

आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 360/PUN/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Prima Private Limited
Chaitanya 774, Budhwar Peth,
Pune-411 026
PAN : AABCP1938J

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Circle-10, Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sharad Shah
Revenue by : Shri Vitthal Bhosale

सुनवाई की तारीख / Date of Hearing : 18.05.2021
घोषणा की तारीख / Date of Pronouncement : 20.05.2021

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of the
Ld. CIT(Appeals)-6, Pune dated 07.12.2017 for the assessment year 2013-14
as per the following grounds of appeal on record : ”

*“1. The Ld. AO erred in (& CIT(A) erred in confirming) making the
disallowance u/s.14A amounting to Rs.19,31,965/-.*

*1.1. The Ld. AO erred in (& Ld. CIT(A) erred in confirming) in not
considering the fact that the assessee has huge internal accruals and*

interest free funds and therefore, no disallowance u/s.14A is warranted w.r.t. interest expenses.

1.2 The Ld. AO erred in (& CIT(A) ought to have netted off the interest expenditure and interest income while calculating disallowance u/s.14A.

1.3 The Ld. AO erred in (& Ld. CIT(A) ought to have excluded at least investments which have not resulted in any exempt income from the calculation of disallowance u/s.14A.

2. The Ld. AO erred in (& CIT(A) erred in confirming) disallowing deduction u/s.54EC of Rs.50,00,000/-.

2.1 The Ld. AO erred in (& CIT(A) erred in interpreting the provisions of Section 54EC.

3. The appellant craves its right to add or modify or alter the Grounds of appeal at any time before or during the course of hearing of the case.

2. There are two basic issues for adjudication in this appeal. First, disallowance u/s.14A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') and second, disallowance u/s. 54EC of the Act.

3. As regards the first issue, disallowance u/s 14A of the Act, it is claimed by the assessee that it has got huge internal accruals and interest free funds for making the investment and therefore, no disallowance should be made u/s. 14A of the Act.

4. The brief facts pertaining to this issue are that the assessee has made huge investment to the tune of Rs. 15.30 Crores as against the share capital and reserves of Rs. 37.11 Crores as shown in the Balance Sheet. That however as evident from the order of the Assessing Officer vide Para 4.2 and order of the Ld. CIT(Appeals) vide para 5.1 of their respective orders, the assessee in this case was unable to establish through evidences and relevant documents that the interest free funds have been only utilized for making investment during the year under consideration.

5. At the time of hearing, the Ld. AR for the assessee submitted that in the present scenario, there is a presumption in favour of the assessee that the

investments were made from the interest free funds available with the assessee. The assessee for this proposition has placed reliance on the decision in its own case in ITA No. 65/PUN/2018 for the assessment year 2012-13. The Ld. AR therefore, claimed that it should be presumed, the assessee has made investment from its own interest free funds.

6. Per contra, the Ld. DR invited our attention at Para 5.1 of the Ld.CIT(Appeals)' order where the Ld. CIT(Appeals) has categorically held that the immediate sources of investment were out of the OD account and when the investment has been made in such manner, the presumption which the assessee claims is no longer valid.

7. We have heard the rival contentions and analyzed the facts and circumstances in this case. We have also considered the judicial pronouncements placed on record. We find that in front of both the Sub ordinate Authorities in spite of opportunities being given, the assessee has not established through evidences and relevant documents that the investments were made out of its own reserves and interest free funds. The Authorities below, therefore, was unable to have an opportunity to examine the interest free funds available with the assessee via-a-vis the investment made during the relevant year under consideration. The case laws relied upon by the assessee in its own case by the Co-ordinate Bench of the Tribunal (supra.) is substantially distinguishable on facts for the reason that in this relevant year, factually it was not established by the assessee and neither therefore, it was examined by the Sub ordinate Authorities that investments were made by the assessee in the year under consideration only from reserves and interest free funds available with the assessee. That further, there is an observation by the Ld. CIT(Appeals) that investments were

directly made from OD account where both own funds and interest bearing funds are intermixed. Therefore, it becomes necessary to factually verify whether the entire investments were made only from interest free funds. We are of the considered view, therefore, in the interest of justice, this issue should be remanded back to the file of the Assessing Officer for verification of investments made vis-a-vis interest free funds available with the assessee during the year under consideration. In view, thereof, we set aside the order of the Ld. CIT (Appeals) on this issue and remand the same back to the file of the Assessing Officer for adjudication after complying with the principles of natural justice as indicated hereinabove.

8. Thus, **Ground Nos. 1, 1.1, 1.2 and 1.3 are allowed for statistical purposes.**

9. The next issue in **Ground Nos. 2 & 2.1** of the appeal memo pertains to disallowance u/s. 54EC of the Act.

10. The brief facts pertaining to this issue are that during the year under consideration, the assessee had sold windmill and showed an amount of Rs.1,78,70,039/- under the head short term capital gain. The assessee claimed exemption for an amount of Rs. 1 Crore u/s.54EC of the Act. The balance amount of Rs.78,70,039/- had been offered as short term capital gain as the windmill being depreciable asset. The assessee had made claim u/s.54EC of the Act on the ground that windmill was held more than three years and was thus a long term capital asset but for taxation purpose, the transfer of depreciable assets give rise to short term capital gain even if the asset has been held for more than three years. It was brought to the notice of the assessee by the Assessing Officer that maximum permissible deduction u/s.54EC of the Act is Rs. 50 lakhs. The assessee was asked to show cause why the balance of Rs.50 lakhs should not be disallowed. To this query, the

assessee had filed reply and the assessee has explained that they have invested Rs. 1 crore in 54EC bond (i) Rs.50 lakhs on 12th March, 2013 i.e. FY 2012-13, AY 2013-14 (ii) Rs.50 lakhs on 25th July, 2013 i.e. FY 2013-14, AY 2014-15 and therefore, the assessee had complied with the condition limit of Rs.50 lakhs on each of the Financial Year. The Assessing Officer vide Para 5.2 of his order and the Ld. CIT(Appeals) vide Para 6.2 of his order have held that the assessee was entitled for deduction u/s.54EC of the Act only to the extent of Rs. 50 lakhs.

11. We find that in the present appeal, in respect of section 54EC of the Act, under which deduction is provided against the income from long term capital gain in case investment is made in specified asset within the time frame of six months from the date of sale of asset. The said section also provides a cap on the investment to be made in the bonds to the extent of Rs.50 lakhs on any financial year. As per the mandate of said section and the proviso there under, where the assessee makes investment of Rs. 50 lakhs in this specified bond within the time frame of six months from the date of sale in any financial year and the benefit of said section is to be allowed to the assessee. In case period of six months falls in two financial years then the question which arises for adjudication whether the assessee can claim the aforesaid deduction u/s.54EC of Act to the extent of Rs. 50 lakhs on each of the financial year totalling to Rs. 1 Crore, where investment is made in the aforesaid bond in two financial year separately but within the period of six months from the date of sale of asset. This issue arose for consideration before the Hon'ble Madras High Court in the case of **CIT Vs. C. jaichander (2015) 370 ITR 579 (Mad.)** and later on in the case of **CIT Vs. Coromandal Industries (2015) 370 ITR 586 (Mad.)** have laid down that the exemption granted under proviso to Section 54EC(1) of the Act should be construed not transaction-wise, but financial year-wise wherein if an assessee was 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, the said deduction should be allowed to the assessee. Further, the Hon'ble High Court in the case of CIT Vs. C. Jaichander (Supra.) has held that 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. The Hon'ble High Court further held that however to remove the ambiguity in the above said provision the legislature by Finance (No.2) Act, 2014, with effect from 1.4.2015, has inserted after the existing proviso to sub-section (1) of Section 54EC of the Act, the second proviso which provides as per the investment made by an assessee in the long-term specified asset out of the 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 Rs. 50 lakhs. The said amendment was held to be applicable from assessment year 2015-16 and subsequent assessment years.

12. Therefore, we find after this amendment Finance (No.2) Act, 2014 with effect from 01.04.2015 there is an insertion of proviso after the existing proviso to sub section (1) to section 54EC of the Act. That however prior to this, the assessee making investment of Rs.50 lakhs in any financial year, it will have benefit of section 54EC (1) of the Act. Meaning thereby, if the assessee was able to invest sum of Rs. 50 lakhs each in two different financial years within the period of six months from the date of transfer of capital asset, the said deduction should be allowed to the assessee. This proposition of the Hon'ble Madras High Court was further followed by the Pune Bench of the Tribunal in ITA No. 321/PUN/2015 for assessment year 2010-11.

13. Before us, the copy of the circular No.01/2015 dated 21.01.2015 wherein the aforesaid amendment is mentioned, have also been placed on record and categorically it is effective from assessment year 2015-16. The case of the assessee before us is where it has made investments of Rs.50 lakhs on 12.03.2013 i.e. financial year 2012-13 relevant to assessment year 2013-14 and another Rs.50 lakhs on 25.07.2013 i.e. financial year 2013-14 relevant to assessment year 2014-15, thus applying the rationale held by the Hon'ble Madras High Court (supra.), the assessee is entitled to get benefit of deduction u/s.54EC of the Act. These investments of the assessee have been made in assessment years 2013-14 and 2014-15. The Finance (No.2) Act, 2014 is effective from assessment year 2015-16 and therefore not applicable to the case of the assessee. Para 21.4 of the said circular (supra.) categorically reads that the amendment is only effective from 01.04.2015 and shall apply in relation to the assessment year 2015-16 and subsequent assessment years. In view thereof, we set aside the order of the Ld. CIT(Appeals) on this issue and direct the Assessing Officer to grant deduction u/s.54EC of the Act to the assessee as per law. Thus, **Ground Nos.2 and 2.1 raised in appeal by the assessee are allowed.**

14. **Ground No.3** is general in nature and hence, requires no adjudication.

15. In the result, **appeal of the assessee is partly allowed for statistical purposes.**

Order pronounced on 20th day of May, 2021.

Sd/-
INTURI RAMA RAO
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 20th May, 2021
SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-6, Pune.
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “ए” बेंच,
पुणे / DR, ITAT, “A” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	18.05.2021	Sr.PS/PS
2	Draft placed before author	20.05.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		