

Tax sop for new house bought in wife's name



Recently, Mumbai ITAT, relying on the Delhi HC judgement in the case of Kamal Wahal (1), granted a tax deduction to an Assessee, who reinvested the sale proceeds of a residential house property in another house property, as under section 54, to save the taxes on LTCG. Here, the Assessee Gopalkrishna Pandu Shetty (2), sold a house property. He reinvested the proceeds in a property of the Company, where he was authorised to enter into agreements/sale deed. The Assessee on a specific advice received by him, construed that he cannot execute a valid agreement as seller in the capacity as Director and as a purchaser in his individual capacity at the same time. Under this bonafide belief, he purchased the property in his spouse's name, however, the entire sale proceeds were contributed by the Assessee and spouse has not contributed anything.

The Assessee claimed the deduction u/s.54 of the IT Act while filing the return. The AO & CIT (A) disallowed the deduction claimed as the reinvestment was done in the name of spouse. The matter came before Mumbai ITAT, who concluded that since, the *sale proceeds have been duly invested in acquisition of new property within the due time allowed, the taxpayer was eligible for claim of deduction.*

In January 2024, Delhi ITAT in the case of Simran Bagga (3) also took similar view. Here, the Tax Payer, contended before ITAT that (i) The capital gains were fully invested in acquisition of the property. (ii) The property was registered in the name of the spouse, as the taxpayer was in UAE at the time of registry whereas the spouse, was in India. (iii) The registry of the plot for the new property was completed, when strict international travel restrictions were in place due to Covid-19.

The Delhi ITAT relying on the decision in the case of Kamal Wahal(1) and Ravinder Kumar Arora (4), allowed the deduction holding that *purposive construction* was to be preferred as against *literal construction*, more so when even literal construction did not mention that the house should be purchased in the name of the taxpayer only.

It may also be noted that in both the cases, the Assessee could prove the compelling conditions and reasonable cause for making such reinvestment in spouse's name.

On similar facts, various High Courts and Tribunals have decided the cases in Assessee's favor, which are as below :

- ▶ DIT, International Taxation v. Mrs. Jennifer Bhide [2012] 349 ITR 80 (Kar HC)
- ▶ Mahadev Balai v. CIT [2018] 402 ITR 117 (Raj HC)
- ▶ Shankar Lal Kumawat v. ITO [2021] 125 taxmann.com 347 (Jaipur - Trib.)
- ▶ Krishnappa Jayaramaiah v. ITO [2021] 125 taxmann.com 110 (Bang. - Trib.)
- ▶ Mrs. Kamal Murlidhar Mokashi v. ITO [2019] 110 taxmann.com 120 (Pune - Trib.)

The mute question which has arisen from these two recent judgements, following various other judgements, is, whether the Assessee, in whose case the LTCG has arisen, can claim deduction for reinvestment made in spouse's name against sale of old residential property as specified u/s 54 of the Income Tax Act, 1961?

Section 54 which deals with deduction for reinvestment of LTCG states that in case of an assessee, who is an individual/ HUF, the resultant LTCG, on account of sale of long-term capital asset being residential house, shall be exempt if the Assessee, has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India.

Both Mumbai and Delhi ITAT, while allowing such exemption, held as under

- ▶ Purposive construction is to be preferred as against literal construction.
- ▶ Section 54F/54 are beneficial provisions which should be interpreted liberally in favour of the exemption/deduction to the taxpayer and deduction should not be denied.
- ▶ The provisions of section 54F of the ITA are *pari materia* with the provisions of section 54 of the Act and thus, the principle derived equally applied to section 54 of the Act as well.

To Conclude, one must keep in mind that in both the cases, there were compelling conditions existing as on the date of reinvestment due to which the reinvestment was done in the spouse's name and deduction was claimed and was allowed by ITAT. The liberal interpretation of the provisions of deduction for reinvestment, should not be taken as the blanket SOP. Each taxpayer needs to evaluate specific facts of their cases, before taking any reinvestment decision, keeping in mind the adverse decision of Bombay HC decision in the case of Prakash Timaji Dhanjode(5).

Cases referred :

1. CIT v. Kamal Wahal [2013] 30 taxmann.com 34
2. Gopalkrishna Pandu Shetty Vs ACIT (ITA No.2471/Mum/2023 dt 01.03.24.
3. Simran Bagga vs. ACIT [2024] 158 taxmann.com 265, dt. 04.01.24
4. CIT v. Ravinder Kumar Arora [2011] 342 ITR 38
5. Prakash s/o Timaji Dhanjode Vs ITO 173 Taxman 311)