IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.491/SRT/2019

निर्धारण वर्ष/Assessment Year: (2014-15)

(Physical Hearing)

Mukesh Arvindlal Vakharia, C/O Arvind Silk Mills, Om Baug, Ashvini Kumar Road, Surat - 395006.	**Vs.**	The ITO, Ward-2(3)(3), Surat.
(Appellant)		**(Respondent)**
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **ABCPV1682L**		

Appellant by	Shri Rasesh Shah, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	29/03/2023
Date of Pronouncement	06/06/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2014-15, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-3, Surat [in short "the ld. CIT(A)"], dated 12.09.2019, which in turn arises out of an assessment order passed by Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), dated 29.03.2023.

2. The grounds of appeal raised by the assessee are as follows:

"1. That the CIT(A) erred in confirming disallowance u/s 54EC of Rs.50,00,000/- being investment in NHAI bond in F.Y. 2012 -2013 i.e. prior to date of sale which took place on 31/01/2014 though the CBDT circular No 359 dt. 10/05/1983 is quite applicable and the amendment to second proviso to Section 54EC is applicable from A.Y. 2015 -2016.

2. That the CIT(A) erred in confirming disallowance u/s 54F of Rs.48,96,993/- considering it as investment in more than one residential house in spite of the fact that the assessee owned other residential house jointly.

3. That the CIT(A) erred in confirming disallowance of expense of Rs.11,69,488/- against the taxable interest income from firm has also held by Vishnu Anant Mahajan (2012) 22 Taxmann.com (88) (Ahd SB)

4. That all additions of Rs.50,00,000/-, Rs.48,96,993/- & Rs.11,69,488/- may kindly be deleted.

5. The assessee craves leave to add, amend, alter, vary and/ or withdraw any or all the above grounds of Appeal."

3. Now, we shall take these grounds one by one.

4. Ground No. 1 raised by the assessee relates to disallowance u/s 54EC of Rs.50,00,000/- being investment in NHAI bond in F.Y. 2012 -2013 i.e. prior to date of sale which took place on 31/01/2014 though the CBDT circular No 359 dated 10/05/1983 is quite applicable and the amendment to second proviso to section 54EC is applicable from A.Y. 2015 -2016.

5. Brief facts of the issue in dispute are stated as under. During the assessment proceedings, assessing officer observed that assessee has claimed deduction u/s 54EC of the Act to the tune of Rs.1,00,00,000/-. The assessee claimed deduction u/s 54EC of Rs.50,00,000/- as on 31.01.2013 though the transfer of capital assets took place on 28.01.2014. The assessing officer noted that as per the provision of section 54EC of the Act, the assessee is entitled for deduction only when the investment has been made within 6 Months after the date of transfer and in this case the assessee has made investment of Rs.50,00,000/- on 31.03.2013, which is before the date of transfer and therefore the assessing officer was of the view that assessee is not entitled to claim exemption u/s 54EC of the Act. Therefore, assessing officer asked the assessee to explain the transaction. In response, the assessee submitted before the assessing officer that the investment was made out of the advance money received on 25.03.2013 and 28.3.2013, therefore the advance money is part of receipt and allowable to qualify for u/s 54EC of the Act. However, the assessing officer rejected the contention of the assessee and the claim of assessee for deduction under section 54EC of the Act, was restricted Rs.50,00,000/- as against Rs.1,00,00,000/- claimed in the return of income, holding that if assessee purchased bond prior of date of sale of property, exemption under section 54EC

is not available. This way, assessee disallowed exemption u/s 54EC of the Act to the tune of Rs.50,00,000/-.

6. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has confirmed the action of the Assessing Officer. Aggrieved by the order of Ld. CIT(A), the assessee is in further appeal before us. Shri Rasesh Shah, Learned Counsel for the assessee at the outset submitted that assessee has raised the additional ground in respect of deduction under section 54EC of the Act which is kind of a sub-ordinate ground emanating from the main ground of the assessee, which is reproduced below:

> *"On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in passing assessment order after full scrutiny although the case was selected for scrutiny for limited purpose (may be for verification of the claim made by the assessee u/s 54EC. The assessment order passed is therefore invalid and is required to be quashed."*

7. The Ld. Counsel for the assessee also submitted written submission in respect of ground no.1, which is reproduced below:

