IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR
(Through web-based video conferencing platform)

BEFORE SHRI SANJAY ARORA, HON'BLE ACCOUNTANT MEMBER &
SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER

I.T.A. No. 31/JAB/2022
(Asst. Year: 2013-14)

Shakuntala Singhvi, 402, Bhumika Estate, Katanga Tiraha, Jabalpur. [PAN : ATUPS 2028 P]	vs.	Pr. CIT-1, Jabalpur.
(Appellant)		(Respondent)

Appellant by	:	Shri Anil Gupta, FCA
Respondent by	:	Shri Shravan Kumar, CIT-DR
Date of hearing	:	28/06/2022
Date of pronouncement	:	30/06/2022

O R D E R

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed against the Order by the Principal Commissioner of Income Tax-1, Jabalpur ('Pr. CIT', for short) under section 263 of the Income Tax Act, 1961 ('the Act' hereinafter) dated 21/03/2022, in respect of the assessee's assessment u/s. 147 read with section 143(3) of the Act dated 11/12/2019 for Assessment Year (AY) 2013-14.

2. The sole issue leading to the revision of the assessee's reassessment, proceedings for which were initiated in view of the discrepancies that came to the notice of the Assessing Officer (AO) in the assessee's share trading transactions, found to be in order in assessment, was the claim for exemption u/s. 54EC of the

Act at Rs. 100 lacs, i.e., as against at Rs. 50 lacs, at which sum, the same, in the opinion of the ld. Pr. CIT, ought to have been allowed in (re)assessment.

3. The assessee's case is that the AO had taken a plausible view, which in fact is supported by the decision of Hon'ble Madras High Court in *CIT vs. C. Jaichander & Anr.* (in TC(A) No. 419 & 533/2014, dated 15/09/2014/at PB pgs.48-51), as indeed by several orders by the Appellate Tribunal. No revision under the circumstances would lie, for which reliance is placed on the decisions in *CIT vs. Max India Ltd.* [2007] 295 ITR 282 (SC); *Malabar Industrial Co. Ltd. vs. CIT* [2000] 243 ITR 83; and *CIT vs. Mehrotra Brothers* [2004] 270 ITR 157 (MP). The Revenue's case, on the other hand, is that there has been no enquiry whatsoever by the AO during the assessment proceedings in the matter, with it being trite law that an absence of enquiry would *per se* result in the order being erroneous and prejudicial to the interests of the Revenue, liable for revision, and for which reliance is placed on the decisions in *Malabar Industrial Co. Ltd.* (supra); *CIT vs. Deepak Kumar Garg* [2008] 299 ITR 435 (MP); and *CIT vs. Himachal Pradesh Financial Corporation* [2010] 186 Taxman 105 (HP).

4. We have heard the parties, and perused the material on record.

4.1 Sub-section (1) of section 54EC, which only is relevant for our purposes, also read out during hearing, reads as under:-

> **Capital gain not to be charged on investment in certain bonds.**
>
> **54EC.** (1) Where the capital gain arises from the transfer of a long-term capital asset (the capital asset so transferred being hereafter in this section referred to as the original asset) and the assessee has, at any time within a period of six months after the date of such transfer, invested the whole or any part of capital gains in the long-term specified asset, the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—
>
> (*a*) if the cost of the long-term specified asset is not less than the capital gain arising from the transfer of the original asset, the whole of such capital gain shall not be charged under section 45;
>
> (*b*) if the cost of the long-term specified asset is less than the capital gain arising from the transfer of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of

> the long-term specified asset bears to the whole of the capital gain, shall not be charged under section 45:
>
> **Provided** 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 lakh rupees."

Second *proviso* to s. 54-EC(1) stands inserted by Finance (No.2) Act, 2014, w.e.f. 01/04/2015:

> "**Provided further** that the investment made by an assessee in the long-term specified asset, from capital gains arising from transfer of one or more original assets, during the financial year in which the original asset or assets are transferred and in the subsequent financial year does not exceed fifty lakh rupees."

4.2 The facts of the case are undisputed and borne out by the record. The assessee sold land at Wright Town, Jabalpur on 15/11/2012 for Rs. 146.94 lacs (market value Rs. 147.09 lacs), realising capital gains at Rs. 126.75 lacs, of which Rs. 100 lacs was invested in a long-term asset (being bonds issued by Rural Electrification Corporation Ltd.) investment in which qualifies for exemption u/s. 54EC, in two tranches of Rs. 50 lacs each, on 31/03/2013 and 30/04/2013 (PB pgs. 10-11), and on that basis claimed, was allowed, exemption u/s. 54EC at Rs. 100 lacs in her assessment for the relevant year. It is this allowance that is being regarded as exigible at Rs. 50 lacs only, so that the AO having not enquired in the matter, the ld. Pr. CIT set aside the assessment for fresh adjudication, to be made after making proper enquiries and in accordance with law.

4.3 We find that, the issue being legal, no error in the view taken by the AO has been pointed out by the Pr. CIT, nor the areas on which further investigation or verification/enquiry is to be made by the AO specified. As afore-noted, the facts are not in dispute and, therefore, it is not understood as to what enquiry the AO is required to make in the set aside proceedings. Rather, it is only on the admitted facts that the competent authority opines the exemption u/s. 54EC to be limited to Rs. 50 lacs. Even as observed by this Tribunal in *Jila Sahkari Kendriya Bank v. Pr. CIT* (in ITA No. 45/Jab/2022, dated 15/6/2022), the nature of the inquiry to be

made, at least specifying its broad contours, is to be clarified by the revisionary authority for it to be purposeful and qualify as a valid set aside; the relevant part of the said order reading as:

'3.2 …..So, however, it is only where the circumstance/s is such as to provoke an enquiry that an absence or lack of enquiry could be said to reflect non-application of mind, vitiating the ensuing order. The amended provision (s.263) itself conveys this to be the legislative intent, using the words "which should have been made", i.e., in relation to an enquiry or verification. *Now, ...* It is only, where so, even if *prima facie*, that the revisionary authority can be regarded as within his province to say that the AO had not examined the same, remitting it back for necessary verification. Even here, there is scope for the assessee to explain his claim on the basis of admitted facts and law, as it may well be that the revisionary authority has misconstrued or not assumed the facts correctly. In other words, there must be scope for enquiry and verification, for which the revision is being proposed to be made by the revisionary authority. Without this basic condition being met, serving as a primary check, the exercise may degenerate into a probing exercise, which could then extend to every aspect of an assessee's return. It is to be borne in mind that it is the non-application of mind, that the absence or lack of inquiry exhibits, which renders an order erroneous and, thus, liable for revision (*Malabar Indl. Co. Ltd. v. CIT* [2000] 243 ITR 83 (SC)). The words 'which should have been made' in *Explanation 2* to sec. 263, in our view, and at the cost of repetition, provide the necessary perspective and framework, suggestive of there being circumstance/s warranting enquiry by the AO, which he has failed to. No…'

4.4 The matter in the instant case, as is apparent, is rather purely legal, so that there is no scope of any inquiry. As regards the different interpretation of s. 54EC by the ld. Pr. CIT, which is the basis of his order, we find no such limitation in the (first) *proviso* to sec. 54EC(1), which (limitation) rather stands introduced w.e.f. 01/04/2015, i.e., AY 2015-16 onwards, and which itself clarifies that no such limitation obtained prior thereto. Reference, with profit, in this context, be made to the decision in *DIT vs. Mitsubishi Corporation* [2021] 438 ITR 174 (SC), explaining the relevant principle of interpretation of statues. Both the conditions, being of investment at no more than Rs. 50 lacs in any one financial year and, two, of investment in a notified asset, to be made within six months of the date of transfer (of the relevant long-term capital asset), prescribed by the section, are met, and on which aspect no doubt stands expressed by the ld. Pr. CIT. There is, in our

view, no incorrect application of law by the AO, which would render his order infirm and, thus, liable for revision u/s. 263, which accordingly fails. The impugned order is not sustainable in law, and is accordingly cancelled.

4.5 We decide accordingly.

5. In the result, the assessee's appeal is allowed.

Order pronounced in open court on June 30, 2022

Sd/-	Sd/-
(Manomohan Das)	(Sanjay Arora)
Judicial Member	Accountant Member

Dated: 30/06/2022

vr/-

Copy to:

1. The Appellant: Shakuntala Singhvi 420, Bhumika Estate Katanga, Jabalpur.
2. The Respondent: Principal CIT-1, Jabalpur
3. The CIT D.R., ITAT, Jabalpur.
4. Guard File.

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Jabalpur.