

Fractional ownership can be considered or not at the time of claiming exemption under Section 54F of the Income Tax Act, 1961.

Object and purpose of inserting section 54F

The primary objective of the sections 54 and section 54F of the Act was to mitigate the acute shortage of housing, and to give impetus to house building activity. There could be a possibility where a person owns around 100 properties and let's say that person holds 80% share of all the properties. If we do not consider fractional ownership of a property for the purpose of section 54F. In such a case, the person can claim the benefit of deduction under section 54F. **And accordingly, the object and purpose of inserting section 54F is defeated.**

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“29.2. The primary objective of the sections 54 and section 54F of the Act was to mitigate the acute shortage of housing, and to give impetus to house building activity. However, it has been observed that claims of huge deductions by high-net-worth assessee were being made under these provisions, by purchasing very expensive residential houses, which was defeating the very purpose of these sections.

From the plain reading of the **provisos (a) and (b) to section 54F**, it is clear that if the assessee **OWNS** more than one residential house other than the new asset on the date of transfer of original asset, the benefit of deduction under section 54F cannot be availed by the assessee.

The meaning of “**owns**” is not defined in Section 54F and Section 2 of the Income Tax Act, 1961 and accordingly for the purpose of meaning of the expression “owns” we refer the **ITAT PUNE BENCH decision in the case of Gopal D. Shetty v. ITO [2008] 25 SOT 53 (Pune)(URO)**, where the ITAT hold that the definition of "owner of the house property" defined in clauses (iii), (iiia) and (iiib) of section 27 of the Act, which are held to be clarificatory and declaratory in nature by the hon'ble Supreme Court, shall be equally applicable in the context of section 54F of the Act.

The clause (iiia) and clause (iiib) of section 27 of the Income Tax Act, 1961 reads as under: -

- a. **Clause (iiia) of section 27:** A person who is allowed to take or retain possession of any building **or part thereof** in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882), shall be deemed to be the owner of that building or part thereof (***emphasis supplied***)

b. Clause (iiib) of section 27: A person who acquires any rights (excluding any rights by way of a lease from month to month or for a period not exceeding one year) in or with respect to any building **or part thereof**, by virtue of any such transaction as is referred to in clause (f) of section 269UA, shall be deemed to be the owner of that building or part thereof; ***(emphasis supplied)***

From the clause (iiia) & (iiib) of section 27 of the income tax act 1961, it is very clear that where a person acquires any right (either in full or in part) in or with respect to **any building or part thereof**, it would cover under the definition of Owner.

Ownership can be many types which include Sole ownership, Joint Ownership or etc. The provision of sec 54F of the Act, doesn't contain the word "Absolute Ownership", it contains word "owns". Accordingly, if a person acquires any rights (either in full or in part) on any building it would fall under the definition of Owner. [Refer clause (iiia) and (iiib) of Sec. 27 of Income Tax Act, 1961]

Relevant Case Laws: -

Supreme Court of India in the case of M.J. Siwani v. Commissioner of Income-tax, Bangalore, [2015], [53taxmann.com318 (SC)]

Section 54F of the Income-tax Act, 1961 - Capital gains - Exemption of, in case of investment in residential house - (Ownership of more than one house) - Assessment year 1997-98 - High Court by impugned order held that where assessee on date of sale of long-term capital asset owns more than one residential house even jointly with another person, benefit under section 54F in respect of capital gain arising from sale of asset was to be rejected - Whether special leave petition filed against impugned order was to be dismissed - Held, yes [In favour of revenue]

Need to apply Strict Construction of the relevant provisions of the Statute:

The provision of section 54F should be constructed strictly in light of unambiguous and plain language used in these provisions.

In this regard, reliance is placed upon the decision of Hon'ble Supreme Court in the case of **Nathi Devi v. Radha Devi Gupta** reported in AIR 2005 SC 648. The Apex Court held that the interpretation function of the Court is to discover the **true legislative intent**, it is trite that in interpreting a statute the Court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequence. Those words must be expounded in their natural and ordinary sense. When a language is plain and unambiguous and admits of only one meaning no question of construction of statute arises, for the Act speaks for itself.

It has been held by the Hon'ble Apex Court in number of cases that Courts can not legislate in the garb of interpretation. Hon'ble Court in **CIT vs. Keshab Chandra Mandal, AIR 1950 SC 265** has observed that "Hardship or inconvenience cannot alter the meaning of language employed by the Legislative if such meaning is clear on the face of the Statue". It is for the legislature to amend the law and not the Court as held in the case of **State of Jharkhand & Anr. Vs. Govind Singh JT** 2004(10) SC 349.

Decision of Supreme Court in case of **Seth Banarasi Das Gupta (1987) 32 Taxman 112A**, was with regard to **fractional ownership** of a depreciable asset (machinery) to decide the claim of depreciation. An asset like machine cannot be put to use for purpose of a business in fractional manner. Due to the same, it was held by Supreme Court that claim of depreciation will not be admissible based on fractional ownership of a machine. Whereas in **section 54 F of the IT Act, context is entirely different**. It is very much possible and prevalent to make use of fractional ownership in a residential house for actual residing purposes by all joint owners. Thus, section 54F has entirely different context when compared with context Supreme Court was dealing with in case of Seth Banarasi Das Gupta.

Judgement dated 30.07.2018 of Constitution Bench of Hon'ble Supreme Court in the case of Commissioner of Customs Vs. Dilip Kumar and company and others (Civil Appeal number 3327 of 2007)

"We may emphatically reiterate that if in the event of ambiguity in a taxation liability statute, the benefit should go to the subject/assessee. But, in a situation where the *tax exemption* has to be interpreted, **the benefit of doubt should go in favour of the revenue...**"

In view of the above, Ratio of aforesaid decision dated 30.07.2018 of Constitution bench of honorable Supreme Court **In the case of Dilip Kumar and Co (95 Taxmann.com 327)** will be squarely applicable to the cases involving claim of deduction under the provisions of Income tax Act as both deduction and Exemption provisions bring certain taxable income, which is otherwise taxable, out of ambit of taxation. Both deductions and exemptions are to be considered on the same footing for the purpose applying rule of interpretation as both are brought on the statue by the Parliament for meeting certain specific objectives of public importance or for some economic reasons. Further, both have ultimate effect of bringing otherwise taxable income out of habit of taxation extending benefit to certain class of taxpayers.

Therefore, in light of ratio of aforesaid judgement of Honorable Supreme Court , interpreting provisions of section 54F of the Income tax Act, if any, should go in favour of the Revenue.