

**आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI**

**BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.5802/Mum/2013

(निर्धारण वर्ष / Assessment Years : 2009-10)

Mr. Lemes E. D' Souza, ALK Bricks Factory Company, Behind Sakinaka, Motor Training School, Opp. Janseva Decoilers, Sakinaka, Mumbai - 400 072.	<b>बनाम/</b> v.	ITO - Ward 21(3)(3), Room No. 507, 5 <sup>th</sup> floor, C-11, Pratyakshakar Bhavan, B.K.C. Bandra, Mumbai - 400 051.
स्थायी लेखा सं./PAN :AADPD7091 H		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

Assessee by :	Shri M. Subramanian
Revenue by :	Shri Rajesh Kumar Yadev

सुनवाई की तारीख /**Date of Hearing** : 22-03-2017

घोषणा की तारीख /**Date of Pronouncement** : 10-04-2017

**आदेश / ORDER**

**PER RAMIT KOCHAR, Accountant Member**

This appeal, filed by the assessee, being ITA No. 5802/Mum/2013 is directed against the appellate order dated 15<sup>th</sup> July, 2013 passed by learned Commissioner of Income Tax (Appeals)- 22, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2009-10, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 26<sup>th</sup> December, 2011 passed by the learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income Tax Act, 1961 (Hereinafter called "the Act").

2. The grounds of appeal raised by the assessee in memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

“1. The Learned CIT(A) has erred in upholding the order of AO and dismissing the appeal.

2. The Learned CIT(Appeal) has erred in not appreciating the fact that assessee has rightly invested in Rural Electrification and Highway Authority Bond well within six months from the date of receipt of the amount and in that way he had done everything possible on his part to comply with requirements of Section 54EC of the Act.

3. On the facts and circumstances of the case. The lower authorities erred in failing to appreciate that in case of 'Deemed Transfer' of property under section 2(47)(V) of the Act involving full payment of the consideration amount in a spread over manner. The date of transfer for the purpose of allowing time for investing the consideration amount in specified assets should be the actual date of receipt of each installment of the payment.

4. On the facts and in the circumstances of the case the Learned CIT (Appeal) erred in not taking into consideration the various judicial decision as cited before him.

a) Mahesh Nemichand Ganeshwade V/S. ITO (ITAI PUNE)

b) Chanchal Kumar Sircar V/S. ITO (2012) 18 taxman com 304 (Kolkata- Trib.)

5. On the facts and in the circumstances of the case of the Learned CIT(A) erred in confirming the assessment of Long Term Gain of Rs. 24,85,420/-.

6. Without prejudice to the above, appellant add that the Sale of TDR (Transfer of Development Right) is not taxable, even though it is Capital assets. Relying on the decision of Supreme Court in case of B. C. Srinivas Shetty, wherein it has been held that where in respect of Capital Assets it is not possible to determine the cost of acquisition or cost of improvement then Capital Gain on transfer of such Capital assets cannot be brought to tax under section 45 of the Act.

Reliance is also put on the following case laws:-

a) Jethalal D. Mehta v. DCIT

- b) Kailash Jyoti No. 2 CHS Ltd. v. Department of Income Tax 23/01/2013.
- c) Shri Ishvarlal Manmohandas Kanojia
- d) Shanta P. Tanwani DAT Mumbai.”

3. Brief facts of the case are that the assessee is a transport operator. The A.O. observed that the assessee had sold TDR for an amount of Rs. 1,45,92,750/- vide agreement dated 06-08-2008 and long term capital gains to the tune of Rs. 47,35,420/- were computed by the assessee as per provisions of the Act. It was observed by the AO that the assessee has purchased a flat of Rs. 22,50,000/- for which exemption u/s 54F of 1961 Act was claimed and the balance amount of capital gain of Rs. 24,85,420/- was claimed to be invested in NHAI/REC Bonds on 26-03-2009 and exemption u/s 54EC of 1961 Act was claimed by the assessee. The date of agreement for transfer of TDR was dated 06-08-2008. The AO observed that the last date of making investment in REC/NHAI Bonds for claiming exemption u/s 54EC of 1961 Act was within 6 months of date of transfer of TDR on 06-08-2008 which should have been done on or before 06-02-2009 , while in the instant case the assessee had invested in REC Bonds on 26-03-2009 which is beyond 6 months from the date of transfer of TDR on 06-08-2008. The AO observed that the assessee is not entitled for claiming exemption u/s 54EC of 1961 Act as the investments in REC/NHAI bonds were made beyond six months from the date of transfer of TDR. The AO observed that assessee had claimed that the said payments on sale of TDR were received on different dates starting from 07.08.2008 to 15.11.2008. The AO observed that the assessee had claimed to have invested in residential flat for claiming exemption u/s 54F of 1961 Act to the tune of Rs. 22,50,000/- which was allowed by the AO . But the investments made in Bonds of National Highway Authority of India to the tune of Rs. 21,50,000/- was made on 26-03-2009 while investment in REC Bonds of Rs. 22,00,000/- was made on 26-03-2009 which was beyond the period of 6 months from the date of transfer on 06-08-2008 which is not in

