CIT v. Gita Duggal (2013) 357 ITR 153 (Delhi)
DELHI HIGH COURT

ISSUE: *Where a building, comprising of several floors, has been developed and reconstructed, would exemption under section 54/54F be available in respect of the cost of construction of –*

(i) the new residential house (i.e., all independent floors handed over to the assessee); or

(ii) a single residential unit (i.e., only one independent floor)?

BRIEF FACTS:

1. *In the present case, the assessee was the owner of property comprising the basement, ground floor, first floor and second floor.*

2. *In the year 2006, she entered into a collaboration agreement with a builder for developing the property. According to the terms of the agreement, the builder was to demolish the existing structure on the plot of land and develop, construct, and/or put up a building consisting of basement, ground floor, first floor, second floor and third floor with terrace at its own costs and expenses.*

3. *The assessee handed over to the builder, the physical possession of the entire property, along with 25% undivided interest over the land.*

4. *The handing over of the entire property was, however, only for the limited purpose of development.*

5. *The builder was to get the third floor plus the undivided interest in the land to the extent of 25% for his exclusive enjoyment.*

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6. *In addition to the cost of construction incurred by the builder on development of the property amounting to Rs. 3.44 crores, a further amount of Rs. 4 crores were payable by the builder to the assessee as consideration against the rights of the assessee.*

THE HIGH COURT HELD *that sale consideration for the transfer should include not only the amount of Rs. 4 crores received by the assessee in cash, but also the cost of construction amounting to Rs. 3.44 crore incurred by the developer in respect of the other floors, which were handed over to the assessee.*

Therefore, the sale price of 3rd floor shall be taken as Rs. 7.44 crores. The cost of construction incurred by the builder is to be added to the sale price, then, the same should also correspondingly be considered as re-investment in the residential house for exemption under section 54.

The fact that the residential house consists of several independent units cannot be permitted to act as an impediment to the allowance of the deduction under section 54 or section 54F. All the 3 floors will be considered as one residential house. It is neither expressly nor by necessary implication prohibited.

Therefore, the assessee is entitled to exemption of capital gains in respect of investment in the residential house, comprising of independent residential units handed over to the assessee.

Particulars	***Amount (Rs. In Crores)***
Cost of land to the assessee (Assumed)	*5.00*
Cost of Construction of four floors	*3.44*
Total Cost of four floors	***8.44***
Cost of each floor	*2.11*
Sale Price of third floor	*7.44*
Less: Cost of Acquisition of third floor	*2.11*

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Long Term Capital Gain	***5.33***
Investment in third floor eligible for deduction u/s. 54 or 54F	*6.33*
Capital Gains	***NIL***

CONCLUSION: *from above decision it is cleared that capital gain can be invested in a redeveloped residential property having various floors and each floor can be considered as separate residential unit.*

Footnotes

SECTION 54: SALE OF OLD ASSET: RESIDENTIAL PROPERTY PURCHASE OF NEW ASSET: RESIDENTIAL PROPERTY

Under Section 54 – Any Long Term Capital Gain, arising to an Individual or HUF, from the ***Sale of a Residential Property*** *(whether Self-Occupied or on Rented) shall be exempt to the extent such capital gains is invested in the*

1. *Purchase of another Residential Property within 1 year before or 2 years after the transfer of the Property sold and/or*
2. *Construction of Residential house Property within a period of 3 years from the date of transfer/sale of property*

Provided that *the new Residential House Property purchased or constructed is not transferred within a period of 3 years from the date of acquisition. If the new property is sold within a period of 3 years from the date of its acquisition, then, for the purpose of computing the capital gains on this transfer, the cost of acquisition of this house property shall be reduced by the amount of capital gain exempt under section 54 earlier. The capital gain arising from this transfer will always be a short-term capital gain.*

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<u>Quantum of Deduction under Section 54</u>

Capital Gains shall be exempt to the extent it is invested in the purchase and/or construction of another house i.e.

1. *If the Capital Gains amount is equal to or less than the cost of the new house, then the entire capital gain shall be exempt*
2. *If the amount of Capital Gain is greater than the cost of the new house, then the cost of the new house shall be allowed as an exemption*

No. of Houses which can be purchased for claiming Section 54 Exemption

1. *The Capital Gains Exemption is allowed only if the Capital Gains exemption is invested in construction/purchase of 1 residential house [Introduced vide Finance Act 2014]. Irrespective of the no. of houses already owned by the person, if he invests the capital gain in construction/purchase of a single residential house – then capital gains exemption can be claimed.*
2. *As an exception to the above rule, in cases where the amount of Capital Gains does not exceed Rs. 2 Crores, the capital gains exemption would be allowed even if the investment is made in purchase/construction of 2 residential houses. However, this exemption of purchasing 2 residential houses can be claimed only once. This exemption once claimed cannot be claimed in again in any other year. For all other years, investment should be made in construction/ purchase of 1 residential house only. [Introduced vide Finance Act 2019].*

To re-iterate, for claiming exemption under Section 54 – the no. of houses already owned by the person is immaterial. He can still claim exemption by reinvesting the Capital Gains on Sale of House in another Residential House.

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SECTION 54F: SALE OF OLD ASSET AND PURCHASE OF ANY ASSET, NEW ASSET: RESIDENTIAL HOUSE

Any Gain arising to an individual or HUF from the sale of any Long-Term Asset other than Residential Property shall be exempt in full, if the entire net sales consideration is invested in

1. *Purchase of one residential house within 1 year before or 2 years after the date of transfer of such an asset or in*
2. *Construction of 1 Residential House within 3 years after the date of such transfer*

In case the whole sale consideration is not invested and only a part of the sale consideration is invested, exemption shall be allowed proportionately i.e.

Exemption under Section 54F not available in following cases

The above exemption would not be available if any of the below mentioned conditions is satisfied: -

1. *The assessee does not own more than 1 Residential House Property on the date of transfer of such asset exclusive of the one he has bought for claiming exemption under section 54F. (Note: The restriction on No. of houses already owned is only applicable if the assessee is claiming exemption under Section 54F. As explained above, there is no such restriction if the assessee is claiming exemption under Section 54);*
2. *The assessee purchases any residential house, other than the new asset, within a period of 1 year of the transfer of the old asset.*
3. *The assessee constructs any residential house, other than the new asset, within a period of 3 years after the date of the old asset.*

Budget 2014 has also introduced an amendment to Section 54F to be effective from FY 2014-14 and as per this amendment the exemption is available if the investment is made in 1 residential house situated in India.

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Exemption under Section 54F would not be allowed if investment is made in 2 houses. The option to invest in 2 houses is available once in lifetime in Section 54 but is not available in Section 54F.

The Assessee also has the option of depositing this amount in Capital Gains Account Scheme as explained in Section 54 above, before the due date of furnishing the Income Tax Return.

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