> *"**Disallowance u/s 54EC of Rs.50,00,000/-***
> ***Facts:***
> *7. The assessee sold the property on 31.01.2014. The assessee made the investment in NHAI bonds of Rs.50,00,000/- on 31.03.2013 and further Rs.50,00,000/- on 31.03.2014. So, assessee made the investment of Rs.50,00,000/- each in two financial years and therefore the condition of S. 54EC read with first proviso to S. 54EC(1) is complied. The assessee has invested Rs. 50,00,000/- initially out of the advance money received of Rs.25,00,000/- each received on 25.03.2013 and 28.03.2013 totalling to Rs.50,00,000/-. In the sale deed, the details of the consideration of Rs.50,00,000/- received by the assessee are mentioned with amount, name of the bank, cheque no. and date. The assessing officer didn't allow the claim of deduction of Rs.50,00,000/- in regard to the investment made on 31.03.2013 in NHAI bond on the ground that assessee made the investment before date of the sale relying on the decision of the Honourable ITAT, Ahmedabad Bench in the case of Smt. Dakshaben R. Patel vs. ACIT (2012) 22 taxmann.com 237 (Ahd. Trib.). The ld. CIT(A) confirmed the addition on the same reason.*
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> ***Arguments:***
> *8. The strong reliance is placed on the circular of CBDT No. 359(F.No.207/8/82.IT (A.11) dated 10.05.1983. This circular is in regard to the S. 54E but the principles hold good in regard to the deduction u/s 54EC.*
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> *9. As per the assessee, the investment is required to be made within 6 months from the date of receipt of sales consideration on the basis of the decision of*

Honourable Tribunal in case of Mr. Lemes E. D' souza v/s. ITO - ITA No. 5802/Mum/2013. Further as per the assessee, the limit of Rs.50 lacs is to be considered in each financial year on the basis of the following judgments of the High Courts:

i. CIT vs Subhash Vinayak Supnekar [77 taxmann.com 226] (Bombay HC)-
ii. CIT vs Coramandel Industries Ltd. [370 ITR 0586] (Madras HC)
iii. CIT vs C. Jaichander [370 ITR 0579] (Madras HC)

10. Even if we assume that the two views are possible, the view which is in the favour of the assessee should be adopted in view of the Supreme Court decision in the case of CIT vs. Vegetable Products Ltd. [1973] 88 ITR 192 (SC).

11. The amendment has been made in S. 54EC by Finance Act (No. 2) 2014 w.e.f. 01.04.2015. As per this, the deduction u/s 54EC is allowable only upto Rs.50,00,000/- as per the second proviso to S. 54EC(1). However, this proviso was inserted w.e.f. 01.04.2015 and therefore it is not applicable to A.Y. 2014-15. The reliance is placed on the decision of the Madras High Court in case of CIT vs Coramandel Industries Ltd. cited supra.

12. The case cited of Ahd ITAT is distinguished and not applicable to the facts of present case in view of the fact that in Ahd bench case there was no advance money received and the applicability of CBDT Circular No.359 (F. No.207/8/82.IT) dated 10.05.1983 was not brought on record wherein it is claimed that "as section 54E contemplated investment of the net consideration in specified assets for a minimum period and as the earnest money/advance as a part of the sale consideration, if executed in the specified assets before the date of sale deed, the amount so invested would qualify for deduction under section 54E. Although this circular is issued in relation to S. 54E it should be equally applicable to S. 54EC also."

8. On the other hand, the Ld. DR for the Revenue, argued that assessee has purchased bond of Rs.50,00,000/- prior of date of sale of property, therefore exemption under section 54EC of the Act, should be disallowed.

9. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the ld. CIT(A) and other material brought on record. We note that assessee sold the property on 31.01.2014 and made the investment in NHAI bonds of Rs.50,00,000/- on 31.03.2013 and further Rs.50,00,000/- on 31.03.2014. Therefore, assessee made the investment of Rs.50,00,000/- each in

two financial years and therefore the condition of section 54EC read with first proviso to section 54EC(1) is complied with by the assessee.