consonance of provisions of Section 54EC of 1961 Act and hence claim of the assessee for exemption u/s 54EC of 1961 Act was rejected by the AO , although AO observed that the investment in NHAI Bonds/ REC Bonds were made within 6 months of receipt of last payment by assessee towards sale consideration on transfer of TDR , which was last received on 15-11-2008 and hence in nutshell the exemption to the tune of Rs. 24,85,420/- claimed by the assessee u/s 54EC of 1961 was denied to the assessee and was brought to tax by the AO as being made beyond six months after the date of transfer of TDR being in violation of provisions of Section 54EC of 1961 Act, vide assessment order dated 26-12-2011 passed by the AO u/s 143(3) of 1961 Act.

4. Aggrieved by the assessment order dated 26-12-2011 passed by A.O. u/s 143(3) of 1961 Act , the assessee filed first appeal before the ld. CIT(A) .

5. The assessee submitted before learned CIT(A) that it has sold TDR for Rs. 1,45,92,750/- vide agreement dated 06-08-2008 as against which payments were received as detailed hereunder :

<u>Date</u>	<u>Amount</u>
07.08.2008	19,92,750
26.09.2008	35,00,000
03.10.2008	35,00,000
25.10.2008	21,00,000
08.11.2008	15,00,000
15.11.2008	<u>20,00,000</u>
<b>Total</b>	<b><u>1,45,92,750</u></b>

Thus, it was submitted by the assessee that last payment towards sale consideration on transfer of TDR was received on 15-11-2008 and period of 6

months should be reckoned from this date for allowing exemption u/s 54EC of 1961 Act. The assessee submitted that it made following investments for claiming exemption u/s 54EC of 1961 Act which is within time prescribed under 1961 Act if reckoned from the last date of receiving the payment on 15-11-2008 under an agreement for transfer of TDR dated 06-08-2008 :

<u>Date of payment</u>	<u>Particular</u>	<u>Amt.</u>	<u>Section</u>
22.10.2008	Flat	22,75,000	54F
26.03.2009	National Highway Bond	21,50,000	54EC
26.03.2009	Rural Electrification Bond	22,00,000	54EC
		=====	
	Total	66,25,000	
		=====	

It was submitted by assessee before learned CIT(A) that dispute is only with respect to allowability of exemption u/s 54EC of 1961 Act and unless payments are received towards sale consideration of TDR, the assessee is not in a position to make investments in REC/NHAI Bonds and hence period of six months for making investment in REC/NHAI bonds should be reckoned from the last date of receipt of consideration by the assessee which was 15-11-2008 , on sale of TDR . The assessee relied upon circular no 791 dated 02-06-2000 issued by CBDT, which stipulates as under:

**“442. Whether the date of transfer, as referred to in section 54E of the Act, is the date of conversion of the capital asset into stock-in-trade or the date on which the stock-in-trade is sold or otherwise transferred by the assessee**

1. Section 2(47) of the Income-tax Act provides that any conversion of capital assets into stock-in-trade shall be regarded as a transfer. This transfer arises in the year in which such conversion takes place and, accordingly, capital gain would normally arise in that very year. However, section 45(2) of the Act postpones the assessment of such

capital gains to the year in which the stock-in-trade is actually sold or otherwise transferred by the assessee.

**2.** In order to qualify for deduction under section 54E of the Act, the investment in specified assets was required to be made within six months from the date of transfer. A question had arisen as to whether the date of transfer, as referred to in section 54E of the Act, is the date of conversion of the capital asset into stock-in-trade or the date on which the stock-in-trade is sold or otherwise transferred by the assessee.

