

Punjab and Haryana High Court allows Section 54F exemption if investment is made before the due date of filing belated tax return

3 April 2013



Background

Recently, the Punjab and Haryana High Court (High Court) in the case of Sri Jagtar Singh Chawla¹ (the taxpayer) held that the exemption from tax on long term capital gains on sale of a long term capital asset (other than a residential house) is available under the Income-tax Act, 1961 (the Act), where investment in new residential house property is made before due date of filing a belated tax return.

As per the Act², the long term capital gain (on transfer of a long term capital asset other than a residential house) may be exempt from tax. To avail the said exemption, it is required that the sale proceeds are invested in a new residential house (subject to the specified conditions). If the same is not done by the date of furnishing the return of income³, then it is required that the proceeds be deposited in a specified Capital Gain Account by the due date of furnishing the income tax return⁴.

Facts of the case

- The taxpayer sold his agricultural land and residential house in 2006, and requested the bank to deposit the proceeds in a Capital Gain Account. However, the amount was instead deposited in a "Flexi General Account" which is a saving as well as fixed deposit account.
- Thereafter, the taxpayer invested a substantial part of the sale consideration in a new house property before 31 March 2008. The possession of the new property was also delivered to the taxpayer on execution of power of attorney on 30 March 2008. Based on the same, the taxpayer claimed the capital gains exempt from tax.
- The Assessing Officer (AO) disallowed the taxpayer's claim stating that condition of deposit of sum in Capital Gain Account or investment in new house before furnishing tax return under Section 139(1) of the Act was not met.

¹ CIT v. Jagtar Singh Chawla (ITA No. 71/2012, AY 2007-08, dated 20 March 2013)

² Section 54F of the Act

³ Section 139 of the Act

⁴ Section 139(1) of the Act

- The Commissioner of Income tax (Appeals) [CIT(A)] upheld the order of the AO.
- The Income-tax Appellate Tribunal (The Tribunal) set aside the order of the CIT(A) on the grounds that the taxpayer had purchased the residential house within the extended period of filing the income tax return, and thus the addition is not sustainable.
- Aggrieved by the order of the Tribunal, the tax department preferred an appeal to the High Court.

Issue before the High Court

Whether the Tribunal is justified in allowing the claim of exemption under Section 54F of the Act as the taxpayer failed to deposit the unutilised consideration in the Capital Gain Account scheme as per the limit prescribed by the Act?

High Court ruling

- The High Court referred to the Gauhati High Court's ruling in case of Rajesh K. Jalan⁵. In the said ruling, it was held that the unutilised portion of capital gains on the sale of residential property should be deposited in a Capital Gain Account before the due date of furnishing the return of income specified in the Act. The Gauhati High Court held that such due date would include extended period to file return as mentioned in the Act⁶.
- Reference was also made to the Karnataka High Court's decision in the case of Fathima Bai⁷, wherein the taxpayer's claim for exemption from capital gains where investment was made by her before the extended due date of filing the return was accepted. The Karnataka High Court had rejected the tax department's claim that the deposit in the capital gains account scheme should have been made before the original due date of filing return⁸.
- The High Court relying on the above mentioned judicial precedents, opined that the benefit of tax exemption on long term capital gains would be available as long as the taxpayer made the new investment within the timeline of filing tax return under Section 139 of the Act. This will not be denied in case a belated return is filed by due date specified thereof.

- Thus it was held that the taxpayer has proved that he acquired a new property within the extended period of limitation of filing the tax return (31 March 2008). Since the taxpayer acquired the new residential house by the end of the assessment year, relevant to the year which he sold the asset, therefore the taxpayer is eligible for exemption from tax on long term capital gains.

Our comments

In the present decision, the Punjab and Haryana High Court has followed the earlier High Court's decisions. It makes the case for the taxpayer who wishes to claim exemption of tax on long term capital gains stronger, where the condition of acquiring new asset within the due date of belated tax return is fulfilled.



In case you need any further information/clarification, please contact:

Parizad Sirwalla
Partner, Mumbai
Email: psirwalla@kpmg.com
Phone: +91 22 3090 2010

For more details on International Executive Services, please [click here](#)

⁵ CIT v. Rajesh Kumar Jalan [2006] 286 ITR 274 (Gau)

⁶ Section 139(4) of the Act

⁷ Fathima Bai v. ITO (ITA no. 435 of 2004, dated 17 October 2008)

⁸ Section 139(1) of the Act

Ahmedabad

Safal Profitaire
B4 3rd Floor, Corporate Road,
Opp. Auda Garden, Prahlad Nagar
Ahmedabad – 380 015
Tel: +91 79 4040 2200
Fax: +91 79 4040 2244

Bangalore

Maruthi Info-Tech Centre
11-12/1, Inner Ring Road
Koramangala, Bangalore 560 071
Tel: +91 80 3980 6000
Fax: +91 80 3980 6999

Chandigarh

SCO 22-23 (1st Floor)
Sector 8C, Madhya Marg
Chandigarh 160 009
Tel: +91 172 393 5777/781
Fax: +91 172 393 5780

Chennai

No.10, Mahatma Gandhi Road
Nungambakkam
Chennai 600 034
Tel: +91 44 3914 5000
Fax: +91 44 3914 5999

Delhi

Building No.10, 8th Floor
DLF Cyber City, Phase II
Gurgaon, Haryana 122 002
Tel: +91 124 307 4000
Fax: +91 124 254 9101

Hyderabad

8-2-618/2
Reliance Humsafar, 4th Floor
Road No.11, Banjara Hills
Hyderabad 500 034
Tel: +91 40 3046 5000
Fax: +91 40 3046 5299

Kochi

4/F, Palal Towers
M. G. Road, Ravipuram,
Kochi 682 016
Tel: +91 484 302 7000
Fax: +91 484 302 7001

Kolkata

Infinity Benchmark, Plot No. G-1
10th Floor, Block – EP & GP,
Sector V Salt Lake City,
Kolkata 700 091
Tel: +91 33 44034000
Fax: +91 33 44034199

Mumbai

Lodha Excelus, Apollo Mills
N. M. Joshi Marg
Mahalaxmi, Mumbai 400 011
Tel: +91 22 3989 6000
Fax: +91 22 3983 6000

Pune

703, Godrej Castlemaine
Bund Garden
Pune 411 001
Tel: +91 20 3050 4000
Fax: +91 20 3050 4010

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2013 KPMG, an Indian Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved.

The KPMG name, logo and “cutting through complexity” are registered trademarks of KPMG International Cooperative (“KPMG International”), a Swiss entity.