IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2014

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR
AND
THE HON'BLE MR.JUSTICE R.KARUPPIAH

T.C.(A).No.443 of 2014

Commissioner of Income Tax
Chennai – 600 034. .. Appellant

Vs.

Coromandel Industries Limited
No.5, Pycrofts Garden Road
Chennai – 600 006. .. Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai, dated 25.6.2013 made in I.T.A.No.411/Mds/2013 for the assessment year 2009-2010.

For Appellant : Mr.T.Ravikumar
Senior Standing Counsel

For Respondent : Mr.Venkat Narayanan
for M/s.Subbaraya Aiyar

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

The Revenue has filed this appeal challenging the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai, dated 25.6.2013 made in I.T.A.No.411/Mds/2013 for the assessment year 2009-2010, by raising the following questions of law:

(i) Whether the Tribunal was right in relying upon the decision of *Sriram Indubal v. ITO in I.T.A.No.1950/Mds/2012*, especially when there is an appeal pending before the High Court which has been preferred by the appellant?

(ii) Whether the Tribunal ought to have noted that the intention of the legislature is to limit the investment in the long term specified asset to Rs.50 Lakhs as held in the case of *Areva T&D India Ltd. v. Assistant Commissioner, 326 ITR 540*, which had been relied upon by the Assessing Officer and the Commissioner of Income Tax (Appeals)?

2.1. The brief facts of the case are as under: The assessee company is engaged in the business of manufacturing engineering components and offering engineering consultancy. The assessee company filed return of income for the assessment year 2009-2010 admitting a taxable income of Rs.67,68,507/-. The return was selected for scrutiny and notice under Section 143(2) of the Income Tax Act was issued on 20.8.2010. Subsequently, after obtaining the copies of returns of income and other relevant documents, a notice under Section 142(1) of the Act was issued on 14.7.2011. The assessee furnished such details on 9.10.2011 and 19.10.2011.

2.2. It was noticed from the documents filed by the assessee that the assessee sold the land and building of Hyderabad Unit for a total consideration of Rs.1,75,00,000/-. The assessee claimed to have sold the land component at Hyderabad for Rs.1,13,74,000/- and after adjusting the indexed cost of acquisition, the total long term capital gains was calculated at Rs.1,09,98,256/-, of which Rs.1,00,00,000/- was claimed as deduction under Section 54EC of the Act, by investing Rs.50 Lakhs in REC Bonds on 31.3.2009 and another Rs.50 Lakhs in REC Bonds on 31.4.2009. However, the Assessing Officer restricted the deduction to Rs.50 Lakhs by stating that the intention of the legislature is to limit the investment in long term specified asset to Rs.50 Lakhs only, by placing reliance on the decision of this Court in *Areva T&D India Ltd. v. Assistant Commissioner, 326 ITR 540*.

2.3. Aggrieved by the said order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who confirmed the order passed by the Assessing Officer.

2.4. Calling into question the said order, the assessee preferred appeal to the Tribunal. The Tribunal held that the exemption granted under proviso to Section 54EC(1) of the Act should be construed not transaction-wise, but financial year-wise. It further held that if an assessee is able to invest a sum of Rs.50,00,000/- each in two different financial years, within a period of six months from the date of transfer of the capital asset, it cannot be said to be inadmissible. Accordingly, the Tribunal allowed the appeal filed by the assessee.

2.5. Assailing the said order passed by the Tribunal, the Revenue has filed this appeal on the questions of law referred supra.

3. We have heard Mr.T.Ravi Kumar, learned Senior Standing Counsel appearing for the Revenue and Mr.Venkat Narayanan, learned counsel appearing for the respondent.

4. The issue involved in this appeal is no longer *res integra* in view of the decision of this Court in *Commissioner of Income Tax v. C.Jaichander and another (Order dated 15.9.2014 made in T.C.(A) Nos.419 and 533 of 2014, to which one of us – R.Sudhakar,J. is a party*). In the said decision, this Court held as under:

> "5. The key issue that arises for consideration is whether the first proviso to Section 54EC(1) of the Act would restrict the benefit of investment of capital gains in bonds to that financial year during which the property was sold or it applies to any financial year during the six months period.
>
> 6. For better understanding of the issue, it would be apposite to refer to Section 54EC(1) 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.
>
> 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.'

7. *On a plain reading of the above said provision, we are of the view that Section 54EC(1) of the Act restricts the time limit for the period of investment after the property has been sold to six months. There is no cap on the investment to be made in bonds. The first proviso to Section 54EC(1) of the Act specifies the quantum of investment and it states that the investment so made on or after 1.4.2007 in the long-term specified asset by an assessee during any financial year does not exceed fifty lakh rupees. In other words, as per the mandate of Section 54EC(1) of the Act, the time limit for investment is six months and the benefit that flows from the first proviso is that if the assessee makes the investment of Rs.50,00,000/- in any financial year, it would have the benefit of Section 54EC(1) of the Act.*

8. The legislature noticing the ambiguity in the above said provision, by Finance (No.2) Act, 2014, with effect from

1.4.2015, inserted after the existing proviso to sub-section (1) of Section 54EC of the Act, a second proviso, which reads as under:

> "Provided further that the investment made by an assessee in the long-term specified asset, from capital gains arising from transfer of one or more original assets, during the financial year in which the original asset or assets are transferred and in the subsequent financial year does not exceed fifty lakh rupees."

9. At this juncture, for better clarity, it would be appropriate to refer to the Notes on Clauses – Finance Bill 2014 and the Memorandum explaining the provisions in the Finance (No.2) Bill, 2014, which read as under:

> *"Notes on Clauses – Finance Bill 2014:*
> *Clause* 23 of the Bill seeks to amend section 54EC of the Income-tax Act relating to capital gain not to be charged on
> investment in certain bonds. The existing provisions contained in sub-section (1) of section 54EC provide that where capital gain arises from the transfer of a long-term capital asset and the assessee has within a period of six months invested the whole or part of capital gains in the long-term specified asset, the proportionate capital gains so invested in the long-term specified asset out of total capital gain shall not be charged to tax. The proviso to the said sub-section provides that the investment made in the long-term specified asset during any financial year shall not exceed fifty lakh rupees.
>
> It is proposed to insert a proviso below first proviso in said sub-section (1) so as to provide that the investment made by an assessee in the long-term specified asset, from capital gains arising from transfer of one or more original assets, during the financial year in which the original asset or assets are transferred and in the subsequent financial year does not exceed fifty lakh rupees.
>
> This amendment will take effect from 1st April,

2015 and will, accordingly, apply in relation to assessment year 2015-16 and subsequent years.

Memorandum: Explaining the provisions in the Finance (No.2) Bill, 2014:

Capital gains exemption on investment in Specified Bonds.

The existing provisions contained in sub-section (1) of section 54EC of the Act provide 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, invested the whole or any part of capital gains in the long-term specified asset, out of the whole of the capital gain, shall not be charged to tax. The proviso to the said sub-section provides that the investment made in the long-term specified asset during any financial year shall not exceed fifty lakh rupees.

However, the wordings of the proviso have created an ambiguity. As a result the capital gains arising during the year after the month of September were invested in the specified asset in such a manner so as to split the investment in two years i.e., one within the year and second in the next year but before the expiry of six months. This resulted in the claim for relief of one crore rupees as against the intended limit for relief of fifty lakhs rupees.

Accordingly, it is proposed to insert a proviso in sub-section (1) so as to provide that the investment made by an assessee in the long-term specified asset, out of capital gains arising from transfer of one or more original asset, during the financial year in which the original asset or assets are transferred and in the subsequent financial year does not exceed fifty lakh rupees.

This amendment will take effect from 1st April, 2015 and will, accordingly, apply in relation to assessment year 2015-16 and subsequent assessment years."

10. The legislature has chosen to remove the ambiguity in the proviso to Section 54EC(1) of the Act by inserting a

second proviso with effect from 1.4.2015. The memorandum explaining the provisions in the Finance (No.2) Bill, 2014 also states that the same will be applicable from 1.4.2015 in relation to assessment year 2015-16 and the subsequent years. The intention of the legislature probably appears to be that this amendment should be for the assessment year 2015-2016 to avoid unwanted litigations of the previous years. Even otherwise, we do not wish to read anything more into the first proviso to Section 54EC(1) of the Act, as it stood in relation to the assessees.

11. *In any event, from a reading of Section 54EC(1) and the first proviso, it is clear that the time limit for investment is six months from the date of transfer and even if such investment falls under two financial years, the benefit claimed by the assessee cannot be denied. It would have made a difference, if the restriction on the investment in bonds to Rs.50,00,000/- is incorporated in Section 54EC(1) of the Act itself. However, the ambiguity has been removed by the legislature with effect from 1.4.2015 in relation to the assessment year 2015-16 and the subsequent years*.

For the foregoing reasons, we find no infirmity in the orders passed by the Tribunal warranting interference by this Court. The substantial questions of law are answered against the Revenue and these appeals are dismissed."

(emphasis supplied)

5. The decision of this Court in *Areva T and D India Ltd. v. Assistant*

Commissioner of Income tax, [2010] 326 ITR 540, relied upon by the learned Senior Standing Counsel for the appellant is not applicable to the facts of the present case, as in the said decision the writ petitions filed "*for issuance of writ of declaration declaring that the conditions occurring in Notification No. 380 of 2006 F. No. 142/09/ 2006-TPL, dated December 22, 2006, along with the words 'subject to the following conditions, namely,' issued by the Central Board of Direct Taxes are ultra vires Section 54EC of the Income-tax Act, 1961, and arbitrary and violative of Articles 14 and 265 of the Constitution of India and consequently unenforceable*", were dismissed as infructuous taking note of the subsequent amendment to Section 54EC of the Act, incorporating the limit on amount of investment in bonds in the section itself.

6. For the reasons aforesaid, we do not find any question of law, much less substantial question of law that arises for our consideration in this appeal. Accordingly, this appeal is dismissed. No costs.

(R.S.J.) (R.K.J.)
16.12.2014

Index : Yes
Internet : Yes
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To:

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) - IX
   Chennai

4. The Assistant Commissioner of Income Tax
   Company Circle-I(3), Chennai.

R.SUDHAKAR,J.
and
R.KARUPPIAH,J.

(sasi)

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