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## Capital Gains: Tax Controversies & Considerations



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# Tax implications on the exemption under Sections 54 and 54F



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## Overview

*The words of wisdom from the Apex Court in Aravinda Reddy aptly summarize the object behind Section 54 of the Act "If you sell your house and make a profit, pay Caesar what is due to him. But if you buy or build another subject to the conditions of section 54(1) you are exempt". While the object appears to be simple, the issues surrounding the section are numerous. Considering the nature of issues and interpretations surrounding the sections, one may echo the feeling from the passage of the Apex Court ruling in Aravinda Reddy's case: "Where ignorance is bliss; 'Tis is folly to be wise"*

*While the two sections have been in statute for over four decades and have undergone numerous amendments, several issues still stem from them. In this article, I have explored some issues that could affect the exemption under this section and persist to date.*

## 1. Introduction

To promote reinvestment in certain assets or schemes, the Central Government has introduced several exemptions from the levy of capital gains accrued to the taxpayers. The exemptions were granted subject to reinvestment and comply with specific conditions prescribed therein. In the case of Individuals, the benefit of exemption is conferred on investment in a residential property through sections 54 and 54F of the Income-tax Act, 1961 ('the Act'). The differences between the sections are discussed in the ensuing paragraph. These exemptions allow twofold benefits to taxpayers: (i) not required to pay taxes on the capital gains reinvested subject to fulfillment of conditions

and (ii) Promote investments in the Housing Sector.

## 2. Exemption under section 54 of the Act

The Income-tax Act, 1922, contained Section 12B(4)(b), which corresponds to Section 54(1) of the Act, allowing concession in respect of investment made in new assets at the option of the Assessee in writing before the assessment is made. Section 54 of the Act was introduced by the Finance Act, 1978 with retrospective effect from 1974, provides for exemption from capital gains in respect of transfer of capital assets being building or lands appurtenant thereto and the income of which is chargeable to tax under the head 'income from house property' ('IHP') upon

reinvesting. Several key amendments have been made to overcome judicial precedents.

**(a) Conditions for claiming exemption**

The law as it stands today vide Finance Act (No.2) 2024, provides for the exemption of capital gains subject to the following conditions:

- The transferor is an Individual or Hindu Undivided Family ('HUF');
- Long Term<sup>1</sup> Capital asset transferred being buildings or land appurtenant thereto being a residential house, the income of which is chargeable to IHP ('Original Asset')
- The investment is made in one residential house in India<sup>2</sup> ('New Asset'), which should be either constructed or purchased.
- In case of purchase, the investment can be made within one year before or two years after the date of transfer of the Original Asset, and in case of construction, it is three years;
- If the capital gains do not exceed INR Two Crores, then investment in two residential houses is permitted. This option can be exercised only once during the assessee's lifetime;
- In case the cost of a new asset exceeds INR Ten Crores, the amount invested in excess of INR 10 Crores shall be ignored;

**(b) Consequence of transferring the new asset within three years**

In case the New asset is transferred within three years from the date of purchase or construction, then the taxpayer will be subject to capital gains on the transfer of the new asset as follows:

- If the capital gains from the transfer of the original asset are more than the cost of a new asset, then the new asset cost will be taken as Nil.
- If the capital gains from the transfer of the original asset is equal to or less than the cost of a new asset, then the cost of the new asset is reduced to the extent of exemption already availed under Section 54.

From the above, it can be observed that the consequence of a transfer of a new asset within the time limit is more severe i.e., the long-term gain from the original asset is clawed back through the reduction from the cost of new asset. This effectively results in a short-term gain chargeable to tax at a higher rate in certain instances.

Further, it is relevant to note that vide Finance Act (No.2), 2024, the period of holding under Section 2(42A) is reduced from 36 months to 24 months (discussed later in detail). However, the clawback period of exemption under 54/54F is still three years from the date of purchase or construction of the new

1. Held for a period more than 24 months as amended by Finance Act (No. 2), 2024

2. Introduced by Finance Act 2014; Before that investment in residential property outside India was allowed

asset. Therefore, if the new asset is held for at least 24 months prior to its transfer, the gains would be treated as long-term; otherwise, it would be short-term.

**(c) Capital Gains Deposit Scheme ('CGDS')**

In case the taxpayer cannot utilize the sum for investment in a new asset before the date of filing the return of income ('ROI') under Section 139 of the Act, the unutilized sum shall be deposited by him before furnishing the ROI under 139(1) in an account in any such bank or institution as may be specified in and utilized in accordance with any scheme notified by Central Government<sup>3</sup>.

