

Cancellation of agreement on non-completion of construction of house won't effect sec. 54 relief

Summary – The Bangalore ITAT in a recent case of T. Shiva Kumar, (the Assessee) held that where assessee having sold residential property, paid entire sale consideration to one 'M' for purchase of another house property within time limit prescribed under section 54, even though said transaction did not eventually materialise and 'M' had to refund amount paid by assessee, still assessee's claim for deduction under section 54 was to be allowed

Facts

- For the relevant assessment year assessee filed its return declaring certain taxable income. During the course of assessment proceedings, the Assessing Officer noted that the assessee had sold a house property and the conveyance deed was executed on 15-4-2008. However, assessee did not show any capital gains in his return of income.
- The assessee's case was that the entire sum realized on sale was given by him to his brother for acquiring a house property owned by him. However, the transaction did not go through and amount was returned to assessee.
- Subsequently, said sum was paid to one 'M' for acquiring a residence owned by her on basis of agreement entered into on 10-3-2010. The said transaction also did not eventually materialize.
- The Assessing Officer thus opined that assessee could not show that he purchased a house within two years from the date of transfer of the original asset nor could he show that he had constructed a residential house within three years of such transfer. He therefore, denied exemption claimed by assessee under section 54.
- The Commissioner (Appeals) confirmed the order of Assessing Officer.
- On second appeal:

Held

- The time period allowed for making a purchase if it is done after the date of transfer is two years and if it is construction it is three years. Thus, if the intention was to construct a residential house the period is three years, the outer limit of three years for constructing a house in the given case was 14-4-2011. *Vide* sub-section (2) of section 54 a deposit under capital gains scheme, if the capital gain is not appropriated for such construction has to be done before the due date for furnishing the return of income under section (1) of section 139.
- Sub-section (4) of section 139 can only be construed to as a proviso to sub-section (1) and thus, the due date furnishing the return mentioned in section 139(1) is subject to the extended period provided under section 139(4). The impugned assessment year is assessment year 2009-10, and the extended time period under section 139(4) is before expiry of one year from the end of the relevant

assessment year or before completion of assessment whichever is earlier. One year from the end of the impugned assessment year would expire only on 31-3-2011.

- The assessment for the impugned assessment year having been completed only on 29-12-2011 the date to be reckoned for the purpose of application of sub-section (2) of section 54 in the case before is 31-3-2011. Thus, it is clear that the assessee had time upto 31-3-2011 to deposit the capital gains in capital gains account scheme, if he could not utilise it for acquiring or constructing a residence.
- This brings to the question of whether assessee can be considered to have constructed or acquired a residence before 31-3-2011. Leaving apart, the transaction the assessee claimed to have made with his brother 'T', undisputedly, on 10-3-2010, he had entered into an agreement with one 'M'. He had also paid a post-dated cheque pursuant to such agreement. The agreement dated 30-3-2011 through which consideration originally agreed by the assessee with 'M' was reduced from Rs. 70 lakhs to Rs. 40 lakhs has been placed on record. It is clearly mentioned therein that assessee had issued a cheque dated 2-12-2010 to 'M' for Rs. 40 lakhs. The bank account of the assessee shows that the above cheque was encashed by 'M' on 18-12-2010. The agreement clearly mentions the intention of the seller to sell a building. It is also mentioned therein that the reduction in the consideration was due to vendors inability to complete the work of the residence before the agreed date. The agreement also mentions that the vendor had delivered to the assessee the original documents of title and the vacant possession of the scheduled property.
- The liberal interpretation of the term purchase as it appears in section 54 has to be given also the term 'constructs' appearing therein, in conjunction to the former. Even the jurisdictional High Court in the case of *CIT v. Smt. B. S. Shanthakumari* [\[2015\] 233 taxmann.com 347/60 taxmann.com 74 \(Kar.\)](#) held that completion of construction within three years period was not mandatory and what was necessary was that the construction should have commenced. There cannot be any dispute with the construction in the property for which agreement was entered by the assessee with 'M' had already begun. The question whether the above agreement finally fructified is a different matter altogether. Assessee had for all purposes satisfied the conditions under section 54 and earnestly demonstrated his intention to invest the capital gain in a residential house. Therefore, the disallowance of such claim stands deleted.
- In the result, the appeal filed by the assessee is treated as allowed.