

Investment in property under construction not to be treated as a 'purchase'; qualifies for 3-year investment period (for construction) for exemption under section 54F

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In brief

The Mumbai Income-tax Appellate Tribunal (Tribunal), in the case of Mrs. Jyoti Arun Kothari (taxpayer), has allowed a claim for exemption under section 54F of the Income-tax Act, 1961 (the Act) against long-term capital gains arising on the sale of a share in an ancestral property. The Tribunal held that investment in under-construction residential property within a period of 3 years from date of sale of property was eligible to claim exemption under section 54F of the Act.

In detail

Facts

- The taxpayer¹, an individual, sold her share in an ancestral property on 12 April 2007, resulting in a long-term capital gain of approximately INR 7 million. On 15 October 2007, she invested the capital gains under the Capital Gain Account Scheme (Scheme) with the State Bank of India. In her return of income for assessment year 2008-09, the taxpayer claimed exemption under section 54 of the Act.
- In lieu of the taxpayer's paying the booking amount

of INR 0.5 million, M/s Pinaki Projects (Developer) issued an allotment letter dated 10 April 2009. The amount of INR 0.5 million was paid by the taxpayer to the Developer on 11 April 2009.

- On 30 May 2009, the taxpayer entered into an agreement with the Developer to acquire a residential property under construction. The taxpayer appropriated the money deposited under the Scheme to pay for the acquisition. The agreement was registered on 10 June 2009, and the Developer handed over the possession of the fully constructed flat in November 2009.

- During the course of assessment proceedings, the tax officer (TO) asked the taxpayer to explain why exemption under section 54 of the Act should be allowed. In reply, the taxpayer agreed to withdraw the claim of exemption under section 54 of the Act. Accordingly, the TO denied the exemption claimed in the return of income.
- The Commissioner of Income-tax (Appeals) upheld the order of the TO.

Issue before the Tribunal

- Whether the taxpayer was eligible to claim exemption under section 54F of the Act?

¹ Mrs. Jyoti Arun Kothari v. ITO [TS-737-ITAT-2014(Mum)]

- Whether the taxpayer could re-agitate the claim before the appellate authority after the withdrawal thereof before the TO?

Tribunal's ruling:

- The Tribunal placed reliance on the following circulars issued by the Central Board of Direct Taxes (CBDT):
 - Circular no. 471 dated 15 October 1986, which stated that the acquisition of flat by an allottee under the self-financing scheme of the Delhi Development Authority (DDA) was not a transaction of sale; from this, it could be inferred that in such a case the DDA would undertake construction work on behalf of the allottees;
 - Circular no. 672 dated 16 December 1993, which stated that if the terms of allotment and construction of flats or houses by co-operative societies or other institutions were similar to those mentioned in Circular 471 dated 15 October 1986, then they could also be treated as cases of construction for the purpose of section 54 and 54F of the Act.
- The Tribunal observed that the taxpayer had booked the house under construction and made an initial payment to the Developer before the

expiry of the stipulated period of 2 years (which applied for the purchase of a fully constructed house). Further, the entire payment for the purchase of the house under construction had been made, and possession of it had been taken, within the stipulated period of 3 years (which applies for cases of construction).

- The events in the intervening period were immaterial, because the ultimate purpose of the beneficial provision was the acquisition of the residential house by the taxpayer.
- The Tribunal held that section 54F of the Act was a beneficial provision and, therefore, should be construed liberally. The case of the taxpayer fitted into the requirements of the beneficial provisions of section 54F of the Act read with CBDT circulars. Hence, the taxpayer was entitled to claim exemption under section 54F of the Act.
- As regards the withdrawal of exemption claim by the taxpayer, the Tribunal held that the legal claim to which the taxpayer was otherwise entitled, could not be denied to her, because she had given a sufficient explanation to the TO.

The takeaway

- The ruling reinforces the position that the beneficial

provisions of the Act need to be construed liberally, by keeping in view the intention behind their introduction. By adopting a holistic view of the transaction in question, the Tribunal emphasised the importance of the 'look at' test to ascertain the true nature of transactions. This decision highlights the fact that if there is sufficient evidence to prove that a capital gain was invested in residential property under construction, the completion of construction or the occupation of the property is not a requirement of law.

- The Tribunal has rendered the aforementioned decision based on the facts of the case. Hence, it would be prudent to examine the actual facts and documentation of each case for determining the eligibility of exemption for investment of capital gains.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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