

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'बी' मुंबई

IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCHES "B", MUMBAI

BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER

&

SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.7548/Mum/2012

(निर्धारण वर्ष / Assessment Year : 2005-06)

Neela S. Karyakarte
Block No.A-20, Suyog,
Co-op Hsg., Society,
Sant Dyaneshwar
Road Mulund (E)
Mumbai- 400081

..... अपीलार्थी /
Appellant

बनाम v/s

ITO-23(3)(1),
3rd Floor,
C-10, Pratyaksha Kar Bhavan,
Bandra Kurla Complex,
Bandra (E)
Mumbai-400051

..... प्रत्यर्थी /
Respondent

स्थायी लेखा सं./ Permanent Account Number – AAGPK987M

Appellant by : Dr. K. Shivaram, (AR)
Revenue by : Shri Vijay Kumar Soni (DR)

सुनवाई की तारीख /
Date of Hearing –12.08.2015

आदेश घोषणा की तारीख /
Date of Order –28.08.2015

आदेश / ORDER

PER ASHWANI TANEJA, A.M.

The present appeal has been filed by the Assessee against order dated 18.10.2012, passed by the Ld. Commissioner of Income Tax

(Appeals)-34, Mumbai for the assessment year 2005-06. The assessee has raised following grounds of appeal:-

"1. The Ld. CITCA) erred in holding that the Assessee is not eligible for exemption u/s 54EC without appreciating the fact that the investment was made within 6 months from the date of transfer i.e. 29-06-2004.

2. The Ld. CITCA) erred in holding that the confirmation letter dt. 10-07- 2004 for possession was not filed before the A.D. and thus holding that is an afterthought to cover six months, without appreciating the fact that the said letter was filed before the A.D. and this is confirmed in the Assessment order at para 4 page 2, wherein the Assessing officer has reproduced assessee's letter dt.06-09-2007.

3. The Ld. CITCA) failed to appreciate the fact that the investment is made on 23.12.2004 and the cheque has been cleared on 29.12.2004., however, the bond was issued on 31-12-2004 and hence the said date is mentioned in the bond. As the investment clearly falls within the date i.e. 29-12-2004, exemption u/s 54EC may be granted.

4. The Appellant craves leave to add, amend, alter or delete any or all the above grounds of appeal. "

2. The effective issue raised in this appeal is whether the assessee would be eligible for deduction u/s 54EC or not. The only key point to decide this issue would be whether the investment was made by the assessee within the six months from the transfer of the original asset as prescribed u/s 54EC of the Income Tax Act 1961. The basic facts as culled out from the assessment order are that during the financial year 2004-05 relevant to A.Y. 2005-06, the assessee sold a row house on 27.04.2004 located at Prateek Apartment, Panchpakhadi, Thane for Rs.18,50,000/-. After indexation, the assessee earned long term capital gain of Rs.10,90,176/-. The assessee invested this capital gain in NHB Capital Gain Bonds 2006 on 31st December, 2004 and claimed exemption u/s 54EC.

3. However, the AO found that the assessee was not eligible for exemption u/s 54EC, since the investment in acquiring NHB Capital Gain Bonds was not made by the assessee within six months from the date of transfer of original asset, as per requirement of section 54EC. The AO observed that the sale of row house (i.e. original asset) was executed on 27.04.2004, as per the registered sale agreement, whereas the assessee has invested the amount in NHB Bonds on 31.12.2004. Thus, as per AO, it was beyond period of six months as stipulated in section 54EC. Accordingly, it was held by the AO that benefit of deduction u/s 54EC was not allowable to the assessee. The assessee contested the matter before the Ld. CIT(A). After considering all the submissions and evidences placed by the assessee, it was held by the Ld. CIT(A) in the appeal order that going by the date of full and final settlement, the date of transfer would be 29th of June, 2004. According to the Ld. CIT(A) the assessee made investment in the bonds on 31.12.2004. It was held by Ld. CIT(A) that even if the date of transfer was taken as 29th of June 2004 and date of investment being 31.12.2004, it fell beyond the period of six months and therefore, the assessee was not eligible for deduction u/s 54EC.

4. Being aggrieved, the assessee filed the appeal before the Tribunal. During the course of hearing, Ld. Counsel appearing on behalf of the assessee brought following facts in our knowledge:-

- i. Date of agreement of sale- 27.04.2004
- ii. Date of transfer of original asset (as held by the CIT(A))
29.06.2004
- iii. Date of possession given by the assessee of the original asset to its purchaser -10th July 2004

- iv. Date of filing of application with National Housing Bank's -
23.12.2004
- v. Date of clearing of cheque in the bank account of the assessee-
29.12.2004
- vi. Date of issuance of bond certificate 31.12.2004.

5. It was submitted by the Ld. Counsel that the assessee had complied with the requirement of section 54EC by making investment within the stipulated period of six months and therefore, the assessee should be given the benefit of section 54EC. The Ld. Counsel also placed reliance upon the judgment of Mumbai Bench of Income Tax Tribunal in the case of M/s. Crucible Trading Co. Pvt. Ltd. in ITA No.5994/Mum/2013 dated 25.02.2015 and upon the latest decision of Special Bench of Ahmadabad bench in the case of Alkaben B. Patel (2014) 148 ITD 31 (Ahd). The reliance was also placed by the Ld. Counsel on the judgment of Hon'ble Supreme Court in the case of CIT vs. **Ogale Glass Works Ltd. (1954) 25 ITR 529 (SC)**, wherein it was held by the Hon'ble Supreme Court that in the case of the cheques not having been dishonored but having been encashed, the payment related back to the date of the receipt of the cheques and in law the dates of payments were the dates of the delivery of the cheques.

