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TAXATION TIMES

November 2022

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Introduction

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Claiming an exemption under section 54 or 54F of the Income Tax Act, 1961 and confused whether the same can be availed if investment made by date of filing belated/revised ITR. Let us go through the relevant provisions of the Income Tax Act and clear the confusion! and many more in this edition of Taxation Times.
In this month's Taxation Times, we cover:

1. An article encompassing the provisions relating to deduction under section 54/54F;
2. Case Laws from various courts & jurisdictions;
3. Tax Compliance Calendar – December 2022;
4. Circulars & Notifications – November 2022;
5. Tax News from around the world

We hope that you find this month's edition of the Taxation Times useful. In case you have any feedback or need us to include any information to make this issue more informative, please feel free to write to us at

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Happy Reading!
Best Regards,
UJA Tax Team

Whether assessee is entitled to Section 54 exemption if investment made by date of filing belated/revised ITR?

There is a dispute whether exemption under section 54 or 54F to be allowed in regard to the amount invested in purchase or construction of the Residential House till the date of filing of return of Income under section 139(1) or section 139(4) of the Income-tax Act, 1961.

Let us discuss the provisions of section 54 and section 139 on this subject to get the answer

Section 54

Section 54 provides that long-term capital gains arising from transfer of a residential house is exempt from income-tax, if the amount of such capital gain is utilised to acquire/construct one residential house in India within specified period, subject to compliance of other conditions.
Conditions to claim exemption under section 54
Section 54 exemption is allowed to an individual or HUF from the long-term capital gains arising from transfer of capital asset, being residential house property. This exemption is allowed if following conditions are satisfied:

a	The individual or HUF owns a long-term capital asset, being a residential house property or land appurtenant thereto.
b	Such capital asset is transferred during the year.
c	Long-term capital gains arise from transfer of such capital asset.
d	The amount of capital gain is invested, by way of purchase or construction, in one residential house property.
e	The purchase of new residential house should be made either within 1 year before the date of the transfer or within 2 years after the date of transfer of original capital asset.
f	In case of construction, the new house should be constructed within 3 years after the date of transfer of old residential house.
g	If the assessee has not utilized the capital gains by the due date of filing of return, then assessee should deposit the capital gains in Capital Gain Account Scheme.

If above conditions are satisfied, the quantum of exemption shall be the amount of long-term capital gains or aggregate of amount invested in new house property and amount deposited in Capital Gain Account scheme, whichever is lower.

Amendment made by the Finance Act, 2019

With effect from assessment year 2020-21, the Finance Act, 2019 has amended section 54 to extend the benefit of exemption in respect of investment made in two residential house properties. The exemption for investment made, by way of purchase or construction, in two residential house properties shall be available if the amount of long-term capital gains does not exceed Rs. 2 crores. If assessee exercises this option, he shall not be entitled to exercise this option again for the same or any other assessment year. In other words, the assessee can exercise this option only once in his lifetime.

The benefit of new provision is allowed from assessment year 2020-21 and onwards.

Essential conditions to claim the exemption for investment in two houses from assessment year 2020-21

The exemption under section 54, in respect of two residential houses, shall be available if following conditions are satisfied by the assessee:

a	The individual or HUF transfers a long-term capital asset, being a residential house property or land appurtenant thereto, on or after April 1, 2019.
b	Long-term capital gains, arising from transfer of such capital asset, do not exceed Rs. 2 crores.
c	The amount of capital gains is invested, by way of purchase or construction, in two residential house properties.

d	The purchase of new residential house should be made either within 1 year before the date of the transfer or within 2 years after the date of transfer of original capital asset. In case of construction, the new house should be constructed within 3 years after the date of transfer of old residential house
e	This option can be exercised only once during the lifetime of the assessee. Thus, if this option is exercised, the assessee cannot claim the same benefit in any other assessment year.

As the time limit to buy a new residential house property begins one year before the date of transfer of original capital asset, the exemption under section 54 should be available even if two new house properties are purchased before this provision came into force. In other words, if two new house properties are purchased on or before March 31, 2019 but the original house property is transferred on or after April 1, 2019, the exemption should be available for the investment made in two house properties provided all other conditions are satisfied.

Section 54(2)

The amount of capital gains, which is not appropriated by the assessee towards purchase of new asset made within 1 year before the date on which the transfer of original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the due date of furnishing the return of income u/s 139(1) in an account in any such bank or institution as may be specified in and be utilised in accordance with the Capital Gains Accounts Scheme, 1988.

Invariably, if a person is not able to utilize the entire amount of capital gains on or before the due date of filing of return for the year in respect of which such capital gains arose. Such a situation is addressed by sub-section (2) by providing for deposit of unutilized funds in a Capital Gains Account Scheme before the prescribed date so that an assessee may not lose upon the exemption of unutilized funds.

Section 54(2) reads as under :

"The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset : ......"

Section 54(2) provides for an interesting proposition that the amount of capital gains which are not appropriated by the assessee for prescribed purposes within one year before; or on or before the due date of filing of return of income under section 139, shall be deposited in the capital gains account scheme. It needs to be emphasized that the literal reading of section 54(2) provides for the two dates i.e. the due date under section 139 and the due date under section 139(1). Pertinently, section 139 cannot be said to mean only section 139(1), but it means all sub-sections of section 139.

It may be noted that the aforesaid provision mandates that the period of utilization or appropriation of the capital gains in purchase or construction of the new residential house is to be considered till the due date under section 139[which also covers sub-section (4) and (5) of section 139].

However, for the purpose of taking the benefit of Capital Gains Account Scheme, the time limit for making such deposit has been prescribed to be till the due date under section 139(1).

SECTION 139(1)

The 6th proviso to section 139(1) was amended w.e.f. 1-4-2020 to provide that every person claiming deductions under section 54 or section 54B or Section 54D or Section 54EC or section 54F or section 54G or Section 54GA or Section 54GB shall, on or before the due date, furnish a return of income of his income on or before the due date specified 139(1), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed even if total income (before Chapter VIA deductions but after claiming these exemptions in respect of capital gains) does not exceed threshold exemption limit.

Conclusion

The sub section (2) of section 54 clearly provides a pigeonhole in the sense that the investment by way of purchase or construction, without resorting to Capital Gains Account Scheme, can be made till the date of belated return under section 139(4) or revised return under section 139(5) as the wordings used in section 54(2) is "section 139" and not section 139(1), which covers all sub sections of section 139".

The aforesaid provision mandates that the period of utilisation or appropriation of the capital gains in purchase or construction of the new residential house is to be considered till the due date under section 139 (which also covers sub-section (4) and (5) of section 139).

However, for the purpose of taking the benefit of Capital Gains Account Scheme, the time limit for making such deposit has been prescribed to be till the due date under section 139(1).

Case Laws

1 Income Tax Officer, Ward – 1 V/s Bhavin Mukeshbhai Patel [2022] 144 taxmann.com 205 (Ahemdabad – Trib)

Section: 69 of the Income Tax Act 1961

Facts: The taxpayer is an individual. The case was selected for scrutiny under CASS due to having a large investment in property as compared to total income. Before the Ld. Assessing Officer ('AO'), the taxpayer submitted that the property was not purchased by him but jointly by Chehar Reality Pvt Ltd & Iscon Procon Pvt Ltd. Since, the taxpayer is the Director of the said companies & signing authority, the taxpayer PAN was wrongly mentioned in the AIR statement instead of the PAN of the company being mentioned. The Ld. AO did not accept the contention of the taxpayer & in the absence of the source of purchase of the said property the consideration value of the property was added to the total income of the taxpayer as unexplained & undisclosed income under s. 69 of the Income Tax Act 1961 ('ITA'). The same in turn was deleted by the Ld. Commissioner of Income Tax (Appeals) [CIT(A)].

Held: The Ld. CIT(A) deleting the disallowance made by the Ld. AO stated that the Ld. AO made the addition to the income of the taxpayer without appreciating that the land was purchased jointly by both companies & merely because the PAN of the director was wrongly mentioned, it does not mean that the land is purchased by the taxpayer. The Ld. CIT(A) also observed that the Ld. AO has not rebutted the documentary evidence which justified that the taxpayer is not the owner of the property but merely the director of the company.

Further, Iscon Procon Pvt Ltd. has shown the purchase of the above lands in cash & shown as a purchase in the P&L account as well as a part of the closing stock.

The Hon'ble Tribunal upheld the opinion & decision of the Ld. CIT(A). As a result, the Revenue's ground of appeal was devoid of merit & thus dismissed.

In Favour of: Assessee

The Ld. CIT(A) stated that the Ld. AO made the addition to the income of the taxpayer without appreciating that –

- Land is purchased by both companies;
- The companies have owned upon land transactions and stated that land has been purchased by them;
- Wrong mentioning of PAN of the taxpayer director does not mean that the land is purchased by the taxpayer;
- The taxpayer has submitted a copy of the land ledger account with annual accounts wherein the above land purchased is duly disclosed.

Further, even the Ld. AO has not rebutted the documentary evidence which justifies that the appellant is not the owner of the property but merely the Director of the companies.

2 Principal Commissioner of Income Tax V/s Ambe Tradecorp (P) Ltd. [2022] 145 taxmann.com 27 (Gujarat) (Gujarat High Court)

Section: 68 of the Income Tax Act 1961

Facts: The taxpayer is a registered company incorporated in India. During the year under consideration the assessee company received two loans from another body corporate and the same were treated by assessing officer to be sham in the sense that the creditworthiness etc. of the giver of the loan were not established. Accordingly, the assessing officer made addition under section 68 of the Act.

Aggrieved by the order passed by the Ld. AO, the assessee company filed an appeal before CIT(A) which uphold the order passed by the Ld. AO.

Against the order passed by the Ld. CIT(A) the assessee company filed an appeal before Hon. ITAT which deleted the demand.

The department being aggrieved by the order of Hon. ITAT filed an appeal before Hon. High Court.

Held: Assessee received loans from two parties - Assessing officer treated same to be sham for reason that creditworthiness of loan givers was not established and, accordingly, made addition under section 68 - It was noted that Tribunal recorded findings of facts that assessee had furnished details such as copy of ledger account, bank statements, income-tax returns, balance sheet etc. of loan givers - It was also recorded that notice under section 133(6) was issued to said loan givers which were duly responded by them, therefore, identity of parties could not be disputed - It was also noticed that assessee was not beneficiary as loan was repaid by assessee in subsequent year - Whether, on facts, identity and creditworthiness of parties and genuineness of loan transactions were well established, therefore, impugned addition made under section 68 on account of said loan amount was unjustified.

In Favour of: Assessee

3 **Shri Bhargavnath Infra V/s Assistant Commissioner of Income Tax [2022] 144 taxmann.com 168 (Pune - Trib.)**

Section: 43CA of the Income Tax Act 1961

Facts: The assessee is a builder and developer. The assessee filed the return of income for the relevant year and the case was selected for assessment under section 143(3); wherein the Ld. AO made disallowance under section 43CA of the Act being the difference between sale value of the flats sold and the stamp duty value of the same It was contended by the assessee that stamp value was at uniform rate without taking into consideration the peculiar features of a particular property. It was also contended that the A.O has ignored the fact that the difference was less than 10% and therefore, not required to be added.

Aggrieved by the order passed by the Ld. AO, the assessee company filed an appeal before CIT(A) which uphold the order passed by the Ld. AO.
Against the order passed by the Ld. CIT(A) the assessee company filed an appeal before Hon. ITAT.

Held: Special provision for full value of consideration for transfer of assets other than capital assets in certain cases (Difference between sale value and stamp duty value - Assessment year 2015-16 - Assessee was a builder and developer - During year he sold certain flats - Assessing Officer made addition to assessee's income under section 43CA being difference between sale value of flats sold and stamp duty value of same - Assessee stated before Tribunal that said difference was less than 10 per cent margin and, therefore, not required to be added - It was noted that first proviso to section 43CA inserted by Finance Act, 2020 with effect from 1-4-2021 stated that if there was a difference between consideration received by assessee as a result of transfer of land or building and value adopted by Government Authority for purpose of payment of stamp duty was within 10 per cent margin then there could not be any addition on pretext of deemed income - It was further noted that Supreme Court in case of CIT v. Vatika Township (P.) Ltd. [2014] 49 taxmann.com 249/227 Taxman 121/367 ITR 466 held that if a fresh benefit was provided by Parliament in an existing provision then such an amendment should be given retrospective effect - Whether even without going into merits of case by application of first proviso to section 43CA having retrospective effect, appeal of assessee deserved to be allowed

In Favour of: Assessee

4 **State Bank of India V/s Assistant Commissioner of Income Tax [2022] 144 taxmann.com 131 (SC)**

Section: 192 r.w.s. 10(5) of the Income Tax Act 1961

Facts: The assessee is State Bank of India. The assessee while making payment has not deducted tax under section 192 of the Act on the Leave Travel Concession (LTC) paid to its employees for foreign travel also. During the assessment proceedings the Ld. AO rejected the contention of the assessee and asked to deduct and pay TDS on foreign LTC also being foreign LTC is not exempt under section 10(5).

Aggrieved by the order passed by the Ld. AO, the assessee company filed an appeal before CIT(A) which uphold the order passed by the Ld. AO.

Against the order passed by the Ld. CIT(A) the assessee company filed an appeal before Hon. ITAT and Hon. ITAT passed its order favouring the department.

Against the order passed by the Hon. ITAT the assessee filed an appeal before Hon. High Court of Delhi which also passed judgement in favour of the department.

Aggrieved by the judgement passed by Hon. Delhi High Court the assessee filed an appeal before Hon. Supreme Court of India.

Held: TDS deductible u/s 192 on LTC paid for travel with a foreign leg, as exemption u/s 10(5) is not applicable for such travel
LTC u/s 10(5) read with Rule 2B is for travel within India, from one place in India to another place in India. The contention of the assessee (SBI) that there is no specific bar under Section 10(5) for a foreign travel and therefore a foreign journey can be availed as long as the starting and destination points remain within India is without merits. In view of the provisions of the Act, the moment employees undertake travel with a foreign leg, it is not a travel within India and hence not covered under the provisions of Section 10(5) of the Act. A foreign travel also frustrates the basic purpose of LTC.

Further Hon. Supreme Court observed that,

The basic objective of the LTC scheme was to familiarise a civil servant or a Government employee to gain some perspective of Indian culture by traveling in this vast country. It is for this reason that the 6th Pay Commission rejected the demand of paying cash compensation in lieu of LTC and also rejected the demand of foreign travel.[Para 4.3.4 of the 6th Pay Commission Report dated March, 2008] This is also an objection of the Revenue which has been raised in its counter affidavit filed by respondent no. 1-Assistant Commission of Income Tax wherein the Revenue has asserted that the provision for LTC was introduced to motivate employees and encourage its employees towards tourism in India and it is for this reason that reimbursement of LTC was exempted. There was no intention of legislature to allow the employees to travel abroad in the garb of LTC available by virtue of Section 10(5) of the Act. Therefore, the Revenue has a valid objection (apart from other objections which are clearly violative of the Statute), that the intention and purpose of the scheme is also violated in the garb of tour within India, foreign travel is being availed.

Many of the employees of the appellants had undertaken travel to Port Blair via Malaysia, Singapore or Port Blair via Bangkok, Malaysia or Rameswaram via Mauritius or Madurai via Dubai, Thailand and Port Blair via Europe etc. It is very difficult to appreciate as to how the appellant who is the assessee-employer could have failed to take into account this aspect. This was the elephant in the room.

The obligation of deducting tax is distinct from payment of tax. The appellant cannot claim ignorance about the travel plans of its employees as during settlement of LTC Bills the complete facts are available before the assessee about the details of their employees' travels. Therefore, it cannot be a case of bonafide mistake, as all the relevant facts were before the Assessee employer and he was therefore fully in a position to calculate the 'estimated income' of its employees.

The contention of Shri K.V. Vishwanathan, learned senior advocate that there may be a bonafide mistake by the assessee-employer in calculating the 'estimated income' cannot be accepted since all the relevant documents and material were before the assessee- employer at the relevant time and the assessee employer therefore ought to have applied his mind and deducted tax at source as it was his statutory duty, under Section 192(1) of the Act.

In Favour of: Revenue

Circulars & Notifications November 2022

A.Circulars:

CBDT releases draft Common Income Tax Return Form for public consultation

https://incometaxindia.gov.in/communications/circular/common-itr.pdf

CBDT condones delay in filing Form No.10A for which the extended due date was 31.03.2022

https://incometaxindia.gov.in/communications/circular/circular-no-22-2022.pdf

Explanatory Notes of the Provisions of the Finance Act, 2022

https://incometaxindia.gov.in/communications/circular/circular-23-2022.pdf

B.Notifications:

CBDT notifies 'Public Investment Fund' for Sec. 10(23FE) exemption

https://incometaxindia.gov.in/communications/notification/notification-125-2022.pdf

C.Press Release:

Direct Tax Collections for F.Y. 2022-23 up to 10.11.202

https://www.pib.gov.in/PressReleasePage.aspx?PRID=1875316

Finance Minister Smt. Nirmala Sitharaman chairs Pre-Budget consultation with Finance Ministers of States

https://www.pib.gov.in/PressReleasePage.aspx?PRID=1878875

Tax Compliances for December 2022

7 December 2022

Due date for deposit of Tax deducted/collected for the month of November, 2022.

15 December 2022

Third instalment of advance tax for the assessment year 2023-24

Due date for issue of TDS Certificate for tax deducted under section 194-IA/194-IB/194M in the month of October, 2022

Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of November, 2022 has been paid without the production of a challan

30 December 2022

Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA/194-IB/194M in the month of November, 2022

Furnishing of report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is January 1, 2021 to December 31, 2021) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report under section 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc.

31 December 2022

Filing of belated/revised return of income for the assessment year 2022-23 for all assessee (provided assessment has not been completed before December 31, 2022)

Tax News from around the World

Biden calls on oil, gas companies to stop 'war profiteering,' threatens windfall tax

https://www.reuters.com/business/energy/biden-address-oil-company-profits-430-pm-remarks-2022-10-31/

Hunt hikes taxes, tightens spending to tackle UK public finances

https://www.reuters.com/world/uk/hunt-sets-out-plan-tackle-uk-public-finances-2022-11-17/

COVID-19 hit African tax revenues hard, but increased foreign aid softened the blow

https://www.oecd.org/tax/tax-policy/covid-19-hit-african-tax-revenues-hard-but-increased-foreign-aid-softened-the-blow.htm

New OECD data highlight multinational tax avoidance risks and the need for swift implementation of international reform

https://www.oecd.org/tax/new-oecd-data-highlight-multinational-tax-avoidance-risks-and-the-need-for-swift-implementation-of-international-reform.htm

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