

आयकर अपीलीय अधिकरण “फ” न्यायपीठ मुंबई मे ।

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI G MANJUNATHA, AM**

आयकर अपील सं./ ITA No. 816/Mum/2017

(निर्धारण वर्ष / Assessment Year 2012-13)

ITO, 19(3)(5), R.No.201, Matru Mandir, Mumbai-400 007	Vs.	Vinay Dharmshi Khatau, Flat No.7, 2 nd Floor, 114- BVP Rd. Earth Enclave, R.K. Wadi, Mumbai-400 004.
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
PAN No.AAEPK4172B		

Revenue by : M.V. Rajguru, DR
Assessee by : D.B. Shah, AR

Date of hearing: 20.06.2018 **Date of pronouncement :** 20-06-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal by the revenue is arising out of the order of Commissioner of Income Tax (Appeals)-30, Mumbai [in short CIT(A)], in appeal No. CIT(A)-30/19(3)(5)/911/2015-16 dated 11.11.2016. The Assessment was framed by the Income Tax Officer (19)(3)(5), Mumbai (in short 'ITO') for the A.Y. 2012-13 vide order dated 18.3.2015 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. This appeal by revenue is arising out of the order of CIT(A) in allowing the double claim under section 54EC of the Act amounting



ITA No. 816/Mum/2017

to ₹1 Crore as against the limit of ₹50 lakhs in the provisions of section 54EC of the Act. For this, revenue has raised following ground No.1:

“On the facts and circumstances of the case and in law, whether, the Ld. CIT(A) was justified in allowing the claim of the assessee under section 54EC totaling to ₹1,00,00,000/- whereas as per the second proviso of section 54EC of the I.T. Act, 1961, which came into effect from 1st April 2015, the limit of investment under section 54EC does not exceeds ₹50 lacs in any F.Y.”

3. We have heard the rival contentions and gone through the facts and circumstances of the case. Facts of the case are that assessee earned long term capital gain on sale of tenancy rights in an immovable property jointly held with other co-owners at ₹99,33,390/-. The assessee claimed exemption under section 54EC of the Act for an amount of ₹50 lakhs on the investment made in REC bonds on 31.3.2012 and also claimed another amount of deduction of ₹50 lakhs investment made in REC bonds on 30.4.2012. According to the A.O., the assessee is entitled to claim exemption 54EC of the Act only to the limit of ₹50 lakhs once. The assessing officer accordingly disallowed the claim of exemption and restricted the claim to ₹50 lakhs.

4. Aggrieved, assessee preferred appeal before the CIT(A). The CIT(A) allowed the claim of assessee by following Tribunal decisions and also the decision of Hon'ble Madras High Court in the case of CIT Vs.Sriram Indubal in T.C.(A) No.419 & 533 of 2014 dated 15.9.2014.



5. Aggrieved, now revenue is in appeal before Tribunal.
6. We find from the facts of the case that the assessee has invested in REC bonds first on 31.3.2012 for an amount of ₹50 lakhs and again on 30.4.2012 for ₹50 lakhs. The assessee claimed exemption under section 54EC of the Act for this amount of ₹1 Crore being investment made in REC bonds in two financial years but within the period of 6 months. We find that the Hon'ble Madras High Court in the case of CIT Vs. Sriram Indubal (supra) has considered this issue and observed as under:

"10. The legislature has chosen to remove the ambiguity in the proviso to Section 54EC(1) of the Act by inserting a second proviso with effect from 1.4.2015. The memorandum explaining the provisions in the Finance (No.2) Bill, 2014 also states that the same will be applicable from 1.4.2015 in relation to assessment year 2015-16 and the subsequent years. The intention of the legislature probably appears to be this amendment should be for the assessment year 2015-2016 to avoid unwanted litigations of the previous years. Even otherwise, we do not wish to read anything more into the first proviso to Section 54EC(1) of the Act, as it stood in relation to the assesseees.

11. In any event, from a reading of Section 54EC(1) and the first proviso, it is clear that the time limit for investment is six months from the date of transfer and even if such investment falls under two financial years, the benefit claimed by the assessee cannot be denied. It would have made a difference, if the restriction on the investment in bonds to Rs.50,00,000/- is incorporated in Section 54EC(1) of the Act itself. However, the ambiguity has been removed by the legislature with effect from 1.4.2015 in relation to the assessment year 2015-16 and the subsequent years.

For the foregoing reasons, we find no infirmity in the orders passed by the Tribunal warranting interference by this Court. The substantial questions of law are answered against the Revenue and these appeals are dismissed. No costs."



ITA No. 816/Mum/2017

7. As the issue is squarely covered by Hon'ble Madras High Court decision, we find no fault in the order CIT(A). Hence, the same is confirmed. The appeal of the revenue is dismissed.

8. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 20-06-2018.

आदेश की घोषणा खुले मे दिनांक 20.06.2018 को की गई ।

Sd/-

(G MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-

(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 20-06-2018

Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

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

BY ORDER,

Assistant Registrar
ITAT, MUMBAI