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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 168/2024

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION-1 ..... Appellant

Through: Mr. Ruchir Bhatia, Sr. Standing Counsel.

versus

REEMA CHAWLA ..... Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Samarth Chaudhari, Adv.

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\+ ITA 169/2024

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION-1 ..... Appellant

Through: Mr. Ruchir Bhatia, Sr. Standing Counsel.

versus

ANIL CHAWLA ..... Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Samarth Chaudhari, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% 11.03.2024

CM APPL. 14523/2024 (Exemption) in ITA 169/2024

Allowed, subject to all just exceptions.

Application is disposed of.

CM APPL. 14519/2024 (42 Days Delay in Re-filing) in ITA 168/2024
CM APPL. 14524/2024 (42 Days Delay in Re-filing) in ITA 169/2024

Bearing in the mind the disclosures made, the delay of 42 days in re-filing the appeals is condoned.

The applications shall stand disposed of.

ITA 168/2024
ITA 169/2024

1. The Commissioner impugns the order of the Income Tax Appellate Tribunal ['**ITAT**'] dated 11 August 2023 and has proposed the following questions for our consideration:-

> "2.1 Whether Ld. ITAT has erred in not considering the observation made by Ld. AO in disallowing the deduction claimed by the assessee of section 54 of IT Act, 1961?
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> 2.2 Whether Ld. ITAT has also erred in considering the subsequent part payment of loan taken from ICICI for purpose of the said residential house, paid during the previous year, as allowable for exemption u/s 54, even though the loan amount is applied for much earlier and for the based on the Apartment buyer agreement dated 18/02/2016 i.e. more than one year before the date of sale of the property in question, for which exemption is being claimed?
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> 2.3 Whether Ld. ITAT has erred in deleting the addition of Rs. 4,04,38,315/- on account of exemption u/s. 54 of the Act treating the purchase of the under construction flat as flat Construction by the assessee, and not considering the facts that the assessee has entered into Apartment buyer agreement for purchase of under construction property on 18.02.2016, thereby making it a purchase of house property?
>
> 2.4 Whether without prejudice to the point above, the Ld. ITAT has erred in considering the construction/purchase of the house has happened within the time frame as mandated by section 54, when the Apartment buyer agreement was in fact entered on 18/12/2016, and thus outside the mandated period, and thus the part payment for the same, even if within the mandated period cannot be eligible for deduction under section 54?"

2. We note that the issue of Long Term Capital Gain itself arises out of the Apartment Buyers Agreement ['**Agreement**'] for the property which was entered into by the assessees' on 18 February 2016 and thus prior to the date of sale.

3. The ITAT has however come to conclude that the aforesaid Agreement was in respect of an under construction flat and since the sale as well as the possession of the property in question had been completed within a period of three years from the date of sale of a residential house, the assessees' would be entitled to be accorded relief.

4. We note that the view as taken by the ITAT is also in consonance with the judgment rendered by this Court in **Principal Commissioner of Income Tax-17 New Delhi vs. Sh. Akshay Sobti** [2019 SCC OnLine Del 12404] where the following observations were rendered:-

> "**24.** It is an accepted position and is not disputed by the Revenue that the assessee had sold the property at Jor Bagh on December 21, 2011. On the said sale, the assessee has claimed deduction of capital gains under section 54 of the Act. The assessee was required to purchase a residential house property either one year before, or within two years after the date of transfer of original asset; or within a period of three years after the date he was required to construct a residential house. The Central Board of Direct Taxes in its Circular No. 672 dated December 16, 1993 has made it clear that the earlier Circular No. 471 dated October 15, 1986 in which it was stated that acquisition of flat through allotment by the Delhi Development Authority has to be treated as a construction of flat, would apply to co-operative societies and other institutions. The tax authorities have relied upon the said circular and held that the builder would fall in the category of other institutions and, therefore, booking of the flat with the builder has to be treated as construction of flat by the assessee. In accordance with the said agreement, the assessee was to make payment in instalments and the builder was to construct an unfinished bare shell flat for finishing by the buyers. The possession was granted on March 30, 2013. The lower tax authorities after examining the terms of the agreement, the occupation certificate, and the other letters-offer to finalize the details of interiors, have come to

a conclusion that the assessee had booked a semi-furnished flat with the builder, namely, DLF Universal Ltd. in the residential group housing complex named as Magnolias DLF Golf Links. Accordingly, the assessee had a window of three years period from December 21, 2011 till December 21, 2014 to construct a house property, calculated from the date of transfer of the original asset. The appellant has claimed deduction on the amount invested till the due date of filing of return under section 139(1) of the Income-tax Act. In this factual background, we do not find any cogent ground to hold that the respondents do not fulfil the conditions laid down under section 54(1) of the Act so as to deny the benefit of the said provision. The apprehension expressed by the learned senior standing counsel for the Revenue is not borne from the facts on record. The provision in question is a beneficial provision for the assessees, who replace the original long-term capital asset by a new one. In relation to section 54F, this court in CIT v. Bharti Mishra (2014) 265 CTR (Delhi) 374 has rejected the contention raised by the Revenue, which is similar to the one urged by Mr. Sharma, in the following words:

