

Sec. 54 relief couldn't be denied merely because assessee failed to obtain possession of new house property

Summary – The Chennai ITAT in a recent case of M. Raghuraman, (the Assessee) held that Even where new flat in which assessee had invested entire capital gain was not completed and possession was not given, assessee could not be denied exemption under section 54

Facts

- The assessee invested entire capital gain in a new flat which was not completed, even though payment was made to promoter. The possession of flat was not yet given to the assessee. The assessee claimed deduction under section 54 for the sale consideration which was reinvested in a new flat.
- The Assessing Officer disallowed the deduction on grounds that in absence of completion of construction, the assessee was not eligible for deduction under section 54.
- On appeal, the Commissioner (Appeals) allowed the deduction of assessee under section 54.
- On appeal to the Tribunal:

Held

- A bare reading of section 54 clearly says that in case the assessee purchased a residential house in India or constructed a residential house in India within the period stipulated in section 54(1), the assessee is eligible for exemption under section 54. Section 54(2) clearly says that in case the capital gain, which is not appropriated by the assessee towards purchase of new asset or which is not utilized in purchase of residential house or construction of residential house, then it shall be deposited in a specific account. It is not the case of the revenue that capital gain was not appropriated or it was not utilised. The fact is that the entire capital gain was paid to the developer of the flat. In other words, the assessee has utilised the entire capital gain by way of making payment to the developer of the flat.
- Section 54(2) does not say that in case the assessee could not get the possession of the property, he is not entitled for exemption under section 54. The requirement of section 54 is that the capital gain shall be utilised or appropriated as specified in section 54(2). The assessee has complied with the conditions stipulated in section 54(2), therefore, the Commissioner (Appeals) has rightly allowed the appeal of the assessee. Hence, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.
- In the result, the appeal filed by the revenue stands dismissed.