

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं/I.T.A. No.2274/Mds/2015

निर्धारण वर्ष /Assessment year : 2011-2012

Shri. P.R. Viswanath,
No.330/2-12, Mangudu Village, V.K.
Mangudi To Pudupadi Road,
Arcot Taluk,
Vellore

Vs. The Assistant Commissioner of
Income Tax,
Vellore,

[PAN AADPV 6060G]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. A. Mahesh, C.A.
: Shri. A.V. Sreekanth, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 11-04-2016

घोषणा की तारीख /Date of Pronouncement

: 27-04-2016

आदेश / O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the assessee is directed against order of Commissioner of Income-tax (Appeals)-13, Chennai in ITA No.202/CIT(A)-13/2014-15, dt. 19.10.2015 for the assessment year

2011-2012 passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The assessee has raised only one substantive ground were Commissioner of Income Tax (Appeals) erred in upholding the order of Assessing Officer on denying the exemption u/s.54EC of the Act investment in REC capital gains bonds falling in two financial years.

3. The Brief facts of the case, the assessee is an individual having income from salary, rental income, capital gains and interest income and filed e-return on 28.09.2011 declaring total income ₹95,07,370/- and same was processed u/s.143(1) of the Act subsequently the case was selected for scrutiny through CASS and notices u/s.143(2) and 142(1) of the Act was issued with questionnaire. In compliance, the Id. Authorised Representative of assessee appeared from time to time and filed details and produced books of accounts and filed written submissions. On verification of sources of income and calculation of long term capital gains and claim of exemption by the assessee, the Id. Assessing found that assessee made investments in REC bonds ₹50,00,000/- on 28.02.2011 and ₹50,00,000/- on 27.04.2011 and assessee filed explanations that assessee has complied with the provisions of Sec.54EC of the Act and investments are made within a period of six months from the date of

transfer of the asset and relied on the Tribunal decisions of *Coromandel Industries (P) Ltd vs. ACIT, Company Circle I(3), Chennai 36 taxmann.6 (Chennai) and Smt. Sriram Indubal vs. ITO 32 taxmann.com 118 (Chennai)* as under:-

"The ITAT has held that the first condition mentioned in section 54EC(1) is that the investment has to be made within a period of six months from the date of transfer of capital asset. Said proviso mentions that investment on which an assessee could claim exemption under section 54EC(1) shall not exceed ₹.50 lakhs during a financial year. So the exemption provision has to be construed not transaction wise but, financial year wise. Explanatory memorandum does say that limitation has view to ensure equitable distribution of benefits among the prospective investors. Last sentence of the Explanatory memorandum clearly states that the exemption for investment cannot exceed ₹50 lakhs in a financial year. Since the assessee here has placed ₹50 lakhs in two different financial years but within six months period from the date of transfer of capital assets, assessee was definitely eligible to claim exemption upto ₹1 crore".

and but Assessing Officer deferred with the decisions of Tribunal as the Department has filed appeal against the order of Tribunal in the High Court and made elaborative finding in his order and came to a arbitrary conclusion that the investment of ₹50,00,000/- in bonds should be restricted as per exemption u/s.54EC of the act and dealt on the provisions of Sec.45 as under:-

"Capital gain not to be charged on investment in certain bonds:-

(1) Where the capital gain arises from the

transfer of a long-term capital asset (the capital asset so transferred being hereafter in this section referred to as the original asset) 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 asset, the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say:-

(a) If the cost of the long-term specified asset is not less than the capital gain arising from the transfer of the original asset, the whole of such capital gain shall not be charged under section 45;

(b) If the cost of the long-term specified asset is less than the capital gain arising from the transfer of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the long term specified asset bears to the whole of the capital gain, shall not be charged under section 45”.

