



Tax alert: Deduction for investment in residential house available to co-owner of more than one residential house

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The Mumbai Bench of the Income-tax Appellate Tribunal, based on facts of the case, has held that joint ownership of two residential properties at the time of sale of original asset, would not deprive the taxpayer from claiming deduction from capital gains under section 54F of the Income-tax Act, 1961.

In a nutshell



The rejection of the claim for exemption would arise only if the property is in the name of the taxpayer, namely the individual or HUF.



Unless there is material to show that the taxpayer is the exclusive owner of the residential property, the absolute effect of the proviso could not be applied. Hence, the joint ownership of the property would not stand in the way of claiming exemption under section 54F of the Income-tax Act, 1961.



If two reasonable constructs of a taxing provision are possible, that construct which favours the taxpayer, is to be adopted.



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Background:

- The taxpayer¹, an individual, during the Financial Year (FY) 2012-13, corresponding to Assessment Year (AY) 2013-14, sold agricultural land and earned long-term capital gains (LTCG).
- The taxpayer deposited the capital gains consideration in the capital gains account scheme and claimed deduction under section 54F of the Income-tax Act, 1961 (ITA) [relating to capital gains on transfer of certain capital assets not to be charged in case of investment in residential house] in respect of the investment in a new residential flat.
- During audit proceedings, the Assessing Officer (AO) held that the taxpayer's claim of deduction under section 54F of the ITA was not allowable, as she was the owner of more than one residential house [i.e., the taxpayer had two residential properties, jointly owned with her husband and HUF² of her father] at the time of the sale of the original asset. Accordingly, the AO by placing reliance on an earlier ruling³, disallowed the claim of deduction under section 54F of the ITA.
- Aggrieved, the taxpayer filed an appeal and in the course of appellate proceedings, the matter reached the Mumbai Bench of the Income-tax Appellate Tribunal (ITAT).

Relevant provisions in brief:

Relevant extract of section 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;...

...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".”

Decision of the ITAT:

The ITAT noted that the issue for consideration was whether joint ownership of more than one residential house would deprive the taxpayer from claiming deduction under section 54F of the ITA. In this regard, the ITAT noted

¹ Shweta Singh v. ITO [2024] 161 taxmann.com 302 (Mumbai ITAT)

² Hindu Undivided Family

³ CIT v. M.J. Siwani [2014] 46 taxmann.com 170 (Karnataka HC)

/observed the following:

- The Madras High Court (HC), in an earlier ruling⁴, had held that merely because the taxpayer jointly owned another property on the date of transfer of the asset, its claim for deduction under section 54F of the ITA could not be rejected in respect of capital gains earned from transfer of original asset. This was based on the following observations:
 - The rejection of the claim for exemption would arise if only the property stands in the name of the taxpayer, namely, individual or HUF.
 - Unless and until there were materials to show that the taxpayer was the exclusive owner of the residential property, the absolute effect of the proviso could not be applied. Hence, the joint ownership of the property would not stand in the way of claiming exemption under section 54F of the ITA.
- Further, the above ruling of the Madras HC was followed by the Surat and Mumbai Bench of the ITAT in other rulings⁵, which allowed the claim of deduction of the payer under section 54F of the ITA. These rulings:
 - Had considered the ruling of the Karnataka HC⁶ relied upon by the Revenue and the ruling of the Madras HC⁷ relied upon by the taxpayer.
 - Followed the principle that if two reasonable constructs of a taxing provision are possible, then that construct which favours the taxpayer, was to be adopted.
 - Followed the principle that when the decision of non-jurisdictional HCs is in conflict with each other, the only objective criteria was to take a view favourable to the taxpayer.
- In the case under consideration, the Revenue had not placed on record even a single decision of the HC, which was contrary to the claim of the taxpayer.

In view of the above, the ITAT held that the joint ownership in two residential properties at the time of sale of the original asset, would not deprive the taxpayer to claim deduction under section 54F of the ITA.

Comments:

Deduction from capital gains arising on sale of capital asset (other than residential house) is allowed under section 54F of the ITA, if the consideration from such sale is invested within the prescribed time limit in a residential house in India (subject to fulfilment of other conditions). However, such deduction is not available if the taxpayer **owns more than one residential house** (income from which is taxable under the head Income from House Property), other than the new asset, on the date of transfer of the original asset.

The issue may arise if **joint ownership in more than one residential house** would deprive the taxpayer from claiming a deduction under section 54F of the ITA.

This ruling has upheld the following principles:

- The rejection of the claim for exemption would arise only if the property is in the name of the taxpayer, namely the individual or HUF.
- Unless there is material to show that the taxpayer is the exclusive owner of the residential property, the absolute effect of the proviso could not be applied. Hence, the joint ownership of the property would not stand in the way of claiming exemption under section 54F of the ITA.

⁴ Dr. Smt. P.K. Vasanthi Rangarajan v. CIT [2012] 23 taxmann.com 299 (Madras HC)

⁵ Mukesh Arvindlal Vakharia v. ITO [2023] 153 taxmann.com 55 (Surat ITAT) and Zainul Abedin Ghaswala v. CIT [2023] 152 taxmann.com 662 (Mumbai ITAT)

⁶ CIT v. M.J. Siwani [2014] 46 taxmann.com 170 (Karnataka HC)

⁷ Dr. Smt. P.K. Vasanthi Rangarajan v. CIT [2012] 23 taxmann.com 299 (Madras HC)

- If two reasonable constructs of a taxing provision are possible, then that construct which favours the taxpayer, is to be adopted.

Taxpayers may want to evaluate the impact of this ruling to the specific facts of their cases.

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