



Voice of CA

Googlies & Doosras –
section 54 Deductions

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CAPITAL
GAINS
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Pitch Report



“If you sell your house to make a profit, pay Caesar what is due to him. But, if you buy or build another, subject to the conditions of section 54(1), you are exempt”

– Justice V. R. Krishna Iyer in *CIT Vs. T.N. Aravinda Reddy (1979) 120 ITR 46 (SC)*

Scheme of Section 54

- ▶ Exemption Available to Individual and HUF
- ▶ In respect of LTCG on transfer of Residential House or land appurtenant
- ▶ Income shall be *Chargeable* under the Head Income from House Property
- ▶ New Asset – “One” (a) Residential House in India
 - Purchased within 1 year before or 2 years after the date of transfer of old asset
 - Constructed within 3 years of the transfer of old asset
- ▶ If $CG > \text{Cost of New Asset}$ → Difference Taxable
- ▶ If $CG < = \text{Cost of New asset}$ → Full Exemption
- ▶ If $CG < = 2 \text{ Cr.}$ – Assessee has one time option to purchase / construct two houses in India w.e.f. AY 20-21
- ▶ If new asset sold within 3 years – then the cost will be NIL or reduced by capital gain exempted earlier as the case may be
- ▶ Investment to be made in Capital Gain Account Scheme



Investment in Multiple Houses

- ▶ Exemption was earlier possible for investment in Multiple Houses
 - CIT Vs. D. Ananda Basappa (2009) 309 ITR 329 (Kar)
 - CIT Vs. K. G. Rukminiamma (2011) 331 ITR 211 (Kar.)
 - CIT Vs. Syed Ali Adil (2013) 352 ITR 418 (AP)
 - CIT Vs. Gita Duggal (2013) 357 ITR 153 (Del.)
 - **Contra : Pawan Arya Vs. CIT (2011) 49 DTR 123 (P & H) – Delhi and Faridabad**
- ▶ Amendment made by Finance No. 2 Act 2014 w.e.f. A.Y. 2015–16
- ▶ Amendment is prospective in nature
 - CIT Vs. V. R. Karpagam 373 ITR 127(Mad.)
 - Tilokchand & Sons Vs. ITO 413 ITR 189 (Mad.)

Multiple Units but One House

- ▶ Some relevant factors
 - Adjacent units merged in one with common entrance, common passage or common kitchen
 - Different floors but used as one unit (Duplex)
 - Different floors but there is common kitchen
- ▶ Difficult to claim when
 - In different societies altogether
 - Not used as a single unit as a fact

Multiple Houses Transferred

- ▶ Two Houses Transferred and Total Investment made in one bigger house. Whether both will qualify for exemption u/s. 54 or any one will qualify ?
- ▶ No requirement of purchasing one new house for each house transferred
 - DCIT Vs. Ranjit Vithaldas 137 ITD 267 (Mum.)
- ▶ Old house Capital Gains 1 Crore – Investment in new house 1.80 Crore – One more house sold within 2 months of purchase of new house – Capital Gain 1 Crore – Unexhausted cost of the new house (80 Lakhs) can be claimed
 - Anagha Ajit Patnekar Vs. ITO 9 SOT 685 (Mum)
- ▶ Similarly both 54 and 54F can be availed for the same asset
 - Ravindra K. Mariwala Vs. ITO (2003) 86 ITD 35 (Mum).

Purchase Vs. Construction

- ▶ Booking in Under Construction Project whether purchase or construction ?
 - CIT Vs. Smt. Bharati C. Kothari (2000) 244 ITR 352 (Cal.)
 - CIT Vs. Mrs. Hilla J. B. Wadia (1995) 216 ITR 376 (Bom) – *Co-operative society*
 - Asst. CIT Vs. Smt. Sundar Kaur Sujan Singh Gadh (2005) 3 SOT 206(Mum) – *Letter of Allotment by Builder*
 - CIT Vs. Brinda Kumari 253 ITR 343 (Del.)
 - Farida A. Dungerpurwala Vs. ITO 67 SOT 208 (Mum.)
- ▶ Circular No. 471 dated 15-10-1986 –DDA
- ▶ Circular No. 672 dated 16-12-1993
- ▶ Demolition of existing structure and reconstruction
 - CIT Vs. Ashok Kumar Ralhan 360 ITR 575 (Del.) (54F – but applicable equally)
 - Mere Modification or renovation in existing flat will not amount to construction – Mrs. Meera Jacob Vs. ITO 313 ITR 411 (Ker.)

