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Invest in spouse or child's name to avail of exemption

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The Income-Tax Appellate Tribunal (ITAT) Jaipur last week allowed exemption under Section 54F of the Income-Tax (I-T) Act on a residential house property purchased in the wife's name. Last month, in another ruling, a similar exemption was granted by ITAT Bengaluru on the purchase of a residential house in the daughter's name.

Vivek Jalan of Tax Connect Advisory Services LLP, a multidisciplinary consulting firm, says, "If you have made capital gains, you can avail of exemptions under Sections 54 and 54F by investing the capital gains in a new house property, subject to conditions. One condition is that the investment should be made by the individual who has sold the property."

In India, a person often invests the amount received in the name of his blood relatives, especially spouse or children. Such an investment is treated as a tax-free gift. Note, there has been no change in the I-T Act yet.

But as Jalan says, "Courts across the country have rightly ruled that if the assessee purchases a new house in the name of his wife or children, and not in the name of someone unconnected with him, he cannot be denied tax exemption if the entire investment has come out of proceeds from the sale of an old property."

What is Section 54/54F?

Both Sections 54 and 54F allow taxpayers to claim exemption from tax on long-term capital gains.

Under Section 54 of the I-T Act, an individual or Hindu Undivided Family that has sold a residential property can avail of exemption from capital gains tax if the gains are invested in the purchase or construction of a residential property.

Suresh Surana, founder, RSM India, says, "Section 54F pertains to the exemption available on reinvestment of the sale consideration derived from the transfer of any long-term capital asset, other than a residential house, in a new residential house property. Remember to claim exemption. The sale consideration needs to be invested in one residential property."

Gopal Bohra, partner, N.A. Shah Associates, says, "In both cases, the new property should be purchased either one year before or within two years after the date of transfer of the old property, or the new property should be constructed within three years from the date of transfer."

HOW CAPITAL GAINS ACCOUNT SCHEME WORKS

- The scheme is applicable to both Sections 54 and 54F of I-T Act
- If an assessee fails to reinvest by the date of filing returns, he will still be able to claim the exemption, provided he deposits the reinvestment amount in this scheme
- Two types of deposits can be made under this scheme: Savings and term
- Any amount withdrawn must be utilised for specified investment within 60 days of withdrawal

Maximise their utility

Invest the entire sale consideration net of expenses towards purchasing a residential property.

Archit Gupta, chief executive officer, ClearTax, says, "If the amount invested is less than the sale consideration, you will get pro-rata exemption only."

YOUR MONEY

If the assessee is not able to purchase or construct the new residential property before filing his tax return, he can invest the amount in the capital gain account scheme. However, he must purchase the new residential property within two years of the date of transfer of the original asset.

The beneficiary of these exemptions is prohibited from selling the new property within three years of its purchase or construction. He also can't purchase any other residential property within two years of the purchase of the original long-term asset.

Gupta adds, "If you fail to do so, the exemption already claimed will be reversed."

Besides wife and daughter, these exemptions can also be availed of if an investment is made in the son's name.

Jalan says, "Exemption under Section 54F cannot be denied if a residential house is purchased in the name of the son or daughter of the assessee, and not the assessee himself."

Before proceeding with any such transaction, Bohra suggests consulting a tax advisor.