

'Agreement to Sale' can't be considered as date of purchase of property for computing Sec. 54 deduction: ITAT

FACT OF THE CASE

1. The assessee and his wife booked a new residential house property. The assessee made most payments to the builders by availing of a mortgage loan. Later, the assessee and his wife sold a residential flat and utilized the sale proceeds to repay the mortgage loan. The assessee claimed deduction under section 54 and claimed nil long-term capital gain in the return of income.
2. During the assessment proceeding, Assessing Officer (AO) denied the benefit of deduction under section 54. AO was of the view assessee had not purchased the new Residential House within the period specified in Section 54. According to him, the new house was purchased on the date the Agreement for Sale was registered.
3. CIT(A) justified denial of section 54 relief to the assessee. Aggrieved-assessee filed the instant appeal before the Tribunal.

DECISION OF THE CASE

1. The Tribunal held that the AO and CIT(A) had taken the date of registration of 'Agreement For Sale' as the date of purchase. It should be noted that this agreement is not a sale/conveyance deed. It is only an agreement for sale between the promoters and developers who have agreed to sell the assessee a flat in a multi-storey building.
2. When the Agreement for Sale was registered, the multi-storey building was not yet constructed, and the obligation of the assessee to make payment is linked to construction.
3. Thus, the assessee's claim of the deduction is to be reckoned from the date of handing over of the possession of the flat by the builder to the assessee. Accordingly, the date on which the assessee took over possession of the new house should be taken as the date of purchase to allow section 54 deduction.