

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 52 of 2004****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE KS JHAVERI****and****HONOURABLE MR.JUSTICE K.J.THAKER**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

JYOTINDRA H. SHODHAN....Appellant(s)

Versus

I.T. OFFICER....Opponent(s)

Appearance:

MRS SWATI SOPARKAR, ADVOCATE for the Appellant(s) No. 1

MRS MAUNA M BHATT, ADVOCATE for the Opponent(s) No. 1

CORAM: HONOURABLE MR.JUSTICE KS JHAVERI
and
HONOURABLE MR.JUSTICE K.J.THAKER

Date : 12/12/2014

ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. By way of this appeal, the appellant-assessee has challenged the order dated 03.07.2003 passed by the Income Tax Appellate Tribunal [for short "**the Tribunal**] in ITA No.1116/Ahd/1994, whereby the appeal filed by the assessee was dismissed by the Tribunal.

2. The facts of this case are that on 07.08.1982 the assessee had sold two plots of land for Rs.8,98,775/-. The original assessment made under Section 143(3) was set aside by the CIT(A) vide order dated 28.08.1989 and the Assessing Officer was directed to make fresh assessment. Thereafter, the Assessing Officer completed the fresh assessment and passed his order on 31.03.1992. In the fresh assessment, the assessee claimed deduction under Section 54E of the Act on the basis of investment of Rs.1,89,400/- made in NRDB on 20th February, 1987, within six months of the receipt of final installment. However, the Assessing Officer, rejected the claim of the assessee.

2.1. Against the order of the Assessing Office, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The CIT(A) vide dismissed the said appeal. Being aggrieved

by the same, the assessee again filed an appeal before the Tribunal. The Tribunal vide impugned order dated 03.07.2003 dismissed the appeal of the assessee. Hence, this appeal is filed at the instance of the assessee.

3. While admitting this appeal on 20.09.2004, the Court had formulated the following substantial questions of law:-

(i) Whether, the ITAT is right in law and on facts in holding that benefit of Section 54E is available where the assessee has invested or deposited the whole or any part of net consideration in any specified asset within six months from the date of consideration received and not from the date of such transfer ?

(ii) Whether, in the facts and circumstances of the case, the deduction under Section 54E is available when the investment in the specified asset is made within a period of 6 months from the date of transferor from the date of receipts of sale consideration ?"

4. Mr. Soparkar, learned advocate for the

appellant-assessee has contended that all the authorities have committed error in passing the orders. He submitted that the assessee had received Rs.5,08,805/- by way of cash as under:-

SL. No.	Rs.	Date
1	Rs.1,68,266.60	06/11/80
2	Rs.1,87,538.38	07/08/82
3	Rs.25,000.00	17/09/84
4	Rs.25,000.00	28/11/84
5	Rs.83,000.00	03/01/84
6	Rs.20,000.00	21/09/85

4.1. Therefore, he submitted that the stipulated period of six months have to be counted from 21st September, 1985 i.e. from the date of receipt of consideration.

5. Learned advocate for the respondent-revenue has supported the impugned judgment and order of the Tribunal and submitted that the present appeal deserve to be dismissed in view of the concurrent findings of all the authorities namely the Assessing Officer, CITA(A) and the Tribunal. He has also drawn our attention to the reasonings adopted by the Tribunal while deciding the appeal. Therefore, he urged that this Court may dismiss the present appeal.

6. We have heard learned advocate for the parties and perused the material on record. In our view, the contention of learned advocate for the appellant-assessee is misconceived inasmuch as the six months' period will have to be counted when sale-deed was executed i.e. from 07.08.1982. Therefore, we are of the opinion that the contention of learned advocate for the appellant-assessee is not acceptable.

7. Further, the Tribunal in paragraph No.17 of its order has observed as under:-

"17. From the aforesaid discussion, it is very clear that an assessee who desired to avail benefit of section 54E must strictly satisfy all those conditions which are provided therein. One of the conditions of the section is that assessee is to deposit whole or any part of the net consideration in any specified assets within a period of six months after the date of transfer. There is no dispute about the facts that the transfer in the present case took place when sale deed was executed and registered on 07.08.1982 and the investment of Rs.1,89,904/- is made by the assessee in National Rural

Development Bonds on 20.02.1987 i.e. after the stipulated period of 6 months from the date of transfer. Further, this case does not falls under the provisions to Sec. 54E(1) whereof the period of six months is allowed to be reckoned from the date of receipt instead of date of transfer. The case of assessee being not a case of compulsory acquisition of property, the benefit granted under the provision would not be available to the assessee. The contention of the assessee that this stipulated period of six months which is to be reckoned from the date of receipt of consideration is not acceptable. In view of clear language of Section 54E(1), the alternate submission, that the view beneficial to the assessee is to be accepted, is also not acceptable.

8. In view of the aforesaid discussions, we are in complete agreement with the view taken by the Tribunal. The Tribunal has not committed any error in dismissing the appeal of the assessee. Hence, the present appeal is dismissed. The questions of law raised in this appeal is answered in favour of the revenue and against the assessee. Accordingly, we hold that the Tribunal

was right in law in holding that benefit of Section 54E is available where the assessee has invested or deposited the whole or any part of net consideration in any specified asset within six months from the date of consideration received and not from the date of such transfer.

(K.S.JHAVERI, J.)

(K.J.THAKER, J)

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