10. The assessee has invested Rs. 50,00,000/- initially out of the advance money received of Rs.25,00,000/- each received on 25.03.2013 and 28.03.2013 totalling to Rs.50,00,000/-. In the sale deed, the details of the consideration of Rs.50,00,000/- received by the assessee are mentioned with amount, name of the bank, cheque number and date. The assessing officer did not allow the claim of deduction of Rs.50,00,000/- in regard to the investment made on 31.03.2013 in NHAI bond on the ground that assessee made the investment before the date of the sale. We note that Hon`ble High Court of Madras in the case of C. Jaichander, [2015] 53 taxmann.com 466 (Madras) held that where assessee invested a sum of Rs. 50 lakhs each in two different financial years, within a period of six Months from date of transfer of capital asset, the assessee is eligible for deduction under section 54EC of the Act. The findings of the Hon`ble Court are reproduced below:

> *"**3.2** It is stated that the assessee sold a property at Palavakkam for a sale consideration of Rs.3,46,50,000/- vide agreement of sale dated 18.2.2008 entered into with the Ceebros Property Developments. The appellant invested Rs.1,00,00,000/- out of the sale proceeds in certain bonds in two financial years, namely, Rs.50,00,000/- in Rural Electrification Corporation Bonds in the financial year 2007-2008 and Rs.50,00,000/- in National Highways HAI Bond in the financial year 2008-2009.*
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> ***3.3** The Assessing Officer held that the assessee can take the benefit of investment in specified bonds to a maximum of Rs.50,00,000/- only under Section 54EC(1) of the Act and accordingly, held that the other sum Rs.50,00,000/- invested over and above the ceiling prescribed does not qualify for exemption in terms of the Act.*
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> ***3.4** The appeal preferred by the assessee did not find favour with the Commissioner of Income Tax (Appeals), who confirmed the order of the Assessing Officer in this regard. Calling into question the said order, the assessee preferred appeal to the Tribunal. The Tribunal held that the exemption granted under provisio to Section 54EC(1) of the Act should be construed not transaction-wise, but financial year-wise. It further held that if an assessee is able to invest a sum of Rs.50,00,000/- each in two different financial years, within a period of six months from the date of transfer of the capital asset, it cannot be said to be inadmissible. The relevant portion of the said order reads as under:*

"8. The first condition mentioned in Section 54EC(1) is that the investment has to be made within a period of six months from the date of transfer of capital asset. Since the date of transfer in the given is 18.2.2008, six months period will elapse on 17.8.2008. Assessee had purchased REC Bonds worth of Rs.50 lakhs on 27.2.2008 and Bonds of NHAI for Rs.50 lakhs on 30.6.2008. Both these purchases were within the six months' period. Only question that arises is whether proviso to Section 54EC(1) would limit the claim of exemption to Rs.50 lakhs. Said proviso mentions that investment on which an assessee could claim exemption under Section 54EC(1) shall not exceed Rs.50 lakhs during a financial year. So, the exemption provision has to be construed not transaction-wise but, financial year-wise. No doubt, Explanatory Memorandum does say that limitation has been placed with a view to ensure equitable distribution of benefits among the prospective investors. Relevant Explanatory Memorandum is reproduced for brevity:—

'The quantum of investible bonds issued by NHAI and REC being limited, it was felt necessary to ensure that the benefit was available to all the investors. For this purpose, it was necessary to ensure that the limited number of bonds available for subscription is also available for small investors. Therefore, with a view to ensure equitable distribution of benefits amongst prospective investors, the government decided to impose a ceiling on the quantum of investment that could be made in such bonds. Accordingly, the said section has been amended so as to provide for a ceiling on investment by an assessee in such long-term specified assets. Investments in such specified assets to avail exemption under section 54EC, on or after the 1st day of April, 2007 will not exceed fifty lakh rupees in a financial year.

'Last sentence of the Explanatory Memorandum clearly states that the exemption for investment cannot exceed Rs.50 lakhs in a financial year. Therefore, if the assessee is able to keep the six months' limit from the date of transfer of capital asset, but, still able to place investment of Rs.50 lakhs each in two different financial years, we cannot say that the restrictive proviso will limit the claim to Rs.50 lakhs only. Since assessee here had placed Rs.50 lakhs in two different financial years but within six months period from the date of transfer of capital asset, assessee was definitely eligible to claim exemption upto Rs.1 Crore. The same view has been taken by Ahmedabad Bench of this Tribunal in the case of Aspi Ginwala & Others v. ACOT (52 SOT 16). We are, therefore, of the opinion that the assessee has to succeed in this appeal. Claim of the assessee for exemption upto Rs.1 Crore has to be allowed in accordance with Section 54EC of the Act."

