

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्रीसंजय अरोड़ा, लेखासदस्य एवंश्रीधुव्वुरुआर.एलरेड्डी, न्यायिकसदस्यकेसमक्ष

BEFORE SHRI SANJAY ARORA, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकर अपील सं./ITA No.1512/Mds/2011

Assessment year : 2007-08

Smt. V. Visalakshi Achi,

L.P. House,

41,42, Venkatachalam Chettiar St.,

Kottaiyur – 630 106.

The Income Tax Officer,

v. Ward I(3),

Karaikudi.

PAN : AAQPA 8992D

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri S. Sridhar, Advocate

प्रत्यर्थीकीओरसे/Respondent by

: Shri M.Murugaboopathy, Addl. CIT

सुनवाईकीतारीख/Date of Hearing : 20.10.2016

आदेश कीतारीख/Date of Order : 21.10.2016

आदेश /O R D E R

Per Sanjay Arora, Accountant Member:

This is an Appeal by the Assessee agitating the appellate order by the Commissioner of Income Tax (Appeals)-I, Madurai ('CIT(A)' for short) dated 06.06.2011, partly allowing the assessee's appeal contesting its assessment order under section 143(3) of the Income-tax Act, 1961 ('the Act' for short) dated 31.03.2009 for assessment year (AY) 2007-08.

2. The present appeal involves the assessee's claim for deduction u/s. 54EC of the Act, which was restricted by the Assessing Officer to Rs.50 lakhs, i.e., on the basis of investment of the long-term capital gains arising to the assessee in long-term specified asset (REC Bonds) within the specified time. The assessee claims to be prejudiced in-as-much as she was prevented by the Notification No.380 of 2006 dated 22.12.2006 issued by CBDT, placing an artificial cap of Rs.50 lakhs on such investment even as the section itself casts no such limit, so that the said Notification is *ultra vires* the Act.

3. We have heard the parties and perused the material on record.

We are wholly unable to appreciate the assessee's claim. This Tribunal is firstly not competent to decide on the constitutionality of the provisions of the Act; being itself a creation of the said statute. Further, deduction stands already allowed to the assessee *qua* the investment made by her. Without further investment, made within the defined period, even *de hors* the Notification, placing a cap on such investment, no further deduction u/s. 54EC of the Act could possibly be allowed. In fact, the Id. AR fairly conceded during the hearing to the assessee having in fact pursued a wrong remedy, placing on record the decision by the Hon'ble Madras High Court in *Areva T&D India Ltd. v. CIT (Asst.)* [reported at [2010] 326 ITR 540 (Mad)] wherein a writ challenging the said Notification was struck down by the Hon'ble Court stating that the law itself stands amended by Finance Act, 2007 with retrospective effect from 01.04.2006, so that the investment in long-term specified asset is to be made during the period commencing 01.04.2006, up to 31.03.2007, and further, confers the power on the Board to prescribe conditions, including as to providing limit on the investment that could be made in the assets specified in the Notification. Continuing further, he would further submit that the proper course for the assessee is to pursue the Board in respect of the powers conferred on it u/s. 119 of the Act for the removal of difficulties. The Tribunal may allow the assessee liberty to

pursue the said course. In our view, even as observed during hearing, the assessee is surely free to pursue any course envisaged by law, and this tribunal has no power to cast any fetter thereon. Even as regards the condonation of delay in moving the Board, where so, the relevance of the fact of the assessee having pursued the appellate course, i.e., as against the administrative remedy, is a matter that lies solely within the purview of the concerned authority and is to be considered by it. We decide accordingly.

4. In the result, the appeal is dismissed.

Order pronounced in the open court on October 20, 2016.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(Duvvuru RL Reddy)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 20th October, 2016.

Kri.

sd/-

(संजय अरोड़ा)

(Sanjay Arora)

खा सदस्य/Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-I, Madurai
4. आयकर आयुक्त/CIT-I, Madurai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.