



IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA no.3731/Mum./2013
(Assessment Year : 2010-11)

M/s. Shah Textile Pvt. Ltd.
C/o Suren Shah & Co.
111, Maker Bhavan-3
22, New Marine Lines
Mumbai 400 020
PAN - AAACS6979D

..... Appellant

v/s

Income Tax Officer
Ward-5(3)(2), Aayakar Bhawan
101, M.K. Road, Mumbai 400 020

..... Respondent

Assessee by : Shri S.C. Tiwari
Revenue by : Shri Rakesh Kumar Agarwal

Date of Hearing - 18.02.2016

Date of Order - 29.02.2016

ORDER

PER SAKTIJIT DEY, J.M.

This is an appeal by the assessee directed against the order dated 23rd November 2012, passed by the learned Commissioner (Appeals)-9, Mumbai, for the assessment year 2010-11.

Following grounds have been raised by the assessee:-

"1. That On the facts and in the circumstances of the case and in law, the learned Commissioner (Appeals) erred in holding that the appellant was not entitled to claim deduction under section 54EC on the sum of ₹ 30 lakh invested by the appellant in Rural Electrification Corporation bonds.

2. On the facts and in the circumstances of the case and in law, the learned Commissioner (Appeals) erred in holding that the amount of long term capital gain arising to the appellant on sale of property to M/s. Multispan Control Instrument Pvt. Ltd., had been correctly worked out by the Assessing Officer.

3. On the facts and in the circumstances of the case and in law, the learned Commissioner (Appeals) erred in not directing the Assessing Officer to allow the appellant the credit of sum of ₹ 657,734 pertaining to MAT credit under section 115JB of the Act relating to assessment year 2006-07.

4. That the order of the learned CIT(A) being contrary to the facts of the case, evidence and material on record and law applicable thereto should be set aside, amended or modified in accordance with the grounds of appeal deduced above.

5. Each of the grounds of appeal enumerated above are independent of and without prejudice to one another.

6. That the appellant craves leave to reserve to itself the right to add to, alter or amend any of the aforesaid grounds of appeal at or before the time of hearing and to produce such further evidence, documents and papers in support of its claim as may be necessary."

2. Grounds no.4, 5 and 6 being general in nature, do not require any specific adjudication.

3. As far as ground no.3 is concerned, learned Counsel for the assessee expressed his intention for not pressing the same as in

pursuance to direction of the learned Commissioner (Appeals), assessee has got desired relief. Hence, this ground is dismissed as "not pressed".

4. In ground no.1, assessee has challenged the decision of the Departmental Authorities in disallowing its claim under section 54EC of the Act for an amount of ₹ 30 lakh.

5. Briefly stated the facts are, assessee a company filed its return of income for the year under consideration on 5th October 2010, declaring total income of ₹ 11,73,674. In the course of assessment proceedings, the Assessing Officer noticed that the assessee during the relevant previous year has sold a plot along with factory building to M/s. Multispan Control Instruments Pvt. Ltd., for a consideration of ₹ 1,03,00,000. Against the capital gain arising out of sale of plot and factory building, assessee has claimed exemption under section 54EC for an amount of ₹ 80 lakh towards investment in REC Bonds. While verifying assessee's claim, Assessing Officer found that the assessee had received 99% of the sale consideration by 31st October 2009 and the transfer deed was held up on account of want of NOC from GIDC and ultimately was registered on 17th December 2009. He, therefore, held that assessee's claim of exemption under section 54EC for an

amount of ₹ 50 lakh is admissible out of the tax payable on long term capital gain as on 31st March 2010. However, as far as the balance claim of exemption of ₹ 30 lakh is concerned, the Assessing Officer disallowed it by holding that such claim cannot be accepted as the investment was not done within a period of six months as the cheque for purchasing the bond was tendered on 18th June 2010 and bond was allotted on 30th June 2010. Accordingly, he disallowed assessee's claim of exemption under section 54EC for the amount of ₹ 30 lakh. Being aggrieved of such disallowance, assessee preferred appeal before the learned Commissioner (Appeals).

6. The first appellate authority, after considering the submissions of the assessee, agreed with the Assessing Officer that claim of exemption under section 54EC for ₹ 30 lakh cannot be allowed as it is beyond the prescribed period of six month from the date of transfer of capital asset. One more reason cited by the learned Commissioner (Appeals) for disallowing assessee's claim of exemption under section 54EC is the investment has to be linked to the financial year in which the transfer has taken place and the claim for deduction cannot exceed to ₹ 50 lakh. He observed, as per proviso to section 54EC inserted by Finance Act, 2007, the maximum amount of deduction under section

54EC during any financial year can not exceed ₹ 50 lakh. While coming to such conclusion, learned Commissioner (Appeals) referred to a decision of the Tribunal, Jaipur Bench, in ACIT v/s Rajkumar Jain & Son (HUF), [212] 50 SOT 213 (Jai.).

7. Learned Counsel for the assessee challenging the decision of the Departmental Authorities, submitted, as the first allegation of the department that the assessee had not invested in REC bonds within a period of six months is totally incorrect. He submitted, the sale deed was registered on 17th December 2009, and the assessee has tendered the cheque for purchase of REC Bonds on 18th June 2010. He submitted the period of six month as envisaged under section 54EC, is meant to be calendar months and not 180 days as calculated by the Assessing Officer. Learned counsel submitted, if a particular provision prescribes the period by referring to months instead of days, as per the provisions of General Clauses Act, the period of six months should be counted as six calendar months. In this context, he referred to the Special Bench decision of the Tribunal, Ahmedabad Bench, in Alkaben B. Patel v/s ITO, [2014] 148 ITD 31 (Ahd.). As far as the observation of the learned Commissioner (Appeals) that assessee is not eligible to claim exemption of ₹ 30 lakh as the maximum amount the assessee can claim under section 54EC in any assessment year is ₹ 50 lakh,

learned counsel submitted, though, there are conflicting views of the Tribunal on the issue but the issue has been settled by the Hon'ble Madras High Court in CIT v/s Coromandel Industries Ltd. [2015] 370 ITR 586 (Mad.). He submitted, the Hon'ble Madras High Court has held that there is no cap imposed under section 54EC as far as investment to be made in bonds. He submitted as per the said judgment of the Hon'ble Madras High Court, the assessee can make investment not exceeding ₹ 50 lakh in any financial years. He, therefore, submitted that none of the reasoning of the learned Commissioner (Appeals) is valid for disallowing assessee's claim of exemption under section 54EC.

8. Learned Departmental Representative, on the other hand, relied upon the reasoning of the Assessing Officer and the learned Commissioner (Appeals).

9. We have considered the submissions of the parties and perused the material available on record. As far as the facts are concerned, there is no dispute that assessee has transferred the factory building vide registered sale deed dated 17th December 2009, whereas, the investments of ₹ 30 lakh in REC Bonds for claiming exemption under section 54EC was made through cheque dated 18th June 2010 and

bonds for ₹ 30 lakh was allotted to the assessee on 30th June 2010. The Assessing Officer has denied assessee's claim of exemption under section 54EC, by reckoning period of six months as provided under section 54EC from the date of sale deed i.e., 17th December 2009 and according to the Assessing Officer the assessee should have invested by 16th June 2010 for claiming exemption under section 54EC. However, it is observed in the Special Bench decision of the Tribunal, Ahmedabad Bench, in Alkaben B. Patel (supra), this particular issue has been addressed by holding as under:—

