for livelihood. The conclusion of the learned Assessing Officer is available on page 4 of the assessment order. Before coming to a conclusion, we are supposed to analyze section 54B which is applicable where the capital gains arise from the transfer of capital asset and was being used for agriculture purposes which was invested in the purchase of any other land and again being used for agricultural purposes. There is no dispute to the fact that the assessee sold his agricultural land and then purchased other agricultural land out of the sale proceeds and got registered some portion of the land in the name of his only son who was a bachelor at the relevant time.

***CIT*v. *Gurnam Singh* [2010] 327 ITR 278/[2008] 170 Taxman 160 (son)**

If the 'ikrarnama'/agreement is analyzed which is available at page 9 of the paper book, it clearly speaks that "The purchaser is at liberty to execute the sale deed in the name of any member of his family. He is also at liberty to execute as many as sale deeds as he desires...." If the contents of the 'ikrarnama'/agreement to sale is analyzed one undisputed fact is oozing out that the sale proceeds of the agricultural land were in fact used to purchase another agricultural land. Section 54B speaks about transfer of capital asset being land within a specified period and another land is purchased for agricultural purposes, then it shall be dealt with in accordance with the provision of this section. It is not the case of the revenue that the capital gain was not utilized by the assessee for the purchase of new asset before the date of furnishing the return of income under section 139.

In fact, if the facts as detailed in the 'ikrarnama' are analyzed, the capital gains was utilized by the assessee for purchasing the new asset. Section 54B is applicable as per the provision of clause 2 of the section. The only dispute raised by the revenue is that the land was got registered in the name of his son. This fact is not disputed that the assessee was an old and illiterate person and never filed any return. At the same time, he was not having any other source of income also. It is not the case that the sale proceeds were used for any other purposes or beyond the stipulated period. This fact was also not disputed that the son of the assessee was bachelor and was not having any other source of income and was totally dependent upon his father. Undisputedly, the earlier land which was sold, also belonged to the assessee and the sale proceeds were also used for purchasing agricultural land. The possession of the said land was also taken by the assessee. The only objection raised by the revenue was that the said land was registered in the name of his son. In view of these facts, it cannot be said that the capital gains/sale proceed were in any way misused for any other purposes contrary to the provisions of law.

***CIT*v. *Gurnam Singh* [2010] 327 ITR 278/[2008] 170 Taxman 160 (son)**

We have heard the counsel for the revenue and gone through the aforesaid impugned order. In our opinion, from the impugned order, no substantial question of law is arising for consideration of this Court as the ITAT while recording a pure finding of fact has dismissed the appeal of the revenue. Undisputedly, in this case the assessee had sold the agricultural land which was being used by him for agricultural purposes.

Out of sale proceeds of the said sale, the assessee has purchased other piece of land (land in question) in his name and in the name of his only son, who was bachelor and dependent upon him, for being used for agricultural purposes within the stipulated time. Further, it is not the case of the revenue that from the sale proceeds of the agricultural land earlier owned by the assessee, the land in question was purchased for any other purpose than the agricultural purpose. Undisputedly, the purchased land is being used by the assessee only for agricultural purpose and merely because in the sale deed his only son was also shown as co-owner, the ITAT has rightly come to the conclusion that it does not make any difference because the purchased land is being used by the assessee for agricultural purposes. It is not the case of the revenue that the said land is being used exclusively by his son. In our view, a pure finding of fact has been recorded by the ITAT which does not require any interference in this appeal.

Karnataka High Court in *DIT, International Taxation* v. *Mrs. Jennifer Bhide* [2011] 203 Taxman 208/15 taxmann.com 82 dated 26.09.2011 (husband)

8. In the instant case the assessee has purchased the property jointly with her husband. She has invested the money in rural bonds jointly with her husband. It is nobody's case that her husband contributed any portion of the consideration for acquisition of the property as well as bonds. The source for acquisition of the property and the bonds is the sale consideration. It is not in dispute. Once the sale consideration is utilized for the purpose mentioned under sections 54 and 54EC, the assessee is entitled to the benefit of those provision. **As the entire consideration has flown from the assessee and no consideration has flown from her husband, merely because either in the sale deed or in the bond her husband's name is also mentioned, in law he would not have any right.**

In that view of the matter, the assessee cannot be denied the benefit of deduction of the aforesaid amount. The Tribunal on proper appreciation of the material on record has rightly allowed the appeal and set aside the order passed by the assessing authority as well as the Appellate Commissioner. We do not see any infirmity in the order which calls for interference. Accordingly, the appeal is dismissed.

*In favour of assessee.

†Arising from order of ITAT in IT Appeal No. 1100 (Bang.) of 2010, dated 22-12-2010.

***Mir Gulam Ali Khan* v. *CIT* [1987] 165 ITR 228/[1986] 28 Taxman 572 dated 17.12.1984. (legal heir)**

*R*elying upon the expression 'assessee' occurring in section 54, it is contended by the department that in order to claim the exemption, the person who sold the house must be the same as the person who purchased the house, that is, the assessee must be one and the same person. The identity must be same. We are unable to accept this contention. The object of granting exemption under section 54 is that a person who sells a residential house for the purpose of purchasing an other convenient house must be given exemption so far as capital gains are concerned. As long as the sale of the house and purchase of another house are part of the same scheme the lapse of some time between the sale and purchase makes no difference. **The word 'assessee' must be given a wide and liberal interpretation so as to include his legal heirs also. There is no warrant for giving too strict an interpretation to the word 'assessee' as that would frustrate the object of granting exemption and what is more, in the instant case the very same assessee immediately after the sale of the house, entered into an agreement for purchasing another house and paid a sum of Rs. 1,000 as earnest money and subsequently the legal representative completed the transaction within a period of one year from the date of the death of the deceased. The sale and purchase are two links in the same chain. We are fortified in this view by a decision of the Madras High Court in *C.V. Ramanathan* v. *CIT* [1980] 125 ITR 191.**

4. We accordingly answer the question in the negative, that is, in favour of the aasessee and against the revenue. No costs.

Shri N. Ram Kumar vs. ACIT 73 ITA No.1901/HYD/2011, (ITAT Hyd) dated 10.08.2012. (minor daughter)

7. The Hon'ble Delhi High Court in the case of CIT vs. Ravinder Kumar Arora (2011) 42(1) ITCL 0498 following the principles laid down by the Hon'ble Andhra Pradesh High Court in the case of Late Mir Gulam Ali Khan vs. CIT(supra) held that the language of section 54F does not mandate that the house property should be purchased in the name of the assessee alone. The Honourable Delhi High Court held that the word "assessee" must be given wide and liberal interpretation as held by the ***Hon'ble AP High Court in the case of Late Mir Gulam Ali Khan (supra)****. The Hon'ble Delhi High Court further held that language contained u/s 54F(1) is pari materia with section 54 of the Act. Similar is also the view in the case of* ***CIT vs. Gurnam Singh (2010) 327 ITR 278*** *and* ***Hon'ble Madras High court in the case of CIT vs. V. Natarajan (2006) 287 ITR 271****.* ***The ITAT, Madras Bench in the case reported in 33 TTJ 466*** *while considering a case of identical nature where the assessee purchased the property in the name of his wife and claimed exemption u/s 54 held that the assessee is entitled to exemption u/s 54 of the Act.*

However, it is seen that the Hon'ble Punjab & ***Haryana High Court in the case of Jai Narayan vs. ITO 306 ITR 335 (P & H)*** *and in the case of* ***Prakash Vs. ITO 220 CTR 249 (Mumbai)*** *and ITAT in the case of ITO vs. Prakash Timaji Dhanjode ITAT Nagpur 81 TTJ 694 have held a different view to the effect that for getting exemption u/s 54F, the property has to be purchased in assessee's name. The intention of the legislature in introducing sec. 54F as explained in Board's Circular No.346 dated 30 th June, 1982 is for encouraging house construction. It is an encouragement given to the assessee to exchange one of the residential houses for another or where he has none to convert any of his long term assets into a residential house.*

Shri N. Ram Kumar vs. ACIT 73 ITA No.1901/HYD/2011, **(ITAT Hyd) dated 10.08.2012. (minor daughter)**

The object behind such a provision is to encourage large scale house building activity or investment in house property to meet acute housing shortage in the country. Therefore, looking at the legislative intent, a liberal interpretation has to be given to section 54F which is a beneficial provision. The Hon'ble Supreme Court in case of ***K.P. Verghese vs. ITO reported in 131 ITR 597*** *has observed in the following manner:-*

" A statutory provision must be so construed, if possible, that absurdity and mischief may be avoided. Where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even do some violence to it, so as to achieve the obvious intention of the legislature and produce a rational construction. "

It is also well settled principle of law that when there are divergent views, to give effect to a beneficial provision the view favourable to the assessee has to be adopted. ***In the aforesaid view of the matter, following the ratio laid down by the jurisdictional High Court in case of late Mir Gulam Ali Khan(supra), by the Hon'ble Delhi High Court in case of CIT vs. Ravinder Kumar Arora (supra) and also by the ITAT, Madras Bench in 33 TTJ 466 (supra), we hold that the assessee will be entitled for deduction u/s 54F for the flat purchased in the name of his daughter subject to the restrictions under the proviso to section 54F(1) of the Act.*** *Hence the grounds raised by the assessee are allowed.*

8. In the result, the appeal filed by the assessee is allowed.

[2021] 131 taxmann.com 307 (Chandigarh - Trib.) IN THE ITAT CHANDIGARH BENCH 'B‘ Income-tax Officer, Ward-4(3), Chandigarh *v.* Smt. Rachna Arora (assesse, daughter and son in law)

Where assessee sold a residential property and invested entire sale consideration on purchase of a new residential property, **assessee was entitled to exemption of entire amount invested by her under section 54 even if new residential property was purchased in joint names of assessee, her daughter and son in law**

IN THE ITAT BANGALORE BENCH 'A' Krishnappa Jayaramaiah v. Income Tax Officer, Ward 6(3)(4), Bangalore [2021] 125 taxmann.com 110 (Bangalore - Trib.) (widowed daughter)

Deduction under section 54F in respect of investment in house property in name assessee's widowed daughter was allowable where there was a direct nexus between sale consideration received and investing in residential house in name of married widowed daughter of assesse.

9.3. In the case before us, the assessee's married widowed daughter is having no independent source of income and is fully dependent on the assessee, on the death of her husband on 20-12-2017. This fact was also clarified by filing a Joint Affidavit by Smt. Shailaja J and the assessee dt.11-12-2018. Being so, in our opinion, the statute should be construed liberally; since the provisions permit economic growth has to be interpreted liberally, restriction on it too has to be construed so as to advance the objective of the provisions not to frustrate it. Accordingly, we are of the opinion that the **assessee has invested the sale consideration on transfer of Capital Asset in purchasing a new residential property in the name of Smt. Shailaja J who is being married widowed dependent daughter of the assessee and also legal heir of the assessee. Accordingly, we direct the Assessing Officer to grant exemption u/s. 54F of the Act on the amount invested in purchase of residential house in his daughter's name.** This ground of appeal of assessee is allowed.

ISSUE – 8

Whether assessee HUF transfers a residential house property held in its name and capital gain is invested in purchasing another house property in the name of one of its members and not the HUF itself, whether HUF can claim deduction u/s 54.

The honorable Gujarat HC in the case of ***PCIT* v. *Vaidya Panalalmanilal HUF*** **[2018] 98 taxmann.com (Guj.) dated 24.09.2018** held that the deduction u/s 54 is still available to the assessee HUF.

7. The materials on record would suggest that there was no dispute at the hands of the Revenue that the sale consideration arising out of the sale of the capital asset was used for acquisition of a new asset and that such newly acquired asset was also shown in the accounts of the HUF. **Revenue's sole objection is that the sale deed was not executed in the name of the HUF but was in the name of two of the members of the HUF.**

8. **In our opinion, the Tribunal was right in coming to the conclusion that this was substantial compliance with the requirement of section 54F of the Act when neither the source of acquisition of the new capital asset nor the account of such new asset in the name of the HUF are doubted. Mere technicality that the sale deed was executed in the name of member of the HUF rather not HUF, would not be sufficient to defeat the claim of deduction. By mere names of the purchasers in the sale deed, the rights of the HUF and other members of the HUF do not get defeated. If at all, the persons' named in the sale deed hold the property of the trust for and on behalf of HUF and the other members of the HUF.**

9. In case of **Vipin Malik (HUF) (supra), Delhi High Court** did not have occasion to exempt this aspect of the matter. In case of **Kalya vs. Commissioner of Income Tax (supra), Rajasthan High Court** was concerned with the very different situation. It was a case where the assessee had sold an immovable property and purchased a new agriculture land in the name of his son and daughter-in-law. It was in this background, the assessee's claim for exemption under section 54B of the Act was declined. Likewise, in case **of Prakash (by legal heir of assessee) vs. Income Tax Officer (supra)**, the assessee had invested the sale proceeds out of sale of capital asset in name of adopted son. It was in this background held that the assessee was not entitled to exemption under section 54F of the Act. The common thread running in these three cases is that the purchase of the new asset was in the name of person other than the assessee. The title was vested in such purchaser and not in the name of the assessee who had sold the existing capital asset. **In the present case, the capital asset was sold by the HUF and purchased by the HUF as reflected in the accounts. The names of two members of the HUF shown in the sale deed was only a cosmetic in nature.**

10. In the result, Tax Appeal is dismissed.

ISSUE – 9

Assessee owns one residential house property in his name and is the co-owner of another house property along with his wife, derives capital gain and invested the same in purchasing another house, whether he can claim deduction u/s 54F

The Mumbai bench of ITAT held in the case of **ITO v. Rasiklal N. Satra (dated 19.09.2005) 2006 98 ITD 335 Mum, 2006 280 ITR 243 Mum, (2006) 100 TTJ Mum 1039** that the word 'owns' in section 54F means absolute ownership and not merely co-owner. Therefore the assessee will be said to be owner of one house only and in such circumstances deduction u/s 54F is held to be allowable.

3. On appeal, it was contended before the Learned CIT (Appeals) that **shared interest in the property does not amount to ownership of the property. Reliance was placed on the following decisions:-**

(i) CIT v. Aravinda Reddy 120 ITR 46 (SC)

(ii) Shiv Narayan Chaudhari v. CWT 108 ITR 104 (Allahabad)

(iii) Smt. Kulwanti D. Alreja v. ITO (Bom.)

(iv) Abdul Rehman v. CIT 12 ITR 302 (Lahore)

4. **The Learned CIT (Appeals) accepted the contention of assessee and consequently allowed the claim of assessee.**

Aggrieved by the same the Revenue is in appeal before the Tribunal.

5. Both the parties have been heard at length. The gist of the arguments of the assessee's Counsel is that **shared interest in the property does not amount to ownership of a residential house in terms of Section 54-F.** According to him, **a co-owner of a house cannot be said to be an owner of a house.** He also drew our attention to the provisions of Section 26 of the Act to point out property owned by co-owners is to be assessed in the status of "Association of Persons" (A.O.P) unless their shares are definite and ascertainable. He argued that such shares are not defined in the present case and as such, no part of house can be said to be owned by assessee. It is a case of joint ownership where income chargeable to tax has to be assessed in the status of A.O.P. only. In support of his arguments, he relied on various judgments reported as **216 ITR 367 (Bom.), 181 ITR 101 (Mad.), 132 ITR 150 (Cal.) and 5 ITR 584 (SC)**. On the other hand, the Learned Departmental Representative has relied on the order of the Assessing Officer.

6. Rival submissions have been considered carefully. The question for our consideration is whether, on facts, assessee can be said to be the owner of the residential house vis-a-vis flat at Sion, Mumbai. The case law referred to by the assessee's Counsel is not on the point of issue before us and, therefore, we proceed on the basis of language employed by the legislature. **The word "residence", as per Stroud's Judicial Dictionary, means a place where an individual or his family eat, drink and sleep.** So a residential house would mean a building or part of the building where one can eat, drink and sleep. Here, we may clarify that house is not being equated with a building since a building may comprise of many houses. **So house means an independent unit where one can eat, drink and sleep. In view of this definition, we hold that flat at Sion, Mumbai, was a residential house since assessee along with his family was living in that house.**

7. **The only question remains as to whether assessee can be said to be the owner of that residential house.** The legislature has used the word "a" before the words "residential house". In our opinion, it must mean a complete residential house and would not include shared interest in a residential house. Where the property is owned by more than one person, it cannot be said that any one of them is the owner of the property. In such case, no individual person of his own can sell the entire property. No doubt, he can sell his share of interest in the property but as far as the property is considered, it would continue to be owned by co-owners. Joint ownership is different from absolute ownership.

In the case of residential unit, none of the co-owners can claim that he is the owner of residential house. Ownership of a residential house, in our opinion, means ownership to the exclusion of all others. Therefore, where a house is jointly owned by two or more persons, none of them can be said to be the owner of that house. This view of ours is fortified by the judgment of the Hon'ble Supreme Court in the case of Seth Banarsi Dass Gupta v. CIT 166 ITR 783, wherein, it was held that a fractional ownership was not sufficient for claiming even fractional depreciation Under Section 32 of the Act.

Because of this judgment, the legislature had to amend the provisions of Section 32 with effect from 1.4.1997 by using the expression "owned wholly or partly". So, the word "own" would not include a case where a residential house is partly owned by one person or partly owned by other person(s). **After the judgment of Supreme Court in the case of Seth Banarsi Dass Gupta (supra), the legislature could also amend the provisions of Section 54-F so as to include part ownership. Since, the legislature has not amended the provisions of section 54-F, it has to be held that the word "own" in Section 54-F would include only the case where a residential house is fully and wholly owned by assessee and consequently would not include a residential house owned by more than one person.**

In the present case admittedly the house at Sion, Mumbai, was purchased jointly by assessee and his wife. It is nobody's case that wife is benami of assessee. Therefore, the said house was jointly owned by assessee and his spouse. In view of the discussions made above, it has to be held that assessee was not the owner of a residential house on the date of transfer of original asset. Consequently, the exemption Under Section 54-F could not be denied to assessee.

The order of the Learned CIT (Appeals) is, therefore, upheld.

8. In the result, the appeal of the Revenue stands dismissed.

ISSUE - 10

Whether exemption can be claimed under Sec.54 and 54F when capital gains from transfer of multiple properties are invested in a single residential property.

ACIT v. Bipin N. Sagar [ITA No. 1507/M/2017 (Mum.)]

Finding of CIT(A)

The Ld. CIT(A) allowed the appeal of the assessee by observing and holding as under:

"5.5 I have considered the submission of the appellant and observation of the A.0,During the appellate proceedings, the Appellant has stated that the **transfer is of one residential house**. **The three adjoining flats were merged and made it one residential house not by the Appellant but by previous owner. The Appellant ever since the date of purchase used it as one residential house. There is one electricity meter in respect of the three flats.**

As against a long term capital gain of Rs. 3,00,46,935, arising on transfer of a residential house, the Appellant has before the due date of filing return of income deposited a sum of Rs. 3,50,00,000 in an account opened under the Capital Gains Account Scheme.

5.6 **Generally, it may not be possible to find a bigger residential unit and that requires combining two or more adjoining flats into one unit. However, that does not mean that each flat is in itself a separate residential unit. What is to be seen is whether the adjoining flats were actually united and used as a common single unit or not. Execution of separate agreements cannot decide this issue. The flats were constructed in such a way that adjustment units of flats can be combined into one. The acquisition of flats may be done independently but eventually there is a single unit and house for the purpose of residence**.

ACIT v. Bipin N. Sagar [ITA No. 1507/M/2017 (Mum.)]

6. It is clear from discussion, submissions and legal decision that the appellant has sold his residential house being flat No.701, 702 and 703 in Glen Eagle building for total sale consideration of Rs.4,50,00,000/-. The appellant has invested Rs,3,50,0000/- in capital gain account with the Oriental Bank of Commerce before due date for filing of return of income. The flats were constructed in such a way that they could be combined into one unit for the purpose of residence. **The acquisition of flats have been done independently but eventually they are single unit for the purpose of residence. Execution of separate agreements cannot decide this issue. In the appellant's case, the AO has not disputed the evidence placed before him to prove that these three adjoining flats were in fact united as one Single unit having one kitchen However, there is no restriction placed anywhere in section 54 that exemption is available in relation to sale of one residential house**. The provision of Section 54 is applied to transfer of any number of residential house by the assesse, provided the capital gain arising there from is invested in a proper manner within the prescribed time limit. The appellant has invested Rs.3,50,0000/- in capital gain account with the Oriential Bank of Commerce before due date of return of income.

6.1 After considering the totality of fact, the rival submissions, the applicable law and on the basis of discussion mentioned above, I have came to the conclusion, the appellant is eligible to claim the benefit of provision of section 54 of I.T.Act. Therefore, the A.O. is directed to delete the addition of Rs.1,88,18,852 on account of disallowance of exemption u/s 54 of the Act."

4. After hearing both the parties and perusing the material on record, we find that the Ld. CIT(A) has given a detailed finding and passed a very reasoned order after following the Hon'ble Bombay High Court on this issue. **We, therefore, do not find any reason to deviate from the conclusion drawn by Ld. CIT(A) and accordingly the order of Ld. CIT(A) is upheld as assessee was using all three flats as a compact unit and has only one electricity bill for all three flats. In any case, the issue is covered by the decision of the Hon'ble Bombay High Court in the case of CIT vs. Devdas Naik [2014] 49 taxmann.com 30 (Bombay) as relied by the Ld. CIT(A)**. We, therefore, uphold the order of Ld. CIT(A) by dismissing the appeal of the Revenue.

Venkat Ramana Umareddy v. DCIT (ITA No. 522/Hyd/2012) dated 18.01.2013

8. We have considered submissions of the parties and perused the materials on record. We have also applied our mind to the various decisions cited before us. Facts which are undisputed are, **the assessee during the relevant financial year had earned long term capital gain out of transfer of two distinct and separate assets. One is a plot of land and the other is a house property.** The total long term capital gain on transfer of these two assets is Rs.93,24,815. The assessee had purchased a new residential house within the prescribed time for a consideration of Rs.1,43,26,665/-.

It is the claim of the assessee that the entire long term capital gain arising from the sale of the two assets were invested in purchase of the new residential house hence the assessee is entitled to avail exemption u/s 54 and 54F of the Act whereas the AO has rejected such claim by holding that for claiming exemption u/s 54 and 54F the assessee has to invest in two houses.

At this stage it is profitable to examine the provisions as contained in the aforesaid two sections. Section 54 provides exemption of capital gain in case of transfer of a long term capital asset being a residential house, the income of which is chargeable under the head income from house property and the assessee within the prescribed time has purchased or constructed a new residential house.

Venkat Ramana Umareddy v. DCIT (ITA No. 522/Hyd/2012) dated 18.01.2013

Sec. 54F provides exemption of capital gain in case of transfer of any long term capital asset, not being a residential house and assessee within the prescribed time has purchased or constructed new residential house. A reading of section 54 and 54F makes it clear that they are independent of each other and operate in respect of long term capital gain arising out of transfer of distinct and separate long term capital assets. However, both the sections allows exemption only on purchase or construction of a new residential house.

In the appeal before us the assessee had sold two distinct and separate long term capital assets viz., one is a residential house which comes under section 54 and the other is a plot of land coming within the ambit of section 54F. The assessee has also purchased a residential house within the prescribed period in terms with both sec. 54 and 54F for a price much more than the total long term capital gain.

The only reasoning on which the lower authorities have rejected assessee's claim of exemption u/s 54 is that the assessee cannot claim exemption under both the sections towards investment in a single house. According to the lower authorities for claiming exemption both u/s 54 and 54F the assessee has to invest in two houses. In our view, such an interpretation of the provisions is totally misconceived and misplaced. The restriction imposed under the proviso to section 54F (1) clearly debars exemption if the assessee purchases or constructs more than one residential house.

Venkat Ramana Umareddy v. DCIT (ITA No. 522/Hyd/2012) dated 18.01.2013

9. At the cost of repetition, we would like to reiterate that sec. 54 and 54F apply under different situations. While sec. 54 applies to long term capital gain arising out of transfer of long term capital asset being a residential house, sec. 54F applies to long term capital gain arising out of transfer of any long term capital asset other than a residential house. However the condition for availing exemption under both the sections is purchase or construction of a new residential house within the stipulated period. There is also no specific bar either u/s 54 and 54F or any other provision of the Act prohibiting allowance of exemption under both the sections in case the conditions of the provisions are fulfilled**. In the facts of the present case, since long term capital gain arises from sale of two distinct and separate assets viz., residential house and plot of land and the assessee has invested the entire capital gain in purchase of a new residential house, in our view, he is entitled to claim exemption both u/s 54 and 54F of the Act. We therefore direct the AO to delete the addition of Rs.44,05,302/-. Hence, these grounds are allowed.**

Where capital gains arising from sale of two flats were invested in one residential house, such capital gains would be exempted under section 54.

Vijay Kumar Wanchoo v. Income Tax Officer, Ward-2(5), Noida [2021] 124 taxmann.com 82 (Delhi - Trib.) IN THE ITAT DELHI BENCH 'SMC-2'

7.2 Considering the facts of the case in the light of above decisions of the Tribunal, it is clear that assessee has purchased two residential flats at Andheri bearing flat A-401 and flat B-401, 4th Floor, Brighton Tower Cooperative Housing Society Ltd., Plot No. 356, Cross Road No. 2, Lokhanwala Complex, Andheri (West), Mumbai and **assessee modified both the flats and converted two units as one residential unit.** This fact is also mentioned in statement of facts and by the A.O. in the assessment order. **The assessee has further sold both the flats through two separate sale deeds. It is an admitted fact that assessee has purchased residential flat at Noida within the permitted time period from the sale of the residential flats.**

Thus, the above decisions of the ITAT, Mumbai Bench are squarely apply to the facts and circumstances of the case that assessee is entitled for exemption under section 54 of the I.T. Act, 1961. The issue is, thus, covered by the aforecited Orders of the ITAT, Mumbai Bench (supra).

In view of the above, I set aside the Orders of the authorities below and delete the entire addition of Rs. 20,10,427/-. In the result, Ground No. 3 of the appeal of the Assessee is allowed.

8. In the result, appeal of the Assessee is partly allowed.

ISSUE - 11

Whether exemption u/s. 54F can be claimed even if construction is not completed within 3 years but when substantial payment been made

It has been held in the following cases that exemption u/s. 54F can be claimed by the assessee even if construction is not completed within 3 years but when substantial payment been made by the assessee.

Commissioner of Income-tax, Bangalore v. Smt. B.S. Shanthakumari (HC) [2015] 60 taxmann.com 74 (Karnataka) dated 13.07.2015

Sambandam's Udaykumar case [2012] 345 ITR 389/206 Taxman 150/19 taxmann.com 17 (High Court of Karnataka)

CIT v. Sardarmal Kothari [2008] 302 ITR 286 (High Court of Madras)

CIT v. Smt. B.S. Shanthakumari (HC) [2015] 60 taxmann.com 74 (Kar)

Section 54F of the Income-tax Act, 1961 - Capital gains - Exemption of in case of investment in residential house (Construction) - Assessment year 2009-10 - Assessee sold a property on 6-10-2008 - She purchased another residential plot on 13-10-2008 - On 2-6-2010 she obtained approval of building plan from local authority and commenced construction which was not completed within 3 years, i.e., on or before 5-10-2011 - She claimed exemption under section 54F in respect of long-term capital gain arising from sale of property - Assessing Officer disallowed claim on ground that assessee had not completed construction of house within three years as per section 54F - Whether once it was established by assessee that she had invested entire net consideration in construction of residential house within stipulated period, it would meet requirement of section 54F and she would be entitled to get benefit of section 54F - Held, yes [Para 8] [In favour of assessee]

CIT v. Smt. B.S. Shanthakumari (HC) [2015] 60 taxmann.com 74 (Kar)

8. Section 54F of the Act is a beneficial provision which promotes for construction of residential house. Such provision has to be construed liberally for achieving the purpose for which it is incorporated in the statute. The intention of the legislature as could be discerned from the reading of the provision would clearly indicate that it was to encourage investments in the acquisition of a residential plot and completion of construction of a residential house in the plot so acquired. **A bare perusal of said provision does not even remotely suggest that it intends to convey that such construction should be completed in all respects in three (3) years and/or make it habitable. The essence of said provision is to ensure that assessee who received capital gains would invest same by constructing a residential house and once it is established that consideration so received on transfer of his Long Term capital asset has invested in constructing a residential house, it would satisfy the ingredients of Section 54F.**

CIT v. Smt. B.S. Shanthakumari (HC) [2015] 60 taxmann.com 74 (Kar)

If the assessee is able to establish that he had invested the entire net consideration within the stipulated period, it would meet the requirement of Section 54F and as such, assessee would be entitled to get the benefit of Section 54F of the Act. Though such construction of building may not be complete in all respect "that by itself would not disentitle the assessee to the benefit flowing from Section 54F". In fact, appellate Commissioner has not only taken note of the judgment of the co-ordinate bench of this **Court in *Sambandam's Udaykumar* case [2012] 345 ITR 389/206 Taxman 150/19 taxmann.com 17**, but had also taken note of the judgment of High Court of Madras in the case of ***CIT* v. *Sardarmal Kothari* [2008] 302 ITR 286**, which was on similar facts as obtained in ***Sambandam Udaykumar's* case (*supra*)** and as such **in the instant case, Appellate Commissioner allowed assessee's appeal noting that the appeal filed by the revenue against the order of High Court of Madras before Apex Court in CC Nos.3953-3954/2009 had been dismissed on 06.04.2009.**

ISSUE - 12

To claim exemption under Sec. 54 & 54F, whether investment in new asset or deposit in CGAS should be out of the actual sale consideration or it can be out of borrowals / bank loan etc.

It has been held in the following cases that Purchase of property out of bank loan is not a bar in allowing exemption u/s 54/54F.

a. **Dr. Kyasa Srinivas v. JCIT (21.04.2017) ITA No. 1865/Hyd/2014 (Hyd. Trib.)**
b. **Kapil Singh Agarwal Vs. ACIT, 66 Taxmann.com 191 (P&H) (04.11.2015)**
c. **Kapil Singh Agarwal Vs. ACIT, 38 Taxmann.com 384 (Delhi Trib) (16.07.2013)**
d. **Smt. Sumathi Gedpudi, [2015[64 Taxmann.com 382 (Hyd.Trib.)**

Dr. Kyasa Srinivas v. JCIT (21.04.2017) ITA No. 1865/Hyd/2014 (Hyd. Trib.)

20. As regards the claim of assessee u/s 54F, The AO disallowed the claim u/s 54F on the ground that the consideration was not utilized for acquiring new asset/the assessee failed to utilize the amount of sale consideration received for purchasing new asset. The claim made by the assessee u/s 54F was Rs. 23,75,946/-.

21. Considered the rival submissions and perused the material facts on record. **AO found that the assessee purchased the house property by availing bank loan instead of applying the sale consideration for the above purpose. We are not in a position to accept the views of the AO considering the fact that the assessee need not have to utilise the sale consideration in the new property.**

Dr. Kyasa Srinivas v. JCIT (21.04.2017) ITA No. 1865/Hyd/2014 (Hyd. Trib.)

It is enough that the assessee procures the new property within the stipulated time provided in section 54F to claim the exemption. How the property purchased by the assessee is irrelevant. In the following cases, the Hon'ble Punjab & Haryana High Court has expressed similar views and other respective benches of Tribunal have also expressed similar views.

1. Kapil Singh Agarwal Vs. ACIT, 66 Taxmann.com 191 (P&H) (04.11.2015)

2. Kapil Singh Agarwal Vs. ACIT, 38 Taxmann.com 384 (Delhi Trib) (16.07.2013)

3. Smt. Sumathi Gedpudi, [2015[64 Taxmann.com 382 (Hyd.Trib.)

Accordingly, following the above views, the ground raised by the assessee is allowed.

In the case of **ITO v. Dinesh Choudhary (HUF) (ITAT Bom) (2013)TIOL 493 ITAT Mum ,** the question arose as to whether the deduction under section 54 is allowable where the assessee has used borrowed funds for construction of the new asset. The case was decided in the favour of the assessee.

Similarly in **J.V.Krishna Rao v. DCIT (AP HC), 51 [2012] 24 taxmann.com104** it was held that the capital gains earned by the assessee can be utilized for other purposes, and as long as the assessee fulfils the condition of investment of the equivalent amount in the asset qualifying for relief under section 54F, by securing the money spent out of capital gains from other sources available to it by borrowal or otherwise, it is eligible for relief under section 54F in respect of the entire amount of capital gains realized.

IN THE ITAT CHANDIGARH BENCH 'A' Keshav Dutt Shreedhar v. Deputy Commissioner of Income-tax, Circle Shimla [2019] 111 taxmann.com 70 (Chandigarh - Trib.)

Law does not require assessee to hold on to very same money and demonstrate that very same money was utilized in acquisition of asset and requirement of law is that money so available to assessee to that extent on which exemption under section 54 was claimed ought to be invested in acquisition of specific asset within stipulated time

The law nowhere requires that there should be a live link between the amount of capital gain and in the purchase of the new asset where the asset is purchased within the stipulated time of filing of return. The law does not require the assessee to hold on to the very same money and demonstrate that the very same money is utilized in the acquisition of the asset. Requirement of the law is that the money so available to the assessee to that extent on which exemption u/s 54 is sought to be claimed ought to be invested in the acquisition of the specific asset within the stipulated time.

It would be appropriate here to support our conclusion by making a reference to ***C. Aryama Sundaram* V. *CIT*** **[2018] 97 taxmann.com 74/258 Taxman 10/407 ITR 1 (Mad)**. The Court considering the requirements of Section 54 of the Income Tax Act held as under :

"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."**

IN THE ITAT MUMBAI BENCH 'D' Reji Easow v. Income Tax Officer, Ward 3(5) [2022] 136 taxmann.com 111 (Mumbai - Trib.)

Possession of new house within stipulated 2 years is 'purchase' for sec.54,even if not funded by proceeds of old house

If assessee has taken possession of new house within the stipulated 2 years period, assessee is entitled to deduction under section 54 even if the agreement for sale of new house is not registered within the 2 years period. Such possession is to be taken as purchase of new house within 2 years period. Source of funds used is irrelevant. Assessee need not prove that the new house was paid for by consideration/capital gains from sale of old house. He will get deduction even if he paid for it though home loan provided purchase is completed by entering into possession within the stipulated 2 years period.

Other decisions in favour of the assessee:

- **ACIT v. Dr. P.S. Pasricha (Bom HC) (2008) 20 SOT 468 (Mumbai)**
- **Bombay Housing Corporation v. Asst. CIT (Bom HC) [2002] 81 ITD 545 (Bom)**
- **ITO v. K.C. Gopalan (Ker HC) [1999] 107 Taxman 591 (Ker)**
- **Muneer Khan v. ITO (ITAT Hyd) 41 SOT (2011) 504**
- **Sita Jain v. Asstt. CIT (ITAT Delhi) ITA Nos. 4754, 4755 & 5036/Del/10 dated 20.5.2011**
- **Mrs. Prema P. Shah v. ITO (ITAT Bom) 57 [2006] 100 ITD 60**

ISSUE – 13

Whether construction of new residential property can commence / begin before sale of original asset.

It has been held in the following cases that construction of new residential property can commence / begin before sale of original asset.

- **CIT, Bangalore v. Anandraj [2015] 56 taxmann.com 176 (HC of Karnataka)**
- **CIT vs. H. K. Kapoor (1998) 150 CTR 128 (All.)**
- **CIT vs. J. R. Subramanya Bhat (1987) 165 ITR 571 (Kar.)**
- **CIT vs. Bharti Mishra (2014) taxmann.com 50 (Delhi)**
- **ITO vs. Saroj Devi Agrawal (2018) 159 TR (A) 414 (Jaipur. Trib)**

CIT, Bangalore v. Anandraj [2015] 56 taxmann.com 176 (HC of Karnataka)

6. It is not in dispute that the assessee sold the agricultural land and the consideration received is in the nature of a long term capital gain. Even before the sale of the property, he had borrowed housing loan and started construction on the site belonging to him. After the sale, the amount spent towards construction of the house is more than the consideration received by the sale of agricultural land and therefore, he is entitled to the benefit of Section 54F of the Act.

7. Therefore, we do not see any infirmity in the order passed by the Tribunal which calls for interference. Accordingly, the substantial question of law is answered in favour of the assessee and against the revenue.

CIT vs. J. R. Subramanya Bhat (1987) 165 ITR 571 (Kar.)

Facts

The assessee was the owner of a building consisting of a ground floor, which he used for his residence and a first floor which he had given on rent. **The assessee sold the building on 9-2-1977 and the capital gain accruing therefrom was claimed to be exempt under section 54. He had commenced the construction of a new house sometime around March 1976, (*i.e.*, before the sale of the building), though it was completed in March 1977.** The ITO rejected the claim for exemption on the ground that the construction of the new building had started much earlier to the sale of the old building and the major portion of the building was let out by the assessee.

On appeal, the Tribunal found

(*i*) that the land appurtenant to the building was in the occupation of the assessee,

(*ii*) that the building was used by the assessee mainly for residential purposes, and

***(iii)* that the new building was completed within two years' period contemplated under section 54.**

So, the Tribunal allowed the relief to the assessee.

CIT vs. J. R. Subramanya Bhat (1987) 165 ITR 571 (Kar.)

On reference :

Held

As per the provisions of- section 54, if the assessee has, within a period of one year before or after the date on which the transfer took place, purchased or has within a period of two years after that date constructed a residential house, then instead of the capital gain being charged to tax, it shall be dealt with in accordance with the other provisions of the said section. In the instant case, on the basis of the evidence on record, the Tribunal found that the building was used by the assessee mainly for his residential purposes and the major portion of the building was under the occupation of the assessee. So, the first condition of section 54 was satisfied.

Again, **the date of sale of the old building was 9-2-1977 and the new building was completed in March 1977. The date of the commencement of construction of the new building was immaterial. Since the assessee had constructed the building within two years from the date of sale of the old building, he was entitled to relief under section 54. On the basis of evidence on record, the conclusion of the Tribunal was not unreasonable. Therefore, the assessee was entitled to relief under section 54.**

CIT vs. H. K. Kapoor (1998) 150 CTR 128 (All.)

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 Golf 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.

CIT vs. H. K. Kapoor (1998) 150 CTR 128 (All.)

Coming to question No. 3, it will suffice to say that it is misconceived. The Tribunal did not record any finding that the assessee did not invest the capital gains in the construction of the new house. Exemption was refused for the simple reason that the assessee had started the construction of the Surya Nagar house before the sale of the Golf Link house. Therefore, the question that for availing of the benefit under section 54 of the Act it is not necessary that the sale proceeds of the old building must be used in the construction of the new building, was not before the Appellate Tribunal.

We, therefore, answer questions Nos. 1 and 2 in the affirmative, that is, in favour of the assessee and against the Revenue, and so far as question No. 3 is concerned, the same being misconceived is returned unanswered.

CIT vs. Bharti Mishra (2014) taxmann.com 50 (HC of Delhi)

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.

CIT vs. Bharti Mishra (2014) taxmann.com 50 (HC of Delhi)

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.

CIT vs. Bharti Mishra (2014) taxmann.com 50 (HC of Delhi)

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.

CIT vs. Bharti Mishra (2014) taxmann.com 50 (HC of Delhi)

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.)"

CIT vs. Bharti Mishra (2014) taxmann.com 50 (Delhi)

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.

ISSUE - 14

Deeming fiction provided for computing full value of consideration as a result of transfer of property as per provisions of section 50C is only applicable for determining full value of consideration as defined under section 48 and thus, for purpose of computing exemption under section 54F, deeming fiction provided under section 50C could not be enlarged

IN THE ITAT CHENNAI BENCH 'D' Mrs. Baskarababu Usha v. Income-tax Officer [2022] 135 taxmann.com 307 (Chennai - Trib.)

11. As regards adoption of deemed consideration for the purpose of exemption u/s.54F of the Income-tax Act 1961, the Assessing Officer has adopted deemed consideration and computed eligibility for exemption u/s.54F of the Act. **The deeming fiction provided for computing full value of consideration as a result of transfer of property as per provisions of section 50C of the Act is only applicable for determining full value of consideration as defined u/s.48 of the Act and thus, for the purpose of computing exemption u/s.54F of the Act, deeming fiction provided u/s.50C cannot be enlarged because, one cannot expect a person to perform impossible things, as when the assessee receives a particular amount from transfer of property, he cannot be expected to reinvest amount over and above consideration received for transfer of property.**

In fact, that may not be intention of the legislature. If you apply deeming fiction provided u/s.50C to provisions of section 54F of the Act, for computation of exemption, then it is impossible for assessee to fulfill said conditions because no assessee will have consideration over and above what was received from transfer of property. This principle is supported by the decision of ITAT., Visakhapatnam Bench in the case of Dy. CIT v Dr Chalasani Mallikarjuna Rao [2016] 75 taxmann.com 270/161 ITD 721.

Therefore, we are of the considered view that the Assessing Officer has erred in adopting deemed consideration for the purpose of computation of exemption u/s. 54F of the Income-tax Act, 1961.

IN THE ITAT DELHI BENCH 'G' Sunil Miglani v. Deputy Commissioner of Income-tax, Central Circle, Ghaziabad [2020] 115 taxmann.com 91 (Delhi - Trib.)

5 …….. Deeming fiction created in section 50C is limited only to the extent and for the purpose of section 48 and this deeming fiction cannot be extended or interpreted as meant for the purpose of other provisions of the Act including Section 54F.

The process of arriving at capital gains and exemptions are distinct and separate and one does not override the other. Section 54F is an exemption provisions and a complete code in itself and since it is a complete code in itself, computation of eligible exemption has to be worked out within its framework as far as possible and deeming fiction contained in any other provision cannot be brought into section 54F.

Section 54F has to be applied only for the definite and limited purpose for which it is created.

The Ld. AR submitted that **it is not permissible to sub-join or track a fiction upon fiction**. Thus, the Ld. AR submitted that **as far as the exemption allowable under section 54F, one has to strictly follow the provisions of the particular section and compute the exemption accordingly without imposing any section creating a legal fiction into the section.**

The Ld. AR relied upon the following decisions:

i.	***Smt. Sabita Devi Agarwal* v. *ITO* [2019] 104 taxmann.com 12 (Kol. - Trib.)**
ii.	***Anant Chetan Agarwal* v. *Dy. CIT* [2018] 97 taxmann.com 621/172 ITD 525 (Lucknow - Trib.)**
iii.	***ITO* v. *Raj Kumar Parashar* [2017] 86 taxmann.com 78/167 ITD 237 (JP - Trib.)**
iv.	***Dy. CIT* v. *Dr. Chalasani Mallikajuna Rao* [2016] 75 taxmann.com 270/161 ITD 721 (Visakhapatnam - Trib.)**
v.	***Nandlal Sharma* v. *ITO* [2015] 61 taxmann.com 271 (JP - Trib.)**
vi.	***Dhaveer Singh Gambhir* v. *ITO* [2015] 56 taxmann.com 205/68 SOT 343 (Indore - Trib.)**
vii.	***Prakash Karnawat* v. *ITO* [2011] 16 taxmann.com 357/[2012] 49 SOT 160 (JP)**
viii.	***Gyan Chand Batra* v. *ITO* [2010] 8 taxmann.com 22 (JP)**
ix.	***Raj Babbar* v. *ITO* [2013] 29 taxmann.com 11/56 SOT 1 (Mum.)**
x.	***CIT* v. *George Henderson and Co. Ltd.* [1967] 66 ITR 622 (SC)**
xi.	***CIT* v. *Smt. Nilofer I. Singh* [2009] 176 Taxman 252/309 ITR 233 (Delhi)**
xii.	***ITO* v. *Manjit Singh* [2010] 128 TTJ 82 (Chd.) (UO)**
xiii.	***CIT* v. *V.S. Dempo Company Ltd.* [2016] 74 taxmann.com 15/242 Taxman 434/387 ITR 354 (SC)**
xiv.	***CIT* v. *ACE Builders (P.) Ltd.* [2005] 144 Taxman 855/[2006] 281 ITR 210 (Bom.)**
xv.	***CIT* v. *Assam Petroleum Industries (P.) Ltd.* [2003] 131 Taxman 699/262 ITR 587 (Gau)**

Besides this, the Ld. AR also submitted that in case of assessee's wife, the issue has been decided in favour of the wife by the **Tribunal in *Anita Miglani* v. *ITO* [IT Appeal No. 2235 (Delhi) of 2016, dated 18-11-2019]**. Thus, the Ld. AR submitted that the issue is squarely covered in favour of the assessee.

8. We have heard both the parties and perused all the relevant materials available on records. It **is pertinent to note that the Assessing Officer admitted the claim of the assessee for exemption under section 54F(1)(*b*) in respect of investment on long term capital gain but instead of taking actual sale consideration received, has adopted the figure of sale consideration by invoking Section 50C. This is not in accordance with the provision of Section 50C which has created a deeming fiction.**

Section 54F is an exemption provision and it has given its applicability in itself, therefore, Section 50C will not come under picture. The Long Term Capital Gain exemption is admissible under section 54F(1)(*b*) of the Income-tax Act, 1961 wherein total taxable gain comes to Rs. 2,68,830/- only as the investment made by the assessee adopting the figure of the actual sale consideration received in consequence with Section 54F of the Income-tax Act.

Therefore, the CIT(A) while enhancing the addition has ignored the very effect of the provisions of Section 54F. Besides this, the CIT(A) while enhancement has not given any reasons as to why the enhancement is necessary and why the assessee is not justified in adopting the figure of the actual sale consideration received. Thus the Assessing Officer as well as CIT(A) failed to justify the stand by making addition of Rs. 30,17,456/- in respect of long term capital gain without granting exemption under section 54F of the Income-tax Act.

It is pertinent to note that we have already taken a view in case of assessee's wife Smt. Anita Miglani (supra) wherein the same order of the CIT(A) was under challenge that the enhancement was not right.

The facts of the present case that of assessee's case is identical, therefore, the appeal of the assessee is allowed.

IN THE ITAT KOLKATA BENCH 'A' Smt. Sabita Devi Agarwal v. Income-tax Officer,Ward-2(3), Siliguri [2019] 104 taxmann.com 12 (Kolkata - Trib.)

6.2 The Jaipur Bench of the Tribunal in the case of ***Prakash Karnawat*** **v.** ***ITO*** **[2011] 16 taxmann.com 357/[2010] 49 SOT 16**, adjudicate the issue in favour of the assessee. It considered the judgment of the Bangalore Bench of the Tribunal of **Gouli Mahadevappa v. ITO [2010] 8 taxmann.com 15/[2011] 128 ITD 503 (Bang)** and at para 8 held as follows:-

"8. We find similar facts are involved in the present case. Assessee has received sale consideration of Rs. 40,00,000/- which has been invested in the Bonds in view of provisions of section 54EC. Therefore, assessee is entitled for deduction under section 54F. The provisions of section 50C are applicable for the purposes of section 48 and for the purpose of section 54F as held by the Tribunal in case of *Gyan Chand Batra* (*supra*). Findings of Tribunal have been reproduced somewhere above in this order which were taken in ITA No. 9/JP/2010 for assessment year 2006-07. Similar view has been expressed by the Bangalore Bench of the Tribunal in case of *Gouli Mahadevappa* (*supra*). Since entire amount of sale consideration has been invested in Bonds, therefore, in our view provisions of section 50C are not applicable as held by Jaipur Bench and Bangalore Bench. Respectfully following the decisions of the Tribunal, we hold that AO and ld. CIT (A) were not justified in invoking provisions of section 50C and alternatively the capital gain shown by assessee. Accordingly the addition made and sustained by the lower authorities is deleted."

In the case of **ITO v. Raj Kumar Parashar [2017] 86 taxmann.com 78/167 ITD 237 (Jaipur - Trib.)**, the Jaipur Bench of the Tribunal, under similar circumstances, held as follows:-

"11. On perusal of the above provisions, it is clear that the where the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45. What is therefore relevant is the investment of the net consideration in respect of the original asset which has been transferred and where the net consideration is fully invested in the new asset, the whole of the capital gains shall not be charged under section 45 of the Act. The net consideration for the purposes of section 54F has been defined as the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer. In other words, the consideration which is actually received or accrued as a result of transfer has to be invested in the new asset.

In the instant case, undisputedly, the consideration which has accrued to the assessee as per the sale deed is Rs. 24,60,000 and the whole of the said consideration has been invested in the capital gains accounts scheme for purchase of the new house property which is again not been disputed by the Revenue. The consideration as determined under section 50C based on the stamp duty authority valuation is not a consideration which has been received by or has accrued to the assessee. Rather, it is a value which has been deemed as full value of consideration for the limited purposes of determining the income chargeable as capital gains under section 48 of the Act. Therefore, in the instant case, the provisions of section 54F(1)(a) are complied with by the assessee and the assessee shall be eligible for deduction in respect of the whole of the capital gains so computed under section 45 read with section 48 and section 50C of the Act. The decisions of the Coordinate Benches as referred supra support the case of the assessee. The subject issue was not for consideration before the Hon'ble Karnataka High Court and hence, the same doesn't support the case of the revenue. We are therefore of the considered view that the provision of section 50C(1) of the Act are not applicable to section 54F for the purpose of determining the meaning of full value of consideration."

6.3 After perusing all these orders of different Benches of the Tribunal, we are of the considered view that the view taken, on this issue that the deeming fiction provided u/s. 50C of the Act, in respect of the term "full value of consideration" is to be applied only to Section 48 of the Act. The meaning of "net consideration" as regards Section 54F(1) of the Act, is not governed by the meaning of "full value of consideration" as mentioned in Section 50C of the Act. Similar view was taken by the Mumbai 'B' Bench of the Tribunal in the case of *Raj Babbar* v. *ITO* [2013] 29 taxmann.com 11/56 SOT 1 (Mum. - Trib.).

6.4 In the result, we direct the Assessing Officer not to adopt the deemed consideration arrived at u/s. 50C of the Act, while computing the deduction of the assessee for the purpose of Section 54F of the Act and take into account only "net consideration" as held by different benches of the ITAT.

ISSUE – 15

Capital Gain Account Scheme (CGAS)

HIGH COURT OF GUJARAT Rashesh Shirish Sanjanwala v. Assistant Commissioner of Income-tax, Circle 4(1)(4) [2022] 134 taxmann.com 104 (Gujarat)

AO should issue NOC in Form G for closure of CGAS,1988 a/c once assessee pays tax on capital gains on transfer of the 'original asset' Para 13(1) which allows closure of Capital Gains Aaccout Scheme, 1988 account with approval of AO in Form G but provides no mechanism or modality of the amount which at one point of time had been contemplated for the purchase of the residential premises from the amount of Capital Gains under the said scheme and the request had been made to the AO for issuance of the No Objection Certificate so that bank can allow withdrawal.

Therefore, **Jurisdictional AO is not justified in withholding NOC required by bank for allowing withdrawal from CGAS,1988 account where assessee paid more by way of advance tax than capital gains payable on transfer of 'original asset' u/s 54F on failure to utilise deposit in CGAS,1988 bank a/c for purchase of new house within 3 years period. This is especially so when assessee is regular filer of ITR in past and all his returns have been processed u/s 143(1) and when he undertakes in affidavit to offer the capital gains for tax in return for forthcoming assessment year 2022-23 and also to supply physical copy of the ITR filed to jurisdictional AO no sooner then he e-files the return of income under the provision of Section 139 of the Act and not to claim the set off of any business/professional loss against the said Capital Gain that he may offer in the Assessment Year 2022-23.**

IN THE ITAT INDORE BENCH Yogesh Jhingan v. Deputy Commissioner of Income-tax-(Central) [2022] 135 taxmann.com 291 (Indore - Trib.)

16. Both the lower authorities were not satisfied with this claim and added the Long Term Capital Gain claimed as deduction for deposit in Capital Gain Account during A.Y. 2008-09, as income for A.Y. 2010-11 alleging that the amount deposited in Capital Gain Account Scheme has not been utilised for the purpose for which it was stated at the time of filing the original return of income.

[2021] 129 taxmann.com 249 (Delhi - Trib.) IN THE ITAT DELHI BENCH SMC-2 Avtar Krishen Jalla v. Income Tax Officer Ward 29(4), New Delhi

Where assessee had sold a flat and earned long-term capital gain which was deposited by him in capital gain account and out of this amount of capital gain assessee had invested a certain sum in new project within 36 months but could not utilize balance sum and Assessing Officer taxed said unutilized gain, though assessee had invested balance sum later, as he had not utilised capital gain amount lying in capital gain account scheme before specified date, said amount was liable to tax

HIGH COURT OF KARNATAKA Professor P.N. Shetty v. Office of Income-tax Officer [2019] 112 taxmann.com 218 (Karnataka)

9. Thus, it is very clear that if only a part of the amount deposited in the Capital Gains Account Scheme is utilized for the construction or purchase of a new asset within the specified time income tax is chargeable on the unutilized amount. That is why the learned Single Judge, by the impugned order, has directed that the appellant is entitled for withdrawal of the amount deposited under sub-section (4) of Section 54F of the said Act subject to deduction of tax applicable.

IN THE ITAT PUNE BENCH 'A' Smt. Pratima C. Joshi v. Deputy Commissioner of Income Tax, Circle-3, Pune [2021] 125 taxmann.com 272 (Pune - Trib.)

3. On going through the mandate of sub-section (4) of section 54F, it is clear that the assessee becomes entitled to exemption u/s.54F on depositing the amount in the designated capital gain account scheme before the stipulated period. **The proviso states that if the amount deposited is not utilized for purchase or construction of asset within the specified period, then amount of exemption allowed earlier "shall be charged u/s.45 as 'income' of the previous year in which the period of three years from the date of transfer of the original asset expires". Thus, the mandate of section 54F(4) is to allow exemption on the assessee depositing the amount in the designated capital gain account scheme.**

It is for the AO to then examine the issue at the end of the third year from the date of sale, if the assessee has constructed a new house, which otherwise fulfills the requisite conditions. If the assessee does not pass such examination of the AO, then the amount of exemption allowed earlier shall is withdrawn or to put it simply becomes chargeable to tax u/s.45 as income of the previous year in which the period of three years expires.

4. Instantly, we are concerned with the initial year when the assessee deposited the amount in capital gain account scheme. A categorical finding has been recorded in para 2 of the order that the assessee did deposit capital gain in specified capital gain account scheme.

In that view of the matter, the assessee becomes entitled to exemption u/s.54F of the Act for the year under consideration. However, it is for the AO to examine as to whether the assessee has constructed the house within period of three years or not.

In case the house is not so constructed or the other relevant conditions are not satisfied, then the AO becomes free to charge the amount of exemption earlier allowed as income u/s.45 of the third year.

We, therefore, modify paras nos. 10 and 11 as under :

"10. We have found it as an admitted position that the assessee deposited balance capital gain in the specified capital gain account scheme. This makes the assessee entitled to exemption u/s.54F in respect of the year under consideration. However, the AO is free to examine as to whether the assessee constructed the house within the stipulated period of three years. In case such construction is not done or the other relevant conditions are not satisfied, then the AO will be at liberty to invoke the proviso to section 54F and make suitable addition in the income of the assessee at the end of third year from the date of transfer of the original asset. Insofar as the year under consideration is concerned, the assessee is entitled to exemption because she has deposited the amount in the designated capital gain account scheme.

11. In the result, the appeal of the Revenue is dismissed."

Is there any requirement that the assessee should file the return before the due date under section 139(1) to claim exemption under section 54/54F?

Where the assessee had fulfilled the condition for depositing the amount of capital gain in a specified bank account before the due date prescribed for furnishing the return of income under section 139(1),there is no requirement that the assessee should file her return of income before the due date prescribed under section 139(1).

[Esther Christopher Mascarenhas v. ITO 9 Taxmann.com 99 (Mum.-ITAT) (2011)]

Merely because investment is made after due date of filing of return, section 54F exemption cannot be denied where investment is made prior to filing of return under section 139(4).

[R.K.P. Elayarajan vs DCIT [2012] 23 taxmann.com 206 (Chennai-ITAT)]

ISSUE - 16

Where assessee invested entire sale consideration in construction of residential house within stipulated time period, exemption under section 54F could not be denied if said consideration was not deposited in capital gain scheme account during intermittent period of construction

IN THE ITAT BANGALORE BENCH 'B' Ramaiah Dorairaj v. Income Tax Officer, ward 4(2)(2), Bangalore [2021] 124 taxmann.com 243 (Bangalore - Trib.)

6. We have heard both the parties and perused the material on record. The main contention of the ld. DR is that the assessee has not complied with the conditions laid down u/s. 54F(1) or 54F(4) of the Act. U/s. 54F of the Act, when the assessee Invests the sale consideration from transfer either purchasing a residential house or constructing a new house within a period stipulated in Section 54F(1) of the Act, then only the assessee entitles for deduction under this section. In the intermediatery period the assessee shall deposit the amount in an account which is duly notified by the Central Government. In this case, the assessee has not deposited the net sale consideration in the Capital Gains Scheme Account notified by the Central Government.

However the plea of the assessee is that within the stipulated time, the assessee has utilized the net sale consideration as enumerated in the Section 54F(1) of the Act and the assessee is entitled for exemption Under Section 54F of the Act. This issue has came up for consideration before the **Hon'ble Karnataka High Court in the case of *K. Ramachandra Rao* (*supra*) wherein the following question was before the Hon'ble High Court :**

" When the assessee invests the entire sale consideration in construction of a residential house within three years from the date of transfer can he be denied exemption under section 54F on the ground that he did not deposit the said amount in capital gains account scheme before the due date prescribed under section 139(1) of the IT Act ? “

This was answered by Hon'ble High Court as follows :

" As is clear from Sub Section (4) in the event of the assessee not investing the capital gains either in purchasing the residential house or in constructing a residential house within the period stipulated in Section 54F(1), if the assessee wants the benefit of Section 54F, then he should deposit the said capital gains in an account which is duly notified by the Central Government. In other words if he want of claim exemption from payment of income tax by retaining the cash, then the said amount is to be invested in the said account. If the intention is not to retain cash but to invest in construction or any purchase of the property and if such investment is made within the period stipulated therein, then Section 54F(4) is not at all attracted and therefore the contention that the assessee has not deposited the amount in the Bank account as stipulated and therefore, he is not entitled to the benefit even though he has invested the money in construction is also not correct."

7. Being so, in our opinion, the Section 54F is beneficial provision and should be interpreted liberally and the Assessing Officer has to see the end utilization of net sale consideration in the way prescribed in Section 54F of the Act, the assessee is entitled for exemption Under Section 54F of the Act. With this observation, we remit the issue to the file of Assessing Officer for fresh consideration.

Venkata Dilip Kumar v. Commissioner of Income-tax, Chennai [2019] 111 taxmann.com 180 (Madras) HIGH COURT OF MADRAS

14. In my considered view, the contention of the Revenue to deny the benefit of deduction to the petitioner/assessee cannot be justified for the following reasons:

Section 54(2) cannot be read in isolation and on the other hand, application of Section 54(2) should take place only when the assessee failed to satisfy the requirement under Section 54(1). While the compliance of requirement under Section 54(1) is mandatory and if complied, has to be construed as substantial compliance to grant the benefit of deduction, the compliance of requirement under Section 54(2) could be treated only as directory in nature.

If the assessee with the material details and particulars satisfies that the amount for which deduction is sought for under Section 54 is utilised either for purchasing or constructing the residential house in India within the time prescribed under Section 54(1), the deduction is bound to be granted without reference to Section 54(2), which compliance in my considered view, would come into operation only in the event of failure on the part of the assessee to comply with the requirement under Section 54(1).

Mere non compliance of a procedural requirement under Section 54(2) itself cannot stand in the way of the assessee in getting the benefit under Section 54, if he is, otherwise, in a position to satisfy that the mandatory requirement under Section 54 (1) is fully complied with within the time limit prescribed therein.

15. At this juncture, the Division Bench decision of the **Karnataka High Court made in ITA No.47 of 2014 in the case of *K.Ramachandra Rao* (*supra*)** is relevant to be quoted, wherein while considering the scope of Section 54F(1) to 54F(4) of the Income Tax Act, it has been observed as follows:

"If the intention is not to retain cash but to invest in construction or any purchase of the property and if such investment is made within the period stipulated therein, then Section 54F(4) is not at all attracted and therefore, the contention that the assessee has not deposited the amount in the Bank account as stipulated and therefore, he is not entitled to the benefit even though he has invested the money in construction is also not correct.''

16. Learned counsel for the Revenue relied on the decision of the **Supreme Court Dilip Kumar and Co. (supra)** in support of her contention that exemption notification should be interpreted strictly and the burden of proof of its applicability would be on the assessee. I have already pointed out that the assessee, in this case, has claimed that it has utilised the disputed sum towards the cost of the additional construction within the period of three years from the date of the transfer and therefore, if such contention is factually correct, it is to be held that the assessee has satisfied the mandatory requirement under Section 54(1) to get deduction. Therefore, I find that the above decision relied on by the Revenue is not helping the case of the respondents under the facts and circumstances of the present case.

17. The claim of the assessee for deduction of the disputed sum towards the additional construction cost was rejected only on the ground that the said sum was not deposited in the capital gain account.

In view of my findings rendered supra, the Revenue is not justified in making such objection. On the other hand, it has to verify as to whether the said sum was utilised by the petitioner within the time stipulated under Section 54(1) for the purpose of construction.

If it is found that such utilisation was made within such time, the Revenue is bound to grant deduction.

Therefore, this Court is of the view that the matter needs to go back to the first respondent for considering the issue as to whether the disputed amount, claimed by the assessee as deduction, has been utilised by the petitioner towards the additional construction within the time limit prescribing under Section 54(1) and thereafter, to pass fresh order accordingly in the light of the findings and observations rendered supra.

Accordingly, the writ petition is allowed and the matter is remitted back to the first respondent to pass a fresh order accordingly. Such exercise shall be done by the first respondent within a period of eight weeks. No costs.

Income Tax Officer *v.* Smt. Rekha Shetty [2020] 118 taxmann.com 10 (Chennai - Trib.) IN THE ITAT CHENNAI BENCH 'C'

Where assessee had substantially complied with provisions of section 54(1) by purchasing new house property within prescribed time period, a mere non-compliance of procedural requirement under section 54(2) i.e. some delay in depositing amount in CGAS, could not stand in way of assessee in getting benefit under section 54

ISSUE – 17

Merely because the assessee could not obtain the possession of the property within a period of 36 months due to defaults committed by the builder, the assessee should not be penalized and deduction u/s 54 should not be denied.

It has been held in the following cases that merely because the assessee could not obtain the possession of the property within a period of 36 months due to defaults committed by the builder, the assessee should not be penalized and deduction u/s 54 should not be denied.

a. **Bal Kishan Atal v. Asstt. CIT [2019] 104 taxmann.com 432/176 ITD 330 (Delhi - Trib.);**
b. **Mrs. Seetha Subramanian v. Asstt. CIT [1996] 59 ITD 94 (Mad. - Trib.);**
c. **Satishchandra Gupta v. Assessing Officer [1995] 54 ITD 508 (Delhi);**
d. **CIT v. Mrs. Hilla J.B. Wadia [1995] 216 ITR 376 (Bom.);**

IN THE ITAT DELHI BENCH 'F‘ Bal Kishan Atal v.Assistant Commissioner of Income-tax, Circle 20(1), New Delhi[2019] 104 taxmann.com 432 (Delhi - Trib.)

4. Regarding disallowance of exemption of Rs.62,68,311/- claimed u/s. 54F of the Act in respect of investment in the residential flat, the ld. AR of the assessee submitted that both the authorities below have erred in not allowing the exemption claimed. It was submitted that during the year under consideration, the assessee sold a property, Plot No. 116, Sharda Niketan, Pitampura, Delhi. The said property was sold for a total consideration of Rs. 98,00,000/- and claimed exemption u/s 54 of the Act, by investing a sum of Rs. 62,68,311/- out of the sale proceeds in a residential flat bearing no. T12-801 at La Tropicana, Khyber Pass, Delhi developed by M/s Parsvnath Landmark Developers Pvt. Ltd. and deposited Rs. 19,00,000/- in Capital Gain account Scheme. The AO during the course of assessment proceedings asked the assessee to produce evidence for the property purchased by the assessee. In response to which the assessee, vide letter dated 07.08.2014 (place at Paper book Page 6) submitted the copies of receipts of payments made to the developers and flat buyer agreement entered into by the assessee with the developers.

However, possession of the property was not given to the assessee by the developer till the end of the statutory period of claiming the exemption under section 54 and therefore even the property did not get registered in the name of the assessee.

The AO alleged that since the possession of the property was not taken by the assessee and the property is not registered in the name of the assessee, the benefit of exemption cannot be claimed.

In reply It was submitted to the Ld. AO that La Tropicana Resident Welfare Association had filed a complaint before National Consumer Disputes Redressal Commission against the developers seeking relief and compensation for the losses suffered by the allottees on account of unfair trade practices and deficient services rendered by the developers.

The delay in granting possession was due to the fact that the Commission through its order dated 02.06.2014 (placed at PB Page 73-74) put stay and directed the developers to not to transfer or alienate in any manner flats allotted to the members and due to which purchase deed also did not get executed.

It was also submitted before the AO that substantial payments have already been made by the assessee and for claiming exemption u/s 54 of the Act, it is not necessary that the possession is granted to the assessee and purchase deed is executed.

However, the AO ignored the submissions and evidences submitted by the assessee, and made an addition of Rs. 62,68,311/-alleging that for claiming exemption u/s 54 of the Act either purchase deed should have been executed or the possession should be granted to the assessee.

The action of the Assessing Officer is incorrect as in the present case, the assessee had paid a substantial amount of purchase consideration to the developers and had made frantic efforts for claiming possession of the said flat.

However, there was delay on part of the developers against whom La Tropicana Resident Welfare Association filed a complaint before National Consumer Disputes Redressal Commission seeking relief from the unfair trade practices of the developers.

It is submitted that assessee had bona fide intentions of investing the property and claiming the exemption u/s 54.

But due to the complaint filed against Parsvnath Landmark Developers Pvt. Ltd., the developer and delay in receiving the possession was beyond the control of the assessee, and the assessee was restricted to pay further amount in the property with them.

It was further contended by the Ld. AR that the AO has not doubted the payments made by the assessee which has been made through proper banking channels.

The delay is by reason beyond the control of the assessee. Similar issue has come up before various courts where it is held that exemption under section 54 cannot be denied in case possession is not granted or purchase deed is not executed by reason beyond the control of the assessee. The Ld. AR placed reliance on the judgment of Hon'ble Delhi High Court in the case of *Balraj* v. *CIT* [2002] 254 ITR 22/123 Taxman 290, order dated 06.12.2001. Ld. AR also placed reliance on following judgments in support of its contention.

1. CIT v. R.L. Sood [2000] 245 ITR 727/108 Taxman 227 (Delhi)

2. Delhi ITAT in the case of Dr. Jasvir Singh Rana v. ITO [IT Appeal No. 5568 (Delhi) of 2015, dated 22-9-2017]

3. Delhi ITAT in the case of Sanjay Khanna, c/o. Jeetan Nagpal v. DDIT (International Taxation) IT Appeal No. 5852 (Delhi) of 2012, dated 14.07.2017

4. Chandrakant S. Choksi HUF v. Asstt. CIT [2015] 53 taxmann.com 312/67 SOT 311 (Mum. Trib)

5. CIT v. Ritesh Kumar Kumat [IT Appeal No. 630 of 2012, dated 20-1-2014]

6. Chennai ITAT in the case of ACIT v. M. Raghuraman [IT Appeal No. 1990 (Mds.) of 2017, dated 8-2-2018.]

5. On the other hand, Ld. DR placed reliance on the order passed by the authorities below. It was submitted that the assessee has not obtained the possession within the period of three years and also purchase deed has also not been executed in favour of the assessee and hence, he did not fulfill the condition for claiming exemption under section 54.

6. We have heard the rival submission and perused the entire material available on record including orders passed by the authorities below and the case laws cited. From the facts, it is clear that assessee has made payment of for the purchase of flat to the developer of Rs.62,68,311/-. The fact of payment of the same and the transaction of purchase of flat are not in dispute. **The only issue is that assessee could not obtain the possession and got the purchase deed executed within the period of three years. The delay was on account of developer and not on account of the assessee.** We have also perused the paper book, where we find that there is a **complaint filed** by La Tropicana, Resident Welfare Association **against the developer with National Consumer Disputes Redressal Commission. Thus, the fact that delay in obtaining possession and getting purchase deed executed was on account of the developer and was by reason beyond the control of the assessee.**

The assessee has made substantial payment of Rs.62,68,311/-. In such peculiar facts and circumstances, we are inclined to agree with the contentions of the assessee that exemption under section 54 cannot be denied to the assessee. The assessee has done all what he could have done. There is no failure on the part of the assessee.

Our above view is supported by judgment of the **Hon'ble Delhi High Court in the case of *Balraj* (*supra*) wherein a similar issue of purchase deed having not been executed had come up for consideration and the Hon'ble Court after analyzing the facts and provision of section 54** has held as under:

"For the purpose of attracting the provisions of section 54 of the Income-tax Act, it is not necessary that the assessee should become the owner of the property. Section 54 of the said Act speaks of purchase. Moreover' the ownership of the property may have different connotation in different statutes. The question which arises for consideration appears to be squarely covered by a decision of the apex court in ***CIT* v. *T. N. Aravinda Reddy* [1979] 120 ITR 46**, where it has been held that 'the word 'purchase' occurring in section 54(1) of the Act had to be given its common meaning, viz., buy for a price or equivalent of price by payment in kind or adjustment towards a debt or for other monetary consideration.

Each release in this case was a transfer of the releasor's share for consideration to the releasee and the transferee, the assessee, 'purchased' the share of each of his brothers and the assessee was, therefore, entitled to the relief under section 54(1)".

The question now is no longer res integra having regard to the decision of the apex court in **CIT v. Podar Cement Pvt. Ltd. [1997] 226 ITR 625**. The apex court categorically held that section 22 of the Income-tax Act, 1961, does not require registration of sale deed. The meaning of the word "owner" in the context of section 22 has been held to be a person who is entitled to receive income in his own right.

The apex court in **Mysore Minerals Ltd. v. CIT [1999] 239 ITR 775 and this court in CIT v. B. L. Sood [2000] 245 ITR 727** have held that registration of the document is not mandatory for claiming depreciation on the property.

In this view of the matter, we have no doubt in our mind that the learned Tribunal went wrong in holding that for the purpose of applicability of section 54, registration of document is imperative. We, therefore, answer the question in the negative, i.e., the assessee is entitled to exemption in terms of section 54 of the Act."

ISSUE - 18

Whether the amount of capital gain utilized in purchase of the property within the due date of filing return under section 139(4) would qualify for deduction under section 54 / 54F of the Act

It has been held in the following cases that the amount of capital gain utilized in purchase of the property within the due date of filing return under section 139(4) would qualify for deduction under section 54 of the Act

- **Pr. CIT v. Shankar Lal Saini [2018] 89 taxmann.com 235/253 Taxman 308 (Raj).**
- **CIT v. Ms. Jagriti Aggarwal [2011] 15 taxmann.com 146/203 Taxman 203/339 ITR 610 (Punj. & Har).**
- **CIT v. Jagtar Singh Chawla [2013] 33 taxmann.com 38/215 Taxman 154 (Punj & Har).**
- **Fatima Bai v. ITO [IT Appeal No. 435 (Kar) of 2004]**
- **Income Tax Appellate Tribunal - Cochin in case of Muthuletchumi Janardhahanan v. Dy. CIT [IT Appeal No. 372 (Coch.) of 2011, dated 7-12-2012]**
- **HIGH COURT OF MADRAS Commissioner of Income-tax v. Smt. Umayal Annamalai [2020] 118 taxmann.com 80 (Madras)**
- **CIT v. Rajesh Kumar Jalan [2006] 157 Taxman 398/286 ITR 0274 (GUHC)**
- **CIT v. Smt. Vrinda P. Issac [2012] 24 taxmann.com 131/[2013] 212 Taxman 101 (Mag.) (KARHC)**

IN THE ITAT MUMBAI BENCH 'B'Income-tax Officer, 25(3)(5), Mumbai v. Nilima Abhijit Tannu [2019] 106 taxmann.com 256 (Mumbai - Trib.)

14. We are of the view that section 54F of the Act only talks about deposit within the prescribed time period. Even on the plain reading of Sub-section (2) of Section 54 of the Income-tax Act, 1961, it is clear that only Section 139 of the Income-tax Act, 1961, is mentioned in Section 54(2) in the context that the *unutilised portion* of the capital gain on the sale of property used for residence should be deposited *before* the date of furnishing the return of the Income-tax under Section 139 of the Income-tax Act. In our view, section 139 of the Income-tax Act, 1961, cannot be meant only Section 139(1), but it means all sub-sections of Section 139 of the Income-tax Act, 1961. The provisions of section 54 are beneficial provisions and are to be construed liberally as has been held by the Coordinate Bench of **ITAT, Chennai in the case of *ACIT* v. *Smt. Umayal Annamalai*, I.T.A. No.415/Mds/2015 &. C.O.No.43/Mds/2015 ITA No.415/Mds/2015**.

The Hon'ble High Court of Punjab and Haryana in the case of the ***CIT* v. *Shri Jagtar Singh Chawla*** **[2013] 33 taxmann.com 38/215 Taxman 154** held that 'Sec 54F - Deposit in capital gains account scheme by sec 139(4) is the correct due date'.

Further, in the case of ***CIT* v. *Rajesh Kumar Jalan*** **[2006] 157 Taxman 398/286 ITR 274 (Gauhati)**, (Paras 6 and 11) held that only Section 139 of the Income-tax Act, 1961 is mentioned in Section 54(2) in the context that the unutilised portion of the capital gain on the sale of property used for residence should be deposited before the date of furnishing the return of the Income-tax under Section 139 of the Income-tax Act. Section 139 of the Income-tax Act, 1961, cannot be meant only Section 139(1) but it means all sub-sections of Section 139 of the Income-tax Act, 1961.

15. We have also considered all the other judgments cited by the parties as well as mentioned in the order of Ld. CIT(A) and we are also of the view that according to the provisions of section 54 of the Act, an assessee has an option to claim deduction against long term capital gain on transfer of a residential flat, provided he/she invests within a period of one year before or two years after the date on which the transfer takes place to purchase or within a period of three years after that date to construct, one residential house in India. As per the facts, the assessee has duly acquired a new house property within 2 years from the date of the original transfer of flat and has accordingly rightly claimed deduction us/ 54 of the Act. **The 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. If the assessee fulfils the condition for exemption u/s.54 within the extended time of filing of return u/s. 139(4) of the Act, the assessee is entitled to exemption u/s.54 of the Act.**

Accordingly, the assessee is entitled deduction u/s 54 of the Act for utilization of sale consideration for investment in new residential property within due date as stipulated u/s. 139 of the Act as already held that Section 139 of the Act cannot be meant only section 139(1), but it means all sub-sections of section 139 of the Act. Thus, under sub-section (4) of section 139 of the Income-tax Act any person who has not furnished a return within the time allowed to him under sub-section (1) of section 142 may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment year whichever is earlier. Since the assessee has fulfilled the requirement under section 54 of the Income-tax Act for exemption of the capital gain, therefore the assessee is entitled for the same.

HIGH COURT OF MADRAS Commissioner of Income-tax v.Smt. Umayal Annamalai[2020] 118 taxmann.com 80 (Madras)

Where assessee invested sale proceeds of old asset in new property before due date of filing belated return and took possession within three years, she was entitled to exemption under section 54F though she had not invested sale proceeds in Capital Gain Account Scheme before due date of filing of return under section 139(1)

ISSUE - 19

Whether booking of flat is to be considered as case of construction for the purpose of section 54 of the Act

It has been held in the following decisions that booking of flat with private builder is to be considered as case of construction for the purpose of section 54 of the Act:

- **CIT v. RL Sood [2000] 108 Taxman 227 (Delhi)**
- **CIT v. Mrs. Hilla JB Wadia [1995] 216 ITR 376 (Bom.)**
- **Ram Prakash Miyan Bazaz v. Dy. CIT [2014] 45 taxmann.com 550/65 SOT 22 (JP-Trib.) (URO)**
- **Smt. Usha Vaid v. ITO [2012] 25 taxmann.com 188/53 SOT 385 (Asr.-Trib.)**

IN THE ITAT MUMBAI BENCH 'G' Yogesh Mavjibhai Gala v. Principal Commissioner of Income-tax [2020] 117 taxmann.com 783 (Mumbai - Trib.)

12. We shall now advert to the issue that as to whether or not the A.O had taken one of the possible view as regards the entitlement of the assessee for claim of deduction under sec. 54 of the Act.

At this stage, we may herein observe that the view taken by the A.O that the **date of allotment of the flats** i.e. 20-02-2010 was to be taken as the basis for calculating the period of the holding by the assessee, on the date of framing of the assessment was supported by the order of the **jurisdictional Tribunal i.e. ITAT, Mumbai Bench 'F', Mumbai in ACIT, 18(3), Mumbai v. Smt. Vandana Rana Roy [ITA No. 6173/Mum/2011, dated 07-11-2012]**. In the said case, the Tribunal had observed that the "date of allotment" was to be reckoned as the date for computing the holding period for the purpose of capital gains.

Also, in the case of **Richa Bagrodia v. Dy. CIT [2019] 175 ITD 552 (Mum), the jurisdictional Tribunal has held that in case of sale of flat it is the date of allotment of the flat and not the date of giving of possession of flat which has to be considered for computing the holding period of 36 months.**

We further find that the **Hon'ble High Court of Punjab & Haryana in the case of *Madhu Kaul* v. *CIT* [2014] 363 ITR 54 (Punj. & Har.)**, has also held that the mere fact that possession of the flat was delivered later, does not detract from the fact that the allottee was conferred a right to hold property on issuance of an allotment letter. It was further observed, that payment of balance instalments, identification of a particular flat and delivery of possession are consequential acts that relate back to and arise from rights conferred by allotment letter.

On the basis of our aforesaid observations, **we are of a strong conviction that the view taken by the A.O that the period of holding** of the aforesaid property *viz.* Flat Nos. 705 & 706, 7th Floor, at Oberoi Exquisite, Goregaon (East), Mumbai, **was to be calculated on the basis of the allotment letter that was issued to the assessee** by the builder *i.e.* M/s Oberoi Realty Limited on 20-2-2010, can safely be held to be a possible and a plausible view that was found to be in conformity with the view taken by the jurisdictional Tribunal and also that of the non-jurisdictional High Court, on the date on which the assessment was framed by him.

Accordingly, we are of the considered view, that the aforesaid conscious and a possible view arrived at by the A.O, could not have been dislodged by the Pr. CIT in exercise of her revisional jurisdiction under sec. 263 of the Act. On the basis of our aforesaid deliberations we '*set aside*' the order passed by the Pr. CIT under sec. 263 of the Act, dated 29-03-2019, and restore the assessment order passed by the A.O under sec. 143(3), dated 21-12-2016. The Grounds of appeal Nos. 1 to 3 raised by the assessee are allowed in terms of our aforesaid observations.

13. Resultantly, the appeal filed by the assessee is allowed.

IN THE ITAT DELHI BENCH 'A' Assistant Commissioner of Income-tax, Circle-5(1), New Delhi v. Akshay Sobti[2019] 106 taxmann.com 60 (Delhi - Trib.) and IN THE ITAT DELHI BENCH 'A'Assistant Commissioner of Income-tax, Circle-50(1), New Delhiv.SeemaSobti[2019] 106 taxmann.com 350 (Delhi - Trib.)

6. We have heard both the parties and perused the records, Paper Book filed by the assessee; submissions of both the parties, case laws cited by the Ld. counsel for the assessee and especially the impugned order passed by the Ld. CIT(A). With regard to ground no. 1 relating to disallowance of deduction u/s. 54 of the Act is concerned, we find that the assessee declared long term capital Rs.12,33,36,714/- from the sale of property at 146, 2nd floor with terrace Jorbagh, New Delhi on 21.12.2011 on which he claimed deduction u/s 54 amounting to Rs.4,00,97,217/-.

However, the AO disallowed the claim on the grounds that the assessee had entered into an agreement dated 10.02.2006 and therefore the date of agreement be treated as the date of acquisition, which falls beyond the period of one year prior to the date of transfer prescribed under section 54 of the Income-tax Act, owing the judgment of **Honorable Delhi High Court in the case of *Gulshan Malik* (*supra*) and *R.L.Sood* (*supra*)**, he disallowed the claim of the assessee. According to Assessing officer, the assessee could have purchased a house property between 28.12.2010 to 28.10.2011 in order to claim deduction under section 54.

Since the assessee invested in the residential House property namely DLF Magnolia way back in F.Y. 2005-06 which is clearly outside the time period mentioned in section 54 of the Income-tax Act, it does not fit in case of exemption under section 54 of the Act. The Assessing officer placed reliance on the judgement of **Honorable High Court at Delhi** in the case of ***Gulshan Malik* (*supra*) and *R. L. Sood* (*supra*).** However, the assessee submitted that in order to avail the benefit under section 54 of Income-tax Act he is required to purchase a residential house property either one year before or within two year after the date of transfer of original asset; or within a period of three years after that date he is required to construct a residential house.

We note that it has been clarified by the CBDT in Circular No.672 dated 16.12.1993 in which it has been made clear that the earlier circular No. 471 dated 15.10.1986 in which it was stated that acquisition of flat through allotment by DDA has to be treated as a construction of flat would apply to co-operative societies and other institutions. The builder would fall in the category of other institutions as held by Mumbai Bench of Tribunal in the case *Asstt. CIT* v. *Smt. Sunder Kaur Sujan Singh Gadh* [2005] 3 SOT 206 and therefore booking of the flat with the builder has to be treated as construction of flat by the assessee.

Thus, in the present case, the period of three years would apply for construction of new from the date of transfer of the original asset. The above circulars are binding on revenue authorities under s. 119 of the Act. He referred the decision rendered by **Honorable High Court of Bombay in the case of *CIT* v. *Mrs.Hilla J.B. Wadia* [1995] 216 ITR 376**, wherein the Honorable High Court has held that it is a case of "Construction". Reliance was placed on the judgment of **Honorable Karnataka High Court in the case of *J.R. Subramanya Bhatt* (*supra*)**, wherein it has been held at it is immaterial whether the construction of the new house was started before the date of transfer, it should be completed after the date of transfer of the original house.

In the present case, he had booked a semi finished flat with the builder, namely DLF Universal Limited in the residential group housing complex named as Magnolias DLF Golf Links) and as per agreement, he was to make payment in installments and the builder was to construct the unfinished bare shell of flat for finishing by the buyers on their own to make it live-able (having specifications set out in Annexure-V) as per clause 10.1 of the said agreement.

It is also noted that Builder Company offered vide letter dated 30.12.2011 that the Occupation certificate has been received from the Competent Authorities and the six months period for completing the interiors, in terms of agreement shall commence from 01.01.2012 and is to be completed before 30.06.2012.

Builder Company's letter dated 20.03.2012 and 20.01.2012 offered to finalise the details of interiors and extended the time for completion of interior to 30.09.2012 and finally possession was granted on 30.10.2013.

It has therefore to be considered as a case of construction of new residential house and not purchase of a flat. Since the flat has been allotted to the assessee by the builder who would fall in the category of other institutions mentioned in the circulars, it has to be taken as a case of construction of the residential flat and not as a purchase of a residential flat.

Therefore, **he had time window of three years period available to him commencing from 21.12.2011 till 21.12.2014 to construct a house property**. Having come to this conclusion that it is case of construction it is now to be seen if the assessee fulfils the conditions laid down under s. 54(1) of the Act.

In the instant case, the assessee has occupied the house property during 2013 vide letter dated 30.10.2013 offering occupation of House property.

Further, the assessee has claimed the deduction on amount invested till the due date of filing of return under section 139(1) of the Income Tax Act. Further, the reliance placed by the Assessing officer on the judgment of **Honorable Delhi High Court in the case of *Gulshan Malik* (*supra*)** is not relevant to the facts of the case under appeal, since the issue involved in the case of Gulshan Malik was pertaining to the period of holding of an asset for the purpose of establishing whether resultant gain is long term capital gain or is short term capital gain.

It was held a right or interest in an immovable property can accrue only by way of an agreement embodying consensus ad idem as against the confirmation letter that does confer any right to claim title. Similarly in the case of *R.L.Sood* (*supra*), the Honorable High Court has declined request of the revenue to call for reference on the proposed question.

It has further been clarified at realizing the practical difficulties faced by the assessee in such situations, the CBDT issued a circular No. 471, dt. 15th Oct,. 1986.

The relief extending instructions of the CBDT, in wake of realization of practical difficulties faced by the assessees, by way of circular extending relief to even marginally non compliant assessees in its literal sense of hyper technicalities, cannot be used as a tool to interpreted instructions of the board or decision of the law Courts, to deny the very relief to the otherwise compliant assessees. In a recent reference to **Honorable Delhi High Court, in the case of CIT v. Kuldeep Singh [2014] 49 taxmann.com 167/226 Taxman 133**, the Honorable Court has observed and discussed various decision of the other Honorable High Courts and Honorable Supreme Court; as follows;

A. CIT v. T.N. Aravinda Reddy [1979] 2 Taxman 541/120 ITR 46 (SC);

B. Civil Appeal nos. 5899-5900/2014 titled SanjeevLal v. CIT [2014] 46 taxmann.com 300/225 Taxman 239 (SC)

C. Reference was made to the decision of Supreme court in CIT v. J.H. Gotla [1986] 156 ITR 323/23 Taxman 14J (SC).

D. Moreover in CIT v. Bharati C. Kothari [2000] 244 ITR 352/[2001] 117 Taxman 538 (Cal.)

In the instant case, since the assessee entered into an agreement for construction of a bare shell of a house by periodic payment of installments and he had to carry the internal fit-outs to make it live- able as per Annexure-V of the agreement with the Builder Company, within Six months from the date of certificate of occupation from the competent Authorities, this is to be treated as the case of construction.

Further, the construction has been completed within three years of the sale of original asset, which is accepted by the Assessing Officer, the relief under section 54 is genuinely claimed by him and therefore, disallowance made under section 54 amounting to Rs. 4,00,97,217/- needs to be deleted.

It is it is clear that the facts of the present case that it was a case of construction of flat and not purchase of flat as held by the AO. Since, the case pertains to construction, benefit of section 54 of the Act are available to assessee.

In view of above, **the booking of bare shell of a flat is a construction of house property and not purchase, therefore, the date of completion of construction is to be looked into which is as per provision of section 54 of the I.T. Act., therefore, the Ld. CIT(A), has rightly directed the AO to allow benefit to the assessee as claimed u/s.54 of the I.T. Act, which does not require any interference on our part, hence, we uphold the action of the ld. CIT(A) on the issue in dispute and reject the ground raised by the Revenue.**

HIGH COURT OF BOMBAY Principal Commissioner of Income Tax-3, Mumbai v.Vembu Vaidyanathan [2019] 101 taxmann.com 436 (Bombay)

4. Having heard learned counsel for the parties, we notice that the **CBDT in its circular No.471 dated 15th October, 1986 had clarified this position by holding that when an assessee purchases a flat to be constructed by Delhi Development Authority ("D.D.A." for short) for which allotment letter is issued, the date of such allotment would be relevant date for the purpose of capital gain tax as a date of acquisition.**

It was noted that such allotment is final unless it is cancelled or the allottee withdraw from the scheme and such allotment would be cancelled only under exceptional circumstances.

It was noted that the allottee gets title to the property on the issue of allotment letter and the payment of installments was only a follow-up action and taking the delivery of possession is only a formality.

5. This aspect was further clarified by the CBDT in its later circular No.672 dated 16th December, 1993. In such circular representations were made to the board that in cases of allotment of flats or houses by co-operative societies or other institutions whose schemes of allotment and consideration are similar to those of D.D.A., similar view should be taken as was done in the board circular dated 15th October, 1986.

In the circular dated 16th December, 1993 the board clarified as under:

"2. The Board has considered the matter and has decided that if the terms of the schemes of allotment and construction of flats/houses by the co-operative societies or other institutions are similar to those mentioned in para 2 of Board's Circular No.471, dated 15-10-1986, such cases may also be treated as cases of construction for the purposes of sections 54 and 54F of the Income-tax Act."

It can thus be seen that the entire issue was clarified by the CBDT in its above mentioned two circulars dated 15th October, 1986 and 16th December, 1993.

In terms of such clarifications, the date of allotment would be the date on which the purchaser of a residential unit can be stated to have acquired the property.

There is nothing on record to suggest that the allotment in construction scheme promised by the builder in the present case was materially different from the terms of allotment and construction by D.D.A.

In that view of the matter, CIT appeals of the Tribunal correctly held that the assessee had acquired the property in question on 31st December, 2004 on which the allotment letter was issued.

Commissioner of Income tax *v.* Mrs. Hilla J.B. Wadia [1995] 216 ITR 376 (BOM.) HIGH COURT OF BOMBAY

Section 54 of the Income-tax Act, 1961 – Capital gains – Profit on sale of property used for residential house – Assessees had transferred property to housing society which was being used for their residence – Society agreed to allot to assessees flat in building to be constructed on said property and assessee made almost entire payment relating to cost of construction of flat within period of two years from date when she conveyed original property to society – Whether on aforesaid facts, assessee was entitled to exemption under section 54 - Held, yes

The assessee and her husband were co-owners of a property which was being used by them for residential purpose.

Under an agreement of sale, they agreed to sell the property to a society, which was formed with the object of purchasing that property and constructing tenements on the said property for the use of its members.

Pursuant to said agreement the property was conveyed by the assessee and consideration was received on 31-3-1973.

The society agreed to allot to the assessee flats in the building being constructed and the assessee paid almost the entire cost of construction of the flat within a period of two years from date when the said property was conveyed to the society.

The Tribunal held that the assessee was entitled to relief under section 54.

The assessee had transferred the property in which she had a half share and which was being used for the purpose of her residence to the society. The question was whether she could be said to have constructed a house property for the purpose of her residence within a period of two years from that date.

This provision was to be construed in the context of the manner in which such residential properties were being constructed in a city like Bombay where, looking to the cost of the land, co-operative housing societies were being formed for constructing a building in which flats were allotted to the members.

This must also be viewed as a method of constructing residential tenements. What was to be seen was whether the assessee had acquired a right to a specific flat in such a building which was being constructed by the society and whether she had made a substantial investment within the prescribed period which would entitle her to obtain possession of the flat so constructed and in which she intended to reside.

The material test in this connection was domain over the flat and investment in it. The assessee satisfied both these conditions. She had acquired such a domain and had invested almost the entire requisite amount in it within a period of two years prescribed under section 54.

In this connection, circular of the Central Board of Direct Taxes bearing No. 471, dated 15-10-1986 could be taken into consideration, which dealt with the investment in flats under the self-financing scheme of the Delhi Development Authority.

The Board stated in the circular that when an allotment letter is issued to an allottee under this scheme on payment of the first instalment of the cost of construction, the allotment is final unless it is cancelled.

The allottee, thereupon, gets title to the property on the issuance of the allotment letter and the payment of instalments is only a follow-up action and taking delivery of possession is only a formality.

The Board directed that such an allotment of a flat under this scheme should be treated as a case of construction for the purpose of capital gains. The instant case was on a much stronger footing because there was not merely an allotment of the flat but even almost the entire cost of construction was paid by the assessee within a period of two years.

In such circumstances, it could be concluded that the instant case fell within the provisions of section 54 in view of the fact that the assessee had acquired substantial domain over the flat in question under the agreement with the society coupled with the payment of almost the entire cost of construction within a period of two years.

Note: The case was decided in favour of the assessee.

IN THE ITAT DELHI BENCH 'C' SMT. Harminder Kaur v. Income Tax Officer, Ward-36(4), New Delhi [2021] 126 taxmann.com 160 (Delhi - Trib.)

Where assessee paid amount of sale consideration received from sale of a residential house for purchase of another residential property prior to due date of filing of return of income under section 139(4), his claim for exemption under section 54 was to be allowed.

Where assessee sold residential property and utilised sale consideration for booking flat in a housing project which was yet to be constructed, since assessee had made entire payment towards investment in new flat within period of three years from date of transfer of original asset, amount was to be treated as invested in purchase/construction of new residential property and assessee was to be allowed exemption under section 54.

Section 54, read with section 139, of the Income-tax Act, 1961 - Capital gains - Profit on sale of property used for residence (Time limit for Investment) - Assessment year 2011-12 - Assessee sold a residential property and invested sale consideration in new residential property by way of booking flat in a housing project - Assessee filed its return of income claiming exemption under section 54 - Assessing Officer disallowed same on ground that assessee had neither invested amount of capital gain in purchase or construction of residential house within stipulated period nor deposited it in capital gain scheme account within limit provided under section 139 - It was noted that assessee had provided detail of payments made for booking flat which showed that payments were made much prior to due date of filing of return under section 139(4) - Whether since investment in property was made prior to due date of filing of return of income under section 139(4), assessee was to be allowed deduction under section 54 - Held, yes [Paras 11.3 to 11.4] [In favour of assessee]

Section 54 of the Income-tax Act, 1961 - Capital gains - Profit on sale of property used for residence - Assessment year 2011-12 - Whether provisions of section 54 nowhere prescribe that construction of new residential house should be completed and prime requirement is investment of sale consideration from sale of a residential house in new residential house within prescribed period - Held, yes - Assessee sold a residential property and invested sale consideration in new residential property by way of booking flat in a housing project - Accordingly, assessee claimed exemption under section 54 - Assessing Officer disallowed same on ground that booking of flat was not purchase of flat because construction of such flat was yet to be carried out and it was not completed till completion of assessment - Whether since assessee had made entire payment towards investment in new flat within period of three years from date of transfer of original asset, amount was to be treated as invested in purchase/construction of new residential property - Held, yes - Whether, therefore, assessee was to be allowed deduction under section 54 - Held, yes [Para 11.7] [In favour of assessee]

[Vinod Kumar Jain Vs CIT TIOL706-P&H (2010)]

Whether determination of title to the property would commence from the first date of allotment or the subsequent date of allotment of the actual flat number and delivery of possession for the purpose of assessing long term capital gains.

Title to the property is transferred with the issuance of the allotment letter and payment of installments is only a follow up action and taking of the delivery of possession is only a formality.

[Kishore H. Galaiya vs ITO [2012] 24 taxmann.com 11 (Mum.)]

Whether booking of flat with a builder amounts to construction or purchase?

Booking of flat with a builder is a case of construction and not purchase of residential flat and therefore, time period 3 years is applicable.

[Smt. Shashi Varma vs CIT [1997] 224 ITR 106 (MP)]

Is allotment of flat under self-financing scheme treated as construction or purchase of a house?

Under Government schedules confining to two years' period for construction and handing over possession thereof is impossible and unworkable under section 54 and, thus, if substantial investment is made in construction of house, it should be deemed that sufficient steps have been taken satisfying requirement of section 54

ISSUE - 20

POSSESSION

IN THE ITAT DELHI BENCH 'A' Ashok Kumar v. Income-tax Officer [2021] 125 taxmann.com 430 (Delhi - Trib.)

Section 54 of the Income-tax Act, 1961 - Capital gains - Profit on sale of property used for residence - Assessment year 2014-15 - Whether where assessee sold/transferred a property on 24-2-2014 and purchased another residential house on 19-2-2013 since seller had taken back physical possession of property from assessee from 19-2-2013 to 19-4-2013 and handedover possession of property on 19-4-2013, date of final possession of property would be 19-4-2013 and thus assessee was entitled for exemption under section 54 - Held, yes [Para 6] [In favour of assessee]

6. We have considered the rival submissions and perused the material on record. The issue in the present appeal is whether exemption under section 54 is allowable to the assessee on purchase of residential house within one year before the date on which transfer of capital asset took place. The facts noted above are not in dispute that assessee sold/transferred property No. 80 Shanti Vihar, Delhi on 24-2-2014 and purchased another residential house D-50 Ground Floor, Kushambi, Ghaziabad, Uttar Pradesh on 19-2-2013. The A.O, therefore, noted that assessee purchased the residential house at Kushambi, Ghaziabad more than one year before the date of transfer of capital asset and as such assessee is not entitled for any deduction under section 54 of the I.T. Act, 1961.

Learned Counsel for the Assessee referred to Supplementary Agreement Dated 13-2-2013 *i.e.*, on the day when Sale Deed was executed. Copy of the Supplementary Agreement is filed at Pages 99-100 of the PB. In the Supplementary Agreement it is specifically mentioned that the Seller [First Party] has taken back the physical possession of the property in question from the Assessee [Second Party] from Dated 19-2-2013 to 19-4-2013 for finishing and completion of the pending work of the above said property and after completion of the entire work First Party will handover the physical possession of the property to the assessee on or before 19-4-2013.

It is also mentioned in the Supplementary Agreement that Sale Deed of the property was executed on 19-2-2013 because of the time binding of Sale Deed registration decided by the parties. Copy of the Sale Deed Dated 19-2-2013 is also filed at Pages 11 to 98 of the PB in which at page-39 the photograph of the property in question is affixed which clearly reveal that property under sale was incomplete and renovation work was going on and as such it was not in habitable condition. Due to this fact, the Supplementary Agreement was executed for completion of the work by the Seller *i.e.*, M/s. Mahalakshmi Buildcon.

It would, therefore, strengthen the submissions of the Learned Counsel for the Assessee that physical possession of the property after completion of the entire work was handedover to the assessee on 19-4-2013 and as such it would fall within one year before the date of transfer of property at 80, Shanti Vihar, Delhi.

Thus, assessee would be entitled for deduction under section 54 of the I.T. Act, 1961.

Same view is taken by ITAT, Mumbai D-Bench, Mumbai in the case of Smt. Ramita Mahendra Mehta (supra) in which in paras 6 to 11 it is held as under :

"6. We have heard the rival submissions perused the orders of the authorities below. The assessee **sold residential house during this Assessment Year by entering into sale agreement on 11-9-2009** and this resulted into long term capital gains which was claimed as exemption u/s 54 of the Act as the assessee purchased a new flat by entering into agreement on 18-8-2007.

The contention of the assessee was that though the agreement was entered into on 18-8-2007 for purchase of new flat, the final possession of the property for occupation was received from the builder only in the month of March 2009, though the entire purchase consideration was already paid by 11-7-2008 to the builder.

Therefore, the **date of final possession given by the builder has to be taken as the date of acquisition of new property for computing the capital gains u/s 54 of the Act.**

7. On a perusal of the decision of the **Hon'ble Jurisdictional High Court** we find that the issue has been considered by the Hon'ble High Court wherein it was held as under:-

"1. The assessee, who is the respondent before us, had **sold office premises on July 23, 1987**, which resulted in long-term capital gains of Rs. 24,05,050. **Prior to the sale she had entered into an agreement for purchase of a residential flat which agreement was dated September 4, 1985.** The agreement was for purchase of a flat for a total consideration of Rs. 12,26,751 On the date of the agreement of sale, the assessee paid a sum of Rs. 1,35,000 as earnest money. **This agreement was registered on October 27, 1985.**

The construction of the flat was finally completed in July, 1988. The assessee paid the consideration amount of Rs. 10,44,375 plus Rs. 47,376 on July 29, 1988, and she was put in possession of the said flat on July 30, 1988. The assessee claimed the benefit of exemption under section 54F of the Income-tax Act, 1961. She has accordingly been granted by the Tribunal exemption of Rs. 11,04,423 under section 54F of the Income-tax Act. The Department has made this application under section 54F of the Income-tax Act for raising the following question:

'Whether, on the facts and in the circumstances of the case, the **Tribunal was right in allowing exemption** of Rs. 11,04,423 under section 54F of the Income-tax Act, 1961, **considering the date of possession of the new residential premises instead of the date of sale agreement and the date of registration?**

2. Under section 54F of the Income-tax Act, in the case of an assessee if any capital gain arises from the transfer of any long-term capital asset, not being a residential house, and the assessee has, within a period of one year before or two years after the date on which the transfer took place, purchased a residential house, the capital gain shall be dealt with as provided in that section

As per the section certain exemption has to be allowed in respect of the capital gains to be calculated as set out therein.

The Department contends that the assessee did not purchase the residential house either one year prior to or two years after the sale of the capital asset which resulted in the long-term capital gains. According to the Department, the agreement for purchase of the new flat was entered into more than one year prior to the sale.

Hence, the petitioner is not entitled to the benefit under section 54F.

In our view, the Tribunal has rightly negatived this contention and has held that the new residential house had been purchased by the assessee within two years after the sale of the capital asset which resulted in long-term capital gains.

The Tribunal has held that the **relevant date in this connection is July 29, 1988, when the petitioner paid the full consideration amount on the flat becoming ready for occupation and obtained possession of the flat**.

This has been taken by the Tribunal as the date of purchase.

The Tribunal has looked at the substance of the transaction and come to the conclusion that the purchase was substantially effected when the agreement of purchase was carried out or completed by payment of full consideration on July 29, 1988, and handing over of possession of the flat on the next day."

8. Therefore, as can be seen from the above decision the question raised by the Revenue as to whether the Tribunal was right in allowing the exemption u/s 54 of the Act considering the date of possession of the new residential premises instead of date of the-sale agreement and the date of registration, has been held in favour of the assessee by rejecting appeal of the Revenue.

9. We also find that similar issue has been decided by **the Coordinate Bench in the case of *Bastimal K Jain* v. *ITO* in ITA.No.2896/Mum/2014** wherein the Coordinate Bench held as under:

"5. Before us the learned counsel for the assessee argued that the **assessee entered into an agreement with M/s. Sharpmind Developers on 28-12-2007.**

The flat intended to be purchased by the assessee was **not at all constructed on 28-12-2007** and though the agreement for purchase was entered into is just a right for purchase of flat in the proposed construction and **eventually property's possession was given to the assessee by the builder only on 11-09-2009 because the flat got ready and occupancy certificate was received by the builder from the BMC only on 31-3-2009.**

In such facts, the learned counsel for. the assessee stated that **acquisition of property is to be considered as and when the possession of the flat was given to the assessee by the builder and that date falls as on 11-9-2009.**

According to the learned counsel for the assessee the vital conditions of section 54 of the Act are fulfilled when the property's possession was handed over to the assessee by the builder on 11-9-2009 *i.e.* within the time limit prescribed u/s. 54 of the Act for claiming deduction u/s 54 of the Act.

We find from the arguments of the learned counsel for the assessee as well as the learned DR that these facts are undisputed.

The assessee from the very beginning has been claiming that the possession of the flat was handed over to the assessee only on 11-9-2009 and that date should be reckoned for the purpose of computation of claim of deduction u/s. 54F of the Act.

We find that the learned counsel for the assessee relied on the decision of this Tribunal in the case of **V M Dujodwala v. ITO 36 ITD 130 (Mum), wherein the Hon'ble Tribunal considered the facts of the case as under:**"

He submitted that the builder being out of fund and for such other reason, went on delaying the construction. Just to help the builder to fasten the construction, the payments were made in instalments much earlier to the actual possession of the property. This is very common in transaction in flats. **The construction was completed at a later date and on 24-11-79, the builder expressed his desire to offer the possession of the flat. That is the first date when the property, at best, can be said to be a purchase of residential property.**

He stressed that even after construction of the building, the flat is not immediately available for residence to the assessee unless it is cleared by the municipal/corporation authorities. Therefore, he submitted that only when the flat construction was completed and available for residence and was actually allotted by the builder to the buyer in compliance with the agreement of sale entered upon by the builder earlier, it could be taken as ready for occupation and that was the date material for the purpose of counting period of one year within the meaning of section 54 of the IT Act, 1961.

He finally submitted **that 9-4-1980, on which date the builder agreed to give possession of the flat would be taken as the date on which the assessee has purchased the property for the purpose of residence within the meaning of section 54 of the IT Act, 1961. Till such time, he had only the right to purchase house property, he added. He relied on the following decisions:-**

(1) CWT v. KB. Pradhan [1981] 130 ITR 393 (Ori.)

(2) K.P, Varghese v. ITO [1981] 131 ITR 597 (SC)

(3) CIT v. Mrs. Shahzada Begum [1988] 173 ITR 397/38 Taxman 31 (AP)

(4)Purushottam Govind Bhat v. First ITO [1985] 13 ITD 939 (Bom.)

(5) Damodar Raheja v. Eighth ITO [1984] 10 ITD 75 (Mad.).

And finally Tribunal decided the issue that in case the assessee is allowed possession of the property, only from that date the ownership is to be considered for the purpose of deduction u/s. 54 of the Act. Tribunal held as under:

"6. We have carefully gone through the facts of the case and the rival contentions. The question before us, though it is simple, raises problems of importance in metropolitan cities where there exists lot of problems for meeting basis human needs 'house'. Just to encourage assessee, section 54 is enacted to give relief of exemption from capital gains in the case of assessee selling existing residential units and acquiring any other residential unit. This has to be done within a period of one year either before or after the date of sale of the first house property. If that is done so, capital gains arising on transfer of the first house property will be exempt to the extent of investment in the second house property as stipulated in section 54. The flat in cities is the most common and a peculiar feature.

The builder has to take plans of construction in his own name and sometimes in the names of his vendors and start construction. He invites prospective customers, enters into agreement for sale of flats proposed to be constructed by him and at times, demands the payment of price in one or more instalment. He may sometimes to finance his own construction activity, gives discounts and accepts lesser payment. The price paid before construction is complete, will be different from the price demanded by the vendors after the flat is constructed. The buyers even after having the agreement for purchase of the flat cannot exercise any right of ownership or their right cannot be traced to any part of the construction till such time the builder actually gives the possession of a particular flat to the buyer.

After the completion of structure, it has to be inspected and cleared by the municipal authorities. Then the flat is ready for occupation which the builder normally intimates to the buyer. The buyer will then take possession and actually enjoy the house property to the exclusion of others. In this flat business, at times, the builder goes financially bad, and delays the construction. Against this background of flat transaction, we are now faced with the provisions of section 54 for granting exemption to the assessee, who at one time, enters into purchase and at other times, takes possession and starts actual enjoyment of the flat. At what point of time he became owner of the house property will decide the fate of his exemption.

7. In identical issue **in *Purushottam Govind Bhat's* case (*supra*)** the Tribunal held as under: The right the assessee has got is a peculiar type of right which certainly cannot be classified as ownership. To say, therefore, that the assessee has purchased the property would in law be erroneous. On the contrary, that the assessee has an interest in this flat as much as that of a full owner cannot be denied. The purpose of the assessee getting the flat allotted was to have the benefit of residential accommodation entirely in his control as if he was the full owner. Except, therefore, for a few technical requirements, the assessee can be said to be the full owner of the property. As a matter of fact if not in law, therefore, it would be correct to say that the assessee has purchased a residential property.

8. Left with the relevant date to decide in the facts of the case, the decision of the Tribunal in ***Purushottam Govind Bhat's*** **case (*supra*)** really comes to favour the assessee. In the said case, **the assessee joined the society in 1977**. **He was allotted a flat and occupied the same on 1-1-1980. The Tribunal held, joining the society and paying the amounts cannot really amount to purchase of a house. On the contrary, allotment of the flat would certainly give the assessee certain specific obligations and rights**. The manner in which the amounts are paid and the period over which they are paid may not be of much relevance. **Considering the peculiar circumstances of that case, it was held that the benefit of section 54 should be extended by taking the date of allotment and occupation as the relevant date of purchase**.

Following the said decision, we are inclined to hold that in this case also, the assessee has, though, entered into agreement for purchase of flat on 22-10-77, paid the money during 1977 to 1979, but the relevant date to be taken for the purpose of applying of section 54 should be the date on which the flat was ready for occupation by the assessee. Taking that date as the date of purchase, is within the period of one year and therefore the capital gains are clearly exempt from tax applying the provisions of section 54.“

6. The learned counsel for the assessee also relied on the decision **of Hon'ble Bombay High Court in the case of *CIT* v. *Smt Beena K Jain* 217 ITR 363 (Bom),** wherein the Hon'ble Bombay High Court has taken similar view by observing as under:

"2: Under section 54F of the Income-tax Act, in the case of an assessee if any capital gain arises from the transfer of any long-term capital asset, not being a residential house, and the assessee has, within a period of one year before or two years after the date on which the transfer took place, purchased a residential house, the capital gain shall be dealt with as provided in that section.

As per the section certain exemption has to be allowed in respect of the capital gains to be calculated as set out therein. The Department contends that the assessee did not purchase the residential house either one year prior to or two years after the sale of the capital asset which resulted in the long-term capital gains. According to the Department, the agreement for purchase of the new flat was entered into more than one year prior to the sale. Hence, the petitioner is not entitled to the benefit under section 54F.

In our view, the Tribunal has rightly negatived this contention and has held that the new residential house had been purchased by the assessee within two years after the sale of the capital asset which resulted in long-term capital gains.

The Tribunal has held that the relevant date in this connection is July 29, 1988, when the petitioner paid the full consideration amount on the flat becoming ready for occupation and obtained possession of the flat.

This has been taken by the Tribunal as the date of purchase. The Tribunal has looked at the substance of the transaction and come to the conclusion that the purchase was substantially effected when the agreement of purchase was carried out or completed by payment of full consideration on July 29, 1988, and handing over of possession of the flat on the next day."

7. On the other hand, the learned senior DR relied on the decision of Hon'ble Gujarat High Court in the case of *CIT* v. *Jindas Panchand Gandhi* [2005] 279 ITR 552 (Guj) wherein, the issue was regarding the claim of deduction u/s. 80T and also whether the asset is a Long term or Short term, not the claim of deduction u/s. 54 of the Act.

8. In such circumstances and in the given facts of the case and also the case law relied on by learned Counsel for assessee in the case of V M Dujodwala (supra) coordinate bench of this Tribunal and also of Hon'ble Bombay High Court in the case of Smt. Beena K Jain, supra, we are of the view that the assessee's claim of deduction u/s. 54 of the Act is to be reckoned from the date of handing over of the possession of the flat by the builder to the assessee i.e. 11-9-2009, and if we take that date, the assessee is entitled to deduction u/s 54 of the Act because the assessee has sold his residential flat on 24-2-2010. We allow the assessee's claim and order accordingly.

10. **Therefore, respectfully following the above decision of the Hon'ble Jurisdictional High Court and the Coordinate Bench, we hold that the date of final occupation of the property should be considered for calculation the period of eligibility for deduction u/s 54 of the Act. If the date of possession *i.e.* March 2009 is taken as date of purchase of new flat as contended by the assessee in its case the assessee is entitled to deduction u/s 54 of the Act as assessee has sold residential flat on 11-9-2009 and satisfied the requirement to purchase the new residential property within the period of one year before the date of transfer of the asset sold. Thus, we allow the claim of the assessee for deduction u/s 54 of the Act.**

11. In the result the appeal of the assessee is allowed.

ISSUE – 21

Section 2(47)(vi) r.w.s 54F

IN THE ITAT CHENNAI BENCH 'A' N. Ramaswamy v. Income Tax Officer, non-Corporate Ward 2(3), Chennai [2020] 113 taxmann.com 289 (Chennai - Trib.)

6. A bare reading of Section 2(47)(*vi*) of the Act shows that the agreement or arrangement which has the effect of transferring or enabling the enjoyment of immovable property, has to be considered as transfer in relation to capital asset. In this case, there was a perpetual lease agreement for unlimited period. The assessee was in possession of residential house. Therefore, this Tribunal is of the considered opinion that in view of the definition found in Section 2(47)(*vi*) of the Act, the transaction of perpetual lease agreement by which the assessee took possession of property for unlimited period, has to be construed as purchase of property within the meaning of Section 54F of the Act.

7. Furthermore, Section 269UA(2)(*iii*)(*f*) of the Act clearly says that any lease for a term of not less than twelve years and includes holding possession of such property thereby taken, has to be construed as transfer. Of course, this is in the context of purchase of property by Central Government in the case of transfer.

In other words, Section 269UA(2)(*iii*)(*f*) also defines transfer which includes lease for a term not less than twelve years. In this case, admittedly, the lease was not for less than twelve years. Hence, for all practical purposes, the acquisition of property by perpetual lease exceeding the period of twelve years, has to be construed as purchase within the meaning of Section 54F of the Act.

In view of the scheme under the provisions of the Income-tax Act, as enunciated under Section 2(47)(*vi*) and Section 269UA(2)(*iii*)(*f*), this Tribunal is of the considered opinion that when the assessee acquired the residential house by means of perpetual lease exceeding twelve years, it has to be construed as acquisition of property / purchase of property within the meaning of Section 54F of the Act.

Therefore, the assessee is entitled for exemption under Section 54F of the Act. Hence, this Tribunal is unable to uphold the order of the Principal Commissioner passed under Section 263 of the Act. Accordingly, the impugned order of the Principal Commissioner is quashed.

ISSUE – 22

Claim of 54F on flats received on re-development

IN THE ITAT MUMBAI BENCH 'G' Satish S. Prabhu v. Assistant Commissioner of Income-tax Circle-27(3), Mumbai [2020] 114 taxmann.com 88 (Mumbai - Trib.)

6. We have considered rival submissions and perused the material on record. Undisputed facts are, the assessee was the owner of two flats in a housing society. One flat was purchased by the assessee himself, whereas, the other one was inherited from his father.

Subsequently, the assessee had entered into a development agreement with housing society and the developer and in terms of the said agreement, the assessee surrendered two flats owned by him and in lieu of these two flats received two new flats from the developer.

As regards the flat purchased by the assessee himself and the new flat received against that, the Assessing Officer has allowed assessee's claim of deduction under section 54 of the Act.

The dispute is only with regard to the second flat inherited from his father. As transpires from the record, in the return of income the assessee neither offered the capital gain from the second flat nor claimed any deduction under section 54/54F of the Act. In the course of assessment proceedings, through a letter submitted before the Assessing Officer the assessee offered capital gain in respect of second flat and claimed deduction under section 54F of the Act.

The Assessing Officer has disallowed the deduction claimed primarily for two reasons; firstly, the claim was not made either in the original return of income or by way of a revised return of income.

Secondly; the flat transferred being a residential property, no deduction under section 54F of the Act can be allowed.

Whereas, learned Commissioner (Appeals) has sustained the said disallowance on the reasoning that the assessee has suppressed the ownership of the second flat and the resultant capital gain and further, the flat sold being a residential property, deduction under section 54F of the Act cannot be allowed.

Thus, from the aforesaid facts, it is clear that the assessee has transferred two flats and in lieu of those two flats has received two new flats on re-development. Merely because the assessee did not offer or disclose the capital gain from the second flat in the return of income would not disentitle him from availing the statutory deduction if otherwise he is entitled to it.

Therefore, we are unable to accept the reasoning of learned Commissioner (Appeals) that since the assessee did not disclose the ownership of the second flat, he will not be entitled to deduction under section 54F of the Act.

As regards the second aspect of the issue, whether the assessee is entitled to claim deduction under section 54 or 54F of the Act, from the facts on record it is clear that according to the Departmental Authorities, the flat transferred being a residential property, the assessee can claim deduction only under section 54 of the Act.

If that is the case, the deduction claimed by the assessee should have been allowed under the correct provision. Merely because the assessee has claimed deduction under section 54F of the Act, by treating the flat as a commercial property, assessee's claim of deduction under section 54 of the Act cannot be disallowed if the assessee fulfills the conditions of section 54 of the Act.

In the facts of the present case, the Departmental Authorities have no doubt that the flat transferred by the assessee is a residential flat and on re-development the assessee has also received a residential flat.

That being the case, the assessee is certainly entitled for deduction under section 54 of the Act. Merely because the assessee claimed a deduction under the wrong provision, his claim cannot be disallowed if it is allowable under a different provision.

In view of the aforesaid, while admitting the additional ground raised by the assessee being purely a legal ground which can be decided without requiring investigation into fresh facts, we direct the Assessing Officer to allow assessee's claim of deduction under section 54 of the Act in respect of the second flat.

Additional grounds are allowed. Consequently, the ground raised by the assessee claiming deduction under section 54F of the Act having become redundant is dismissed.

Jitender Kumar Madan vs Income Tax officer Ward 19(1)(3) ITA No: 6921 / Mum / 2010 dated 11.04.2012 (ITAT Mum) / 21 taxmann.com 316 (Mum.)]

Does exchange of old flat with a new flat under a development agreement amounts to construction of new flat for purpose of claiming deduction under section 54?

Exchange of old flat with a new flat to be constructed by the builder under development agreement amounts to transfer under section 2(47) of the Income Tax Act, 1961. The acquisition of a new flat under a development agreement in exchange of the old flat amounts to construction of new flat. The provisions of section 54 are applicable and assessee is entitled to exemption if the new flat had been constructed within a period of 3 years from the date of transfer.

Income Tax officer Ward -1 vs. Abbas Ali Shiraz (2006) 5 SOT 422 (Bang)

ITAT Bangalore Bench "A" SMC

6. I have heard the rival submissions and perused the records. On consideration of facts of the case, it becomes clear that the Assessing Officer has based his estimate on the common general observations that does not take into consideration the specifics of the matter. Such issues require specific and analytical consideration of facts with an expertise in the matter.

The Assessing Officer could have made it a case for reference to Valuation Officer within the meaning and scope of section 55A of the Act. This has not been done. There is no material fact to disprove the value of cost of acquisition adopted by the assessee. No specific rebuttal of the reasons given by the assessee has also been made.

Under the circumstances, there does not seem to be any reason to substitute one estimate with that of another. As such, the cost of acquisition and value as taken by the assessee as on 1-4-1981 has to be adopted for calculation of the long-term capital gain.

7. Now coming to the benefit under section 54 of the Act, a cursory perusal of the section makes it clear that capital gain arising from the transfer of a house property is exempt from tax provided the following conditions are satisfied :

(*a*)The house property is a residential house whose income is taxable under the head 'Income from house property' as transferred by an individual or an HUF;

(*b*)The house property (may be self-occupied or let out) is a long-term capital asset;

(*c*)The assessee has purchased a residential house within a period of one year before the transfer or within two years after the date of transfer or has constructed a residential house property within a period of three years after the date of transfer.

That the assessee fulfils the precondition mentioned at point Nos. (*a*) and (*b*) above is not in doubt. The Assessing Officer also has mentioned in the assessment order that the property was let out.

This is also not a dispute that the assessee had purchased the new residential house by way of construction and not by way of outright purchase.

This is because it is clear from the agreement with the developer that the developer would construct the residential apartments on the property alienated by the assessee to the developer and handover the residential apartments to the assessee in consideration of the sale of earlier residential property.

This fact is clear and unambiguous. Therefore, to say that the assessee's case falls for the requirement of acquisition of new residential property within two years is contrary to the requirements and conditions envisaged under section 54 of the Act. It is noteworthy that as per the developer's agreement, the assessee is also a party to the development of the said property into a residential apartment complex with the developer on joint development basis. Therefore, under the circumstances, it would be proper to consider the period of three years for the applicability of section 54 of the Act in the case of the assessee which the assessee has fulfilled. Therefore, the benefit of section 54 is allowed to the assessee. It is ordered accordingly.

In the result, the appeal filed by the revenue is dismissed.

ISSUE – 23

ABSENCE OF OC

IN THE ITAT BANGALORE BENCH 'A' Estate of Late Dr. S. Zakaulla Masood v. Income Tax Officer, Ward 1(5)(4), Bangalore [2020] 122 taxmann.com 214 (Bangalore - Trib.)

11. In the present case, we are satisfied on the basis of evidence produced by the assessee that a building had come up over the site purchased by assessee and the purchase of site and cost of construction was much more than the capital gain arrived at by the assessee on sale of ancestral house.

The CIT(Appeals) has gone by the fact that there was absence of Occupation Certificate. In our opinion, this will not be a ground to deny the claim of assessee for deduction u/s. 54 of the Act, as other evidence filed by the assessee sufficiently demonstrates that assessee has constructed a residential house within the period of stipulated by law.

The findings of the CIT(Appeals) in this regard are very vague and cannot be the basis to deny the claim of assessee for deduction u/s. 54 of the Act. We therefore hold that assessee is entitled to deduction u/s. 54 of the Act and consequently no long term capital gain is eligible to tax. The addition is deleted.

ISSUE – 24

Whether the deemed cost of new asset means the amount which has already been utilized by assessee for purchase or construction of new asset or it also includes the amount deposited as per requirements of sub-section (4) of section 54F?

[ACIT v. Vikas Singh 16 taxmann.com 127 (Delhi) [2011]]

Whether the deemed cost of new asset means the amount which has already been utilized by assessee for purchase or construction of new asset or it also includes the amount deposited as per requirements of sub-section (4) of section 54F?

For purposes of sec 54F, deemed cost of new asset is amount which has already been utilized by assessee for purchase or construction of new asset plus amount deposited as per Capital gain account scheme, 1988.

ISSUE -25

Cost of residential house purchased is entire cost of house, hence where there were separate agreements for sale of house and sale of furniture, assessee's claim for deduction under section 54 would be allowable in entirety.

Order of the Ahmedabad Bench of ITAT in the case of Rajat B. Mehta v. ITO (International Taxation)[2018] 90 taxmann.com 176.

Cost of residential house purchased is entire cost of house, hence where there were separate agreements for sale of house and sale of furniture, assessee's claim for deduction under section 54 would be allowable in entirety

7. However, the ITAT Ahmedabad Bench in the case of *Rajat B. Mehta* (*supra*) has held that cost of residential house purchased is entire cost of house, hence where there were separate agreements for sale of house and sale of furniture, assessee's claim for deduction under section 54 would be allowable in entirety.

In this case the assessee a non-resident Indian sold his property at Vadodara and invested Rs. 78 lakhs in another property and claimed deduction under section 54. The Assessing Officer noticed that the assessee had entered into two separate contracts, though on the same date, one for Rs. 60 lakhs for purchase of house property and the other one for Rs. 18 lakhs for purchase of furniture and fixtures in the said property. The Assessing Officer, thus, formed the view that expenses incurred on buying furniture could not be said to be expenses incurred for making the house habitable and, therefore, declined deduction under section 54 of the Act to the extent of Rs. 18 lakhs being the amount paid under separate agreement for furniture and fixtures in residential property purchased by the assessee.

The Tribunal answered the following two questions formulated, in the facts and circumstances of the case, in favour of the assessee.

(a) Whether cost of residential house is entire cost of house, and it cannot be open to the Assessing Officer to treat only cost of civil construction as cost of the house and segregate cost of other things as not eligible for deduction under section 54 of the Act?

(b) Whether even if the assessee were to buy the house, without any furniture, consideration would have been the same, therefore two agreements could not be considered in isolation and splitting of consideration was only an artificial arrangement?

The assessee's claim of deduction under section 54 for investing capital gains in residential house along with furniture and fixtures during relevant year was thus allowed in entirety.

The Tribunal listed out the entire items of furniture sold through the second contract of sale and also noted at para 8 of its order that "the learned Departmental Representative, was fair enough in not really being very aggressive in disputing our perspectives on the artificial splitting of contracts". Though the Assessing Officer was of the opinion that clearly "the assessee has executed the separate deed (for sale of furniture and fixtures etc) to save stamp duty on it, (and) now the assessee is trying to evade income tax" the following observations made by the Tribunal at para 8 of its order clinched the issue in favour of the assessee in getting deduction on Rs. 18 lakhs which was denied by the lower authorities.

"Here is an NRI who decided to sell a fairly spacious house in his hometown, and yet, to keep his India connection alive, invested a part of these sale proceeds in a smaller residential unit, but he has been declined the legitimate deduction under section 54 in respect of the same, only for the reason, as the circumstances suggest, that he is made an unwilling party to artificially splitting of sale consideration to minimise the capital gains burden of the seller."

Moreover, the case pertained to section 54 benefit/claim made by the assessee on purchase of a residential property consequent to the sale of old residential property and the issue did not pertain to taxability of capital gains in the hands of the seller. The additional facts that worked out in favour of the assessee were that he was an NRI and that neither cash payment was made nor cash deposit was found in the books of the NRI.

ISSUES ON SECTION 54EC

ISSUE – 26

Where the minor has transferred an asset, will the exemption under section 54F/54EC be allowed to the minor or the parent.

[ACIT vs Madan Lal Bassi [2004] 88 ITD 557 (CHD.)]

Where the minor has transferred an asset, will the exemption under section 54F/54EC be allowed to the minor or the parent.

Provisions of section 64(1A) i.e. clubbing of income of the minor with the income of the parent have to applied in the end after computing income of minor under Income Tax Act. Where proceedings under Act for assessment of income of a minor child are required to be taken, minor child can be treated as an assessee under section 2(7) for purposes of section 54F. Benefit under section 54F cannot be denied to minor child on ground that father of minor child has a residential house at time of transfer of capital asset.

[DCIT vs Rajeev Goyal [2012] 22 taxmann. com 34 (Kol.-ITAT)]

In case of clubbing of income of minor child, deduction under section 54EC is to be allowed on minors' income from LTCG separately and only net income is to be clubbed.

ISSUE – 27

What is the date of investment in respect of section 54EC?

[Hindustan Unilever Ltd. v. DCIT 191 Taxman 119 (Bom) [2010]]

What is the date of investment in respect of section 54EC?

For the purposes of the provisions of Section 54EC, the date of investment by assessee must be regarded as date on which payment was made and received by the National Housing Bank.

ISSUE – 28

Whether the benefit under section 54EC could be availed where bonds are purchased in joint name?

[DIT vs Mrs. Jennifer Bhide 15 taxmann.com 82 (Kar.) [2011]]

Whether the benefit under section 54EC could be availed where bonds are purchased in joint name?

Merely because bonds are in joint name, assessee could not be denied benefit of deduction u/s 54EC. As far as it is established that the complete consideration has flown from the assesse, the benefit could not be denied on this ground.

ISSUE – 29

Can exemption under Section 54EC be claimed where REC Bond were purchased prior to date of sale of property?

[Smt. Dakshaben R. Patel vs ACIT [2012] 22 taxmann.com 237 (Ahd.-ITAT)]

Can exemption under Section 54EC be claimed where REC Bond were purchased prior to date of sale of property?

Section 54EC clearly states that the investment in specified bonds is to be made “within a period 6 months after the date of such transfer”, the intention of the legislature is clear. Had the legislature wanted to give liberty to the assessee to invest before or after the date of transfer, they would have explicitly said so, as has been provided in section 54 & 54F of the Act. Since such specific words are not used in section 54EC, deduction cannot be allowed to the assessee.

ISSUE – 30

Whether the benefit under section 54EC and 54F can be taken simultaneously?

Whether the benefit under section 54EC and 54F can be taken simultaneously?

Deduction under section 54EC cannot be denied on ground that assessee has availed exemption under section 54F also in respect of a part of capital gains.

[ACIT vs Deepak S. Bheda[2012] 23 taxmann.com 159 (Mum.)]

Thanks to my computer operators

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