

Capital gain on transfer of residential property not to be charged in certain cases¹

54GB. (1) Where,—

(i) the capital gain arises from the transfer of a long-term capital asset, being a residential property (a house or a plot of land), owned by the eligible assessee (herein referred to as the assessee); and

(ii) the assessee, before the due date of furnishing of return of income under sub-section (1) of section 139, utilises the net consideration for subscription in the equity shares of an eligible company (herein referred to as the company); and

(iii) the company has, within one year from the date of subscription in equity shares by the assessee, utilised this amount for purchase of new asset,

then, instead of the capital gain being charged to income-tax as the income of the previous year in which the transfer takes place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(a) if the amount of the net consideration is greater than the cost of the new asset, then, so much of the capital gain as it bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45 as the income of the previous year; or

(b) if the amount of the net consideration is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45 as the income of the previous year.

(2) The amount of the net consideration, which has been received by the company for issue of shares to the assessee, to the extent it is not utilised by the company for the purchase of the new asset before the due date of furnishing of the return of income by the assessee under section 139, shall be deposited by the company, before the said due date in an account in any such bank or institution as may be specified and shall be utilised in accordance with any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and the return furnished by the assessee shall be accompanied by proof of such deposit having been made.

(3) For the purposes of sub-section (1), the amount, if any, already utilised by the company for the purchase of the new asset together with the amount deposited under sub-section (2) shall be deemed to be the cost of the new asset:

Provided that if the amount so deposited is not utilised, wholly or partly, for the purchase of the new asset within the period specified in sub-section (1), then,—

¹ Inserted with effect from the 1st day of April, 2013

(i) the amount by which—

- (a) the amount of capital gain arising from the transfer of the residential property not charged under section 45 on the basis of the cost of the new asset as provided in sub-section (1), exceeds—
- (b) the amount that would not have been so charged had the amount actually utilised for the purchase of the new asset within the period specified in sub-section (1) been the cost of the new asset,

shall be charged under section 45 as income of the assessee for the previous year in which the period of one year from the date of the subscription in equity shares by the assessee expires; and

(ii) the company shall be entitled to withdraw such amount in accordance with the scheme.

(4) If the equity shares of the company or the new asset acquired by the company are sold or otherwise transferred within a period of five years from the date of their acquisition, the amount of capital gain arising from the transfer of the residential property not charged under section 45 as provided in sub-section (1) shall be deemed to be the income of the assessee chargeable under the head “capital gains” of the previous year in which such equity shares or such new asset are sold or otherwise transferred, in addition to taxability of gains, arising on account of transfer of shares or of the new asset, in the hands of the assessee or the company, as the case may be.

(5) The provisions of this section shall not apply to any transfer of residential property made after the 31st day of March, 2017.

(6) For the purposes of this section,—

a) “eligible assessee” means an individual or a Hindu undivided family;

(b) “eligible company” means a company which fulfils the following conditions, namely:—

- (i) it is a company incorporated in India during the period from the 1st day of April of the previous year relevant to the assessment year in which the capital gain arises to the due date of furnishing of return of income under sub-section (1) of section 139 by the assessee;
- (ii) it is engaged in the business of manufacture of an article or a thing;
- (iii) it is a company in which the assessee has more than fifty per cent. share capital or more than fifty per cent. voting rights after the subscription in shares by the assessee; and
- (iv) it is a company which qualifies to be a small or medium enterprise under the Micro, Small and Medium Enterprises Act, 2006;

(c) “net consideration” shall have the meaning assigned to it in the Explanation to section 54F;

(d) “new asset” means new plant and machinery but does not include—

- (i) any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person;
- (ii) any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest-house;
- (iii) any office appliances including computers or computer software;
- (iv) any vehicle; or
- (v) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head “Profits and gains of business or profession” of any previous year.