

Sec. 54F benefit is available on purchase of multiple units if it constitutes one residential house

Summary – The Mumbai ITAT in a recent case of Joseph J. Mudaliar, (the Assessee) held that claim under section 54/54F may be allowable in case of purchase of more than one new flat when said flats constitute one residential house.

Facts

- The assessee had made a claim under section 54F to the extent of the investment made in three flats at same floor of the building. Out of these three flats one flat was purchased in the name of assessee himself and two other flats were purchased in the joint names of assessee, his wife his son respectively.
- The Assessing Officer asked the assessee to explain as to how it can claim deduction under section 54F on three different units on the same floor in the name of three different persons, as it was contrary to provisions of section 54F.
- In response the assessee filed revised return of income and restricted its claim under section 54F only to one flat.
- The Assessing Officer initiated the penalty proceedings under section 271(1)(c) in respect of the claim withdrawn by the assessee under section 54F and levied penalty on account of wrong claim of deduction.
- Commissioner (Appeal) confirmed said order.
- On Appeal.

Held

- The claim under section 54/54F may be allowable in case of purchase of more than one new flat when more than one flat constitutes one residential house. In the present case, all three flats in which the assessee invested the consideration received on sale of the old assets are located at the same floor of the building and, therefore, in view of the various precedents the claim of the assessee would not fall under the category of bogus or absolute untenable claim under the law. It is not the case of the wholly untenable claim under law and without any foundation or basis of the claim made by the assessee. The assessee has brought on record the entire facts relation to the claim and further there are various decisions supporting the claim of assessee, therefore, even the assessee withdrew the claim under section 54F in respect of two flats out of three, the mere withdrawal of the claim would not turn the *bona fide* claim of the assessee into the category of wholly untenable and unsustainable claim having no basis. Therefore, the claim of exemption under section 54F in the facts and circumstances of the case is a highly debatable one and, it cannot be said that it is an absolutely untenable claim under the law. When the assessee has explained all relevant facts and also brought on record various precedents in support of his claim then it leaves

no doubt that the claim made by the assessee was a *bona fide* claim and the explanation is duly supported by the various decisions. Accordingly, in the facts and circumstances of the case, the penalty levied under section 271(1)(c) is not justified and the same is deleted.