

Assessee wasn't entitled to claim sec. 54F relief if agreement to sell property wasn't executed by buyer

Summary – The Hyderabad ITAT in a recent case of Raj Jain., (the Assessee) held that In a case where sale is not concluded or agreement of sale is not certain to be honoured, assessee could not have claimed to have purchased residential property within one year before or within two years after sale of original asset or to have constructed property within three years after sale of property for purposes of claiming deduction u/s. 54F(4)

Facts

- The assessee had sold his property and had paid a sum of Rs. 1.00 crores to the vendor for purchase of another property.
- The Assessing Officer observed that the assessee had made payment but the sale could not be completed and also the vendor of the new property had not come forward for registration. It was observed that the assessee made efforts to conclude the purchase of the above property for availing exemption under section 54F but since the assessee had not concluded the sale transaction within the period stipulated under section 54F, the Assessing Officer disallowed the claim of deduction under section 54F and added it to the returned income of the assessee and brought it to tax.
- The Commissioner (Appeals) confirmed said order.
- According to the assessee, the sale transaction has not gone through because the vendor intended to cheat him and the assessee has issued a legal notice to the vendor and also filed a civil suit before the Civil Court at Hyderabad for specific performance of the sale agreement.

Held

- To claim exemption under section 54F, the assessee has to invest the capital gains in purchase of a residential house within a period of one year before or within a period of two years after sale of the original asset or invest in construction of a residential house within a period of three years after the sale of the original asset. The department has placed much reliance on the words "purchased/constructed" used in the said section to mean that the transaction has to be concluded within the specified period to be eligible for deduction under section 54F.
- The common finding of all the Courts is that if the assessee has invested the long term capital gains in purchase or construction of a new residential house within the period specified in the section, then, the assessee is eligible to claim deduction under section 54F. Admittedly, the assessee has paid an advance of Rs. 1.00 crore to the vendor, but the property could not be registered because of the vendor's attitude. There is no material on record to attribute the non-registration due to any fault of the assessee. The assessee has also filed a copy of the suit for specific performance in filed before the Additional Chief Judge, City Civil Court, Hyderabad wherein the assessee has stated that he had paid the advance to the vendor on 3-7-2013 and that the assessee has issued legal notices to

the vendor on 5-4-2014 and also on 21-5-2015 for execution of the registered sale deed in favour of the assessee. It is also seen from the said document that on 31-8-2015, the HSBC Bank Ltd has executed a registered sale deed in favour of one by auctioning the property since the vendor had not cleared the dues to the Bank and committed default. Thus, on 31-8-2015, the agreement of sale has become impossible to be honoured as the property itself has been auctioned and sold to another party. The assessee has filed the return of income on 25-7-2014 *i.e.* after issuance of the legal notice dated 5-4-2014 to the vendor calling upon him to execute the registered sale deed in favour of the assessee by clearing the bank loan and receiving the balance sale consideration of Rs. 3.4 crores. Therefore, as far as the assessee is concerned, he was aware of the bank loan and also the default committed by the vendor in repaying the loan. Thus, the property was not without an encumbrance as on the date of filing of the return and there was no certainty of the transaction going through. In a case where the sale is not concluded or the agreement of sale is not certain to be honoured, the assessee could not have claimed to have purchased the residential property within one year before or within two years after the sale of the original asset or to have constructed the property within three years after the sale of the property for the purposes of claiming the deduction under section 54F(4). Thus, the disallowance of assessee's claim under section 54F is confirmed and the assessee's grounds on this issue are rejected.