DECIPHERING SECTIONS 54, 54F, 54B AND 54EC AND ISSUES THEREIN FACED WHILE CLAIMING DEDUCTIONS

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INTRODUCTION:

Earning income automatically casts a responsibility on the taxpayers to discharge income tax on such income and so is the case with capital gains too. Section 45 of Income Tax Act, 1961 ("IT Act" or "the Act") is the charging section for Capital Gains. Section 45(1) of the Act reads as under:

*Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, **save as otherwise provided in*** sections 54, 54B, 54D, 54E, 54EA, 54EB, 54F, 54G ***and*** 54H, *be chargeable to income-tax under the head "Capital gains"*……………………..

Thus Section 45(1) make capital gains chargeable to income tax in the previous year in which transfer of a capital asset takes place. However, such capital gains is calculated after claiming deductions under Sections 54 to 54H. These sections provide help taxpayers to reduce their income in nature of capital gains thereby reduce their tax outgo.

This article focuses on deductions claimed under Section 54, Section 54B, Section 54EC and Section 54F against the Long-Term Capital Gains ("LTCG") on sale of residential property or any other asset and discuss common issues faced at the time of claiming such deductions.

SECTIONS 54 and 54F:

About the Sections:

Let's first understand two of most crucial sections 54 & 54F. Both these sections are the most beneficial, commonly and widely availed deduction provisions of the Act. These sections provide deduction from capital gains upon fulfillment of certain conditions.

The synopsis of both the sections is tabulated below:

Particulars	Section 54	Section 54F
Eligible assessee	Individual or HUF	Individual or HUF
Nature of asset transferred	Long Term Capital Asset being building or land appurtenant thereto and a Residential House	Any Long Term Capital Asset other than a Residential House
Conditions for claiming deduction	Re-invested in a residential house in India either by – a. Purchase within 1 year before or 2 years after the date of transfer; or b. Constructed within 3 years after the date of transfer.	Re-invested in a residential house in India either by – a. Purchase within 1 year before or 2 years after the date of transfer; or b. Constructed within 3 years after the date of transfer.

Particulars	Section 54	Section 54F
Amount of deduction	If Capital Gains is < the amount invested = full amount is available as deduction If Capital Gains is > the amount invested = difference is taxable	If cost of new house > net sales consideration = full amount is available as deduction If cost of new house < net sales consideration then, Amount Exempt = Capital Gain X $\frac{\text{Amount Invested}}{\text{Net Sale Consideration}}$
Lock in period for holding of new property	3 years from date of its acquisition or construction	3 years from date of its acquisition or construction
Consequence of transfer before 3 years	Capital gains exempted earlier would be reduced from the cost of new asset while computing capital gains in respect of transfer of new asset	Capital gain exempted earlier shall be deemed to be the income of the P.Y. in which the new asset is transferred.
Other requirements/restrictions	a. If capital gains amount does not exceed Rs. 2 Crores, assessee may purchase or construct 2 residential houses in India. This option shall be exercised only once in life time. b. Where cost of new asset exceeds Rs. 10 crores, the amount so exceeding Rs. 10 crores shall not be taken into account. This is applicable from 1st April 2023.	a. Assessee shall not own more than 1 residential house other than new asset on the date of transfer or original asset. b. Shall not purchase any residential house other than new asset within 1 year or shall not construct any residential house other than new asset within 3 years from date of transfer of original asset. c. Where cost of new asset exceeds Rs. 10 crores, the amount so exceeding Rs. 10 crores shall not be taken into account. This is applicable from 1st April 2023.

Particulars	Section 54	Section 54F
Deposit in Separate account	Amount of capital gains which is not appropriated towards purchase or construction of new house is required to be deposited before due of furnishing of return in separate bank account. Such amount is to be used within 3 years from the date of transfer of original asset.	Amount of net consideration which is not appropriated towards purchase or construction of new house is required to be deposited before due of furnishing of return in separate bank account. Such amount is to be used within 3 years from the date of transfer of original asset.