> "13. For the satisfaction of the third condition, it is not stipulated or indicated in the section that the construction must begin after the date of sale of the original/old asset. There is no condition or reason for ambiguity and confusion which requires moderation or reading the words of the said sub-section in a different manner. The apprehension of the Revenue that the entire money collected or received on transfer of the original/capital asset would not be utilised in the construction of the new capital asset, i.e., residential house, is ill- founded and misconceived. The requirement of sub-section (4) is that if consideration was not appropriated towards the purchase of the new asset one year before date of transfer of the original asset or it was not utilised for purchase or construction of the new asset before the date of filing of return under section 139 of the Act, the balance amount shall be deposited in an authorized bank account under a scheme notified by the Central Government. Further, only the amount which was utilised in construction or purchase of the new asset within the specified time frame stand exempt and not the entire consideration received.
>
> 14. Section 54F is a beneficial provision and is applicable to an assessee when the old capital asset is replaced by a new capital asset in the form of a residential house. Once an assessee falls within the ambit of a beneficial provision, then the said provision should be liberally interpreted. The Supreme Court in CCE v. Favourite Industries (2012) 7 SCC 153 has succinctly observed:—
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> > '21. Furthermore, this court in Associated Cement Companies Ltd. v. State of Bihar (2004) 7 SCC 642, while

explaining the nature of the exemption notification and also the manner in which it should be interpreted has held: (SCC page 648, para 12)

> "12. Literally 'exemption' is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. In fact, an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden of progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking, liberal and strict construction of an exemption provision is to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in the nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. (See Union of India v. Wood Papers Ltd. (1990) 4 SCC 256 ; [1990] SCC (Tax) 422 and Mangalore Chemicals and Fertilisers Ltd. v. Deputy Commissioner of Commercial Taxes [1992] Supp (1) SCC 21 to which reference has been made earlier.)"

22. In G. P. Ceramics (P.) Ltd. v. Commissioner, Trade Tax (2009) 2 SCC 90, this court has held : (SCC pages 101-02, para 29)

> 29. It is now a well-established principle of law that whereas eligibility criteria laid down in an exemption notification are required to be construed strictly, once it is found that the applicant satisfies the same, the exemption notification should be construed liberally. [See Commissioner, Trade Tax v. DSM Group of Industries (2005) 1 SCC 657 (SCC para 26) ; TISCO Ltd. v. State of Jharkhand (2005) 4 SCC 272 (SCC paras 42- 45) ; State Level Committee v. Morgardshammar India Ltd. (1996) 1 SCC 108 ; Novopan India Ltd. v. CCE & Customs [1994] Supp (3) SCC 606 ; A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala (2007) 2 SCC 725 and Reiz Electrocontrols (P.) Ltd. v.

CCE (2006) 6 SCC 213.'

15. In view of the aforesaid position, we do not find any merit in the present appeal and the same is dismissed."

25. The aforenoted findings of the tax authorities are factual and cannot be categorised as perverse. It cannot be said in the facts of the present case that the deduction claimed for the construction were not relatable to the transaction of sale of the Jor Bagh property which resulted in income by way of capital gains. There is no ground urged by the Revenue before the Commissioner of Income-tax (Appeals), or before the Income-tax Appellate Tribunal, that the expenditure was not connected with the sale transactions. Moreover, we cannot go into the factual question as to whether the deduction claim made by the assessee with regard to the payments were not genuine, or were not made. The Assessing Officer had treated the date of acquisition of the residential property as February 10, 2006 and denied the exemption under section 54 of the Act, which was not the correct approach. We, therefore, do not find any question of law that arises for our consideration on this ground. With respect to the deduction under section 54EC of the Act being restricted to Rs. 50,00,000 as against Rs. 1,00,00,000, we may note that the said question has already been answered in the judgment relied upon by the Tribunal to uphold the deletion by Commissioner of Income-tax (Appeals). The High Court of Madras in CIT v. Coromandel Industries Ltd. (supra) has held as under (page 589 of 370 ITR):

"The issue involved in this appeal is no longer res integra in view of the decision of this court in CIT v. C. Jaichander (order dated September 15, 2014, made in T. C. (A.) Nos. 419 and 533 of 2014—(2015) 370 ITR 579 (Mad), to which one of us—R. Sudhakar J. is a party). In the said decision, this court held as under (page 583):

'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.

For better understanding of the issue, it would be apposite to refer to section 54EC(1) of the Act, which reads as under:

"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."

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 April 1, 2007, in the long-term specified asset by an assessee during any financial year does not exceed fifty lakhs 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.

The Legislature noticing the ambiguity in the abovesaid provision, by the Finance (No. 2) Act, 2014, with effect from April 1, 2015inserted 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 lakhs rupees."

At this juncture, for better clarity, it would be appropriate to refer to the Notes on Clauses—Finance (No. 2) Bill, 2014, and the Memorandum Explaining the Provisions in the Finance (No. 2) Bill, 2014, which read as under (see (2014) 365 ITR (St.) 103, 120):

"Notes on Clauses—Finance (No. 2) 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 gains 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 lakhs 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 (see (2014) 365 ITR (St.) 149, 184):

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, 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 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 lakhs 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."

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 April 1, 2015. The Memorandum Explaining the Provisions in the Finance (No. 2) Bill, 2014, also states that the same will be applicable from April 1, 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.

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 April 1, 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)

The decision of this court in Areva T and D India Ltd. v. Asst. CIT (2010) 326 ITR 540 (Mad), 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 (see (2007) 288 ITR (St.) 6)), 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.

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."

5. In view of the aforesaid, we find that the appeals fail to raise any substantial question of law and we thus see no reason to interfere with the ITAT's impugned order dated 11 August 2023. They shall consequently stand dismissed on the aforesaid terms.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 11, 2024/ RW