IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'B' BENCHES :: PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER &
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No.2127/PUN/2017
(A.Y. 2014-15)

ACIT, Circle-6, Pune.	vs	Ghanshyam M. Kachi, 1101, Raviwar Peth, Pune-411 002 PAN: AQWPK 4253 H
Appellant/Revenue		Respondent/Assessee

C.O.No. 11/PUN/2021
(Arising out of ITA No.2127/PUN/2017)
(A.Y. 2014-15)

Ghanshyam M. Kachi, 1101, Raviwar Peth, Pune-411 002 PAN: AQWPK 4253 H	vs	ACIT, Circle-6, Pune.
Applicant/assessee		Respondent/Revenue

Assessee by	:	Shri Vijay D. Kendhe, CA
Revenue by	:	Shri M.G. Jasnani, DR
Date of hearing	:	01/07/2023
Date of pronouncement	:	17/07/2023

O R D E R

Per Bench:

The appeal by the Revenue and the Cross Objection (CO) by the assessee emanates from the order of Commissioner of Income Tax (Appeals)-4, Pune, dated 25.05.2017 for A.Y.2014-15.

2. This is a recalled matter and the original order of the Tribunal dated 06/04/2022 was passed *ex-parte* and it was contended by the assessee in MA filed that he was not aware of the preponement of the

date of hearing of the case, for which he could not appear on the date of hearing and resultantly, the order passed by the Tribunal was *ex-parte.* That, after hearing the submissions, the Tribunal had recalled its earlier order and that is how, the case has come up before the present bench.

ITA No.2127/PUN/2017 - By Revenue

3. First we shall take up the Revenue's appeal in ITA No.2127/PUN/ 2017 for A.Y. 2014-15 for adjudication as per the following grounds of appeal:-

> *"1. On the facts and in the circumstances of the case the Ld CIT(A) has erred in allowing Rs.17,00,000/- being amount of commission paid by the assessee which were not supported by evidence and confirmation.*
>
> *2. On the facts and in the circumstances of the case the Ld CIT(A) has erred in deleting the addition of Rs.35,40,600/- made by the Assessing officer on account of Indexed Cost of Improvement which was not proved by genuine evidence or bills.*
>
> *3. On the facts and in the circumstances of the case the Ld CIT(A) has erred in deleting the addition of Rs.2,94,79,600/- made by the Assessing officer on account of disallowance of claim u/s 54F of the Act though the appellant did not qualify for conditions laid down there under.*
>
> *4. On the facts and in the circumstances of the case the Ld CIT(A) has erred in deleting the addition of Rs.50,00,000/- made by the Assessing Officer on account of disallowance of deduction u/s 54EC of the Act, though the proviso under specify the upper limit of 50 lakh.*
>
> *5. For these and such other grounds as may be urged at the time of hearing, the order of the Ld. CIT(A) may be vacated and that of the Assessing Officer be restored.*
>
> *6. The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal during the course of appellate proceedings before the Hon'ble Tribunal."*

4. The relevant facts are that assessee is an individual, filed his

return of income for A.Y. 2014-15 on 31/07/2014 declaring total income of Rs. 10,64,14,400/-. Against the returned income filed, the assessment was completed by the Assessing Officer (AO) vide order dated 29/08/2016 passed u/sec.143(3) of the Act determining total income at Rs.14,11,34,600/-. While doing so, the AO made several disallowances. The brief background of the disallowances is as under:-

During the previous year relevant to the assessment year under consideration, the assessee had sold immovable property being land admeasuring 02 acres situated at S.No.59/1/3 to one Mr. Valiullah Rahmen Shariff for a consideration of Rs.14,64,48,000/- which was received in the form of Rs.10 crores by cheque and 26000 sq.ft. built-up constructed area. While computing the capital gains, the assessee claimed (i) commission expenses of Rs.17,00,000/- as cost of sale, (ii) indexed cost of improvement of Rs.35,40,600/-, (iii) deduction u/s 54F of Rs.2,94,79,600/- and (iv) deduction u/s 54EC of Rs.50,00,000/-. While completing the assessment, the AO disallowed the commission expenses of Rs.17,00,000/- for want of confirmations from the persons to whom the commission payment was stated to have been made. Similarly, in respect of indexed cost of improvement of Rs.35,40,600/- the AO had disallowed the same for want of proof, as the assessee produced only xerox copy of the bills which were self-made and no proof of payment and source of payment were filed. That, as regards the claim of deduction u/sec. 54F amounting to Rs.2,94,79,600/-, the

AO had denied the benefit on the ground that there was no agreement to purchase the property as well as the housing project has not commenced. As regards the claim of exemption u/s 54EC amounting to Rs.50,00,000/-, the AO disallowed the claim for exemption u/sec.54EC in respect of second installment of Rs.50,00,000/- made on 27.08.2014 by holding that the assessee is entitled for deduction u/sec. 54EC only to the extent of Rs.50,00,000/-.

5. Being aggrieved by the aforesaid assessment, the assessee filed appeal before the ld. CIT(A), who had deleted all the disallowances as per reasoning appearing in his order.

6. Being aggrieved by the decision of the ld. CIT(A), the Revenue is in appeal before us. Ground No.1 of the Revenue's appeal is against the decision of ld. CIT(A) deleting the disallowance of commission of Rs.17,00,000/- claimed as deduction while computing the cost of sale of land. The AO had disallowed the same for want of details and confirmation of the payments. However, before the ld. CIT(A), assessee submitted that the expenses being share of stamp duty expenses as borne by the assessee. This contention of the assessee was accepted by the ld.CIT(A) without examining any evidence etc. We have perused the order of the ld. CIT(A) and therein, there is no discussion as to the evidences/documents furnished before him by the assessee demonstrating the share of stamp duty expenses. We

further observe that the ld. CIT(A) in his order is absolutely silent as to how share of stamp duty expenses would be allowable while computing the capital gains. At the time of hearing also, ld.AR of the assessee could not justify such share of stamp duty expenses and neither could place on record any evidence to show regarding the claim made by the assessee. In view of these facts and circumstances, we are not in conformity with the findings of the ld. CIT(A) on this issue and since he has come to a conclusion without examination of any evidence and also has failed to provide specific reasons regarding the allowability of share of stamp duty expenses while computing capital gains, the findings of the ld. CIT(A) are therefore, reversed and the addition of Rs.17,00,000/- made by the Assessing Officer is restored. Ground no.1 of Revenue's appeal stands allowed.

7. In Ground No.2, the Revenue is aggrieved with the decision of the ld.CIT(A) allowing the indexed cost of improvement of Rs.35,40,600/- while computing the capital gains. The AO has provided categorical finding in the assessment order disallowing the same on the ground that only xerox copy of self-made vouchers of the expenditure were submitted by the assessee and no proof of payment and source of such payment were filed before the AO. The ld. CIT(A), *per contra*, has deleted the addition by holding that such addition was made by the AO merely on suspicion, doubts and surmises without bringing any concrete evidence, simply rejecting the contentions of the

assessee. We are of the considered view that the onus always lies upon the assessee who seeks deduction of expenses. The assessee has to prove the genuineness of the expenditure claimed towards indexed cost of improvement. In this case, the assessee has failed to prove the genuineness of the expenditure and, therefore, it was not correct, judicially, for ld. CIT(A) allowing the indexed cost of improvement made to the asset sold. We do not find any merit in the findings of the ld. CIT(A) on this issue and the same is reversed. Ground No.2 of appeal of the Revenue stands allowed.

8. Regarding the allowing of exemption u/s 54F, the findings of the ld. CIT(A) is devoid and bereft of any merit allowing benefit of exemption u/sec. 54F of the Act, which is therefore reversed and accordingly, the ground of appeal no.3 filed by the Revenue stands allowed.

9. As regards deduction u/sec. 54EC, the issue is covered by the decision of Hon'ble Madras High Court in the case of *CIT vs. Coromandal Industries Limited* in Tax Case Appeal No.443/2014, dated 16.12.2014, wherein the Hon'ble High Court has held as under :-

> *"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.

.....

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." (emphasis supplied)

10. That, in view of the aforesaid judicial pronouncement of the Hon'ble Madras High Court, the issue stands covered in favour of the assessee and, therefore, there is no need for any interference with the order of the ld. CIT(A) on this issue. Ground of appeal No.4 of the Revenue stands dismissed.

11. In the result, the appeal of the Revenue in ITA No.2127/PUN/2017 stands partly allowed.

C.O.No. 11/PUN/2021 – By assessee

12. This cross objection filed by the assessee is time barred, by 22 months. The assessee has filed an affidavit seeking condonation of delay in filing this cross objection. We have observed the contents in the condonation of delay petition and have given considerable thought to the same, however, in our considered view the assessee has not stated any justifiable, cogent and reasonable cause for late filing of this cross objection with a delay of 22 months. The law of limitation has to be construed strictly as per the direction of the Hon'ble Apex Court and it can only be given concession in certain cases where the assessee is a *bonafide* assessee and the reasons for delay so explained should not attribute to any deliberate and intentional misconduct on the part of the assessee. That, further such reasons, should be justifiable and cogent reasons. In this case, the assessee has neither substantiated through reasonable cogent reasons nor has corroborated the same with any documentary evidence the delay of 22 months in filing this cross objection and, hence, the CO filed by the assessee stands dismissed.

13. In the result, cross objection filed by the assessee stands dismissed.

14. In the combined result, appeal of the Revenue is partly allowed and the CO filed by the assessee is dismissed.

Order pronounced in open Court on 17th July, 2023.

Sd/-	Sd/-
(INTURI RAMA RAO)	(PARTHA SARATHI CHAUDHURY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated : 17th July, 2023
vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
5. The DR, ITAT, "B" Bench Pune.
6. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.