

1. To claim the benefit u/s 54E of the Income Tax Act, 1961, period of six months is reckoned from the date of transfer of capital asset and not from the date of receipt of final sales consideration.

Jyotindra H. Shodhan Vs. ITO, [2015] 229 taxman 299 [Gujarat], Date of Order: 12-12-2014

In brief, the assessee had sold two plots of land and claimed deduction u/s 54E of the Act on the basis of investment made in NRDB within six months of the receipt of sale consideration. However, the AO raised the contention that investments in specified assets were made after six months from the date of transfer of capital asset and disallowed the same. The assessee contended that the stipulated period of six months have to be reckoned from the date of receipt of final consideration instead of date of transfer of the capital assets.

Hon'ble high court held that the time period of six months for making investments in specified assets must be reckoned from the date of transfer of the capital asset which is pre-condition under the provision of section 54E for availing benefits. In the present case, the investments were made after the period of six months from the date of transfer. Therefore, the assessee is not entitled to claim the benefits u/s 54E of the Act and such deduction cannot be allowed.

2. Registration application u/s 12A of the Income Tax Act, 1961 cannot be rejected merely on ground that organization formed with a view to provide services to ex-army personnel, their widows and dependents and charged one time nominal registration fee.

Army Welfare Placement Organization v. DIT (Exemptions), [2015] 38 ITR (T) 1 (Delhi-ITAT), Date of Order: 22.01.2015

In brief, the assessee is a welfare and non-profitable organization set up by the Indian Army with an aim to arrange placement for retired army personnel, their widows and dependent in public and private sectors in India for which assessee charged a nominal registration fees for onetime. The assessee filed an application u/s 12A seeking registration u/s 12A of the Income Tax Act, 1961 for being treated as charitable institution to claim exemption u/s 11 of the Act. However, the Ld. Director rejected the application for the reason that the main objective of the organization is to give placement to the members of the organization who register with them by paying the placement fee charges to the organization (particularly it is only for the ex-army personnel and their dependent and widows). It is purely a commercial activity and violation of Section 2(15) of the Income Tax Act, 1961 and there is no charitable activity conducted by the assessee.

Hon'ble ITAT held that in a situation in which an activity is not undertaken with a profit motive or on sound and recognized business principles, such an activity cannot be considered to be a business activity and reliance is placed on the judgment of **Hon'ble Delhi High Court in the case of Institute of Chartered Accountants of India Vs DGIT (Exemption) [(2011) 347 ITR 99 (Del)]**. In present case services are render to the army personnel, their widows and dependents, rather than to any trade, commerce or business with not for profit motive. Thus, the registration u/s 12A of the Act cannot be rejected merely due to this reason in the absence of any other material.