"6. The subtle question is that whether the word "month" refers in this section a period of 30 days or it refers to the months only. Section 54EC, if we read again prescribes that an investment is required to be made within a period of six months. Whether the intention of the legislator was to compute six calendar months or to compute 180 days. To resolve this controversy, we are guided by a decision of Hon'ble Allahabad High Court pronounced in the case of CIT v. Munnalal Shrikishan [1987] 167 ITR 415 where answering the dispute in respect of law of limitation the Hon'ble Court has clearly held that there is nothing in the context of section 256(2) to warrant the conclusion that the word 'month' in it refers to a period of 30 days, therefore, refers to six months in Section 256(2) is to six calendar months and not 180 days. Rather, in this cited decision an interesting observation of the court was that while comparing the precedents the contextual setting is to be examined and if entirely distinct and different then do not warrant to apply universally. Even in the case of Tamal Lahiri v. Kumar P. N. Tagore AIR 1978 (SC) 1811, it was opined while interpreting Section 533 of Bangalore Municipal Act, 1932 that the expression six months in the said section means six calendar months and not 180 days. A copy of the judgment is placed before us. The purpose of mentioning this plank of argument is that after scrutinizing few more Sections of The Act it is evident that on some occasion the Legislature had

not used the terms "Month" but used the number of days to prescribe a specific period. For example in Section 254(2A) First Proviso it is prescribed that the Tribunal may pass an order granting stay but for a period not exceeding one hundred and eighty days. This is an important distinction made in this statute while subscribing the limitation/ period. This distinction thus resolves the present controversy by itself.

7. So the logical conclusion is that in the absence of any definition of the word ' month' in The Act, the definition of General Clauses Act 1897 shall be applicable and by doing so there is no attempt on our part to interpret the language of Sec. 54EC , what to say a liberal or literal interpretation. We hereby hold that the Legislature has in its wisdom has chosen to use the word ' month'. This was done by keeping in mind the definition as prescribed in General Clauses Act 1857. Therefore we have also read the word 'month' within the recognized ways of interpretation. Rather we have also seen both; the conventional as well as lexicon meaning. Here there in no attempt to supply casus-omissus but replicated as per the language used.

7.1 In the present case there is no dispute about the investment which had actually been made by the assessee. The said investment had been made in the month of December, 2008. However, alleged to be few days late from the date of transfer in the month of June, 2008. It is not the case of the Revenue that the appellant had altogether fudged the dates. Once the purpose of the introduction of the section was served by making the investment in the specified assets then that purpose has to be kept in mind while granting incentive."

In the present case, admittedly, assessee has transferred the property on 17th December 2009 and made the investment in REC Bond on 18th June 2010, therefore, the period of six months as provided under section 54EC has to be has to be construed as six calendar month and reckoned from end of December 2009 to end of June 2010 by applying the principle laid down by the Special Bench

decision referred to above. Therefore, the assessee having invested the amount of ₹ 30 lakh within the period of six months, it is eligible to claim exemption under section 54EC.

As far as the second issue whether the assessee can claim exemption under section 54EC for an amount exceeding more than ₹ 50 lakh, that too, in more than one financial year, it is to be observed that as far as relevant facts are concerned, the assessee has made investment in REC bonds in two tranches of ₹ 50 lakh and ₹ 30 lakh. As far as the first investment of ₹ 50 lakh is concerned, there is no dispute as the department has accepted it. However, as far as the second investment of ₹ 30 lakh is concerned, it is the view of the learned Commissioner (Appeals) that assessee is not eligible to claim such exemption in view of the first proviso to section 54EC introduced into the statute by Finance Act, 2007. For this purpose, the learned Commissioner (Appeals) has relied upon the decision of the Tribunal Jaipur Bench (supra). It is noted that the view of different benches of the Tribunal on this issue are divergent. While the decision of Jaipur Bench referred to by the learned Commissioner (Appeals) is against the assessee, learned counsel has brought to our notice two other decisions of the Tribunal, Ahmedabad Bench in *Apsi Ginwala & Ors v/s*

ACIT, [2012] 52 SOT 16 (Ahd.) and ITO v/s Rania Faleiro, [2013] 142 ITD 21 (Panaji) favouring the assessee. Relying upon the principles laid down by the Hon'ble Supreme Court in CIT v/s Vegetable Products Ltd. [1973] 88 ITR 192 (SC), he submitted that when there are conflicting decisions, on a particular issue, the decision favourable to the assessee should be followed. We find merit in the aforesaid submissions of the assessee. Moreover, as could be seen, the Hon'ble Madras High Court in Coromandel Industries Ltd. (supra), after taking into consideration the import of proviso to section 54EC introduced by Finance Act, 2007, has held that there being no cap on the investment to be made in bonds under the provisions of section 54EC, the assessee can make investment for an amount more than ₹ 50 lakh spreading over more than one financial year subject to the conditions such investment is made within a period of six month and secondly the investment in a particular assessment year should not exceed amount of ₹ 50 lakh. Further, there is no decision of the jurisdictional High Court available on this issue. Therefore, respectfully following the decision of the Hon'ble Madras High Court, which is higher to the Tribunal in judicial hierarchy, we allow assessee's claim of exemption under section 54EC for the amount of ₹ 30 lakh. Ground no.1, is allowed.

10. Ground no.2 raised by the assessee is on computation of long term capital gain by the Assessing Officer.

11. This ground is related to the additional ground no.1 raised by the assessee. Therefore, it is necessary to deal with the additional grounds raised by the assessee before us which are as under:–

"1. That On the facts and in the circumstances of the case and in law, the learned Commissioner (Appeals) erred in not adjudicating that Assessing Officer should have taken cost of acquisition according to the fair market value of land as on 01.04.1981 for the purpose of indexation.

2. That On the facts and in the circumstances of the case and in law, the learned Commissioner (Appeals) erred in not adjudicating that the Assessing Officer was required to set off unabsorbed depreciation of ` 206,999 in the computation of total income against the capital gains assessed by him."

12. Making his submissions for admission of additional grounds, learned Counsel for the assessee contended that both the issues raised in additional grounds arise out of the assessment order passed and were also raised before the first appellate authority. However, the learned Commissioner (Appeals), while disposing off assessee's appeal has failed to consider the pleadings of the assessee on these issues. In this context, learned counsel drew our attention to the relevant portion

of the order as well as the written submissions filed before the learned Commissioner (Appeals).

13. Learned Departmental Representative, however, opposing the contention of the learned Counsel for the assessee submitted the assessee having not raised any ground before the learned Commissioner (Appeals) on this issue cannot be permitted to raise additional ground for the first time before the Tribunal.

14. We have considered the submissions of the parties and perused the material available on record. It is noticed that while completing assessment the Assessing Officer has not accepted the adoption of fair market value by the assessee as on 1st April 1981, for indexation of cost of acquisition. Similarly, the claim of unabsorbed depreciation was not allowed by the Assessing Officer. It is further noticed, the assessee in grounds no.2 and 4 before CIT(A) had challenged the disallowance / addition made by the Assessing Officer. Further, from the written submissions filed before the first appellate authority, which has been reproduced in toto in the order of the learned Commissioner (Appeals), it is observed that assessee has made specific submissions on the issue of adoption of cost of acquisition as on 1st April 1981 as well as claim of unabsorbed depreciation. However, the learned Commissioner

(Appeals), while disposing off assessee's appeal has failed to consider the submissions of the assessee and decide these two issues raised by the assessee. Moreover, facts relating to these issues being already on record, having been dealt with by the Assessing Officer; we admit the additional ground raised by the assessee. As could be seen in ground no.1 of additional ground corresponding to ground no.2 of main ground, assessee has challenged the working of long term capital gain by the Assessing Officer on the ground that fair market value of the capital asset as on 1st April 1981 adopted for the purpose of indexation of cost of acquisition is not proper. In ground no.2, of additional ground, assessee has challenged disallowance of its claim of unabsorbed depreciation of ₹ 2,06,999. As the learned Commissioner (Appeals) has failed to decide these two issues, we restore the matter relating to these issues to his file for deciding afresh after due opportunity of being heard to the assessee. These grounds are allowed for statistical purposes.

15. In the result, appeal is partly allowed.

Order pronounced in the open Court on 29.02.2016

Sd/-
RAMIT KOCHAR
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 29.02.2016

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

(Dy./Asstt. Registrar)
ITAT, Mumbai