

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.9.2014

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR
AND
THE HON'BLE MR.JUSTICE G.M.AKBAR ALI

T.C.(A).Nos.419 and 533 of 2014

Commissioner of Income Tax
Chennai.

.. Appellant
in both appeals

Vs.

C.Jaichander

.. Respondent
in T.C.(A) No.419/2014

Sriram Indubal

.. Respondent
in T.C.(A) No.533/2014

PRAYER in T.C.(A).No.419 of 2014: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai, dated 1.11.2013 made in I.T.A.No.456/Mds/2013 for the assessment year 2009-2010.

PRAYER in T.C.(A).No.533 of 2014: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'D' Bench, Chennai, dated 31.1.2013 made in I.T.A.No.1950/Mds/2012 for the assessment year 2008-2009.

For Appellant : Mr.J.Narayanasamy
Senior Standing Counsel

For Respondent : Mrs.Pushya Sitaraman
Senior Counsel
for Ms.Hemalatha
for respondent
in T.C.(A) No.419/2014

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Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar
for respondent
in TC(A) No.533/2014

JUDGMENT
(Delivered by R.SUDHAKAR, J.)

The Revenue is the appellant in these appeals. While T.C.(A) No.419 of 2014 is filed challenging the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai, dated 1.11.2013 made in I.T.A.No.456/Mds/2013 for the assessment year 2009-2010, T.C.(A).No.533 of 2014 is filed challenging the order of the Income Tax Appellate Tribunal 'D' Bench, Chennai, dated 31.1.2013 made in I.T.A.No.1950/Mds/2012 for the assessment year 2008-2009.

2. These appeals were admitted on the following substantial questions of law:

- (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 Lakhs made in two different financial years?
- (ii) Whether on the facts and circumstances of the case, the Tribunal was right in not referring the matter to the Special Bench under Section 255(4), when there are conflicting views by different benches?"

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3.1. For better clarity, we state the facts of the case in T.C.(A) No.533 of 2014. The assessee filed return of income on 27.9.2009 and the same was processed under Section 143(1) of the Act. The case of the assessee was selected for scrutiny and notices under Sections 143(2) and 142(1) of the Income Tax Act, 1961 (for brevity, "*the Act*") were issued on 29.9.2010 and 14.10.2010 respectively. In terms of the said notice, the assessee furnished details to the department.

3.2. It is stated that the assessee sold a property at Palavakkam for a sale consideration of Rs.3,46,50,000/- vide agreement of sale dated 18.2.2008 entered into with the Ceebros Property Developments. The appellant invested Rs.1,00,00,000/- out of the sale proceeds in certain bonds in two financial years, namely, Rs.50,00,000/- in Rural Electrification Corporation Bonds in the financial year 2007-2008 and Rs.50,00,000/- in National Highways HAI Bond in the financial year 2008-2009.

3.3. The Assessing Officer held that the assessee can take the benefit of investment in specified bonds to a maximum of Rs.50,00,000/- only under Section 54EC(1) of the Act and accordingly, held that the other sum Rs.50,00,000/- invested over and above the ceiling prescribed does not qualify for exemption in terms of the Act.

3.4. The appeal preferred by the assessee did not find favour with the

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Commissioner of Income Tax (Appeals), who confirmed the order of the Assessing Officer in this regard. Calling into question the said order, the assessee preferred appeal to the Tribunal. The Tribunal held that the exemption granted under proviso to Section 54EC(1) of the Act should be construed not transaction-wise, but financial year-wise. It further held that if an assessee is able to invest a sum of Rs.50,00,000/- each in two different financial years, within a period of six months from the date of transfer of the capital asset, it cannot be said to be inadmissible. The relevant portion of the said order reads as under:

