

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai**

**Before Shri B.R. Baskaran, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No. 1998/Mum/2017
(Assessment Year: 2013-14)**

Shri Suketu Modi
515-C, Meher Mansion,
R.P. Masani Road,
Matunga,
Mumbai-400019
PAN – AACPM5546K

Vs. DCIT-4(1)(2),
Aayakar Bhavan,
Room No. 640,
6th Floor,
Mumbai-40020

(Appellant)

(Respondent)

Appellant by: Shri Malav P. Sheth, A.R
Respondent by: Shri Nishant Samaiya, D.R
Date of Hearing: 04.10.2018
Date of Pronouncement: 12.10.2018

ORDER

Per Ravish Sood, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-9, Mumbai, dated 13.12.2016, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income Tax Act, 1961, (for short 'Act'), dated 21.01.2016 for A.Y 2013-14. The assessee assailing the order passed by the CIT(A) has raised before us the following grounds of appeal:

"Being aggrieved by the order of the Hon'ble Commissioner of Income Tax (Appeals) - 9, Mumbai, this appeal petition is submitted on the following grounds which it is prayed may be considered independently without prejudice to one another;

1. **Disallowance of exemption of Rs 30,00,000/- under section 54EC:**

1.1 *On facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the disallowance of exemption eligible u/s 54EC of Rs 30,00,000/- on investment made in Rural Electrification Bonds of Rs. 30,00,000/- on 30.04.2013 without appreciating that the conditions prescribed under section 54EC is already satisfied. Thus the disallowance of exemption of Rs 30,00,000/- u/s 54EC being bad-in-law must be deleted.*

- 1.2 *Without prejudice to the above and without admitting, on facts and circumstances of the case and in law, the learned CIT(A) erred in not appreciating that the amendment made in section 54EC by insertion of second proviso to the said section was applicable w.e.f AY 2015-16 and not retrospective in nature. Thus the learned CIT(A) erred in not appreciating that the second proviso to section 54EC is not applicable to the ensuing assessment year 2013-14 under consideration and accordingly the disallowance of exemption of Rs 30,00,000/- u/s 54EC is bad-in law and must be deleted.*
- 1.3 *Without prejudice to the above and without admitting, on facts and circumstances of the case and in law, the learned CIT(A) erred in not appreciating that for the ensuing assessment year 2013-14, the limit of Rs 50 lakhs prescribed in the first proviso is applicable for investments made within 6 months for each financial year. Accordingly the learned CIT(A) erred in not considering the investments of Rs.30 lakhs made on 30.04.2013 in Rural Electrification Bonds as eligible investments. Accordingly the disallowance of exemption of Rs 30,00,000/- u/s 54EC is bad-in-law and must be deleted.*
2. *The appellant company craves leave to add, to amend, alter/delete and/or modify the above grounds of appeal on or before the final hearing.”*

2. Briefly stated, the assessee had e-filed his return of income for A.Y 2013-14 on 02.09.2014, declaring total income of Rs.60,03,300/-. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.

3. The A.O while framing the assessment observed that the assessee had during the year returned 'long term capital gain' (for short 'LTCG') of Rs.99,25,064/- on buy back of shares. It was noticed by the A.O that against the aforesaid LTCG the assessee had claimed deduction of Rs. 78,35,733/- under Sec. 54EC of the Act. Further, it was noticed by the A.O that as regards the LTCG of Rs.28,35,733/- on sale of 7,500 shares, the assessee had made an investment of Rs. 30 lac towards purchase of 500 bonds of Rural Electrification Corporation Ltd. (for short 'REC') on 30.04.2013, and raised a claim of deduction under Sec. 54EC. The A.O did not find favour with the claim of deduction of Rs. 28,35,733/- raised by the assessee under Sec. 54EC for two fold reasons viz. (i) the deduction contemplated under Sec. 54EC had a ceiling of Rs.50 lac; and (ii) the assessee could claim deduction under Sec. 54EC by making investment in the long term specified asset, only in the year in which the asset was sold. On the basis of his aforesaid observations the A.O restricted the entitlement

