

# Opinion | It's not always possible to claim exemption without investing in CGAS

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It's time for the government to simplify process of opening and operating a CGAS account

## Topics

CGAS Account LTCG Tax Exemption Sale of Residential House

Our tax laws have two provisions which help claim long-term capital gains exemption by reinvesting in a residential house. One provision applies when you sell a residential house and acquire another, the other applies when you sell any long-term capital asset and reinvest in a residential house. Since the time limit for acquisition of a residential house under both these provisions is two years for purchase and three years for construction after the due date for filing the tax return, both the provisions require you to set aside the amount that you intend to reinvest in a residential house and deposit it in a Capital Gains Account Scheme (CGAS) account with a nationalised bank before you file the return of income, unless you have already made payments for the new house before filing the return.

What happens if you do not deposit the amount in the CGAS account before you file your return, but still fulfill the requirement of buying the new house within the stipulated period? Courts have taken conflicting views, with the Karnataka high court holding that you would still get the benefit of capital gains exemption, and the Bombay high court holding that you would not get the benefit if you failed to make the deposit in time (read more about the [case in the column I wrote in 2016](#)).

A new interesting twist has been added by a recent decision of the Jaipur bench of the income tax appellate tribunal. In this case, the taxpayer, who was a farmer and had never filed tax returns before, received certain compensation on compulsory acquisition of his land. Wanting to buy a residential house, the taxpayer intended to open a CGAS account and approached a private bank for this purpose. The bank assured him that the account that he was opening was a CGAS account, and even certified that the deposits that he was making in this account were under the CGAS scheme. The taxpayer deposited all the compensation received in this bank account. The taxpayer even made payments for purchase of land and construction of a house on the land from such account, and there were no other transactions in this account. The tax officer found out that this account was an ordinary savings account, and not a CGAS account, and denied the benefit of the capital gain exemption to the

taxpayer. In the first appeal, the commissioner (appeals) also confirmed that the taxpayer was not entitled to the benefit of the capital gains exemption.

The tribunal observed that the whole purpose of CGAS was to ensure that the funds for acquisition of the residential house were set aside from other normal funds of the taxpayer, and to ensure that such funds are ultimately utilised for acquisition of a residential house. Though technically, the account opened by the taxpayer was not a CGAS account, the essence and spirit of opening a CGAS account had been achieved and demonstrated. The taxpayer had deposited only compensation for acquisition of land in the account, and withdrew only payments for acquisition of a residential house from it.

Besides, the taxpayer was under the genuine belief that it was a CGAS account, having been led to believe so by the branch manager of the private bank. In fact, once the taxpayer came to know that this was not a CGAS account, he immediately requested permission of the tax officer to transfer the funds lying in this account to a CGAS account with a nationalised bank, which was not granted. According to the tribunal, this showed the genuineness of the taxpayer's actions. The tribunal, therefore, held that the taxpayer had complied in substance with the requirements of the law, and allowed the taxpayer the benefit of capital gains exemption to the extent of the funds utilised for the new house.

Taxpayers need to understand that this decision, though in favour of the taxpayer, cannot be regarded as a precedent for claiming capital gains exemption without investing in a CGAS account. The tribunal administered justice in this case, looking at the facts of the case, where the taxpayer was under the impression that he had invested in a CGAS account. The litigation faced by the taxpayer in this case also underlines the need to ensure that there is proper compliance with law. The procedure stipulated by law is complicated, and maybe it is time that this aspect of opening and operating a CGAS account is simplified by the government. Perhaps, this will happen in the new income tax law that is being drafted.

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