

## **Section 54 does not require that assessee must earn income from said property**

**Summary – The Mumbai ITAT in a recent case of Mrs. Sheela Bhagwandas Nichlani, (the Assessee) held that where requirement of section 54 is that income of building which is being sold should be chargeable under head 'income from house property'; requirement of section is not that assessee must earn income from said property.**

### **Facts**

- The assessee was owner of a land upon which a residential building was constructed with funds of assessee's husband. The assessee sold said property and invested sale consideration in purchasing a new residential house property and claimed exemption under section 54.
- The exemption under section 54 was denied to assessee on the ground that assessee was not owner of the house property and no income had been assessed relating to the said property in hands of assessee under head 'House property' but the Assessing Officer allowed deduction of a sum paid by assessee to her tenants on basis of tenancy agreement and affidavit of tenant.
- The Commissioner (Appeals) upheld said order.
- On appeal, it was submitted by assessee that in the case of her husband the Assessing Officer himself had allowed exemption under section 54 on purchase of new residential property of and, thus, department could not take different stand in the case of the assessee as assessee's case was on sound footing as she was owner of the land.

### **Held**

- It is undisputed that assessee was owner of a land upon which building was constructed by funds made available by husband of assessee in pursuance to an agreement dated 3-12-1973. The relevant clauses of the said agreement provide that the assessee and her husband had agreed to construct a residential house consisting of ground and two upper floor on the said plot of land and the house consisting of the said plot of land together with structure thereon was intended to be held jointly in equal proportion by the assessee and her husband. The husband of the assessee has contributed all the funds for construction of the residential building thereon. If the terms of aforementioned agreement are kept in mind then it cannot be said that assessee was not owner of the building which was sold by her.
- Upon basis of aforementioned agreement the revenue authorities had assessed husband of assessee and had computed long term capital gain on 50 per cent of sale proceeds and exemption had also been granted under section 54. The case of the assessee is on sound footing as assessee is owner of the land itself. Therefore, the claim of the assessee had wrongly been rejected for the reason that assessee is not owner of the building which was sold and upon which long term capital gain has been computed.

- The Assessing Officer after verifying the evidences filed by the assessee has accepted the claim of the assessee regarding deductibility of Rs.25 lakhs, which was paid to the tenant as compensation. This fact itself has established that the property of the assessee was occupied by the tenant. The requirement of section 54 is that the income of the building which is being sold should be chargeable under the head "Income from house property". The requirement of section is not that the assessee must earn income from said property. If there was a tenant then the income from the property was chargeable to tax. Therefore, exemption also cannot be denied to the assessee on the ground that assessee did not show any income chargeable under the head "Income from house property".
- There cannot be any dispute on the fact that the new residential property purchased by the assessee and her husband is fulfilling the criteria for exemption under section 54 as the revenue itself has granted such exemption to the husband of the assessee for his 50 per cent share. Keeping in view this fact, exemption under section 54 has wrongly been denied to the assessee and the Assessing Officer was directed to grant such exemption to the assessee.