3.5 *Assailing the said order dated 31.1.2013 made in I.T.A.No.1950/Mds/2012 passed by the Tribunal, the department filed T.C.(A) No.533 of 2014 raising the substantial questions of law, referred supra.*

3.6 *Subsequently, another co-ordinate bench of the Tribunal, by placing reliance on the above said order dated 31.1.2013 made in I.T.A.No.1950/Mds/2012 in the case of Smt. Sriram Indubal v. ITO [2013] 32 taxmann.com 118 (Channai - Trib.), allowed the appeal filed by the assessee (C.*

Jaichander) in I.T.A.No.456/Mds/2013, by order dated 1.11.2013. Aggrieved by the said order, the department filed T.C.(A) No.419 of 2014 raising the substantial questions of law, referred supra.

4. *We have heard Mr. J. Narayanasamy, learned Senior Standing Counsel appearing for the Revenue; Mrs. Pushya Sitaraman, learned Senior Counsel appearing for the respondent in T.C.(A) No.419 of 2014 and Mr. R. Vijayaraghavan, learned counsel appearing for the respondent in T.C.(A) No.533 of 2014.*

5. *The key issue that arises for consideration is whether the first proviso to Section 54EC(1) of the Act would restrict the benefit of investment of capital gains in bonds to that financial year during which the property was sold or it applies to any financial year during the six months period.*

6. *For better understanding of the issue, it would be apposite to refer to Section 54EC(1) of the Act, which reads as under:*

> *"Section 54EC. Capital gain not to be charged on investment in certain bonds.— (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."*

7. *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 1.4.2007 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 flows 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.

8. *The legislature noticing the ambiguity in the above said provision, by Finance (No.2) Act, 2014, with effect from 1.4.2015, inserted after the existing proviso to sub-section (1) of Section 54EC of the Act, a second proviso, which reads as under:*

> *"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."*

9. *At this juncture, for better clarity, it would be appropriate to refer to the Notes on Clauses - Finance Bill 2014 and the Memorandum explaining the provisions in the Finance (No.2) Bill, 2014, which read as under:*

> *"Notes on Clauses - Finance Bill 2014:*
>
> *Clause 23 of the Bill seeks to amend section 54EC of the Income-tax Act relating to capital gain not to be charged on investment in certain bonds. The existing provisions contained in sub-section (1) of section 54EC provide that where capital gain arises from the transfer of a long-term capital asset and the assessee has within a period of six months invested the whole or part of capital gains in the long-term specified asset, the proportionate capital gains so invested in the long-term specified asset out of total capital gain shall not be charged to tax. The proviso to the said sub-section provides that the investment made in the long-term specified asset during any financial year shall not exceed fifty lakh rupees.*
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> *It is proposed to insert a proviso below first proviso in said sub-section (1) so as to provide 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.*
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> *This amendment will take effect from 1st April, 2015 and will, accordingly, apply in relation to assessment year 2015-16 and subsequent years.*
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> *Memorandum: Explaining the provisions in the Finance (No.2) Bill, 2014:*
>
> *Capital gains exemption on investment in Specified Bonds.*
>
> *The existing provisions contained in sub-section (1) of section 54EC of the Act provide that where capital gain arises from the transfer of a long-term capital asset and the assessee has, at any time within a period of six months, invested the whole or any part of capital gains in the long-term specified asset, out of the whole of the capital gain, shall not be charged to tax. The proviso to the said sub-section provides that the investment made in the long-term specified asset during any financial year shall not exceed fifty lakh rupees.*

However, the wordings of the proviso have created an ambiguity. As a result the capital gains arising during the year after the month of September were invested in the specified asset in such a manner so as to split the investment in two years i.e., one within the year and second in the next year but before the expiry of six months. This resulted in the claim for relief of one crore rupees as against the intended limit for relief of fifty lakhs rupees.

Accordingly, it is proposed to insert a proviso in sub-section (1) so as to provide that the investment made by an assessee in the long-term specified asset, out of capital gains arising from transfer of one or more original asset, 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.

This amendment will take effect from 1st April, 2015 and will, accordingly, apply in relation to assessment year 2015-16 and subsequent assessment years."

