

## **No denial of exemption merely because sec. 54F has no specific mention of depreciable assets**

**Summary – The Ahmedabad ITAT in a recent case of Shrawankumar G. Jain, (the Assessee) held that Exemption under section 54F is available even on short-term capital gains calculated as per section 50 on sale of depreciable assets held for more than 36 months**

**Where assessee had purchased new residential house within due date specified under section 139(4) from date of transfer of original asset, requirement to deposit net consideration received by assessee in capital gain account scheme as per section 54F(4) would not be attracted and assessee would be eligible to benefit of exemption under section 54F**

### **Facts**

- The assessee individual was running its proprietorship business under the name and style of MM. The assessee had sold its factory shed. The assessee had claimed depreciation on such factory shed. Accordingly, the income earned thereon was shown as short-term capital gain under section 50. However, the assessee in its return of income had claimed exemption under section 54F against the short-term capital gain on the ground that same was invested in purchase of residential property.
- As per the Assessing Officer, the exemption is available under section 54F, only on was long-term capital asset. The impugned factory shed was subject to depreciation under section 32 therefore, the gain earned on the sale of such factory shed was liable to be taxed under section 50 being short-term capital gain. Once, the gain was held as short-term by virtue of the provision of section 50, same could not be subjected to exemption under section 54F. The Assessing Officer also observed that the object for enacting the provision of section 50 was to avoid the multiple benefits claimed by the assessee. Therefore, the assessee was not eligible for exemption under section 54F. Besides above, the Assessing Officer also observed that the assessee had violated the provision of section 54F(4) as he failed to deposit the amount of net sale consideration in the capital gain account scheme. Therefore, the assessee could not be allowed exemption under section 54F.
- On appeal, the Commissioner (Appeals) also upheld the order of the Assessing Officer.
- On second appeal:

### **Held**

- The issue in the instant case relates to the exemption claimed by the assessee within the prescribed time limit under section 54F in respect of depreciable assets. The Assessing Officer has made the disallowance on account of two reasons that exemption in section 54F is available only on sale of long-term capital assets. Whereas, in the instant case, the assessee has sold depreciable assets which is treated as short term capital gain by virtue of the provision of section 50. Without prejudice to the above, the assessee is also not eligible for exemption under section 54F as he failed to deposit

the net consideration received by him in the capital gain account scheme as mandated under section 54F.

- The view taken by the Assessing Officer was subsequently confirmed by the Commissioner (Appeals).
- It is undisputed fact that the period of holding of factory shed was exceeding more than 36 months and on the same assets the depreciation was claimed by the assessee. Thus, the gain arose on sale of such depreciable assets was held as short term by virtue of the provision of section 50. At this juncture, it is relevant to reproduce the section 2(42A).
- From the combined reading of the sections 50 and 54F, it is noted that all the provisions of the section as discussed above are mutually exclusive to each other. There is no mention under section 50 referring to the provision of section 54F and *vice versa*. Therefore, the provision of one section does not exclude the provision of other section. Therefore, both the provision should be applied in the instant case independently. The assessee has claimed deduction under section 54F because of the fact that the factory shed was long-term capital assets and there is nothing mention under the provision of section 54F for depreciable assets. Thus, the sale of factory shed is subject to short-term capital gain on the basis of deeming provision as specified under section 50. Thus, inherently the factory shed being long-term capital assets is eligible for deduction under section 54F.
- The capital gain income earned by the assessee on the sale of depreciable assets being factory shed is eligible for exemption under section 54F as it is long-term capital assets as per the provision of section 2(42A). Thus, one has no hesitation in deleting the addition made by the Assessing Officer by disallowing the exemption available to the assessee. Similarly, there is no dispute the net consideration was utilized by the assessee before filing the income tax return within the due date as specified under section 139(4). Therefore, the assessee is eligible for exemption under section 54F, though he failed to deposit the net consideration in the capital gain account scheme within the time specified under section 139(1).