

## ITAT: Date of possession of property to be considered as purchase date for Sec.54 deduction

Jun 15, 2024

Prateek Rajendra Kapadia [TS-407-ITAT-2024(Mum)]

### Conclusion

Mumbai ITAT allows Assessee's appeal and holds the Assessee to be eligible for deduction under Section 54; Opines that the date of possession of the property, should be regarded as the date of purchase for the purpose of claiming exemption under Section 54, by relying on Jurisdictional HC judgment in [Beena K. Jain](#) and Pune ITAT ruling in [Ayushi Patni](#) wherein it was held that the relevant date of purchase for computation of deduction under Section 54 was the date when the Assessee obtained possession; Rejects Revenue's argument that the Assessee is not eligible for the deduction as the date of agreement to purchase is beyond the prescribed time period of 'one year prior and 2 years after the sale of original asset', under Section 54; Thus opines that, "*the relevant date for grant of deduction u/s 54 in this case would be the date of possession i.e. 16.11.2015, which is well within the period of two years from the date of agreement to sell the original asset i.e. 22.07.2015*". :ITAT Mum

### Decision Summary

The ruling was delivered by the Division Bench of Mumbai ITAT comprising Shri Amit Shukla, Judicial Member and Smt. Renu Jauhri, Accountant Member.

Mr. Sukhsagar Sayal appeared for the Assessee while the Revenue was represented by H. N. Bhatt.

Assessee-Individual, filed return of income for AY 2016-17, declaring total income of Rs. 82.38 Lacs and also claimed deduction under Section 54 for Rs. 2.69 Cr. Revenue denied Assessee's claim of deduction under Section 54 observing that the new asset was neither purchased within one year before the date of transfer of original asset nor constructed within three years from the date of transfer of original asset as required under Section 54, thus held Assessee to be not eligible for the Section 54 deduction, which was affirmed by the CIT(A). Aggrieved, the Assessee preferred the present appeal.

ITAT noted that the agreement to purchase the new asset was made on Jun 21, 2014 i.e. more than one year before the date of agreement to sell the original asset, i.e. Jul 22, 2015. Further noted Assessee's contention that even though the new asset had been booked and the agreement to purchase was entered on Jul 22, 2015, the said asset was under construction and the occupancy certificate was received by the developer/builder only on Sep 15, 2015 and the possession was given to the Assessee on Nov 16, 2015, and that both the aforementioned dates fall within the prescribed period under Section 54. Relied on Jurisdictional HC judgment in [Beena K. Jain](#) wherein it was held that the relevant date of purchase for computation of deduction under Section 54 was the date when the Assessee obtained possession.

Observed that, in the present case, on the date of purchase agreement there was no asset in existence which could be called a residential house. Thus opined that the date of possession of the property, i.e. Nov 15, 2015, should be regarded as the date of actual purchase for the purpose of claiming exemption under Section 54. Also relied on Pune ITAT ruling in [Ayushi Patni](#) wherein it was held that, "*It is an un-rebutted fact that at the time of execution of agreement, the residential property was not in existence. Therefore, taking into consideration facts of the case, the date of possession of flat is the date of actual purchase for the purpose of claiming exemption u/s 54F*". Thus Opined that, "the relevant date for grant of deduction u/s 54 in this case would be the date of possession i.e. 16.11.2015, which is well within the period of two years from the date of agreement to sell the original asset i.e. 22.07.2015". Accordingly allowed Assessee's claim for deduction under Section 54.

### Case Law Information

**Taxpayer Name**

- Prateek Rajendra Kapadia

**Judicial Level & Location**

- Income tax Appellate Tribunal Mumbai

**Appeal Number**

- ITA No.67/Mum/2024

**Date of Ruling**

- 2024-06-10

**Ruling in favour of**

- Assessee

**Section Reference Number**

- 54

**Nature of Issue**

- Deductions

**Judges**

- Amit Shukla, Judicial Member
- Renu Jauhri, Accountant Member

**Counsel for Tax Payer**

- Sukhsagar Sayal

**Counsel for Department**

- H. N. Bhatt