

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH AHMEDABAD**

Before Shri Mukul Kr. Shrawat, Judicial Member and
Shri T.R. Meena, Accountant Member

ITA No. 2803/Ahd/2011
Assessment Year :2008-09

Smt. Dakshaben R. Patel, 44, Rokadnath Society, Behind Haribhakti Society, Race Course Circle, Baroda.-390007	V/s.	Asstt. Commissioner of Income Tax, Aayakar Bhavan, Circle-2(1), Baroda
PAN No. ACUPP3401C		
(Appellant)	..	(Respondent)

अपीलार्थी की ओर से By Appellant	Shri Mukund Bakshi, A.R.
प्रत्यर्थी की ओर से/By Respondent	Shri Dinesh Chandra Sharma, Sr. D.R.
सुनवाई की तारीख/Date of Hearing	16.05.2012
घोषणा की तारीख/Date of Pronouncement	31.05.2012

ORDER

PER : T.R.Meena, Accountant Member

This is appeal arises out of order of CIT(A)-II, Baroda, order dated 01.09.2011 for assessment year 2008-09. The effective grounds of appeal are as under:-

"1. The Ld. Commissioner of Income Tax (A)-II, Baroda has erred in law and in facts in confirming the action of Ld. AO in the

disallowance of exemption claimed u/s 545EC of Rs. 50,00,000/- with respect to investment made in REC Bonds on the ground that the such investment was made 8.1/2 months prior to date of transfer of the property subjected to capital gains. The impugned rejection of the deduction claimed is devoid of the principles relating to the grant of exemption u/s. 54EC and hence it is prayed that the claim as made by the appellant may kindly be granted.

2. The Ld. Commissioner of Income Tax (A)-II, Baroda has erred in law and in facts in not appreciating the fact that the provisions of sec. 54EC are for granting exemptions and benefits to the assessee and, therefore, ought to be construed accordingly considering the overall objectives of the provisions and also the circumstances leading to such investments prior to the date of transfer. The claim of the appellant deserves to be allowed on this consideration and may be accordingly directed.”

2. First and second grounds are against granting of exemption under Section 54EC of the I.T. Act on investment made in REC Bonds. The A.O. observed that the assessee has claimed exemption u/s 54EC(1) of Rs. 50 lakh against the long turn capital gain. The date of sale of the property was 13.02.2008 and the date of purchase of REC Bond was 30.11.2007 (wrongly mention in the assessment order as 31.05.2008). The REC Bond was purchased 2 and 1/2 months prior to the date of sale of property. The Assessing Officer observed that as per Section 54EC(1) where the capital gain arises from the transfer of long term capital assets and the assessee has, at any time within a period of six months after the date of such transfer, invested the whole or any part of capital gains in the long term specified assets, he shall be eligible for the claim of exemption as per Section 54EC.

Since the investment was made before the date of transfer, the Assessing Officer disallowed the claim of exemption u/s 54EC of Rs. 50 lakh.

3. Being aggrieved by the order of A.O., the assessee filed second appeal before Id. CIT(A)-II, Baroda, after considering the various decisions and argument of the assessee, confirmed the order of A.O. The findings are as under:-

“(ii) Pandian Chemicals Ltd. vs CIT 262 ITR 278(SC):

Rules of interpretation would come into play only if there is any doubt with regard to the express language used in the provision. Where the words are unequivocal, there is no scope for importing the rule of liberal interpretation of an incentive provision.

(iii) CIT Vs M.C. Budharaja & Co. 204 ITR 412(SC):

Liberal interpretation of an incentive provision should not do violence to plain language. The object of an enactment should be gathered from a reasonable interpretation of the language used therein.

(iv) IPCA Laboratories Vs DCIT 266 ITR 521, 529(SC):

Any interpretation has to be as per wording of the provision including incentive provision. If the wordings of the provision are clear, then the benefits, which are not available under the provision, can not be conferred by ignoring or misinterpreting the words in the provision.

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,.....". 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 in the adjacent sections 54 & 54D, which are on similar issue i.e. deduction from capital gain, the legislature has used specific words, to provide that investment could be made before the date of transfer too as under:-

".....the assessee has within a period of years after the date on which the transfer took place purchased, or has within a period of

three years after that date constructed a residential house, then....."

Since such specific words are not used in section 54EC, the intention of the legislature is clear and cannot be substituted with our own. Further, the case laws cited by the Authorized Representative all relate to section 54 & 54F, where the scheme of investment horizon is different. These case laws do not apply to the present case.

Hence, the deduction u/s. 54EC for Rs.50,000/- denied by the Assessing Officer is correct and is upheld.