10. *The legislature has chosen to remove the ambiguity in the proviso to Section 54EC(1) of the Act by inserting a second proviso with effect from 1.4.2015. The memorandum explaining the provisions in the Finance (No.2) Bill, 2014 also states that the same will be applicable from 1.4.2015 in relation to assessment year 2015-16 and the subsequent years. The intention of the legislature probably appears to be that this amendment should be for the assessment year 2015-2016 to avoid unwanted litigations of the previous years. Even otherwise, we do not wish to read anything more into the first proviso to Section 54EC(1) of the Act, as it stood in relation to the assessees.*

11. *In any event, from a reading of Section 54EC(1) and the first proviso, it is clear that the time limit for investment is six months from the date of transfer and even if such investment falls under two financial years, the benefit claimed by the assessee cannot be denied. It would have made a difference, if the restriction on the investment in bonds to Rs.50,00,000/- is incorporated in Section 54EC(1) of the Act itself. However, the ambiguity has been removed by the legislature with effect from 1.4.2015 in relation to the assessment year 2015-16 and the subsequent years.*

For the foregoing reasons, we find no infirmity in the orders passed by the Tribunal warranting interference by this Court. The substantial questions of law are answered against the Revenue and these appeals are dismissed. No costs."

11. On the identical facts, our view is fortified by the judgment of Hon`ble High Court of Bombay, in the case of Subhash Vinayak Supnekar [2017] 77 taxmann.com 226 (Bombay), wherein it was held that when amount received as advance under an agreement to sell a capital asset is invested in specified bonds, benefit of section 54EC is available to assessee. We note that the case law referred by the assessing officer in the case of Smt. Dakshaben R. Patel Vs. ACIT (2012) 22 taxmann.com 237 (Ahd. Trib.) is distinguishable on facts and

not applicable to the facts of assessee`s case in view of the fact that in said case there was no advance money received and the applicability of CBDT Circular No.359 (F. No.207/8/82.IT) dated 10.05.1983 was not brought on record wherein it is claimed that "as section 54E contemplated investment of the net consideration in specified assets for a minimum period and as the earnest money/advance as a part of the sale consideration, if executed in the specified assets before the date of sale deed, the amount so invested would qualify for deduction under section 54E. Although this circular is issued in relation to section 54E, however it should be equally applicable to section 54EC of the Act also. Therefore, based on these facts and circumstances of the case, we allow ground No.1 raised by the assessee.

12. In the result, ground No.1 raised by the assessee is allowed.

13. Ground No.2 raised by the assessee relates to disallowance u/s 54F of Rs.48,96,993/- considering it as investment in more than one residential house, in spite of the fact that the assessee owned another residential house jointly.

14. Succinct facts qua ground No.2 are that during the assessment proceedings the assessing officer observed that assessee had claimed deduction u/s 54F of the Act to the tune of Rs.48,96,993/-. The assessing officer held that assessee is not entitled to the deduction u/s 54F of the Act as assessee owned more than one house. The assessee submitted reply before the assessing officer stating that assessee is joint owner in other houses, therefore he is entitled to claim deduction u/s 54F of the Act. However, the assessing officer rejected the contention of the assessee and observed that as per the details submitted by the assessee, the assessee owned 3 properties and therefore the claim of the assessee was rejected u/s 54F of the Act at Rs.48,96,993/-.

15. On appeal, ld CIT(A) confirmed the action of the assessing officer. Aggrieved, the assessee is in further appeal before us. Learned Counsel for the assessee argued that where assessee held the property jointly with his other family members in equal proportion, it cannot be said that assessee is the owner of the house property at the time of the sale for availing the deduction u/s 54F of

the Act, therefore assessee is entitled to claim deduction under section 54F of the Act.

16. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

17. We have given our thoughtful consideration to rival contention. We have perused case file as well as paper books furnished by assessee. We note that assessee claimed deduction u/s 54F of the Act to the tune of Rs.48,96,993/- on the ground that assessee owns only one house at the Oberoi Palace Housing Society in this name at the time of the sale. It is the contention of the assessee that the other two properties are owned jointly with others and therefore it is not required to be considered for the purpose of condition of section 54F of the Act. The assessing officer relied on the order of the Hon`ble Supreme Court in the case of M. J. Siwani v/s. CIT - 53 taxmann.com 318 (SC) where the SLP filed by the taxpayer was dismissed. The ld Counsel stated that by way of the SLP, the Hon`ble Supreme Court did not concur with the finding of the Hon`ble Karnataka High Court in the case of CIT v/s. M. J. Siwani - 366 ITR 356 (Kar.). Mere dismissal of the SLP does not constitute the judgment by the Supreme Court in the favour of the revenue. The ld Counsel placed reliance on the following judgments:

i. Khoday Distilleries Ltd. vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd. – Civil Appeal No. 2432/2019
ii. Smt. Tej Kumari vs. CIT (2001) 247 ITR 210 (Patna HC)

