

## **Entitlement to sec. 54F relief remains intact even if a residential house is used commercially**

**Summary – The Hyderabad ITAT in a recent case of N. Revathi, (the Assessee) held that where building has been constructed for residential use with all amenities like kitchen, bathroom etc., which are necessary for residential accommodation, in such a case, even if it is used as a school or for any other commercial purpose, it cannot lose its character as a residential building so as to claim deduction under section 54F.**

### **Facts**

- The assessee filed her return declaring long-term capital gain from sale of two properties but at the same time claimed exemption under section 54F.
- During the scrutiny assessment proceedings, the Assessing Officer called upon the assessee to submit construction account, valuation report from registered valuer and building approval plan and other information with regard to the newly acquired property against which the assessee claimed exemption under section 54F.
- In response to the query made by the Assessing Officer, the assessee explained that she alongwith her sister were owners of a plot of land having 50 per cent share each. They decided to construct residential building over the said plot of land consisting stilt plus 5 floors. So far as the cost of construction of building is concerned, the assessee submitted a report from a registered valuer who valued the cost of construction of the building at Rs. 2.16 crore.
- From the approved plan, the Assessing Officer noticed that the building consisted of two flats in each floor connected by a corridor. Thus, if the building was of five floors, then the total number of flats would be ten i.e. five flats each belonging to the assessee and her sister. The Assessing Officer therefore was of the view that the assessee was eligible for exemption under section 54F only for one flat.
- The Assessing Officer therefore deputed the Inspector to make a spot enquiry for verifying the assessee's claim. The Inspector submitted his report wherein he stated that the structure existing was not a residential house but a commercial building being used for a school.
- The Assessing Officer on the basis of the report of the Inspector concluded that the building constructed by the assessee against which exemption under section 54F had been claimed was not a residential house and accordingly he completed the assessment by disallowing the claim of exemption under section 54F.
- The Commissioner (Appeals) confirmed the view of the Assessing Officer.
- On second appeal:

### **Held**

- The sole issue came up for consideration is whether the building in question constructed by the assessee on which exemption under section 54F has been claimed is a residential building as

claimed by the assessee or a building constructed for commercial use. As can be seen from the assessment order the Assessing Officer has come to a conclusion that the building is not a residential building basically for the reason that the building is used for a school.

- However, only because the building is used as a school cannot change the nature and character of the building from residential to commercial. Even a residential building can be used as a school or for any other commercial purpose but the relevant factor to judge is whether the construction made is for residential house or for commercial purpose.
- If the building has been constructed for residential use with all amenities like kitchen, bathroom etc., which are necessary for residential accommodation then even if it is used as a school or for any other commercial purpose, it cannot lose its character as a residential building.
- However, if the construction is made in such a way that it is not normally for residential use but purely commercial use, then it cannot be considered to be a residential house. Therefore, the primary fact which is required to be examined is whether the building has been constructed for residential use or not. This can be verified from the approved plan and architectural design of the building.
- However, the plan of the constructed building has not been brought on record. Therefore, it is difficult to arrive at a conclusive finding with regard to the nature of the building. In the aforesaid view of the matter, the matter is remitted back to the file of the Assessing Officer who would conduct necessary enquiry to find out the exact nature of construction, i.e., whether it has been constructed for residential use or for commercial use.
- If the building has been constructed for residential use with all amenities, which are necessary for a residential accommodation, then exemption under section 54F cannot be refused only because it is being used as a school subsequently.
- So far as the view of the Assessing Officer that exemption under section 54F will be available only in respect of one flat is concerned, the same cannot be accepted. Law is well-settled that 'a residential house' does not mean a single residential house and, thus, where the assessee constructs or receives a number of flats adjacent to each other or in different floors of the same building then also the assessee would be entitled for exemption under section 54F.
- In view of the above, the matter is remitted to the file of the Assessing Officer who would decide the issue afresh after affording a reasonable opportunity of being heard to the assessee in the matter.
- In the result, the appeal is treated as allowed for statistical purposes.