The primary objective of the sections 54 and section 54F of the Act was to mitigate the acute shortage of housing, and to give impetus to house building activity. However, it has been observed that claims of huge deductions by high-net-worth assessees are being made under these provisions, by purchasing very expensive residential houses. It is defeating the very purpose of these sections. In order to prevent this, amendment has been made to both the sections thereby limiting maximum benefit of deduction which an assessee can claim to Rs. 10 crores. If cost of new asset is more than Rs. 10 crores, the cost of such asset shall be deemed to be Rs. 10 crores.

Say for example, if the value of new asset is Rs 25 Crores then the maximum benefit of deduction which an assessee can claim is limited upto Rs 10 Crores only. For the amount above Rs 10 Crores no benefit is available. Here, the limit of Rs 10 Crores is not per financial year but pertains to cost of new asset.

Some of common Issues while claiming deductions under Sections 54 and 54F:

Whether assessee is eligible to claim the deduction under these sections and whether conditions prescribed therein are getting fulfilled or not results in litigation. Some of the issues causing litigation have been dates / duration relevant for the purpose of claiming deduction under the sections, purchase / sale of more than one property, co-ownership/investment in joint names, etc.

Issue No. 01: Whether the assessee can claim the deduction under section 54/54F if he has not utilized the amount of capital gains or not deposited in Capital Gains Account Scheme within the due date prescribed u/s 139(1) but deposited/utilized the same before filing the belated return u/s 139(4).

For claiming deduction u/s 54 and 54F respectively, the assessee needs to utilize the amount of capital gains or net consideration as the case may be by purchasing or constructing a residential property or by depositing the amount in capital gains account scheme before due date for furnishing return u/s 139 until the time he purchases or constructs the residential property. There is dispute whether deduction u/s 54 and 54F to be allowed in regard to amount invested in purchase or construction of residential property till date of filing of return under Section 139(1) or Section 139(4) of the Act.
Section 54(2) reads as under

"The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilized by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an

account in any such bank or institution as may be specified in and utilized in accordance with any scheme the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit…………"

Thus, this sub section provides for an interesting proposition that the amount of capital gains which are not appropriated by the assessee either for purchase or construction of new residential house within one year before; or on or before the due date of filing of return of income under section 139, shall be deposited in the capital gains account scheme. So if we do literal reading of Section 54(2), two dates are prescribed i.e. the due date under section 139 and the due date under section 139(1). When Section 139 is referred it just cannot be said to mean only section 139(1), but it means all sub-sections of section 139. The provision mandates that the period of utilization or appropriation of the capital gains in purchase or construction of the new residential house is to be considered till the due date under section 139 [which also covers sub-section (4) and (5) of section 139]. However, in order to take benefit of Capital Gains Account Scheme, the time limit for making such deposit has been prescribed to be till the due date under section139(1). As mentioned previously this has been subject to extensive litigation.

ITAT DELHI BENCH 'C' in case of SMT. Harminder Kaur v. Income Tax Officer Ward - 36(4), New Delhi

In this case assessee sold a residential property and invested sale consideration in new residential property by way of booking flat in a housing project. Assessee filed its return of income claiming deduction under section 54 however the same was disallowed by Assessing Officer on ground that assessee had neither invested amount of capital gain in purchase or construction of residential house within stipulated period nor deposited it in capital gain scheme account within limit provided under section 139. ITAT in this case noted and held that assessee had provided detail of payments made for booking flat which showed that payments were made much prior to due date of filing of return under section 139(4). Since investment in property was made prior to due date of filing of return of income under section 139(4), assessee was to be allowed deduction under section 54.

There are many other favourable judicial pronouncements which clearly outline that deduction to be allowed under both the sections till the due date of filing of belated return under Section 139(4):

1. ***CIT v. Smt. Umayal Annamalai [2020] 118 taxmann.com 80/273 Taxman 146 (Mad.)***
2. ***Dr. Kushagra Kataria v. Dy. CIT [2019] 101 taxmann.com 359/174 ITD 648 (Delhi - Trib.)***
3. ***Rajendra Pal Verma v. Asstt. CIT [2019] 104 taxmann.com 303/176 ITD 211 (Mum.)***

The aforesaid interpretation has been approved by the Hon'ble ***Supreme Court in the case of Xavier J. Pulikkal v. Dy. CIT [2016] 73 taxmann.com 34/242 Taxman 59/379 ITR 535 (Mag.)*** when the Hon'ble Apex Court, while allowing the civil appeal, modified (or so to say-reversed) the reasoning of the Kerala High Court in the underlying order in Dr. Xavier J. Pulikkal v. Dy. CIT [2015] 64 taxmann.com 457/[2016] 242 Taxman 206.

