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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.7.2014

CORAM

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

T.C.(A).No.49 of 2014

The Commissioner of Income Tax
Chennai - 600 034.

..Appellant

Vs.

Akbar Ali Dhala

..Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Chennai 'B' Bench, dated 25.6.2013 made in ITA No.1693/Mds/2012 for the assessment year 2007-2008 against the order of the Commissioner of Income Tax (Appeals) XII, Che-34 dt.5.6.12 and made in ITA No.545/2011-12 for the assessment year 2007-08 against the order of the Assistant Commissioner of Income Tax, Business Circle-XV, Chennai dt. 31.12.2011 and made in GIR No./P.A.N.-ACFPAQ7514E for the Assessment year 2007-08.

For Appellant

:Mr.J.Narayanasamy
Senior Standing Counsel

J U D G M E N T
(Delivered by R.SUDHAKAR, J.)

The appeal has been filed by the Revenue challenging the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai, dated 25.6.2013 made in ITA No.1693/Mds/2012 for the assessment year 2007-2008, by raising the following substantial questions of law:

"1. Whether on the facts and in the circumstances of the case the Tribunal has jurisdiction and was right in holding that the assessee is entitled to capital gains exemption under Section 54EC even though the assessee had invested in REC bonds beyond the stipulated period of six months, when the section does not provide for extension of the time limit for investment?



his appeals.

In result, the assessee's appeal is dismissed."

2.3. On further appeal by the assessee, the Tribunal, placing reliance on the decision of the Bombay High Court in Commissioner of Income Tax v. Cello Plast, (2012) 24 Taxmann.com 111 (Bom.), came to the conclusion that since the bonds were not available during the period from 1.4.2007 to 1.7.2007, the assessee had no other option except to invest in REC Bonds on 2.7.2007. The assessee's plea for grant of capital gain exemption under Section 54EC of the Act was accepted and the appeal was allowed. Aggrieved by the said order passed by the Tribunal, the Revenue has filed this appeal.

3. The main plank of the argument of the learned Senior Standing Counsel appearing for the appellant is that the assessee could have invested in REC Bonds during the period from 22.11.2006 to 31.3.2007, during which period REC Bonds were available, and inasmuch as the assessee failed to invest in REC Bonds when the same were available, he cannot claim capital gains exemption under Section 54EC of the Act.

4. We have heard the learned Senior Standing Counsel appearing for the appellant and perused the order passed by the Tribunal and the authorities below.

5. Before advertng the merits of the case, it would be apposite to refer to Section 54EC 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.



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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.

(2)

(3)

Explanation.- For the purposes of this section,-

(a)

(b) "long-term specified asset" for making any investment under this section during the period commencing from the 1st day of April, 2006 and ending with the 31st day of March, 2007, means any bond, redeemable after three years and issued on or after the 1st day of April, 2006, but on or before the 31st day of March, 2007,-

(i) by the National Highways Authority of India constituted under section 3 of the National Highways Authority of India Act, 1988 (68 of 1988) ; or

(ii) by the Rural Electrification Corporation Limited, a company formed and registered under the Companies Act, 1956 (1 of 1956),

and notified by the Central Government in the Official Gazette for the purposes of this section with such conditions (including the condition for providing a limit on the amount of investment by an assessee in such bond) as it thinks fit :

Provided that where any bond has been notified before the 1st day of April, 2007, subject to the conditions specified in the notification, by the Central Government in the Official Gazette under the provisions of clause (b) as they stood immediately before their amendment by the Finance Act, 2007, such bond shall be deemed to be a bond notified under this clause;

(ba) "long-term specified asset" for making any investment under this section on or after the 1st day of April, 2007 means any bond, redeemable after three years and issued on or after the 1st day of April, 2007 by the National Highways Authority of India constituted under section 3 of the National Highways Authority Act, 1988



(68 of 1988) or by the Rural Electrification Corporation Limited, a company formed and registered under the Companies Act, 1956 (1 of 1956).”

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6. Section 54EC of the Act contemplates 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 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 provisions of the said Section. The purport of this section is to grant a benefit to the assessee, who had invested the capital gain that arises from the transfer of long-term capital asset, within a period six months after the date of such transfer, in the long-term specified asset.

7. There is no hard and fast rule that the assessee should invest on a particular date within the six months period specified in the said provision. This is more so taking into consideration the fact that the assessee is entitled to invest in any such long term specified asset specified in Explanation (b) to Section 54EC(3) that would be most beneficial to him. It is also possible that the assessee can wait till the last date to see whether any bond that is profitable to him is issued.

