

Capital gains: More than one house can be bought

Income-Tax Act, 1961 (Act) gives exemption for capital gains from tax if the conditions stipulated, inter-alia, in Section 54 of the Act are satisfied. This section provides for exemption in respect of long-term capital gains arising from the transfer of a residential house and requires investment of the amount of capital gain in acquiring another residential house for exemption from tax on capital gains. The condition attached to the benefit u/s 54(1) is that the assessee, on transfer of a residential house, purchases or constructs another residential house within the time mentioned. The use of the word 'a' gives impression that in lieu of one house transferred, only one house can be acquired for claiming exemption. There has been controversy on the issue whether the capital gain arising on the transfer of a residential house can be invested in more than one house.

In the following decisions, the views expressed are that in lieu of one residential house transferred, only one such house can be acquired: *Gulshanbanoo R. Mukhi v. Joint CIT* (2002) 83 ITD 649 (Mum.Trib);

Krishna Gopal Nagpal v. Dy. CIT (2004) 82 TTJ (Pune-Trib) 48; and *ITO v. Sushila M. Jhaveri* (2007) 16 (II) ITCL 254 (Mum 'I' Trib).

In the following decisions, considering the facts of the cases, more than one residential houses have been considered permissible: *K.G. Vyas v. Seventh ITO* (1986) 16 ITD 195 (Bom Trib.); *CIT v. Sunita Aggarwal* (2007) 13(1) ITCL 66 (Del-HC); *ITO v. P.C. Ramkrishna (HUF)* 2007 108 ITD 251 (Chen. Trib.) and *Prem Prakash Bhutani v. Asstt. CIT* (2007) 110 TTJ (Delhi-Trib) 440.

The Karnataka High Court has expressed a more rationale view considering the provisions of Section 54. In the case before the court, the assessee owned a property, which she agreed to give to a builder in lieu of getting 48 per cent of super-built area in the form of residential apartments. The builder constructed eight flats and gave four to the assessee. The issue arose whether capital gain tax exemption can be claimed in respect of acquisition of four flats. The Revenue's case before the court was that section 54 uses the word 'a residential house'. Hence, exemption is available only in respect of investment in one such house – not four. The HC did not agree with the Revenue's view. According to the court, the property is sold is referred to as 'original asset' in Section 54, described as buildings or lands appurtenant thereto, being 'a residential house'. Thus, residential house may include buildings or land appurtenant thereto. The stress is on the use to which the property is put and exemption is available when the house acquired is used as a residential house. The residential house necessarily have to be buildings or lands appurtenant thereto. It cannot be construed as one residential house.

The HC observed that the context in which the expression 'a residential house' is used in Section 54 makes it clear that it was not the intention of the legislature to convey the meaning that it refers to as a single residential house. According to the HC, it is permissible to invest the amount of capital gain in more than one house and get exemption envisaged in Section 54.

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