IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1009 OF 2014

The Commissioner of Income Tax-II
Pune .. Appellant

v/s.

Mr. Subhash Vinayak Supnekar .. Respondent

Mr. Vipul Bajpayee for the appellant
None for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 14th DECEMBER, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 28th June, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2008-09.

2. Mr. Bajpayee, learned Counsel for the Revenue urges the following question of law for our consideration :-

> *"Whether on the facts and circumstances of the case and in law, the Tribunal erred in holding that the assessee was entitled to*

deduction u/s 54EC of the Act when the assessee had not fulfilled the mandatory requirement of making the investment within six months from the date of the transfer?"

3. The short question that arises for our consideration in this appeal is whether an amount received on sale of a capital asset as an advance on the basis of Agreement to Sale and the same being invested in specified bonds before the final sale, would entitle the respondent assessee to the benefit of Section 54EC of the Act.

4. The impugned order of the Tribunal records the fact that an Agreement to Sale for the subject property was entered into on 21st February, 2006. The final sale took place under a Sale Deed dated 5th April, 2007. The respondent assessee had invested an amount of Rs.50 lakhs from the advance received under the Agreement to Sale in the Rural Electrification Corporation Ltd. bonds on 2nd February, 2007. The Assessing Officer as well as the Commissioner of Income Tax (Appeals) held that the respondent assessee is not entitled to the benefit of Section 54EC of the Act as the amounts were invested in the bonds prior to the sale of the subject property on 5th April, 2007. The impugned order of the Tribunal placed reliance upon the decision of its co-ordinate bench in ***Bhikulal Chandak HUF Vs. Income Tax Officer,***

0126 TTJ 545 wherein it has been held that where an assessee makes investment in bonds as required under Section 54EC of the Act on receipt of advance as per the Agreement to Sale, then the assessee is entitled to claim the benefit of Section 54EC of the Act.

5. The grievance of the Revenue before us is that the Agreement to Sale dated 21st February, 2006 was never produced before the authorities. Therefore, the respondent assessee is not entitled to the benefit of Section 54EC of the Act.

6. We find that the Sale Deed dated 5th April, 2007 is produced. This itself in clause (d) thereof records the fact that the Agreement to Sale had been entered into on 21st February, 2006 in respect of the subject property and the amounts being received by the vendor (respondent assessee) under that Agreement to Sale. Thus, these amounts when received as advance under an Agreement to Sale of a capital asset are invested in specified bonds, the benefit of Section 54EC of the Act is available. In the above view, the Tribunal holds that the facts of the present case are similar to the facts before the Tribunal in *Bhikulal Chandak HUF (supra)*. The Revenue does not dispute the same before us. Moreover, on almost identical facts, this Court in

Ms. Parveen P. Bharucha Vs. DCIT, 348 ITR 325, held that the earnest money received on sale of asset, when invested in specified bonds under Section 54EC of the Act, is entitled to the benefit of Section 54EC of the Act. This was in the context of reopening of an assessment and reliance was placed upon CBDT Circular No. 359 dated 10th May, 1983 in the context of Section 54E of the Act.

7. Mr. Bajpayee, learned Counsel for the Revenue very fairly points out that the Revenue had preferred an appeal against the order of the Tribunal in *Bhikulal Chandak HUF (supra)* to this Court (Nagpur Bench) being Income Tax Appeal No.68 of 2009. This Court by an order dated 22nd August, 2010 refused to entertain the Revenue's above appeal from the decision of the Tribunal in *Bhikulal Chandak HUF (supra)*. In the above view, the question as proposed for our consideration in the present facts does not give rise to any substantial question of law. Thus, not entertained.

8. Accordingly, the appeal is dismissed. No order as to costs.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**