



**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"H" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

ITA no.5439/Mum./2017  
(Assessment Year : 2007-08)

Heatex Products P. Ltd.  
1, Laxmi House  
T.H. Kataria Marg  
Matunga (West)  
Mumbai 400 016  
PAN - AACCM3756E

..... Appellant

v/s

Dy. Commissioner of Income Tax  
Circle-2(3)(2), Mumbai

..... Respondent

Assessee by : Ms. Aarti Sathe  
Revenue by : Shri Manoj Kumar Singh

Date of Hearing - 07.03.2019

Date of Order - 24.05.2019

**ORDER**

**PER SAKTIJIT DEY. J.M.**

The aforesaid appeal has been filed by the assessee challenging the order dated 26<sup>th</sup> May 2017, passed by the learned Commissioner (Appeals)-4, Mumbai, for the assessment year 2007-08.

2. Though, the assessee has raised six grounds, however, the dispute in the present appeal is confined to disallowance of assessee's

claim of exemption under section 54EC of the Income-tax Act, 1961 (for short "*the Act*") for an amount of ₹ 50 lakh.

3. Brief facts are, the assessee, a company, filed its return of income for the impugned assessment year on 31<sup>st</sup> March 2009, declaring total income of ₹ 25,16,545, after claiming deduction under section 54EC of the Act. During the assessment proceedings, the Assessing Officer, to verify assessee's claim of exemption under section 54EC of the Act, called for necessary details from the assessee. From the details furnished, he found that in the previous year relevant to the assessment year under dispute, more precisely, on 19<sup>th</sup> December 2006 the assessee had transferred a capital asset, being lease hold interest in land, for a consideration of ₹ 1,32,50,000. Further, he noticed that against the aforesaid sale consideration, the assessee had claimed deduction of ₹ 1 crore under section 54EC of the Act towards investment made in REC Bonds. However, from the details furnished, the Assessing Officer found that the investment made in REC Bonds was made in two tranches i.e., ₹ 50 lakh on 31<sup>st</sup> March 2008 and further ₹ 50 lakh on 1<sup>st</sup> August 2008. Referring to the provisions of section 54EC of the Act, the Assessing Officer observed that for claiming deduction under the said provision, the assessee had to make the investment within a period of six months from the date of transfer of the capital asset. Since, the first investment of ₹ 50 lakh

was made on 31<sup>st</sup> March 2007, i.e., within six months from the date of transfer of the capital asset, he allowed assessee's claim of deduction under section 54EC of the Act to that extent. Insofar as the balance investment of ₹ 50 lakh on 1<sup>st</sup> August 2007, is concerned, the Assessing Officer disallowed assessee's claim of deduction on the reasoning that the said investment was not made within the prescribed time limit of six months from the date of transfer of capital asset. While doing so, he observed that as per the provision of section 54EC of the Act, there is no scope of condonation of delay in making investment. Accordingly, he disallowed assessee's claim of deduction under section 54EC of the Act in respect of balance amount of ₹ 50 lakh. Being aggrieved with the aforesaid disallowance, the assessee preferred appeal before the first appellate authority.

4. After considering the submissions of the assessee learned Commissioner (Appeals) observed, the assessee was not able to establish that the delay in investing the balance amount of ₹ 50 lakh was due to non-availability of REC Bonds in the market. Therefore, he sustained the disallowance made by the Assessing Officer.

5. Reiterating the stand taken before the Departmental Authorities learned Authorised Representative submitted, the assessee could not deposit the entire amount of ₹ 1 crore in REC Bonds on 31<sup>st</sup> March

2007, since the maximum investment to be made by a person in REC Bonds was restricted to the amount of ₹ 50 lakh. Therefore, she submitted, the assessee could not have invested more than ₹ 50 lakh in REC Bonds at a time. She submitted, after 31<sup>st</sup> March 2007, REC Bonds were not available for investment. REC Bonds again became available between the period 02.07.2007 to 31.03.2008 and by that time the six month period has expired on 18<sup>th</sup> June 2007. Thus the assessee could not make the investment of balance amount of ₹.50 lakh within the stipulated period. She submitted, after the re-issue of REC Bonds the assessee immediately invested ₹ 50 lakh on 1<sup>st</sup> August 2008. Thus, she submitted, since non-investment of the balance amount of ₹ 50 lakh in REC Bonds was due to non availability of REC Bonds in the market, the assessee could not be asked to do an impossible act. She submitted, since the delay in investment was due to a situation beyond the control of the assessee, it should not suffer for that and the investment made should be allowed as deduction. To demonstrate that REC Bonds were not available, during the period from 1<sup>st</sup> April 2007 to 18<sup>th</sup> June 2007, learned Authorised Representative drew our attention to various documentary evidences furnished in the paper book. Further, learned Authorised Representative submitted, the allegation of learned Commissioner (Appeals) that the assessee did not invest the entire amount of ₹ 1

crore during the availability of REC Bonds till 31<sup>st</sup> March 2007, is without any basis because the maximum amount one could invest as per the condition imposed was ₹ 50 lakh. She submitted, even though the investments were made in two financial years, but the assessee still can claim exemption under section 54EC of the Act as per the provisions applicable to the impugned assessment year. In support of her contention learned Authorised Representative relied upon the following decisions:-

- i) *CIT v/s Celloplast, [2012] 253 CTR 246 (Bom.);*
- ii) *Aspi Ginwala v/s ACIT, ITA no.3226/Ahd./2011, dated 30.03.2012; and*
- iii) *Vivek Jairaz Bhoy v/s DCIT, ITA no.236/Bang./2012, dated 14.12.2012.*