of the assessee towards claim of deduction under Sec. 54EC to an amount of Rs.50 lac.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The contentions advanced by the assessee to support his claim of deduction raised under Sec. 54EC did not find favour with the CIT(A). The CIT(A) being of the view that the A.O had rightly restricted the entitlement of the assessee towards claim of deduction under Sec. 54EC to an amount of Rs. 50 lac, upheld his order and dismissed the appeal.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorized Representative (for short 'A.R') of the assessee took us through the facts of the case. It was submitted by the Id. A.R that the lower authorities had erred in misconceiving the scope and gamut of Sec. 54EC, and thus wrongly restricted the entitlement of the assessee towards claim of deduction to an amount of Rs.50 lac. It was the contention of the Id. A.R, that as the LTCG for the year under consideration had emerged from a set of two independent sale transactions of shares viz. (i) sale of 18,750 shares on 10.08.2012 for Rs.75,00,000/-; and (ii) sale of 7,500 shares on 18.12.2012 for Rs.30 lac, therefore, the respective investments made by the assessee towards purchase of specified bonds under Sec. 54EC, having been made within the stipulated period of six months, were thus eligible for claim of deduction under the aforesaid statutory provision. The Id. A.R in order to buttress his aforesaid contention, submitted that as the rider in the aforesaid statutory provision viz. *second proviso* to Sec. 54EC(I) was made available on the statute vide the Finance (No. 2) Act, 2014, with effect from 01.04.2015, thus the same was not applicable to the year under consideration. The Id. A.R in order to fortify his aforesaid contention relied on the order of the ITAT Mumbai "I" Bench in the case of Tulika Devi Dayal Vs. JCIT (2018) 89 taxman.com 442 (Mumbai). It was submitted by the Id. A.R, that in the aforementioned case it was observed by the Tribunal that where an assessee had invested a sum of Rs. 50 lac each in two different financial years, but within a period 6 months

from the date of transfer of the capital asset, he would duly be entitled for claim of deduction in respect of the said investments under Sec. 54EC of the Act. Further, the ld. A.R also took support of the judgment of the Hon'ble High Court of Madras in the case of CIT vs. Coromandal Industries Ltd. (2015) 56 taxmann.com 709 (Madras). The ld. A.R. taking us through the aforesaid judicial pronouncement, submitted that the Hon'ble High Court had observed that where the assessee company had invested capital gains in REC bonds in two different financial years, but within the stipulated period of 6 months from the date of transfer of capital asset, then the exemption claimed by the assessee under Sec. 54EC was to be allowed.

6. Per contra, the ld. Departmental Representative (for short 'D.R') relied on the order of the ITAT Jaipur Bench 'A' in the case of ACIT-Circle-2, Ajmer Vs. Shri Rajkumar Jain & Sons(HUF) (2012) 19 taxmann.com 27 (Jp). The ld. D.R relying on the aforesaid order, submitted that as per Sec. 54EC the investment made by an assessee within a period of 6 months is to be construed as an investment made for that particular financial year in which the transfer of the asset had taken place. It was the contention of the ld. D.R that the period of 6 months was not to include some part of a subsequent financial year. The ld. D.R taking support of the aforesaid order of the coordinate bench of the Tribunal, submitted that as the assessee had invested an amount of Rs.30 lac towards purchase of 500 REC bonds on 30.04.2013 i.e. in the period falling in the succeeding year and not the year under consideration, therefore, the said investment did not qualify for claim of deduction under Sec. 54EC of the Act. Further, in support of his aforesaid contention, it was averred by the ld. D.R that the lower authorities had rightly restricted the claim of deduction of the assessee under Sec. 54EC to an amount of Rs.50 lac.

