

## Deeming fiction of sec. 50C won't apply while claiming relief under sec. 54F: ITAT

**Summary – The Mumbai ITAT in a recent case of Hrishikesh D. Pai., (the Assessee) held that where assessee had sold a property which was used for commercial purposes and on which depreciation was also claimed and said property was held for a period of more than thirty six months and further assessee had purchased a residential flat from consideration received, assessee was eligible for deduction under section 54F on capital gains arising from sale of property**

### Facts

- During the previous year relevant to the assessment year 2012-13, the assessee, a doctor by profession, had sold a property, which was used by him for commercial purposes for his clinic and on which depreciation was also claimed under section 32. The said property was held by the assessee for a period of more than thirty six months before being sold. Further the assessee had purchased a new residential flat from the consideration received from sale of the above property.
- The assessee claimed deduction under section 54F on the capital gains arising from the sale of aforesaid property.
- The Assessing Officer treated the aforesaid property as short-term capital assets within the deeming provision of section 50 and held that the assessee was not entitled for deduction under section 54F with respect to short-term capital gains arising on sale of such short term capital assets, as the deduction under section 54F was available only on the long-term capital gains arising from transfer of long-term capital assets.
- The Commissioner (Appeals) allowed the deduction under section 54F to the assessee.
- On appeal to Tribunal by revenue:

### Held

- Section 50 creates a deeming fiction by modifying provisions of sections 48 and 49 for the purposes of computation of capital gains chargeable to tax under section 45 with respect to the depreciable assets forming part of block of assets and there is nothing in section 50 which could suggest that deeming fiction is to be extended beyond what is stated in provisions of section 50 and it cannot be extended to deduction allowable to the assessee under section 54F which is an independent section operating in altogether different field. The issue is no more *res integra* as the issue is now been settled by the Supreme Court in the case of *CIT v. V.S. Dempo Co. Ltd.* [\[2016\] 74 taxmann.com 15/242 Taxman 434/387 ITR 354.](#)
- The Mumbai Bench of the Tribunal in the case of *ACIT v. Kiran G. Gadhia* [IT Appeal No. 4021 (Mum.) 2015, dated 22-3-2017] has under similar circumstances allowed the deduction under section 54/54F.

- Thus keeping in view aforesaid decisions, the assessee will be entitled for deduction under section 54F on the capital gains arising on the sale of depreciable assets being commercial property.
- In view of the aforesaid, the appeal filed by the revenue deserved to be dismissed.