

आयकर अपीलीय अधीकरण, न्यायपीठ – “ए” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA**  
(समक्ष)Before श्री महावीर सिंह, न्यायीक सदस्य एवं/and श्री, सी.डी.राव लेखा सदस्य)  
[Before Shri Mahavir Singh, JM & Shri C. D. Rao, AM]

**आयकर अपील संख्या / I.T.A Nos. 1146/Kol/2011**

**निर्धारण वर्ष/Assessment Years: 2005-06**

Chanchal Kumar Sircar  
(PAN ALGPS 2370 A).  
(अपीलार्थी/Appellant)

Vs. Income-tax Officer, Wd-32(1), Kol  
(प्रत्यर्थी/Respondent)

&

**आयकर अपील संख्या / I.T.A Nos. 1147/Kol/2011**

**निर्धारण वर्ष/Assessment Years: 2005-06**

Chapal Kumar Sircar  
(PAN ALGPS 2369 R).  
(अपीलार्थी/Appellant)

Vs. Income-tax Officer, Wd-32(1), Kol  
(प्रत्यर्थी/Respondent)

Date of hearing: 25.01.2012  
Date of pronouncement: 21.02.2012

For the Appellant: Shri S. Bandyopadhyay  
For the Respondent: Shri S. K. Roy

**आदेश/ORDER**

**Per Mahavir Singh, JM ( महावीर सिंह, न्यायीक सदस्य)**

These appeals by different assesseees are arising out of separate orders of CIT(A)-XIX, Kolkata in Appeal No.172 &171/CIT(A)-XIX/ITO, Wd-32(1), Kol/10-11 vide dated 21.06.2011. Assessments were framed by ITO, Wd-32(1), Kolkata u/ss. 254/263/143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for Assessment Years 2005-07 vide his separate orders, both dated 24.12.2010.

2. The only common issue in these appeals of assessee is against the order of CIT(A) confirming the action of Assessing Officer in disallowing exemption u/s. 54EC of the Act. We will take up the issue from ITA No.1147/K/2011 in the case of Chapal Kr. Sircar and decide the issue. For this, assessee has raised following effective ground nos. 2 to 7:

*“2. On the facts and in the circumstances of the case, the lower authorities erred in failing to appreciate that law cannot compel anybody to do the impossible and that it was not possible for the appellant to invest any portion of the sale consideration in ‘long term specified asset’ before the same had actually been received by the appellant.*

*3. On the facts and in the circumstances of the case, the lower authorities erred in failing to appreciate that in case of ‘Deemed transfer’ of property under section 2(47)(v) of the*

*Act involving full payment of the consideration amount in a spread-over manner, the date of transfer', for the purpose of allowing time for investing the consideration amount in specified assets, should be considered to be the actual date of receipt of each installment of the payment.*

*4. On the facts and in the circumstances of the case, the lower authorities erred in failing to appreciate that the appellant had duly deposited the amounts of installments of sale consideration received by him within a short period from the respective dates of such receipts and in that way, he had done everything possible on his part to comply with the requirements of section 54EC of the Act.*

*5. On the facts and in the circumstances of the case, the learned CIT(A) erred in not taking into consideration the various judicial decisions as cited before him.*

*6. On the facts and in the circumstances of the case, the learned CIT(A) erred in confirming the assessment of Long Term Capital Gains of Rs. 10,47,745/- in the hands of the appellant.*

*7. Without any prejudice to above and having regard to the fact that the learned CIT(A) has held that 'deemed transfer' of portions of building under consideration had taken place during the year under appeal only in respect of the three flats in the 1st floor of the building to Paschim Banga Ganatrantik Mahila Sainity (Zila Committee), Paschim Banga Ganairantik Mahila Samily (State Committee) and Eksathe, the learned CIT(A) erred in not giving any credit in respect of the deposit of Rs.30,00,000/- made with NABARD on 27.08.04."*

3. Briefly stated facts of the case are that assessee filed his return of income for the relevant assessment year 2005-06 on 12.07.2005. Assessment was framed u/s. 143(3) of the Act dated 24.12.2007 assessing the total income of the assessee at Rs.3,51,600/-. Assessment order was revised by CIT, Kolkata u/s. 263 of the Act vide order dated 10.08.2009 directing the Assessing Officer to frame fresh assessment because as per him the assessment order is erroneous and prejudicial to the interest of revenue in allowing excess exemption u/s. 54EC of the Act from the capital gains earned by assessee. The revision order framed by CIT u/s. 263 of the Act was upheld by ITAT vide its order dated 02.01.2010 in ITA No.1705/K/2009. The Assessing Officer passed consequential order in consequence to revision order passed by CIT u/s. 263 of the Act for the present assessment. In the present assessment, facts are that assessee Shri Chapal Kr. Sircar and his brother Shri Chanchal Kr. Sircar were the joint owners of the house property at 114 Eliots Road, Kolkata-16. This property was demolished and in its place both brothers constructed house with ground plus three storied building jointly during the period 1993-94 relevant to assessment year 1994-95 at a total cost of Rs.61.26 lacs. This is an admitted position as assessment was framed in both the cases u/s. 147 r.w.s. 143 of the Act for Assessment Year 1994-95 and 1995-96. Out of the above three floors, the entire first floor was sold in three parts to the following:

- i) Ganatrantik Mahila Samity,
- (ii) Kolkata Ganatrantik Mahila Samity and

## (iii) Eksathe

These were sold by way of separate agreements all dated 02.07.2004 and sale deed was registered at a value of Rs.49,09,470/-, Rs.12,60,950/- and Rs.13,26,826/- respectively. The total sale consideration of the entire first floor was at Rs.74,97,246/-. Further, the entire second floor of the building excluding two rooms were sold to Communist Party of India (Marxist) by another agreement for sale dated 01.07.2004 at the value of Rs.56.80 lacs. This agreement was not registered as sale deed or it was not a registered agreement. The other portions of the property were retained by these two brothers for their residential premises. The ground floor was for common car parking space. The assessee and his brother received part payments from the parties [as per details below] and possession of the respective flats was also handed over to the parties simultaneously. Almost immediately after the receipt of the said payments, they were fully deposited with NABARD in terms of the requirement u/s 54EC of the Act, as the details given below would establish.

<u>G. M. Samity</u>		
<u>Date of receipt</u>	<u>Amount (Rs.)</u>	<u>Date of deposit With NABARD</u>
02.07.04	15,00,000	27.08.04
27.12.04	10,00,000	07.01.05
17.05.05	16,00,000	30.05.05
24.05.05	<u>8,09,470</u>	30.05.05
	<u>49,09,470</u>	

<u>K. G. M. Samity</u>		
<u>Date of receipt</u>	<u>Amount (Rs.)</u>	<u>Date of deposit With NABARD</u>
02.07.04	5,00,000	27.08.04
16.05.05	<u>7,60,950</u>	16.06.05
	<u>12,60,950</u>	

<u>EKSATHE</u>		
<u>Date of receipt</u>	<u>Amount (Rs.)</u>	<u>Date of deposit With NABARD</u>
02.07.04	5,00,000	27.08.04
16.05.05	<u>8,26,826</u>	16.06.05
	<u>13,26,826</u>	

Besides, they also received, on 01.07.04, initial payment of Rs.30,00,000/- from CPI(M) in respect of the Second floor flat which amount was fully deposited with NABARD on 27.08.2004. A subsequent payment of Rs.26,80,000/- was also received from CPI(M) on 27.06.05, which amount, in its turn, was deposited with NABARD on 06.07.05. Thus, each of

the installment receipts by both brothers, was deposited in full with NABARD within a rather short time and in any case much earlier than expiry of the six months' period from the dates of the respective receipts.

