

OPINION REGARDING DEDUCTION U/S 54 OF INCOME TAX ACT, 1961

Case

Mr. A and Mr. B bought a house in f/y 2004-2005 for Rs. 5,50,000/- which was sold on 12/08/2011 for Rs. 51,50,000/-. Assessee has neither invested the gain amount in another property nor deposited the amount in Capital gain deposit scheme account till the due date of return filing under section 139(1).

Assessee : B
A

Issues

- ❖ What will be the capital gain chargeable under Income Tax?
- ❖ Whether assessee can get relief u/s. 54 even if neither he utilized the amount nor deposited in capital gain deposit scheme account till the due date of return filing under section 139(1)

Detailed Discussion and Opinion on abovementioned issues

1. What is capital gain?

As per **section 45(1) of Income tax act, 1961** Profits or gains arising from the **transfer** of a **capital asset** made in a previous year are taxable as capital gains under the head "Capital Gains".

The important ingredients for capital gains are, therefore, existence of a capital asset and transfer of such capital asset.

In abovementioned case capital asset is the house which has been transferred through sale.

2. When the incidences of capital gain tax arise?

Capital gain become taxable on the date of transfer so it must be understood that on what date transfer will be taken completed.

The date of transfer is the date on which the rights in capital asset transferred to transferee.

In abovementioned case rights in capital asset has been transferred on 12/08/2011 so capital gain tax arise on that date and that gain is chargeable in f/y 2011-2012.

3. What will be the Period of holding to calculate either it is short term gain or long term gain?

For calculating tax liability on capital gain nature of capital gain should be decided that either its short term gain or long term gain. For determining nature, period of holding should be calculated.

Period of holding means the period for which asset was held by the owner.

Long term capital gain : Assessee holds asset for more than 36 month

Short term capital gain : Assessee holds asset for 36 or less than 36 months

In abovementioned case Period of holding is period from the date of purchase in f/y 2004-05 to 12/08/2011 i.e. more than 6 years. So nature of capital gain is Long term gain.

4. What is the amount of capital gain chargeable for tax?

In case of long term capital asset, capital gain should be calculated as mentioned below:

Capital gain = Sale consideration less Indexed cost of acquisition

In abovementioned case

Sale Consideration = 51,50,000/-

**Indexed cost of acquisition = $550000/480 \times 785$
= 8,99,480**

(i.e. index for 2004-05 is 480 and 2011-12 is 785)

**Capital Gain = 51,50,000 – 8,99,480
= 42,50,520**

As there were two owners of house and both had equal rights in property so 50%-50% capital gain is chargeable in hands of both the assessee.

5. Whether assessee can claim exemption u/s 54?

As per Section 54 of Income Tax Act, 1956 where in case of an assessee being an individual or a HUF, the capital gain arises from the transfer of a long term capital asset, being buildings or lands appurtenant thereto and being a residential house and the assessee has within a period of one year before and two years after the date on which the transfer took place or has within three years after that date constructed, a residential house then instead of the capital gain being charged to income tax as income of the previous year in which the

transfer took place, it will be exempt to the extent cost of new asset and in that case cost of new asset will be reduced by the exempt amount.

The amount of the capital gain which is not utilized by assessee for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return of income under section 139(1) in specified capital gain deposit scheme account.

In abovementioned case Assessee has neither utilized nor deposited the amount till 30th septempter'2012 (i.e. due date of ROI u/s 139(1)) but at the same time assessee has not deposited the ROI till date.

In current situation option of deposition of amount in capital gain deposit account has been closed for assessee because due date of filing of ROI u/s 139(1) has been left but still option of utilization of funds for either purchase or construct new asset is open for assessee because as per section 54 amount must be utilized before the due date of filing of ROI u/s 139 and section 139 itself covers 139(4) also. As per section 139(4) assessee can file belated return till the end of one year from end of relevant assessment year so assessee can utilize the amount till the date of 31st March'2014 for construction of asset and till the date of 11/08/2013 for purchase of new asset provided return to be filed after the utilization of capital gain amount.

In Case of CIT v Rajesh kumar jalan (2006) ,Gauhati High court, it was decided that “ From the reading of section 54(2) it is clear that for the purpose of purchase or construction of new asset, the time period mentioned is before the due date of furnishing the return of income under section 139. Thus, since only section 139 has been mentioned therein, the date of furnishing return of income can be date under section 139(4) & the capital gain utilized for specified purpose before that date shall be entitled to exemption.” Complete facts of case is attached herewith also.

Disclaimer

Our opinion is based on our understanding with the Income Tax Act'1956, generally accepted principles and decided case laws. Case may be selected for scrutiny but ultimately decision will be in favor of assessee. It is mere our opinion.

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