

## No sec. 54F relief if newly acquired house is instantly demolished: Chennai ITAT

**Summary – The Chennai ITAT in a recent case of K.V. Vijayaraghavan, (the Assessee) held that where assessee demolished newly acquired residential house instantly for purpose of construction of a shopping complex, exemption under section 54F could not be granted**

### Facts

- The assessee sold two shops and a residential building for certain amounts. These amounts were deposited in the capital gains scheme account in a nationalized bank. Later on, the assessee withdrew this amount and purchased a residential plot and claimed the benefit of section 54F.
- The Assessing Officer disallowed claim of the assessee on the ground that the new asset purchased was instantly demolished by the assessee and, further, he had proceeded to construct a shopping complex.
- On appeal, the Commissioner (Appeals) affirmed the order of the Assessing Officer.
- In the instant appeal, the assessee argued that the provisions of section 54F(3) only provides that the new asset should not be transferred in terms of section 2(47) within the period of three years from the date of purchase and did not specify a situation where the new asset was demolished.

### Held

- In the case *CIT v. V. Pradeep Kumar* [\[2007\] 290 ITR 90/\[2006\] 153 Taxman 138](#) Madras High Court held that construction must be real one. It should not be a symbolic construction.
- The Parliament in its wisdom had enacted section 54F in the Finance Act, 1982 with a view to encourage housing construction. Thus, the intention of the legislation was not for destruction of residential building but for promoting the construction of the residential housing units. If the benefit of section 54 is extended where the new residential building is demolished without constructing another residential building within the time limit prescribed under the Act, then the purpose of the Act is defeated. Further, as rightly pointed out by the Commissioner (Appeals), in the case *V. Pradeep Kumar* cited *supra*, it has been categorically held that "the burden is on the assessee to prove that he had actually constructed a new residential house for the purpose of the exemption under section 54F. Section 54F emphasizes construction of residential house. The construction must be a real one. It should not be a symbolic construction. Mere construction by way of extension of the old existing house would not mean constructing a residential house as contemplated under section 54F."
- Thus, order of the Commissioner (Appeals) cannot be interfered with on this issue wherein he has held that in the case of the assessee, exemption under section 54F cannot be granted since he has

demolished the newly acquired residential house instantly for the purpose of construction of a six floored shopping complex.