4. The assessee filed his return of income for A.Y. 2005-06 on 12.07.2005 showing total income of Rs.3,50,000/-. In the said return, the assessee did not show any Capital Gains on 'deemed' sale of the portion of the house property as discussed above as the entire sale proceeds were deposited with NABARD within a short period from the respective dates of each installment of money received from the purchasers in accordance with the requirements of section 54EC of the Act. The assessee claimed exemption u/s. 54EC of the Act on Capital Gains. However, during the course of the assessment proceeding for the said year, the matters relating to sale of the property and deposit of the consideration amounts with NABARD, were discussed with the A.O., who did not consider any Capital Gains tax to be imposable in this case and he completed the assessment u/s 143(3) of the Act, on 24.12.2007, at the figure of total income of Rs.3,51,600/-. He, however, did not make any mention in the assessment order about the 'deemed' or otherwise sale of the portion of the property and deposit of the consideration amount with NABARD. The CIT, in exercise of his powers u/s 263 of the Act, held that the deposits of sale consideration amounts were mostly not within six months' time limit from the date of the sale (deemed) of the portion of the property but held that the date of deemed sale should be taken for the purpose of section 54EC of the Act, to be 02.07.2004 (as discussed above and also in the impugned re-assessment order). In that view, he not only set aside the assessment for re-doing the same by taking into consideration the Capital Gains aspect, but also gave definite directions for not considering the deposits made beyond the period of six months from 02.07.2004 for the purpose of section 54EC. The matter was taken up by the appellant to Income Tax Appellate Tribunal, Kolkata Bench, which, by its order dated 08.01.2010 in ITA NO.1705/KoI/2009, upheld the setting aside of the original assessment order for making a fresh assessment in accordance with law simply because of the fact that no enquiries had been made about the sale (deemed) of the portion of the property and the Capital Gains issue arising therefrom. At the same time, the ITAT also gave a specific direction to the A.O. to ignore the various comments made by the CIT in his order u/s 263 about the merits of the issue.

5. In consequence to revision order passed u/s. 263 of the Act by CIT, assessment was framed u/s 254/263/143(3) of the Act by the A.O. on 24.12.2010, in which, besides the sales of the first floor of the property to three different parties, as considered by the CIT in his order u/s

263 of the Act, even the sale of the portion of the second floor to CPI(M) has also been considered together, after making detailed discussions in the order, the A.O. has included Long Term Capital Gains to the extent of Rs.10,47,745/- and disallowed exemption u/s. 54EC of the Act. Aggrieved, assessee preferred appeal before CIT(A) and CIT(A) also confirmed the action of the AO by stating that as per Memorandum of Agreement for sale, which was registered, part of sale consideration was received by these co-owners and possession was also handed over to the purchasers as on 02.07.2004, hence for the purposes of capital gains transfer of capital asset was completed on 02.07.2004 and assessee has made investment with NABARD on or after 02.01.2005 i.e. after six months the assessee is not entitled for exemption u/s. 54EC of the Act. Aggrieved, now assessee is in appeal before us.

6. We have heard rival contentions and gone through facts and circumstances of the case. From the date of receipt of sale consideration and date of deposits with NABARD (dates mentioned in para 3 page 3 of this order) clearly reveals that deposit is made within one month of the receipt of sale consideration. It is a fact that these two brothers sold part of his immovable property and received first payment from CPI(M) on 01.07.2004 and from remaining three purchasers on 02.07.2004 as part payment although the possession was also handed over to these purchasers. It is also a fact that the sale deed was registered, in the case of CPI(M) on 27.06.2005 and in the case of other three purchasers on 28.09.2005. The assessee has deposited the sale consideration within one month of receipt with NABARD for availing exemption u/s. 54EC of the Act. In such circumstances whether the assessee is eligible for claim of exemption or not ? In our view, in this type of case, the period of six months for making deposit u/s. 54EC of the Act should be reckoned from the dates of actual receipt of the consideration, because in the present case the assessee has received part payment as on the date of execution of agreement and handing over of possession of the property and received part payment after six months at the time of registration of sale deed or even after that in few of instances, as is evidently clear from the above chart at para 3 page 3 of this order. We are of the view that if the period is reckoned from the date of agreement and receipt of part payment at the first instance, then it would lead to an impossible situation by asking assessee to invest money in specified asset before actual receipt of the same. This view of ours is supported by the decision of Hon'ble Andhra Pradesh High Court in the case of S. Gopal Reddy Vs. CIT (1990) 181 ITR 378 (AP), wherein similar situation of delayed receipt of compensation amount on acquisition of property, Hon'ble High Court observed that if the investment in specified asset was made within a period of six months from the date of receipt of compensation, as against the date of acquisition of the property denoting transfer thereof, the same should be