**3.** The Board had earlier issued a Circular No. 560 dated 18-5-1990, in consultation with Ministry of Law, clarifying that for purposes of section 54E of the Act, the date of transfer in such cases is the date on which the capital asset is converted by the assessee into stock-in-trade and not the date on which such stock-in-trade is sold or otherwise transferred by the assessee. Section 54E became inoperative for transfers made on or after 1-4-1992.

**4.** Sections 54EA, 54EB and 54EC also provide deduction from long-term capital gain if the sale proceeds/long-term capital gain is invested in specified assets within a period of 6 months from the date of transfer. It is not possible for an assessee to make the required investment under the aforesaid sections at the point of conversion of capital asset into stock-in-trade because the right to collect sales consideration in such cases arises only at the point of sale or transfer otherwise of stock-in-trade. The board has considered the matter afresh in consultation with the Ministry of Law and has decided that the period of 6 months for making investments in specified assets for the purpose of sections 54EA, 54EB and 54EC should be taken from the date such stock-in-trade is sold or otherwise transferred, in terms of section 45(2) of the Act.

**Circular** : No. 791, dated 2-6-2000.”

The assessee also relied upon the decision of ITAT, Pune in the case of Mahesh Nemichand Ganeshwade v. ITO (2012) 73 DTR (Pune) (Trib.) 1 and decision of ITAT, Kolkatta in the case of Chanchal Kumar Sircar v. ITO (2012) 18 taxmann.com 304(Kol-trib.).

The learned CIT(A) rejected the contention of the assessee on the ground that the assessee had to make investment of the whole or any part of the capital gains within a period of 6 months in long term specified assets from the date of transfer for claiming exemption u/s 54EC of 1961 Act. The learned CIT(A) observed that in the present case the date of transfer of TDR is the date on which the assessee had entered into an agreement for sale of the TDRs which was on 06-08-2008. The ld. CIT(A) observed that section 54EC of 1961 Act has never used the word 'consideration' as it uses the word 'transfer' only, which in the instant case was on 06-08-2008 and the investment in NHAI/REC Bonds should have been made on or before 06-02-2009, while the assessee invested in REC/NHAI Bonds on 26-03-2009 which is beyond a period of 6 months. Hence, the ld. CIT(A) held that the claim of the assessee for exemption cannot be allowed u/s 54 EC of the Act as the investment was made beyond 6 months from the date of transfer. The assessee relied on the CBDT Circular No. 791 dated 2<sup>nd</sup> June, 2000 whereby the ld. CIT(A) held that the CBDT circular covers the situation of conversion of capital asset into stock-in-trade and the time is allowed till when the stock-in-trade is actually sold or otherwise transferred by the assessee which is not the issue in the present case and, hence, this circular is not applicable to the facts of the assessee's case, vide appellate order dated 15-07-2013 passed by learned CIT(A).

6. Aggrieved by the appellate order dated 15-07-2013 passed by the ld. CIT(A), the assessee filed second appeal before the tribunal.

7. The ld. Counsel for the assessee submitted that the assessee had sold TDR against which capital gain was earned of Rs. 47,35,420/-. It was submitted that the assessee had invested in residential flat to the tune of Rs.22,50,000/- against which Revenue has allowed exemption u/s 54F of 1961 Act. The dispute has arisen w.r.t. investment in REC/NHAI Bonds to the

tune of Rs. 43,51,000/- which was made on 26-03-2009 which was beyond six month from the date of agreement for transfer of TDR on 06-08-2008. It was submitted that the assessee had realized the sale proceeds of TDR on various dates from 07-08-2008 to 15-11-2008 and investment in REC/NHAI Bonds were made within six months if calculated from the last date of receipt of consideration on 15-11-2008. The ld. CIT(A) has distinguished the CBDT Circular No. 791 dated 2<sup>nd</sup> June, 2000 whereby he held that the CBDT circular covers only where the capital asset is converted into stock-in-trade and then the period was to be reckoned from the date of actual sale or transfer of stock-in-trade by the assessee. The learned counsel for assessee relied on decision of ITAT, Pune in the case of Mahesh Nemichandra Ganeshwade & Ors. v. ITO (2012) 73 DTR (Pune-trib.) 1 and decision of ITAT-kolkatta in the case of Chanchal Kumar Sircar v. ITO in ITA no. 1146/Kol/2011 vide orders dated 21.02.2012 (2012) 18 taxmann.com 304(Kol.trib) . In alternative, it was contended by learned counsel for the assessee that gains arising from sale of TDR are not taxable and relied upon decision of Hon'ble Apex Court in the case of CIT v. B.C.Srinivasa Setty (1981) 128 ITR 294(SC) .

8. The ld. D.R. submitted that the ld. CIT(A) was quite right in distinguishing the CBDT circular. It is submitted that the assessee cannot be allowed deduction u/s 54EC of the Act as the investment have not been made within six months from the date of transfer.

9. We have considered rival contentions and also perused the material available on record including case laws relied upon. The assessee had sold TDR for Rs.1,45,92,750/- vide agreement for sale dated 06-08-2008 against which payments were received by the assessee over a period of time from 07-08-2008 to 15-11-2008 and long term capital gain of Rs. 47,35,420/- were computed. The assessee and his brother had surrendered their right in the



plot of land bearing CTS No. 138B and 138/2B to Municipal Corporation of Greater Mumbai(MCGM) and in lieu of this MCGM had issued development rights certificate dated 29-07-2008 for 1355.70 square meters area of FSI . The said TDR equivalent of 14592.75 square feet was transferred for consideration of Rs. 1,45,92,750/- at the rate of Rs. 100/- per square feet by assessee, vide agreement for sale dated 06-08-2008. The assessee undisputedly received payments of Rs. 1,45,92,750/- against sale of TDR , vide agreement for sale dated 06-08-2008 as under :

<u>Date</u>	<u>Amount</u>
07.08.2008	19,92,750
26.09.2008	35,00,000
03.10.2008	35,00,000
25.10.2008	21,00,000
08.11.2008	15,00,000
15.11.2008	<u>20,00,000</u>
<b>Total</b>	<b><u>1,45,92,750</u></b>

The assessee had made investment in residential flat to the tune of Rs. 22,50,000/- against which exemption u/s 54F of 1961 Act was allowed by Revenue , which is not in dispute before the tribunal . The dispute has arisen w.r.t. investments made by the assessee in NHAI/REC Bonds totaling Rs. 43,51,000/- which was admittedly made by assessee on 26-03-2009 and the assessee had claimed exemption u/s 54EC of the Act, which was denied by authorities below as the said investment in NHAI/REC Bonds were made beyond period of six months from the date of transfer of TDR on 06-08-2008 which infringes provisions of Section 54EC of 1961 Act and hence as per authorities below , the assessee is not entitled for exemption u/s 54EC of 1961 Act. However , we find that the said investments have been made

within six months from the date of receipt of last installment of sale consideration of TDR which was received on 15-11-2008 , the total consideration having been received over a period of time spread from 07-08-2008 to 15-11-2008, as detailed above. The assessee received first payment of Rs. 19,92,750/- on 07-08-2008 which was paid by the assessee for architect fees and also share of his brother in TDR. The second installment of Rs. 35,00,000/- was received on 26-09-2008 and if the period of six month is reckoned from this date of second installment, the assessee has made the investment within time stipulated u/s 54EC of 1961 Act of six months as investment in REC/NHAI Bonds of Rs. 43,51,000/- was made on 26-03-2009. Section 54EC of 1961 as was prevalent during relevant period is reproduced hereunder:

**[Capital gain not to be charged on investment in certain bonds.**

**54EC.** (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.]

*(2) Where the long-term specified asset is transferred or converted (otherwise than by transfer) into money at any time within a period of*

three years from the date of its acquisition, the amount of capital gains arising from the transfer of the original asset not charged under [section 45](#) on the basis of the cost of such long-term specified asset as provided in clause (a) or, as the case may be, clause (b) of sub-section (1) shall be deemed to be the income chargeable under the head “Capital gains” relating to long-term capital asset of the previous year in which the long-term specified asset is transferred or converted (otherwise than by transfer) into money.

*Explanation.*—In a case where the original asset is transferred and the assessee invests the whole or any part of the capital gain received or accrued as a result of transfer of the original asset in any long-term specified asset and such assessee takes any loan or advance on the security of such specified asset, he shall be deemed to have converted (otherwise than by transfer) such specified asset into money on the date on which such loan or advance is taken.

[(3) Where the cost of the long-term specified asset has been taken into account for the purposes of clause (a) or clause (b) of sub-section (1),—

(a) a deduction from the amount of income-tax with reference to such cost shall not be allowed under [section 88](#) for any assessment year ending before the 1st day of April, 2006;

(b) a deduction from the income with reference to such cost shall not be allowed under [section 80C](#) for any assessment year beginning on or after the 1st day of April, 2006.]

*Explanation.*—For the purposes of this section,—

(a) “cost”, in relation to any long-term specified asset, means the amount invested in such specified asset out of capital gains received or accruing as a result of the transfer of the original asset;

[(b) “long-term specified asset” for making any investment under this section during the period commencing from the 1st day of April, 2006 and ending with the 31st day of March, 2007, means any bond, redeemable after three years and issued on or after the 1st day of April, 2006, but on or before the 31st day of March, 2007,—

(i) by the National Highways Authority of India constituted under section 3 of the National Highways Authority of India Act, 1988 (68 of 1988); or

(ii) by the Rural Electrification Corporation Limited, a company formed and registered under the Companies Act, 1956 (1 of 1956),

and notified by the Central Government in the Official Gazette for the purposes of this section with such conditions (including the condition for providing a limit on the amount of investment by an assessee in such bond) as it thinks fit:]

*[Provided that where any bond has been notified before the 1st day of April, 2007, subject to the conditions specified in the notification, by the Central Government in the Official Gazette under the provisions of clause (b) as they stood immediately before their amendment by the Finance Act, 2007, such bond shall be deemed to be a bond notified under this clause;]*

*[(ba) “long-term specified asset” for making any investment under this section on or after the 1st day of April, 2007 means any bond, redeemable after three years and issued on or after the 1st day of April, 2007 by the National Highways Authority of India constituted under section 3 of the National Highways Authority of India Act, 1988 (68 of 1988) or by the Rural Electrification Corporation Limited, a company formed and registered under the Companies Act, 1956 (1 of 1956).]*”

Section 54EC of 1961 Act is a beneficial section which allows exemption against long term capital gains earned by tax-payer on transfer of original asset, if the investments are made in long term specified assets within six months from the date of transfer of original asset. The section encourages making investments in REC/NHAI bonds out of long term capital gains on transfer of original asset earned by tax-payer and is to be construed reasonably to give full effect to the beneficial provisions and it cannot be interpreted in a manner to frustrate the intent of legislature. The tax-payer cannot be asked to do impossible , as in cases if the consideration is not received by the tax-payer on sale / transfer of long term capital assets but is received subsequently as provided in an agreement to sale, the tax-payer cannot be expected to invest in REC/NHAI Bonds out of his own other sources or to make borrowings to invest in NHAI/REC Bonds to claim exemption u/s 54EC of 1961 Act, the objective of the beneficial provision of Section 54EC of 1961 Act is to encourage investments out of sale proceeds received or accruing to the tax-payer from sale of long term capital assets and the tax-payer cannot be asked to do impossible in cases where genuinely the sale considerations are not received at the time of transfer of long term capital asset in terms of agreement for sale/transfer of long term capital asset. The assessee has rightly relied upon the decision of the Kolkata Bench of this

Tribunal in the case of Chanchal Kumar Sircar v. ITO in ITA No. 1146/Kol/2011 & ITA No. 1147/Kol/2011 (2012) 18 taxmann.com 304(Kol.trib.) for assessment year 2005-06 vide common order dated 21<sup>st</sup> February, 2012, wherein on similar facts, the deduction u/s 54EC of 1961 was allowed by the Kolkata-tribunal. The relevant extract of the decision of Kolkata tribunal is reproduced hereunder :

*“6. We have heard rival contentions and gone through facts and circumstances of the case. From the date of receipt of sale consideration and date of deposits with NABARD (dates mentioned in para 3 page 3 of this order) clearly reveals that deposit is made within one month of the receipt of sale consideration. It is a fact that these two brothers sold part of his immovable property and received first payment from CPI(M) on 01.07.2004 and from remaining three purchasers on 02.07.2004 as part payment although the possession was also handed over to these purchasers. It is also a fact that the sale deed was registered, in the case of CPI(M) on 27.06.2005 and in the case of other three purchasers on 28.09.2005. The assessee has deposited the sale consideration within one month of receipt with NABARD for availing exemption u/s. 54EC of the Act. In such circumstances whether the assessee is eligible for claim of exemption or not ? In our view, in this type of case, the period of six months for making deposit u/s. 54EC of the Act should be reckoned from the dates of actual receipt of the consideration, because in the present case the assessee has received part payment as on the date of execution of agreement and handing over of possession of the property and received part payment after six months at the time of registration of sale deed or even after that in few of instances, as is evidently clear from the above chart at para 3 page 3 of this order. We are of the view that if the period is reckoned from the date of agreement and receipt of part payment at the first instance, then it would lead to an impossible situation by asking assessee to invest money in specified asset before actual receipt of the same. This view of ours is supported by the decision of Hon'ble Andhra Pradesh High Court in the case of S. Gopal Reddy v. CIT [1990] 181 ITR 378, wherein similar situation of delayed receipt of compensation amount on acquisition of property, Hon'ble High Court observed that if the investment in specified asset was made within a period of six months from the date of receipt of compensation, as against the date of acquisition of the property denoting transfer thereof, the same should be considered to be sufficient compliance for the purpose of claiming exemption u/s. 54E of the Act. Hon'ble High Court observed that a taxing statute or any other statute has to be construed*

*reasonably and every effort should always be made to ascertain the intention of Parliament from the words employed and, as far as possible, an interpretation which leads to absurdity should be avoided. Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction would be preferred to the literal construction. The Hon'ble Court also observed that under the provisions of section 54E of the Act, what is to be invested in specified assets is "the consideration or any part thereof" and unless the consideration is received, or accrues, there is no question of investing it. The second proviso to sub-section (1) of section 54E inserted with effect from April 1, 1984, states that in the case of compulsory acquisition of property under a statute, if the full amount of compensation awarded for such acquisition is not received by the assessee on the date of such transfer, the period of six months referred to in sub-section (1) shall, in relation to so much of such compensation as is not received on the date of the transfer, be reckoned from the date on which such compensation is received by the assessee. It would be consistent with reason to construe this proviso as being merely clarificatory. In other words, the provision made by the second proviso to sub-section (1) of section 54E should be deemed to have prevailed even prior to April 1, 1984, i.e., with effect from the date of the enactment of section 54E of the Act.*

**7.** *Similar situation was analysed by Hon'ble Allahabad High Court in the case of CIT v. Janardhan Dass [2008] 299 ITR 210/ 170 Taxman 113 wherein Hon'ble High Court observed that section 54B(2) of the Act, provides that where the transfer of the asset is by way of compulsory acquisition under any law and the compensation amount awarded for such acquisition is enhanced by any court, Tribunal or other authority, the capital gains attributable to the enhanced value of the compensation shall be dealt with as provided for in section 54B(2), according to which if the enhanced compensation as received has been invested in agricultural land within two years of its receipt, to that extent no capital gains tax will be charged. This provision gives an insight that section 54B of the Act has taken into consideration the possibility of enhancement of compensation amount by the court, Tribunal, etc., at the subsequent stages. If the agricultural land is purchased within a period of two years from such enhancement, the capital gain or no capital gain, as the case may be, will be charged under section 54B(2) of the Act. In other words, the period of two years in such cases will commence from the date of enhancement of the compensation amount by the court, etc. This is indicative of the legislative intent to the effect that for the purposes of section 54B, the date of receipt of enhancement of the compensation amount is the relevant consideration and not the date of transfer. It*



*follows, therefore, that for a delay on the part of the acquiring body in making payment of the compensation amount, the assessee should not be deprived of the benefit of section 54B of the Act provided he fulfills the other conditions of the section within the stipulated period from the date of receipt of the payment. The emphasis is on the date of actual receipt of the payment and not on the date of transfer of the asset, in the case of agricultural land. The statute should be interpreted as it stands without making any addition or subtraction therein. Section 54B of the Act is a beneficial provision for an assessee who is otherwise liable to pay income-tax under the head "Capital gains". On a conjoint reading of section 45 with section 54B of the Act, the word "transfer" should be read for the purposes of income-tax as the date on which the compensation amount is paid to such assessee. The period of two years for the purposes of examination under section 54B of the Act will commence from the date of receipt of compensation and not from the date of acquisition of the agricultural land.*

