



Tax alert: Exemption from capital gains available for new residential house registered in spouse's name

2 April 2024

The Delhi Bench of the Income-tax Appellate Tribunal has rendered its decision that long-term capital gains exemption under section 54 of the Income-tax Act 1961 [relating to investment in residential property] is allowable to the taxpayer for investment in new residential property, registered in the spouse's name.

In a nutshell



Purposive construction is to be preferred against literal construction, more so when even literal construction does not say that the house should be purchased in the name of the taxpayer only.



Section 54F/54 of the ITA are the beneficial provisions which should be interpreted liberally in favour of the exemption/deduction to the taxpayer and the deduction should not be denied.



New house purchased in the name of the spouse of the taxpayer is eligible for claiming deduction under section 54F of the ITA. The provisions of section 54F of the ITA are *pari materia* with the provisions of section 54 of the ITA and thus, the principle derived equally, applied to section 54 of the ITA as well.



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Background:

- The taxpayer¹ is a non-resident individual residing in United Arab Emirates (UAE).
- During the Financial Year (FY) 2019-20, corresponding to Assessment Year (AY) 2020-21:
 - The taxpayer sold her property in New Delhi and earned capital gains on the same. Out of the sale proceeds, certain amount was invested into a new residential house in Hyderabad.
 - The new residential house in Hyderabad, in which the investment was made by the taxpayer, was registered in the name of her spouse, say Mr. A.
 - As the investment was made by the taxpayer in a residential house, she claimed deduction under section 54 of the Income-tax Act, 1961 (ITA) [relating to exemption from capital gains earned from sale of residential property if invested in another residential property, subject to satisfaction of conditions].
- During the course of audit proceedings, the taxpayer:
 - Furnished all the details of investment made in the residential house, including the bank statement and the payment receipt issued by the builder.
 - Submitted that the deduction should not be restricted merely because the property was not registered in the name of the taxpayer.

However, the Assessing Officer (AO) disallowed the claim of deduction under section 54 of the ITA on the basis that the residential property was registered in the name of the spouse of the taxpayer, i.e., Mr. A, and not in the name of the taxpayer. The AO also held that the payment was made from a joint account.

Accordingly, a draft order was passed by the AO proposing addition towards capital gains.

- The taxpayer filed objections against the draft order before the Dispute Resolution Panel (DRP) which upheld the disallowance, and the AO passed the final order based on such directions. Aggrieved by the AO's final order, the taxpayer filed an appeal with the Delhi Bench of the Income-tax Appellate Tribunal (ITAT).

The key contentions of the taxpayer before the ITAT were as follows:

- The capital gains were fully invested in acquisition of the property.
- The property was registered in the name of the spouse (Mr. A) as the taxpayer was in UAE at the time of registry whereas Mr. A, was in India.
- The registry of the plot for the new property was completed on 12 January 2021, when strict international travel restrictions were in place due to Covid-19.

Relevant provisions in brief:

Extracts of section 54 of the ITA:

“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

¹ Simran Bagga vs. ACIT [2024] 158 taxmann.com 265 (Delhi- Trib.)

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,..."

Decision of the ITAT:

The ITAT noted that it was undisputed that property was sold, and the proceeds had been reinvested. Hence the only issue was that when the property had been registered in the name of the spouse of the taxpayer, whether the deduction under section 54 of the ITA was allowable or not?

In this regard, the ITAT noted / observed as follows:

