

# Capital Gain Tax Exemption Under Section 54F Landmark Judgements

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a kitchen, toilet having electricity and water connection which was being used as a residential unit. 3.3 The valuer estimated the life of the constructed house as 65 years and in the annexure to the report while submitting technical details, the valuer mentioned that walls are brick load-bearing walls, type of foundation brick stepped foundation, superstructure above ground floor brick wall in cement mortar, flooring with marble flooring, finishing with cement plaster. These details support the contention by the assessee that the house constructed by the assessee was not a simple dwelling house but the same was built with strong building material which provides a long life to the structure of the building/house. 3.4 The Delhi Tribunal, in the case of *Girish Mohan v. ACIT* (2023) ruled that the size of the constructed house in proportion to the size of the plot is immaterial for exemption under section 54F. The fact that the construction proportion is very small in proportion to the size of the plot has nothing to do with granting exemption benefit to the cost of land appurtenant to the house. 3.5 The Assessing Officer is directed to allow the same to the assessee. 4. SCENARIO 2: – USE OF PROPERTY IS NOT RELEVANT CRITERION TO CONSIDER ELIGIBILITY FOR BENEFIT UNDER SECTION 54F: Mr. Gupta sold some shares and constructed a residential house. The new property has been let out for commercial use. 4.1 The CIT (A) observed that the new property in question has been let out for commercial purposes and, therefore, the same could not be said to be a residential house. The exemption under section 54F was denied. 4.2 The stand of the assessee was that the plot of land was meant for residential purposes. The building was constructed only with the object of using it as a residential house. The letting out by the assessee of the superstructure for commercial purposes was not the intention and was merely incidental, done to earn some rentals. 4.3 It was argued that the conditions specified in section 54F merely require an assessee to invest in a residential house and there was no stipulation that the same be also used as a residential house. It was submitted that the letting out for commercial purposes was only a temporary phenomenon and did not distract from the fact that the property remained a residential property. 4.4 THE ITAT DELHI BENCH 'G' in the case of *Mahavir Prasad Gupta v. Joint Commissioner of Income-tax* ruled that the assessee is eligible for a claim of exemption under section 54F of the Act. 4.5 The relevant points of the ruling by the Delhi Tribunal: 4.5 The relevant points of the ruling by the Delhi Tribunal: (a) Section 54F envisages the exemption of long-term capital gain where the net consideration thereof is appropriated towards the construction of a new residential house. The use of the property is not the relevant criterion to consider the eligibility for section 54F benefit. (b) A bare reading of the provisions of section 54F reflects that the sale proceeds shall be invested in the purchase/construction of the new residential house. Therefore, the question that arises in the instant case is whether the new property constructed by the assessee is a residential house or not. Mere non-residential use would not render a property ineligible for section 54F benefit if it otherwise is a residential house. (c) On this aspect, we do not find any positive finding by the lower authorities and neither is there any relevant material before us to arrive at a finding. Thus, if the assessee is found to have constructed a residential house, whatever may be the use it has been put to, the assessee can be said to have fulfilled the conditions envisaged under section 54F. 5. SCENARIO 3: COST OF VACANT LAND APPURTENANT TO AND FORMING PART OF A RESIDENTIAL UNIT IS TO BE CONSIDERED FOR CLAIM OF EXEMPTION UNDER SECTION 54F EVEN IF NO CONSTRUCTION HAS BEEN DONE ON APPURTENANT LAND: 5.1 Mr. Mohan sold a piece of land for Rs. 1.20 crores, which resulted in capital gains of Rs. 31.04 lakhs. After the sale of

the plot, he purchased a piece of land for Rs. 30 lakhs and within six months thereafter again purchased another continuous plot of land for which payment totaling Rs. 30 lakhs was made in installments. 5.2 Mr. Mohan claimed exemption under section 54F of net consideration which he invested in the purchase of the first plot on which the residential house was under consideration and in respect of his continuous plot which according to him was nothing but land appurtenant to the building constructed on the first plot. 5.3 The Assessing Officer held that exemption under section 54F is provided only if the investment is in respect of a residential house and not for an empty plot. He, therefore, held that the consideration invested in the purchase of the second plot was not entitled to exemption under section 54F and restricted the exemption to the extent of the amount invested in the purchase of the first plot. 5.4 ITAT DELHI BENCH 'H' in case of Additional Commissioner of Income-tax, Range-1, Dehradun v. Narendra Mohan Uniyal ruled the cost of vacant land appurtenant to and forming part of the residential unit was to be considered for claim of exemption under section 54F even if no construction had been done on the appurtenant land. 5.5 The following relevant points were discussed by the Delhi Tribunal: – (a) From a plain reading of sections 54 and 54F, it is crystal clear that exemption is allowable in respect of the amount invested in the construction of a residential house. (b) There is no rider under section 54F that exemption will be denied in respect of investment of capital gains made on the acquisition of land appurtenant to the building or on the investment on land on which the building is being constructed. (c) When the land is purchased and the building is constructed thereon, such construction doesn't need to be on the entire plot of land. There is no denial of exemption for a part of the land which is appurtenant to the building and on which no construction is made. (d) Therefore, the contention of the revenue, that there is a distinction concerning investment in appurtenant land as per sections 54 and 54F, was not tenable at all. (d) Therefore, the contention of the revenue, that there is a distinction concerning investment in appurtenant land as per sections 54 and 54F, was not tenable at all. (e) In the instant case, there was no dispute over the fact that the investment of capital gains was made within the statutory period and the same financial year. Another plot of land that was purchased by the assessee was adjacent to the plot already purchased during the relevant year itself out of capital gains. Only because construction was made on the first plot of land, the exemption claimed in respect of investment made in the adjacent plot of land could not be declined when all the other conditions as stipulated under section 54F were being satisfied. (f) Thus, the cost of vacant land appurtenant to and forming part of the residential unit was to be considered for the claim of exemption under section 54F even if no construction had been done on the appurtenant land. (g) The provisions of section 54 provide for exemption if the net consideration received as a result of the transfer of any capital asset, other than a residential house, is invested in the purchase or construction of a residential house. The new residential house is not debarred from having a land appurtenant to any size. Disclaimer: The article is for educational purposes only. The author can be approached at [caanitabhadra@gmail.com](mailto:caanitabhadra@gmail.com) Sponsored Tags: Capital Gain income tax Section 54F Kindly Refer to Privacy Policy & Complete Terms of Use and Disclaimer. « Previous Article Next Article » Share Author Bio Name: CA Anita Bhadra Qualification: CA in Job / Business Company: BHARAT ELECTRONICS LIMITED Location: MUMBAI, Maharashtra, IN Member Since: 17 Aug 2017 | Total Posts: 213 | View Full Profile My Published Posts New Income Tax Rules on Sale of Gold ETF & Gold Mutual Funds Co-Ownership Doesn't Always Mean Joint Tax Responsibility Section 87 Rebate on

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