

Section 54 does not stipulate purchase of new asset from sale proceeds of original capital asset only: ITAT

Summary – The Bangalore ITAT in a recent case of Joseph Devadass., (the Assessee) held that where assessee had availed loan and also utilised capital gain from sale of old house for purchase of a new house, and total investment was much more than loan amount plus amount of capital gain, capital gain was to be treated as an investment in purchase of new house

Facts

- The assessee was an individual and earned capital gain of Rs. 5.69 lakhs on sale of residential property. The assessee had invested Rs. 88.17 lakhs in purchase of new house property and claimed deduction under section 54 in respect of capital gain arising from sale of the existing residential property.
- The Assessing Officer had denied the claim of deduction on the ground that the assessee had utilized the loan of Rs. 56 lakhs for purchase of new house. He held that the investment should be made from capital gain arising from transfer.
- On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer.
- On further appeal to the Tribunal, the assessee had submitted that the assessee had purchased a new house for Rs. 88 lakhs out of which Rs. 56 lakhs was made out of the loan. The investment had been made by the assessee from the amount including the capital gain of Rs. 5.69 lakhs, thus, ignoring the loan amount the balance amount of investment had to be considered for deduction under section 54.

Held

- It is clear from the plain reading of the section 54(1) that the capital gains arising from transfer of long term capital asset being building or land appurtenant thereto and being a residential house, the income of which is chargeable under the head 'Income from house property' and the assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date of construction of a residential house then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the provisions of the Act. Thus the deduction under section 54 is available even when the assessee has purchased residential house prior to the date of transfer of the existing residential house. It means that at the time of purchase of new house prior to the sale of the existing house the capital gain is not required to be invested as it is not arisen and available with the assessee on the date of purchase of new residential house. Therefore the provisions of section 54 permits the investment prior to the date of sale of the existing house and thereby the condition of the investment of the sale proceeds cannot be understood in the manner that the investment has to be made only from the proceeds of the sale

but it is only the amount of investment which is relevant. If the view taken by the authorities is accepted then the purchase of the house one year prior to the sale of existing asset cannot be allowed under section 54(1). In view of the facts and circumstances of the case, the authorities have committed a serious error in not allowing the deduction under section 54 on the ground that the assessee has availed the loan for purchase of new house. Even otherwise when the total investment is much more than the loan as well as the capital gain then the capital gain is treated to be invested in purchase of new house. Hence the claim of the assessee under section 54 is allowed.