- The sale proceeds from the New Delhi property had been credited to the same bank account prior to the new investment and the same proceeds were utilized for purchase of new property.
- The taxpayer submitted the documentary evidence in form of bank statement and the payment receipt issued by the builder to substantiate that the investment had been made out of the sale proceeds of the New Delhi property sold by the taxpayer.
- The taxpayer was in UAE at the time of registry whereas Mr. A, spouse of the taxpayer, was in India. The registry of the plot for the new property was completed when strict international travel restrictions were in place due to Covid-19. Therefore, the taxpayer could not travel to India and the registry was completed in the name of Mr. A, for the sake of convenience.
- Reference was made to various earlier rulings of the High Courts and the ITAT:
 - Case 1² - The deduction under section 54 of the ITA was allowed where the new residential property was purchased in the name of the wife of the taxpayer.
 - Case 2³ - Exemption under section 54 of the ITA was allowed for investment in residential property by the taxpayer jointly with her husband.
 - Case 3⁴ - Exemption under section 54B of the ITA was allowed for investment made by the taxpayer in the name of his wife.
 - Case 4⁵ - It was held that mere fact that investment in new property was made in name of his wife could not be a reason for disallowance of deduction under section 54 of the ITA to taxpayer.
 - Case 5⁶ - Deduction under section 54F of the ITA was allowed where the taxpayer purchased a flat in the name of her minor daughter.
 - Case 6⁷ - Exemption was allowed in this case where the taxpayer had invested sale consideration received on transfer of capital asset in purchasing a new residential property in name of his married widowed daughter.
 - Case 7⁸ - In order to claim deduction under section 54F of the ITA, new residential house need not be purchased by taxpayer in his own name or exclusively in his name.

² CIT v. Natarajan [2006] 287 ITR 271 (Mad HC)

³ DIT, International Taxation v. Mrs. Jennifer Bhide [2012] 349 ITR 80 (Kar HC)

⁴ Mahadev Balai v. CIT [2018] 402 ITR 117 (Raj HC)

⁵ Shankar Lal Kumawat v. ITO [2021] 125 taxmann.com 347 (Jaipur - Trib.)

⁶ N Ram Kumar v. Asstt. CIT [2012] 25 taxmann.com 337 (Hyd. - Trib.)

⁷ Krishnappa Jayaramaiah v. ITO [2021] 125 taxmann.com 110 (Bang. - Trib.)

⁸ Mrs. Kamal Murlidhar Mokashi v. ITO [2019] 110 taxmann.com 120 (Pune - Trib.)

- The jurisdictional Delhi High Court in earlier rulings⁹ had held that new house purchased in the name of the spouse of the taxpayer was eligible for claiming deduction under section 54F of the ITA [relating to capital gain on transfer of certain capital assets not to be charged in case of investment in residential house]. The provisions of section 54F of the ITA are *pari materia* with the provisions of section 54 of the ITA and thus, the principle derived equally applied to section 54 of the ITA as well.

The High Court also held that **purposive construction** was to be preferred as against literal construction, more so when even literal construction did not mention that the house should be purchased in the name of the taxpayer only.

- Section 54F/54 of the ITA are beneficial provisions which should be interpreted liberally in favour of the exemption/deduction to the taxpayer and deduction should not be denied.

In view of the above, the ITAT held that since, the sale proceeds had been duly invested in acquisition of new property within the due time allowed, the taxpayer was eligible for claim of deduction.

Comments:

An exemption from long-term capital gains (LTCG) on sale of residential house property and other long-term capital asset has been provided [to individual / Hindu Undivided Family (HUF)] under sections 54 and 54F of the ITA, respectively, where such taxpayer purchases or constructs residential house, subject to fulfillment of other conditions.

Sometimes the new residential house property may be registered in the name of, amongst others, the spouse or children of the taxpayer earning such LTCG. An issue arises whether registration of the new residential house property needs to be necessarily in the name of the taxpayer earning such LTCG for claiming exemption under section 54, 54F, etc. of the ITA?

The ITAT in this ruling, has allowed the exemption to the taxpayer under section 54 of the ITA, where the new residential property was registered in her spouse's name and has reiterated the following principles:

- **Purposive construction** is to be preferred as against literal construction, more so when even literal construction does not say that the house should be purchased in the name of the taxpayer only.
- Section 54F/54 of the ITA are the beneficial provisions which should be interpreted liberally in favour of the exemption/deduction to the taxpayer and deduction should not be denied.
- New house purchased in the name of the spouse of the taxpayer was eligible for claiming deduction under section 54F of the ITA. The provisions of section 54F of the ITA are *pari materia* with the provisions of section 54 of the ITA and thus, the principle derived equally applied to section 54 of the ITA as well.

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

⁹ CIT v. Kamal Wahal [2013] 30 taxmann.com 34/214 Taxman 287/351 ITR 4 and CIT v. Ravinder Kumar Arora [2011] 15 taxmann.com 307/203 Taxman 289/[2012] 342 ITR 38,

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