7. We have heard the authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record. We find that our indulgence has been sought by the assessee for adjudicating the validity of the orders of the lower authorities, which had

restricted his entitlement towards claim of deduction under Sec. 54EC to an amount of Rs.50 lac. We find that the assessee had during the year under consideration carried out sale of shares vide two independent transactions, and had claimed deduction under Sec. 54EC in respect of the LTCG earned therefrom, as under:

Sr. No.	No. of Shares	Date of transfer	Sale consideration (Rs.)	LTCG (Rs.)	Investment u/s 54EC		
					Date of Investment	Amount invested (Rs.)	Deduction allowable u/s 54EC (Rs.)
1.	18,750	10.08.2012	75,00,000	70,89,332	13.12.2012	50,00,000	50,00,000
2.	7,500	18.12.2012	30,00,000	28,35,733	30.04.2013	30,00,000	28,35,733
				99,25,064		80,00,000	78,35,733

The A.O while framing the assessment was not persuaded to accept the aforesaid claim of deduction so raised by the assessee. The A.O was of the view, that the claim of deduction raised by the assessee under Sec. 54EC was not in order for two fold reasons, viz. (i) that the claim of deduction under Sec. 54EC during any financial year was not to exceed an amount of Rs. 50 lac; and (ii) the investment in the long term specified asset was to be made only during the financial year in which the asset had been sold. We find that it is on the basis of his aforesaid conviction that the entitlement of the assessee towards claim of deduction under Sec. 54EC was restricted by the A.O to an amount of Rs.50 lac.

8. We have deliberated at length on the issue under consideration and are unable to persuade ourselves to subscribe to the view taken by the lower authorities. We are of the considered view, that though the *first proviso* of Sec. 54EC(1) contemplates that the investment in the 'long term specified asset' by an assessee during any financial year is not exceed an amount 50 lac, however, the same nowhere provides any restriction as regards splitting of such investment in two different financial years. Rather, in our considered view, as long as the assessee makes an investment in the long term specified asset within a period of 6 months from the date of transfer of the long term capital asset, he would stand duly entitled for claim of deduction under the aforesaid statutory provision. We may however clarify,

that such splitting of the investment in the 'long term specified asset' during the financial year in which the asset is sold and the subsequent financial year, had been subjected to a capping of Rs.50 lacs, vide the Finance (No. 2) Act, 2014 with effect from 01.04.2015. However, as the case before us pertains to A.Y 2013-14, hence the restriction contemplated by the *second proviso* of Sec. 54EC(1) would not be applicable to the year under consideration. In so far, the observations of the lower authorities that the investment in the 'long term specified asset' has to be made in the year in which the asset is sold, we are afraid that such a precondition is not discernible on a perusal of the aforesaid statutory provision. Rather, the interpretation accorded by the lower authorities, therein mandating the making of an investment in the 'long term specified asset' only in the year in which the asset had been sold, to our understanding would clearly frustrate the contemplation of a period of six months within which the assessee under the aforesaid statutory provision is allowed to make an investment. We are of the considered view, that the aforesaid observations of the lower authorities on the basis of which the claim of deduction raised by the assessee under Sec. 54EC has been dislodged are clearly unsustainable in law and cannot be upheld. In this regard, we may herein observe that our aforesaid view that where an assessee has invested the capital gain in the specified asset in two financial years, but within a period of six months from the date of transfer of the asset, the claim of deduction under Sec. 54EC would be in order, is fortified by the judgment of the Hon'ble High Court of Madras in the case of CIT Vs. Coromandal Industries Ltd. (2015) 56 taxmann.com 209 (Mad). We find that the Hon'ble High Court in its aforesaid judgment had observed that from a reading of Sec. 54EC(1) and its *first proviso*, it is clear that the time limit for investment is six months from the date of transfer and where such investment is spread over in two financial years, then the claim of deduction raised by the assessee cannot be denied. It was further observed that the splitting of the investment in the 'long term specified asset' during the financial year in which the asset is sold

and the subsequent financial year, had been subjected to a capping of Rs.50 lacs, vide the Finance (No. 2) Act, 2014 with effect from 01.04.2015.

9. We thus are of the considered view that the claim of deduction raised by the assessee under Sec. 54EC of Rs.78,35,733/- in his 'return of income' is well in order, and the same had wrongly been restricted by the lower authorities to an amount of Rs. 50 lac. In terms of our aforesaid observations we set aside the order of the CIT(A) and direct the A.O to allow the claim of deduction under Sec. 54EC of Rs. 78,35,733/- raised by the assessee in his return of income.

10. The appeal of the assessee is allowed.

Order pronounced in the open court on 12.10.2018

Sd/-
(B.R.Baskaran)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक 12.10.2018
Ps. Rohit

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT,
Mumbai

