

## Assessee can claim sec. 54F relief by filing belated return under sec. 139(4)

**Summary – The Chennai ITAT in a recent case of G. Ramesh, (the Assessee) held that Due date for assessee to invest amount of capital gains in purchase/construction of new residential asset or investment in capital gains scheme under section 54F refers to 'extended due date' under section 139(4)**

### Facts

- During relevant year, assessee earned capital gains from sale of residential properties. The assessee claimed deduction under section 54F on investment in a flat.
- The Assessing Officer opined that the assessee had filed the return of income not under section 139(1) and it was filed belatedly under section 139(4), as such the assessee was not entitled for deduction under section 54F.
- The Commissioner (Appeals) confirmed the order of the Assessing Officer.
- On second appeal:

### Held

- It was noted that the Karnataka High Court in the case of *Fathima Bai v. ITO* [IT Appeal No. 435 of 2004, dated 17-10-2008] and, Gauhati High Court in the case of *CIT v. Rajesh Kumar Jalan* [2006] 286 ITR 274/157 Taxman 398 held that due date for the assessee to invest the amount of capital gains in purchase/construct of new residential asset or investment in capital gains scheme under section 54F refers to the 'extended due date' under section 139(4). So far as the time limit for assessee to invest in purchase of construction of residential asset, the time limit available under section 139(4) is to be considered. However, during the intermediary period, *i.e.*, after the sale of capital asset till the date of investment, the fund had to be deposited in an account in any such bank or institution as may be specified in and utilized in accordance, any scheme with Central Government notified in official gazette framed in this behalf and the assessee shall file proof for such deposit.
- The Assessing Officer in this case outrightly rejected the claim of assessee that the assessee has not utilized the capital gains on transfer of capital asset in investment in residential house as specified in section 54F(1) on the reason that the assessee has not filed the return of income within due date in term of section 139(1). He has not examined the other conditions in section 54F. Further, assessee contended that even if he has not deposited amount in the capital gains account scheme under section 54F(4), the assessee would be entitled for deduction under section 54. However, as per section 54F(4), in the event of the assessee not investing the capital gains either in purchasing the residential house or in constructing a residential house within the period stipulated in section

54F(1), if the assessee wants the benefit of section 54F, then he should deposit the said capital gains in an account which is duly notified by the Central Government.

- In other words, if he wants claim of exemption from payment of tax by retaining the cash, then the said amount is to be invested in the said account notified by Central Government on this behalf. If the intention is not to retain cash but to invest in construction or any purchase of the property and if such investment is made within the period stipulated therein, i.e., section 139(4), then section 54F(4) is not at all attracted and therefore, the contention that the assessee has not deposited the amount in the bank account as stipulated and therefore, he is not entitled to the benefit even though he has invested the money in construction is also not correct.
- In view of the above, the issue is remitted to the file of Assessing Officer to examine the fulfilment of the conditions under section 54F of Act through intermediary period that is from the date of sale of capital asset to the date of actual investment in residential house.
- In the result, the appeal of the assessee is partly allowed for statistical purposes.