

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

**BEFORE SHRI D. KARUNAKARA RAO, AM AND
SHRI S. S. VISWANETHRA RAVI, JM**

आयकर अपील सं. / ITA No.523/PUN/2017
निर्धारण वर्ष / Assessment Year : 2013-14

Shankar Sadashiv Dangat,
Virangula Residency,
Sadashiv Dangat Nagar,
Ambegaon BK, Pune-411046.

PAN : AGMPD9426H

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-11(1),
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Abhay Shastri
Revenue by : Shri Abdhesh Kumar Jha

सुनवाई की तारीख / Date of Hearing : 20.01.2020
घोषणा की तारीख / Date of Pronouncement : 22.01.2020

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal filed by the assessee is against the order of the CIT(A)-1, Pune dated 13.12.2016 for the assessment year 2013-14.

2. The effective ground raised by the assessee is as under :-

"1. The Assessing Officer has erred in laws and facts in disallowing the claim u/s 54B of Income Tax Act, 1961."

3. Briefly stated the relevant facts include that the assessee is a LIC Agent deriving income from LIC commission, rent, interest and share profit from M/s. Yashodha Construction. The assessee filed the return of income declaring total income of Rs.4,18,984/-. At the end of the assessment u/s

143(3) of the Act, the Assessing Officer assessed the total income of the assessee at Rs.54,43,361/-. The CIT(A) confirmed the action of the Assessing Officer and dismissed the appeal of the assessee. Against the said decision of the CIT(A), the assessee is in appeal before us with the above extracted ground.

4. Before us, at the outset, ld. Counsel for the assessee filed a copy of the decision of the Pune Bench of the Tribunal in the case of Shri Ajit Govindrao Jillewar (HUF) vs. CIT vide ITA No.973/PUN/2014 for the assessment year 2009-10 dated 09.05.2016 and submitted that the identical issue has already been adjudicated by the Tribunal and decided in favour of the assessee. Further, ld. Counsel relied upon the contents of para 6 onwards of the said order of the Tribunal (supra) in this regard.

5. On the other hand, ld. DR for the Revenue relied heavily on the orders of the revenue authorities.

6. On hearing both the sides, we find, the issue involved in this appeal is covered one by the said order of the Tribunal (supra). On perusing of the said order of the Tribunal (supra), we find the contents of para 6 onwards of the said order of the Tribunal (supra) are relevant and the same are extracted hereunder :-

“6. The only issue before us in the present appeal is, Whether the assessee is eligible to claim deduction u/s. 54EC of the Act, in view of the fact that the assessee has made investment in REC bonds after the expiry of 6 months from the date of execution of the sale deed?”

7. As per the provisions of section 54EC, the assessee is eligible to claim deduction on the long term capital gain arising from transfer of capital asset, if the assessee at any time within the period of 6 months after the date of transfer of asset invest the whole or any part of the capital gains in the long term specified asset i.e. the bonds issued by National Highway Authority of India or Rural Electrification Corporation Limited notified by the Central Government of India.

In the present case the assessee had sold the agricultural land vide sale deed dated 24-07-2008 and has received the consideration on 15-10-2008. The assessee in support of his claim has filed bank statement of Shri Bharat Vishwanathrao Raminwar (purchaser of land) at pages 24 and 25 of the paper

book to show that a sum of Rs.12,50,000/- was debited in the account on 15-10-2008 in favour of Shri A G Jihewar vide cheque No. 712019. The same cheque number is also mentioned in the sale deed dated 24-07-2008. Thus, the period of limitation for making investment in specified bonds starts from the date of credit of consideration amount in favour of the assessee. Although, the cheque was dated 23-09-2008 the same was deposited by the assessee in his account on 15-10-2008. A perusal of the terms and conditions of the registered sale deed dated 24-07-2008 placed on record shows that the possession of land would be handed over to the purchaser on receipt of consideration. Thus, the sale transaction would be complete only on the receipt of consideration and handing over of the possession of land. Even if the limitation is counted from the date of cheque, the assessee should have made investment in the specified bonds on or before 22-03-2009. Undisputedly, the assessee made investment in REC bonds on 26-02-2009 i.e. within six months from the date of receipt of consideration.

It is a well settled law that beneficial provisions/legislations have to be interpreted liberally. The provisions of section 54EC being a beneficial provision has to be construed liberally. The claim of the assessee should not be thwarted on mere technicalities or by giving narrow interpretation to beneficial provisions. In the instant case, investment in REC bonds made by the assessee within six months from the date of receipt of sale consideration would amount to constructive compliance of the provisions of section 54EC and hence, the assessee is eligible to claim deduction u/s. 54EC of the Act.

8. The Co-ordinate Bench of the Tribunal in the case of Mahesh Nemichandra Ganeshwade & Ors. Vs. Income Tax Officer (supra) while dealing with the similar situation granted relief to the assessee where the amount was deposited within 6 months from the date of payment but beyond 6 months from the date of transfer. The relevant extract of the findings of the Tribunal in the said case are reproduced here-in-below:

“18. In our considered opinion, the interpretation placed by the CBDT in consultation with the Ministry of Law to the condition of making investment within six months from the date of transfer in section 54EC would support the claim of the assessee in this case also for exemption from capital gain with respect to the impugned sum of Rs 50 lakhs invested in specified assets on 3.8.2007 and 27.10.2007. In the present case, admittedly the impugned amount of sale proceeds have been received by the assessee much after the date of transfer i.e. 12.7.2005, so however, it is also emerging from the record that the investments of Rs 12,50,000/- and Rs 37,50,000/- made on 3.8.2007 and 27.10.2007 respectively have been made within six months of receipt of such consideration. Therefore, having regard to the interpretation placed by the CBDT to understand the requirement of making investment within six months from the date of transfer in section 54EC of the Act we are inclined to uphold the plea of the assessee for exemption from tax on capital gains qua impugned amount of Rs 50 lakhs . Therefore on this aspect, assessee has to succeed. Thus, this Ground of appeal is allowed.”

9. In so far as the objection of the ld. DR that before making investment the assessee utilized the sale consideration for earning interest by investing in FDR and advancing to the third party is concerned, we find that there is no restriction in the provision of section 54EC that the capital gain arising from the sale of asset cannot be utilized in any other manner before investing in long term specified asset (i.e. the bonds) within the time frame given in the section.

Thus, in view of the facts of the case and the provisions of section 54EC of the Act, the impugned order is set aside and the appeal of the assessee is allowed.”

7. From the above, it is evident that in that case where the payment was received late by the seller and credited to the seller's accounts belatedly, the period attributable to the delay in crediting, should not be used against the assessee. The amounts are so credited to the assessee's accounts should be appropriated as per the provisions of section 54B of the Act. Considering the above decision of the Tribunal (supra), we direct the CIT(A) to examine each of the credit accounts, the manner of reinvestment of the same in the eligible assets, applicability of the said order of the Tribunal etc. Thus, the ground raised by the assessee is remanded to the file of the CIT(A) for fresh adjudication. The CIT(A) shall grant reasonable opportunity of being heard to the assessee in accordance with set principles of natural justice. Therefore, the ground raised by the assessee is allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on this 22nd day of January, 2020.

Sd/-

(S. S. VISWANETHRA RAVI)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(D. KARUNAKARA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 22nd January, 2020.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Pune.
4. The Pr. CIT-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.