

LTCG tax computation on sale of house property: How this ITAT order favouring a taxpayer will change the way capital gains is calculated

By Neelanjit Das, ET Online • Last Updated: Apr 11, 2025, 04:16:00 PM IST



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Sandeep Jhunjhunwala, Partner- M&A Tax, Nangia Andersen LLP, says: "The issue in dispute in the judgement pronounced by the Mumbai Income Tax Appellate Tribunal is whether, for the purpose of calculating capital gains, the holding period should be reckoned from the date of conveyance deed or the date of allotment letter."

"Although, in the facts of the case, the assessee has claimed an exemption under Section 54/ 54F of the Act, the same is not in dispute. Having regard to the subject matter of the judgement, the Mumbai ITAT has held that the letter of allotment is to be considered to determine the period of holding. Tribunals and High Courts of various jurisdictions have arrived at a similar conclusion in the context of different fact patterns."

"However, the underlying principle that emerges is that the sale deed or document of conveyance only transfers the legal title while an agreement to sell or allotment letter confers the right of ownership to the purchaser and hence, the date of such allotment letter should be considered for the purpose of determining the period of holding. The above is a fact specific exercise and courts have, in certain circumstances held that the cumulative conditions ie (i) registration of sale deed, (ii) assessee should have acquired a legal right to receive consideration and (iii) property's possession must be handed-over to the buyer, should be satisfied for a transfer to take place."

How does Section 54F capital gains tax exemption work?

According to Jhunjhunwala from Nangia Andersen LLP: "Section 54F of the Income Tax Act, 1961 provides an exemption from capital gains arising from the transfer of a long-term capital asset (referred as 'original asset') other than a residential house.

This exemption is available only to individuals and Hindu Undivided Family ('HUF'). The essential condition to claim the exemption under Section 54F of the Act is that the taxpayer must purchase or construct a residential house (referred as 'new asset') within a specified period prescribed therein. If the taxpayer proposes to purchase the residential house from the proceeds of the original asset, the same must have been effected within one year before or two years after the date of transfer of the original asset. In case of construction, the new asset must be constructed within three years from the date of transfer. Hence, the objective of this exemption to encourage or enable the taxpayer to convert any long term capital asset into a residential house.

If the net consideration from the transfer of the original asset is fully deployed on the purchase or construction of the new residential house, the entire capital gains is exempt. Only a proportionate exemption can be availed where the cost of the new asset is less than the net consideration. It would be important to note that the Finance Act, 2023 introduced a cap of INR 10 crore on the exemption that can be claimed under this Section ie where the cost of the new asset exceeds INR 10 crore, the exemption would be limited to INR 10

How does Section 54 capital gains tax exemption work?

According to Jhunjhunwala from Nangia Andersen LLP, "The main purpose of Section 54 of the Act is to give relief in respect of profits on the sale of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (referred as 'original asset').

"The conditions on reinvestment in the new asset (ie residential house) are similar to that prescribed under Section 54F of the Act ie the taxpayer must have, within a period of one year before or two years after the date of transfer of original asset, purchased or within a period of three years from that date, constructed, a residential house. However, the mode of computation of the exemption under Section 54 varies from that prescribed under Section 54F."

"The exemption under Section 54 depends upon the extent of investment of the capital gains in the new asset vis-à-vis the amount of investment of net consideration as prescribed under Section 54F . Where the amount of capital gain is more than the cost of the new asset, the differential would be subject to tax."

An important aspect of Section 54 is that, the said Section provides for the exemption even where the taxpayer re-invests in two residential houses in India provided that this option can be exercised only where the amount of capital gains from the transfer of the original asset does not exceed Rs 2 crore. The cap of Rs 10 crore on the exemption and the provisions for depositing the