

No denial of sec. 54 relief just because JDA was entered into to build commercial complex on newly acquired house

Summary – The Hyderabad ITAT in a recent case of Vikas Kumar, (the Assessee) held that where assessee had invested sale consideration in new residential property, exemption under section 54 could not be denied in relevant year merely because in subsequent year or year after, assessee had entered into development agreement with builder to construct commercial property, on said premises

Facts

- The assessee had invested the sale consideration of a property in residential property and claimed deduction under section 54.
- The Assessing Officer had disallowed the said deduction on the ground that the intention to purchase new residential house was not for residential purpose relying on subsequent events in the year 2013-14 i.e. development agreement was entered into on with a builder for development of commercial complex on said property.
- The Commissioner (Appeals) held that it was the intention of the assessee to build the commercial complex on the old residential property. He concluded that the action of the Assessing Officer in denying deduction under section 54 was very well-justified.
- On appeal:

Held

- The assessee had invested the sale consideration in the new residential property within the meaning of section 54 and claimed the deduction under section 54 in the assessment year under consideration. In the subsequent year or year after, the assessee had entered into development agreement with the builder to construct commercial property on said land. By entering into the Joint Development Agreement (JDA), the property will not lose the status of being residential property. It loses its character only on the date on which the actual demolition occurs/happens. It is not recorded when the actual demolition took place. Assessing Officer has relied heavily on the fact that assessee has entered into JDA and he has not resided nor let out the property. Assessing Officer opined that the intention of the assessee was only to construct commercial property. The assessee has invested the sale consideration in the residential property and it is not disputed that the new property is residential. It is only that assessee has not resided nor let out and in the year subsequent to purchase of property, assessee has entered into JDA. In these circumstances, the Assessing Officer cannot deny the exemption under section 54 because the assessee has not demolished the house even on the day of 'JDA'. As per the provisions of section 54, when the assessee transfers the

new property within a period of three years, the assessee loses the benefits under section 54 and the capital gain so claimed is taxable in the year in which the new asset is transferred. In the given case, the assessee had demolished the new asset in the year subsequent to purchase of new asset. Hence, it is an event which occurred subsequently and the Assessing Officer cannot travel back to the assessment year in which assessee claimed the exemption under section 54 and deny the exemption.