

आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI

श्री आय.पी. बंसल, न्यायिक सदस्य एवं श्री संजय अरोड़ा, लेखा सदस्य के समक्ष ।
BEFORE SHRI I. P. BANSAL, JM AND SHRI SANJAY ARORA, AM

आयकर अपील सं./I.T.A. No. 8029/Mum/2011
(निर्धारण वर्ष / Assessment Year: 2008-09)

Aquatech Engineers 302, Unique Industrial Estate, Off. Veer Savarkar Marg, Prabhadevi, Mumbai-400 025	बनाम/ Vs.	Addl. CIT-18(1), C-10, 7 th Floor, Pratyaksha Kar Bhavan, Bandra-Kurla Complex, Bandra (E), Mumbai – 400 051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAFA 6767 G		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी ओर से / Appellant by	:	Shri Kishor Chaudhari
प्रत्यर्थी की ओर से/Respondent by	:	Shri Manoj Kumar
सुनवाई की तारीख / Date of Hearing	:	13.06.2013
घोषणा की तारीख / Date of Pronouncement	:	19.06.2013

आदेश / ORDER

Per Sanjay Arora, A. M.:

This is an Appeal by the Assessee agitating the Order by the Commissioner of Income Tax (Appeals)-29, Mumbai (‘CIT(A)’ for short) dated 07.09.2011, partly allowing the assessee’s appeal contesting its assessment u/s.143(3) of the Income Tax Act, 1961 (‘the Act’ hereinafter) for the assessment year (A.Y.) 2008-09 vide order dated 24.12.2010.

2.1 Opening the arguments for and on behalf of the assessee, it was submitted by the ld. AR, the assessee's counsel, that the sole issue arising in the instant appeal relates to the validity of the assessee's claim in respect of Long Term Capital Gains (LTCG) u/s.54EC of the Act, claimed by it in the sum of Rs.49,72,923/-. The Revenue has denied the said claim on the ground that the investment in the National Highway Authority of India (NHAI) bonds, entitling it to deduction u/s.54EC, stood made beyond six months of the date of transfer, i.e., the period specified under the relevant provision, so that the assessee's claim is not maintainable in law. The relevant dates, which are not in dispute, are as under:-

<i>Sr. No.</i>	<i>Particulars</i>	<i>Date</i>
1	<i>Date of Agreement</i>	<i>29.02.2008</i>
2	<i>Consideration received on</i>	<i>10.03.2008</i>
3	<i>Application for NHAI bonds</i>	<i>21.05.2008</i>
4	<i>Cheque cleared on</i>	<i>29.09.2008</i>
5	<i>Deemed Date of Allotment</i>	<i>30.09.2008</i>

The difference arises on two counts. Firstly, the date from which the period of six months is to be reckoned. While the assessee contends it to be as 10.03.2008, i.e., the date of receipt of the consideration for transfer (of the long term capital asset), the Revenue adopts the said date as 29.02.2008, i.e., the date of the agreement, as the transfer u/s. 2(47) of the Act occurred only on the said date. Two, while the Revenue considers the period of six months to expire exactly on August 31, 2008; the same commencing on March 01, 2008, i.e., the date following the date of transfer, and even considering it as commencing from the date of receipt of consideration, on 09.09.2008, the assessee's stand is that the period of six months would expire only on 30.09.2008, i.e., the date of allotment of the said bonds, so that its claim is valid in law. There are, it was claimed by him, decisions by the tribunal on both these aspects in the assessee's favour.

With regard to the first issue, i.e., the date from which the six month period is to be reckoned, he would rely on the decision in the case of *Chanchal Kumar Sircar vs. ITO* [2012] 50 SOT 289 (Kolkata) [16 ITR (Trib) 91]; the tribunal holding that the period of six months for the purpose of deposit u/s.54EC should be reckoned from the date of the

actual receipt of the consideration in its respect. In respect of the second issue, he relied on the decision in the case of *Yahya E. Dhariwala vs. Dy. CIT* [2012] 49 SOT 458 (Mum), wherein the tribunal held that the word 'month' as occurring in the provision, being not specified, the same would need to be understood, in terms of section 3(35) of the General Clauses Act, 1897, as per the British calendar, relying for the purpose on the decision in the case of *CIT vs. Kadri Mills (Coimbatore) Ltd.* [1977] 106 ITR 846 (Mad) and *CIT vs. Brijlal Lohia and Mahabir Prasad Khemka* [1980] 124 ITR 485 (Cal.).

2.2 The Id. DR, on the other hand, would submit that while the assessee states of having applied for the NHAI bonds on 21.05.2008, the same were, in fact, not open for subscription as on that date, even as noted by the Id.CIT(A), and which fact stands further confirmed by him (Id. DR) from the internet. The assessee's claim in this respect is, therefore, wrong. On the Bench querying him as to how is the same relevant inasmuch as what is relevant is the date on which the amount is invested in the specified asset, and which would only be on its allotment, and which is 30.09.2008, he could not furnish any satisfactory answer.

3. We have heard the parties, and perused the material on record.

3.1 The primary facts are neither disputed nor denied. The issue, as apparent, has two limbs to it. First, is the date of transfer, for which the assessee has relied on the decision in the case of *Chanchal Kumar Sircar* (supra). Even as observed during the course of hearing, the said decision is clearly inapplicable inasmuch as in that case the consideration for the transfer was received several months after the date of the transfer of the property, rendering actual investment within a period of six months of the transfer impossible, so that the assessee's case (for claiming benefit u/s.54EC) would stand ousted at the very threshold. The tribunal's view of reckoning the commencement date as the date of receipt of the consideration, as against the date of transfer, as clearly postulated by the provision, was guided by the peculiar facts of the case; the provision being a beneficial provision, so that a liberal view thereof ought to be taken where the facts otherwise admit. In the instant case, on the other hand, the assessee has received the

payment within a period of ten days. The same, though on a somewhat higher side, inasmuch as a payment by bank instrument would ordinarily stand to be effected/cleared within two to three working days, the time lag cannot be considered as inordinate by any stretch of imagination and, rather, even as pleaded by the Id. AR in his favour, stands received only in the normal course. *How could the assessee then seek support from the decision in the case of Chanchal Kumar Sircar (supra), wherein the tribunal was moved by the fact of the impossibility of the compliance of the provision in the facts of the case?*

So however, as the Revenue considers the actual outflow of funds as the relevant date of investment (in specified asset u/s.54EC), it must, on the principle of parity, also take the date of receipt of consideration, allowing a time lag of two to three working days, i.e., as in the normal course of banking business, for the same (receipt). As such, the relevant date would be upon allowing the normative time required for the realization of funds through the banking channel. We draw support or this proposition from s.27 of the General Clauses Act, 1897. The date of the agreement being 29.02.2008, i.e., the last date of the month of February, the date of receipt would - in the ordinary and regular course - fall some time in the first week of March, 2008, i.e., even if we do not consider the date of the actual receipt as being date of receipt in the normal course, being *sans* any details in the matter by the assessee and, thus, not relevant.

3.2 The second component of the controversy stands determined by the co-ordinate Bench of the tribunal in the case of *Yahya E. Dhariwala (supra)*, wherein, being guided by the fact that the provision of section 54EC is a beneficial provision, it sought to grant the benefit of doubt with regard to the word 'month' occurring in the provision, by construing it as a calendar month; the word being undefined. A period of six clear months from the first week of March, 2008, would, therefore, end only 30.09.2008, i.e., the date of allotment of the NHAI bonds.

3.3 In this view of the matter, the assessee's case would warrant being accepted, which we are inclined to in the facts and circumstances of the case, including the decisions by the co-ordinate benches of the tribunal in the matter. We decide accordingly.

4. In the result, the assessee's appeal is allowed.

परिणामतः निर्धारिती की अपील स्वीकृत की जाती है ।

Order pronounced in the open court on June 19, 2013

आदेश की घोषणा खुले न्यायालय में दिनांक:जून 19, 2013 को की गई ।

Sd/-

(I. P. BANSAL)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांकDated : 19.06.2013

व.नि.स./Roshani, Sr. PS

Sd/-

(SANJAY ARORA)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**