

THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Ravish Sood (JM)

I.T.A. No. 4597/Mum/2019 (Assessment Year 2009-10)

Chandur B. Advani A-2, Ananta, 2 nd Floor Dr. Rajabali Patel Road Opp. Breach Candy Hospital Mumbai-400026. PAN : AAFPA0766J (Appellant)	Vs.	ITO-12(3)(1) Room No. 114 1 st Floor Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri K. Gopal
Department by	Ms. Shreekala Pardeshi
Date of Hearing	14.01.2021
Date of Pronouncement	01.03.2021

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned CIT(A) sustaining the penalty under section 271(1)(c) of the I.T. Act amounting to Rs. 9,49,777/-.

2. Brief facts of the case leading to the levy of penalty are that in the assessment order in this case the Assessing Officer made two disallowances. First was with respect to denial of claim of exemption against long term capital gains amounting to Rs. 45,83,160/- on the ground that the investment made was in excess of Rs. 50,00,000/- in a particular financial year in terms of section 54EC of the Act. In this regard observations by the Assessing Officer are as under :-

On going through the submissions submitted during the assessment proceedings for the year under consideration, it is seen that during the F.Y. 2008-09 relevant to A.Y. 2009-10, the assessee has made following investments in specified Bonds u/s. 54EC of I.T. Act, 1961.

a. Rs. 48,60,000/- in Non-Convertible Redeemable Taxable Bonds issued by National Highway Authority of India on a Long Term Capital Gain of Rs.46,10,130/- for A.Y. 2008-09 (F.Y. 2007-08).

b. Rs. 48,60,000/- in Non-Convertible Redeemable Taxable Bonds-Series-VIII issued by Rural Electrification Corporation Ltd on a Long Term Capital Gain of Rs.45,83,160/- for A.Y. 2009-10 (F.Y. 2008-09)

The assessee has made the above two investments in-accordance with the provisions of section 54EC of the Act. The Long Term Capital Gain of Rs. 45,83,160/- for A.Y. 2009-10 is claimed as exempt.

This is a very peculiar stage, where one asset was sold on 19.02.2008 i.e. during the F.Y. 2007-08 relevant to A.Y. 2008-09 and another asset was sold on 23.04.2008 i.e. during the F.Y. 2008-OS relevant to A.Y. 2009-10 which is the year under consideration. Thus, for both the capital gain transactions, investment u/s. 54EC of the I.T.Act, 1961 was made in F.Y. 2008-09 (A.Y. 2009-10) itself. Therefore, the total amount of investment in F.Y. 2008-09 (A.Y. 2009-10) being the year under consideration amounting to Rs. 97, 20, 0007- which is in excess of the upper limit of Rs. 50,00,0007- fixed for an investment u/s. 54EC of the Act. The proviso to section 54EC read as : *that the investment made on or after the 1st day of April, 2007 in the long term specified asset by an assessee during any financial year does not exceed fifty lakhs rupees.*

(ii) During the assessment proceedings, the assessee was asked to show-cause as to why the claim of exemption of LTCG of Rs. 45,83,160/- for A.Y. 09-10 should not be disallowed. In reply, the assessee vide its authorized representatives letter no. A-5/11-12/01140 stated as under:

(1) *The assessee has sold .a residential flat on February, 2008 for a consideration of Rs. 50,89,5007- and had earned capital gains thereon of Rs. 46,10,130/- on the sale of said flat. The assessee invested a sum of Rs. 48,60,000/- in Capital Gains Bonds issued by M/s. National Highway Authority .within six months and claimed the exemption u/s. 54EC of the said Act, in his return of income filed for the A. Y. 2008-09.*

(2) *The assessee then sold another residential flat on April 23, 2008 for a sale consideration of Rs. 50,89,5007- and earned capital gains thereon of Rs. 45,83,160/- on the sale of the said flat. The assessee invested Rs. 48,60,000/- being the capital gains earned in the Capital Gains Bonds issued by M/s Rural Electrification Corporation Ltd within six months and claimed the exemption u/s. 54EC of the said Act, in his return of income filed for the A. Y. 2009-10.*

(3) *The assessee had sold the said two flats in two different Financial years and the limit contained therein is applicable for every financial year and therefore the said exemption u/s. 54EC of the said Act, should be allowed in both the years. '*

The contention of the assessee is not acceptable in view of the upper limit having been specified in the proviso to section 54EC of the Act, wherein it clearly states that the investment in a particular financial year should not exceed fifty lakh rupees.

Further, the upper limit as specified in section 54EC of the I.T. Act is the limit with respect to an 'Amount' and No. of assets sold during the year'.

(iii) On going through the statement of affairs and statements of the bank accounts submitted by the assessee, it is crystal clear that the assessee has invested Rs.97,20,000/- (Rs. 48,60,000/- x 2) in a particular financial year and violated the provisions of section 54EC of the I.T. Act, 1961.

In view of the above, Long Term Capital Gain claimed exempt at Rs. 45,83,160/- is disallowed/being an investment made in excess of Rs. 50 lakhs in a particular financial year.”

3. Another addition made by the Assessing Officer was with respect to interest receipt as reflected in the ITS details. That there was shortfall of Rs. 54,822/- in interest receipts. The assessee has explained that this was by mistake and certain FDs were not accounted for in computing interest. Penalty was also levied in this regard. The assessee's plea that wrong claim u/s. 54EC was due to wrong advice of the professional was rejected by the Assessing Officer. Explanation regarding inadvertent mistake in interest income was also rejected by the Assessing Officer and penalty was levied.

4. Upon assessee's appeal learned CIT(A) reproduced Assessing Officer's observation as well as assessee's submission. Thereafter she referred to case laws and without pointing out how these case laws are relevant confirmed the penalty.

5. Against this order assessee is in appeal before us.

6. We have heard both the counsel and perused the records. As regards denial of exemption u/s. 54EC, we note that assessee's claim was denied on the sole ground that as per the provisions of the Act investments cannot exceed Rs. 50 lakhs in one financial year. Facts of the case as narrated by the Assessing Officer above clearly indicate that there was some confusion in

this regard as assessee had made two investments in two years and made one claim for both the amounts.

7. Furthermore, there was no case of concealment or furnishing inaccurate particulars as everything was disclosed. The assessee's claim can also not be said to be ex facie bogus. In these circumstances, the decision of Hon'ble Supreme Court in the case of Reliance Petro Products Pvt. Ltd., (322 ITR 158) comes to rescue the assessee. In this case it was expounded that the rejection of claim by the Assessing Officer cannot ipso facto lead to the conclusion that the assessee deserves to be visited with regours of penalty u/s 271(1)(c) of the Act.

8. Moreover, we also note that Hon'ble Supreme Court in the case of Hindustan Steel Vs. State of Orissa (83 ITR 26) through larger bench had expounded that the authorities may not levy penalty if the conduct of the assessee is not found to be contumacious. We find that on the facts and circumstances of the present case, the submissions of the assessee and explanations are not ex facie bogus or contumacious.

9. As regards the issue of shortfall in the disclosure of interest income, we find that the assessee's explanation deserves to be accepted. When interest amount is already disclosed to the Department through ITS details, there is no reason why the assessee would deliberately try to conceal the interest income. Our adjudication and reference of case laws on the earlier issues are also applicable on this issue.

10. Accordingly, in the background of the aforesaid discussion and precedent, we set aside the orders of the authorities below and direct that the penalty should be deleted.

11. In the result, this appeal by the assessee stands allowed.

Order pronounced in the open court on 1.3.2021.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 01/03/2021

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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