The 6th proviso to section 139(1) was amended w.e.f. 1-4-2020 to provide that every person claiming deductions under section 54 or section 54B or section 54D or section 54EC or section 54F or section 54G or section 54GA or section 54GB shall, on or before the due date, furnish a return of his income on or before the due date specified in section 139(1), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed even if total income(before Chapter VIA deductions but after claiming these deductions in respect of capital gains) does not exceed threshold limit. However, there is no section 80AB like provision denying deductions under these sections if ITR not filed on or before due date u/s 139(1). Hence it can be concluded that assessee is entitled to deduction u/s 54 of investment made in new house up to the date of filing belated return/revised return of Income however in case of deposit unutilized amount in separate bank account or in capital gains scheme due date is considered to be that under section 139(1).

Another interesting issue for discussion is where investment of entire sale consideration is made in construction of residential property within 3 years period however no deposit of capital gains amount or consideration amount was made in capital gains scheme within prescribed due date. In such scenario deduction under sections 54 and 54F cannot be denied. ***ITAT Bangalore has held this in [2012] 124 taxmann.com 243 Ramaiah Dorairaj vs. ITO ward 4(2)(2)***. ITAT had relied on Hon'ble ***Karnataka High Court decision in case of K. Ramachandra Rao*** wherein High Court noted that it is very clear from section that if amount is not invested within stipulated time than amount is required to be deposited in an account notified by Central Government. In other words if he want to claim deduction from payment of income tax by retaining the cash, then the said amount is to be invested in the said account. If the intention is not to retain cash but to invest in construction or any purchase of the property and if such investment is made within the period stipulated therein, then Section 54F(4) is not at all attracted and therefore the contention that the assessee has not deposited the amount in the Bank account as stipulated and therefore, he is not entitled to the benefit even though he has invested the money in construction is also not correct.

Similar view was taken by ***High Court of Madras in case of Venkata Dilip Kumar v. Commissioner of Income-tax, Chennai [2019] 111 taxmann.com 180 (Madras). High Court*** held that Section 54(2) cannot be read in isolation and on the other hand, application of Section 54(2) should take place only when the assessee failed to satisfy the requirement under Section 54(1). While the compliance of requirement under Section 54(1) is mandatory and if complied, has to be construed as substantial compliance to grant the benefit of deduction, the compliance of requirement under Section 54(2) could be treated only as directory in nature. Mere non-compliance of a procedural requirement under Section 54(2) itself cannot stand in the way of the assessee in getting the benefit under Section 54, if he is, otherwise, in a position to satisfy that the mandatory requirement under Section 54 (1) is fully complied with within the time limit prescribed therein.

The Section 54 and 54F are beneficial provisions and should be interpreted liberally and the Assessing Officer has to see the end utilization of capital gains or net sale consideration in the way prescribed in Section 54 and 54F of the Act, the assessee is entitled for deduction under both the sections.

Issue No. 02: Whether assessee can claim deduction under section 54/54F if the agreement date is much earlier than the possession date of the purchased property?

One of the conditions to claim deduction under both the sections is that the new residential property has to be purchased within 1 year before or 2 years after the date of transfer. The question arises as to whether we can consider the property whose agreement has been done much earlier however possession is received only 1 year before the transfer date for purpose of claiming deduction or not.

ITAT Pune in case of Sanjay Vasant Jumde v. Income Tax Officer [2023] 148 taxmann.com 34 (Pune-Trib) dated 02/02/2023 held that the date of Purchase shall be the Date of possession and not date of agreement for claiming the deduction u/s 54/54F.

In this case assessee, a non-resident Indian, had sold his bungalow and earned long-term capital gain. He invested a portion of capital gains towards purchase of a new residential flat and claimed deduction under section 54 which was disallowed by AO since new property was purchased by assessee on 21-12-16 i.e. beyond one year preceding to sale of old property however possession was received on 24-01-2018 after construction was completed. The ITAT held that new property shall be deemed to have been acquired only when it is ready full consideration has been paid and the possession is received. ITAT had relied on

Bombay High Court judgment case of Smt. Beena K. Jain (supra), 1996 217 ITR 363 Bom dated 23-11-1993. In the said decision of the Hon'ble Bombay High Court (*supra*) it was appreciated about the substance of the transaction involving section 54 of the Act. The question was whether the relevant date was the date of sale agreement or the substantive element of the transaction had to be considered. The Hon'ble Bombay High Court held that the substance of the transaction signifies when the new property is ready for possession, when the substantial or full payment had been made and when the actual possession was acquired by the assessee. These substantial necessities are crucial for determining the issue for claim of deduction u/s 54 of the Act. Admittedly, in this case what the department is harping upon is merely the agreement dated 21-12-2016 when the building itself was not constructed and the assessee has only acquired his right to get a flat in the said building. When actually therefore, can it be said that the new property was purchased? It is only when the assessee received the possession through letter of possession on 24-12-2018. This is when all the three ingredients as enumerated in the decision of Hon'ble Jurisdictional High Court for claiming deduction u/s 54 had been complied with by the assessee. In another decision of ***Pune Tribunal in Ayushi patni v. Dy. CIT [IT Appeal No. 1424/PUN/2016 and ITA No. 1707/PUN/2016, for A.Y. 2012-13, order dated 17-01-2019*** identical facts were considered.

It was observed by the Tribunal that it is an unabated fact that at the time of execution of agreement, the residential property was not in existence. Therefore, taking into consideration the facts of the case, the date of possession of the flat as the date of actual purchase for the purpose of claiming deduction u/s 54/54F of the Act.

The matter however still remains unsettled and point for litigation. However, considering many judicial pronouncements including that of High Court and Tribunals if at time of agreement residential property was not in existence then date of possession of flat can be considered as actual purchase date for purpose of claiming deduction u/s 54 and 54F of the Act.

In another case ***Karnataka High Court in case of The Commissioner of Income Tax vs Mr. Shakuntala Devi (TS-5809-HC-2016 Karnataka) dated 28-09-2016*** had even held that Date of MOU to be reckoned as date of purchase for the purpose of benefit u/s 54 though the sale deed was not registered before the period of 2 years. In the instant case consideration paid by assessee under Memorandum of Understanding dated 08.09.2003 would fully cover the consideration of capital gains portion for being eligible to claim deduction under Section 54 of the Act. The fact that consideration received from sale of property were used for purchase of new asset would suffice to claim benefit of Section 54 / 54F of the Act as it amounts to utilisation of capital gains of net consideration for investment in new asset.

Thus, whether date of agreement or date of possession or date of MOU etc. is to be considered as date of purchase depends on facts of the case and is subject matter to litigation.

Issue No. 03: Assessee owns one residential house property in his name and is the co-owner of another house property along with his wife. He derives capital gain and invested the same in purchasing another house, whether he can claim deduction u/s 54 F?

Proviso to Section 54F states that the deduction u/s 54F shall not apply if
(a) the assessee

(i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or

(ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or

(iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(b) *the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property"*

The issue therefore arises is case where assessee is sole owner of one property and co-owner of another at the time of acquisition of new property. In this scenario whether holding of property in co-ownership will lead to violation of condition of Section of 54F or not?

The Mumbai bench of ITAT in the case of ITO v Rasiklal N Satra (2006 98 ITD 335 Mum dated 19/09/2005) held that the word 'owns' in section 54F means absolute ownership and not merely co-owner. Joint ownership is different from absolute ownership. In the case of residential unit, none of the co-owners can claim that he is the owner of residential house. Ownership of a residential house, in our opinion, means ownership to the exclusion of all others. Therefore, where a house is jointly owned by two or more persons, none of them can be said to be the owner of that house. Further in case of where property is co-owned no individual person on his own can sell the entire property. No doubt, he can sell his share of interest in the property but as far as the property is considered, it would continue to be owned by co-owners.