8. In the present case, for more than 51 days REC Bonds were not available in the market and that fact is not in dispute. A reading of Section 54EC of the Act and the fact that REC Bonds were not available for a period of 51 days would go to show that prejudice is caused to the assessee, as he will not be able to exercise the right any time during the entire period of six months. In effect, when the bonds were not available from 1.4.2007 to 1.7.2007, it creates an artificial cut-off period contrary to Section 54EC of the Act. The statutory benefit granted under Section 54EC of the Act is sought to be curtailed on the ground that the said option should have been exercised in a period earlier to six months, even though such right is available to the assessee for a period of six months as a whole. The assessee will be entitled to exercise his option during the entire period. The assessee can make his choice based on what is available or wait for a better option. However, he cannot be expected to visualize unforeseen eventualities and do the impossible. In the present case, assessee chose to wait but by the meantime, the option ran out and hence had to wait till the next opportunity.



9. The above said view is fortified by a decision of the Bombay High Court in Commissioner of Income Tax v. Cello Plast, (2012) 24 Taxmann.com 111 (Bom.), wherein a similar issue was considered and it was held as under:

"17. The submissions are not well founded. The REC bonds could not be purchased as they were not available throughout the period of six months commencing from the date of the sale of the factory by the respondents and even thereafter till the extended date of 31.12.2006 under the CBDT Circular. That the bonds were available for a limited time during this period between 1.7.2006 to 3.8.2008, makes no difference. The respondents had time till 21.9.2006, to invest in these bonds to avail the benefit under section 54EC. Section 54EC entitles a person to avail of the right conferred thereby at any time during the period of six months from the date of sale of the asset. The respondents cannot be deprived of this right conferred by the Act for no fault of theirs. Thus, the availability of the bonds only for a limited time during this period cannot prejudice the assessee's right to exercise the same upto the last date. The bonds were admittedly not available except during the said period.

18. Lex not cogit impossibila (law does not compel a man to do that which he cannot possibly perform) and impossibilum nulla obligatio est (law does not expect a party to do the impossible) are well known maxims in law and would squarely apply to the present case. The statute viz. Section 54EC of the Act provides for exemption from tax to long term capital gain provided the same is invested in bonds of Rural Electrification Corporation Limited or National Highway Authority of India. However, as the bonds were not available, it was impossible for the respondent-assessee to invest in them within six months of the sale of their factory building. Therefore, in the circumstance one would have to interpret Section 54EC of the Act ensure that it does not lead to injustice. The Apex Court in the matter of



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Directorate of Enforcement v. Deepak Mahajan (1994) 3
SCC 440 observed as follows:

'Though the function of the Courts is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law. In such circumstances, it is the duty of the Court to mould or creatively interpret the legislation by liberally interpreting the statute.'

Therefore, in the present facts, the six months provided for investing in bonds may be reasonably extended in view of the non availability of bonds till 22.1.2007.

19. The contention of the appellant revenue that Rural Electrification bonds were available upto 3.8.2006 and the respondent assessee should have purchased the bonds before 3.8.2006 is not sustainable as the time given by the statute to invest in bonds under Section 54EC of the Act is six months from the date of sale and, therefore, the respondent was entitled in law to wait till 21.9.2006 to invest in the bonds."

Though the learned Senior Standing Counsel appearing for the appellant states that the facts in the above said decision are slightly different from facts of the present case, the said plea does not hold water in view of the reasoning given by us interpreting Section 54EC of the Act.

7. For the foregoing reasons, on the above stated facts, no substantial question of law arises for our consideration and we find no reason to interfere with the order of the Tribunal.

In the result, this appeal is dismissed.

Sd/-

Asst. Registrar(Records)

Dt.07/08/14

/true copy/

Sub Asst. Registrar.



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To:

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- 1.The Assistant Registrar,
Income Tax Appellate Tribunal
Chennai Bench "B", Chennai.
- 2.The Secretary, Central Board
of Direct Taxes, New Delhi.
- 3.The Commissioner of Income Tax (Appeals-XII)
Chennai - 600 034.
4. The Commissioner of Income Tax-X
Chennai.
5. The Assistant Commissioner of Income Tax
Business Circle - XV
Chennai.

+1cc to Mr.J. Narayanaswamy ,Advocate SR.No.30827

SV(CO)
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