The amount already utilized by the taxpayer and the amount deposited shall be regarded as the deemed cost of the new asset.

**(d) Non-utilization of the amount deposited in CGDS**

Suppose the amount deposited is not utilized wholly or partly towards investment in a new asset within the time specified. In that case, such a unutilized amount shall be chargeable as capital gains (long-term) of the previous year in which the specified period expires (three years), and it will be long-term gains i.e., in effect the year of charge is deferred.

**3. Exemption under Section 54F of the Act**

The section was introduced by the Finance Act, 1982 w.e.f from 1984, which allowed exemption from capital gains from the transfer of long-term capital asset (not being a residential house) by an individual or HUF in case of investment of net consideration<sup>4</sup> in one residential house.

**(a) Conditions for claiming exemption**

The law as it stands today vide Finance Act 2024, provides for exemption of capital gains subject to the following conditions:

- The transferor is an Individual or Hindu Undivided Family ('HUF');
- Capital asset transferred is other than a residential house ('Original Asset');
- The investment is made in one residential house in India ('New Asset') and it should be in the form of construction or Purchase;
- In case of Purchase, the investment can be made within one year before or two years after the date of transfer of Original Asset and in case of construction, three years;
- In case of the cost of new asset exceeds INR Ten Crores, the amount invested in excess of INR 10 Crores is ignored;

3. Capital Gains Deposit Scheme, 1988 – GSR 724(E) dated 22 June 1988

4. Full value of consideration reduced by expenditure incurred wholly and exclusively in connection with such transfer

**(b) Computation of Capital Gains**

The capital gains shall be computed as follows:

- (i) Cost of new asset is more than the net consideration, then no capital gains in respect of original asset shall be charged
- (ii) Cost of new asset is less than the net consideration, then the exemption shall be on a proportionate basis, which is based on the cost of new asset to the net consideration

**(c) When the exemption is not available**

The provisions of section 54F are not applicable in the following circumstances:

- (i) Owns more than one residential house other than a new asset on the date of transfer of original asset;
- (ii) Purchase any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset;
- (iii) Construct any residential house, other than new asset, within a period of three years after the date of transfer of Original asset;
- (iv) The income from such residential house, other than one residential house owned on the date of transfer of Original asset is chargeable under the head IHP

To summarize, the Act does not want to provide an exemption if the Assessee owns more than one residential houses either before the date of transfer of the original asset or after investing in one residential house.

The Section also provides for the deposit of unutilized amounts in capital gains; the provisions are similar to the one addressed in Section 54 of the Act.

The consequence of transferring a new asset within three years of purchase or construction is slightly different from Section 54. Section 54F(3) specifically provides that if the new asset is transferred within 3 years, the exemptions claimed on the original asset will be chargeable as capital gain relating to the long-term capital asset in the year the new asset is transferred.

Before we move on to specific issues, a few aspects require an understanding, and they are dealt with in the following paragraphs:

**4. Certain Aspects for Consideration**

**(a) Land Appurtenant thereto**

The term 'land appurtenant' is not defined under the Act, and its meaning has to be understood non-technically. The extent of land appurtenant to a building transferred has to be based on facts and circumstances, and common tests cannot be applied. The **Madras High Court** in the case **Kalpagam**<sup>5</sup> has laid out the following tests for understanding (although not exhaustive) the term:

5. *CIT vs. Kalpagam (M) (1997) 227 ITR 733 (Mad)*

- i. Whether building together with the land is treated as an individual unit and enjoyed by the person occupying it;
- ii. If a building has extensive lands appurtenant, an inquiry can be made whether any land contiguous to the building can be put to independent use without causing any detriment to the enjoyment of the building<sup>6</sup>;
- iii. Any indication that a portion of land contiguous was applied other than the enjoyment of building;
- iv. Any income derived from land that is not assessed under IHP.

**(b) Residential House and income chargeable under IHP**

The term 'residential house' is not defined in the statute and is construed as having a liberal meaning<sup>7</sup>. Ideally, it should constitute an abode or residence, and it should not be causal as in the case of a hotel or choultry<sup>8</sup>. The Property constructed for residential purposes does not lose its character merely because it is temporarily used for office purposes<sup>9</sup>. The distinction between a residential building and a

house is very important since every "residential building" would not be a "residential house", though every residential house has to be a residential building<sup>10</sup>. Sale of rights in a flat vide allotment letter cannot be regarded as a residential house<sup>11</sup>. When the building was not occupied on account of being uninhabitable, it could not be regarded as a residential house, and the assessee was not allowed an exemption under 54<sup>12</sup>.

The Central Board of Direct Taxes vide their circular<sup>13</sup> has clarified that merely a residential house is assessed as Nil under Section 23(2) of the Act; it does not mean the property is not chargeable to tax under IHP; hence, the same is entitled to exemption under Section 54.

Recently, Explanation 3 to Section 28 was introduced<sup>14</sup>, which states that letting out a residential house or a part thereof shall not be chargeable under profits and gains ('PGBP') and shall be charged to tax under IHP. Before this amendment, the income from this residential house was never assessed under IHP but under PGBP, hence not considered for Section 54 or 54F, but the impact of the amendment could be as follows:

6. *S Radhakrishnan vs. CIT (1984) 145 ITR 170 (Mad)* – Vacant plots other than bungalow was sold; *CIT vs. Zaibunnisa Begum (1985) 151 ITR 320 (AP)*

7. *Guruprasad Angisetty vs. ITO, 2016 (9) TMI 385 – ITAT Chennai*

8. *Poonen vs. Rathi Varghere – AIR 1956 Mys 57*

9. *CIT vs. Purushottam Dass (2001) 247 ITR 516*

10. *Rajesh Surana vs. CIT, (2008) 306 ITR 368 (Raj)* – Rendered in the context of Section 53 of the Act.

11. *CIT vs. Kalpana Hansraj (2019) 102 taxmann.com 228 (Bom)*

12. *D.P. Meha – 251 ITR 529 (Del)*

13. Circular No 538 dated 13 July 1989

14. Finance Act (No.2), 2024 applicable from AY 2024-25

- (i) Section 54 – Capital Gain realized from the sale of such house can be reinvested in new asset
- (ii) Section 54F – The residential house may required to be counted to decide the eligibility of reinvestment i.e, whether the assessee has more than one house at the time of transfer of eligible asset

## 5. Specific Issues

As per Section 2(42A), residential property is regarded as a short-term capital asset if held for less than 24 months; otherwise, it is a long-term capital asset. Therefore, the property's acquisition date, whether done through purchase or construction, is critical in determining the holding period and implication on the time limit prescribed under Sections 54 and 54F of the Act. Therefore, the period of holding and the date of acquisition are dealt with as part of the following issues:

### (i) **Purchase vs Construction**

Neither of the terms is defined under the Act, and both aspects are different. The **Hon'ble Supreme Court** in **Aravinda Reddy's**<sup>15</sup> case held that the word 'purchased' in Section 54(1) of the Act must be given its ordinary meaning as buying for a price by payment in kind or adjustment towards old debit or for other monetary consideration.

The **Andhra Pradesh High Court** in **CIT vs. Shahajada Begum**<sup>16</sup> has observed that the expression 'purchase' would undoubtedly connote the domain and control of the property given into the assessee's hands.

'Construction' means the action of building something. Therefore, payment to a builder for a flat that is yet to be constructed cannot be treated as a purchase and should be regarded as construction<sup>17</sup>. Booking of semi-finished property is to be regarded as construction and not a purchase<sup>18</sup>. Construction should not be restricted to new construction alone; it can be extended to remodeling<sup>19</sup> and encompasses substantial renovation to make a house habitable<sup>20</sup>.

### (ii) **Own vs. Held**

Section 2(42A) uses the term 'held' by the Assessee as against the term 'own'. The dictionary meaning of 'held' is to possess or be the owner, holder, or tenant of a property, stock, land, etc. An assessee enters into the purchase agreement for a flat and takes possession of the flat; however, the consideration was discharged over a period of time. The Court<sup>21</sup> held that the possession was handed over to the taxpayer through the agreement, and he became a beneficial owner at this juncture. Upon payment

15. 120 ITR 46, 48 (SC)

16. 173 ITR 397

17. *Farida A. Dungerpurwala vs. ITO* (2014) 67 SOT 208

18. *Akshay Sobti* (2019) 177 ITD 92 (Del ITAT), *Seema Sobti* (2019) 177 ITD 370 (Del ITAT)

19. *Mathavan Pillai* 219 ITR 696 (Kerala)

20. *Meher R Surti* (2013) 27 ITR (Trib) 340 (Mum ITAT)

21. *CIT vs. Ved Prakash & Sons (HUF)* [1994] 207 ITR148 (Punjab & Haryana).



of the final installment, he became the legal owner of the property. Going by the usage of the word 'toward' before the 'purchase' in Section 54(2), it is not used in a real sense of legal transfer. Hence, holding legal title within a specified period is not a condition precedent for attracting section 54<sup>22</sup>.

In **Ved Prakash & Sons (HUF)**<sup>23</sup>, the Court expounded on the scope of 2(42A) and the term 'transfer'. The Court observed that 'transfer' does not refer to physical form of property or possession of the property, it refers to subject matter of transfer i.e., the nature of rights and interest in the property. Therefore, the question has to be what has been transferred and when it was acquired are relevant.

**(iii) Delay in registration of property/ execution of Conveyance Deed**

In case of acquisition, there are instances where the date of possession and date of registration are different. In such instances, an issue may arise regarding the relevant date for determining the holding. This is also crucial for determining satisfaction of reinvestment under Sections 54 or 54F of the Act.

The intention of the exemption under these sections is the reinvestment of gains/net consideration in a residential house. The Act of Registration confers

a legal title to the property; a mere delay in property registration cannot take away the beneficial title if the consideration is paid and absolute possession is obtained<sup>24</sup>. This is fortified by the extended definition of transfer under Section 2(47) of the Act<sup>25</sup>. The Supreme Court in **Poddar Cements**<sup>26</sup>, in the context of allowing depreciation, considered the beneficial ownership despite the title deeds not being registered. The Delhi High Court in **Kuldeep Singh**<sup>27</sup> suggested that the word purchase used in Section 54 should be interpreted pragmatically in a practical manner and legalism shall not be allowed to play and create confusion or linguistic distortion and in fact the Court went on to observe that section 54(2) should not be restricted to registered sale deed or even possession but has a wider connotation. The **Andra Pradesh High Court in Shahjaga Begam (supra)** allowed the benefit of Section 54 by observing that the delay in obtaining formal registration of the sale deed is immaterial as the assessee has satisfied other requirements of payment of consideration and securing possession.

**(iv) Entering into an Agreement to Sell**

In many instances, the parties initially enter into an agreement to sell the property (constructed or under construction). Whether an agreement

22. *Prakash Timaji Dhanjode* 258 ITR 114 (Nagpur ITAT); *Laxmichand Narpal Nagda (Dr)* – 211 ITR 804

23. 207 ITR 408 (P&H)

24. *Balraj* - 254 ITR 22 (Delhi)

25. Refer to Clause (v) and (vi) to Section 2(47)

26. 226 ITR 625 (SC)

27. 270 ITR 561



to sell confers any right to the acquirer, satisfying the reinvestment condition. The **Supreme Court in G.H. Ariff & Others**<sup>28</sup> held that 'property' is a term of wide import. The **Bombay High Court in Vijay Flexible Containers**<sup>29</sup> held that the right to obtain conveyance of immovable property falls with the expression 'property of any kind' under 2(14) of the Act.

The **Supreme Court in Sanjeev Lal's case**<sup>30</sup>, where the assessee inherited the property, entered into an agreement to sell it (2002). Before a sale deed could be executed, an injunction was granted. Later, the injunction was removed, and the assessee sold the property (2006). In the meantime, the Assessee invested in a property (2003) within the limit if reckoned from the agreement to sell, claiming exemption under Section 54. By executing an agreement to sell, the right in the asset for the seller is extinguished in as much as the *right in personam* is created in favor of the agreement holder. The relevant extracts are reproduced:

*"23...In practical life, there are events when a person, even after executing an agreement to sell an immovable property in favour of one person, tries to sell the property to another such an act would not be in accordance with law because **once an agreement to sell is executed***

***in favour of one person, the said person gets a right to get the property transferred in his favour by filing a suit for specific performance and therefore, without hesitation one can say that some right, in respect of the said property, belonging to the assessee had been extinguished and some right had been created in favour of the vendee/transferee, when the agreement to sell had been executed"***

The **High Court of Gujarat in Kishobhai Harijibhai Patel**<sup>31</sup> and **Kolkatta ITAT in Gautam Jhunjunwala**<sup>32</sup> has allowed a claim under Section 54/54F as the new property was purchased within time limits<sup>33</sup> from the date of agreement to sell. The **Delhi ITAT in Smt. Anjali Bhadoo**<sup>34</sup> considered the agreement for sale as an agreement of construction to allow a claim under 54 of the Act. The ITAT considered the circulars issued by the board (*infra*), which is discussed subsequently in this article.