ITAT fortified its view based on judgement of Hon'ble ***Supreme Court in the case of*** Seth Banarsi Dass Gupta V.Cit ***166 ITR 783***, wherein, it was held that a fractional ownership was not sufficient for claiming even fractional depreciation under Section 32 of the Act. In view of this it was held that assessee was not the owner of residential house which was owned as co-owner with his wife.

If residential property held in joint name but full payment is made by one person, then whether person making payment is considered to be owner of property or not?

Contrary view which can be taken on co-ownership of the residential property for the purpose of Section 54F is by considering the scenario where property is considered to be in the name of person who has made payment of full consideration himself and not a single penny has been contributed by the joint owner. In such cases, it can be considered that the person owns more than one residential house, other than the new asset and thus deduction can be disallowed. Similar view was taken by ***THE ITAT BANGALORE BENCH 'C' in case of Anil Dev vs. Deputy Commissioner of Income Tax, Circle-2(2)(1), Bengaluru (2020) in ITA No. 1040/Bang/2018 dated 25-08-2020***. ITAT had allowed the deduction under Section 54F to the assessee where his contention was that he owned one commercial property and remaining one was residential property which was fully owned by wife of assessee and merely the name of assessee was included in purchase deed. Full consideration was paid by wife of assessee. Thus, only one residential property was fully owned by assessee which was purchased by him out of consideration from sale of shares.

Issue No. 04: Whether deduction u/s 54 /54 F is available to the assessee if the new asset is purchased in the joint name of the assessee together with some family member such as husband, wife, daughter, son or legal heir or what if new house is not purchased by assessee in his/her own name but in name of some family member or relative or in case of assessee being HUF where property is purchased in the name of one of its members and not the HUF itself?

There is a controversy on this issue as to whether assessee should be the owner of the residential property in order to be eligible for claiming deduction or not. Section 54 and 54F provide for purchase or construction of new house. But both sections are silent on name or who should be the owner of the house. From plain reading of section, it can be interpreted that the new house should be owned or be in the name of the assessee. However, the phrase "assessee should be legal owner" is missing. In many cases it has been held that where entire consideration has been paid by the assessee himself, he is entitled to full deduction u/s 54 even if property has been purchased in joint name with other family members. There are even cases where the deduction is denied in such cases. Some judicial rulings deny deductions under this section as assessee is not the owner of new house.

In case of ***Laxmi Narayan v CIT [2018] 89 taxmann.com 334 402 ITR 117 (Rajasthan) dated 07.11.2017 and in case of Radhey Shyam Arora vs. ITO (IT Appeal No. 267 Jp of 2017 dated 13-12-2017) Jaipur ITAT*** had held that "*The law provisions require the assessee to reinvest the gain amount within the stipulated time and there is no specific requirement that he should be the legal owner of reinvested property. It is not specified that it is to be in the name of assessee. Accordingly, when entire investment for the purchase of new house has gone through the assessee's account, then the benefit u/s. 54 cannot be denied on the ground that the new house was purchased in the name of his wife*". Similarly, when new house is purchased in joint name with brother, sister, children, close relatives, etc., and payment for new house is fully made through bank account of assessee, full deduction u/s. 54 is allowed, when such names are added for sake of convenience only.

Some other favourable judgments are:

a. ***CIT vs. Lamal Wahal [2013] 214 Taxman 287/30 taxmann.com 34 (Delhi)***

b. ***DIT, International Taxation vs. Mrs. Jeniffer Bhide [2012] 349 ITR 80/[2011] 203 Taxman 208/15 Taxmann.com 82 (KAR.)***

The Hon'ble ***Bombay High Court in case of Prakash vs. ITO [2009] 312 ITR 40/[2008] 173 Taxman 311 (BOM.)*** has taken a contrary view. High Court held that the purpose of section 54F is to give benefit on the ownership of one residential house only to the assessee and to encourage to have one residential house by the assessee. Therefore, right from the sale of original asset till the purchase and/or construction of the residential house, i.e., the "new asset", the ownership and domain over the new asset is a must. The new property must be owned by the assessee and/or he should be having legal title over the same. The others may use and occupy the same along with the assessee but the ownership should be of the assessee of the residential house so purchased from the net consideration/sale proceeds of the sale of original asset by the assessee.

The honorable ***Gujarat HC in the case of PCIT v Vaidya Panalalmanilal HUF (2018) 259 Taxman 19 (Guj.)(HC)dated 24 09 2018*** held that there was no dispute at the hands of revenue that the sale consideration arising out of sale of capital asset was used for acquisition of new asset and that such new asset was shown in books of HUF. Revenue's sole objection is that the sale deed was not executed in the name of the HUF but was in the name of two of the members of the HUF. The Tribunal was right in coming to the conclusion that this was substantial compliance with the requirement of section 54F when neither the source of acquisition of the new capital asset nor the account of such new asset in the name of the HUF are doubted. Mere technicality that the sale deed was executed in the name of member of the HUF rather not HUF, would not be sufficient to defeat the claim of deduction. By mere names of the purchasers in the sale deed, the rights of the HUF and other members of the HUF do not get defeated. If at all, the persons' named in the sale deed hold the property of the trust for and on behalf of HUF and the other members of the HUF.

The judgments in case of ***Vipin Malik (HUF) (supra) Delhi High Court*** *reported in* ***330 ITR 309, Kalya vs. Commissioner of Income Tax (supra) Rajasthan High Court*** *reported in* ***208 ITR 436 and Prakash (by legal heir of assessee) vs. Income Tax Officer (supra) Bombay High Court*** reported in 312 ITR 340, were concerned with the very different situation. The common thread running in these three cases is that the purchase of the new asset was in the name of person other than the assessee. The title was vested in such purchaser and not in the name of the assessee who had sold the existing capital asset.

In the present case of ***PCIT v Vaidya Panalal Manilal HUF***, the capital asset was sold by the HUF and purchased by the HUF as reflected in the accounts. The names of two members of the HUF shown in the sale deed was only a cosmetic in nature.

Rajasthan High Court in case of ***KALYA v. CIT [2012] 208 TAXMAN 436/22 TAXMANN.COM 67 (RAJ.) dated 19-05-2012*** held that The word '*assessee*' used in the IT Act needs to be given a 'legal interpretation' and not a 'liberal interpretation'. If the word 'assessee' is given a liberal interpretation, it would tantamount to giving a free hand to the assessee and his legal heirs and it shall curtail the revenue of the Government, which the law does not permit. Therefore, deduction u/s 54B would not be available where the land was purchased by assessee in the name of his son & daughter-in-law.
The question therefore still arises as to if new property is not in name of assessee but if entire payments are made out of sales proceeds of asset transferred than whether assessee will be considered to be owner of the property and allowed deduction or not.

The ***Supreme Court*** in case of ***CIT v. Vegetable Products Ltd. [1973] 88 ITR 192*** has observed that if a statutory provision is capable of more than one view, then the view which favours the taxpayer should be preferred. Therefore, section 54/54F, being a beneficial provision enacted for encouraging investment in residential houses, should be liberally interpreted. There is nothing in the section to show that the house should be purchased in the name of the assessee only. As a matter of fact, the sections do not require that the new residential house should be purchased in the name of the assessee; it merely says that the assessee should purchase/construct "a residential house".

SECTIONS 54B and 54EC:

Section 54B of the Income Tax Act states that individual or HUF sells a long term capital asset being agricultural land and invests proceeds in purchase of a new agricultural land within 2 years of sale then capital gains arising from the sale will be exempt from tax.
Synopsis of section is tabulated below:

Particulars	Conditions
Eligibile assessee	Individual of HUF
Nature of Asset transferred	The deduction applies only to agricultural land. It does not apply to any other type of property, such as residential or commercial properties. Such land must have been used in 2 years immediately preceding the date on which transfer took place for agricultural purposes.
Time Limit	Investment of sale proceeds in the purchase of new agricultural land in India to be done within two years from the date of sale. If the new agricultural land is purchased before the sale of the old land, the deduction cannot be claimed.
Quantum of Deduction	Amount of deduction will be equal to the amount invested in the new agricultural land. If the amount invested is less than the capital gains, then the remaining amount will be taxable.
Minimum period of holding	At least 3 years from date of purchase.

Particulars	Conditions
Other conditions	If agricultural land is not purchased before the date of furnishing of Income Tax Return u/s 139 – the amount of capital gains must be deposited before the date of filing of return in any bank or institution specified according to the Capital Gains Account Scheme, 1988. The deduction can be claimed for the amount which is deposited. If the amount deposited under this sub-section is not utilised wholly or partly for the purchase of the new asset within the period specified in sub-section (1), then,— (*i*) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of two years from the date of the transfer of the original asset expires; and (*ii*) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

As per Income Tax Act, there are two types of Agriculture Land in India that is 'Rural Agriculture Land' and 'Urban Agriculture Land'. Therefore, it is very important to understand the meaning of 'Rural Agriculture Land' and 'Urban Agriculture Land'.

Rural Agricultural Land or Agricultural Land referred to in **Section 2(14)(iii) of the Act** is not considered a capital asset. Therefore, any gains from its sale are not taxable under the head Capital Gains. As per Section 2(14) of the Income Tax Act, 1961 Capital Assets does not include-

"agricultural land in India, not being land situated-

(a) In an area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than then thousand; or

(b) In any area within the distance, measured aerially-

(i) Not being more than two kilometres from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or

(ii) Not being more than six kilometres from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or

(iii) Not being more than eight kilometres from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.

Explanation- For the purposes of this sub-clause, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year."

From the above definition, it is clear that to be a rural agriculture land, a land has to qualify both the below mentioned conditions.

1. The land should be Out of the Municipality or Nagar Palika.
2. The land should be aerially out of:

   - 2 Kms in case of nearest Municipality or Nagar Palika having population of more than 10000 but not exceeding 100000/-; or

   - 6 Kms in case of nearest Municipality or Nagar Palika having population of more than 1,00,000 but not exceeding 10,00,000/-; or

   - 8 Kms in case of nearest Municipality or Nagar Palika having population of more than 10,00,000/-.

Urban Agricultural Land: - *Urban Agricultural Land is a land located in specified location i.e. not a Rural Agricultural Land and used for agricultural purposes.*

Now that we have understood that only Urban agricultural land is considered as capital asset lets discuss issues for claiming deduction under section 54B.

Issue No. 05: Whether assessee can be denied deduction on the fact that property was valued as non-agricultural land for stamp paper?

ITAT Delhi in Vipin Kumar Vs ITO (2019) ITA 7620/Del/2019 dated 16-01-2023 held that benefit under section 54B of the Income Tax Act cannot be denied on mere fact that property was valued by the registered authority as a non-agricultural land for the purpose of stamp paper. Assessee had submitted the facts that land sold by him was agricultural land for which copy of sale deed, Khatauni and report of Gram Pradhan was also submitted regarding regarding situation of land from municipal limit of Hapur.

Based on high stamp duty levied by registration authority and basis fact that as per the sale deed page no. 36, the land was sold for the purpose of residential use Ld. AO concluded the land is a capital asset being non-agricultural land and hence denied deduction under Section 54B. Copy of Khasra and Khatauni and other relevant documents were ignored in which the land was shown as agricultural land. The crucial point of controversy thus, needs to be restored to the files of CIT(A) to allow the additional evidences of the assessee and to let the assessee establish that the land falling in the share of assessee which was sold by the impugned sale deed was not converted to non-agricultural purposes by any order of revenue authorities. If that stands establish the mere fact that it was sold for the purpose of residence of the vendor or that it was valued for the purpose of stamp papers by the registered authority as a non-agricultural land would not be material and assessee will be entitled to benefit of Section 54B of the Act.

Issue No. 06: Whether deduction under Section 54B be denied for agricultural land which was converted to non-agricultural before the transfer

One of important conditions for being eligible to claim deduction under Section 54B is that the agricultural activity has to be undertaken 2 years prior to date of sale. In a typical scenario where land was agricultural land and before sale it is converted to non-agricultural, if assessee is able to prove that agricultural activity was being undertaken on the land in 2 years prior to sale date then deduction cannot be denied. ***Surat bench of ITAT in case of [2023] 149 taxmann.com 378 Balubhai Mustafabhai Mahida vs. DCIT*** held that AO cannot deny deduction if assessee is able to provide complete details of agricultural activities and evidence thereof. Just because of fact that prior to sale land was converted to non-agricultural cannot be ground to reject claim of assessee.

