Case Study: Possession Date for Capital Gains Exemption

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Case Study: Possession Date for Capital Gains Exemption +91-9833843720 enquire@kdpaccountants.com Apply for Articleship Home About us Our Team Services Setup Company in India NRI Tax filing Services FEMA Consultants India Foreign Company Registration Setup a Liaison Office Setup Company Outside India Outsourced Accounting Service Outsource Payroll Accounting Employer of Record Services Corporate Financial Advisory FEMA India Rules for NRI Transfer Pricing Consultants Corporate Laws Consultants NRI Property Management Start Up Consultancy Audit and Assurance Services Business Advisory Services Investment Consultants PAN Registration Trademark Registration Services Register Company Company Registration Services in India Register Company in UAE Register Company in India Register Company in UAE Clients Case Studies Blog Careers Contact Apply for Articleship Home >> Blog Case Study: Possession Date to Avail Exemption under Capital Gains Case Studies Blog Careers Contact Apply for Articleship Home >> Blog Case Study: Possession Date to Avail Exemption under Capital Gains Under section 54 of the Income Tax Act, capital gains from the sale of long-term property, such as buildings or land appurtenant thereto, and being a residential house by an individual or Hindu Undivided Family (HUF) may be exempt from taxation. To be eligible for this deduction, the money earned from the sale must be used to buy a new residential house. To claim tax benefit u/s 54, the Assessee must have purchased a new residential house within one year before or two years after the date of transfer of the original asset. In case, the new residential house is being constructed then the construction needs to be completed within three years from such date. The Income-tax Appellate Tribunal (ITAT) Mumbai recently declared that for houses currently in construction, the date of possession should be considered to assess eligibility for tax advantage under section 54 of the Income Tax Act. Facts of the Case: Assessee earned long-term capital gain amounting to INR 34,25,243/- on the property sale dated Feb 10, 2011. The assessee claimed a deduction under section 54 of the Income Tax Act on the entire long-term gain as they claimed to have spent the amount on purchasing a new residential flat. Assessee signed a purchase agreement with a builder on July 25, 2009, agreeing to buy a flat for INR 73,06,530. The Assessee Officer (AO) decided that the property was acquired on July 25, 2009, and denied the exemption under section 54 because this date was more than one year before the sale of the original property. An order under sections 144C (13), 147, and 254 of the Income Tax Act was issued on October 3, 2023, at a total income of 35,97,395. Analysis: Analysis: The Assessing Officer claims the property was purchased on July 25, 2009. Since, this date the Assessee is not qualified for a deduction under section 54 because it was more than a year before the original property was sold on February 10, 2011. The Assessee claims they took possession of the property on February 2, 2011. They argue that this possession date should be considered the purchase date. Since this date is within one year before the sale of the original property on February 10, 2011, the Assessee believes they should be eligible for the deduction under section 54. Dictation: It was held that the Assessee is entitled to deduction u/s 54 of the Act on the purchase of new property considering the date of possession on the following grounds: According to Section 54, a deduction is allowed if the Assessee purchases a property. In this case, on July 25, 2009, the assessee executed a contract to buy a house under construction. The date of purchase, which is February 2, 2011, is when the house was finished and turned over. In the case of Principal Commissioner of Income Tax & Ors. vs. Akshay Sobti 7 Ors. (2020) 423 ITR 0321 (Delhi), the Delhi High Court ruled that the law benefits taxpayers who replace their original long-term capital asset with a new one. It was further held that booking an unfinished flat counts as constructing a house, not purchasing one. Therefore, the important date is when the completion of the construction, in line with section 54 of the Income Tax Act. In the case of Bastimal K Jain v. ITO (2016) 76 taxmann.com 368(Mumbai), the court ruled that the Assessee's claim for a deduction under section 54 should be based on the date when the builder handed over the possession of the flat, which was on September 11, 2009. Since the Assessee sold his residential flat on February 24, 2010, the Assessee was entitled to a deduction under section 54. Conclusion: The Income Tax Appellate Tribunal (ITAT) Mumbai determined that for claiming tax exemption under section 54 of the Income Tax Act, the possession date of a freshly constructed home should be considered the purchase date. This assures that taxpayers can claim exemptions by reinvesting long-term capital gains in new residential properties, highlighting the significance of the possession date in establishing eligibility. 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