"8. The first condition mentioned in Section 54EC(1) is that the investment has to be made within a period of six months from the date of transfer of capital asset. Since the date of transfer in the given is 18.2.2008, six months period will elapse on 17.8.2008. Assessee had purchased REC Bonds worth of Rs.50 lakhs on 27.2.2008 and Bonds of NHAI for Rs.50 lakhs on 30.6.2008. Both these purchases were within the six months' period. Only question that arises is whether proviso to Section 54EC(1) would limit the claim of exemption to Rs.50 lakhs. Said proviso mentions that investment on which an assessee could claim exemption under Section 54EC(1) shall not exceed Rs.50 lakhs during a financial year. So, the exemption provision has to be construed not transaction-wise but, financial year-wise. No doubt, Explanatory Memorandum does say that limitation has been placed with a view to ensure equitable distribution of benefits among the prospective investors. Relevant Explanatory Memorandum is reproduced for brevity:-

'The quantum of investible bonds issued by NHAI

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and REC being limited, it was felt necessary to ensure that the benefit was available to all the investors. For this purpose, it was necessary to ensure that the limited number of bonds available for subscription is also available for small investors. Therefore, with a view to ensure equitable distribution of benefits amongst prospective investors, the government decided to impose a ceiling on the quantum of investment that could be made in such bonds. Accordingly, the said section has been amended so as to provide for a ceiling on investment by an assessee in such long-term specified assets. Investments in such specified assets to avail exemption under section 54EC, on or after the 1st day of April, 2007 will not exceed fifty lakh rupees in a financial year.'

Last sentence of the Explanatory Memorandum clearly states that the exemption for investment cannot exceed Rs.50 lakhs in a financial year. Therefore, if the assessee is able to keep the six months' limit from the date of transfer of capital asset, but, still able to place investment of Rs.50 lakhs each in two different financial years, we cannot say that the restrictive proviso will limit the claim to Rs.50 lakhs only. Since assessee here had placed Rs.50 lakhs in two different financial years but within six months period from the date of transfer of capital asset, assessee was definitely eligible to claim exemption upto Rs.1 Crore. The same view has been taken by Ahmedabad Bench of this Tribunal in the case of *Aspi Ginwala & Others v. ACOT* (52 SOT 16). We are, therefore, of the opinion that the assessee has to succeed in this appeal. Claim of the assessee for exemption

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upto Rs.1 Crore has to be allowed in accordance with Section 54EC of the Act."

3.5. Assailing the said order dated 31.1.2013 made in I.T.A.No.1950/Mds/2012 passed by the Tribunal, the department filed T.C.(A) No.533 of 2014 raising the substantial questions of law, referred supra.

3.6. Subsequently, another co-ordinate bench of the Tribunal, by placing reliance on the above said order dated 31.1.2013 made in I.T.A.No.1950/Mds/2012 (*in the case of Sriram Indubal*), allowed the appeal filed by the assessee (*C.Jaichander*) in I.T.A.No.456/Mds/2013, by order dated 1.11.2013. Aggrieved by the said order, the department filed T.C.(A) No.419 of 2014 raising the substantial questions of law, referred supra.

4. We have heard Mr.J.Narayanasamy, learned Senior Standing Counsel appearing for the Revenue; Mrs.Pushya Sitaraman, learned Senior Counsel appearing for the respondent in T.C.(A) No.419 of 2014 and Mr.R.Vijayaraghavan, learned counsel appearing for the respondent in T.C.(A) No.533 of 2014.

5. The key issue that arises for consideration is whether the first proviso to Section 54EC(1) of the Act would restrict the benefit of investment of capital gains in bonds to that financial year during which the property was

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sold or it applies to any financial year during the six months period.

6. For better understanding of the issue, it would be apposite to refer to Section 54EC(1) of the Act, which reads as under:

"Section 54EC. Capital gain not to be charged on investment in certain bonds.—

(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.

Provided that the investment made on or after the 1st day of April, 2007 in the long-term specified asset by an assessee

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during any financial year does not exceed fifty lakh rupees."

7. On a plain reading of the above said provision, we are of the view that Section 54EC(1) of the Act restricts the time limit for the period of investment after the property has been sold to six months. There is no cap on the investment to be made in bonds. The first proviso to Section 54EC(1) of the Act specifies the quantum of investment and it states that the investment so made on or after 1.4.2007 in the long-term specified asset by an assessee during any financial year does not exceed fifty lakh rupees. In other words, as per the mandate of Section 54EC(1) of the Act, the time limit for investment is six months and the benefit that flows from the first proviso is that if the assessee makes the investment of Rs.50,00,000/- in any financial year, it would have the benefit of Section 54EC(1) of the Act.

8. The legislature noticing the ambiguity in the above said provision, by Finance (No.2) Act, 2014, with effect from 1.4.2015, inserted after the existing proviso to sub-section (1) of Section 54EC of the Act, a second proviso, which 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."

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9. At this juncture, for better clarity, it would be appropriate to refer to the Notes on Clauses – Finance Bill 2014 and the Memorandum explaining the provisions in the Finance (No.2) Bill, 2014, which read as under:

"Notes on Clauses – Finance Bill 2014:

Clause 23 of the Bill seeks to amend section 54EC of the Income-tax Act relating to capital gain not to be charged on investment in certain bonds. The existing provisions contained in sub-section (1) of section 54EC provide that where capital gain arises from the transfer of a long-term capital asset and the assessee has within a period of six months invested the whole or part of capital gains in the long-term specified asset, the proportionate capital gains so invested in the long-term specified asset out of total capital gain shall not be charged to tax. The proviso to the said sub-section provides that the investment made in the long-term specified asset during any financial year shall not exceed fifty lakh rupees.

It is proposed to insert a proviso below first proviso in said sub-section (1) so as to provide 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.

This amendment will take effect from 1st April, 2015 and will, accordingly, apply in relation to assessment year 2015-16 and subsequent years.

Memorandum: Explaining the provisions in the Finance

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(No.2) Bill, 2014:

Capital gains exemption on investment in Specified Bonds.

The existing provisions contained in sub-section (1) of section 54EC of the Act provide that where capital gain arises from the transfer of a long-term capital asset and the assessee has, at any time within a period of six months, invested the whole or any part of capital gains in the long-term specified asset, out of the whole of the capital gain, shall not be charged to tax. The proviso to the said sub-section provides that the investment made in the long-term specified asset during any financial year shall not exceed fifty lakh rupees.

However, the wordings of the proviso have created an ambiguity. As a result the capital gains arising during the year after the month of September were invested in the specified asset in such a manner so as to split the investment in two years i.e., one within the year and second in the next year but before the expiry of six months. This resulted in the claim for relief of one crore rupees as against the intended limit for relief of fifty lakhs rupees.

Accordingly, it is proposed to insert a proviso in sub-section (1) so as to provide that the investment made by an assessee in the long-term specified asset, out of capital gains arising from transfer of one or more original asset, 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.

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This amendment will take effect from 1st April, 2015 and will, accordingly, apply in relation to assessment year 2015-16 and subsequent assessment years."

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 that 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 2015-2016 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 assessees.

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.

For the foregoing reasons, we find no infirmity in the orders passed by

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the Tribunal warranting interference by this Court. The substantial questions of law are answered against the Revenue and these appeals are dismissed.

No costs.

(R.S.J.) (G.M.A.J.)
15.9.2014

Index : Yes
Internet : Yes
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To:

1. The Assistant Registrar,
Income Tax Appellate Tribunal
Chennai Bench "D", Chennai.
2. The Assistant Registrar,
Income Tax Appellate Tribunal
Chennai Bench "B", Chennai.
3. The Secretary, Central Board
of Direct Taxes, New Delhi.
4. The Commissioner of Income Tax (Appeals) - IX
Chennai
5. The Assistant Commissioner of Income Tax
Business Circle-VI, Chennai.
6. The Income Tax Officer
Business Ward VI(3), Chennai.

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R.SUDHAKAR,J.
and
G.M.AKBAR ALI,J.

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T.C.(A).Nos.419 and 533 of 2014

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