

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT**

**Before Shri C.M.GARG, Judicial Member, and
Shri O.P. MEENA, Accountant Member**

**ITA No.2718/AHD/2016
Assessment Year: 2012-13**

ITO (Intl. Taxn), Surat	बनाम/ Vs.	Smt Chrusheela M Bhatia, Ground Floor, Bhatia House Moti Daman, Daman
(Appellant)		(Respondent)
P.A. No. AEPPB3942P		

Assessee by	Shri Sapnesh Seth – CA
Revenue by	Shri Shrinivas T Bidari – CIT DR
Final Date of Hearing:	22/11/2017
Date of Order:	10/01/2018

आदेश / ORDER

Per Shri C.M. Garg, J.M:

This appeal is filed by the revenue against the order of the learned CIT (Appeals) 13, Ahmadabad, dated 01.08.2016 passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for the assessment year 2012-13.

2. In this appeal the revenue has raised the following common grounds of appeal:-

“(i) The Ld. has erred in law and on the facts of the case in holding that the assessee can claim benefit of Section 54EC of the Act twice with respect to the same capital



gains if the investment is made in two separate Financial years.

(ii) The Ld. CIT (A) has failed to appreciate that if the gain has arisen in one year, the deduction u/s 54EC of the Act cannot be allowed in respect of this gain on account of investment made in next year merely on the ground that the investment has been made within six months of arising of the gains.

3. Brief facts giving rise to this appeal are that the Assessing Officer during the course of assessment, held that the deduction claimed u/s 54EC of the Income Tax Act 1961 (for short the Act) in the year under consideration is allowed to Rs. 50,00,000/- and balance investment of Rs. 50,00,000/- being excess of the limit prescribed in the provision under the said section was disallowed. The aggrieved assessee carried the matter before CIT (A) who allowed the appeal with following conclusion: -

5. I have perused the order of the Assessing Officer and the written submissions made in this regard. I find that the action of the Assessing Officer in computing the cost of land at Rs. 10/- per sq. mtr as against Rs 120/-, merit sustenance as it has an objective basis taken from the information gathered u/s 133(6) of the Act from the Sub-Registrar, Dadra & Nagar Haveli. It may be noticed that the rate adopted by the Assessing Officer is reasonably higher than the rate indicated by the Sub-Registrar for the land in the nearby area. I find that the rate of Rs. 120/- per sq. mtr. Adopted by the appellant is way of the mark than the rate indicated by the Sub - Registrar, Dadra & Nagar Haveli. I, agree with the



contention of the Assessing Officer in para 9 of the assessment order that the appellant has got the value done on the basis of surmise presumption and the actual sale instances on the date of valuation has not been examined. Accordingly I am inclined to concur with the action of the Assessing Officer to recomputed the long term capital gain with respect to the sale of four lands as indicated in para 9 of the assessment order. The ground relating to the computation of long term capital gain is therefore, dismissed.

6. The second ground relates to the disallowance of deduction amounting to Rs. 50 Lakhs u/s 54EC against the claim of deduction of Rs. 1 Crore by the appellant. During the year, the appellant invested Rs. 1 crore and has claimed deduction u/s 54EC of the Act amounting to Rs. 1 Crore. Such investments were made on two dates, but within a period of six months, as stipulated in Section 54EC. The Assessing Officer is of the view that a benefit of Rs. 50 lakhs only can be allowed u/s 54EC. The appellant on the other hand argued that her case is squarely covered by the decision of Hon'ble ITAT, Ahmadabad in the case of *Aspi Ginwals & Others Vs ACIT 52 SOT 16 (Ahmadabad)* and also decision of Hon'ble Madras High Court in the case of *CIT Vs V.C. Jaichander -370 ITR 0579 (Mad)*.

4. Now the revenue is before this Tribunal in this second appeal with the grounds as noted above.

5. We have heard rival arguments and carefully perused the relevant record placed before the Tribunal. The Ld. Departmental Representative (DR) submitted that the Ld. CIT (A) has erred on the facts of the case in holding that the



assessee can claim benefit of the section 54 EC of the Act twice with respect to the same capital gains, if investment is made in two separate financial years. The Ld. DR further submitted that the Ld. CIT (A) failed to appreciate that if the gain has arisen in the one year, the deduction cannot be allowed in respect of this gain on account of investment made in the next year merely on the ground that the investment has been made within six months of arising the gain. The Ld. DR submitted that the CIT (A) has granted relief to the assessee without any basis and by considering the irrelevant facts therefore the impugned order may kindly be set aside by restoring that of the Assessing Officer.

6. Replying to the above the Ld. Counsel strongly supported the first appellate order and submitted that as per decision of Hon'ble Madras High Court in the case of CIT Vs V.C. Jaichander (Supra) and order of ITAT Ahmadabad in the case of Aspi Ginwala & Others Vs ACIT (Supra) were the assessee transfers his capital assets after 30th September of the financial year then he gets an opportunity to make an investment of Rs. 50,00,000/- each in two different financial year and able to claim exemption upto Rs. 1 Crore.

7. On careful consideration of above rival submissions and conclusion drawn by the Ld. CIT (A), as noted above, we observe that in the present case the transfer of capital asset was made on 19/10/2011 i.e. after 30/09/2011. At this stage we are also require to adjudicate the contention of the Ld. DR

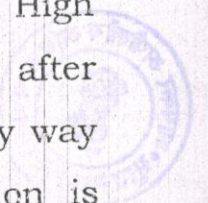


that by Finance (2) Act, 2014 the ambiguity in the section 54EC(1) of the Act has been removed by insertions of second proviso to said provision and the same has retrospective effect. In this regard, placing reliance on the decision of Hon'ble Madras High Court in the case of CIT Vs C Jaichander (supra), the Ld. Counsel contended that as para 11 of this decision the ambiguity has been removed by the legislature w.e.f. 01/04/2015 in relation to the assessment year 2015-16 and the subsequent assessment years but for present A.Y. 2012-13 said amended second proviso is not applicable and this issue has attain finality by the order of Hon'ble Madras High Court.

8. On careful consideration of above submission and respectful perusal of the decision of the Hon'ble Madras High Court (supra) para 7 to 11 we find that their Lordship after considering the amendment made to section 54EC(1), by way of insertion of second proviso, held that this provision is effective from 01/04/2015 in relation to A.Y. 2015-16 and subsequent years hence in the present case pertaining to A.Y. 2012-13 benefit of this amended provision cannot be extended as per ratio of said decision. Thus, contentions of Ld. DR in this regard are dismissed.

9. Further, as per decision of Hon'ble Madras High Court in the case of CIT Vs C. Jaichander (Supra) it was held thus: -

On a plain reading of the above said provision, we are of the view that Section 54EC(1) of the Act restricts the time limit for the period of investment after the property



has been sold to six months. There is no cap on the investment to be made in bonds. The first proviso to section 54EC(1) of the Act specifies the quantum of investment and it states that the investment so made on or after 01/04/2007 in the long term specified asset by an assessee during any financial year does not exceed fifty lakh rupees. In other words, as per the mandate of section 54EC(1) of the Act, the time limit for investment is six months and the benefit that flow from the first proviso is that if the assessee makes the investment of Rs. 50,00,000/- in any financial year, it would have the benefit of section 54EC(1) of the Act.

10. Furthermore from the decision of ITAT, Ahmadabad in the case of Aspi Ginwala & Others Vs ACIT (Supra) as per proviso to section 54EC, where assessee transfers his capital asset after 30th September of the financial year he gets an opportunity to make an investment of Rs. 50 Lakhs each in two different financial years and is still able to claim exemption upto Rs. 1 crore. Exemption u/s 54EC is duly available where there is a delay in making investment due to non-availability of the bonds. As we have noted above, the transfer of capital asset in the present case was made on 18/10/2011 therefore as per first proviso to section 54EC the assessee gets an opportunity to make an investment of Rs. 50 lakhs each in two different financial year and is entitle to claim exemption under the said provision upto Rs. 1 crore.

11. In view of foregoing discussion, when we logically analyze conclusion drawn by the Ld. first appellate authority then we

find that the appellant's case is squarely covered on all four corners by the decision of Hon'ble Madras High Court in the case of C. Jaichander (Supra) and order of Tribunal in the case of Aspi Ginwala (Supra). We are unable to see any valid reason to interfere with the conclusion drawn by the Ld. CIT (A) and hence we uphold the same. Accordingly, ground no. 1 and 2 of the revenue are dismissed. Ground no 3 & 4 are of general in nature which requires no adjudication.

In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 10/01/2018



Sd/-
(O.P. Meena)
ACCOUNTANT MEMBER

Sd/-
(C.M. Garg)
JUDICIAL MEMBER

दिनांक /Dated : 10th January, 2018

Nhanu/LDC

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file. ✓

By order


01/01/18
Sr. Private Secretary

ITAT, Surat Bench, Surat

सहायक पंजीकार
आयकर अपीलीय अधिकरण
सूरत न्यायपीठ, सूरत. ✓