

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1010/Ahd/2024
(निर्धारण वर्ष / Assessment Year : 2012-13)

Harivallabhdas Rajan Ramkrishna 201 Aniket, CG Raod, Navrangpura, Ahmedabad, Gujarat, 380009	बनाम/ Vs.	Assistant Commissioner of Income Tax Circle 5(2)(1), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAHH5621N		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Mehul K. Patel, Advocate
प्रत्यर्थी की ओर से/Respondent by :	Smt. Mamta Singh, Sr. DR

Date of Hearing	11/09/2024
Date of Pronouncement	01/10/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre, Delhi, (in short ‘the CIT(A)’), dated 18.04.2024 for the Assessment Year (A.Y.) 2012-13.

2. The brief facts of the case are that the assessee had filed his return of income for A.Y. 201213 on 26.07.2012 declaring total income of Rs.6,13,82,049/-. The original assessment was completed under Section 143(3) of the Income Tax Act, 1961 (in short ‘the Act’) on 31.12.2014 on total income of Rs.6,23,19,924/-. Subsequently, the case was reopened u/s.147

of the Act for the reason that assessee had claimed exemption u/s.54EC of the Act, which was not found in accordance with the provisions of the Act. The re-assessment was completed on 08.12.2019 at total income of Rs.6,72,70,700/-, wherein addition of Rs.50 Lakhs was made on account of excess exemption claimed u/s.54EC of the Act.

3. Aggrieved with the order of the AO, the assessee had filed an appeal before the First Appellate Authority, which has been decided by the Id. CIT(A) vide the impugned order and the appeal of the assessee was dismissed.

4. Now, the assessee is in second appeal before us and has taken the following grounds in this appeal:

“(1) That on facts and in law the learned NFAC has grievously erred in confirming the disallowance of claim of deduction of Rs. 50,00,000/- made u/s 54EC of the Act.

(2) That on facts, and as per the law prevailing in the year under appeal, the entire claim of deduction u/s 54EC of the Act ought to have been allowed as prayed for.”

5. Shri Mehul K. Patel, Ld. AR appearing for the assessee submitted that the assessee had sold an immovable property for a consideration of Rs.31 Crore on 25.01.2012 along with two other co-owners. The capital gain arising on the sale of the property was invested in NHAI bond & REC bond and exemption of Rs.1 Crore was claimed u/s.54EC of the Act. The Ld. AR explained that as per the provisions of Section 54EC of the Act, the assessee

was required to invest the capital gains within a period of six months from the date of transfer of the long term capital asset and that the quantum of investment was restricted to Rs.50 Lakhs only in one financial year. The Ld. AR submitted that the assessee had invested Rs.50 Lakhs on 28.02.2012 in NHAI bond (in F.Y. 2011-12) and another Rs.50 Lakhs in RAC bond on 30.04.2012 (in F.Y. 2012-13). Thus, the twin conditions as stipulated in Section 54EC of the Act were satisfied as the assessee had made the investment within the period of six months from the date of transfer and the quantum of investment also did not exceed Rs.50 Lakhs in each of the financial year. The Ld. AR contended that the AO was not correct in restricting the exemption u/s.50EC of the Act to Rs.50 Lakhs only and disallowing the investment of Rs.50 Lakhs. He explained that the limit of Rs.50 Lakhs for the total investment was introduced on the statute vide 2nd Proviso to Section 54EC of the Act vide Finance (No.2) Act, 2014 w.e.f. 01.04.2015 only and that this provision was not applicable to the current year. In this regard, he has placed reliance on the decision of *Hon'ble Madras High Court in the case of CIT vs. Coromandel Industries Ltd., [2015] 5 taxmann.com 209 (Madras)* and in the case of *CIT, Chennai vs. C. Jaichander, [2015] 53 taxmann.com 466 (Madras)*. He further submitted that the Co-ordinate Bench of Tribunal has also taken identical view in the case of *Shri Atushbhai B. Amin vs. JCIT in ITA No.915/Ahd/2014, dated 16.03.2017*.

6. Per contra, Smt. Mamta Singh, the Ld. SR. DR submitted that the limit of Rs.50 Lakhs in the investment of bonds as stipulated u/s.54EC of the Act was cumulative investment in respect of each transaction of transfer of long term capital asset. She contended that the law doesn't envisage differential treatment on the basis of date of transfer. She explained that the situation of investment in two financial years will arise only if the transfer was effected after 30th September. In the case where the asset was transferred during first half of the year, the investment can be made only in one financial year as the period of six months will expire during that year only. She, therefore, relied upon the decision of the Ld. CIT(A) and supported the addition as made by the AO.

7. We have carefully considered the rival submissions. The assessee has complied with the provision of Section 54EC of the Act, so far as making the investment within the period of six months from the date of transfer of long term capital asset is concerned. The dispute is only about the quantum of investment. The assessee had invested Rs. One crore in two bonds spread over two financial years whereas as per Revenue investment of Rs. 50 lakhs only could have been made. The limit for investment in the bonds notified u/s.54EC of the Act was introduced vide first Proviso to Section 54EC of the Act w.e.f. 01.04.2007 which specified that investment made on or after 1st April, 2007 should not exceed Rs.50 Lakhs during any financial year. The assessee had fulfilled this condition as the period of six months was spread

over two financial years and accordingly the assessee had made investment in bonds of Rs.50 Lakh each in the two financial years. The cap of total investment of Rs.50 Lakhs in the two financial years was introduced vide Finance (No.2) Act, 2014 w.e.f. 01.04.2015 only, whereby the second Proviso to section 54EC was introduced. This second Proviso clarified that the total investment, in the financial year in which the asset is transferred or in the subsequent financial year, should not exceed fifty lakh rupees. It is, thus, found that this cap of total investment of Rs.50 Lakhs was not applicable in the current year and as per the scheme of the Act the assessee was entitled to make investment of Rs. 50 lakh each in two financial years, within the outer limit of six months from the date of transfer of the asset. The second proviso was introduced precisely to eliminate the differential treatment on the basis of date of transfer. However, this amendment was only from 01.04.2015 onwards and can't be extended to the current year as the legislature had not provided for retrospective application to the second proviso.

8. The Ld. CIT(A) has confirmed the disallowances made by the AO following the decision of Hon'ble Madras High Court in the case of *M/s. Areva T & D India Limited vs. ACIT in Writ Petition No.1524 of 2007*. It is found that the decision in the case of *M/s. Areva T & D India Limited (supra)* was considered by Hon'ble Madras High Court in the subsequent decision in the case of *Coromandel Industries Ltd. (supra)* and the Hon'ble High Court had held that exemption of Rs.50 Lakhs each claimed in

two financial years, within six months period from the date of transfer of capital asset, was eligible for exemption u/s 54EC of the Act. In the case of *C. Jaichander (supra)* also, the Hon'ble Madras High Court had held that in the absence of any cap of investment in bonds, the investment of Rs.50 Lakhs each made in two financial years, within period of six months from the date of transfer could not have been disallowed. The Hon'ble Court further held that the amendment made w.e.f. 01.04.2015 was prospective in nature and applicable to A.Y. 2015-16 and subsequent years. The relevant portion of the judgment is reproduced below:

“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 month 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.”

9. The Co-ordinate Bench of this Tribunal has also held in the case of *Shri Atushbhai B. Amin (supra)* that the investment of Rs.1 Crore claimed in two financial years was allowable as deduction.

10. In view of the above facts and the judicial pronouncements, we are of the considered opinion that Ld. CIT(A) was not correct

in holding that the assessee was eligible for deduction of Rs.50 Lakhs only u/s. 54EC of the Act. As the assessee had fulfilled all the necessary conditions as stipulated in Section 54EC of the Act at the relevant point of time, he was eligible for deduction of Rs. 1 Crore as claimed u/s.54EC of the Act. Accordingly, the addition of Rs.50 Lakhs on account of excess exemption u/s.54EC of the Act is deleted.

11. In the result, the appeal of the assessee is allowed.

This Order pronounced on	01/10/2024
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Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

(True Copy)

Ahmedabad; Dated 01/10/2024
S. K. SINHA