

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "A" BENCH  
**Before: Smt. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 949/Ahd/2023  
Asst Year 2011-12**

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| Rajendra Harjivandas<br>Prajapati,<br>25, Nandigram Society,<br>Nr. Railway Crossing,<br>Nr. Vedhshala,<br>Naranpura,<br>Ahmedabad-380013.<br><b>PAN: AAWPP1180G<br/>(Appellant)</b> | Vs | The DCIT,<br>Circle-2(2)<br>Ahmedabad.<br><br><b>(Respondent)</b> |
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**And**

**ITA No.822/Ahd/2019  
Asst Year 2011-12**

|   |    |  |
|---|----|--|
| The ACIT,<br>Circle-2(2),<br>Ahmedabad.<br><br><b>(Appellant)</b> | Vs | Rajendra Harjivandas<br>Prajapati,<br>25, Nandigram Society,<br>Nr. Railway Crossing,<br>Nr. Vedhshala,<br>Naranpura,<br>Ahmedabad-380013.<br><b>PAN: AAWPP1180G<br/>(Appellant)</b> |
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**Assessee Represented: Shri Dhinal Shah, AR  
Revenue Represented: Ms. Saumya Pandey Jain, Sr-DR**

Date of hearing : 10-04-2024  
Date of pronouncement : 05-07-2024

**आदेश/ORDER**

**PER T.R SENTHIL KUMAR, JUDICIAL MEMBER:-**

These cross appeals are filed by the Assessee and the Revenue as against the appellate order dated 05.03.2019 passed

by the Commissioner of Income Tax(Appeals)-10, Ahmedabad arising out of the order passed under section 143(3) r.w.s 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2011-12.

2. The brief facts of the case is that the assessee is an individual deriving income from business and capital gain. For the Asst. Year 2011-12, the assessee filed his Return of Income wherein assessment was completed u/s.143(3) of the Act, by passing Assessment Order dated 21.02.2014, determining total income at Rs. 28,53,050/-. Latter the assessment was revised u/s.263 of the Act on the grounds that the assessee has claimed deduction u/s.54EC of the Act amounting to Rs.1.5 crore on account of investment in REC bonds against long-term capital gains of Rs.804.42 lakh from the sale of 3 pieces of land which are as follows:

| <i>Sr No</i> | <i>Land</i>                                | <i>Sale dated</i> | <i>Sale value</i>  | <i>L.T.C.G</i>     | <i>Date of Investment</i> | <i>Amt. Of Investment</i> |
|--------------|--|-------------------|--------------------|--------------------|---------------------------|---------------------------|
| 1.           | <i>Agri Land at Sr No. 500, 502, 502/2</i> | <i>12/10/2010</i> | <i>8,01,33,055</i> | <i>7,99,31,951</i> | <i>31/03/2010</i>         | <i>50,00,000</i>          |
| 2.           | <i>Agri Land at No 8 Block</i>             | <i>24/06/2010</i> | <i>3,63,900</i>    | <i>3,26,421</i>    | <i>21/07/2010</i>         | <i>5,00,000</i>           |
| 3.           | <i>Agri. Land at No. 6 Block</i>           | <i>24/06/2010</i> | <i>2,07,400</i>    | <i>1,83,327</i>    | <i>08/04/2011</i>         | <i>50,00,000</i>          |

3. The said claim was allowed by the AO. On scrutiny of the assessment order it was revealed that the REC bonds for Rs.50 lakh was purchased on 31.03.2010 which preceded the date of transfer of any of the three properties. On the date of purchase of another REC bonds of the Rs. 50 lakh on 21.07.2010, capital gain of Rs.5.10 lakh only was available as against LTCG deduction. To be eligible for deduction u/s.54EC of the Act, investment in long-term specified asset is required to be made within a period of six months after the date of transfer of the original asset. In the present case, the assessee had made investment of Rs. 50 lakh on 31.03.2010 which was prior to the date of transfer/sale namely 12.10.2010 & 24.06.2010 of any of the three properties. Thus, deduction of Rs.94.90 lakh was irregularly allowed by the AO while passing the assessment order and also irregular deduction u/s.54EC of the Act, amounting to Rs.94.90 lakh which are liable to be withdrawn. Therefore, a revision order dated 08.03.2016 was passed by PCIT denying the benefit of deduction u/s.54EC of the Act. The AO has given effect to this order and demanded tax thereon.

