

## House constructed by builder on behalf of assessee has to be considered for granting sec. 54F relief to assessee

**Summary – The Hyderabad ITAT in a recent case of Pradeep Kumar Chowdhry, (the Assessee) held that Investment of consideration received on transfer, in a flat constructed by builder within 3 years would amount to construction of a residential house for purpose of claiming deduction under section 54F.**

### Facts

- The assessee sold property on 12-9-2008 and had long-term capital gain of Rs. 2.29 crores.
- He invested part of sale consideration in a residential flat promoted by a builder and said amount was claimed as deduction under section 54F.
- The Assessing Officer disallowed deduction under section 54F on ground that construction of a new house was not completed within 3 years.
- The Commissioner (Appeals) dismissed the assessee's appeal holding that investment/purchase made was not completed within 2 years from date of sale of property and further there was total uncertainty about completion of construction of flat.
- On appeal, the assessee argued that the time-limit applicable for purchase of flat was 3 years in his case as he had not purchased readymade flat but purchased a flat which was to be constructed and which was equivalent to constructing a residential flat. The assessee further contended that once the investment was made within 2 years, and the delay in construction was beyond the control of the assessee, the same needed to be condoned irrespective of the period.
- On the other hand, the revenue argued that the construction should have been carried out by the assessee himself and not by the flat promoter and further only reasonable delay could be condoned and not the delay of more than 5 years.

### Held

- The following are factors which distinguished a house construction as against flat booked with the construction company in the context of exemption under section 54F:
  - (a) Real estate prices have soared up and, therefore, very few individual house are being constructed.
  - (b) Exemption is available in case of purchase of a flat within two years.
  - (c) It has been held by co-ordinate Benches that if consideration received on transfer has been invested either in purchasing a residential house or in constructing a residential house, even though the transactions are not complete in all respects and as required under the law, it would not disentitle the assessee from availing benefit under section 54F.
  - (d) Section 54F is a benevolent provision.

- A flat which is newly constructed by a builder on behalf of the assessee is in no way different from a house constructed. Section 54F being a beneficial provision has to be interpreted so as to give the benefit of residential unit, *viz.*, flat instead of house in the present state of affairs. Further even if only advance is given, the benefit still will be available for exemption under section 54F.
- The assessee will get the benefit under section 54F for payment made till 12-9-2011.