

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-368-2018 (O&M)

Date of Decision: 12.3.2019

Principal Commissioner of Income Tax-1, Chandigarh

....Appellant.

Versus

Shri Mahipinder Singh Sandhu

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.**

PRESENT: Ms. Urvashi Dhugga, Senior Standing Counsel,
for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 14.3.2018 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench, 'B', Chandigarh (hereinafter referred to as “the Tribunal”) in ITA No. 650/Chd/2017, for the assessment year 2008-09, claiming the following substantial questions of law:-

- i) Whether on the facts and circumstances of the case, the ITAT's order is perverse as the agreement to sell was executed on 19.11.2007 and the assessee had received 90% of the total consideration amounting to ₹ 4,71,69,579/- which was more than 90% of the total consideration in

the F.Y. 2007-08 relevant to A.Y. 2008-09 and had the requisite funds to invest within six months of the transfer to claim the benefit under section 54EC?

- ii) Whether on the facts and circumstances of the case, the ITAT's order is perverse in holding that transfer took place in A.Y. 2010-11 and therefore, exigible to deduction under Section 54EC?
- iii) Whether on the facts and circumstances of the case, the ITAT's order is legally sustainable under Section 2(47) read with Section 45 which is a deeming Section and introduced a legal Section to decide the issue of transfer of capital assets?
- iv) Whether on the facts and circumstances of the case, the Hon'ble ITAT order is perverse as it is against the judgment of the Hon'ble Apex Court in Sanjeev Lal Versus CIT in Civil Appeal No. 5899 of 2014 on the issue of transfer under Section 2 (47) read with Section 45 of the Income Tax Act?

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed his return of income on 29.9.2008 for the assessment year 2008-09 declaring an income of ₹ 5,27,15,240/-. Subsequently, the case was reopened and notice under Section 148 of the Act was issued to the assessee. The Assessing Officer noticed that the assessee had sold shares of M/s TICS Telecom Towers Pvt. Ltd. on 28.11.2007 and had received a part sale consideration amounting to

₹ 40,28,748/- during the assessment year 2010-11 and the said income has to be taxed in the assessment year 2008-09. It was further observed that since the assessee had made investment in REC bond on 6.8.2010, i.e. after a period of six months from the date of transfer of the shares irrespective of when the whole or part of sale consideration was actually received, the assessee was not entitled to deduction under Section 54EC of the Act. Accordingly, the Assessing Officer vide assessment order dated 30.10.2015 (Annexure A-1) disallowed the benefit of exemption under Section 54EC of the Act as claimed by the assessee and made addition of ₹ 40,28,748/-. Feeling aggrieved by the order, Annexure A-1, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), Chandigarh [for brevity “the CIT(A)”]. The CIT(A) vide order dated 22.2.2017 (Annexure A-2) upheld the addition made by the Assessing Officer and dismissed the appeal. Still dissatisfied, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 14.3.2018 (Annexure A-3) while partly allowing the appeal, had deleted the addition made by the Assessing Officer and affirmed by the CIT(A). Hence, the present appeal by the revenue.

3. After hearing learned counsel for the appellant, we do not find any merit in the appeal.

4. The Assessing Officer had reopened the case of the assessee to which the assessee filed objections. The Assessing Officer disposed of the said objections by giving reasons in the order dated 23.6.2016 wherein it was observed that the capital gains were to be taxed in the year in which they were transferred and that the delay in receipt of consideration was no bearing on the taxability of the amount. Vide the said order, the Assessing Officer rejected the objection of the assessee regarding withdrawal of

exemption under Section 54EC of the Act by noticing that the assessee was not eligible for exemption under Section 54EC since the investment was not made within six months after the date of transfer which is an eligibility criterion for claiming the exemption. The said findings of the Assessing Officer were upheld by the CIT(A) in appeal. On further appeal, the Tribunal upheld the action of the Assessing Officer in reopening of the assessment. However, the Tribunal deleted the addition of ₹ 40,28,748/- made by the Assessing Officer and upheld by the CIT(A). The Tribunal held that admittedly the amount of ₹ 18,00,000/- was deposited in the Escrow Account. Both the transferrer and the transferee had common rights over the said amount as the said amount was deposited in the Escrow Account as a security in respect of future liabilities of the company/transferor. There was no certainty about the quantum of amount likely to be received by transferor or transferee out of the said amount deposited in Escrow Account. Since, there was no certainty of the time of release of the said amount or the part of the amount to either of the parties as dispute between the parties had occurred and the litigation was going on, it cannot be said that the assessee had got a vested right to receive the amount in question. It was only at the end of the litigation that the rights and liabilities of the transferor and transferee were ascertained and thereupon the share of the assessee was passed on to the assessee for which the assessee offered capital gains in the immediate assessment year 2010-11. Further, the Tribunal had held the assessee entitled to the benefit of deduction under Section 54EC of the Act as the amount was invested by him in the Rural Electrification Corporation Ltd. bonds in the year of receipt which was also the year of taxability of the capital gains so received. The relevant findings

recorded by the Tribunal read thus:-

“8. We have considered the rival submissions of the Ld. Representatives of the parties and have also gone through the record. We find force in the contention raised by the Ld. Counsel for the assessee. Admittedly, a sum of ₹ 18,00,000/- was deposited in the Escrow Account. Both the transferor and transferee had common rights over the said amount as the said amount was deposited in the Escrow Account as a security in respect of future liabilities of the company/transferor. There was no certainty about the quantum of amount likely to be received by transferor or transferee out of the said amount deposited in Escrow Account. Even there was no certainty of the time of release of the said amount or the part of the amount to either of the parties as a dispute between the parties had occurred and litigation was going on. In these circumstances, it cannot be said that the assessee had got a vested right to receive the amount in question. It was only at the end of the litigation that the rights and liabilities of the transferor and transferee were ascertained and thereupon the share of the assessee was passed on to the assessee for which the assessee offered capital gains in the immediate A.Y. 2010-11. The

Hon'ble Bombay High Court in the case of CIT Vs. Hemel Raju Shete' (supra) while relying upon the decision of the Hon'ble Supreme Court in 'E.D. Sassoon & Co. Ltd. Vs. CIT' (supra) has observed that when the taxpayer did not have the vested right to receive a particular amount, it cannot be said that the said amount has accrued to the taxpayer. The Hon'ble Delhi High Court in the case of 'R. Dalmia Vs. CIT' (supra) has held that the capital gains would accrue only to an assessee when they are ascertained.

9. We also find force in the contention of the Ld. Counsel for the assessee that the amount was invested in Rural Electrification Corporation Ltd. bonds on receipt of the same and in the year of the taxability of the capital gains. We, therefore, hold that the assessee is entitled to the benefit of deduction u/s 54EC as the amount was invested by the assessee in the Rural Electrification Corporation Ltd. bonds in the year of receipt which was also the year of taxability of the capital gains so received. In view of this, the order of the lower authorities on this issue is set aside and the additions made into the account of the assessee are hereby ordered to be deleted.”

5.

In view of the above, no error could be pointed out by learned

counsel for the revenue in the findings recorded by the Tribunal warranting interference by this Court. Further, referring to the judgment of the Apex Court in **Sanjeev Lal and another v. Commissioner of Income Tax and another (2014) 365 ITR 389 (SC)**, relied upon by the learned counsel for the revenue, in view of the factual matrix noticed hereinbefore, suffice it to observe that the said pronouncement being based on its own facts does not advance the case of the revenue.

6. No question of law, much less, substantial question of law arise in the appeal. Consequently, finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

March 12, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes