IN THE ITAT CHENNAI BENCH 'D'

Smt. Sriram Indubal

v.

Income-tax Officer, Business Ward-VI(3), Chennai*

ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
AND V. DURGA RAO, JUDICIAL MEMBER
IT APPEAL NO. 1950 (MDS.) OF 2012
[ASSESSMENT YEAR 2008-09]
JANUARY 31, 2013

ORDER

Abraham P. George, Accountant Member - In this appeal filed by the assessee, its grievance is that the CIT(Appeals) confirmed the restriction of her claim of exemption of Rs. 1 Crore under Section 54EC of Income-tax Act, 1961 (in short 'the Act'), to Rs. 50 lakhs.

2. Facts apropos are that assessee had, during the relevant previous year, sold a property comprising of land and building at Plot No.21, Door No.142, MGR Salai, Palavakkam, Chennai-41, for a consideration of Rs. 3,46,50,000/-. Sale proceeds were invested by the assessee as under:-

Sl. No.	*Description of the property/investment*	*Date of Investment*	*Amount Invested (Rs.)*
1.	Rural Electrification Corporation bonds	27.02.2008	50,00,000
2.	Bonds issued by National Highways Authority of India	30.06.2008	50,00,000
3.	Capital gains account scheme in Syndicate Bank, Mount Road Branch, Chennai	27.06.2008	26,00,000
4.	Flat No.33 at "Ankur Grand", No.252/254 Poonamallee High Road, Chennai - 600 010 from M/s Ankur Foundations, No.25, Barnaby Road, Kellys, Chennai - 600 010.	23.06.2008	2,05,68,904
5.	Flat No.43 at "Ankur Grand", No. 252/254 Poonamallee High Road, Chennai - 600 010 from M/s Ankur Foundations, No.25, Barnaby Road, Kellys, Chennai - 600 010.		

As per the A.O., the sum of Rs. 1 Crore invested by the assessee in capital gains Bonds were in two instalments. First Rs. 50 lakhs in REC Bond on 27.2.2008 and second Rs. 50 lakhs in NHAI Bond on 27.06.2008. Second instalment of Rs. 50 lakhs in NHAI Bond was paid in financial year 2008-09. A.O. was of the opinion that there was restriction placed for investments under Section 54EC of the Act with effect from 1.4.2007. Accordingly, investments had to be made within six months from the date of transfer of capital asset. Assessee, here, had made investment of Rs. 50 lakhs on 27.2.2008 in REC Bonds and another Rs. 50 lakhs on 30.6.2008 in NHAI Bonds. Since the statute pegged the investment for which exemption was allowable in an assessment year to Rs. 50 lakhs, the second sum of Rs. 50 lakhs invested on 30.6.2008, as per the A.O., was not eligible for deduction under Section 54EC of the Act. Taking this view, A.O. curtailed the exemption claimed by the assessee under Section 54EC, pro rata to 50 lakhs investment made in REC Bonds.

3. In her appeal before CIT(Appeals), argument of the assessee was that ceiling mentioned in proviso to Section 54EC(1) was applicable for investment made in a financial year only. As per the assessee, ceiling was to be applied year-wise and not transaction-wise. Both the investments, i.e. in REC as well as NHAI were done within six months from the date of transfer of capital asset. Therefore, both of them were eligible for exemption under Section 54EC of the Act. These were made in two different financial years and therefore, were well within the ceiling. However, CIT(Appeals) was not impressed. According to him, the Explanatory note in Finance Act, 2007 through which the limitation for investment in exempt assets was introduced in the statute, clearly implied that this was with a view to ensuring equitable distribution of benefits among prospective investors. Therefore, according to him, it had to be construed as applicable transaction-wise and not year-wise. Thus, he confirmed the view taken by the A.O. in this regard.

4. Now before us, learned A.R., strongly assailing the orders of authorities below, submitted that authorities below committed error in holding that ceiling was applicable transaction-wise. According to him, limitations placed were financial year-wise and not transaction-wise. Only restriction was that the assessee should have made the investments within six months from the date of transfer of capital asset. Here, it was admittedly done within six months from the date of transfer of capital asset. Assessee had invested in REC and NHAI Bonds in two different financial years, but within six months from the date of transfer of the capital asset. Therefore, ceiling mentioned under proviso to Section 54EC(1) would apply separately for two investments. Assessee, according to him, was therefore, eligible for exemption of the whole sum of Rs. 1 crore under proviso to Section 54EC(1) of the Act.

5. *Per contra*, learned D.R. submitted that the Explanatory Memorandum to Finance Act, 2007 which introduced proviso to Section 54EC(1) was clear in that limitation placed was for ensuring equitable distribution of available exempt assets so that all assessees could take advantage of it. Maximum exemption that could be given was Rs. 50 lakhs for each transaction which gave rise to capital gains. According to her, the view taken by the A.O. was justified.

6. In reply, learned A.R. submitted that the issue was already considered by Ahmedabad Bench of this Tribunal in the case of *Aspi Ginwala Shree Ram Engg. & Mfg. Industries* v. *Asstt. CIT* [2012] 52 SOT 16/20 taxmann.com 75 and it was held therein that assessee was eligible for exemption of Rs. 1 Crore, if it could make such investment in two instalments of Rs. 50 lakhs which fell in two financial years, though the dates were within six months from the date of transfer of capital asset.

7. We have perused the orders and heard the rival submissions. There is no dispute that assessee had transferred the capital asset on which she had claimed exemption under Section 54EC on 18.2.2008. Assessee had also claimed exemption under Section 54EC on investments made in REC and NHAI Bonds. Section 54EC(1), which is relevant to the case, is reproduced hereunder, for brevity:-

"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:

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"."

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 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* (*supra*). We are, therefore, of the opinion that the assessee has to succeed in this appeal. Claim of the assessee for exemption upto Rs. 1 Crore has to be allowed in accordance with Section 54EC of the Act.

9. In the result, appeal filed by the assessee is allowed.