Due care must be taken regarding an agreement to sell, whether such agreement confers any irrevocable and unconditional right to enforce the conveyance of property pending possession or discharge of full consideration so as to argue that the requirement of reinvestment/transfer is satisfied.

28. 76 ITR 47 – rendered in the context of the Wealth Tax Act

29. 186 ITR 693

30. 365 ITR 389 (SC)

31. [2019] 107 taxmann.com 295 (Gujarat)

32. [2018] 98 taxmann.com 220 (Kolkata Trib)

33. One year before the date of agreement to sell

34. (2024) 204 ITD 124

**(v) Obtaining Allotment Letter vs actual possession vs payment of installments**

In the case of property construction, a conveyance deed is entered into after construction. The taxpayer may make an advance and book a flat, and as part of that, the builder may issue an allotment letter against the booking. Post booking, the assessee pays installments over a period and receives possession. A question arises as to whether obtaining an allotment letter satisfies the requirement of reinvestment.

When a letter of allotment is issued by a builder to the allottee or an agreement to purchase is executed between the allottee and the builder, the allottee gets valuable rights in the units to be constructed and these rights are irrevocable and will continue till the allottee complies with the conditions mentioned in allotment letter including payment of installments by the specified date. The allotment letter/agreement to purchase prevents the builder/transferor from selling the same unit to another intended buyer. Therefore, the holding period commences from the date of issue of the allotment letter/agreement to purchase as the allottee gets clear rights in the property, and the date of periodic payment of installments is only a consequential action upon which the delivery of possession flow.

The Central Board of Direct Taxes ('CBDT') issued a clarification<sup>35</sup> in the context of the Self-financing Scheme of the Delhi Development Authority (DDA). The CBDT accepted that investment in a flat under construction for 54 and 54F. The CBDT, vide its clarification<sup>36</sup>, extended the proposition in an earlier circular to schemes of allotment and construction of flats/houses by the Cooperative societies or other institutions, provided the schemes are similar to para 2 of the earlier circular. The Department took cognizance of the **Bombay Court** observation in **Mrs Hilla J.B. Wadia**<sup>37</sup> and accepted that the payment of installments was a follow-up action and taking possession is only a formality.

The above principles are expounded when booking flats with a private builder for construction purposes under Section 54 of the Act. The **Bombay High Court in Vembu Vaithyanathan**<sup>38</sup> has accepted the circular principles and applied them to the agreement with the builder. The Court accepted that the scheme with the builder is similar to DDA's terms of allotment and construction, allowing a claim under Section 54F. The Apex Court dismissed the Special Leave Petition<sup>39</sup>.

35. Circular 471 dated 15 October 1986

36. Circular 672 dated 16 December 1993

37. [1993] 69 Taxman 114 (Bom.)

38. 413 ITR 248

39. (2019) 265 Taxmann 535 (SC)

After the full consideration payment, the assessee was allotted a site (original site) long ago. Later, the allotment was canceled, and a new site was allotted. The asset has to be regarded as a long-term asset, i.e., from the date of allotment of the original site. Hence, a deduction under 54F cannot be denied<sup>40</sup>.

If a shareholder<sup>41</sup> acquired membership in a cooperative society with a right to allotment of a flat after construction, he should be deemed to have become the owner of the flat even before he had taken possession of the flat.

Other notable rulings include RL Sood<sup>42</sup>, Gulshan Malik<sup>43</sup>, Hilla JB Wadi<sup>44</sup>, K. Ramakrishnan<sup>45</sup>, and Sumit Exports<sup>46</sup>, wherein the court/tribunal applied the principles of the circular. In Narendra Kumar Jain<sup>47</sup>, the Mumbai ITAT, in the context of 56(2)(x), held that the date of the allotment letter is relevant for the determination of the stamp duty value of the property.

#### (vi) **Delay in Possession of the Constructed Property**

The Tribunal and High Court in R L Sood (supra) held that exemption under 54 cannot be denied when a substantial

amount of the cost of the new house was paid within a year, acquiring substantial control and domain during the period. Further, various Courts<sup>48</sup> have taken the view that exemption under 54F cannot be denied on the ground that complete construction could not be done or possession of construction of a new house not granted to assessee in view of the application of liberal construction and also considering the practical reality that construction by builders takes an unusually longer time.

