

## **Investment of sales consideration provides sec. 54F relief even if construction isn't completed within 3 years**

**Summary – The Bangalore ITAT in a recent case of Smt. B.S. Shanthakumari, (the Assessee) held that where consideration received on transfer of property had been invested by assessee in construction of residential house, merely because construction was not complete in all respects within stipulated period, benefit of section 54F, should not be rejected.**

### **Facts**

- The assessee invested the capital gain arose on sale of her property in purchasing another house site to claim deduction under section 54F.
- The Assessing Officer found that the assessee had not constructed the residential house within the period of three years as stipulated under section 54F. Accordingly, he rejected the claim made by the assessee and taxed the entire capital gains under the head long-term capital gains.
- On appeal, the Commissioner (Appeals) held that though the residential building of the appellant under construction was not complete within the stipulated period due to circumstances beyond the control of the appellant, she could not be denied the benefit envisaged under section 54F and deleted the addition made by the Assessing Officer.
- On revenue's appeal:

### **Held**

- The order of the Commissioner (Appeals) does not call for any interference. It is clear from the order of the Commissioner (Appeals) that the assessee had commenced construction of the building within a period of three years from the date on which the property on the transfer of which capital gain arose. In fact even at the stage of purchasing the plot of land on which construction was put up by the assessee, the entire capital gain had been invested. The intention of the assessee was to construct a residential house and in this regard, it is found that the assessee had applied for a sanction of the building plan and got sanction of the building plan as early as on 2-6-2010. The construction, however, could not be completed by the assessee, though construction had been started. The Karnataka High Court in the decision rendered in the case of *CIT v. Sambandam Udaykumar* [\[2012\] 345 ITR 389/206 Taxman 150/19 taxmann.com 17](#) had taken a view that under the provisions of section 54F, the condition precedent was that the capital gain realized from sale of capital asset should have been parted by the assessee and invested in constructing a residential house. If the money is invested in constructing the residential house, merely because the construction was not complete in all respects and was not in a condition to be occupied within the stipulated period, that cannot be a ground for rejecting the benefit of deduction under section 54F

to the assessee. The Court observed that the essence of the provisions of section 54F is whether the assessee who received the capital gain has invested in the house.

- It was demonstrated that consideration received on transfer has been invested in construction of the residential house, then though the construction is not complete in all respects and as required under law, the assessee should be given the benefit of section 54F. A reading of the aforesaid decision of the Karnataka High Court would show that there is no particular stage of completion of construction that is contemplated. It is not in dispute that the assessee later completed the construction and has occupied the residential house. In such circumstances, it is viewed that no fault can be found with the order of the Commissioner (Appeals) allowing benefit of deduction under section 54F to the assessee. The order of the Commissioner (Appeals) is confirmed and the appeal of the revenue is dismissed.