

Residential house constructed on commercial land is entitled to section 54F relief

Summary – The Jaipur ITAT in a recent case of Smt. Saroj Devi Agarwal., (the Assessee) held that Residential house constructed on a commercial plot would be eligible for deduction under section 54F

Facts

- The assessee had sold a plot of land and claimed deduction under section 54F for the construction of first and second floors at a commercial property. The basement, ground floor and the third floor of the said property were used by the other co-owners for commercial purpose.
- The Assessing Officer disallowed the claim under section 54F on account of four objections. Firstly, the land on which construction was done was a commercial land, no permission for the residential purpose was given by the JDA. Hence, the construction on the two floors could not be treated as 'residential house' within the meaning of section 54F. Secondly the assessee was the owner of 1/8th portion of land only. Hence, construction of first and second floors on the entire area of land could not be treated as in ownership of assessee. Thirdly, the Assessing Officer also observed that the construction of the said floors started on 9-4-2008 but in the balance sheets as on 31-3-2008 and 2009 of the assessee, no asset in the form of plot of land was shown and, thus, the assessee was not the owner of land on the date of construction, and hence not eligible for deduction under section 54 in absence of right of ownership. Fourthly, date of construction is 9-4-2008, and the sale of plot of land is 22-10-2008. Thus, the construction had started almost seven months before the sale of original asset, and as per the provisions of section 54F, the assessee was not eligible for deduction.
- On appeal, the Commissioner (Appeals) observed that there was no condition that the building plan of the residential house constructed should be approved by the municipal corporation or any other competent authority. The essential requirement for claiming deduction under section 54F was to see whether a residential house was constructed or not. The Assessing Officer had not disputed the construction of a residential house by the assessee for which it claimed deduction under section 54F. Therefore, first ground of Assessing Officer for rejection of claim did not hold good. Further, during assessment proceedings, it was submitted that the declaration in the form of affidavit by the Co-owners of the land that the assessee was the absolute owner of the construction on the first and second floor which consisted of the residential unit of the assessee and thus the ownership of the said residential house vests completely with the assessee. Further, a copy of the purchase deed dated 2-6-1990 of 1/8th share of the plot had been filed which showed that the assessee purchased the property from NB. This clearly established the ownership of the assessee over 1/8th share of the plot. The objection of the Assessing Officer that construction was started before the sale of asset was also not sustainable. Thus, it was held that the Assessing Officer was not justified in denying exemption under section 54F.

Held

- The issue of entitlement of benefit of section 54F would depend upon the facts of each case. In the present case, the assessee is seeking exemption on the ground that it has constructed a residential house. Such benefit of deduction is available if the assessee is in position to demonstrate that all conditions as envisaged in the provision of section 54F have been fulfilled. As per section 54F(1) there has to be a transfer of capital asset referred to as original asset, and such transfer gives rise to capital gain. For availing benefit of exemption from tax, the assessee is required to prove that it has purchased a residential house within one year before or two years after the transfer of the original asset or has within three years after the date of transfer constructed the residential house in India.
- In the present case, there is no dispute so far construction of house is concerned. The objection of Assessing Officer are three-fold, firstly the assessee has 1/8th rights over the property on which the new asset is constructed; secondly, the construction started prior to transfer of original asset and thirdly the new asset cannot be treated as residential house as same has been constructed on the commercial land. As per assessee by way of settlement amongst the co-owners, the assessee was given absolute rights over the new asset. Therefore, the assessee is entitled for exemption as claimed. It is further stated that law does not prohibit constructing a residential house on a commercial land. It is also argued that constructing a residential house in a commercial complex would not *ipso facto* alter the residential house into a commercial premises.
- The revenue has not brought any material on record suggesting that on commercial land no residential house can be constructed. Even there is no material suggesting that any unauthorized construction by the assessee would debar it from claiming exemption under section 54F. In the absence of such material, benefit of section 54F cannot be denied. Another objection of the Assessing Officer is with regard to the fact that construction of residential house was started prior to transfer of original asset. This objection is also misplaced when the assessee is entitled to exemption under section 54F if the residential house is purchased one year before the transfer of the original asset. Therefore, merely because the construction was started prior to transfer of original asset, if same is completed within three years of transfer of original asset, would not come into way of entitlement of exemption. Another objection of the Assessing Officer is that the assessee is having 1/8th share in the commercial land on which the new asset has been constructed. The explanation of the assessee is that by way of settlement the assessee was given absolute rights on the new asset. This claim of the assessee requires verification at the end of the Assessing Officer. Therefore, the finding of Commissioner (Appeals) to the extent that Assessing Officer would verify from other co-owners about the factum of relinquishment of their rights into new asset is modified. If the Assessing Officer finds correctness into the claim of the assessee, he would allow the entire claim lest he would restrict the same to the extent of 1/8th of the cost of construction of new asset.