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HC Rules exemption of long term capital gain available for investment made within extended date of filing of tax return

Executive Summary

This tax alert summarizes the recent ruling of Punjab and Haryana High Court (HC) in the case of Shri Jagtar Singh Chawla (Taxpayer)[1] on an issue: whether exemption of long term capital gain under section 54F of Income Tax Act (ITA) is to be denied to the Taxpayer who made investment in a residential house within the extended due date of filing of tax return [instead of deposit made in Capital Gain Account Scheme (CGAS) made by the due date of filing of return of income prescribed in ITA]. The HC noted that the said section 54F of ITA, while prescribing the limitation of time for making investment or deposit, does not differentiate the limitation period as to the due date or the extended due date (EDD). The HC ruled that the Taxpayer having made the investment before the EDD is entitled to the benefit of exemption under the said section; the Revenue cannot deny the benefit on the ground that the investment or the deposit has not been made on or before the due date.

Background

Pursuant to section 54F of ITA, an individual or a Hindu Undivided Family (HUF) is entitled to exemption from long term capital gain tax arising on transfer of a capital asset (other than a residential house), subject to the conditions *inter alia* that he invests the capital gain amount for purchase of a residential house within the stipulated period of one year before the date of transfer or within two years or three years after the date of transfer, in the case of purchased house property and constructed house property, respectively. However there is further condition that if the investment is not made on or before the due date of filing the income tax return[2] the amount should be invested in a CGAS by the due date and utilize the same for purchase or construction of the residential house within the stipulated period. ITA also provides that where a Taxpayer has not filed tax return within the due date, he is entitled to file belated return within the EDD i.e. upto one year from the end of the Assessment Year. In the facts of the case the Taxpayer earned long term capital gains on sale of land, etc. and invested in a residential house within the EDD but did not deposit the amount in the CGAS on or before the prescribed due date of filing of the return. He claimed exemption of the capital gain in his tax return which was denied in the assessment. The first

[1] ITA No. 71 pronounced on 20.03.2013

[2] Currently the due date is 30 September of the Assessment Year in the case of Tax payers required to have their accounts audited and 31 July of the Assessment Year in other cases.

appellate authority also confirmed denial of the exemption. On farther appeal, ITAT ruled in favour of the Taxpayer. Revenue preferred an appeal before the High Court, whose ruling is discussed here under.

Taxpayer's contentions

- Section 54F mandates investment in a residential house within the time prescribed for filing of return of income without differentiating the due date and the EDD.
- Since the investment has been made within the EDD of filing of return of income, the exemption cannot be denied.

Tax Authority's contentions

- For claiming exemption under section 54F, the Taxpayer must make investment in a residential house on or before the due date or invest the amount into a CGAS.
- Since the Taxpayer has neither invested the amount nor deposited the amount in the Scheme within the stipulated due date, exemption cannot be allowed to him.

HC ruling

- Section 54F mandates the investment in a residential house or deposit the amount in CGAS on or before the time prescribed for filing of return of income under section 139 of ITA.
- As per section 139 (1) of ITA, a return of income should be filed within the due date, in the instant case, 31 July following the end of the financial year.
- However, pursuant to section 139 (4) of ITA, a Taxpayer who has not filed his return of income within the due date under section 139 (1), is entitled to file the same within the EDD, being, period of one year from the end of the Assessment Year.
- Since section 54F refers to section 139 simpliciter, without carving exception as to sub-section (1), the Taxpayer, in the instant case, having made the investment before the prescribed under sub-section (4) of section 139, is entitled to exemption of the long term capital gain claimed by him.

Our comments

This HC ruling provides clarity on the interpretation of exemption under section 54F of ITA, reiterates the legal principles propounded by Gauhati HC in Rajesh Kumar Jalan's case [286 ITR 274] in the context of section 54(2) of the ITA. It must be carefully noted that the benefit of the law laid down in this ruling can be availed only by those Taxpayers who have invested the capital gain amount within the extended date of filing of return. Therefore, **a Taxpayer who makes investment beyond the EDD[3], will not be entitled to claim the exemption without depositing the capital gain amount in CGAS before the due date of filing the return of income applicable to him in section 139(1) of ITA**.

[3] But not exceeding the maximum period of limitation prescribed in the relevant section of ITA.

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We are reachable at:
PHD & Associates
Chartered Accountants
Radha Chambers, Level 3,
Telli Park Lane, Andheri East,
Mumbai - 400 069. India.
Tel : +91 22 26820083
Fax : +91 22 26830824