

Note – Exemption from long-term capital gains – Purchase of residential house in a foreign country

Sometime back, a query was raised whether the benefit of exemption under sections 54 and 54F of the Income-Tax Act, 1961 (the Act), in respect of long-term capital gains, on account of investment of such capital gains in the purchase / construction of a residential house in a foreign country, is available to an assessee, being a non-resident Indian.

As per section 54 of the Act, in the case of an individual or a Hindu undivided family, if capital gain arises from the transfer of a long-term capital asset, being a residential house or land appurtenant thereto and within the prescribed period the assessee purchases or constructs a residential house, then exemption will be available to the extent the sale proceeds of the residential house sold, are utilized in the purchase / construction of a new residential house.

As per section 54F of the Act, in the case of an individual or a Hindu undivided family, if capital gain arises from the transfer of a long-term capital asset, not being a residential house and within the prescribed period the assessee purchases or constructs a residential house, then exemption will be available to the extent the sale proceeds of the aforesaid long-term capital asset sold, are utilized in the purchase / construction of a new residential house.

The usual understanding in respect of the aforesaid sections is that the new residential house should be purchased / constructed only in India, because the capital gain arises on the transfer of a capital asset located in India.

However, the Mumbai Bench and the Bangalore Bench of the Tribunal have held that the benefit of exemption under the aforesaid sections 54 and 54F should be available even in cases where the capital gains are utilized in the purchase or construction of a residential house in a country outside India.

The aforesaid decisions of the Tribunal are discussed as follows :

1. *Mrs. Prema P. Shah Vs ITO [2006] 282 ITR (AT) 211 (Mum)*

In this case a non-resident Indian sold a residential house in India and purchased a new residential house in the United Kingdom (UK). The assessee claimed exemption from the long-term capital gains to the extent the same were utilized for the purchase of a residential house in London. The Assessing Officer did not allow the aforesaid claim of exemption, because, according to him the assessee had not purchased the new residential house in India.

On appeal before the Tribunal, it was held that the assessee was entitled to the benefit of exemption under section 54 of the Act, because section 54 of the Act did not exclude the right of the assessee to claim the benefit of the section in relation to a property purchased in a foreign country, if all other conditions laid down thereunder were satisfied.

2. *Vinay Mishra Vs ACIT [2012] 20 ITR (Trib) 129 (Bang)*

In this case during the previous year, relevant to the assessment year 2009-10, the assessee sold certain shares which resulted in long-term capital gains. The assessee invested the entire capital gain in the acquisition of a residential house in the United States of America (USA) and claimed exemption under section 54F of the Income-Tax Act, 1961. The Assessing Officer rejected the claim of exemption under section 54F of the Act, on the ground that the newly purchased house property ought to be situated in India. The Commissioner (Appeals) confirmed the order of assessment.

On further appeal by the assessee, it was held by the Tribunal that on a plain reading of section 54F of the Act, there was nothing to suggest that the new residential house acquired, should be situated in India. The Court was precluded from reading the words “*in India*” into section 54F of the Act, when the Parliament in its legislative wisdom had deliberately not used the word “*in India*” in section 54F of the Act. Therefore, the assessee’s claim for exemption under section 54F of the Act, was to be allowed since all the conditions laid down thereunder, for availing of the exemption were satisfied.

From the aforesaid judgements of the Mumbai and Bangalore Benches of the Tribunal, it is clearly established that the benefit of exemption under sections 54 and 54F of the Act, will be available to an assessee even if the newly acquired residential house is situated outside India.

Place : Pune

Date : 29.11.2012

(S.K. Tyagi)

sf