

**A STUDY OF**  
**Section 54F(1) proviso (a)(ii) "vs" Section 54F(2)**  
**OF**  
**INCOME TAX ACT, 1961**

**54F(1)**

- \* Sub-section (1) of Section 54F provides that in order to save capital gain tax on transfer of any -
  - \* long term capital asset, (*original asset*)
  - \* not being a residential house,
- \* if the assessee has -
  - \* within a period of one year before 'or'
  - \* within a period of **two years after**
- \* the date of on which the transfer took place 'or'
- \* has within a period of three years after that date constructed
- \* a residential house (*new asset*),
- \* the capital gain shall be dealt with in accordance with the provisions of clause (a) and (b) of sub-section (1) of section 54F subject to proviso to the sub-section and read with the *Explanation* thereunder.

**Comments**

- \* Section 54F(1) provides **exemption** in respect of capital gain **in the assessment year in which it arises**, subject to fulfillment of conditions prescribed therein.
- \* One of the conditions for availing the exemption is to invest the amount of net consideration in the purchase of a residential house (*new asset*) **within two year** from the date of transfer of the original asset.
- \* This period of **two years** was **inserted** by the Finance Act, 1987 w.e.f 1.4.1988.
- \* **Before this insertion** the period for purchase of the new asset after the date of the transfer of the original asset was **one year**. The relevant expression as existed before the said insertion was as follows:-  
  
 "and the assessee has, within a period of **one year before or after** the date on which the transfer took place purchased.....,"
- \* It means that **up to AY 1987-88** the period for purchase a residential house (*new asset*) after the date of transfer of the original asset was **one year**, which was increased to **two years from AY 1988-89**, and which is so even up till now.

**54F(1)**

**Proviso**

- \* Sub-clause (ii) of clause (a) of proviso to sub-section (1) of section 54F **{Sec.54F(1) proviso (a)(ii)}** provides that "nothing contained in sub-section (1) shall apply" i.e. the exemption of capital gain as mandated u/s 54F(1), **which is to be allowed in the year of transfer of long term capital asset**, shall not be allowed if -
  - \* the assessee purchases
  - \* any residential house,
  - \* other than the new asset,
  - \* within a period of **one year**
  - \* after the date of transfer of the original asset."

**Comments**

- \* Section 54F(1) mandates that in order to claim exemption of long term capital gain, the assessee has to invest the amount of net consideration in the purchase of a residential house within a period of one year before or **two years after the date of transfer of the original capital asset**.
- \* Sec. 54F(1) Proviso (a)(ii) mandates that the exemption as allowable u/s 54F(1) shall not be allowed if the assessee purchases any residential house, other than the new asset {purchased u/s 54F(1)}, within a period of **one year after the date of transfer of the original asset**.
- \* It simply means that if an assessee wants to claim exemption u/s 54F(1) **in the return of the assessment year in which the original asset is transferred**, then the assessee can not **purchase** any other residential house within one year of the date of transfer of the original asset.
- \* if the assessee does so and **has not yet filed his return** -
  - \* then he can not claim the exemption u/s 54F(1).
- \* if the assessee does so and **has already filed his return and has claimed the exemption** -
  - \* then the exemption claimed u/s 54F(1) shall be deemed to have been claimed wrongly and shall be liable to be withdrawn **in the same year** under the law, as under the circumstances no exemption as such was allowable because of breach of condition prescribed under the provisos.

**54F(2)**

- \* Sub-section (2) of Section 54F provides that -
  - \* where the assessee **purchases**,
  - \* within a period of **two years**
  - \* after the date of transfer of the original asset
  - \* any residential house
  - \* other than the new asset *{i.e. the residential house already purchased u/s 54F(1)}*then -
  - \* the amount of capital gain not charged u/s 45 and allowed as exemption u/s 54F(1)
  - \* shall be deemed to be the income
  - \* chargeable under the head "capital gain"
  - \* relating to long term capital asset
  - \* of the previous year
  - \* in which **such** residential house is purchased.

**Comments**

- \* Section 54F(1) provides **exemption** in respect of capital gain **in the assessment year in which it arises**, subject to fulfillment of conditions prescribed therein.
- \* Sec. 54F(1) Proviso (a)(ii) **disentitles exemption** in the assessment year in which it arises in case of breach of condition prescribed therein (as discussed above).
- \* Sec. 54F(2) provides that the exemption allowed u/s 54F(1) in any assessment year shall be **forfeited** and accordingly shall be taxed in the assessment year in which violation mentioned therein is made. The violation shall be if the assessee purchases another residential house {other than the new asset purchased u/s 54F(1)} within **two years** of the transfer of the original asset.

- \* This period of **two years** was **substituted** by the Finance Act, 1987 w.e.f 1.4.1988.
- \* **Before this substitution** the period for purchase of the new asset after the date of the transfer of the original asset was **one year**.
- \* It means that **up to AY 1987-88** the period for purchase a residential house (*new asset*) after the date of transfer of the original asset was **one year**, which was increased to **two years from AY 1988-89**, and which is so even up till now.

### **Conclusion**

- \* There is neither any inconsistency nor any contradiction between the provisions of -
  - \* Section 54F(1) proviso (a)(ii) - purchase of another residential house **within one year** "and"
  - \* Section 54F(2) - purchase of another residential house **within two years**.
- \* Both these provisions operates in different fields. Earlier **disentitles the exemption u/s 54F(1)** in the year in which the long term capital arises, whereas the later **withdraws the exemption** earlier allowed u/s 54F(1).
- \* It may be noted that the period u/s 54F(2) was increased by the Finance Act, 1987 w.e.f AY 1988-89 because the period of investment u/s 54F(1) was also increased by the Finance Act, 1987 w.e.f AY 1988-89.
- \* *Therefore, the conclusion is, that, after making investment in a new residential house either by way of **purchase within one year before or after** the date of transfer of the original asset or by way of **construction within one year** from such date in order to fulfil the condition of section 54F(1), the assessee **purchases** another residential house **within one year**, he shall not be entitled to claim the exemption u/s 54F(1) in the year when the capital gain has arisen by virtue of the provisions of section 54F(1) proviso (a)(ii); and once such exemption is legitimately allowed and the assessee **purchases** another residential house within **two years** or **constructs within three years** from the date of transfer of the original asset, the exemption already allowed u/s 54F(1) **shall be forfeited** and accordingly shall be chargeable to tax as long term capital gain in the year in which such other residential house is acquired.*

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