

Investment in one F.Y Section - 54EC

Where long term capital asset is transferred after 30-September of a financial year, exemption on investment in capital gains bonds is available upto Rs 100 lakh invested over two financial years. Impacts assessee who have transferred long term capital assets in second half of F.Y 2011-12 – opportunity for saving upto Rs 10 lakhs capital gains tax.

1. Introduction

The Income Tax Act provides for an exemption on long term capital gain earned by an assessee during a financial year (April 1 to March 31). The exemption is available to the **extent of capital gain** earned on satisfaction of following conditions:

A. Investment in specified bonds **within 6 months from the date of transfer of the capital asset**

B. Specified bonds are those issued by Rural Electrification Corporation Limited ("REC" bonds) or National Highways Authority of India ("NHAI bonds")

C. Investment made in REC or NHAI bonds does not exceed Rs 50 lakh during any financial year

The exemption of capital gain is to the extent of investment actually made in specified bonds within the time limit of 6 months from the date of transfer.

2. Issue

In case of transfer of long term capital asset in the 2nd half of the financial year ie after September 30, whether the period of 6 months extends beyond the financial year in which the asset is transferred?

3. Legal analysis

3.1. Relevant Case law analysis

3.1.1. Ruling of Jaipur ITAT

In **Shri Raj Kumar Jain & Sons (HUF) ITA No. 648/JP/2011**, the assessee sold property on 13-12-2007 for Rs 2.47 crores and invested Rs 50 lakhs on 31-3-2008 and Rs 50 lakh on 10-6-2008. The AO disallowed the investment made on 10-6-2008 on the ground that the investment limit of Rs 50 lakhs was exceeded.

The Jaipur ITAT decided the issue in favour of Revenue holding that the investment within 6 months refers to the investment in the financial year in which the transfer has taken place. It observed that subsequent investment is to be considered as part of the investment of financial year in which the transfer has taken place.

The rationale of the ITAT was that if the view of the assessee was accepted, an assessee who transfers a long term capital asset from October 1 to March 31 would be able to invest Rs 50 lakhs in the financial year in which transfer has taken place and Rs 50 lakhs in the subsequent financial year. Such assessee would be advantageously placed as against an assessee who transferred long term capital assets from April 1 to September 30.

3.1.2. Contrary ruling

However, in **Shri Aspi Ginwala, ITA 3226/Ahd/2011**, on similar facts, the Ahmedabad ITAT held that as the language of the proviso to section 54EC is clear and unambiguous, the assessee was entitled to exemption of Rs 100 lakhs. It cited the Apex Court

Investment in one F.Y Section - 54EC

case of IPCA Lab 266 ITR 521 and held that as the wordings of the proviso to section 54EC were clear, the benefits available to the assessee could not be denied.

3.2. Impact analysis with examples

In the Jaipur ITAT ruling, the rationale for deciding against the assessee was that it would lead to less beneficial exemption for assessee who transferred long term capital assets in the 1st half of the financial year.

In Scenario 1, investment is allowed only upto 50 lakhs (Department view) whereas in Scenario 2 investment is allowed upto Rs 100 lakhs (Assessee view).

Particulars	Scenario 1 Amount (Rs)	Scenario 2 Amount (Rs)
Assumptions		
Sale in FY 1 is in 2nd half		
Sale in FY 2 is in 1st half after investment		
Financial Year 1 ("FY 1")		
Sale consideration (Rs in lakhs) [A]	450	450
Cost of acquisition of LTCA [B]	300	300
LT CG [C=A-B]	150	150
Less: Investment in specified bonds in March [D]	50	50
Less: Investment in specified bonds in April [E]	0	50
LT CG taxable [F=C-D-E]	100	50
Financial Year 2 ("FY 2")		
Sale consideration (Rs in lakhs) [G]	450	450
Cost of acquisition of LTCA [H]	300	300
LT CG [I=G-H]	150	150
Less: Investment in specified bonds in March of FY 2 [J]	50	0*
LT CG taxable [K=I-J]	100	150
Total LT CG taxable in FY 1 and FY 2 (L=K+F)	200	200

Investment in one F.Y Section - 54EC

* No eligibility of investment of Rs 50 lakhs as the amount invested in the first half to claim exemption for FY 1 would have exhausted the limit for the financial year 2 as per REC and NHA issue norms.

In the above example, if LTCG of FY 1 is taken on a standalone basis, it appears that the assessee under Scenario 1 (Department view) is worse off. However, if LTCG of FY 1 and 2 are taken cumulatively, it is seen that the LTCG is equally applicable under both scenarios.

Extending the argument of the Jaipur ITAT, there is in fact no discrimination by adopting the assessee's view. The excess exemption claimed by assessee in FY 1 (Scenario 2) is not allowed to the assessee when computing investment limit in FY 2.

3.3. Legal principles and comments:

- Per REC and NHA issue rules, the maximum investment allowed per retail investor per financial year in the specified bonds is Rs 50 lakh.
- The words used in proviso to [Section 54EC](#) is “**any financial year**” and not “**relevant financial year**”.
- Definition of “long term capital asset” in Explanation (ba) to section 54EC means any bond redeemable after three years and issued on or after 1-4-2007 by REC or by NHA (emphasis supplied).
- A proviso qualifies the generality of the main enactment by providing an exception. It carves out an exception to the main provision which but for the proviso would be a part of the main provision. The proviso to section 54EC is with respect to the investment limit of Rs 50 lakhs which was inserted by Finance Act 2007. As such, a time limit cannot be read into the proviso to restrict the exemption to investments made after the date of transfer but before the end of the FY.
- As held in a catena of rulings, where two views are possible, the view favouring the assessee should be adopted. Illustratively, refer Vegetable Product Ltd 88 ITR 192 (SC).
- The act of investment in a financial year succeeding the relevant financial year to gain a tax benefit is also seen in section 43B where after the close of the relevant financial year, any payments made within the due date of filing the return of income towards liability accrued (such as bonus, gratuity, etc) are allowed as a deduction in computing Profits & Gains of Business or Profession.
- Incentive provisions are to be construed liberally – refer Bajaj Tempo 188 ITR 196 (SC)

4. Conclusion

An assessee who has transferred a capital asset in the second half of FY 2011-12 and who has exhausted the exemption limit of Rs 50 lakhs upto March 2012 can look to invest a further sum of Rs 50 lakhs within 6 months from the date of transfer even if such period spills over into the FY 2012-13. The tax benefit would be to the extent of Rs 50 lakhs @ 20% (assumed to be applicable tax rate) which would be upto Rs 10 lakhs (excluding surcharge and cess as may be applicable).