

## No sec. 54F relief on cost of land of newly constructed house if it was purchased 1 year before sale of capital asset

**Summary – The Bengaluru ITAT in a recent case of Parswanath Padmarajaiah Jain, (the Assessee) held that Assessee is not entitled to benefit of section 54F in respect of investment made by assessee in purchasing capital asset (land) before period of one year prior to sale of another capital asset**

### Facts

- The assessee purchased a land on 17-4-2010 and claimed exemption under section 54F, of an amount of Rs.3.84 crores out of the capital gains of Rs.8.62 crores on the premise that the assessee's case would fall within the purview of section 54F(1) as the assessee had carried out the construction which included the purchase of land and, therefore, the assessee was entitled to the benefit of section 54F for the above said amount.
- During the assessment proceedings the Assessing Officer denied the benefit of section 54F in respect of the cost of land of a sum of Rs.1.93 crores as the said land was acquired by the assessee before one year of sale of the capital asset on 1-4-2012.
- On appeal, the Commissioner (Appeals) had also dismissed the claim of the assessee relying upon the bare provision of section 54F.
- On second appeal to the Tribunal:

### Held

- From the perusal of section 54F, it is clear that for the purpose of claiming benefit of deduction under section 54F, it is incumbent upon the assessee to satisfy one of the following ingredients :
  - (i) That the Capital asset should be purchased within one year before the sale of the long term capital asset Or
  - (ii) The Capital asset should have been acquired within two years after the date on which the transfer took place Or
  - (iii) Within a period of three years after the date of sale of the capital asset, the assessee had constructed one residential house in India.
- Admittedly, for the purposes of availing the benefit of exemption under section 54F, the assessee is required to satisfy that his case falls in any of the above conditions. The capital asset was sold on 1-4-2012 and the land was purchased by the assessee for which the benefit of section 54F was sought, was purchased on 17-4-2010. Hence, it is beyond the pale of argument that the condition (i) *supra* is applicable as the capital asset ( land ) has been acquired before a period of one year from the sale of capital asset.

- Similarly, it is not the case of the assessee that the assessee is claiming the benefit or exemption under section 54F in clause (ii) *supra* as the assessee has not purchased land within a period of two years after the transfer took place.
- The claim under the last clause (iii) of 54F would only fall if the assessee within a period of three years after the date of transfer had constructed one residential house in India. Admittedly, land was purchased on 17-4-2010 and, hence, this clause would also not be applicable for the purposes of claiming the benefit of section 54F as the land was purchase prior to one year whereas land required construction of residential house after 3 years of sale of capital asset. The construction or acquisition of the residential house should have taken place within a period of three years after the transfer of the capital asset. The capital asset was transferred on 1-4-2012 and the land was purchased on 17-4-2010 *i.e.*, beyond period of one year prior to the date of transfer and, hence, for the purposes, of availing the benefit under section 54F (3rd exemption), as mentioned herein above, it is necessary that the house should have been constructed within a period of three years from the date of transfer of the capital asset. Purchase of the land was prior to one year, hence, the case of the assessee does not fall under any of the three exemptions available to the assessee under section 54F.
- Section 54F is an exemption provision and though there is no ambiguity in reading of section 54F assuming there is some ambiguity; in that eventuality section 54F is required to be read in favour of the revenue as held by the Supreme Court in the matter of *CC (Import) v. Dilip Kumar & Co.* [2018] 95 taxmann.com 327/69 GST 239.
- In view of the above, the appeal of the assessee is to be dismissed and it is to be held that the assessee is not entitled to the benefit of section 54F in respect of the investment made by the assessee in purchasing the capital asset (land) prior to the period of one year from the sale of capital asset , as the said purchase of the land was not within a period of one year prior to the sale of the capital asset or falling in any one of these categories in which the assessee was entitled to claim exemption under section 54F under these categories.