18. The ld Counsel further submitted that Hon`ble Madras High Court in case of Dr. (Smt.) P. K. Vasanthi Rangarajan Vs. CIT (2012) 23 taxmann.com (299) wherein it was held that where the assessee held the property jointly with her husband in equal proportion, it cannot be said that she is the owner of the house property at the time of the sale for availing the deduction u/s 54F of the Act. It is to be noted that w.e.f. 01.04.2001, there was the amendment in section 54F to

the effect that assessee could be owner of one house at the time of the sale. Here in the case of the assessee he was sole owner of only one house and other houses under the joint ownership are not required to be considered as per the judgment of the Hon`ble Madras High Court in case of Dr. (Smt.) P. K. Vasanthi Rangarajan (supra).

19. We also note that on the identical facts, the Coordinate Bench of ITAT Mumbai, in the case of Ashok G. Chauhan, [2019] 105 taxmann.com 204 (Mumbai - Trib.) held that where Assessing Officer rejected assessee's claim for deduction under section 54F of the Act, on ground that at time of sale of capital asset, assessee was owner of more than one residential house properties, in view of fact that one residential property was co-jointly owned in name of assessee and his wife and he could not be treated as 'absolute owner' of said property, deduction under section 54F could not be denied to him. We note that Hon`ble Supreme Court in the case of CIT vs. Vegetable Products Ltd, 88 ITR 192(SC) held that if two reasonable constructions of a taxing provision are possible that construction which favours the assessee must be adopted. Therefore, respectfully following the judgment of the Hon`ble Madras High Court in case of Dr. (Smt.) P. K. Vasanthi Rangarajan (supra), we allow ground No.2 raised by the assessee.

20. Ground No.3 raised by the assessee relates to confirming the disallowance of expense of Rs.11,69,488/- against the taxable interest income from firm.

21. Succinct facts qua the issue are that during the assessment proceedings, the assessing officer observed that the assessee has shown interest income of Rs.5,04,979/- from firm Arvind Silk Mills and against it has claimed expenses of Rs.11,69,488/- resulting into loss of Rs.6,64,509/-. The assessing officer noticed that the assessee was having only interest income from firm but had claimed expenses in nature which were depreciation, petrol, insurance etc. which are nowhere related to earning interest income and therefore assessing officer disallowed the expense of Rs.11,69,488/-.

22. On appeal, ld CIT(A) confirmed the action of the assessing officer, therefore assessee is in further appeal before us. The Learned Counsel for the assessee, at the outset, argued that during the assessment stage, the assessing officer has not given proper opportunity to the assessee to explain the nature of such expenses. These expenses are very much connected with assessee`s business and the assessee have cogent evidence with him to prove the genuineness of these expenses provided an opportunity to explain the nature of expenses is granted to the assessee to plead this issue before assessing officer. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

23. We have heard both the parties. We note that Assessing officer disallowed the expenses on the ground that personal expenses are not allowable. The Id. CIT(A) confirmed the addition stating that assessee did not make any submission during the appellate proceedings on this issue. Although, we note that assessee filed the detailed submission on this issue before ld CIT(A), however, ld CIT(A) ignored the same. Assessing officer in para no. 12 of assessment order observed that personal expenditure are not allowable without pinpointing the personal element in the above expenses. Assessing officer never doubted the genuineness of expenses nor the nature of business income against which it was claimed. The assessing officer simply made addition without pinpointing the personal taint especially when the assessee has debited withdrawal of Rs.3,27,298/- for personal purpose separately. Thus, we note that the main grievance of the ld Counsel is that assessee was not granted sufficient opportunity to explain the nature of these expenses. We note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. Therefore, without delving much deeper into the merits of the case, in the interest of justice, we restore the matter back to the file of assessing officer for de novo adjudication and pass a speaking order after affording sufficient opportunity of being heard to the assessee, who in

turn, is also directed to contest his stand forthwith. For statistical purposes, ground No.3 raised by the assessee is allowed.

24. In the combined result, assessee`s appeal is partly allowed for statistical purposes.

Order pronounced on 06/06/2023 in the open court.

Sd/-	**Sd/-**
(PAWAN SINGH)	**(Dr. A.L. SAINI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

सूरत /Surat
दिनांक/ Date: 06/06/2023
SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat