

## Section 54 exemption not to be denied if delay in getting possession is on account of builder

**Summary – The Delhi ITAT in a recent case of Bal Kishan Atal, (the Assessee) held that Section 54 exemption is not to be denied if delay in getting possession is on account of builder**

### Facts

- During the relevant year, the assessee sold a residential property for Rs.98 lakhs and claimed deduction of Rs. 81.44 lakhs under section 54. The assessee claiming indexed cost of acquisition of Rs.16.13 lakhs and invested a sum of Rs.62.68 lakhs in the residential flat and deposited Rs. 19 lakhs in the capital gain account.
- The Assessing Officer disallowed the deduction of Rs.62.68 lakhs on the premise that assessee had not taken possession within the period of three years. The deduction of Rs.19 lakhs deposited in the capital gain account was also disallowed on the ground that assessee had not utilised the same within the prescribed period.
- On appeal, the Commissioner (Appeals) also confirmed the action of the Assessing Officer.
- On second appeal:

### Held

- The Delhi ITAT stated that it is clear that assessee has made payment for the purchase of flat to the developer of Rs.62.68 lakhs and the transaction of payment and purchase of flat are not in dispute. The only issue is that assessee could not obtain the possession and got the purchase deed executed within the period of three years since the delay was on account of developer and not on account of the assessee. Thus, the delay in obtaining possession and getting purchase deed executed was on account of the developer and was beyond the control of the assessee. The assessee has made substantial payment of Rs.62.68 lakhs. In such peculiar facts and circumstances, exemption under section 54 cannot be denied to the assessee. The assessee has done all what he could have done. There is no failure on the part of the assessee.
- On the issue of disallowance of exemption of Rs.19 lakhs in respect of amount deposited by the assessee in the capital gain account on the ground that the same was not utilised within the period of three years, the assessee submitted that the reason for non-utilisation was by reason beyond the control of the assessee since the possession of the flat had been delayed by the developer. The assessee also made an alternative submission that even otherwise the amount is not taxable in the current assessment year and the addition if any on account of non-utilisation can be made in the year in which the prescribed period of three years expires.
- In view of the above the addition made by the Assessing Officer and sustained by the Commissioner (Appeals) were to be deleted.