**8.** *In another similar situation Hon'ble Andhra Pradesh High Court in the case of Darapaneni Chenna Krishnayya (HUF) v. CIT [2007] 291 ITR 98 wherein Hon'ble High Court observed that land belonging to the assessee was acquired by the Government of Andhra Pradesh in terms of the provisions of the Land Acquisition Act during 1981-82. The Land Acquisition Officer awarded compensation at the rate of Rs. 20,000 per acre. Not satisfied with the award, the assessee sought a reference and the civil court enhanced the compensation to Rs. 71,380 per acre. On appeal, the High Court enhanced the compensation to Rs. 2,83,000 per acre. By virtue of the orders of the High Court, the assessee received additional compensation amounting to Rs. 15,26,135 and interest on the additional compensation amounting to Rs. 28,58,622 on April 9, 1991, and on receiving the amounts, he invested the entire additional compensation in the UTI Capital Gains Scheme of 1983, on October 1, 1991, i.e., within six months from the date of receipt of the additional compensation and sought exemption under section 54E of the Act. The Assessing Officer denied this exemption on the ground that the capital gain arose in respect of transfer of the original asset prior to March 31, 1983, when the UTI Capital Gains Scheme, 1983, was not in force. On appeal, the Commissioner (Appeals) upheld the disallowance made by the Assessing Officer. On further appeal, the Tribunal held that the assessee was entitled for the exemption under section 54E. On a reference, the Hon'ble Court held that the assessee received the amounts in 1991-92. Admittedly, the amounts were deposited by the assessee within six months from the date of its receipt, in the UTI Capital Gains Scheme, which is one of the units as specified asset mentioned in*

*Explanation 1(c)(ii) to section 54E of the Act. The assessee was entitled to exemption under section 54E of the Act.*

**9.** *In view of the above consistent principle adopted by Hon'ble High Courts in respect to interpretation of a beneficial provision i.e. exemption provision under capital gains tax, we have to take similar approach in deciding the issue in hand i.e. the claim of assessee for exemption u/s. 54EC of the Act because this is exactly similar to section 54E, 54B or 54EA or EB of the Act. In the present case before us, admittedly assessee received part payments after execution of agreement to sale and handing over of possession thereby completing the transaction in terms of section 53A of Transfer of Property Act but invested in specified bonds i.e. NABARD bonds within one month of the receipt of sale consideration being part payment. Hence, we are of the considered view that the assessee is eligible for exemption u/s. 54EC of the Act on part payment received after completion of transaction on 02.07.2004 and as detailed out in para 3 page 3 of this order. AO is directed accordingly. This issue of assessee's appeal is allowed. Similar are the facts in ITA No. 1146/Kol/2011 in the case of Shri Chanchal Kr. Sircar, hence AO will allow exemption in this case also.*

**10.** *In the result, the appeals of the assesseees are allowed.”*

The assessee has also rightly relied upon decision of ITAT-Pune in the case of Mahesh Nemichand Ganeshwade v. ITO(supra) . Section 54 EC of 1961 Act is a beneficial provision and is to be reasonably interpreted to give effect to the intention of Parliament while legislating the said provision and it cannot be construed in manner to frustrate the intention of legislature . In this case, the assessee admittedly received payments after execution of the agreement on 06-08-2008, which were received over a period of time from 07-08-2008 to 15-11-2008 and investments of Rs. 43,51,000/- were made in NHAI/REC Bonds on 26-03-2009 which is within six months if reckoned from the date of receipt of last installment of sale consideration by the assessee on 15-11-2008 and also is within six months from the receipt of second installment of Rs. 35,00,000/- on 26-09-2008. It is also admitted and undisputed that first installment of Rs. 19,92,750/- received by the assessee on 07-08-2008 was



utilized by assessee for paying architect fee and payment of share of his brother in TDR. Considering the factual matrix of the case as discussed above, we are of the considered view that the assessee is eligible for exemption u/s 54EC of the Act and addition of Rs. 24,85,420/- made by the AO and as confirmed by learned CIT(A) is not sustainable in eyes of law and is hereby ordered to be deleted. In view of our above decision, the alternate ground raised by the assessee that capital gain on sale of TDR is not taxable has become academic and infructuous and the said question of law is kept open. We order accordingly.

10. In the result, appeal filed by the assessee in ITA No. 5802/Mum/2013 for the assessment year 2009-10 is allowed.

Order pronounced in the open court on 10<sup>th</sup> April, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक: 10-04-2017 को की गई ।

Sd/-  
(D.T. GARASIA)  
JUDICIAL MEMBER

sd/-  
(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 10-04-2017

I

व.नि.स./ R.K., Ex. Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "A" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai