

IN THE INCOME TAX APPELLATE TRIBUNAL
BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

“SMC-B” BENCH : BANGALORE

ITA No.927/Bang/2018
Assessment Year :2008-09

Shri Amarnath G. N., C/o. M/s. Bharathi Coffee Curing Works, No. 3, B.M. Road, Boovanahalli, Hassan – 573 201. PAN: AAKPA6732H	vs.	The Assistant Commissioner of Income Tax, Circle – 1, Hassan.
APPELLANT		RESPONDENT

“SMC-C” BENCH : BANGALORE

ITA No. 928/Bang/2018
Assessment Year : 2008-09

Smt. Shalini H.B., C/o. M/s. Bharathi Coffee Curing Works, No. 3, B.M. Road, Boovanahalli, Hassan – 573 201. PAN: ABNPS1318P	vs.	The Assistant Commissioner of Income Tax, Circle – 1, Hassan.
APPELLANT		RESPONDENT

Appellants by	:	Smt. Suman Lunkar, CA
Respondents by	:	Dr. S. Palani, Addl. CIT (DR)

Date of hearing	:	12.04.2018
Date of Pronouncement	:	20.04.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

Both these appeals are filed by two different but connected assesseees and these appeals are directed against two separate orders of Id. CIT(A), Mysore both dated 31.10.2017 for Assessment Year 2008-09. Both these appeals were heard together and are being disposed of by way of this common order for the sake of convenience because both the assesseees are related to each other.

2. The grounds raised by the assessee in ITA No. 927/Bang/2018 are as under.

“1. The learned Assessing Officer has erred in passing the order as passed by him. The order passed is bad in law, without jurisdiction and against the principles of natural justice and is required to be quashed in toto.

2.1 In any case, the conditions precedent for the issue of notice u/s. 148 of the Act being absent, the re-opening of assessment becomes bad in law and consequently the order as passed/confirmed being also bad in law is required to be quashed.

2.2 In any case the assessing officer having not complied with legal provisions / procedure for reopening / reassessment, the consequential order becomes bad in law and liable to be quashed.

3.1 In any case and without prejudice, the learned Assessing Officer had erred in not allowing the deduction claimed U/s. 54EC of the I.T. Act, amounting to Rs. 20,00,000/- being Investments made in REC Bonds and NHAI Bonds on the ground that the investments were made beyond the time limit prescribed U/s. 54EC of the I.T. Act, 1961 and the learned CIT(A) has erred in confirming the same. On the proper appreciation of facts and circumstances of the case and the law applicable, the denial of deduction U/s. 54EC being erroneous both on facts and law is applicable to be disregarded.

3.2 On the facts and circumstances of the case, the appellant had rightly claimed the deduction U/s. 54EC of the I.T. Act, 1961 and same is to be granted without any variation.

4. In any case and without prejudice, the authorities below have erred in not appreciating the fact that the appellant was prevented by sufficient and reasonable cause from investing the sum in eligible bonds within the prescribed time limit as mentioned in Section 54EC of the I.T. Act. The delay if any, in investing in eligible Bonds is due to closure of issue / non availability of Bonds being beyond the control of the appellant is to be condoned and deduction is to be granted in the interest of natural justice and equity.”

3. The grounds raised by the assessee in ITA No. 928/Bang/2018 are as under.

“1. The learned Assessing Officer has erred in passing the order as passed by him. The order passed is bad in law. without jurisdiction and against the principles of natural justice and is required to be quashed in toto.

2.1 In any case, the conditions precedent for the issue of notice u/s. 148 of the Act being absent, the re-opening of assessment becomes bad in law and consequently the order as passed/confirmed being also

bad in law is required to be quashed.

2.2 In any case the assessing officer having not complied with legal provisions / procedure for reopening / reassessment, the consequential order becomes bad in law and liable to be quashed.

3.1 In any case and without prejudice, the learned Assessing Officer had erred in not allowing the deduction claimed U/s. 54EC of the I.T. Act, amounting to Rs. 20,00,000/- being Investments made in REC Bonds and NHAI Bonds on the ground that the investments were made beyond the time limit prescribed U/s. 54EC of the I.T. Act, 1961 and the learned CIT(A) has erred in confirming the same. On the proper appreciation of facts and circumstances of the case and the law applicable, the denial of deduction U/s. 54EC being erroneous both on facts and law is applicable to be disregarded.

3.2 On the facts and circumstances of the case, the appellant had rightly claimed the deduction U/s. 54EC of the I.T. Act, 1961 and same is to be granted without any variation.

4. In any case and without prejudice, the authorities below have erred in not appreciating the fact that the appellant was prevented by sufficient and reasonable cause from investing the sum in eligible bonds within the prescribed time limit as mentioned in Section 54EC of the I.T. Act. The delay if any, in investing in eligible Bonds is due to closure of issue / non availability of Bonds being beyond the control of the appellant is to be condoned and deduction is to be granted in the interest of natural justice and equity.”

4. It was submitted by Id. AR of assessee that ground no. 2 in respect of validity of reassessment proceedings is not pressed in both these appeals and therefore, this ground is rejected as not pressed in both the appeals.
5. Thereafter, it was submitted by Id. AR of assessee that the only issue involved in both these appeals is regarding allowability of deduction u/s. 54EC of IT Act of Rs. 20 Lakhs in each case for investment made in REC Bonds and NHAI Bonds and this claim was not allowed by the AO on this reasoning that these investments are made beyond the time limit prescribed u/s. 54EC of IT Act. In this regard, she drawn my attention to para 3 of the order of CIT (A) and pointed out that in this Para, this is noted by CIT (A) that the property in question was sold on 16.11.2007 and therefore, the investment was required to be made within six months from that date i.e. up to 15.05.2008 but the

investment was made on 14.07.2008. She also pointed out that this is also noted by CIT(A) that the relevant scheme consisting of REC and NHA Bonds were closed for investments with effect from 31.03.2008 and these have been opened again for investment only with effect from 26.05.2008 for NHA Bonds and on 28.05.2008 for REC Bonds. She submitted that the assessee could not make the investment within permitted time up to 15.05.2008 for this reason that these schemes were closed for investment from 31.03.2008. She placed reliance on a judgement of Hon'ble Karnataka High Court rendered in the case of Dr. (Smt.) Sujatha Ramesh Vs. CBDT as reported in 401 ITR 242 and pointed out that in that case also, investment was made after the expiry of the prescribed time of six months from the date of sale of the capital asset. She further pointed out that in this case, it was held by Hon'ble Karnataka High Court that the assessee has substantially satisfied the condition for availing the exemption provided in law and hence, the said exemption should not be denied only for this reason that there is delay in making investment. In this regard, she drawn our attention to para 14 of this judgement. The Id. DR of revenue supported the orders of authorities below.

6. I have considered the rival submissions. I find that there is no dispute about facts of the present case that the assessee was required to make investment in the bonds on or before 15.05.2008 but the investment was made by the assessee on 14.07.2008 i.e. after two months. In the light of these facts, now I examine the applicability of this judgement of Hon'ble Karnataka High Court rendered in the case of Dr. (Smt.) Sujatha Ramesh Vs. CBDT (supra) and for the sake of ready reference, para 14 of this judgement is reproduced hereinbelow.

“14. The present case is one of such nature, where the Court finds that the substantial conditions for claiming the exemption from capital gain tax stood satisfied and the prescribed investment was made by the assessee in the Bonds of the National Highways Authority, for the minimum lock-in period of three years also is an undisputed fact, and therefore, the delay in making such investment of six months deserved to be condoned, in view of the fact that, the assessee- petitioner, a Doctor by profession was traveling from India to USA a long distance country where she normally resided and came to India not only to meet her family members, but to sell the immovable property

belonging to her and sought to avail the genuine exemption from such tax liability upon making the investment in the prescribed investment in the form of Bonds of Infrastructure which she did make in the National Highways Authority.”

7. As per this judgement, I find that if there is reasonable cause for delay in investment in the bond for claiming deduction u/s. 54EC of IT Act, delay should be condoned and deduction should be allowed. In the present case, it is undisputed fact that the schemes for making investments being NHAI and REC Bonds were closed w.e.f. 31.03.2008 and the assessee was eligible for making investment in these bonds up to 15.05.2008. Hence during this period from 31.03.2008 to 15.05.2008, there was no scheme available for making investment, to be claimed u/s. 54EC. These schemes have opened for investment again on 26.05.2008 and 28.05.2008 for NHAI and REC Bonds respectively and the assessee has made investment in these two bonds on 14.07.2008. Under these facts, in my considered opinion, there was reasonable cause for delay in making investment in the eligible bonds for claiming deduction u/s. 54EC and therefore, by respectfully following this judgement of Hon'ble Karnataka High Court rendered in the case of Dr. (Smt.) Sujatha Ramesh Vs. CBDT (supra), I hold that the assessee's claim for deduction u/s. 54EC should be allowed and the AO is directed to allow this deduction in both these cases.

8. In the result, the appeals filed by both the assesseees are partly allowed.
Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 20th April, 2018.
/MS/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.