Controversies

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Can construction of a Residential House commence before the date of transfer of old property for the purpose of exemption u/s. 54/54F?

Issue:

For the purpose of claiming exemption u/s. 54/54F Long term Capital Gain is required to be invested in acquiring a new Residential House. These sections require that Long term Capital Gain can be invested in purchasing a new residential house within a period of one year before the date of transfer or within two years after the date of transfer. It is also provided that the long term capital gain can be invested in construction of a new residential house within three years after the date of transfer. Question arises whether in respect of construction of a new residential house, construction can commence before the date of transfer? Section mandates that the construction should be done within three years after the date of transfer and hence, if construction starts before the date of transfer then the exemption u/s. 54/54F may not available. Needless to say that if the entire capital gain is invested then the same will be exempt u/s. 54/54F.

Proposition:-

It is submitted that we must make note of two situations:

1. The construction of the new house commences before the date of transfer but is completed within the stipulated period after the date of transfer.
2. The construction of the new house is completed before the date of transfer.

The date of commencement of construction of the new house is immaterial. If the assessee has constructed the new house within the stipulated period from the date of transfer of old building. He is entitled to claim exemption u/s. 54/54F.

"It is proposed that section 54/54F if read carefully states that the assessee, being an individual or Hindu Undivided Family, could claim benefit under the said section provided the assessee had within a period of three years after the date of sale of the original asset, constructed a residential house. It is not stipulated or indicated in the section that the construction must begin after that date of sale of the original/old asset."

View against the Proposition:-

When the construction of new house is completed before the transfer of old house then the assessee is not entitled to deduction u/s. 54/54F of the Act it was held by the Gujarat High Court in the case of *Smt. Shantaben P. Gandhi Vs. CIT (1981) 129 ITR 218 /16 Taxmann 356. The ITAT Delhi Bench in the case of Jt. CIT Vs. Rajkumar Aggarwala & Sons (2005) 95 TTJ 315* following the decision of the Gujarat High Court in the case of Smt. Shantaben P. Gandhi (supra) and distinguishing the decision of the Karnataka High Court in the case of Subramanya Bhat (supra) held that the assessee was not entitled to get the benefit of exemption u/s. 54 of the Act if he had completed the construction of the new house before the transfer the old house.

It is further submitted that even if construction starts before the sale of old residential house and is completed after the sale of old residential house the exemption to the extent of investment before the sale of old residential house is not available for exemption. *The Hydrabad Bench of the ITAT in the case of Smt. Nimmagadda Sridevi V. Sy. CIT (2013) 33 taxmann.com 306/58 SOT 54* has held that investment in new residential property made by assessee is not entitled to deduction u/s. 54F to the extent of investment in the residential property following the decision of the Tribunal in the case of *Chandru L. Raheja Vs. Third ITO (1988) 27 ITD 551 (Bom.).*

View in favour of the Proposition:-

Let me refer to the landmark decision of Karnataka High court in the case of *CIT Vs. J.R. Subramanya*

Bhat (1987) 165 ITR 571. The assessee was the owner of a residential building which was partly let out and partly owner occupied. The assessee sold the building in February, 1977 but started construction of a new building in March 1976 itself and claimed exemption u/s. 54 of the Act. The building was completed in March 1977 after the sale of the old building in February 1977. One of the grounds on which the claim made u/s. 54 of the Act was rejected by the Assessing Officer was that the construction of the new building had commenced earlier than the sale of the old building. The Tribunal allowed the appeal of the assessee by holding that, though the commencement of the new building was completed in March, 1977, which was within the two years' period contemplated u/s. 54 of the Act. The stipulated period, as per the provisions of section 54 stood then, was two years as against three years now for construction of property. The High Court, on reference u/s. 256(2) of the Act, held that "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 the sale of the old building, he was entitled to relief u/s. 54. On the basis of evidence on record, the conclusion of the Tribunal was not unreasonable. Therefore, the assessee was entitled to relief u/s. 54.

Let me now refer to the decision in the case of *Dy. CIT V. Radhakant M. Tripathy (IT Appeal No. 136 (AHD.) of 2011, dated 21st Feb. 2014)*. The Ahmedabad Bench of ITAT in this case, following precedents on this issue, has held that payment made towards purchase of land and construction within 1 year prior to date of sale of old capital asset was eligible for exemption u/s. 54F of the Act. In this case the assessee sold a plot on 26th March, 2007 for a sum of Rs. 60 lakhs and earned capital gain of Rs. 44,99,597/-. The assessee made a total payment of Rs. 34.50 lakhs from 27th March, 2006 to 24th June, 2007 and claimed exemption u/s. 54F of the Act to the tune of Rs. 27,02,268/- as per proportionate deduction allowable under this section. The AO, on noticing that the aforesaid investment of Rs. 34.50 lakhs included a sum of Rs. 17.50 lakhs made prior to the date of transfer of property, restricted the exemption accordingly. On appeal by the assessee the commissioner of Income Tax (Appeals) through an elaborate order, after referring to precedents, allowed the appeal of the assessee. The appeal preferred by the Revenue was dismissed by the Tribunal after fully analyzing the facts of the case by observing that "the Revenue could not bring any contrary material on record to controvert the findings of CIT (A)."

Summation:-

In my opinion, if the construction of a new house is completed before transfer of old house then assessee is not entitled to deduction u/s. 54/54F. However, if the construction of new house starts before transfer of old house but is completed after the transfer of old house then assessee is entitled to deduction of u/s. 54/54F. Let me refer to the decision of Sandeep Khosla Vs. CIT (IT Appeal No. 509 (Bang) of 2013 dated 8th August, 2014. The assessee in this case sold a plot on 26th September, 2007, but had obtained plan approval for construction of new capital asset (residential house) on 3rd August, 2005 and started construction in the first quarter of the F.Y. 2006-07, i.e. 11/2 year prior to sale of the old capital asset. The AO held that as the construction had started prior to sale of plot-old capital asset the assessee was not eligible for necessary exemption u/s. 54F of the Act. The commissioner of Income Tax (Appeals) concurred with the view of the AO in denying exemption u/s. 54F of the Act. On appeal preferred by the assessee, reliance was placed by him on the decision of the Jurisdictional High Court in the case of J.R. Subramanya Bhat (supra) for the proposition that the date of commencement of construction was not relevant, as the law has stipulated only the time limit for completion of construction. The Tribunal after noticing the fact about the commencement of construction of the house 11/2 year prior to the date of sale, concurred with the argument put forth on behalf of the assessee that the date of commencement of construction was not relevant as the law has stipulated only the time limit for completion of construction and allowed the appeal of the assessee with a direction to the AO to verify date of completion of construction within the stipulated time.

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3. Position limits for cross-currency futures and options contracts (not involving indian rupee) on exchanges in International Financial Services Centres (IFSC):

The SEBI has fixed the positions limits for cross currency futures and options contracts on exchange in IFSC. The position limits for eligible market participants, per currency pair per stock exchange, shall be as follows:-

a. Trading Members (positions on proprietary basis as well as clients' position) – Gross open position across all contracts not to exceed 15% of the total open interest or USD 1 billion equivalent, whichever is higher.

b. Institutional Investors – Gross open position across all contracts not to exceed 15% of the total open interest or USD 1 billion equivalent, whichever is higher.

c. Eligible Foreign Investors – Gross open position across all contracts not to exceed 15% of the total open interest or USD 1 billion equivalent, whichever is higher.

d. Other Clients – Gross open position across all contracts not to exceed 6% of the total open interest or USD 100 million equivalent, whichever is higher.

Appropriate penalties shall be imposed by stock exchanges for violation of position limits by eligible market participants.

[SEBI/HO/MRD/DRMNP/CIR/P/2017/43 dated 17.05.2017]

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Let me now refer to important decision of the Delhi High court explaining the term "Construction". In the case *of CIT v. Ashok Kumar Ralhan (2014) 46 Taxmann.com 416/224 Taxman 137 (Mag.)/360 ITR 575 (Delhi),* the assessee had sold a property in Oct. 2006 and declared capital gains of Rs. 51,71,994/-. He had purchased a property in December, 2004 on construction of which he claimed benefit u/s. 54F of the Act.

The AO denied benefit u/s. 54F of the Act to the assessee on the ground that there was no need for the assessee either to reconstruct or to renovate the purchased property as it was already fully constructed. The Commissioner of Income Tax (Appeals), relying on certificate issued by the architect who had stated that the earlier structure was demolished and thereafter, new construction was made on the plot, held that it was a case of new construction after demolition and therefore, the assessee was entitled to exemption u/s. 54F of the Act. When the issue ultimately reached the Delhi High court it made the following observations at para.7of its judgment

"The Word "construction" in Black's Law Dictionary, 6th Edition at page 312 has been defined to mean to build; erect; put together; make ready for use. The word "construct" is distinguishable from maintenance, which means to keep up, to keep from change, to preserve. The word "construction" for the purpose of the section has to be given realistic, practical and a pragmatic meaning, keeping in mind the object and purpose of the provision. Section 54F is a beneficial provision as an earlier capital asset, which is sold, is replaced by a new capital asset in the form of a residential house, which should be purchased or constructed within the time period stipulated.

The Delhi High court ultimately held in favour of the assessee by dismissing the appeal preferred by the Revenue.

In this case the new capital asset was purchased 22 months prior to sale of old capital asset.

It is clear from the detailed discussion above that period of investment prior to sale of asset has no relevance in determining total investment made prior to date of sale of capital asset, though it has to be ensured that construction is not complete before sale of old capital asset.

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