Section 54EC – Capital Gains not to be charged on investment in certain bonds

Section 54EC is Deduction on Long Term capital gains arising on sale of long term capital asset being land or building or both through investment in Capital Gain Bonds. Capital gain bonds or 54EC bonds are the fixed income instruments that provide capital gains tax deduction under section 54EC to the investors. The tax liability on long-term capital gains from sale of immovable property can be reduced by purchasing 54EC bonds.

Synopsis of section is tabulated below:

Particulars	Conditions
Eligible assessee	All assesses
Asset Type	Land or building or both being long term asset
Time Limit	6 months from date of transfer
Quantum of Deduction	Rs. 50 lakhs or amount of capital gains invested in purchase of bonds
Qualifying assets	Long Term bonds viz. NHAI bonds or Rural Electrification Bonds
Lock in period	Such investment can be redeemed only after 5 years.

Let us understand some of issues faced while claiming deduction u/s 54EC

Issue No. 07: Can deduction under Section 54EC be claimed where specified Bond were purchased prior to date of sale of property?

Ahemdabad ITAT Bench in case of Dakshaben R Patel v.s ACIT (2012) ITA No. 2803/Ahd/2011 dated 31-05-2012 had held that Section 54EC clearly states that the investment in specified bonds is to be made "within a period 6 months after the date of such transfer", the intention of the legislature is clear. Had the legislature wanted to give liberty to the assessee to invest before or after the date of transfer, they would have explicitly said so, as has been provided in section 54 & 54F of the Act. Since such specific words are not used in section 54 EC, deduction cannot be allowed to the assessee.

Thus, investment in bonds prior to date of transfer cannot be considered to be reason for claiming deduction under section 54EC as investment was not made within 6 months after the date of transfer thereby resulting in non-fulfillment of condition.

If agreement to sale is entered and any advance is received by the assessee against such agreement and which is thus invested in 54EC bonds prior to the final sale agreement then deduction under 54EC is allowed. This view has been taken by Bombay High Court in case of ***CIT vs Subhash Vinayak Supnekar ITA No. 1009 of 2014 dated 14.12.2016***.

Issue No. 08: Whether the benefit under section 54EC and 54F can be taken simultaneously?

Deduction under section 54EC cannot be denied on ground that assessee has availed deduction under section 54 F also in respect of a part of capital gains. Mumbai ITAT in case of ***ACIT vs Deepak S Bheda 2012 23 taxmann com 159 (Mum) dated 15-06-2012*** **it was held that deduction cannot be denied in 54EC just because same has also been availed in Section 54F.** It is to be noted that it is not a case of availing double deduction on the same amount but the assessee has claimed deduction under section 54F as well as under section 54EC for the respective amount of capital gain invested in purchase of new house and REC bonds. Wherever any such restriction is deemed fit, the Legislature has provided in the statute a sufficient check under chapter VI-A of the Act. As far as the claim of deduction under section 54F and under section 54EC, there is no such restriction in the statute that the assessee cannot claim the deduction under both sections, even if the conditions provided under the respective sections are complied with and the same does not result in availing double deduction on the same amount. The expression 'the whole or any part of capital gains in the long-term specified assets' makes it clear that the deduction under section 54EC is available even when the part of capital gain is invested in specified long-term asset. There is no dispute that the assessee has invested out of the total capital gain in REC bonds within the prescribed period of time as provided under section 54EC. Therefore, once the conditions as prescribed under section 54EC are complied with, then the deduction cannot be denied on the ground that the assessee has availed the deduction under section 54F also against a part of the capital gain.

CONCLUSION:

As mentioned previously, Sections 54, 54F, 54B and 54EC are all beneficial for assessee and hence they should be interpreted liberally in a way that they prove beneficial for claiming of relevant deductions from capital gains. Many of issues are still unsettled and judicial pronouncements are in both ways therefore it is advisable that whenever there is a transaction of sale of long-term asset be it residential or any other asset, proper guidance and advice of Chartered Accountant is taken before entering into the transaction to avoid any future litigations.

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