Time limit for making investment in under construction projects is 3 years to avail benefit of Sec 54 : ITAT

Hemant Shridhar Phatak vs. The Asst. Commissioner of Income Tax (ITA NO.267 & 268/MUM/2023)

Facts:

1. Mr.Phatak and his wife jointly sold a residential flat on 04/08/2012 and claimed exemption under section 54 of the Income Tax Act, on the long-term capital gains. They had booked two flats in under construction projects on 18/04/2011, and possession was received on 26/11/2014.

2. The Assessing Officer denied the exemption, stating that the flats were booked beyond one year before the date of transfer and possession was received after two years from the transfer.

3. The assessee's representative argued that the flats were booked in a building under construction, and possession was received within three years from the date of transfer, fulfilling the condition for exemption under section 54. He contended that, acquiring a flat in a building under construction was considered akin to construction.

Note: For the purpose of availing benefit of section 54 of the Act, the assessee from the date of sale of long term capital asset should either within a period of one year before or two years after the date on which the transfer took place purchase or within a period of three years after the date construct a residential house in India.

ITAT Mumbai held as under:

1. In the case of CIT vs. Hilla J B Wadia, 216 ITR 376 (Bom), the Hon'ble Jurisdictional High Court has held that where an assessee has utilized capital gains from transfer of old residential asset towards purchase of flat in a building under construction, 'this must also be viewed as a method of constructing residential tenement.'

2. Where the assessee has acquired a flat in a building under construction, it would be a case of construction and not purchase of property.

3. So the time limit of 3 years prescribed U/S 54 for construction of new property is fulfilled.

4. The appeal is allowed.