4. Aggrieved against the giving effect the assessee filed an appeal before the Ld.CIT(A), who partly allowed the appeal of the assessee by allowing deduction u/s.54EC of Rs.1 crore and confirmed the disallowance to Rs.44,90,000/- by observing as follows:

*4.1 I find that on a plain reading of the above said provision, it is evident 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 appellant 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 appellant makes the investment of Rs.50,00,000/- in any financial year, it would have the benefit of Section 54EC(1) of the Act. I agree with the argument of the AR. that it is clear and unambiguous from the language of the above proviso that where appellant 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 able to claim exemption upto Rs. 1 Crore u/s 54EC of the Act. Thus, the proviso to the said Section as applicable for the year under consideration Le. A.Y. 2011-12 and upto A.Y.2012-13 mentions "Any Financial Year and not the "Relevant Financial Year*

*4.2 In order to remove any ambiguity 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 appellant 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.*

*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 appellant in the long-term specified asset, from capital gain 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*

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

*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 appellant 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 appellant 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."*

*4.3 In view of the Notes on Clauses Finance Bill 2014 and the Memorandum explaining the provisions in the Finance (No.2) Bill, 2014 as reproduced herein above, I have no doubt that the legislature has chosen to remove the ambiguity in the proviso to*

*Section 54EC(1) of the Act by inserting a second proviso but only w.e.f. 01/04/2015 and subsequent years and not retrospectively. I find support from decisions rendered by various courts of law including the jurisdictional court as cited by the appellant, wherein inter alia, the above position of law as prevailing prior to A.Y.2015-16 has been accepted. In the decision of the Hon'ble ITAT, Ahmedabad Bench in the case of Aspi Ginwala, Shree Ram Engg & Mfg. Industries vs. ACIT (2012) 52 SOT 16/20 taxmann.com 75 (Ahd.) on identical facts, it is held as under:*

*The appellant sold property on 22.10.2007 and computed long-term capital gains. The section 54EC investment was required to be made within 6 months ie. on or before 21.04.2008. The appellant invested Rs. 50 lakhs in REC bonds on 31.12.2007 (F.Y. 2007-08, within the 6 M time limit) and Rs.50 lakhs in NHAI bonds on 26.5.2008 (F.Y. 2008-08, beyond the 6 M time limit) and claimed a deduction of Rs. 1 crore. The appellant claimed that no eligible scheme was available for subscription from 1.4.2008 to 28.5.2008 and that he applied in the NHAI bonds as soon as it opened and that he was prevented by sufficient cause from investing within the time period of 6 months. The Assessing Officer & CIT(A) rejected the claim for exemption of Rs. 50 lakhs in respect of the NHAI bonds on the ground that (1) it exceeded the monetary limit of Rs. 50 lakhs prescribed in section 54EC and (ii) it was made beyond the time limit of 6 months*

*On appeal to the Tribunal, held allowing the appeal (1) The Proviso to section 54EC provides that the investment made in a long term specified asset by an appellant "during any financial year should not exceed Rs. 50 lakhs. It is clear that if the appellant 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 able to claim exemption upto Rs. 1 crore under section 54EC. The language of the proviso is clear and unambiguous and so the appellant is entitled to get exemption upto Rs. 1 crore in this case: (i) Though the time limit of 6 months for making the investment under section 54EC expired on 21.4.2008, no bonds were available for subscription between 1.4.2008 to 28.5.2008. The investment was made as soon as the subscription opened on 26.5.2008. The appellant was accordingly prevented by sufficient cause which was beyond his control in making investment in these Bonds within the time prescribed. Exemption should be granted in*

*cases where there is a delay in making investment due to non availability of the bonds.*

*The above position is reiterated and confirmed by various other courts of law as under:*

*CIT Vs. C. Jaichander(2015) 370 ITR 579/229 Taxman 10 (Mad.)(HC)*

*CIT. Vs.Snram Indubai (2015) 370 ITR 579 (Mad.) (HC)*

*CIT Vs. Coromandel Industries Ltd. (2015) 370 ITR 586/230 Taxman 548 (Mad) (HC)*

*Mrs. Lilavati Sayani us. ITO (2014) 49 taxmann.com 579 (Mumbai - Trib.)*

*ITO Vs. Rania Faleiro (Ms.) (2013) 142 ITD 769 (Panji) (Trib.)*

*Thus, in view of the above facts and overwhelming position of law coupled with the clear legislative intention to insert the second proviso to Section 54EC only wef 01/04/2015 Le. A.Y.2015-16 and subsequent years restricting the maximum investment of Rs.50 lakhs irrespective of financial year, I am of the opinion that from a plain reading of Section 54EC(1) and the first proviso as applicable for the year under consideration ie. A.Y.2011-12, it is clear that prior to insertion of the Second Proviso to Section 54EC w.e.f. 01/04/2015 applicable to A.Y.2015-16 and subsequent years, 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 appellant amounting to Rs. 1 crore cannot be denied and the addition as made by the AO is not justified. There are two properties/two banakhat and two investments as per details below.*

*The Assessing Officer is of the opinion that the investment dated 31-3-2010 has been made before the sale deed dated 11-10-2010.*

| <i>Survey No.</i>    | <i>Amount Rs</i>   | <i>Investment U/s. 54EC</i> | <i>Date Investment</i> | <i>Amount Rs.</i> | <i>Reference/ Banakhat dated</i> |
|----------------------|--------------------|-----------------------------|------------------------|-------------------|----------------------------------|
| <i>502/2</i>         | <i>2,32,56,773</i> | <i>REC Bonds</i>            | <i>31-03-2010</i>      | <i>50,00,000</i>  | <i>08-04-2011</i>                |
| <i>498 &amp; 500</i> | <i>5,68,76,282</i> | <i>REC Bonds</i>            | <i>08-03-2010</i>      | <i>50,00,000</i>  | <i>11-10-2010</i>                |
|                      | <i>8,01,33,055</i> |                             |                        |                   |                                  |

*However, the appellant was in receipt of Rs. 70 lakhs before the date of investment on 31-3-2010 ie Rs. 35 lakhs on 8-3-2010 and another Rs 35 lakhs on 25-3-2010. Therefore, there is misreading of facts by the Assessing Officer and the appellant is eligible to get benefit of investment of Rs. 1 crore Consequently, the disallowance will be restricted to Rs. 44,90,000/- and the same is confirmed. The ground No.1 of the appeal is partly allowed*

5. Aggrieved against the appellate order, the revenue is in appeal before us in ITA No.822/Ahd/2019, raising the following grounds of appeal:

*1. The CIT(A) has erred in law and on facts in holding that the investment in long term asset eligible for deduction u/s 54EC is not restricted to Rs 50 Lacs*

*2. The CIT(A) has erred in law and on facts in treating the clarification amendment in Proviso I of the Section 54EC to be prospective in nature*

*3. The Ld.CIT(A) has erred in law and on facts in allowing the deduction u/s 54EC of the IT Act in respect of bonds purchased prior to the date of sale of property which resulted in LTCG.*

*4. The appellant craves leave to amend alter any ground or add a new ground, which may be necessary.*

6. We have heard the rival contention at length and perused the materials available on records including the paper book and case laws filed by the assessee. The grounds raised by the revenue is no more resintgrea, since the issue is settled by the Jurisdictional High Court as well as various High Courts which were being considered by the Ld.CIT(A) in his appellate order extracted above. The Ld.CIT(A), also considered notes and clauses of Finance Act, 2014 and Memorandum explaining provision of (Bill no.2) of the Finance Act, thereby Parliament has to remove the ambiguity in the proviso to section 54EC(1) of the Act, by insertion of second proviso

with effect from 01.04.2015 onwards, which is applicable prospectively. It is undisputed fact that the investments made by the assessee in REC Bonds on 31.03.2010, 08.04.2010 and 21.07.2010 for Rs.50,00,000/- each which are much before the insertion of 2<sup>nd</sup> proviso to section 54EC(1) of the Act with effect from 01.04.2015. Further, the above amendment was considered by the Co-ordinate Bench of this Tribunal in the case of Aspi Ginwala and Shree Ram Engg. & Mfg. V/s ACIT, the above decisions are also extracted in his order passed by Ld.CIT(A) at paragraph 4.3. Thus, we do not find any infirmity in the order passed by the Ld.CIT(A), therefore, the ground raised by the Revenue is devoid of merits and liable to be dismissed.

6.1 In the result, the appeal filed by the **Revenue in ITA No.822/Ahd/2019 is hereby dismissed.**

7. Now coming to the ITA No.949/Ahd/2023, appeal filed by the assessee and Grounds of appeal are as follows:

*“...The learned CIT(A) has erred in restricting the deduction upto Rs. 50,00,000 and confirming the addition of Rs. 44,90,000 under Section 54EC in as much as the assessee had received advances amount of more than Rs. 44,90,000 prior to investment of Rs. 50,00,000 on 21-07-2010 and therefore the same is also eligible for deduction under Section 54EC...”*

8. The registry has noted that there is a delay of 1654 days in filing the above appeal by the assessee. The condonation of delay affidavit filed by the assessee reads as follows:

*1. Rajendra Harjivandas Prajapati, aged about 61 years residing at 25, Nandigram Society, Nr. Railway Crossing, Nr. Vedhshala, Naranpura, Ahmedabad 380013do hereby solemnly affirm as under*

*I had received CIT(A) Order for A.Y. 2011-2012 under Section 143(3) read with Section 263 dated 05-03-2019 on 20-03-2019*

*The CIT(A) had partly allowed the appeal and the Department has filed an appeal to Hon'ble ITAT against the relief granted by CIT(A) by ITA No. 822/Ahd/2019 This appeal is pending before Hon'ble ITAT.*

*I did not file appeal against the CIT(A) Order dated 05-03-2019 to the extent of restricting the deduction under Section 54EC on misunderstanding of law*

*The CIT(A) has given the relief on the ground that an amount of Rs. 50,00,000 was received in advance and the same is eligible for deduction under Section 54EC There is a reasonable jurisprudence in the form of Hon'ble High Court and ITAT decisions on this principle.*

*I believe that the claim of deduction to the extent of Rs. 44,90,000 under Section 54EC not granted by CITA also is eligible for deduction on the same principle that the advance against sale of property is eligible for deduction under Section 54EC*

*I realized this only on the last date of hearing of the ITAT based on the advice of the AR*

*In view of this, the appeal is filed belatedly and your honours are prayed to condone the delay and admit the appeal*

*Whatever stated above is true and correct to the best of my knowledge and belief.*

9. On perusal of the affidavit it makes it clear that there is no mentioning about the clear reason for the delay with proper explanation. It is seen from the records the list of dates and events which are as follows:

| Sr.No | Date       | Particulars   |
|-------|------------|---|
| 1.    | 28.09.2011 | Assessee filed its Return of Income declaring income of Rs. 28,53,050/-   |
| 2.    | 21.02.2014 | Regular assessment u/s.143(3) of the Act, made accepting the Returned Income.   |
| 3.    | 08.03.2016 | Ex-parte revision order passed by PCIT after providing three hearings to the assessee and denied partial claim of exemption u/ s.54EC of the Act. |
| 4.    | 22.09.2016 | Giving effect order passed by the AO u/s.143(3) r.w.s   |

|     |            |   |
|-----|------------|---|
|     |            | <i>263 of the Act.</i>  |
| 5.  | 05.03.2019 | <i>Ld.CIT(A) given partial relief to the assessee.</i>  |
| 6.  | 14.08.2019 | <i>ITA No.822/Ahd/2019 filed by the Revenue was dismissed on the ground of Low Tax Effect.</i>                      |
| 7.  | 11.03.2020 | <i>MA No.380/Ahd/2019 filed by the Revenue was also dismissed by the ITAT.</i>                                      |
| 8.  | 2021       | <i>The Revenue has challenged this Batch of MA's before High Court of Gujarat by filing Writ Petition.</i>          |
| 9.  | 08.08.2022 | <i>Hon'ble Gujarat High Court has remitted the matter back to the file of ITAT to decide the appeals on merits.</i> |
| 10. | 28.11.2023 | <i>Present Appeal filed by the assessee with a delay of 1654 days.</i>  |

10. From perusal of the above list of dates and events, the original appeal filed by the Revenue was dismissed as earlier in August 2019 by this Tribunal and M.A filed by the Revenue was also dismissed by the Co-ordinate Bench of this Tribunal. The same was challenged before the Hon'ble High Court of Gujarat by filing the Writ Petition and vide judgment dated 08.07.2022, the Hon'ble Gujarat High Court remitted the matter back to the this Tribunal to decide the appeal on merits. It is thereafter, the present appeal is filed by the assessee on 28.11.2023. It is seen that the assessee was not a party in the proceedings when Department appeal was dismissed on account of Low Tax Effect and MA was also filed by the Revenue was also dismissed even Department's appeal before the Hon'ble High Court of Gujarat. When the Hon'ble High Court of Gujarat set-aside the matter back to the file of the ITAT. On service of notice, the assessee filed the present appeal with a delay of 1654 days. Hence, the delay in filing the appeal is hereby condoned.

11. Since it is a undisputed fact that the assessee invested in REC bonds of Rs.1.5 crores by selling three immovable properties

much before the insertion of the second proviso to section 54EC(1),  
as follows:

| Sr. No | Survey/<br>Block No       | Assessee Share<br>of (Rs.) | Advance<br>Amount<br>Received | Investment in<br>REC Bonds | Date of<br>Investment |
|--------|---------------------------|----------------------------|-------------------------------|----------------------------|-----------------------|
| 1.     | Survey<br>No.502/2        | 2,32,56,773                | 70,00,000                     | 50,00,000                  | 31.03.2020            |
| 1a.    |                           |                            | 1,62,56,773                   | 44,90,000                  | 21.07.2010            |
| 2.     | Survey<br>No.498 &<br>500 | 5,68,76,282                | 1,25,00,000                   | 50,00,000                  | 08.04.2011            |
| 3.     | Block No.6/8              | 5,09,748                   | Nil                           | 5,10,000                   | 21.07.2010            |

12. Thus the Ld.CIT(A) is not correct in restricting the benefit of deduction u/s.54EC only to the extent of Rs.1crore. Thus, the above order of the Ld.CIT(A) is modified and the Ld.AO is directed to grant a deduction u/s.54EC of Rs.1.5 crores. Hence, the grounds raised by the assessee is hereby allowed.

13. In the result, the appeal filed by the assessee is allowed.

**14. In the combined results, the appeal filed by the assessee is allowed and appeal filed by the Revenue is dismissed.**

Order pronounced in the open court on 05/07/2024

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

(True Copy)  
**Ahmedabad : Dated 05/07/2024**  
Manish