

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH "C"

Before **SHRI D K TYAGI - JM**
And **SHRI A MOHAN ALANKAMONY - AM**

ITA no.3226/Ahd/2011
(Assessment Year:-2008-09)

Shri Aspi Ginwala, Shree Ram Engg. & Mfg. Industries, Opp. Narsinh Estate, Pratapnagar, Baroda-390 004	V/s	The Asst. Commissioner of Income-tax, Circle-5, Baroda
PAN: ABCPG 5584 A		
[Appellant]		[Respondent]

ITA no.3227/Ahd/2011
(Assessment Year:-2008-09)

Shri Rustom Ginwala, Shree Ram Engg. & Mfg. Industries, Opp. Narsinh Estate, Pratapnagar, Baroda-390 004	V/s	The Asst. Commissioner of Income-tax, Circle-5, Baroda
PAN: ABLPG 0622 J		
[Appellant]		[Respondent]

Assessee by :-	Shri S N Soparkar, AR
Revenue by:-	Shri S P Talati, Sr. DR

Date of Hearing:-	23-02-2012
Date of Pronouncement:-	30-03-2012

ORDER

PER D K TYAGI (JM):- These two appeals have been by two different assesseees against two separate orders 09-11-2011 and 11-11-2011 passed by the learned CIT(A)-V, Baroda for Assessment Year 2008-09.

2 Since issues involved in these two appeals are common, the appeals were heard together and are being disposed of by this consolidated order. The common grounds which are identical in both the appeals, read as under:-

- [1] The learned C.I.T. (Appeals) has erred in law and on facts in above case in confirming the order of learned A.O. of assessing the Long Term Capital Gain at Rs.1,80,32,450/- as against Rs.1,30,32,450/- returned by the appellant.
- [2] The appellant most humbly submits that on the facts and the circumstances of his case & in law, the addition/disallowance made by learned A.O. is erroneous and prays that Hon'ble Tribunal be pleased to hold so now and delete the same.
- [3] The learned CIT (Appeals) has erred in law and on the facts of the appellant's case in confirming the order of the Ld. AO of allowing deduction u/s 54EC of the Act at Rs.50,00,000/-, instead of Rs.1,00,00,000/- claimed by the appellant on the erroneous plea that the investment of Rs.50,00,000/- made by the appellant is beyond the time limit prescribed u/s 54EC of the Act.
- [4] The appellant most humbly submits that on the facts and the circumstances of his case & in law, the disallowances made by learned A.O. is erroneous and prays that Hon'ble be pleased to hold so now and grant the deduction as claimed.
- [3] The appellant craves leave to add, to alter and/or amend the grounds of appeal herein above taken.

3 Ground nos.1 and 2 are inter-connected and therefore both are decided together as under. Since the facts involved in both the grounds are similar, we are considering the facts in the case of Shri Aspi Ginwala in ITA No.3226Ahd/2011. The facts of the

case which are clear from the submissions of the assessee before the learned CIT(A) which read as under:-

"The appellant has preferred an appeal before your honour against order u/s 143 (3) of the Act passed by the Asst. Commissioner of Income Tax Circle-5, Baroda (hereinafter referred to as "Ld. A.O.") for the above-mentioned Assessment Year. In connection with the said appeal the appellant craves liberty to place the following submissions for your honour's kind consideration, with a request to consider the same, while finalizing the same.

The facts leading to the grounds of appeals are as under:

1.1 The appellant is an individual having "Income from House Property", Capital Gain, Other Sources and share of profit from firms".

1.2 The appellant had filed his return of income for the Asst. Year on 11.11.2008 disclosing total income of 1,06,89,010/-.

1.3 The appellant and his brother namely Rustom Ginwala had sold a house property on 22/10/2007 for ' 6.21 Crore. In the said property the appellant and his brother had 50% share. The appellant had made investment of ' 50 Lacs, on 31/12/2007 in REC Bonds and ' 50 Lacs on 26/5/2008 in NHAI Bonds and claimed exemption of ' 100 lacs u/s 54EC of the Act. The investment in REC Bonds was within time limit of 6 months prescribed in Section 54EC of the Act while investment in NHAI has been made only on 26/5/2008 (allotment date 31/5/2008) as the subscription of neither of the scheme opened during 1/4/2008 to 26/5/2008. The appellant had made very same day the subscription of first scheme got opened.

1.4 The return of income included the "Income from Capital Gain (Long Term)" of ' 1,30,32,450/- earned on sale of house property (after claiming exemption u/s 54 EC of ' 100 Lies for investment made in specified bonds).

1.5 The assessment has been completed u/s. 143 (3) of I.T. Act, 1961 by the Ld. A.O., vide order dated 15/12/2010. In the assessment order the Ld. A.O. has taxed Long Term Gain at ' 1,80,32,450/-

instead of 1,30,32,450/- and has disallowed the exemption of x 50.00 Lacs for investment made in NHAI Bonds on 26/31-5-2008, on the plea that the exemption for such investment is not available as the investment has been made is beyond 6 months' time limit prescribed in Section 54EC of the Act.

2.1 Both ground of appeals relates taxing Income from Capital Gain at 1,80,32,450/- as against ' 1,30,32,450/- returned by the appellant and disallowing exemption of ' 50 Lacs claimed u/s 54EC of the Act.

The appellant objects to the action of the Ld. A.O. on the following grounds:

2.2 The appellant most humbly submits that that the investment has been made by him in the prescribed securities in due compliance of Section 54EC of the Act and the exemption is rightly claimed and is available.

2.3 As far as delay in making investment is concern, the appellant most humbly submit that there is no delay in making investment on his part. Since no eligible scheme notified in the said section was available for subscription between **1/4/2008 to 28/5/2008** he was prevented by sufficient cause in not complying with the time limit prescribed in section 54EC. The appellant further submit that the appellant took all the step to comply with the time limit incl. kept the money ready, instructed the his broker to subscribe the first available scheme as soon as the scheme starts subscription for new financial year, requested the issuer etc.

2.4 As stated above as the appellant had sold property on 22/10/2007, he was required to make investment within 6 months i.e. on or before 21/04/2008, in order to avail exemption u/s 54EC of Act. However both the eligible investments were closed for subscription from 31st March 2008 and were reopened only on 26th May 2008 for NHAI Bonds and 28th May 2008 for REC Bonds. The appellant is attaching herewith proof that no bonds were available during 1/4/2008 to 26/28 May 2008 a period which falls within the period of 6 months in Annexure- 1.

2.5 As far as the observation of the Ld. A.O. made in Para 6.5 of the Asst. Order as under:

"In this regard response was received from NHAI which provide that the assessee had made the application on 28th May 2008 and the date of closing of subscription was 31/03/2009 and the period of issue was 1 year, date on which subscription re-opened was 11th May 2009 and the commencement date of allotment after re-opening was 3 f* May 2009. Therefore, the whole discussion of time period as well as the time limit of investment should be read in consonance so that the benefits of these provisions should reach every one and should not be beneficial to one and detrimental to others."

The appellant most humbly submit that this observation is totally out of context as the Ld. A.O. should have inquired whether the subscription to any of the scheme was opened between 1.4.2008 to 26.5.2008 as claimed by the appellant or not? On the contrary the appellant has furnished evidences (refer Annexure -1) that subscription to both scheme stopped on 31/3/2008 and reopened only on 26/28th May 2008 and the same is not contradicted by the Ld. A.O as the same is confirmed by REC in reply of the notice u/s 133(6) of the Act. The copy of the entire correspondence in response to notice u/s 133(6) of the Act is enclosed herewith for your honour's ready reference in Annexgre-2. The appellant further submits that every year the subscription stops on 31st March and it reopens in somewhere in May next year. This is was also case in next year and the subscription reopened only on 11/5/2009 (as observed by the Ld. A.O. in the assessment order).

2.6 The appellant further submits that since neither of the specified bonds were available for subscription from 1st April 2008 to 26th/28th May 2008, the investment made immediately on the reopening of the scheme, should be considered within the time limit prescribed, as there was no delay on the part of the appellant, rather it was impossible for the appellant to invest after 1/4/2008 till last date of specified period i.e. 21/4/2008 as both the eligible schemes were closed for the subscription.

The appellant further submits that he had kept the fund ready and as soon as the subscription of one of the scheme opened, he has subscribed to it. The subscription for NHAI Bonds opened on 26/5/2008 and the application was made on same day i.e. on 26/05/2008 itself and cheque got cleared on 28/05/08 (the allotment is made on 31/5/2008). The copy of bank statement along with counterfoil of the investment made in enclosed in Annexure- 3 for

your honour's ready reference. The appellant further submits that he has made investment on same day the subscription of one of the scheme got opened and didn't wait till the subscription of other scheme to get open.

2.7 The appellant further submits that this is a case of real hardship to the tax payer. One side the act provides for exemption if investment is made in the specified assets within a specified period, however on the other side the specified assets were not available for subscription within that specified period. In a situation any person is helpless.

In such situation, the appellant most humbly submit that he is eligible for exemption for the investment made beyond time limit, as he was prevented by sufficient cause which was beyond his control. The appellant most humbly submit that the Hon'ble C.B.D.T. in past in similar circumstances has taken a broad view and has directed that the period of investment needs to be extended. The Hon'ble C.B.D.T. had issued a press note F.NO.142/09/2006 dated 30 June, 2006 extending the time limit. The relevant Para of the said note is reproduced below for your ready reference:

"5. It has been brought to the notice of the Central Board of Direct Taxes that some persons could not avail of the benefit under section 54EC of the Income Tax Act on account of non-availability of the capital gain bonds. Further, for some other persons the effective time available for making the investment is less than six months because of non-availability of these bonds.

6. With a view to removing the hardship caused to the taxpayers, the Central Board Of Direct Taxes, in exercise of powers conferred by clause (c) of sub section (2) of Sec. 119, hereby orders that the limitation of six months for making the investment under section 54EC of capital gains arising from the transfer of a long-term capital assets, is extended-"

Since, the facts and circumstances of the appellant's matter are same, the benefit of benevolent circular / notification / press note, needs to be extended to all such cases where the assessee are prevented to make investment in the specified assets within specified period for non-availability of bonds for subscription during such period.

2.08 The appellant also submit that various judicial authorities have taken unanimous view that the exemption should be granted in such cases where there is a delay in making investment due to non-

availability of the bonds and have held that it is a reasonable cause and the exemption should be granted. The citations' and the gist of the decisions are as under:

Cello Plast Vs. DCIT 2010 TTOL 60 ITAT (Mum)

In this case the Tribunal has held that it was an impossible task for the assessee to comply with the time period laid down u/s 54EC. The delay in purchase due to non-availability of the bonds was held to be a reasonable cause, and the assessee was held to be entitled to exemption u/s 54EC. The Tribunal has followed the decision in case of Ram Agarwal Vs. JCIT 81 ITO 163 (Mum). In that case on similar facts, it had been held by the Tribunal, that the assessee was entitled to claim deduction u/s 54EC. The relevant paras from the said decisions are reproduced as under:

Cello Plast Vs. DCIT 2010 TTOU 60 IT AT (Mum)

"10. The Id. Counsel of the assessee reiterated its contentions raised before the lower authorities here before us. It was further submitted that no bonds were available at the time of filing of the return. Even upto 31.12.2006, the bonds were not available. The bonds were available only on 22.1.2007. Immediately after five days i.e. 27.1.2007 the assessee applied for purchase of bonds and on 31.1.2007 the bonds were allotted to the assessee. Therefore, this was an impossible task to the assessee to buy the bonds within the specified time as the bonds were not available. Reliance was placed on the decision of the Tribunal reported in 81 ITD 163. Attention of the Bench was drawn on paras 15 to 20 of the order of the Tribunal where in similar circumstances, the claim of deduction u/s 54F was allowed. On the other hand, the Id. DR placed reliance on the order of the CIT(A).

11. We have heard the rival submissions and consider them carefully. After taking into consideration all the facts and material on record, we find that the assessee deserves to succeed in this ground also. There is no dispute that assessee has sold its capital asset i.e. plant and machinery during the year under consideration. For claiming exemption u/s 54EC, upto Rs. 50 lac has to be invested in the purchase of specified bonds. The assessee approached the concerned authorities. However, the bonds were not available. Various entities approached CBDT. Taking into consideration the hardship faced by the various entities, the CBDT vide circular no. 142/9/2006 TPL dated 30.6.2006 extended the time for purchasing the specified bonds upto 31.12.2006. The assessee approached the appropriate

authorities to buy the bonds; however they were not available. Therefore, it was an impossible task for the assessee to comply with the conditions of the sec. 54EC. The assessee ultimately purchased FDs of Rs.50 lacs with a view to buy specified bonds whenever they are available. Letter was issued to the SBI while purchasing FDs of Rs.50 lacs that the bonds are not available in the market and therefore, FD for an initial period of 90 days which may be extended further or may be redeemed prior to expiry date for investing the same in bonds qualified u/s 54E & the act. Copy of the letter dated 30.10.2006 is placed at page 6 of the compilation. Copies of the FDs are placed at pages 7 & 8 of the compilation. Copies of the letters issued by Rural Electricity Corpn. Ltd along with the copy of bond certificate is placed at pages 9 of the compilation. In this allotment, it is clarified that the assessee applied for the purchase of the bonds on 27.1.2007 and they are allotted on 31.1.2007. 500 bonds for a consideration of Rs. 50 lacs were allotted. The bond certificates is also placed at page 10 of the compilation.

11.1 From these facts, it is clearly established that there was reasonable cause in not purchasing these specified bonds within the specified time allowed as they were not available in the market, as soon as the bonds were available in the market, the assessee immediately purchased the same. Therefore in our considered view, under these circumstances, the assessee is entitled for the exemption u/s 54EC. "

Ram -Agarwal Vs. Joint CIT 81 ITD 163 (Mum)

"In regard to claim of exemption under section 54F we may mention that it is found by the learned CIT (A) that the bank was closed on 31-8-1995 on account of strike as certified by the officials of the concerned bank. From the certification given by the bank officials, the assessee had approached the bank officials with the cheque for the amount of deposit on 30-8-1995. The assessee remained unable to obtain receipt on 31-8-1995 due to bank strike and the cheque was cleared on 1-9-1995. In this view of the situation, it can well be said that the deposit of the assessee was in accordance with the provisions of statute as on the last date i.e. the 31-8-1995, the deposit could not be made due to the reason which was beyond the control of the assessee particularly in view that the efforts were made by the assessee a day prior to last date to deposit the requisite amount in the bank to make him entitle for exemption under sec 54F. As mentioned earlier, this position has also been accepted by the learned CIT (A). Therefore, we direct the Assessing officer to allow the necessary exemption to the assessee.

Before parting we may observe that section 54F is a beneficial provision to encourage assessee to invest in house properties. Keeping in mind the above object behind the insertion of section 54F and considering the fact that the

assessee was not at fault in not depositing the amount before 31-8-1995, we hold that the deposit made on 1-9-1995 satisfies the condition laid down in section 54F of the Act."

The appellant also submit that there are no contrary decisions as of now to the best of his knowledge.

2.09 The appellant also submits that the assessee often comes across such type of situations; many a time banks are closed or govt. office has a holiday on the due date of filing appeal/return/reply, payment of tax etc. But, in all such cases, Section 10 of the General Clauses /Act, 1897 comes to the rescue. As per said section if last day happens to be closed, next working day is the last date. The said section is reproduced herewith for your ready reference.

"Sec. 10. Computation of time.- (1) Where, by any (Central Act) or regulation made after the commencement of this Act, any act or proceeding is directed to allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

Provided that nothing in this section shall apply to any act or proceeding to which the (Indian Limitation Act, 1877 (15 of 1877)), applies.

This section applies also to all (Central Acts) and Regulations made on or after the fourteenth day of January, 1887."

This provision is applicable in the case of the appellant as he was prevented to make investment in the specified assets within specified period due to non-availability of bonds for subscription during such period.

2.10 In view of the above facts and circumstance and the direct decisions explaining the legal positions, the appellant most humbly submit that the investment made by him is within the specified time and hence the exemption is squarely available and have to request your honour to hold so now and quash the disallowance made.

The appellant shall be grateful if the above submissions are considered favourably while disposing of the above appeal. For which act of grace, i shall remain grateful."

4 The learned CIT(A) has dealt with the issues as under:-

“5.2 I have considered the facts of the case as well as the observation of the AO and the arguments advanced by the AR. Before considering the arguments of the appellant, it will be worthwhile to go through the provisions of section 54 EC of the I. T. Act. Provisions of section 54 EC are reproduced hereunder: -

"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) so 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:

[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 rupee]".

It is clear from the proviso above that it was the intention of the legislature that benefit under section 54 EC be restricted to Rs.50 lakh for an assessee per (assessment) year. However, due to peculiar drafting of the proviso a situation has arisen where assesseees who transfer their capital asset after 30th September of the financial year get an opportunity to make an investment of 50 lakh in two different financial years and are able to claim an exemption up to Rs.1 crore under section 54 EC. As provisions of the Act have to be interpreted literally there is no option before the Department but to provide

deduction of Rs.1 crore to some of the assesseees while those transferring capital assets before 30th September are deprived of this benefit. Clearly, it cannot be the intention of the legislature to favour the assesseees transferring asset after the 30th September because it will not only be discriminatory, it will be illogical also. The appellant, by depositing Rs.50 lakh in the specified assets in the next financial year is trying to claim a deduction of Rs.1 crore, a benefit which is not intended by the legislature. Since, she has not been able to invest in the specified assets within six months as provided in section 54 EC, she is not entitled to any relaxation in the time period of six months because she has already deposited Rs.50 lakh in the specified assets in the year in which the capital asset has been transferred. The case laws quoted by the appellant are of no help because facts in those cases were entirely different. In those cases the appellants were prevented from taking benefit of express provisions of the Act and there was no case of taking additional and unintended benefit.

It has been held by the honourable High Court of Kerala in the case of 252 ITR 513 (Ker) C Dhanapalan that A concession cannot be claimed as a matter of right. Any scheme extending concession has to be understood strictly in terms of the scheme only. It has referred to case of International Cotton Corporation (P) Ltd 35 STC 1 (SC) which was rendered in context that concession for declared goods should be extended to some other comparable goods. The SC found that the courts did not have jurisdiction to direct a similar concessions to others, since that would be tantamount to legislation by the court, while no court has such legislative power.

SC has consistently held that incentive provisions which confer concession, should be interpreted in a liberal manner, so as to subserve the purpose for which they are intended e.g.

- (i) 196 ITR 188(SC) - Bajaj Tempo Lt
- (ii) 177 ITR 418(50), 177 ITR 431 (SC)

General rule is that the provisions relating to deductions, allowances and exemptions are expected to be interpreted rigidly, incentive provisions are to be interpreted differently as they form an exception to the rule.

It has been held by the honourable Supreme Court in the case of 204 itr 412 (SC) Budharaja (N.C.) and Co that "the principle of adopting a liberal interpretation which advances the purpose and object of beneficent provisions cannot be carried to the extent of doing violence to the plain and simple language used in the enactment. It would not be reasonable or permissible for the court to rewrite the section or substitute words of its own for the actual words employed by the Legislature in the name of giving effect to the supposed underlying object. After all, the underlying object of any provision has to be gathered on a reasonable interpretation of the language employed by the Legislature".

Similarly, in the case of IPCA LAB 266 ITR 521 (SC) it has been held by Honourable Supreme Court that "even though a liberal interpretation has to be given to such a provision the interpretation has to be as per the wording of the section. If the wording of the section is clear, then benefits which are not available cannot be conferred by ignoring or misinterpreting words in the section".

Similarly in the case of 108 ITR 439 (SC) Alladi Kuppaswamy it has been held by the Hon'ble SC that "it is true that a fiscal statute should be construed strictly so as to give every benefit of doubt to the subject, but when the phraseology of a particular section of the statute takes within its sweep the transaction which is taxable, it is not for the court to strain and stress the language of the section so as to enable the taxpayer to escape the tax".

In view of the above position of the law, I'm of the opinion that the appellant is not entitled to any relaxation in the time limit for making an additional investment of Rs.50 lakh under section 54 EC of the income tax act 1961 because it is not only against the provisions of section 54 EC it is also against the spirit of provision inserted below sub section (1) of section 54 EC reproduced above. Order of the AO denying additional exemption of Rs.50 lakh to the appellant is therefore confirmed."

5 Aggrieved by this order of the learned CIT(A), the assessee is in appeal before us. At the time of hearing, the learned counsel

of the assessee reiterated the submissions made before the learned CIT(A).

6 The learned DR, on the other hand, supported the orders of the AO and the learned CIT(A).

7 We have heard both the parties and perused the records and find that the assessee and his brother Shri Rustom Ginwala sold a property on 22-10-2007 for Rs.6.21 Crores. The assessee and his brother had 50% share in this property. The assessee made investment of Rs.50 lakhs on 31-12-2008 in REC Bonds and Rs.50 lakhs on 26-05-2008 in NHAI Bonds and claimed exemption of Rs.1 Crore u/s 54EC of the Act. The investment in REC Bonds was allowed by the AO as it was within the time limit of six months prescribed in section 54EC of the Act, while the investment in NHAI Bonds which was made only on 26-05-2008 was not allowed as according to the lower authorities the assessee is only entitled for exemption u/s 54EC upto Rs.50 lakhs only. The assessee's case, however, is that as per the proviso to section 54EC, investment made on or after 1st April, 2007 in the Long Term Specified Asset by an assessee during any financial year should not exceed Rs.50 lakhs. The assessee's case is that since the property was sold on 22-10-2007 he could have invested in eligible investment within six months i.e. on or before 21-04-2008 in order to avail exemption u/s 54EC of the Act. There is no dispute about Rs.50 lakhs invested on 31-12-2007 in REC Bonds. The dispute is only about further investment of Rs.50 lakhs in NHAI Bonds made on 26-05-2008.

Since six months in this case involves two financial years, the assessee's case is that if he had deposited another Rs.50 lakhs from 1st April, 2008 to 21-04-2008, he was entitled for exemption u/s 54EC of the Act. As during this period from 01-04-2008 to 26-05-2008 subscription in eligible investment was closed, the investment made by the assessee on 26-05-2008 i.e. 1st day of the reopening of the subscription of eligible investment in NHAI Bonds should be treated in time. There is also no dispute about the fact that subscription to the eligible investment was closed during the period 01-04-2008 to 26-05-2008. The dispute which remains to be decided by us in this case is whether as per the provisions of section 54EC the assessee is entitled for exemption of Rs.1 Crore as six months period for investment in eligible investment involves two financial years. If the answer to this question is "yes", whether investment made by the assessee on 26-05-2008 beyond six months period is eligible for exemption in view of the fact that no subscription for eligible investment was available to the assessee from 1st April, 2008 to 26-05-2008.

8 While going through the proviso of section 54EC, we find that the proviso to section reads as under:-

“[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 rupee]”

It is clear from this proviso that where assessee transfers his capital asset after 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 upto Rs.1 Crore u/s 54EC of the Act. Since the language of the proviso is clear and unambiguous, we have no hesitation in holding that the assessee is entitled to get exemption upto Rs.1 Crore in this case. This view of ours gets support from the following finding of the Hon'ble Supreme Court in the case of IPCA LAB 266 ITR 521 (SC), wherein it has been held by the Hon'ble Supreme Court that

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“even though a liberal interpretation has to be given to such a provision the interpretation has to be as per the wording of the section. If the wording of the section is clear, then benefits which are not available cannot be conferred by ignoring or misinterpreting words in the section”

Here the situation is reverse. Since the wording of the proviso to section 54EC is clear, the benefits which are available to the assessee cannot be denied. In view of above, it is hereby held that the assessee is entitled for exemption of Rs.1 crore as six months' period for investment in eligible investments involved is two financial years.

9 Now, coming to the second aspect of the matter, whether investment of Rs.50 lakhs made in NHAI Bonds on 26-05-2008 can be considered to be made within six months period as per the proviso to sec. 54EC, we find that the assessee was to make investment in such Bonds between 01-04-2008 to 21-04-2008. There is no dispute about the fact that subscription of eligible Bonds was closed during this period till 26-05-2008 and on the 1st day of the reopening of the subscription, the assessee made this investment. Under the circumstances, we are of the

considered opinion that the assessee was prevented by sufficient cause which was beyond his control in making investment in these Bonds within the time prescribed. We further find that various judicial authorities have taken a view that exemption should be granted in such cases where there is a delay in making investment due to non-availability of the bonds and have held that it is a reasonable cause and the exemption should be granted. In the case of Ram – Agarwal vs. Joint CIT 81 ITD 163 (Mum), it has been held as under:

"In regard to claim of exemption under section 54F we may mention that it is found by the learned CIT (A) that the bank was closed on 31-8-1995 on account of strike as certified by the officials of the concerned bank. From the certification given by the bank officials, the assessee had approached the bank officials with the cheque for the amount of deposit on 30-8-1995. The assessee remained unable to obtain receipt on 31-8-1995 due to bank strike and the cheque was cleared on 1-9-1995. In this view of the situation, it can well be said that the deposit of the assessee was in accordance with the provisions of statute as on the last date i.e. the 31-8-1995, the deposit could not be made due to the reason which was beyond the control of the assessee particularly in view that the efforts were made by the assessee a day prior to last date to deposit the requisite amount in the bank to make him entitle for exemption under sec 54F. As mentioned earlier, this position has also been accepted by the learned CIT (A). Therefore, we direct the Assessing officer to allow the necessary exemption to the assessee.

Before parting we may observe that section 54F is a beneficial provision to encourage assessee to invest in house properties. Keeping in mind the above object behind the insertion of section 54F and considering the fact that the assessee was not at fault in not depositing the amount before 31-8-1995, we hold that the deposit made on 1-9-1995 satisfies the condition laid down in section 54F of the Act."

Since no contrary decision was cited on behalf of the Revenue, we are left with no option but to hold that the investments made by the assessee on 26-05-2008 beyond six months is eligible for exemption in view of the fact that no subscription for eligible

investment was available to the assessee from 1st April, 2008 to 26-05-2008.

11 In the result, both the appeals are allowed.

Order pronounced in the court today on 30-03-2012

Sd/-

Sd/-

(A MOHAN ALANKAMONY) ACCOUNTANT MEMBER	(D K TYAGI) JUDICIAL MEMBER
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Date	:	30-03-2012
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Copy of the order forwarded to:

1.	Shri Aspi Ginwala,
2	Shri Rustom Ginwala, Shree Ram Engg. & Mfg. Industries, Opp. Narsinh Estate, Pratapnagar, Baroda-390 004
3.	The Asst. Commissioner of Income-tax, Circle-5, Baroda
4.	CIT concerned
5.	CIT(A)-V, Baroda
6.	DR, ITAT, Ahmedabad Bench-C, Ahmedabad
7.	Guard File

BY ORDER

Deputy Registrar
Assistant Registrar
ITAT, AHMEDABAD