6. The learned Departmental Representative strongly relied upon the observations of learned Commissioner (Appeals).

7. We have considered rival submissions and perused material on record. We have also applied our mind to the decisions relied upon. As could be seen from the facts on record, against the gain derived from transfer of lease holds rights the assessee had claimed deduction under section 54EC of the Act for an amount of ₹ 1 crore towards investment made in REC Bonds. There is no dispute that the assessee is eligible to claim deduction under section 54EC of the Act, since the

Assessing Officer himself has allowed deduction for an amount of ₹ 50 lakh. It is relevant to observe, this is the second round of litigation on the issue before us. In the original assessment, the Assessing Officer had disallowed assessee's claim of deduction under section 54EC of the Act on similar ground. When the issue ultimately came up for consideration before the Tribunal in ITA no.8197/Mum./2010, vide order dated 24<sup>th</sup> July 2013 the Tribunal restored the issue to the Assessing Officer with a direction to verify whether REC Bonds were available during the period of limitation and if the Bonds were not available, the assessee cannot be penalized for not investing in the Bonds within the stipulated time. While in the subsequent assessment order, the Assessing Officer has not specifically complied with the aforesaid direction of the Tribunal, learned Commissioner (Appeals) has held that the assessee could not establish that REC Bonds were not available during the period of limitation and further, the assessee could not furnish any valid reason why it could not make the investment of ₹ 1 crore when the Bonds were available for investment up to the period of 31<sup>st</sup> March 2007. Undisputedly, the capital asset was transferred by the assessee on 19<sup>th</sup> December 2006. So, the assessee was required to invest in REC Bonds within the period of six months from the date of transfer i.e., by 18<sup>th</sup> June 2007. While the assessee invested an amount of ₹ 50 lakh on 31<sup>st</sup> March 2007, the

balance amount of ₹ 50 lakh was invested by the assessee on 1<sup>st</sup> August 2007. The explanation of the assessee for not investing the second amount of ₹ 50 lakh on/or before 31<sup>st</sup> March 2007 is, as per the conditions imposed at the time of issuance of REC Bonds Series-VIA, available between the period from 22<sup>nd</sup> January 2007 to 31<sup>st</sup> March 2007, the maximum amount one can invest was ₹ 50 lakh. Therefore, the assessee could not have invested the amount of ₹ 1 crore in REC Bonds. On a perusal of the material placed on record, we find the aforesaid contention of the assessee acceptable. As per the condition of section 50EC Series-VIA Bonds, the maximum amount one can invest is ₹ 50 lakh. Therefore, the assessee could not have invested more than ₹ 50 lakh in the said Bonds on 31<sup>st</sup> march 2007. This restriction was also as per the conditions imposed by the CBDT in its notification issued on 29<sup>th</sup> June 2006. Undisputedly, after 31<sup>st</sup> March 2007, REC Bonds were not available in the market and REC Bonds Series-VII was again available from 2<sup>nd</sup> July 2007 to 31<sup>st</sup> March 2008. It is a fact that the assessee had invested further amount of ₹ 50 lakh on 01.08.2007 after REC Bond Series-VII became available. In the meanwhile, the six month period from the date of transfer of the capital asset expired on 18<sup>th</sup> June 2007. Therefore, the assessee could not have invested in the REC Bonds within the stipulated period of six months as provided under section 54EC of the Act, as it was not

possible on the part of the assessee to do so due to non-availability of the bonds. That being the case, the claim of deduction in respect of balance amount of ₹ 50 lakh cannot be disallowed since the assessee has demonstrated that non-investment in REC Bonds within the stipulated period was due to non-availability of bonds in the market. This view of ours is supported by the decision of the Hon'ble Jurisdictional High Court in case of CIT Vs. Celloplast (supra). Therefore, the delay in investment has to be condoned as the assessee cannot be expected to do or perform an impossible act.

8. Insofar as the issue whether the claim of deduction under section 54EC of the Act is available if the investments are spread over two financial years, we are of the considered opinion that there was no bar in section 54EC of the Act for allowing deduction in respect of investment made in two financial years. The provision as contained in section 54EC r/w its proviso would make it clear that the cap is with regard to the amount to be invested in a particular financial year and it does not restrict the claim deduction even if the investments are made in excess of ₹ 50 lakh spread over two financial years. The decisions cited by the learned Authorised Representative clearly support this view. Therefore, on over all consideration of facts and material on record, we are of the view that the claim of deduction under section 54EC of the Act in respect of the amount of ₹ 1 crore is allowable.



Accordingly, we direct the Assessing Officer to allow assessee's claim of deduction in respect of the balance amount of ₹ 50 lakh also. Grounds raised are allowed.

9. In addition to the aforesaid issue in the main ground, the assessee has raised additional ground on the issue of disallowance of claim of TDS of ₹ 1,75,429.

10. We have considered rival submissions and perused the material on record. It is the contention of the learned Authorised Representative that without properly verifying the claim of the assessee including the TDS certificate filed, it has been disallowed. It is seen from the record, while deciding the appeal arising out of original assessment order, learned Commissioner (Appeals) had directed the Assessing Officer to give credit for TDS as per law. Therefore, the issue raised in the additional ground can be decided on the basis of facts and material available on record. That being the case, though, we admit the additional ground, however, we restore the issue to the Assessing Officer for verifying assessee's claim vis-a-vis the facts and material on record including the TDS certificate furnished by the assessee and allow credit for TDS as per law. The additional grounds are allowed for statistical purposes.

11. In the result, appeal is partly allowed.

Order pronounced in the open Court on 24.05.2019

**Sd/-**  
**MANOJ KUMAR AGGARWAL**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 24.05.2019**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

(Assistant Registrar)  
ITAT, Mumbai