On the other hand, Ld. DR relied upon the order of Ld. CIT(A) and that of the AO and submitted that the benefit has been rightly denied.

6. We have heard both the parties very carefully. With a view to make things simple, let us first take into consideration the undisputed facts on record with respect to various dates. The Ld. CIT(A) has held that the date of transfer of original asset is 29th of June 2004. The

Revenue has not filed any appeal and Ld DR has not disputed the order of Ld. CIT(A) with respect to this finding. Thus, as a matter of fact, the date of transfer of original asset is taken as 29th June 2004. If this is taken as date of transfer then going by the judgment relied upon the Ld counsel passed by Hon'ble Special Bench in the case of Alkaben B. Patel (supra), it could be safely said that the assessee has made investment within the six calendar months.. This view has been followed by the Co-ordinate Bench in the case of M/s. Crucible Trading Co. Pvt. Ltd.(supra) and the observations of the Hon'ble coordinate bench are reproduced here under:

"5. We have heard both the parties and their contentions have carefully been considered. In the aforementioned decision of Special Bench "6 months" have been interpreted and it is held that the same would mean 6 calendar months and not 180 days. The observations of the Special Bench are as under:

5.6 In certain other context few Hon'ble High Courts have also taken a view that a month is to be reckoned according "british calendar". We have noted that in the case of CIT v. SLM Manekial Industries Ltd. [20051 274 ITR 485/[2007] 158 Taxman 30 (Guj.), the Hon'ble Jurisdictional High Court has opined that the issue of interpretation of the term "month" is no longer res integra because in the case of CIT v. Kadri Mills (Coimbatore Ltd.), 106 ITR 846 (Mad.) it was laid down that the month to be reckoned according to British calendar. The issue before the Hon'ble Court was that whether the 4 ITA NO.5994/MUM/2013 (A.Y. 2010-11) Tribunal was right in law and on facts in canceling the penalty levied u/s. 271(l)(a), observing that month meant calendar month and not the lunar month of 28 or 30 days. This issue was dealt at some length by Hon'ble Madras High Court in the case of Kadri Mill (Caimbatore) Ltd. (supra). In this case, the observation of the Hon'ble Court was that IT Act, 1961 itself does not define the word "month" however Section 3 of General Clauses Act, 1987 define the word "month" means a month reckoned according to British calendar. In this context a decision of Hon'ble Calcutta High pronounced in the case of CIT v. Brijlal Lohia & Mahabir Prasad Khemka [1980] 124 ITR 485/ [1981] 5 Taxman 93 has also been generally cited wherein it was held that the words "however considering month during which the default continued" as appeared in Section

271(l)(a) refer only to a month during the whole of which the default continued and not to a month during which only part of which default continued. Likewise in the case of Harnand Rai Rarnanand v. CJT[1986] 159 1TR988/24Taxman 571 (Raj.), and B.V.Aswathaiah & Bros. v.ITO[1985] 155 ITR 422/[1986] 27 Taxrnan 560 (Kar) it was held that a month is a British calendar month.

5.1 Similar view is supported by the other decision relied upon by Ld. Sr. Counsel. No contrary decision has been brought to our notice by Ld. DR. In this view of the situation, after hearing both the parties, we find no infirmity in the relief granted by Ld. CIT(A). We decline to interfere and the order passed by Ld. CIT(A) is upheld."

7. Further, Hon'ble Supreme Court has held in the case of Ogale Glass Works Ltd. (supra) that the cheques not having been dishonored but having been cashed, the payment relates back to the dates of the receipt of the cheques and as per law the dates of payments would be the date of delivery of the cheques. Now, if we notice from the facts on record, the assessee had filed an application with National Housing Bank on 23.12.2004 and submitted along with this application Cheque No.669766 drawn on bank of India, Mulund Branch Mumbai, dated 23.12.2004. This fact has not been disputed by the Ld. DR appearing on behalf of the revenue. Thus, assessee has clearly made the investment within the period of 180 days also. Thus, viewed from any angle it can be safely said that the assessee has made investment within the period of six months. The assessee should be granted the benefit of deduction and the same has been wrongly denied to the assessee.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 28th day of August, 2015.

Sd/-
(Joginder Singh)
JUDICIAL MEMBER

Sd/-
(Ashwani Taneja)
ACCOUNTANT MEMBER

मुंबई MUMBAI, दिनांक DATED:28 .08.2015
Patel

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

- (1) निर्धारिती / The Assessee;
- (2) राजस्व / The Revenue;
- (3) आयकर आयुक्त(अपील) / The CIT(A);
- (4) आयकर आयुक्त / The CIT, Mumbai City concerned;
- (5) विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / The DR, ITAT, Mumbai;
- (6) गार्ड फाईल / Guard file.

आदेशानुसार / By Order
उप / सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai