

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI

BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER
AND
SHRI N. K. CHOUDHRY, JUDICIAL MEMBER
(Through Video Conferencing)

ITA No. 579/Del/2018
(Assessment Year: 2009-10)

ShriAlok Kumar Kapoor,
Village and Post Adhyatmik
Nagar, Ghaziabad
PAN: AQLPK5020B
(Appellant)

Vs. Deputy Commissioner of
Income Tax,
Circle-1, Ghaziabad
(Respondent)

Assessee by :	Shri Manoj Kumar, Ld. CA
Revenue by:	Shri Manu Chourasia, Ld. Sr. DR
Date of Hearing	01/02/2022
Date of pronouncement	22/02/2022

O R D E R

PER N.K. CHOUDHRY, J. M.:

1. This appeal has been preferred by the assessee against the order dated 21.11.2017 impugned herein passed by the Id. Commissioner of Income Tax (Appeals)-2, Noida {hereinafter called in short as the "Id. Commissioner"} u/s 250(6) of the Income Tax Act, 1961 (in short "the Act") for the assessment year 2009-10.

2. In this case the Assessee had filed his return of income on dated 15.02.2011 by declaring total income of Rs. 2,18,99,694/-, which was processed u/s 143(1) of the Act. Thereafter, the case of the Assessee was selected on the basis of AIR information, wherein it was revealed that the Assessee has sold two immovable properties during the FY 2008-09 for the consideration of Rs. 4,72,50,000/- and Rs. 97,95,100/-. Consequently, the case of the Assessee was reopened u/s 147 of the Act and the statutory notice u/s 148 was issued on 16.03.2016, which was duly served upon the Assessee on 20.03.2016. In compliance of which the Assessee submitted the copy of acknowledgment of return of income for the Assessment Year 2009-10 filed on 15.02.2011 and requested that the same return may be treated as return filed in response to the notice u/s 148 of the Act.

2.1 Ultimately, the AO observed that the Assessee has sold two properties on dated 19.12.2008 and 30.12.2008 for consideration of Rs. 97,95,100/- and Rs. 4,72,50,000/- respectively, out of which Assessee had ½ % share amounting to Rs. 48,97,550/- and Rs. 2,36,25,000/-. Thereafter, the Assessee invested Rs. 50 lakhs on 30.03.2009 and again Rs. 50 lakhs on 26.06.2009 in REC bonds. As per section 54EC of the Act on account of capital gain arising from transfer of a capital asset which is required to be invested or must be invested within six months from the date of such transfer and this investment must not exceed Rs. 50 lakhs. The AO also relied upon the circular No. 3/2008 dated 12.03.2008 issued by CBDT being an explanatory note on the provisions relating to Direct Taxes in Finance Act, 2007 in para 28.2 thereof it is prescribed that investment in such specified assets to avail exemption u/s 54EC on

or after 1st day of April, 2007 will not exceed Rs. 50 lakhs in financial year. Resultantly, the AO observed that as the Assessee has sold two assets while the section 54EC allows only one (as per plain reading of the sentence a long terms capital asset). Thus, the deduction claimed in case of two assets cannot be allowed. Ultimately, the AO allowed the investment to the tune of Rs. 50 lakhs only and disallowed another Rs. 50 lakhs as claimed by the Assessee as investment on 26.06.2010. The AO also referred to new provision in section 54EC of the Act, which was inserted by Finance (No.2) Bill, 2014 in the Act w.e.f. 1-4-2015, wherein it is provided 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.

2.2 Against the said disallowance the Assessee preferred first appeal before the Id. Commissioner by raising the following grounds of appeal:-

“1. Because the assessing officer has erred the law and on merits of the case in restricting the deduction of the Rs. 50 lacs instead of Rs. 1 crore u/s 54EC of Income Tax Act 1961 in respect of sale of immovable properties during the previous year.

2. Because the contention of the Assessing Officer that the deduction u/s 54EC can be claimed on sale of one immovable property is wrong and illegal.

3. *Because the appellant seeks leave to take additional ground/amend any grounds of appeal at the time of hearing in the interest of justice and equity.”*

3. The Id. Commissioner by impugned order, restricted the addition challenged to the tune of Rs. 48,97,550/- while deleting part of the addition to the tune of Rs. 1,02,450/-. The Id. Commissioner while adjudicating the issue relied upon the order passed by the Jaipur Bench of ITAT in the case of ACIT Vs. Shri Raj Kumar Jain & sons (HUF) in ITA NO. 648/JP/2011 wherein, it was held:

The Assessee is entitled to exemption of Rs. 50 lakhs u/s 54EC of the Act and it is not the case where two interpretation of section 54EC are possible. The earlier notification of the Govt. clearly suggested that the Assessee are entitled exemption to the extent of Rs. 50 lakhs u/s 54EC of the Act. Investment within six months is the investment in that financial year in which transfer has taken place. Hence, subsequent investment is to be considered as part of investment of Financial Year in which transfer has taken place. We, therefore, hold that Id. Commissioner was not justified in allowing deduction to the Assessee to the extent of Rs. 1 crores u/s 54EC of the Act.

4. Against the impugned order the Assessee is in appeal before us.

5. Heard the parties and perused the material available on record. The issue involved in the instant case relates to the claim of exemption u/s 54EC of the Act which mandates that the Assessee at any time within the period of six months, after date of such transfer, invested the whole or any part of the capital gain in the long-term

specified asset, the capital gain shall be dealt in accordance with the following provisions of section 54EC of the Act :-

[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,—

(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](#) :

²⁰**[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.]

The following second proviso shall be inserted after the existing proviso to sub-section (1) of section 54EC by the Finance (No. 2) Act, 2014, w.e.f. 1-4-2015 :

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.

5.1 It is the case of the Assessee that the Assessee was supposed to invest u/s 54EC of the Act within six months of the arising of capital gain or selling of properties to the extent of Rs. 50 lakhs each in the financial year in which the property was sold and in the subsequent financial year if the same falls within six months gaining of capital gain. The Id. Commissioner while confirming the disallowance/addition relied upon the judgment passed by the ITAT Jaipur Bench in case of ACIT Vs. Shri Raj Kumar Jain & sons (HUF) (supra) whereas it is a fact that the Hon'ble Jurisdictional tribunal in two cases i.e. ACIT Vs. Seema Sobti in ITA No. 5899/Del/2015 decided on 15.05.2019 (2019) 106 taxmann.com 350 and in the case of ACIT Vs. Akshay Sobti in ITA No. 5900 and 5901/Del/2015 decided on 10.05.2019 (2019) 106 taxmman.com (Delhi Tribunal), upheld the deletion of similar addition as under challenge herein, by concluding as under:

“After going through the facts and circumstances of the case, we find that the judgment of the Hon'ble Madras High Court is applicable on the facts of the present case. Therefore, following the decision of Hon'ble High Court, Ld. CIT(A) has rightly allowed the ground of the Assessee, which does not need any interference on our part, hence, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground raised by the Revenue.”

5.2 The co-ordinate bench while deciding the similar issue and upholding the deletion of addition, exactly same as involved in this case, not only distinguished the decision of the ITAT Jaipur bench of this Tribunal in case of Sri Raj Kumar Jain & sons HUF (supra) as relied upon by the Ld. Commissioner, but also followed the judgment of Madras High Court in case of CIT Vs. Coromandal Industries Ltd (2015) 56 taxmann.com 209/230 decided on 14.12.2016 wherein, it was held as under:-

“The legislature has chosen to remove the ambiguity in the proviso to Section 54EC(1) of 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 that the same will 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 2015-2016 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 assesseees.

The Honorable High court has further observed and underlined as under;

"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 appellant 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.

For the foregoing reasons, we find no infirmity in the orders passed by the Tribunal warranting interference by this Court. The substantial questions of law are answered against the Revenue and these appeals are dismissed."

5.3 The Id. DR did not refute the above factual position as submitted by the Assessee and recorded by us.

5.4 The Hon'ble Madras High court in its order also referred to memorandum of understanding qua the provision introduced in the Finance (2) Bill 2014 applicable from 01.04.2015 and held *that the intention of the legislature probably appears to be that this amendment should be for the assessment year 2015-2016 to avoid unwanted litigations of the previous years.* Therefore, the observation of the AO qua application of the amended provision to the case in hand is un-sustainable.

5.5 Considering the peculiar facts and circumstances of the case to the effect that time limit for investment of long-term capital asset, is six months from the date of transfer and even if such investment falls under two financial years the benefit of investment of Rs. 50 Lakhs individually in each financial year as claimed by the Assessee herein, cannot be denied. Consequently, the order under challenge is liable to be set aside while allowing appeal of the Assessee, hence ordered accordingly.

6 In the result, appeal filed by the Assessee is allowed.

Order pronounced in the open court on 22/02/2022.

-Sd/-
(R.K.PANDA)
ACCOUNTANT MEMBER

-Sd/-
(N.K. CHOUDHRY)
JUDICIAL MEMBER

Dated:22/02/2022
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi