

## Even advance payment for flat would be eligible for sec. 54 relief

**Summary – The Chennai ITAT in a recent case of Kannan Santhanam, (the Assessee) held that Advance payment of sum for purchase of residential flat before due date of filing of return of income would amount to utilization of capital gain making it eligible for exemption**

### Facts

- The assessee sold a residential flat and earned capital gain of Rs. 64.8 lakhs. Thereafter, the assessee purchased a flat from builder and made payment of Rs. 83 lakhs in advance before the date of filing of return under section 139(1) and claimed exemption under section 54.
- The Assessing Officer disallowed the claim of the assessee on the grounds that the assessee had paid advance for purchase of residential flat and the construction of flat was not completed on date of payment.
- On appeal, the Commissioner (Appeals) allowed the claim of assessee.
- On further appeal to the Tribunal:

### Held

- The Apex Court in *Fibre Boards (P.) Ltd. v. CIT* [\[2015\] 376 ITR 596/62 taxmann.com 135 \(SC\)](#) examined this issue in the context of section 54G and found that the advance paid for purchase of asset would certainly amount to utilization of capital gain by the assessee for the purpose of purchasing/acquiring the capital asset.
- Section 54G(2) makes the assessee for claiming exemption under section 54G to appropriate the capital gain or to utilize the same within the due date for filing of return of income under section 139(1), the unutilized portion should be deposited in the capital gains account. Section 54G(2) is *pari materia* same as section 54(2). Therefore, this Tribunal is of the considered opinion that the observation/finding of the Apex Court is equally applicable in respect of the provisions of section 54(2). In other words, when the assessee advanced a sum of Rs. 83 lakhs as on 31-7-2011, before the due date for filing of return of income, for a purchase of residential flat to the Builder, this would amount to utilization of capital gain. The admitted capital gain is 64.84 lakhs and what was advanced by the assessee for purchasing the flat is Rs. 83 lakhs. The assessee, in fact, utilised the capital gain for purchasing the flat before 31-7-2011. Hence, the assessee is entitled for exemption under section 54. This Tribunal is of the considered opinion that the Commissioner (Appeals) has rightly allowed the claim of the assessee by placing reliance on the judgment of Apex Court in *Fibre Boards (P.) Ltd. (supra)*. In view of the above, there is reason to interfere with the order of the lower authority and, accordingly, the same is confirmed.