

Sale of Multiple Flats – Eligibility for Rollover - Section 54

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Section 45(1) of Income Tax Act, 1961 (Act) provides that profits or gains arising from transfer of capital asset effected during the previous year is chargeable to tax under head 'Capital Gains' and shall be deemed to be income of the previous year in which transfer takes place. This section is subject to provisions of Section 54/54B *ibid* etc which provides for roll over of tax provided conditions mentioned there in are satisfied.

Section 54 of the Act provides for roll over of tax in case of transfer of long-term capital asset by individual or HUF, being residential property, income from which is chargeable to tax under the head house property, and the resultant gain is invested in another residential house property within in the time frame provided there in.

The benefit of exemption under Section 54 suffered from various ambiguities namely whether the exemption is available if assessee invests in more than one residential house or such an investment should be only in India or investment of gain in a residential house property outside India is allowed.

Judiciary has expressed view that the beneficial provisions of Section 54 are available even in case the assessee invested the gain in more than one residential house¹ and also for investment in residential house located outside India² keeping in light the intention of Section 54 of Act.

To overcome the above judicial pronouncements pertaining to issues of investments in multiple residential properties and as well of those made outside India, Finance Act (No.2) 2014 has made an amendment by providing that the exemption under Section 54 can be claimed only on investment of gain in **ONE** residential house property and the same shall be situated in **INDIA**.

This amendment takes effect from AY 2015-16 and subsequent years. Similar amendments were also made in Section 54F. After the above amendment the ambiguity of investment in multiple houses to claim exemption under Section 54 has come to an end.

However, the question that arises now is whether gain arising from sale of multiple residential properties which is invested in one residential property in India is eligible for roll over for the purposes of Section 54?

In other words, whether there is a restriction in Section 54 which prevents from investing gain in one residential property, where the gain is arising because of sale of multiple properties? For example, an assessee has 3 flats and sold them and has accumulated certain gain. Now, the assessee has invested such gain in single residential flat. Whether such investment is exempted by virtue of Section 54?

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² Vinay Mishra 30 Taxmann.com 341

We argue that the assessee is eligible for exemption under Section 54 of the Act for the reason that the amendment has restricted investing in one residential property but there is nothing as such in Section 54 that states that gain should also arise from a single residential property.

We also gather support to our view from the recent judgment of Honourable Mumbai Tribunal in the matter of Mr Bipin N Sagar³. The said judgment is analysed for better understanding of the title of the subject article.

The facts of the case before the Honourable Tribunal in the matter of Mr Bipin N Sagar are as under. The assessee has sold three flats and realised a gain. Such gain was invested in the method specified under Section 54 and accordingly claimed exemption.

The Assessing Officer (AO) has issued a notice stating that assessee is not eligible for exemption under Section 54 since he has sold more than one residential house. Against such notice, the assessee has stated that at the time of purchase, there were three separate residential properties but later the said three flats were converted into a single flat. Due to certain legal formalities, the assessee has sold the three flats vide three separate sale agreements but the said three flats were always occupied as single unit. The assessee also stated that all the three flats have only electricity meter which substantiates his claim that there are no three units but only single unit.

However, AO has rejected the plea of the assessee and disallowed exemption pertaining to sale of other two flats by allowing exemption with respect to single flat. The assessee has carried the matter to the Commissioner of Income Tax (Appeals) [CIT (A)].

The CIT (A) after examining the issue on the hand, made certain subtle observations by placing reliance on the judgment of Devdas Naik⁴ passed by Honourable Bombay High Court and Sh Pawan Arya⁵ passed by Honourable Punjab and Haryana High Court. The CIT (A) stated that number of agreements entered by the assessee to sell the flats is not a deciding factor as to conclude whether there are three flats or single flat. What has to be seen is whether the adjoining flats were actually united and used as a common single unit or not to conclude whether sale of three flats or single flat is involved.

The CIT (A) then proceeded to state that there is no restriction placed in Section 54 which stated that exemption is allowable only in respect of single residential house property. There is an inbuilt restriction that gain arising from sale of residential house cannot be invested in more than one residential house. However, there is no restriction that capital gain arising from sale of more than one residential flat cannot be invested in one residential house.

Further, CIT (A) has held that, even if assessee sells more than one residential house in the same year and the capital gain is invested in a new residential house, exemption under section 54 cannot be denied if all other conditions are satisfied. The CIT (A) relied on the

3 2019 (2) TMI 515

4 2014 (7) TMI 173

5 2010 (12) TMI 144

decision of Honourable Mumbai Tribunal in the matter of Rajesh Keshav Pillai⁶, wherein it was held that exemption under Section 54 shall be available in respect of transfer of any number of long-term capital assets being residential houses if other conditions are satisfied.

Based on the above reasoning, the CIT (A) has held that there is no restriction under Section 54 if gain arising from multiple long-term capital assets are invested as long as such gains are invested in single property and such property is in India. Hence, the CIT (A) have rejected the additions made by AO and accordingly granted the relief to the assessee.

The AO has preferred an appeal to Honourable Mumbai Tribunal (ITAT). The ITAT after pursuing the order of CIT (A) has held that the CIT(A) has passed a reasoned order and therefore there is nothing on record to deviate from the conclusion drawn by CIT (A) and accordingly dismissed the appeal of AO.

Concluding Remarks:

As stated earlier, in our view there is nothing in Section 54 which restrict investing gain arising from multiple long-term residential properties. It was held in numerous judgments that Section 54 is a beneficial piece of legislation and needs no strict interpretation and accordingly the act of AO reading it in a stricter sense is unwarranted.

⁶ 2010 (8) TMI 477