considered to be sufficient compliance for the purpose of claiming exemption u/s. 54E of the Act. Hon'ble High Court observed that a taxing statute or any other statute has to be construed reasonably and every effort should always be made to ascertain the intention of Parliament from the words employed and, as far as possible, an interpretation which leads to absurdity should be avoided. Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction would be preferred to the literal construction. The Hon'ble Court also observed that under the provisions of section 54E of the Act, what is to be invested in specified assets is "the consideration or any part thereof" and unless the consideration is received, or accrues, there is no question of investing it. The second proviso to sub-section (1) of section 54E inserted with effect from April 1, 1984, states that in the case of compulsory acquisition of property under a statute, if the full amount of compensation awarded for such acquisition is not received by the assessee on the date of such transfer, the period of six months referred to in sub-section (1) shall, in relation to so much of such compensation as is not received on the date of the transfer, be reckoned from the date on which such compensation is received by the assessee. It would be consistent with reason to construe this proviso as being merely clarificatory. In other words, the provision made by the second proviso to sub-section (1) of section 54E should be deemed to have prevailed even prior to April 1, 1984, i.e., with effect from the date of the enactment of section 54E of the Act.

7. Similar situation was analysed by Hon'ble Allahabad High Court in the case of CIT Vs. Janardhan Dass (late through legal heir Shyam Sunder) (2008) 299 ITR 210 (All) wherein Hon'ble High Court observed that section 54B(2) of the Act, provides that where the transfer of the asset is by way of compulsory acquisition under any law and the compensation amount awarded for such acquisition is enhanced by any court, Tribunal or other authority, the capital gains attributable to the enhanced value of the compensation shall be dealt with as provided for in section 54B(2), according to which if the enhanced compensation as received has been invested in agricultural land within two years of its receipt, to that extent no capital gains tax will be charged. This provision gives an insight that section 54B of the Act has taken into consideration the possibility of enhancement of compensation amount by the court, Tribunal, etc., at the subsequent stages. If the agricultural land is purchased within a period of two years from such enhancement, the capital gain or no capital gain, as the case may be, will be charged under section 54B(2) of the Act. In other words, the period of two years in such cases will commence from the date of enhancement of the compensation amount by the court, etc. This is indicative of the legislative intent to the effect that for the purposes of section 54B, the date of

receipt of enhancement of the compensation amount is the relevant consideration and not the date of transfer. It follows, therefore, that for a delay on the part of the acquiring body in making payment of the compensation amount, the assessee should not be deprived of the benefit of section 54B of the Act provided he fulfills the other conditions of the section within the stipulated period from the date of receipt of the payment. The emphasis is on the date of actual receipt of the payment and not on the date of transfer of the asset, in the case of agricultural land. The statute should be interpreted as it stands without making any addition or subtraction therein. Section 54B of the Act is a beneficial provision for an assessee who is otherwise liable to pay income-tax under the head "Capital gains". On a conjoint reading of section 45 with section 54B of the Act, the word "transfer" should be read for the purposes of income-tax as the date on which the compensation amount is paid to such assessee. The period of two years for the purposes of examination under section 54B of the Act will commence from the date of receipt of compensation and not from the date of acquisition of the agricultural land.

8. In another similar situation Hon'ble Andhra Pradesh High Court in the case of Darapaneni Chenna Krishnayya (HUF) Vs. CIT (2007) 291 ITR 98 (AP) wherein Hon'ble High Court observed that land belonging to the assessee was acquired by the Government of Andhra Pradesh in terms of the provisions of the Land Acquisition Act during 1981-82. The Land Acquisition Officer awarded compensation at the rate of Rs. 20,000 per acre. Not satisfied with the award, the assessee sought a reference and the civil court enhanced the compensation to Rs. 71,380 per acre. On appeal, the High Court enhanced the compensation to Rs 2,83,000 per acre. By virtue of the orders of the High Court, the assessee received additional compensation amounting to Rs. 15,26,135 and interest on the additional compensation amounting to Rs. 28,58,622 on April 9, 1991, and on receiving the amounts, he invested the entire additional compensation in the UTI Capital Gains Scheme of 1983, on October 1, 1991, i.e., within six months from the date of receipt of the additional compensation and sought exemption under section 54E of the Act. The Assessing Officer denied this exemption on the ground that the capital gain arose in respect of transfer of the original asset prior to March 31, 1983, when the UTI Capital Gains Scheme, 1983, was not in force. On appeal, the Commissioner (Appeals) upheld the disallowance made by the Assessing Officer. On further appeal, the Tribunal held that the assessee was entitled for the exemption under section 54E. On a reference, the Hon'ble Court held that the assessee received the amounts in 1991-92. Admittedly, the amounts were deposited by the assessee within six months from the date of its receipt, in the UTI Capital Gains Scheme, which is one of the units as specified asset mentioned in Explanation 1(c)(ii) to section 54E of the Act. The assessee was entitled to exemption under section 54E of the Act.

9. In view of the above consistent principle adopted by Hon'ble High Courts in respect to interpretation of a beneficial provision i.e. exemption provision under capital gains tax, we have to take similar approach in deciding the issue in hand i.e. the claim of assessee for exemption u/s. 54EC of the Act because this is exactly similar to section 54E, 54B or 54EA or EB of the Act. In the present case before us, admittedly assessee received part payments after execution of agreement to sale and handing over of possession thereby completing the transaction in terms of section 53A of Transfer of Property Act but invested in specified bonds i.e. NABARD bonds within one month of the receipt of sale consideration being part payment. Hence, we are of the considered view that the assessee is eligible for exemption u/s. 54EC of the Act on part payment received after completion of transaction on 02.07.2004 and as detailed out in para 3 page 3 of this order. AO is directed accordingly. This issue of assessee's appeal is allowed. Similar are the facts in ITA No. 1146/Kol/2011 in the case of Shri Chanchal Kr. Sircar, hence AO will allow exemption in this case also.

10. In the result, the appeals of the assessee are allowed.

11. Order pronounced in open court on 21.02.2012.

Sd/-

सी.डी.राव, लेखा सदस्य  
(C. D. Rao)  
Accountant Member

Sd/-

महावीर सिंह, न्यायीक सदस्य  
(Mahavir Singh)  
Judicial Member

(तारीख) Dated 21st February, 2012

वरिष्ठ निजि सचिव Jd.(Sr.P.S.)

आदेश की प्रतिलिपि अग्रेषित:- Copy of the order forwarded to:

1. अपीलार्थी/APPELLANT – 1) Shri Chanchal Kumar Sircar, 2) Shri Chapal Kumar Sircar, 114, Elliot Road, (3<sup>rd</sup> Floor), Kolkata-700 16..
2. प्रत्यर्थी/ Respondent- ITO, Ward-32(1), Kolkata
3. आयकर कमिशनर (अपील)/ The CIT(A), Kolkata
4. आयकर कमिशनर/CIT, Kolkata
5. वभागिय प्रतिनीधी / DR, Kolkata Benches, Kolkata

सत्यापित प्रति/True Copy,

आदेशानुसार/ By order,

सहायक पंजीकार/Asstt. Registrar.