Where the Assessee has substantially completed construction of the property by the year in which the permissible period ends, there is no reason to deny relief under Section 54 of the Act<sup>49</sup>. The **Bombay High Court**<sup>50</sup> allowed the claim based on the payment made even though there was a significant delay in obtaining the allotment letter and approval for construction in the Housing Board scheme under the Maharashtra Ownership of Flats Act, 1963.

#### 6. **Other Issues for consideration**

Other issues (illustratively) that were discussed in various jurisprudence are tabulated below for kind consideration:

40. *CIT vs. A. Suresh Rao* [2014] 41 taxmann.com 475 (Kar.).

41. *Anilaben Upendra Shah* - 262 ITR 657 (Guj)

42. [2000] 108 Taxman 227 (Delhi)

43. 223 Taxman 243 (Delhi)

44. 216 ITR 376 (Bombay)

45. 365 ITR 59 (Delhi)

46. [2023] 148 taxmann.com 475 (Mumbai - Trib.)

47. [2024] 165 taxmann.com 797 (Mumbai - Trib.)

48. *Shakunthala Deve* – 389 ITR 366 (Kar); *C Gopalaswamy* – 284 ITR 307 (Kar); *Kuldeep Singh* (Supra); *Sambandam Uday Kumar* – 345 ITR 389 (Kar)

49. *Bhavna Cuccaria* (2017) 9 ITR(T) 231 (Chandigarh)

50. 393 ITR 536

<b>Sr. No.</b>	<b>Nature of Issues</b>	<b>Comments</b>
1	Construction of a house on a plot owned by others	Construction could be on a plot owned by the assessee, spouse, or others. Under English law, both superstructure and plot should belong to the same person, which is irrelevant or not required under the Transfer of Property Act of 1882 <sup>51</sup> . Hence, land and superstructure could belong to two different persons, which is recognized for depreciation purposes by segregating the cost <sup>52</sup> . Hence, arguably, a claim under 54/54F could not be denied <sup>53</sup>
2	Payment of Advance could be regarded as utilization	As long as the deal for construction is completed before the outer time limit, applying the reasoning of the CBDT's circular <sup>54</sup> In the context of 54E, the advance is considered as utilization and it should be applicable for section 54/54F as well.
3	Despite paying substantial consideration, construction could not be completed within three years	Claim for 54F allowed following the principles of satisfying substantial conditions: Smt B.S. Shanthakumari <sup>55</sup> ; Sardarmal Kothari <sup>56</sup>
4	New Asset purchased under the joint name of assessee or on family members	Claim were allowed considering the liberal view in following cases (i) Kamal Wahal <sup>57</sup> , Ravinder Kumar Arora <sup>58</sup> – Investment in Joint name with Wife (ii) V Natarajan <sup>59</sup> – in the name of wife (iii) Gurnam Singh <sup>60</sup> - Son (iv) Purchased in the name of members of HUF – Vaidya Panalalmanilal (HUF) <sup>61</sup> , Jeniffer Bhide <sup>62</sup>

51. Page 7115 of Sampath Iyengar's Law of Income Tax – 13th Edition Volume 5

52. *Alphs Theatre* – 65 ITR 377 (SC)

53. *Smt. Savita Rani* (1983) 5 ITD 621 (Del ITAT)

54. Circular No 359 dated 10 May 1983

55. 2015 60 taxmann com 74

56. 302 ITR 286

57. 351 ITR 4 (Delhi)

58. 342 ITR 38 (Delhi)

59. 287 ITR 271 (Mad)

60. 371 ITR 278 (P&H)

61. (2018) 259 Taxman 19 (Guj)

62. 349 ITR 80 (Kar)

<b>Sr. No.</b>	<b>Nature of Issues</b>	<b>Comments</b>
		Contrary Views in the following cases (i) Investment in the name of adopted son - Prakash <sup>63</sup> (ii) Investment with brother – Kamal Kant Kamboj <sup>64</sup>
5	Commencement of Construction of Property before the sale of original asset	The Act only requires the completion of construction within the prescribed period. It does not provide for the date of commencement of construction; hence, the same was treated as immaterial, applying a beneficial view in the under-noted cases while allowing the claim: (i) Anandraj <sup>65</sup> (ii) H.K. Kapoor <sup>66</sup> (iii) J.R. Subramanya Bhat <sup>67</sup> (iv) Bharti Mishra <sup>68</sup> Contrary in Ushaben Jayantilal Sodhan <sup>69</sup>
6	Implication of 50C on allowing exemption under 5F/54F	In the context of 54EC, the <b>Bombay High Court</b> <sup>70</sup> has held that 50C has to be given full effect at the time of capital gains and exemption computation. Given that Section 54 is on a similar pedestal, it is arguable that 50C should equally apply here, and the Assessee is required to invest net gains computed applying section 50C.

63. 312 ITR 40 (Bom)

64. 397 ITR 240 (P&amp;H)

65. [2015] 56 taxmann.com 176 (Kar)

66. (1998) 150 CTR 128 (All)

67. (1987) 165 ITR 571 (Kar)

68. [2014] 41 taxmann.com 50 (Del)

69. [2018] 93 taxmann.com 453 (Guj.)

70. Jagdish C.Dhabhalia (2019) 161 ITD 721

<b>Sr. No.</b>	<b>Nature of Issues</b>	<b>Comments</b>
		In case of Section 54F, the Assessee is required to invest net consideration, and the Courts <sup>71</sup> /Tribunals <sup>72</sup> have taken a view that section 50C <sup>73</sup> was not applied for computing exemption under section 54F of the Act.
7	Death of the Assessee – How exemption or unutilized deposit will be dealt in the hands of the representative assessee	<p>The claim under 54 cannot be rejected on the representative assessee and he cannot be differentiated from the assessee for income tax purposes. Therefore, if the son makes the reinvestment, the benefit of Section 54/54F should be granted<sup>74</sup></p> <p>Regarding the receipt of unutilized deposits from the CGDS, they cannot be charged to tax in the hands of a legal representative as they would be capital receipts. Reliance can be placed on the CBDT Circular<sup>75</sup>.</p>
8	Non-deposit of money during the intermittent period; however, the reinvestment is made within the stipulated time	<p>In the under-noted cases, the claim for 54/54F was allowed on the satisfaction of the fact that it was reinvested in a property (acquired or constructed) within a stipulated time, although the amount was not deposited in the CGDS during the intermittent period.</p> <p>(i) Ramaiah Dorairaj<sup>76</sup></p> <p>(ii) K Ramachandra Rao<sup>77</sup></p> <p>(iii) Venkata Dilip Kumar<sup>78</sup></p>
9	Gift of one residential property before the date of transfer of original asset to avail benefit of 54F	One of the requirements under section 54F is that the assessee should not own two residential houses at the time of transfer of original asset and to overcome this, a settlement or property gift is entered in relatives' favor.

71. *Gouli Mahadevappa (2013) 215 Taxman 145*

72. *Gyan Chand Batra (2010) 133 TTJ 482 (Jaipur ITAT); Baskarababu Usha [2022] 135 taxmann.com 307 (Chennai Trib)*

73. Assume sale of land and investing in residential house

74. *Ramanathan (CV) 125 ITR 191 (Mad); Mir Gulam Ali Khan (Late) – 165 ITR 228 (AP)*

75. Circular No 743 dated 06 May 1996

76. *[2021] 124 taxmann.com 243 (Bangalore Trib)*

77. *(2015) 277 CTR 522 (Kar)*

78. *[2019] 111 taxmann.com 180 (Mad)*

<b>Sr. No.</b>	<b><i>Nature of Issues</i></b>	<b><i>Comments</i></b>
		<p>In the under-noted cases, the Tribunal has accepted the gift/settlement and allowed relief under Section 54F</p> <p>(i) Sajida Begum<sup>79</sup> – Oral Gift under Muslim law recognized</p> <p>(ii) Maya A. Ajwani<sup>80</sup> - Gift to wife</p>
10	Gift of Property in respect of which exemption is claimed	<p>The Assessee sold a property in April 2010, invested in the new asset in August 2010, and claimed exemption under 54. In November 2010, the Assessee settled the new property in favour of his daughter out of love and affection.</p> <p>The Tribunal<sup>81</sup> interpreted Section 47(iii) and stated that the gift of property is not regarded as a transfer; hence, the Assessee has not violated the conditions of Section 54.</p>

79. (2015) 56 taxmann.com 269 (Bang)

80. (2015) 56 taxmann.com 255 (Mum)

81. Abdul Hameed - (2016) 65 taxmann.com 211 (Chennai)

