

Can two adjacent properties be treated as one house for sec. 54 claim

Summary – The Jaipur ITAT in a recent case of Pramod Sahai Bhatnagar, HUF, (the Assessee) held that the issue whether two flats could be treated as one residential house for purpose of claiming deduction under section 54 should be re-examined and remanded the matter to AO

Facts

- The assessee HUF filed income claiming exemption under section 54 in respect of the investment made in two new flats.
- The Assessing Officer restricted exemption under section 54 to one flat and accordingly made addition to the long-term capital gain.
- On appeal, the Commissioner(Appeals) dismissed the appeal of the assessee.
- On appeal to the Tribunal assessee submitted that when he had purchased two flats which are adjacent to each other and with the purpose to use as duplex, then the investment made in these two flats would be eligible for deduction under section 54.

Held

- The ITAT stated that the language of section 54 is plain and unambiguous and the term used as 'a residential house' can be understood as 'a residential dwelling'. Therefore, if more than one smaller units are adjacent to each other and are converted into one house for the purpose of residence, it can be used as one residential house as intended by the legislature.
- What constitutes a residential house depends on the peculiar facts of each case. The primary requirement for treating a structure as residential house is the purpose for which the same is acquired or constructed by the assessee for the purpose of his own residence.
- For considering the two flats as a residential house the various aspects are to be taken into consideration. Accordingly, the matter is set aside to the record of the Assessing Officer for proper examination and verification of the relevant facts.
- In the result, the appeal filed by the assessee is allowed for statistical purposes.