4. In the result, the appeal is dismissed."

4. Now the assessee is before us and contended that Section 54 and 54EC are having similar nature and object of giving exemption us 54EC to boost the investment in bonds. In Section 54 the exemption is available even investment made before one year of sale transaction, which should be read with reference to exemption availed u/s 54EC. He also relied various decisions which are summarized as under:-

1	CIT Vs. J.R. Subramanya Bhat - 165 ITR 571 (Kar.)	Claim u/s. 54 - Sale of building in February 1977 - Construction of new building commenced in 1976 and completed in March 1977. Since the new building has been constructed within 2 years from the sale of old building, exemption eligible. Date of commencement of construction immaterial.
2	CIT Vs. H.K. Kapoor (Deed.) Through LR - 234 ITR 753 (All.)	Exemption u/s. 54 - Commencement of construction of new house before sale of old house - Capital gain arising from the sale of old house so invested exempt under sec. 54.
3	CIT Vs. Late N. Kasi Viswanathan - 305 ITR 371 (Mad.)	Exemption u/s. 54EA - Investment in specified security in June 1999, while the compensation received in July 1999, Sec 54EA does not prevent assessee from making the investment out of available compensation even before enhanced compensation received.
4	Bhikalal Chandak (HUF) Vs. ITO - 126 TTJ 545 (Nagpur)	Exemption u/s. 54EC - Investment made prior to the date of transfer out of advance received - eligible

	Circular No. 359 dated 10 th May 1983	
	IAC Vs. Jayantilal C. Patel (HUF) - 26 ITD 1 (Ahd.)	For claim of exemption u/s. 54E - Source of investment of fund is immaterial.
General:		
a)	Bajaj Tempo Ltd. V. CIT 196 ITR 188 (SC)	Beneficial and incentive provisions to be interpreted liberally
	CIT Vs. Vegetable Products Ltd. - 88 ITR 192 (SC)	
b)	CIT Vs. Gwalior Rayon Silk Mfg. Co. Ltd. - 196 ITR 149 (SC)	Where taxing provision is ambiguous and reasonably capable of more than one interpretation, that interpretation which is beneficial to the assessee has to be accepted.
	CIT Vs. Shahzada Nand & Sons & Ors. - 60 ITR 392 (SC)	
	CIT Vs. Naga Hills Tea Co. Ltd. - 89 ITR 236 (SC)	
	Saroj Aggarwal Vs. CIT - 156 ITR 497 (SC)	
	CIT Vs. J.H. Gotla - 156 ITR 323 (SC)	
c)	CIT Vs. Canara Workshops Pvt. Ltd. - 161 ITR 320 (SC)	While interpreting the provisions, full effect is required to be given to the legislative intention of encouraging assesses.
	ITO Vs. H.P. Vishweswaraiah - 250 ITR 863 (Kar.)	
	S. Gopal Reddy Vs. CIT - 181 ITR 378 (AP)	
	CIT Vs. Smt. Roda Mistry - 231 ITR 12 (AP)	
d)	Motor Industries Co. Ltd. Vs. Union of India & Ors. - 289 ITR 134 (Kar.)	Capital gains - Exemption u/s. 54EC - Vires of notification imposing ceiling on issue of specified bonds - where tax concessions, benefits are extended to assessee, what amount of bonds should be notified for claiming concession is a matter of consideration within the realm of Legislature / Central Government. Courts cannot compel the enlargement / extension of scope of issue of bonds. Notification dated 29.06.2006 restricting the amount under challenge.

e)	Smt. Sarla N. Sakraney Vs. ITO - 130 1TD 167 (Mum.)	Sec. 54EC - Investment within the time extended by notification No. 142/09/2006-TPL dated 30th June 2006, eligible for exemption.
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5. Another side, the revenue opposed the argument of the assessee and claimed that the order of the authorities below required to be sustained.

6. We have perused the orders of authorities below and gone through the submission and case law which were squarely not applicable on Section 54EC. Section 54EC clearly states that the investment in specified bond is to be made “within a period of six months after the date of such transfer.....”.. In Section 54 and 54F which are adjacent to the Section 54EC, no such provision has been made. The Section 54 and 54F has specified word which is reproduced as under:

“The assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house, then”

Whereas in Section 54EC :-

“The assessee has at any time within a period of six months after date of such transfer, invested the whole or in part of capital gain in long term specified assets, the capital gain shall be indulged with accordance with the following provisions.....”

The intention of the legislature is clear. It was not desired by them to give the exemption u/s 54EC even investment made before the transfer of the long term capital assets. There is no direct case law of Section 54EC for claiming of exemption even investment made before, has been brought in the knowledge of the Bench.

7. Therefore, we have conscious view that the Id. CIT(A) has rightly confirmed the addition and no interfere in the order of Id. CIT(A) is called for. Accordingly, the assessee's appeal is dismissed.

8. In the result, the assessee's appeal is dismissed.

Order pronounced in Open Court on the date mentioned hereinabove at caption page.

Sd/-
(Mukul Kr. Shrawat)
Judicial Member

Sd/-
(T.R. Meena)
Accountant Member

True Copy

S.K.Sinha

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी / Appellant
2. प्रत्यर्थी / Respondent
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद ।

Strengthen preparation & delivery of orders in the ITAT	
1) Date of taking dictation	25.05.2012
2) Direct dictation by Member straight on computer/laptop/dragon dictate	xxxx
3) Date of typing & draft order place before Member	28.05.2012
4) Date of correction	28.05.2012
5) Date of further correction	
6) Date of initial sign by Members	
7) Order uploaded on	
8) Original dictation pad has been enclosed in this file	
9) Final order and 2nd copy send to Bench Clerk on	

