

Allotment of flats under self financing scheme of DDA has to be deemed as construction of house for sec. 54F relief

Summary – The Mumbai ITAT in a recent case of Mrs. Jyoti Arun Kothari, (the Assessee) held that In view of [CBDT Circular No. 471, dated 15-10-1986](#) cases of allotment of flats under self financing scheme are to be treated as cases of construction for purpose of capital gains entitling benefit under section 54F

Facts

- The assessee, a household lady, had acquired an under construction flat within 3 years from the date of transfer of ancestral property and claimed exemption under section 54F.
- During course of assessment proceedings, the Assessing Officer issued show cause notice to the assessee to explain as to why long term capital gain claimed exempt should not be denied as sale consideration from property had been invested in new property after two years from the sale of old property. In reply, assessee explained that she had invested amount of capital gain under capital gain account scheme on or before the due date of filing return for the said assessment year and, moreover, she had entered into an agreement on 30-5-2009 with a developer to acquire an under construction residential property and the developer handed over the constructed flat in the month of November 2009. However, the Assessing Officer was not satisfied with the assessee's explanation and issued another show cause notice. The assessee, in her reply, agreed to withdraw exemption claimed under section 54 and, accordingly, the Assessing Officer denied exemption.
- On appeal, the Commissioner (Appeals) upheld the disallowance made by the Assessing Officer.
- On second appeal:

Held

- On facts, it is clear that under construction house was booked/allotted to the assessee and the initial payment of Rs. 5 lakhs was also made by the assessee to the developer before the expiry of stipulated period of two years meant for the purchase of an already built up house. Thereafter, the assessee made subsequent payments as per the schedule agreed upon. It is to be noted that the CBDT *vide* its [Circular No. 471 dated 15-10-1986](#) has clarified that an acquisition of a flat by the allottee under self-financing scheme of the Delhi Development Authority is not a transaction of sale and inference that can be drawn is that the DDA undertakes construction work on behalf of the allottees. The tentative cost of construction is already determined and that the DDA facilitates the payment of the cost of construction in instalments and, therefore, it had been decided that cases of allotment of flats under the self-financing scheme of the Delhi Development Authority be treated as cases of construction for the purpose of capital gains entitling benefit under section 54F. The CBDT

vide Circular No. 672 has decided that if the terms of allotment and construction of flats/houses by the co-operative societies or other institutions are similar as those mentioned in [Circular No. 471 dated 15-10-1986](#), such cases may also be treated as cases of construction for the purpose of sections 54 and 54F. Section 54F is a beneficial provision for promoting the construction of residential house and, therefore, it should be construed liberally. The assessee in this case had booked the under construction house and made the initial payment of Rs. 5 lakhs to the developer before the expiry of stipulated period of two years meant for the purchase of an already built up house and had further paid the entire capital gain money for the purchase of under construction house and the possession of the constructed house was also delivered to her within the stipulated period of 3 years. Therefore the events in the intervening period are immaterial as the ultimate purpose of the beneficial provision is acquiring of a residential house by the assessee. The case of the assessee fits into the requirements of the beneficial provisions of section 54F read with the CBDT circulars as noted above for treating the same as construction of the house, entitling her the benefit of exemption from tax.

- In view of the law laid down by the *CIT v. Sambandam Udaykumar* [\[2012\] 345 ITR 389/206 Taxman 150/19 taxmann.com 17 \(Kar.\)](#) the assessee under the said circumstances is entitled to claim under section 54F.
- So far so the contention of the revenue that the assessee herself had withdrawn her claim before the Assessing Officer, is concerned, it is found from the record that the assessee before the Assessing Officer had never stated that she had purchased an already built house. It was stated before the Assessing Officer that she had purchased an under construction house. The date of allotment and that of the payments made and thereafter delivery of the possession of the house has never been disputed by the Assessing Officer. Despite given all the explanation, the Assessing Officer was not satisfied and, therefore, the assessee being a household lady and not aware of the provisions, had withdrawn the claim, which seems to be under pressure. Even otherwise, the legal claim to which the assessee is otherwise entitled to, cannot be denied to her when she had given sufficient explanation regarding the same before the Assessing Officer, which is quite convincing and justified.
- In the result, the appeal filed by the assessee is allowed.