

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## TAX APPEAL NO. 32 of 2003

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE KS JHAVERI

and

HONOURABLE MR.JUSTICE K.J.THAKER

- =====
- 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 ?
- =====

TORRENT LABORATORIES LTD.....Appellant(s)

Versus

DY.C.I.T. (ASSESSMENT)....Opponent(s)

Appearance:

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

MR NITIN K MEHTA, ADVOCATE for the Opponent(s) No. 1

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

Date : 17/11/2014

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

1. By way of this appeal, the appellant-assessee has challenged the order dated 30.09.2002 passed by the Income Tax Appellate Tribunal, Ahmedabad [for short "the ITAT"] in ITA No.1191/Ahd/96.

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

*"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that while computing long term capital gains, deductions under Sections 48(2) are required to be allowed before applying the provisions of Sections 54E of the Income Tax Act, 1961 ?"*

3. The facts in brief are that on 31.12.1992 the assessee had filed its return of income, declaring total income of Rs.1,08,97,673/- for the assessment year 1992-93. The Assessing Officer passed order under Section 143(1)(a) of the Income Tax Act. Against the said order, the assessee filed an appeal before the CIT(Appeal). The CIT(A) vide 10.1.1996 partly allowed the said appeal. Being aggrieved by the same, the assessee filed an appeal before the ITAT. The Tribunal vide its order dated 30.09.2002 dismissed the appeal of the assessee. Hence, this appeal.

4. While admitting this appeal, the Court had directed to hear this appeal along with Tax Appeal No.288 of 2002 since the facts and questions of law involved in this appeal are identical to Tax Appeal No.288 of 2002.

5. Learned counsel for the appellant has submitted that the Tax appeal No.288 of 2002 has now been decided by this Court on 21.07.2008.

6. As against this, learned counsel for the revenue has relied upon the decision of Kerala High Court in the case of CIT (Appeal) Vs. V.V. George, 227 ITR 893 and submitted that the earlier bench has not been considered this judgment in proper perspective.

7. We have heard learned advocate for both the parties and perused the material on record. We have also perused the decision of this Court passed in Tax Appeal No.288 of 2002 and other allied matter and found that the issue involved in this appeal is already concluded by the above decision. Paragraph Nos. 25 to 27 of the above decision reads as under:-

*"25. If one analyses the scheme of capital gains tax, the capital gains arises out of the transfer of capital assets. However, such capital gains are subject to certain exemptions and deductions. Immediately after charging section of 45, mode of computation and deductions is provided in Section 48. The opening words of*

Section 48 (1) are very clear which say that the income chargeable under the head capital gains. It is, therefore, necessary to compute the chargeable capital gain first and while computing such chargeable capital gain, deductions under Section 48 (1) and 48 (2) are required to be given. Section 48 (1) refers to two deductions, namely, expenditure incurred in connection with such transfer and cost of acquisition of the assets and the cost of any improvement thereto. Thus, after deducting these two amounts, Clause (b) of Section 48 (1) talks about further deductions specified in sub-Section (2). Thus, as a natural corollary, for the purpose of computing chargeable capital gain, both these sub-Sections (1) & (2) of Section 48 should be resorted to first. The question then arises with regard to Section 54E of the Act. It is true that Explanation to Section 53 says that in this section and in Sections 54, 54B, 54D, 54E, 54F and 54G, references to capital gain shall be construed as references to the amount of capital gain as computed under Clause (a) of sub-Section (1) of Section 48. However, all these sections, namely, Section 53 onwards, are in respect of either whole or pro rata deductions from the amount of chargeable capital gains and when such pro rata deductions are determined, the Explanation to Section 53 can be invoked. It has, however, nothing to do with the mode of computation and deduction provided under Section 48 (2) of the Act. In no way, it restricts the operation of Section 48 (2) of the Act. The definition of net consideration given in Explanation 5 to Section 54E is also applicable while considering the deduction under Section 54E on the basis of the amount invested in the specified investments. This Explanation does not restrict the operation of Section 48 (2) of the Act. It is also important to note that although Section 54E provides for an exemption, it is an exemption intended to

provide an incentive to an assessee to invest in specified assets and being such an incentive (which one assessee may choose to avail and another may not), it cannot be suggested that Section 54E must be so read as to provide for additional 'steps' in the computation of the income chargeable under the head capital gains under Section 48. The categorical language of Section 48 does not permit importing of any additional 'step' since it so clearly and repeatedly lays down that for the purpose of computation of income chargeable under the head Capital gains, first of all full value of consideration for transfer should be determined. Thereafter, deductions under clause (a) of Section 48 (1) should be granted and after determining capital gain in such manner, deductions under Section 48 (2) should be worked out. The same would be the income chargeable to tax as computed under Section 48. A harmonious reading of all the relevant provisions shows that it is only after giving full effect to the provisions of Section 48 which lay down the basic mechanism of how the income chargeable under the head Capital gains is to be computed, that the question of going to Section 54E would arise.

26. On the basis of the above discussion, the computation of capital gain made by the assessee along with its return of income is a correct computation and capital gain worked out by the Assessing Officer and confirmed by the CIT (Appeal) as well as Tribunal is contrary to the provisions relating to capital gains. We, therefore, with respect do not subscribe the view taken by the Kerala High Court. We are of the view that deduction under Section 48 (2) of the Act is available to all assesseees whether one makes an investment in specified assets as envisaged under Section 54E of the Act or not and hence, while computing the income chargeable under the head capital gains,

deductions under Section 48 (1) and (2) are considered first. Under Section 54E of the Act, an assessee in order to avail of the benefit of exemption or deduction thereunder, must invest in the specified assets within six months of the transfer of assets, either whole or part of the net consideration. If an assessee invests the whole net consideration, he is entitled to exemption on the entire capital gains. However, if he invests a part of the net consideration in specified assets, he will be entitled to proportionate exemption by virtue of Section 54E (1) (b) of the Act. The assessee has, therefore, rightly made investments in specified assets only on that part of the net consideration as enabled him to claim exemption on the otherwise taxable capital gains. It is not necessary for the petitioner to invest the whole of the net consideration in order to claim exemption from tax on such capital gains. The assessee is entitled to avail of the permissible deduction under Section 48 (1) (b) of the Act and then take the advantage of Section 54E of the Act by investing the proportionate net consideration in specified assets and thereby avoid tax on the capital gains on which the assessee would otherwise be liable to pay tax.

27. Before parting, we also observe that the Circular relied upon by the revenue cuts at the very root of the statutory provisions with which we are concerned in these appeals and there is no way we can give effect to the same. It has the effect of reducing the deductions under Section 48 (2) and thereby increasing the amount of net taxable capital gains. A Circular cannot impose an additional burden on the assessee. We are, therefore, of the view that the above Circular has not correctly interpreted the provisions of Section 48 viz.a.viz. Section 54E. Notes on Clauses in the Finance Bill, 1987, neither under Clause 15 seeking

*substitution of a new section of Section 48 of the Act relating to mode of computation and deductions nor under Clause 22 seeking an amendment of Section 54E of the Act relating to exemption from capital gain on transfer of capital assets in certain cases, states that while computing long term capital gains, deductions under Section 54E of the Act are required to be allowed before deductions under Section 48 (2) of the Act. The assessee's computation of capital gain is, therefore, in accordance with the provisions of the Act and it must be upheld."*

8. In view of the above, we concur with the findings recorded by the earlier Division Bench. Therefore, the present appeal is allowed. Accordingly, the question of law which was posed in this appeal is answered in favour of the assessee and against the revenue.

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(K.S.JHAVERI, J.)

THE HIGH COURT  
OF GUJARAT

(K.J.THAKER, J)

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