

Sec. 54F relief available on short-term capital gains arising on dep. assets held for more than 36 months

Summary – The Chennai ITAT in a recent case of Dr. S. Sankaralingam, (the Assessee) held that where AO rejected assessee's claim for deduction under section 54F on ground that amount of capital gain was not deposited in Capital Gains Account within prescribed time, in view of fact that a part of sale consideration amount received in cash was taken over by department before due date of filing return and, thus, assessee was prevented from depositing said money in Capital Gains Account, impugned order deserved to be set aside

Provisions of sections 54 and 54F are beneficial provisions and, therefore, where assessee is eligible for deduction under section 54F, mere non-reference about specific section under which assessee is making claim cannot be a reason to disallow legitimate claim of assessee

Facts

- During relevant year, the assessee sold a landed property for a total sale consideration of Rs. 9 crores. However, the sale deed was registered disclosing the sale consideration only at Rs. 6 crores. The balance Rs. 3 crores was received by the assessee in cash. The assessee deposited said cash in the bank account in the name of the children of the assessee.
- The assessee claimed the cost of acquisition at Rs. 1.04 crores, whereas, cost of construction was claimed to the extent of Rs. 2.28 crores. The long-term capital gains was Rs. 6.71 crores. The assessee claimed deduction to the extent of capital gain.
- According to the Assessing Officer, the assessee had not constructed the house within a period of three years and also had not deposited in Capital Gains Account, therefore, he was not eligible for deduction under section 54F.
- The Commissioner (Appeals), however, granted deduction under section 54F of the Act.
- The revenue filed instant appeal contending that the assessee had not indicated the section under which the claim was made. Therefore, according to the revenue, the Commissioner (Appeals) was not justified in allowing the claim of the assessee.

Held

- Admittedly, the property was sold for Rs. 9 crores. The sale consideration disclosed in the sale deed was only Rs. 6 Crores. The assessee apparently received sale consideration to the extent of Rs. 3 crores in cash. However, he deposited the same in S.B. Account in the names of self, his wife and children. It is not in dispute that Rs. 1.40 crores was used for repayment of loan and Rs. 4.60 crores was deposited in Capital Gains Account. The balance amount to the extent of Rs. 2,99,50,000/- was deposited in State Bank of India in the name of assessee, his wife and children and the same was taken over by the department before the due date for filing of return of income. Therefore, as rightly submitted by the assessee, the assessee was prevented from depositing said money in the

Capital Gains Account. The total capital gain is Rs. 6,71,08,935/-. Hence, considering the deposit of Rs. 4.60 crores in Capital Gains Account and the money taken by the department to the extent of Rs. 2,99,50,000/-, it is held that the Commissioner (Appeals) has rightly allowed the claim of the assessee under section 54F of the Act.

- The revenue has also raised an objection in respect of failure of the assessee to make a specific claim under specific provision. No doubt, the assessee has not made any specific claim. However, he claimed exemption under section 54 in the return of income filed by him. The assessee has not indicated the specific provision. The return of income clearly shows that the assessee claimed deduction under section 54B/54D/54EC/54F/54G/54GA. The provisions of sections 54 and 54F of the Act are beneficial provisions. Merely because the assessee has not made any specific reference, that cannot be a reason to disallow the claim of the assessee. It is not a case of the revenue that the assessee is not eligible for deduction under section 54F of the Act. Therefore, mere non-reference about specific section under which the assessee is making claim cannot be a reason to disallow the claim of the assessee. Therefore, there is no 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 is dismissed.