

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER

ITA No. 7096/MUM/2014  
(Assessment Year : 2011-12)

The Income Tax Officer 25(3)(5),  
Room NO.606, C-10, 6<sup>th</sup> Floor,  
Pratyakshakar Bhavan, BKC,  
Bandra (East), Mumbai -51 ... Appellant

Vs.

M/s. Worli Automobile Centre,  
Kumkum Bungalow, 1<sup>st</sup> Floor,  
161, S.v. Road, Vile Parle(West)  
Mumbai 400 056  
PAN:AAAFW3678C .... Respondent

C.O. No.74/Mum/2016  
(Arising out of ITA No. 7096/MUM/2014,  
Assessment Year : 2011-12)

M/s. Worli Automobile Centre,  
Kumkum Bungalow, 1<sup>st</sup> Floor,  
161, S.v. Road, Vile Parle(West)  
Mumbai 400 056  
PAN:AAAFW3678C ... Cross Objector

Vs.

The Income Tax Officer 25(3)(5),  
Mumbai.

Revenue by : Shri Santosh Mankoskar  
Assessee by : Shri Dharendra M. Shah

Date of hearing : 21/06/2016  
Date of pronouncement : 29/06/2016

**ORDER**

The captioned appeal by the Revenue and Cross Objection by assessee, pertaining to assessment year 2011-12 are directed against

an order passed by CIT(A)-32, Mumbai dated 08/09/2014, which in turn arises out of an order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 01/11/2013.

2. In this appeal of the Revenue, the only issue involved relates to the action of the CIT(A) in allowing exemption under section 54EC of the Act of Rs.48,50,000/- over and above the amount of Rs.50,00,000/- allowed by the Assessing Officer.

3. Briefly put, the relevant facts are that during the year under consideration, assessee firm sold a property situated at Worli on 21/03/2011 for a total consideration of Rs.1.00 crore. In the return of income filed, assessee claimed that it had invested in REC bonds of Rs.50,00,000/- on 31/03/2011 and also Rs.48,00,000/- in such Bonds on 31/07/2011. Since the aforesaid two investments were made in the long term specified asset as mentioned in section 54EC of the Act and the same were acquired within a period of six months from the date of transfer of the sale of asset the amount of Rs.98,50,000/- was claimed as deductible in terms of section 54EC of the Act. The Assessing Officer was of the view that the investment in REC bonds, though made within a period six months, as prescribed in section 54EC(1) of the Act, yet they were made in two different financial years i.e. Rs.50,00,000/- in financial year 2010-11 and Rs.48,50,000/- in financial year 2011-12, and thus, assessee could take the benefit of investment in the specified bonds to a maximum of Rs.50,00,000/- under section 54EC(1) of the Act. Accordingly, he held that the sum of Rs.48,50,000/- invested over

and above ceiling prescribed, and that too in the subsequent financial year, does not qualify for exemption under section 54EC(1) of the Act. In appeal, the CIT(A) disagreed with the Assessing Officer and instead allowed the claim of the assessee. The CIT(A) noted that the investment made by the assessee of Rs.50,00,000/- on 31/3/2011 and Rs.48,50,000/- on 31/7/2011 in REC bonds were within the period of six months prescribed under section 54EC(1) of the Act. Secondly, the CIT(A) noticed that the second proviso to section 54EC(1) of the Act, which limits the exemption to the extent of Rs.50,00,000/-, when such investments were made in two financial years, was inserted by the Finance (No.2) Act 2014 w.e.f. 1/4/2015. According to the CIT(A), since the aforesaid restriction has been inserted by the legislature w.e.f. 01/04/2015, prior to that, the instant claim of the assessee was within the confines of law. Therefore, he has allowed the claim of the assessee. Against such a decision, Revenue is in appeal before the Tribunal.

4. At the time of hearing, the Ld. Departmental Representative did not dispute the point appreciated by the CIT(A) that the restriction on the claim of exemption under section 54EC(1) of the Act upto Rs.50,00,000/-, even in case where such investment falls under two financial years, came into force w.e.f. 01/04/2015. Thus, the said restriction would apply in relation to assessment year 2015-16 and onwards and certainly not to the assessment year under consideration i.e. assessment year 2010-11. Ld. Representative for the assessee also referred to the judgment of Hon'ble Madras High Court in the case of CIT vs. C. Jaichander & Another in TC(A) Nos. 419 and 533 of 2014

dated 15/09/2014, wherein also similar position has been affirmed. A copy of the said judgment of Hon'ble Madras High Court has been placed on record. The question of law, which was considered by the Hon'ble Madras High Court reads as under:-

*“(i) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee is eligible for deduction of Rs.1 Crore under Section 54EC, in respect of investment of Rs.50.00 Lakhs made in two different financial years?”*

The Hon'ble High Court was dealing with a similar situation relating to assessment year 2008-09, which was prior to the insertion of the second proviso to section 54EC(1) of the Act by the Finance (No.2) Act, 2014. After discussing the issue in extenso, the Hon'ble High Court concluded as under:-

*“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 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 2015-16 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 assessee.*

*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.”[underlined for emphasis by me]*

Respectfully following the aforesaid ratio of the Hon'ble Madras High Court, I find that the CIT(A) has made no mistake in allowing assessee's

claim for deduction under section. 54EC of the Act of Rs.48,50,000/- on account of investment made in REC bonds on 31/07/2011, over and above the exemption of Rs.50,00,000/- allowed by the Assessing Officer with respect to the investment in REC bonds on 31/03/2011. Thus, I affirm the order of the CIT(A) and accordingly the Revenue fails in its appeal.

5. In the result, appeal of the Revenue is dismissed.

6. In the Cross Objection filed by the assessee, the first issue relates to the deduction under section 54EC of the Act of Rs.48,50,000/- allowed by the CIT(Appeals). This aspect of the cross objection is merely in support of the order of the CIT(Appeals), which has already been affirmed in the appeal of the Revenue. Hence, this Ground of the cross objection does not require any specific adjudication, and is discussed.

7. The next Ground raised by the assessee in the cross objection is with regard to the action of the CIT(Appeals) in not allowing deduction of Rs.2,40,000/- while computing capital gains. The said sum of Rs.2,40,000/- represented demand raised by the Municipal Corporation in respect of the shop sold by the assessee. The Assessing Officer as well as the CIT(Appeals) have disallowed the claim of the assessee on the ground that the impugned amount could not be considered to be a cost incurred in connection with transfer of the property so as to be deductible as per section 48 of the Act in order to compute capital gains.

8. Before me, the Ld. Representative for the assessee pointed out that the aforesaid payment was required to be made by the assessee in order to effectuate the transfer of property and, therefore, it was deductible while computing the capital gains.

9. Having considered the objection of the assessee as also the factual matrix, in my view, the impugned expenditure cannot be said to be incurred wholly and exclusively in connection with the transfer of property in question and, therefore, its deduction under section 48(i) of the Act has been rightly denied by the lower authorities. The relevant discussion in the order of the CIT(Appeals) reveals that the impugned sum represents the arrears of municipal taxes payable on the property. Therefore, it is not an amount which can be said to have been incurred wholly and exclusively in connection with transfer of property within the meaning of section 48(i) of the Act. Thus, on this aspect assessee fails.

10. The last Ground raised by the assessee is for award of costs, which is declined in the absence of any justifiable reason.

11. Resultantly, the appeal of the Revenue as well as cross objection filed by the assessee are dismissed.

Order pronounced in the open court on 29/06/2016

Sd/-

(G.S. PANNU)  
ACCOUNTANT MEMBER

Mumbai, Dated 29/06/2016

Vm, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**