

Sec. 54: Booking of unconstructed flat in housing project to be deemed as investment for construction of house

Summary – The Mumbai ITAT in a recent case of Farida A. Dungerpurwala., (the Assessee) held that Booking of a flat which is going to be constructed by a builder has to be considered as a case of 'construction of flat' and not purchase of flat for purpose of section 54

Facts

- The assessee sold a residential flat in October, 2005 for certain amount and claimed deduction under section 54 in respect of cost of new flat.
- The Assessing Officer noticed that the assessee had booked a flat in a project in December, 2002 in the joint name of assessee and her relative and she obtained possession of the new flat in December, 2004.
- The Assessing Officer did not accept the assessee's contention that the date of possession of new house should be taken as the date of purchase and rejected claim for deduction under section 54.
- On appeal, the Commissioner (Appeals) confirmed the decision of the Assessing Officer.
- On second appeal:

Held

- There is no dispute with regard to the fact that the assessee can purchase a new house within one year before the date of transfer of the original residential house in order to avail of deduction under section 54. The said deduction is also available if a new house:
 - (a) is purchased within two years after the date on which the transfer of original house took place, or
 - (b) is constructed within a period of three years after the date on which the transfer took place.
- Thus, it is seen that the statute has prescribed different time limits for "purchase of a new house" and for "construction of a new house". There should not be any dispute that the expressions "purchase" and "construction" denotes two different kinds of actions. The deduction is available only if a new house is purchased within one year before the date of transfer of the original residential house. Thus, if a new house is constructed within one year prior to the date of transfer of the original residential house, the deduction under section 54 is not available.
- In the instant case, the assessee along with her relative has entered into an agreement on 4-12-2002 with a builder. As per the registered sale agreement, the builder shall construct residential apartments on a piece of land and allot a specified flat to the assessee. As per the agreement, the builder constructed the residential apartments and finally handed over the possession on 4-12-2004.

- The ratio laid down in the several cases clearly show that the booking of a flat which is going to be constructed by a builder has to be considered as a case of "construction of flat". The deduction under section 54 is available only if the assessee constructs a new house within three years after the date of transfer. In the instant case, the assessee has constructed a house prior to the date of transfer of original house, in which case, the assessee is not entitled to claim deduction under section 54 in respect of the cost of new flat.
- In view of the foregoing discussion, the assessee has not fulfilled the conditions prescribed under section 54. Accordingly, the decision taken by the Commissioner (Appeals) is upheld.