

**IN THE INCOME TAX APPELLATE TRIBUNAL  
CIRCUIT BENCH AT MANGALURU**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.964/Bang/2016  
(Assessment year: 2012-13)**

Deputy Commissioner of Income-tax,  
Circle 1,  
Udupi. ... Appellant

Vs.

Shri Borkatte Ganapathi Hegde,  
S/o Shri A.Laxman Hegde,  
Borkatte, Karkala,  
Udupi-574320. ... Respondent  
*PAN:AAGPH 8430 D*

Appellant by : Shri R.N.Siddappaji, Addl.CIT(DR)  
Respondent : Smt. H.G.Vinutha, CA

Date of hearing : 03/02/2017  
Date of pronouncement : 02/05/2017

**O R D E R**

**Per INTURI RAMA RAO, AM :**

This is an appeal filed by the revenue directed against the order of the CIT(A), Mangaluru, dated 15/02/2016 for the assessment year 2012-13.

2. The revenue raised the following grounds of appeal:

1. The order of the Ld. CIT(A) is against law & facts of the case.

2. The Ld. CIT(A) erred in deleting the additions made on account of excess deduction claimed u/s 54EC which is not in accordance with the said provisions.
  3. The Ld. CIT(A) erred in determining the application of section 54EC due to which there is differential treatment between two assessees for the same F.Y. with the same nature of transaction and same head of income with only the difference in date of transaction during the F.Y.
  4. The learned CIT(A) erred in not considering the fact that decision of Hon'ble ITAT(Bang "C" Trib) dated 14.12.2012 in the case of Vivek Jairazbhoy Vs. Dy.CIT 2007 in ITA No.236/Bang/2012 is pending in the High Court of Karnataka, Bengalure in ITA 166/2013.
3. Brief facts of the case are that the respondent-assessee is an individual and is engaged in the business of retail trade of IMFL, HPCL dealer and also runs business of commission agency. Return of income for the assessment year 2012-13 was filed on 28/09/2012 declaring total income of Rs.78,98,020/-. The return of income was processed u/s 143(1) [hereinafter referred to as 'the Act' for short][hereinafter referred to as 'the Act' for short] and subsequently the case was selected for scrutiny assessment under CASS. Against the said return of income, the assessment was completed by the ITO, Ward 2(2), Mangaluru, vide order dated 28/11/2014 passed u/s 143(3) of the Act at a total income of Rs.1,22,29,845/-. While doing so, the AO disallowed the claim for deduction u/s 54EC of the Act for a sum of Rs.49,09,181/-.
4. The background facts leading to the above disallowance is as under: During the previous year relevant to assessment year under consideration, the assessee sold the following two properties:

- (i) Sy.No.361/1, Idu Grama, Karkala Taluk, Udupi District, Karnataka
- (ii) Sy.No.6-4A, Derebail Village, Mangalore City, Dakshina Kannada, Karnataka

Out of the sale consideration, the assessee has invested in the bonds prescribed under the provisions of section 54EC i.e. Rural Electrification Corporation falling within same financial year as well as in the following years, the details of which are as under:

- a) REC Bonds of Rs.12,50,000/- on 31-01-2012 (date of allotment)
- b) REC Bonds of Rs.10,00,000/- on 31-03-2012 (date of allotment)
- c) REC Bonds of Rs.27,50,000/- on 31-03-2012 (date of allotment)
- d) REC Bonds of Rs.12,50,000/- on 31-08-2012 (date of allotment)
- e) REC Bonds of Rs. 6,00,000/- on 30-09-2012 (date of allotment)
- f) REC Bonds of Rs.31,50,000/- on 30-09-2012 (date of allotment)

5. The AO disallowed the claim holding that exemption u/s 54EC is restricted to sum of Rs.50 lakhs only and therefore, investment made in subsequent financial year was disallowed.

The relevant observations of the AO are as follows:

9. The assessee's objection is not acceptable under the following grounds. The Honorable Jaipur ITAT in ACIT v/s Shri Rajkumar jain & Sons (HUF) [ TS-142-ITAT-2012(JPR)] had held that the exemption of gains was to be restricted to investment in specified bonds to Rs 50 Lakhs only and any other interpretation would lead to discrimination against various tax payers depending upon date of transfer of long term capital assets. Proviso in sub-section 1 of section 54EC is proposed to be inserted to restrict the investment eligibility in specified bonds to Rs 50 lakhs only even in a situation where the eligibility for investment in bonds falls in two different financial years. Further, the assessee objected for proposed to the disallowance of Rs 50 lakhs and has quoted Tribunal decisions from Panaji (ITAT) Tribunal in the case of ITO, Ward-2 Margao V/s Ms. Rania Faleiro as reported in ITA NO. 9 (panaji) of 2013 for A.Y. 2008-09. However, the Panaji ITAT Tribunal decision has not been accepted by the department and it has further appealed before the Hon'ble High Court of Bombay at Goa against of this order which was admitted by the High Court of Bombay at Goa vide Tax Appeal No. 16 of 2013 on the following substantial question of law:

9(i) "Whether the Income tax Appellate Tribunal erred in interpreting the provisions of section 54EC which clearly provides that the amount allowable for the financial year is Rs 50,00,000/- only and accordingly the amount allowable for the corresponding to the relevant financial year is 2007-08 is Rs 50,00,000/- and therefore the ITAT could not have granted relief thereby allowing deduction under section 54EC of Rs 1,00,00,000/-".

Hence, assessee's objection to the proposal for disallowance a sum of Rs 49,09,181/- is not acceptable. Therefore, excess deduction claimed for a sum of Rs 49,09,181/- is disallowed and treated as Capital Gain and added back to assessee's income.

5. Being aggrieved, an appeal was preferred before the CIT(A), who vide impugned order, allowed the appeal placing reliance on the decision of the Hon'ble Madras High Court in the case of *CIT vs. C.Jaichander* (2015) 370 ITR 579: The relevant portion of the impugned order reads as under:

**5.3** The submissions of the appellant were considered carefully. The AO in the order restricted the exemption of Capital gains to Rs.50 Lakhs only relying on the decision of Hon'ble ITAT, Jaipur in ACIT Vs Shri. Ramkumar Jain & sons (HUF). The AO also rejected the case law relied upon by the appellant in the case of ITO, Ward-2, Margao Vs Ms. Raina Faleiro (Panaji ITAT) on the ground that the Department did not accept the said decision and filed appeal before the Hon'ble Mumbai High Court.

**5.4.** The Hon'ble ITAT Mumbai Bench 'A' in the case of Mrs. Lilavati M. Sayani Vs Income Tax officer held that *the issue involved in the appeal of the assessee is squarely covered by decision rendered in the case of ASPI Ginwala, Shree Ram Engg. &Mfg Industries v. Asstt.CIT [2012] 52 SOT 16/20 taxmann.com 75 (Ahd), wherein the Ahmedabad Bench of the Income-tax Appellate Tribunal held that the provision of section 54EC makes it clear that where the assessee transfers its capital asset after the 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 up to Rs. 1 crore under section 54EC. The Tribunal observed that the language of the proviso is clear and unambiguous and relied on the decision of the Hon'ble Supreme Court in the case of IPCA Laboratory Ltd. v. Dy. CIT [2004] 266 ITR 521/135 Taxman 594 to hold that since the wording of the proviso to section 54EC is clear, the benefits which are available to the assessee cannot be denied. Following the aforesaid decision the assessee was entitled to full exemption under section 54EC.*

5.5. The Hon'ble ITAT (Bang), in para 9.7 and 9.8 of the order (reproduced above) considered the decision of Hon'ble ITAT Jaipur (relied upon by the AO) and decided that the assessee is entitled to total deduction under section 54EC of the Act spread over a period of two financial years @ Rs.50 lakhs each on investments made in specified instruments within a period of six months from the date of sale of the property. The Hon'ble Madras High Court in para 11 of the order held that 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.

5.6. The following conditions should be satisfied for the purpose of 54EC :

- a) Assessee may be an individual, firm, company or any other person
- b) The asset transferred should be a long term capital asset.
- c) The assessee should invest the whole or any part of the capital gain in long term specified asset ( bonds issued by NHAI and REC) within six months from the date of transfer of the asset.

5.7 In the instant case, during the previous year the appellant sold two capital assets on 03.10.2011 and 20.03.2012. The appellant derived long term capital gains from the above transactions. During the previous year and also the immediate financial year the appellant invested a total amount of Rs.1 crore in REC bonds. Investment in each financial year was Rs.50,00,000/- and the investments were within six months of transfer of the above immovable properties as stipulated under the provisions of section 54EC of the act. There is no dispute regarding the investment dates.

The appellant fulfilled all the conditions laid down u/s 54EC of IT Act. In view of the above, respectfully following the decision of Hon'ble Madras High Court and the Jurisdictional Hon'ble ITAT, Bangalore 'C' Bench in the case cited above, **I hereby direct the AO to delete the entire addition made.**

The appellant fulfilled all the conditions laid down u/s 54EC of IT Act. In view of the above, respectfully following the decision of Hon'ble Madras High Court and the Jurisdictional Hon'ble ITAT, Bangalore 'C' Bench in the case cited above, **I hereby direct the AO to delete the entire addition made.**

6. Being aggrieved, the revenue is in appeal before us in the present appeal.

7. The only issue that arises in the present appeal is whether the assessee is entitled for deduction of claim u/s 54EC in respect of investment made in prescribed bonds though in different

financial years i.e. immediately succeeding financial year. There is no dispute as to the amount of capital gains computed. The provisions of section 54EC provide for deduction in respect of investment made in prescribed bonds against income from long term capital gains in case investment is made in specified assets within a period of six months from the date of sale assets. The said section also specifies maximum amount of investment to be made in financial year i.e. Rs.50 lakhs in any financial year. The relevant provisions of section 54EC, as they stood at the relevant point of time are reproduced below:

**“Capital gain not to be charged on investment in certain bonds.-**

**54EC.** (1) Where the capital gain arises from the transfer of a long-term capital asset (the capital asset so transferred being hereafter in this section referred to as the original asset) and the assessee has, at any time within a period of six months after the date of such transfer, invested the whole or any part of capital gains in the long-term specified asset, the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,ô

- (a) if the cost of the long-term specified asset is not less than the capital gain arising from the transfer of the original asset, the whole of such capital gain shall not be charged under section 45;
- (b) if the cost of the long-term specified asset is less than the capital gain arising from the transfer of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the long-term specified asset bears to the whole of the capital gain, shall not be charged under section 45 :

Provided that the investment made on or after the 1st day of April, 2007 in the long-term specified asset by an assessee during any financial year does not exceed fifty lakh rupees. ”

From a bare reading of the above provisions, it is clear that assessee is entitled to deduction where he makes investment of Rs.50 lakhs in specified assets within a period of six months in one financial year. The issue then crops up is in case said period of six months falls within two financial years, whether assessee can claim deduction u/s 54EC to the extent of Rs.50 lakhs in each financial year totalling to Rs.1 crore. This issue had come up for consideration before the Hon'ble Madras High Court in the case of *C.Jaichander* (supra) and again in *CIT vs. Coromandel Industries Ltd.* (370 ITR 586) wherein the Hon'ble Madras High Court has laid down that the exemption granted under proviso to section 54EC(1) should be construed not transaction-wise but financial year-wise. Consequently, the assessee is entitled to exemption of Rs.50 lakhs in each financial year aggregating to Rs.1 crore. The relevant portion of the judgment of the Hon'ble Madras High Court in the case of *Coromandel Industries Ltd.* (supra) is extracted below:

¶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. ö

In this connection, it is worth mentioning that the Legislature, by the Finance (No.2) Act, 2014 w.e.f. 01/04/2015, has inserted second proviso to sub-section (1) of section 54EC to remove the

above ambiguity in the said provision so that the exemption is limited to Rs.50 lakhs on account of investment in the specified bonds out of the long-term capital gains from the transfer of one or more assets during the financial year. The said second proviso 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.

The above decision of the Hon'ble Madras High Court was followed by the co-ordinate bench of Pune in the case of *ITO vs. Smt.Bala R.Venkitachalem* (71 taxmann.com 219)(Pune-Trib). Para. 9 of the above decision reads as under:

“9. The issue arising in the present appeal is against the claim of deduction under section 54EC of the Act, under which deduction is provided against the income from long term capital gains in case the investment is made in specified assets within time frame of six months from the date of sale of asset. The said section also provides a cap on the investment to be made in the bonds to the extent of Rs.50 lakhs in any financial year. As per the mandate of the said section and the proviso thereunder, where the assessee makes an investment of Rs.50 lakhs in the specified bonds within time frame of six months from the date of sale, in any financial year, then the benefit of said section is to be allowed to the assessee. In case, the period of six months falls within two financial years, then the question which arises for adjudication is whether the assessee can claim the aforesaid deduction under section 54EC of the Act to the extent of Rs.50 lakhs in each of the financial year totalling Rs.1 crore, where the investment is made in the aforesaid bonds in two financial years separately but within period of six months from the date of sale of assets. This issue arose for consideration before the Hon'ble High Court of Madras in *C. Jaichander (supra)* and later in *CIT v. Coromandel Industries Ltd.* [2015] 370 ITR 586/230 Taxman 548/56 taxmann.com 209 (Mad.) have laid down that the exemption granted under the proviso to section 54EC(1) of the

Act should be construed not transactionwise but financial year wise, wherein if the assessee was able to invest sum of Rs.50 lakhs each in two different financial years, within period of six months from the date of transfer of capital assets, the said deduction was allowable to the assessee. The Hon'ble High Court of Madras in *C. Jaichander (supra)* has held that as per the mandate of section 54EC(1) of the Act, time limit for investment is six months and benefit that flows from the first proviso is that if the assessee makes investment of Rs.50 lakhs in any financial year, it would have benefit of section 54EC(1) of the Act. The Hon'ble High Court further held that however, to remove the ambiguity in the above said provisions, legislature by Finance (No.2) Act, 2014 w.e.f. 01.04.2015 had inserted proviso after existing proviso to sub-section (1) of section 54EC of the Act. The second proviso, as per which the investment made by the assessee in long term capital gains specified assets out of 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 subsequent financial years, does not exceed Rs.50 lakhs. The said amendment was held to be applicable from assessment year 2015-16 and subsequent assessment years. The Hon'ble High Court thus, categorically held that the investment made on or after 01.04.2007 in long term specified assets by an assessee during any financial year should not exceed Rs.50 lakhs. However, the benefit that flows from the proviso was that where the assessee makes investment of Rs.50 lakhs in any financial year, it could have the benefit of section 54EC(1) of the Act. Applying the aforesaid proposition to the facts of the present case, where the assessee had invested Rs.50 lakhs in REC bonds i.e. specified assets as provided under section 54EC of the Act on 28.02.2010 i.e. in financial year 2009-10 and Rs.22,50,000/- on 30.04.2010 i.e. in financial year 2010-11 as against the capital gains arising of Rs.72,49,401/- on the transfer of long term capital gains i.e. sale of shares on 21.01.2010 falling in financial year 2009-10, the assessee is entitled to the benefit provided by the proviso under section 54EC of the Act and consequently, the order of CIT(A) merits to be upheld. Dismissing the grounds of appeal raised by the Revenue, the appeal of the Revenue is dismissed. ”

Thus, in the light of the ratio laid down in the above decisions, we do not find any fallacy in the reasoning of the CIT(A).

8. In the result, the appeal filed by the revenue is dismissed.

*Order pronounced in the open court on 2<sup>nd</sup> May, 2017*

Sd/-  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

sd/-  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

Place: Bengaluru.  
Date: 02/05/2017  
*Srinivasulu, Sr. PS*

Copy to:

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Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore