

Generally speaking whenever investment is made in a residential house property so as to save Capital Gains tax, the investment in the house property should be in the name of the person who is deriving Capital Gain.

However, a very interesting decision was given by the Delhi High Court in the case of CIT v. Ravinder Kumar Arora 342 ITR 38.

This decision is very important and of practical utility to large number of investors who are interested to make investment in residential house property for the purpose of saving their Capital Gains tax. The brief facts in this case were that the assessee filed his return for the assessment year 2007-08 showing a total income of Rs. 64,32,220.

In the assessment proceedings, it was noticed by the Assessing Officer that the assessee is a proprietor of M/s. Arora Service Station and is running a petrol pump.

During the relevant year, the assessee has shown long-term capital gains of Rs. 45,49,045 on sale of plot of land bearing Khasra No. 526/1, Min and Old No. 526, MIN Khasra No. 552 and Old Khasra No. 37 situated at Mohuddinpur Kanwani, Tehsil Dadri, District Gautam Budh Nagar, UP. This plot of land was purchased by the assessee in his name on January 27, 1989.

As per the details filed by the assessee, it was noticed by the Assessing Officer that this land was sold for a sale consideration of Rs. 4,33,00,000 to M/s. Nirala Developers Pvt. Ltd. vide sale deed dated July 1, 2006.

Out of the total gain arising from sale of land, the assessee claimed exemption of capital gain to the extent of Rs. 3,18,59,276 under section 54F of the Act on account of purchase of a new house property.

The assessee, vide reply dated November 19, 2009, filed a copy of the purchase deed through which a residential house bearing No. 8, Block No. 7, situated in layout plan of Safdarjung Enclave, New Delhi, was purchased on March 1, 2007, for a total consideration of Rs. 3,28,15,000 and claimed exemption under section 54F of the Act for Rs. 3,18,59,276.

On going through the purchase deed of the above residential house, it was noticed by the Assessing Officer that the purchase deed was made jointly in the names of the assessee and his wife, Smt. Manju Arora.

The assessee had claimed exemption under section 54F of the Act with reference to the whole amount invested in the said house property. The Assessing Officer, vide questionnaire dated December 4, 2009, asked the assessee to explain his claim of exemption under section 54F of the Act with reference to the whole amount invested in the said house in as much as the property was purchased jointly with his wife.

The assessee, vide reply dated December 15, 2009, submitted that wife's name was only included in the sale deed just to avoid any litigation after his death though all the funds invested in the said house were provided by the assessee himself as was clear and evident from the bank statement.

The assessee, therefore, submitted before the Assessing Officer that the exemption under section 54F of the Act is to be allowed with reference to the full amount of purchase consideration paid by him for the aforesaid residential house.

The assessee's submission was considered by the Assessing Officer. The Assessing Officer noted that though all the payments were made by the assessee, the residential house was purchased jointly in the names of the assessee and his wife.

The Assessing Officer then referred to section 54F of the Act only to the extent of his right in the new residential house purchased jointly with his wife.

The Assessing Officer, therefore, allowed 50 per cent of the exemption claimed under section 54F of the Act as against the total claim of Rs. 3,18,59,276 made by the assessee. The Assessing Officer allowed the claim only to the extent of Rs. 1,59,29,638 and the balance 50 per cent being Rs. 1,59,29,638 was disallowed.

Aggrieved by that order, the assessee filed the appeal before the Commissioner of Income-tax (Appeals), which was also dismissed. However, in further appeal before the Income-tax Appellate Tribunal (hereinafter referred to as "the Tribunal"), the assessee has succeeded there as the Tribunal has held that the assessee is entitled for the benefit of section 54F of the Act with reference to the total investment of Rs. 3,28,15,000.

Aggrieved with the order of the Income-tax Appellate Tribunal, the Income tax Department came up in appeal before the Honourable judges of the High Court.

The Honourable High Court judges opined that looking to the facts and circumstances of the case the question of law was to be decided in favour of the assessee and against the Revenue.

The Honourable judges were of the view that a plain reading of the aforesaid provision indicates that in order to get benefit of this section, the assessee should, inter alia, 'purchase' a house. As per the Revenue, this house has to be purchased in the name of the assessee only and the benefit is not given if it is purchased by the assessee jointly with his wife.

The Honourable judges gave due importance to the important factual findings recorded by the Tribunal in this case are that it was the assessee who independently invested in the purchase of new residential house.

Along with the name of his wife also and that it was the assessee who paid stamp duty and corporation tax at the time of registration of the sale deed of the house so purchased and has also paid commission and legal expenses in connection with the purchase of the house.

The Tribunal further records that whole of the purchase consideration has been paid by the assessee and not even a single penny has been contributed by the wife in the purchase of the house.

The Tribunal also noted the argument that the property was purchased by the assessee in the joint names with his wife for 'shagun' purpose and because of the fact that the assessee was physically handicapped.

Finally the Honourable judges of the High Court were of the view that the conditions stipulated in section 54F stand fulfilled. It would be treated as the property purchased by the assessee in his name and merely because he has included the name of his wife and the property purchased in the joint names would not make any difference.

Such a condition has to be, rather, encouraged which gives empowerment to women. There are various schemes floated by the Government itself permitting joint ownership with wife.

If the view of the Assessing Officer (AO) or the contention of the Revenue is accepted, it would be a derogatory step. In conclusion although the judges gave their verdict in favour of the assessee but still they made it clear that section 54F of the Act is the beneficial provision which should be interpreted liberally in favour of the exemption/deduction to the tax payer and deduction should not be denied on hyper technical ground.

The Andhra Pradesh High Court in the case of Late Mir Gulam Ali Khan v. CIT (1987) 165 ITR 228 (AP) has held that the object of granting exemption under section 54 of the Act is that an assessee who sells a residential house for purchasing another house must be given exemption so far as capital gains are concerned.

The word “assessee” must be given wide and liberal interpretation so as to include his legal heirs also. There is no warrant for giving too strict an interpretation for the word “assessee” as that would frustrate the object of granting exemption.

The above mentioned decision of the Honourable judges of the High Court with regard to purchase of property in joint names of the assessee as well as his wife who had not contributed to the purchase would be a guiding factor for such tax payers who have similar type of situation in their practical life.