

Period of holding of a flat reckoned from date of allotment letter as such letter extinguished all rights of seller.

Summary – The Indore ITAT in a recent case of Sanjay Kumath, (the Assessee) held that period of holding of a flat reckoned from date of allotment letter as such letter extinguished all rights of seller.

Facts

- The assessee was allotted a flat by a builder by way of allotment letter dated 22-1-2005. Payments were made by assessee and balance payment was made in instalment gradually. After payment of full consideration by assessee, agreement to sell between assessee and builder was executed on 27-2-2009. Thereafter, the assessee sold said flat on 5-3-2009 and invested sale consideration in capital gain CDR A/c with Bank. He claimed exemption under section 54F treating said asset as long-term capital asset.
- However, the Assessing Officer did not accept the assessee's contention by observing that assessee had acquired the right in the said flat by way of agreement executed on 27-2-2009. Thus, the said asset was a short-term capital asset and the period of holding of said asset being less than the prescribed period of three years, short term capital gain income had accrued to the assessee.
- The Commissioner (Appeals) allowed assessee's claim for deduction under section 54F by treating the date of allotment as date of acquisition for treating the flat as long-term capital asset in the hands of the assessee.
- On second appeal:

Held

- The assessee was allotted a flat in a multi-storied building. *Vide* the allotment letter, the builder agreed to sell the flat to the assessee. After signing the said letter of allotment and paying the booking amount, the assessee acquired the right in the said flat.
- After the entire payment was made by the assessee, agreement was executed on 27-2-2009. Thereafter, the assessee sold the flat on 5-3-2009. Thus, all the rights in the flat were duly acquired by the assessee on 22-1-2005, when he was given letter of allotment which clearly described the precise number of flat so allotted to him. As per the provisions of section 2(47)(ii), "Transfer" in relation to capital assets includes the extinguishment of any right therein. This letter of allotment extinguishes the rights of builder in the said flat in favour of the assessee in respect of this flat and by signing the letter of allotment, the assessee agreed to buy the same and for which payment was also made according to the letter of allotment.
- Board *vide* Circular No. 672 after referring Circular No. 471 extended the facility of exemption under sections 54 & 54F in respect of allotment of flat/house. Thus, as per the CBDT Circular also, the

assessee acquired the rights/title in the flat by way of allotment letter on 22.1.2005. This allotment letter was duly confirmed by the assessee by making various payments. Out of total payment of Rs. 33.15 lakhs, the assessee made payment of Rs. 6.23 lakhs in the month of allotment itself *i.e.* January, 2005. Subsequent payment was also made as per the terms agreed with the builder. Only after receipt of entire amount, the builder has executed agreement with the assessee on 27-2-2009. The assessee has sold the said flat on 5-3-2009. Since the assessee has acquired all the rights in the flat on 22-1-2005, the period of holding is to be computed with respect to the date of allotment *i.e.* 22-1-2005. Taking the date of sale as 5-3-2009, the holding period of flat with the assessee was more than 36 months, therefore, there is no infirmity in the order of Commissioner (Appeals) for allowing assessee's claim for exemption under section 54/54F, by treating the capital assets so sold as long-term capital assets.