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TAX FLASH NEWS

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Investments made before the date of furnishing belated return of income would be eligible for exemption under Section 54 of the Income-tax Act

Background

The exemption under Section 54 of the Income-tax Act, 1961 (the Act) is available to individual taxpayers if the capital gains are utilised for investment in new residential property as per the due dates specified therein. In this context, the Ahmedabad Bench of the Income Tax Appellate Tribunal (the Tribunal) recently in the case of Anita Ajay Shad[1] (the taxpayer) held that the exemption under Section 54 of the Act would be allowable to taxpayers for investments made in new residential property upto the date of furnishing return of income under Section 139(4) of the Act.

Facts of the case

- The taxpayer, an individual, had Long Term Capital Gains (LTCG) of INR35 lakhs during the Financial Year (FY) 2010-11.
- Out of the LTCG, the taxpayer had made an investment in a new residential house property of INR15 Lakhs before 31 July 2011, INR5 lakhs before the actual date of filing the return of income i.e 25 August 2011, and INR15 Lakhs between September 2011 to December 2011, which is within the time limit available under Section 139(4) of the Act.
- On the above grounds, the taxpayer had filed the return of income[2] for the FY 2010-11 on 25 August 2011, and claimed an exemption under Section 54 of the Act, to the extent of entire investment made by her.

[1] Anita Ajay Shad v. ITO (ITA No 3154/ Ahd/ 2015) (Ahd) – Taxsutra.com
[2] Section 139(4) of the Act

- The Assessing Officer (AO) in his order denied the exemption claimed under Section 54 of the Act on the grounds that conditions provided under Section 54 of the Act have not been fulfilled as the tax payer has not invested the capital gains before filing of return of income, and that the taxpayer has not acquired the new property before filing of return of income.
- Aggrieved by the Order passed by the AO, the taxpayer had filed an appeal with the Commissioner of Income-tax (Appeals) [CIT(A)].
- The CIT(A) had observed that the taxpayer had invested the gains after furnishing the return of income, and accordingly passed an Order by concluding that the taxpayer is eligible only for partial exemption.
- Further, aggrieved by order of the CIT(A), the taxpayer had filed an appeal with the Tribunal.

Taxpayer's contentions

- The taxpayer contented on the grounds that she is entitled to the exemption under Section 54 of the Act as the LTCG utilised for investment in new residential property is within the due date stipulated under section 139(4)[3] of the Act.
- Further, property was acquired and put to use within a period of two years of transfer of original asset, and thus the taxpayer deserves full relief under Section 54 of the Act, as claimed.

[3] Any person who has not furnished a return within 31st day of July of the assessment year, may furnish the return for any previous year at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier

- The taxpayer had relied upon various judicial precedents[4] in support of the above claim.

Tribunal's decision

- As per Section 54(2) of the Act, capital gain is required to be appropriated by the taxpayer towards purchase of new asset before furnishing of return of income under Section 139 of the Act.

- Alternatively, in the event of non-utilisation of capital gains towards purchase of new asset, the taxpayer is required to deposit the capital gains in specified bank account[5] before the due date of filing of return of income under Section 139(1) of the Act.

- Accordingly, the due date under Section 139(1) or under Section 139(4) of the Act may be considered for the purpose of investment in new assets. However, for deposits to Capital Gains Accounts Scheme, the due date under Section 139(1) only needs to be considered.

- As a consequence, any investment made before the due date under Section 139(1)/139(4) of the Act would be eligible for a benefit under Section 54 of the Act. However, investment (other than investments in Capital Gains Accounts Scheme) made after the actual date of filing the return, will arguably not stand eligible for benefit under Section 54 of the Act, even if such investment is made before the due date under Section 139(4) of the Act.

- Accordingly, the Tribunal has held that the taxpayer would be entitled to an exemption to the extent of utilisation of capital gains made before the actual date of filing of return of income under Section 139(4) of the Act, i.e., on or before 25 August 2011 in the instant case.

- While certain investments were made (September 2011 to December 2011) before the due date under Section 139(4) of Act, the said amounts would not be eligible to receive the benefit under Section 54(2) of the Act as the beneficial interpretation of considering the due date under Section 139(4) of the Act would not hold good after the actual furnishing of return of income.

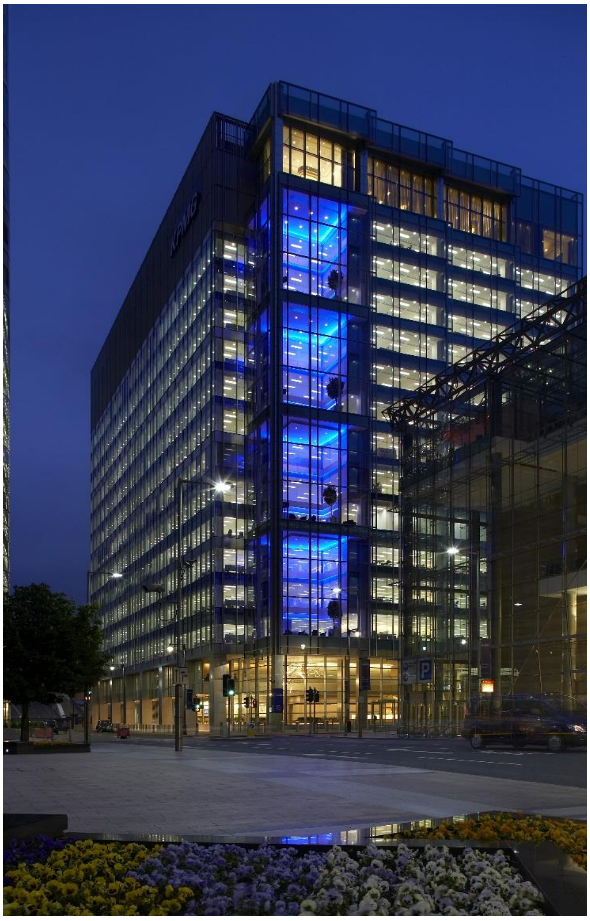
Our comments

This decision provides clarity on the entitlement of exemption under Section 54 of the Act with respect to utilisation of LTCG, as under:

- When a taxpayer furnishes returns subsequent to the due date of filing a return under Section 139(1), but within the due date for filing the belated return under Section 139(4), the benefit of the investment made upto the date of furnishing return of income under 139(4) cannot be denied.

- However, any investment made after furnishing the return of income though before the due date under Section 139(4) would not be eligible.

Considering this is a fact-specific case and given the ruling of the Tribunal, adoption of the same in other jurisdictions/set of facts could be evaluated on a case-to-case basis.



[4] Ashok Kapasiawala v. ITO [2015] 63 taxamnn.com 284 (Ahd), Gopal Saran Darbari v. [2017] 77 taxmann.com 49 (Del)

[5] Capital Gains Accounts Scheme, 1988

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