Post Purchase Construction Exps

- ▶ Department's view
 - Purchase and construction are mutually exclusive
 - Transaction gets completed once new house is purchased - subsequent events are not material
- ▶ B.B. Sarkar Vs CIT (1982) 132 ITR 150 (Cal.) - *Additional floor constructed after purchase - Purchase does not rule out construction*
- ▶ Mrs. Gulshanbanoo R. Mukhi Vs. Jt. CIT (2002) 83 ITD 649 (Mum)
 - *Cost Vs. Price - Construction not possible without purchase*
- ▶ Jt. CIT Vs. Smt. Armeda K. Bhaya (2005) 95 ITD 313 (Mum)
- ▶ Saleem Fazelbhoy Vs. DCIT (2007) 106 ITD 167 (Mum)
 - inhabitable premises is not residential house
 - Difference between expenses on making house habitable and expenses on renovation

Construction – Beginning and End

- ▶ Time Limits for New House
 - Purchase : 1 year prior or 2 years after
 - Construction : Within 3 years on transfer
- ▶ Construction completed prior to transfer of original asset will not qualify for exemption
 - ACIT Vs. Sagar Nitin Parikh ITA No. 6399/Mum-2011
- ▶ Construction started prior to transfer of old house completed subsequent to transfer
 - CIT Vs. J. R. Subramanya Bhatt 165 ITR 57 (Kar.)
 - CIT Vs. H. K. Kapoor 234 ITR 753 (All.)
 - Mustansir I. Tehsildar Vs. ITO 168 ITD 523 (Mum.)



When New house is purchased / constructed

- ▶ Some Relevant events in the process of Purchase or construction of a new house
 - Part Payment
 - Agreement
 - Balance Payment
 - Registration
 - Possession
- ▶ General law – Registration of conveyance coupled with possession
- ▶ Difference between “*purchase*” and “*own*”
- ▶ Section 54(2) / 54F(4) – “towards purchase”



When New house is purchased / constructed

- ▶ Purchase means to buy for a price or equivalent of price by payment in kind or adjustment towards a debt – *CIT Vs. T. N. Arvinda Reddy (1979) 120 ITR 46 (SC)*
- ▶ Domain and control over the property – *CIT Vs. Mrs. Shahzada Begum (1988) 173 ITR 397 (AP)* – Payment of substantial portion of consideration and possession
- ▶ *CIT Vs. Dr. Laxmichand Narpal Nagda (1995) 211 ITR 804 (Bom.)* – Purchase is not used in the sense of a legal transfer – Ordinary meaning shall be followed

Whether Registration is Compulsory ?



- ▶ Purchase is different then legal ownership

- ▶ Supporting Decisions
 - CIT Vs. Smt. Beena K. Jain (1996) 217 ITR 363 (Bom.)
 - Balraj Vs. CIT (2002) 254 ITR 22 (Del.)
 - CIT Vs. Ajitsingh Khajanchi (2008) 297 ITR 95 (MP)

What if Construction can not be completed in time ?



- ▶ Exemption Beneficial provisions shall be liberally construed
 - Bajaj Tempo Ltd. Vs. CIT (1992) 196 ITR 188 (SC)
 - Broach District Co-operative Cotton Sales, Ginning & Pressing Society Ltd. vs. CIT (1989) 177 ITR 418 (SC)
 - CIT vs. Straw Board Manufacturing Co. Ltd. (1989) 177 ITR 431 (SC)
 - CIT Vs. Mrs. Hilla J. B. Wadia (1995) 216 ITR 376 (Bom)
- ▶ **CC Vs. Dilipkumar & Co. (2018) 9 SCC 1 (SC)**
 - Exemption provision to be construed strictly and in case of ambiguity view that favours revenue shall be adopted
- ▶ Substantial compliance Vs. Complete compliance
 - CIT Vs. Saradarmal Kothari (2008) 302 ITR 286 (Mad)
 - CIT Vs. Sambandam Udaykumar (2012) 251 CTR (Kar) 317
 - CIT Vs. Girish Ragma 239 Taxman 449 (Bom.)

Purchase in Joint names

- ▶ Requirement is to Purchase and not Own
- ▶ Section does not put a restriction that the Purchase cannot be in the joint names
 - CIT Vs. Ravinderkumar Arora (2012) 342 ITR 38 (Del.)
 - DIT International Taxation Vs. Mrs. Jennifer Bhide (2012) 349 ITR 80 (Kar)
 - Dr. P. K. Vasanthi Rangarajan Vs. CIT (2012) 252 CTR (Mad) 336
 - Laxmi Narayan Vs. CIT (2018) 402 ITR 117 (Raj.)
 - Bhatkar Ramarao Prakash Vs. ITO (2019) 175 ITD 144 (Bang.)

Purchase in Others' names

- ▶ Whether it can be said that “*the assessee*” has purchased the house ?
 - Late Mir Gulam Ali Khan Vs. CIT (1987) 165 ITR 228 (AP) – Death of Assessee before Investment
 - CIT Vs. V. Natarajan (2007) 287 ITR 271 (Mad) – In name of wife
 - CIT Vs. Kamal Wahal (2013) 351 ITR 4 (Del.) – In name of wife
- ▶ Contra View
 - Prakash Vs. ITO (2009) 312 ITR 40 (Bom.), – Adopted son – **Section 54F**
 - Vipin Malik (HUF) Vs. CIT (2011) 330 ITR 309 (Del.) – Karta of HUF – Section 54F
 - Kalya Vs. CIT (2012) 251 CTR (Raj) 174 – 54B exemption denied – “assessee” shall be strictly construed.
- ▶ Situation under section 54F and under section 54

Capital Gain Account – Failure to Invest and Due Date

- ▶ Section 139 (1) Vs Section 139 (4)

- ▶ Judicial Support
 - CIT Vs. Rajesh Kumar Jalan (2006) 286 ITR 274 (Gau.)
 - Fathimabai Vs. ITO (2009) 32 DTR (Kar.) 243
 - CIT Vs. Ms. Jagriti Agarwal (2011) 339 ITR 610 (P & H)
 - CIT Vs. Jagtar Singh Chawla (2013) 87 DTR (P &H) 217
 - P.R. Kulkarni & Sons (HUF) Vs. Addl CIT (2011) 135 TTJ (Bang) 630
 - **Humayun Suleman Merchant 387 ITR 421 (Bom) – Dilution of the principle**

Source of Investment – How crucial

- ▶ Significance of Investment made One Year before the Transfer
 - CIT Vs. Pasricha ITXA No. 1825 of 2009 (Bom. HC)
 - ITO Vs. K.C. Gopalan (2000) 162 CTR (Ker) 566
 - CIT Vs. Kapil Kumar Agarwal 382 ITR 56 (P & H)
- ▶ Borrowed Funds / Housing Loans
 - Subsequently Repaid / Not Repaid
 - Bombay Housing Corporation Vs. ACIT (2002) 81 ITD 545 (Mum) – Forced Borrowings Vs. Conscious Borrowings
 - Mrs. Prema P. Shah Vs. ITO (2006) 100 ITD 60 (Mumbai)
- ▶ Repayment of earlier housing loans – Whether exemption allowable ?????

Death of Assessee prior to purchase

- ▶ Section 159 (1) – Legal representative to be assessed in the like manner and to the same extent as assessee
- ▶ Section 159(3) – Legal representative of the deceased is deemed to be an assessee for the purpose of this Act
- ▶ Liberal Interpretation – Situation beyond control
 - C. V. Ramnathan Vs. CIT 125 ITR 191 (Mad.)
 - Mir Gulam Ali Khan Vs. CIT 165 ITR 228 (AP)

Impact of Section 50C

- ▶ Section 50C replaces SDV as Consideration for purpose of section 48 – Deeming fiction
- ▶ Sec. 50C does not extend to Section 54
- ▶ What is to be invested is Capital Gains – Computation is always u/s. 48
 - Jagdish C. Dhabalia Vs. ITO 308 CTR 295 (Bom.) – in the context of sec. 54EC
- ▶ Equity and Taxation are Strangers
- ▶ Different position under section 54F
 - Gyan Chand Batra Vs. ITO 133 TTJ 482 (Jp.)
 - DCIT Vs. Dr. Chalsani Malikarjuna Rao 161 ITD 721 (Vis)
 - Anant Chetan Agarwal Vs. DCIT 172 ITD 525 (Luck.)

Original Asset – A Residential House

- ▶ Original asset should be a Residential House
 - Dr. A. S. Atwal Vs. CIT (2005) 277 ITR 462 (P&H)
- ▶ Income “chargeable” under IFHP – Chargeable Vs. Charged
 - Mrs. Sheela Bhagwandas Nichlani Vs. ITO (2014) 146 ITD 244 (Mum.)
- ▶ Adjoining Land Vs. Appurtenant Land
 - P. K. Lahiri Vs. CIT (2005) 275 ITR 17 (All)
- ▶ House destroyed before sale of Land
 - Subhash Chand Kapoor Vs. ITO (2010) 46 DTR (Agra)(Trib) 314

Redevelopment Cases



- ▶ Whether Purchase or Construction?
- ▶ Claim for section 54 exemption
 - Jatinder Kumar Madan Vs. ITO (2012) 32 CCH 059 (Mum).
- ▶ Delay in completion of the project – Liberal Interpretation ?
- ▶ Position where right from beginning it was known that the project will not be completed in three years.

Section 56(2)(x) – Interplay with sec. 54

- ▶ New house purchased for 1 Crore – Stamp Duty Value 1.20 crore
- ▶ Section 56(2)(x) – 20 Lakhs is Income
- ▶ Section 49(2A) – Cost of New House is 1.20 Crores
- ▶ Can the Assessee claim that the investment to be considered for section 54 is Rs. 1.20 Crores ?

Sec 54 vis-à-vis Section 54F

Available for Transfer of Residential House	Available for Transfer of any asset other than Residential House
Capital Gains is to be invested	Net Consideration is to be invested
No additional conditions	Additional conditions (a) not own more than one house (b) should not purchase any other house within 1 year (c) should not construct any other house within 3 years
New asset can not be transferred within 3 years	
In case of default cost of new asset will be reduced for CG purpose	In case of default exemption granted earlier becomes LTCG of the year in which default takes place





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