

Flat constructed on land occupied by housing society on leasehold basis eligible for Sec. 54 relief

Summary – The High Court of Bombay in a recent case of Rahul Uday Tuljapurkar, (the Assessee) held that a flat constructed on land occupied by housing society on leasehold basis is eligible for Sec. 54 relief

Facts

- The assessee was a joint owner of a residential property in the nature of a flat. The apartment complex was owned by a Co-operative Housing Society on a leasehold land. The assessee and his mother being co-owners sold the flat and invested a part of the sale consideration in purchase of a new residential unit. In the return of income, the assessee claimed deduction while computing his capital gain tax liability in terms of section 54.
- The Assessing Officer rejected his claim on the ground that the assessee had not transferred the building and the land appurtenant thereto and since this was a precondition for application of section 54, the assessee was not entitled to the benefit of exemption as per the said provision.
- The Commissioner (Appeals) held that the fact that residential building in which the flat was situated was constructed on a leased land, would not change the nature of transaction and the assessee would be the owner of the flat in law. He thus allowed assessee's claim for deduction.
- The Tribunal, dismissed the revenue's appeal.
- On revenue's appeal:

Held

- The HC held that the revenue is wholly incorrect in the contention.
- In terms of provisions of section 54, what is important is that there should be a transfer of capital asset being a building or land appurtenant thereto and being a residential house. The revenue's contention that the transferor of a capital asset of a residential unit must also transfer the land appurtenant thereto in order to claim benefit of section 54 is absurd since there is no such prescription under section 54(1) of the Act.
- Such a rigid interpretation would disallow every claim in case of transfer of a residential unit in a Co-operative Housing Society since upon sale of a flat a member of the Co-operative Housing Society never transfers the title in land to the purchaser.
- Hence, merely because the housing complex was situated on a piece of land which was occupied by the Co-operative Housing Society under a long term lease, would make no difference.
- In the result, the revenue's appeal is dismissed.