The Id. Assessing Officer based on the action of Department in filing an appeal in High Court, disallowed exemption of ₹50,00,000/- and assessed total income of ₹.1,45,07,369/- and raised demand. Aggrieved by the order of Assessing Officer, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Authorised Representative of assessee explained the facts and argued the grounds and supported his arguments with judicial decisions and produced

supporting documents in respect of sale of shares and allotment letter of REC bonds u/sec. 54EC of the Act as on 31.03.2011 and second allotment letter dated 30.04.2011. The Id. Commissioner of Income Tax (Appeals) considered the submissions on the provisions of Sec. 54EC of the Act and Department circular no.3/2008 and but made distinction on the decision relied by the assessee and deferred the judgment of High Court and come to a unilateral conclusion that assessee is eligible only for ₹50,00,000/- as investment u/sec. 54EC of the Act and concurred with the findings of the Assessing Officer and dismissed the appeal of the assessee. Aggrieved by the order of Commissioner of Income Tax (Appeals), the assessee filed an appeal before Tribunal.

5. Before us, the Id. Authorised Representative urged the grounds and explained that there is no dispute on calculation of long term capital gains and investments by the assessee except understanding the provisions of Sec.54EC (1) of the Act were assessee has made investments in REC bonds of ₹50,00,000/- each on 28.02.2011 and 27.04.2011 in two financial years. The Id. Assessing Officer and Commissioner of Income Tax (Appeals) has expressed their own opinion in interpreting the definition and the dictionary meaning of "any" in the provisions further Assessing Officer suo-motu took the

decision by distinguishing judicial decision and restricted ₹50,00,000/- is for one financial year only and excess claim was disallowed. The provisions of Sec. 54EC of the Act are beneficial provision and to be construed liberally. The investment by the assessee in Sec. 54EC Bonds within the period of six months from date of sale of property is as per law and supported the submissions with the jurisdictional High Court decisions and prayed for allowing the appeal.

6. Contra, the Id. Departmental Representative relied on the orders of the lower authorities, CBDT circular and spirit of amendment of Sec. 54EC of the Act vehemently opposed to the grounds of the assessee.

7. We heard the rival submissions and perused the material on record and judicial decisions. The assessee has invested long term capital gains within six months from the date of transfer of Asset in Rural Electrification Corporation bonds (REC) under Sec.54EC of the Act and complied with the provisions of law by purchasing the bonds in February, 2011 ₹50,00,000/- and ₹50,00,000/- in April, 2011 both falls within six months from date of transfer of asset and there is no dispute about the investment and the provisions u/s.54EC of the Act in investment in bonds is as under:-

"Provided that the investment made on or after the 1st day of April, 2007 in the long term specified asset by an assessee during any financial year does not exceed fifty lakh rupees"

this provision has been amendment by Finance Act, 2014 w.e.f.

1.04.2015 as under:-

"Provided further that the investment made by an assessee in the long term specified asset, from capital gains arising from transfer of one or more original assets, during the financial year in which the original asset or assets are transferred and in the subsequent financial year does not exceed fifty lakh rupees".

On combined reading of both the provisions, the legislative intent in the subsequent amendment is to restrict the investment of ₹50,00,000/- to one financial year only. There was ambiguity and confusion on interpreting the provisions as the Commissioner of Income Tax (Appeals) examined the issue on the interpreting the word "any" referring to dictionary meaning because there was no certainty was visualized considering the provisions, CBDT circulars and facts of the case. The Assessing Officer tried to make a distinction of provisions for restricting investment of ₹50,00,000/- only in one financial year. The assessee has invested in two installments falling in two financial years and availed tax exemption. Amendment of provisions of Sec.54EC in Finance Act, 2014 are prospective and apply

from 01.04.2015 effective from assessment year 2015-16 onwards. We considering the facts and amendment of provisions rely on the jurisdictional High Court decision of *CIT vs. C. Jaichander 370 ITR 579 (Mad)* and *CIT vs. Coramandel Industries Ltd 370 ITR 586 (Mad)* and setaside the order of the Commissioner of Income Tax (Appeals) and direct the Assessing Officer to delete the addition and allow the grounds in favour of the assessee.

8. In the result, the appeal of the assessee in ITA No.2274/Mds/2015 is allowed.

Order pronounced on Wednesday, the 27th day of April, 2016, at Chennai.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:27.04.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |