

Sec. 50C not applicable if assessee invested entire sale consideration in new house property u/s. 54F

Summary – The Lucknow ITAT in a recent case of Anant Chetan Agarwal, (the Assessee) held that where after sale of agricultural land, entire net consideration (whatever had physically received and accrued to assessee) had been invested, assessee would be eligible for deduction in respect of whole of capital gains

Facts

- The assessee sold an agricultural land (capital asset being situated within 8 Kms from the municipal limit of Bareilly) for a consideration of Rs. 27.46 lakh, value of which as per circle rate was Rs.58.06 lakh. The assessee claimed deduction under section 54F amounting to Rs. 27.46 lakh, *i.e.*, entire net sale consideration.
- The investment made in the house property as claimed under section 54F was examined by the Assessing Officer and the assessee was required to explain as to why the capital gain on entire consideration of Rs.58.06 lakh (as per provisions of section 50C) may not be charged. The assessee submitted that whatever sale consideration was received by him, has been invested under section 54F and, therefore, provisions of section 50C were not attracted. The Assessing Officer was not convinced with the submissions of the assessee and has held that provisions of sections 45, 48 and 50C applies to the case of the assessee and deduction under section 54F is not applicable. The Assessing Officer was of the opinion that sections 45 and 48 are charging sections and provisions of section 50C were applicable as per fair market value determined by the DVO.
- The matter was referred to the DVO by the Assessing Officer and DVO determined the fair market value of the property at Rs. 40.64 lakh as against value of circle rate amounting to Rs. 58.06 lakh.
- The assessee was show caused as to why value of property would not be treated at Rs. 40.64 lakh for the purpose of charging capital gain. It was in this context that the Assessing Officer held that charging sections to be 45 and 48 and applicability of section 50C was there, since fair market value was determined by the DVO and, therefore, assessee was not eligible for deduction under section 54F.
- On appeal, the Commissioner (Appeals) affirmed the order of the Assessing Officer.
- On appeal to the Tribunal:

Held

- Section 50C specifically mentions that for the purpose of section 48 value adopted was assessed for the purpose of stamp duty shall be deemed to be full value of consideration received or accruing as a result of transfer; meaning thereby, deeming fiction created in section 50C is limited only to the extent and for the purpose of section 48 and this deeming fiction cannot be extended or interpreted as meant for the purpose of other provisions of the Act including section 54F. Provisions of section 45 is the charging section of capital gain wherein itself conditions falling under section 54F is

exempted from chargeability and section 48 provides for mode of computation in case of capital gains. Provisions of section 50C can only be applied to the extent of section 48 and not beyond that. If provisions of section 50C are incorporated to protect the interest of the Revenue. Similarly section 54F is there to protect the interest of the assessee subject to the conditions specified therein. If one is allowed to encroach upon the territory of other, then either of the provisions becomes redundant which is definitely not the intention of the Legislature. Given the facts and circumstances of every case, section 50C to be applied separately and again in another set of facts and circumstances where there is applicability of section 54F, that is to be applied. Sanctity, with regard to section 54F is concerned, whether entire net consideration received by the assessee has been utilized or not. The assessee cannot be excepted to do more than whatever he has received; meaning thereby assessee can invest that amount only which he has actually physically received from transfer of long term capital asset other than residential house as provided under section 54F. There is a doctrine of impossibility of performance wherein it is only to the extent of funds available with the assessee that he can be expected to invest. On perusal of section 54F, what is, therefore, relevant is the investment of the net consideration in respect of original asset which has been transferred and whether net consideration is fully invested in the new asset. The net consideration as determined under section 50C based on the stamp duty authority valuation is not a consideration which has been received by or has accrued to the assessee. The Revenue authority did not place reliance on the proviso to section 54F. It is, therefore, clear that the entire net consideration and whatever has physically received and accrued to the assessee, the entire amount has been invested and in such circumstances, provisions of section 54F(1)(a) are complied with by the assessee and, therefore, assessee becomes eligible for deduction in respect of whole of the capital gains to be computed under section 45, read with sections 48 and 54F(1)(a). In this view of the matter, the order of the Commissioner (Appeals) is to be set aside and the appeal of the assessee is to be allowed.