



## **Global Employer Services Alert**

Harmonizing global & local perspectives

**Commencement of property construction prior to transfer of original asset not an impediment for capital gain exemption, says Delhi Tribunal**

**Issue no:** GES/06/2018

**In this issue:**

[Facts](#)

[Issue before the Tribunal](#)

[Ruling of the Tribunal](#)

[Comments](#)

[Do you know about Dbriefs?](#)

[Contacts](#)

## Facts

- Tarun Jalali ("the tax payer") entered into a transaction of sale of house property owned by him vide agreement to sale dated 30.09.2010.
- He had acquired a new residential house property through sale cum construction agreement dated 20.11.2007 and sale deed dated 20.04.2011.
- The construction of the new property was commenced prior to the sale of old property and completed within a period of three years from the date of sale.
- The tax payer claimed exemption under Section 54 of the Income Tax Act, 1961 ("Act") for investment made in new residential house since construction was completed within three years and start of construction prior to the date of sale of old property was immaterial.
- The Assessing Officer ("AO") rejected the exemption claim on the ground that no allotment or agreement was made within one year from the date of sale of old property and no substantial payments were made towards the cost of new asset during the year under consideration.
- Aggrieved by this order, the tax payer filed an appeal before the Commissioner of Income-Tax (Appeals) ("CIT (A)"). The CIT (A) partly allowed the appeal by relying on the judgement of the Allahabad High Court in case of H. K. Kapur. It held that the tax payer was entitled to the benefit of section 54 of the Act.
- However, the CIT (A) also noted that the unutilised capital gain amount up to the due date of filing of return was not deposited in the notified capital gain account scheme. Hence, the CIT(A) allowed exemption under Section 54 only for amounts appropriated towards construction of new flat after the date of transfer of old asset.
- Aggrieved by the CIT (A)'s order, the tax payer filed an appeal before the Income-Tax Appellate Tribunal, New Delhi ("the Tribunal").

## Issue before the Tribunal

- Is the amount invested in construction of new residential house prior to date of sale of old property eligible for exemption under Section 54?

## Ruling of the Tribunal

- The ratio laid down by Delhi High Court in case of CIT vs. Bharti Mishra and Karnataka High Court in case of CIT vs. J.R. Subramanya Bhat would apply to the instant case.
- The Delhi High Court in case of Bharti Mishra held that section 54F prescribes appropriation of sale consideration within one year before the date of transfer of original asset, two years from the date of transfer or construction of new property within three years from the date of transfer. However, the Act does not prescribe

any condition as to the date of commencement of construction of house property which may be commenced even before the date of transfer of original asset.

- In case of CIT vs. J.R. Subramanya Bhat, Karnataka High Court held that investment made towards construction of house property prior to the date of transfer should also be eligible as deduction for the purpose of Section 54.
- Following the aforesaid ratio, the tax payer is eligible for exemption in respect of investment made in construction of new property prior to the date of transfer of old house since the construction of new house was completed within three years from the date of transfer.

## Comments

Through this decision, the Tribunal has followed the principles laid down by the various High Courts on the issue of capital gain exemption thereby ensuring consistency across jurisdictions and time periods.

### Source

Tarun Jalali vs. DDIT, New Delhi [2018] ITA No. 2376/Del/2014 (Delhi Tribunal)

*References in the above decision:*

Delhi High Court in case of CIT(A) vs. Bharti Mishra 265 CTR 374

Karnataka High Court in case of CIT vs. J.R. Subramanya Bhat 165 ITR 571

Allahabad High Court in case of H. K. Kapur 234 ITR 753

## Do you know about Dbriefs?

Dbriefs are live webcasts that give valuable insights on important developments affecting your business. To register, visit the [Dbriefs](#) page



Download the report



## Contacts

### Ahmedabad

19<sup>th</sup> Floor, Shapath - V  
SG Highway,  
Ahmedabad – 380 015.  
Tel: + 91 (079) 6682 7300  
Fax: + 91 (079) 6682 7400

### Coimbatore

Shanmugha Manram  
41, Race Course,  
Coimbatore  
Tamil Nadu - 641018  
Tel: + 91 (0422) 439 2801  
Fax: +91 (0422) 222 3615

### Kolkata

Bengal Intelligent Park Building  
Alpha, 1st floor, Block EP and GP  
Sector V, Salt Lake Electronics  
Complex,  
Kolkata - 700 091.  
Tel : + 91 (033) 6612 1000  
Fax : + 91 (033) 6612 1001

### Bangalore

19th Floor, 46 - Prestige Trade  
Tower, Palace Road, High Grounds,  
Bengaluru,  
Karnataka – 560001.  
Tel: +91 (079) 6627 6000  
Fax: +91 (080) 6627 6010

### Delhi/Gurgaon

Building 10,  
Tower B, 7th Floor,  
DLF Cyber City,  
Gurgaon 122 002  
Tel : +91 (0124) 679 2000  
Fax : + 91 (0124) 679 2012

### Mumbai

Indiabulls Finance Centre,  
Tower 3, 28th Floor,  
Elphinstone Mill Compound,  
Senapati Bapat Marg, Elphinstone  
(W),  
Mumbai – 400013  
Tel: + 91 (022) 6185 4000  
Fax: + 91 (022) 6185 4101

### Chennai

No.52, Venkatanarayana Road,  
7th Floor, ASV N Ramana Tower,  
T-Nagar,  
Chennai 600 017.  
Tel: +91 (044) 6688 5000  
Fax: +91 (044) 6688 5050

### Hyderabad

KRB Towers, Plot No. 1-4,  
Survey No. 65 to 67,  
1st -3rd Floor  
Madhapur, Serilingampally(M),  
RR District, Hyderabad.  
Tel: +91 (040) 6603 2600  
Fax: +91 (040) 6603 2714

### Pune

106, B-Wing, 7<sup>th</sup> Floor,  
ICC Trade Tower,  
Senapati Bapat Road,  
Pune – 411 016.  
Tel: + 91 (020) 6624 4600  
Fax: +91 (020) 6624 4605



Deloitte makes an impact that matters

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) for a more detailed description of DTTL and its member firms.

This material and the information contained herein prepared by Deloitte Touche Tohmatsu India LLP (DTTI LLP) is intended to provide general information on a particular subject or subjects and is not an exhaustive treatment of such subject(s). This material contains information sourced from third party sites (external sites). DTTL LLP is not responsible for any loss whatsoever caused due to reliance placed on information sourced from such external sites. None of DTTI LLP, Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this material, rendering professional advice or services. This information is not intended to be relied upon as the sole basis for any decision which may affect you or your business. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.

No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this material.

©2018 Deloitte Touche Tohmatsu India LLP. Member of Deloitte Touche Tohmatsu Limited