

Property held by co-owners cannot be treated as property owned only by assessee while for relief u/s 54F: ITAT

Summary – The Mumbai ITAT in a recent case of Ashok G. Chauhan, (the Assessee) held that property held by co-owners cannot be treated as property owned only by assessee while for relief u/s 54F

Facts

- Assessee filed his return claiming deduction under section 54 F in respect of capital gain arising from transfer of capital assets.
- The Assessing Officer noted that at time of transfer of capital asset, assessee owned two residential houses out of which one was jointly purchased with his wife.
- The Assessing Officer rejected assessee's claim for deduction since assessee was owner of two flats on date of transfer of capital assets.
- The Commissioner (Appeals) upheld the order passed by Assessing Officer.
- On second appeal:

Held

- ITAT determined that it is a fact that assessee was co-owner of the second property along with his wife and not full owner.
- In case a property is owned by more than one person, it cannot be said that anyone of them is the owner of the property since no individual person on his own can sell the entire property - they can sell only their interest in the property but.
- In the present case the second house was jointly owned by assessee and his wife and thus it cannot be said that the assessee fully and wholly owned the house.
- Although the assessee could not be treated as 'absolute owner' of the second residential flat the exemption under section 54F cannot be denied to the assessee to the extent of his proportion.
- In view of aforesaid, the Assessing Officer is directed to allow the exemption under section 54.