

In Gita Duggal case 257 CTR 208 (Del) (2013), High Court held that “the expression “a” residential house should be understood in a sense that building should be of residential in nature and “a” should not be understood to indicate a singular number.

Also, section 54/54F uses the expression “a residential house” and not “a residential unit”. Section 54/54F requires the assessee to acquire a “residential house” and so long as the assessee acquires a building, which may be constructed, for the sake of convenience, in such a manner as to consist of several units which can, if the need arises, be conveniently and independently used as an independent residence, the requirement of the Section should be taken to have been satisfied. There is nothing in these sections which require the residential house to be constructed in a particular manner. The only requirement is that it should be for the residential use and not for commercial use. If there is nothing in the section which requires that the residential house should be built in a particular manner, it seems that the income tax authorities cannot insist upon that requirement. A person may construct a house according to his plans, requirements and compulsions. A person may construct a residential house in such a manner that he may use the ground floor for his own residence and let out the first floor having an independent entry so that his income is augmented. It is quite common to find such arrangements, particularly post-retirement. One may build a house consisting of four bedrooms (all in the same or different floors) in such a manner that an independent residential unit consisting of two or three bedrooms may be carved out with an independent entrance so that it can be let out. He may even arrange for his children and family to stay there, so that they are nearby, an arrangement which can be mutually supportive. He may construct his residence in such a manner that in case of a future need he may be able to dispose of a part thereof as an independent house. There may be several such considerations for a person while constructing a residential house. The physical structuring of the new residential house, whether it is lateral or vertical, cannot come in the way of considering the building as a residential house. The fact that the residential house consists of several independent units cannot be permitted to act as an impediment to the allowance of the deduction under section 54/54F. It is neither expressly nor by necessary implication prohibited.”

In the case of CIT v. Syed Ali Adil (AP)(HC) (2013) 260 CTR 219, High Court, held that the expression “a residential house” in section. 54 (1) has to be understood in the sense that the building should be of residential nature and “a” should not be understood to indicate a singular number. Where an assessee had purchased two residential flats, he is entitled to exemption under section 54 in respect of capital gains on sale of its property on purchase of both the flats, despite the fact that the flats were purchased by separate sale deeds. Deduction is allowable even if the flats are on different floors. On facts, as the two flats purchased by the assessee are adjacent to one another and have a common meeting point, the deduction cannot be denied.

In CIT vs. D. Ananda Basappa 309 ITR 329 (Kar.), multiple flats in the same complex were used as one unit and the exemption under section 54 was allowed. The special leave petition filed by the department against this decision was also rejected by the Supreme Court [320 ITR (St.) 19].

In CIT vs. K.G. Rukminiamma 331 ITR 211 (Kar.), there were four residential units, but all of them were in the same building acquired in pursuance of a development agreement. It was held that exemption was allowable.

In the case of CIT v. Raman Kumar Suri (2013) 81 DTR 33, High Court held that two flats were joined before assessee became owner of said property and certificate from society also established fact that these two flats were considered as one residential house property , therefore, exemption was fully allowable.

In the case of V.R. Karpam (Smt.) v. ITO (2013) 143 ITD 126 (Chennai)(Trib.), Tribunal held that 'a residential house' in the context could not be construed as a singular. Meaning given in section 54 would apply to section 54F also. New asset defined in section 54F as 'a residential house' has to be understood in plural. It is not necessary that all residential units should be single door number allotted. Following the ratio in CIT v.K.G.Rukminiamma (2011) 331 ITR 211 (Karn.)(HC), the claim of assessee was allowed.

In ACIT v. Deepak S. Bheda (2012) 52 SOT 327 (Mum.)(Trib.), Tribunal held that if requirement of assessee family was met out only by enlarging residential unit by merging 4 flats and that too prior to handing over of the possession of said residential unit, then said converted residential unit would be treated as a residential house as stipulated under section 54F and thus, claim of the assessee was allowed.

In ITO v. Ms. Shushila M. Jhaveri (2007) 107 ITD 327 (Mum.-Trib.) (SB), exemption under section 54 of the Act was held to be allowable only in case of purchase of single house. It was held that the word "any" used by the Legislature in section 54B, 54D, 54E, 54EA and 54EB of the Act while the word "a" used only in section 54 and 54F of the Act. This clearly showed that the Legislature intended different meaning to these two words. Thus, exemption under section 54 or section 54F of the Act would be available in respect of one house only. But where two

houses joint together constitutes a single unit for residence, then exemption under section 54 would be available to such joint residential house. On the other hand, where two units were distantly located, then it could not be constituted to be “a residential house” and therefore, exemption under section 54 of the Act will be available only to one residential house at the option of the assessee.

In *K.C. Kaushik v P.B. Rane*, ITO (1990) 185 ITR 499 (Bom.), it was held that where the assessee purchases more than one house, then he can claim relief in respect of only one house provided he satisfies the conditions of section 54 of the Act.

The aforesaid judgments should be borne in mind while claiming exemption under section 54 or section 54F of the Act and can be usefully relied upon after careful consideration of facts of the case and appropriate circumstances.

Further an important point - sec 54 LTCG not utilized, within six months CGSB a/c is to be established in PSU Bank, next day if any property purchase, requisite Bankers cheque / DD can be issued by the bank. If a property sold on April 1st, before Sept.30th, required to be put up in CG [unless LTCG not invested in property] no 15months leeway is possible.

Gita Duggal case can be more comprehensive in understanding, BUT ONE HAS TO TAKE ONE'S OWN SAFEGUARDING MEASURES, after careful, proper evaluation as the individuals circumstances be.