IN THE INCOME TAX APPELLATE TRIBUNAL
SPECIAL BENCH, AHMEDABAD

BEFORE G.C. GUPTA, VICE PRESIDENT, SHRI MUKUL Kr. SHRAWAT, JUDICIAL MEMBER AND N.S. SAINI, ACCOUNTANT MEMBER

ITA No.1973/Ahd/2012

Alkaben B. Patel, 33, Laxmi Industries Estate, Nr. Nagarwell Hanuman, Ahmedabad. PAN: ACVPP 7415K	V/s.	**The Income Tax Officer, Ward 14(2), Ahmedabad.**
(Appellant)		(Respondent)

Revenue by :	S/Shri P.L. Kureel, Sr.D.R. and O.P. Vaishnav, CIT-DR.
Assessee(s) by :	**Shri U.S. Bhati, A.R**.

सुनवाई की तारीख/**Date of Hearing : 30/12/2013**
घोषणा की तारीख /**Date of Pronouncement: 25/03/2014**

आदेश/O R D E R

PER SHRI MUKUL KUMAR SHRAWAT, J.M.

This Special Bench has been constituted vide an order U/s 255(3) of the I.T.Act (hereinafter mentioned as The Act) by the Hon'ble President, I.T.A.T. The question referred to us is reproduced below:

> *"Whether for the purpose of Section 54EC of IT Act, 1961, the period of investment of six months should be reckoned after the date of transfer or from the end of the month in which transfer of capital asset took place?"*

1.1. It is desirable, as well, to reproduce the Grounds of Appeal raised by the assessee, as under :

> *" The Ld. CIT(A)-XXI,Ahmedabad has grossly erred in law and in facts in confirming the disallowance of legitimate investment made U/s 54 EC of Rs. 45,00,000/-. The Ld. A.O.*

may be directed to allow the legitimate deduction in respect of investment if NHAI Bonds U/s 54 EC of Rs. 45,00,000/-.

2. The Ld. CIT(A)-XXI, Ahmedabad has grossly erred in law in considering the last date for investment U/s 54EC as 10.12.2008 in place of 31.12.2008 as the 'month' would mean that the "full month" which reckoned from the end of the month in which transfer takes place. Therefore, he may be directed to consider the last date for making investment U/s 54EC as 31.12.2008 in place of 10.12.2008.

2. Brief facts as emerged from the corresponding assessment order passed u/s. 143(3), dated 28.11.2011 are that the assessee in individual capacity has sold a flat situated at Lotus Co-operative Society, Usmanpura Ahmedabad for a consideration of Rs.64 lacs. The appellant had computed the Capital Gain at Rs.Nil and declared the same as per the Return of Income. A working of the Capital Gain was admittedly furnished along with the return of income. The basis for "Nil" capital gain was that the gain was stated to be at Rs.56,65,767/- however the assessee had made the investment in NHAI bond of Rs.45 lacs and claimed the deduction u/s.54 EC of IT Act. The assessee has also made an investment in "capital gain account scheme" of Rs.12 lacs, not in controversy.

2.1 During the course of assessment proceedings it was noticed by the AO that the investment made in NHAI bonds of Rs.45 lacs for the purpose of claim of deduction u/s.54EC was purchased on 17th of December of 2008 as per the statement of the bank, appearing in the bank pass book. The admitted factual position was that the gain was arising from a Long Term Capital Asset; hence, it was to be assessed under the head "Long Term Capital Gain".

Due to the said reason the assessee was entitled for a deduction if investment is made out of the sale proceeds in a "specified asset" **within a period of six months from the date of the transfer** of the asset. The AO has referred the provisions of Section 54EC of IT Act and thereafter discussed that a sale document was registered on 10th of June, 2008; hence, the assessee was required to purchase the NHAI bond within six months from the said date of registration, i.e., 10th June, 2008. However, the assessee had purchased the NHAI bond on 17th of December, 2008, alleged by the AO. A show cause was issued as to why the claim of exemption be not disallowed in respect of the investment made in NHAI bond in the light of the provisions of Section 54EC of IT Act being not invested within six months. The assessee has informed that the sale consideration was deposited in a capital gain account out of which the investment was made in the specified asset, i.e., NHAI bond to claim the benefit of the provisions u/s.54EC of IT Act. The assessee has also explained to the AO that the **last date of expiry of six months from the date of transfer** of the Long Term Capital Asset was **10th of December, 2008** however the assessee had allegedly tendered a cheque on 8th December, 2008 vide an application no.157602 to the bank. According to assessee since the application for the purchase of those bonds was tendered in the bank on 8th December, 2008, which was within the period of six months from the date of the transfer of the Long Term Capital Asset, therefore, the assessee was eligible for the deduction u/s.54EC. According to the assessee the **cheque was cleared on 17th of December, 2008.**

Alternatively the assessee's contention was that up to the end of the month of December 2008 the said investment was eligible for the deduction. The AO was not convinced and held that the assessee was required to invest the capital gain in the specified asset within a period of six months from the date of the transfer and that requirement was not complied with by the assessee; hence, not eligible for the deduction u/s. 54EC of IT Act. Accordingly an addition of Rs.45 lacs was made in the hands of the assessee. Being aggrieved the matter was carried before the First Appellate Authority.

3. It was reiterated before the learned CIT(A) that the due date of six months, as alleged by the AO, was 10th of December 2008, however, the assessee had claimed to have tendered the cheque along with an application for issue of NHAI bond to the bank on 8.12.2008. That cheque was cleared on 17th of December, 2008. It was thus pleaded that on account of the fact that the assessee had submitted the application before the last day of the expiry of six months from the date of the transfer of the capital asset, hence entitled for the deduction u/s.54EC of IT Act. Learned CIT(A) was of the view that the appellant was unable to establish that the impugned application for investment in NHAI bond was actually tendered on 8th of December, 2008. According to him, the seal/stamp and the date was not clear on the said application. In his opinion since the said cheque of Rs.45 lacs was encashed on 17th December, 2008 hence that was the date of the investment. The investment was made after the expiry of six months from the date

of the transfer of the capital asset, which had expired on 10.12.2008, therefore, not entitled for the claim of deduction u/s. 54EC of IT Act. On that ground Learned CIT(A) has affirmed the addition. Being aggrieved the appellant had further preferred an appeal before the Tribunal.

3.1) As stated earlier the short issue is whether the investment of Rs.45 lacs was made within six months from the date of the transfer of the "Long Term Capital Asset" so as to qualify for the exemption u/s.54EC has been referred to the Special Bench.

The appellant is represented by Sri U.S. Bhati who had made two fold arguments. His first plank of argument is legal in nature that as per the General Clauses Act the word "month reckoned" according to the British Calendar. For this legal proposition he has submitted a copy of the **General Clause Act, 1897** and referred Section 3 clause(35) of **Definitions** . He has enlarged the said argument by also placing reliance on a **CBDT Circular No.791 of 2nd of June, 2000** for the legal proposition that while interpreting the beneficial provision a liberal interpretation is to be adopted, as recommended in the said circular. In view of the said Circular for the purpose of claim of deduction on sale or transfer of stock in trade, the Board had decided that the period of six months for making investment in specified assets for the purpose of deduction u/s.54EA, 54EB and 54EC should be taken from the date when such stock in trade is sold or otherwise transferred as per Section 54(i) of IT Act. Likewise a liberal interpretation was made in respect of one more

provision of IT Act by **CBDT in a Circular no.359 dated 10.05.1983** wherein it was felt by the Board, while considering the provisions of Section 54E, that exemption for Long Term Capital Gain is available if the consideration is invested in a specified asset. A technical interpretation of Section 54E therefore could mean, as per Board, was that the exemption from tax on capital gain would be available if part of the consideration is invested prior to the date of the execution of the sale deed. As per the board, the investment could be regarded as having been made within a period of six months after the date of transfer. Analyzing this situation, the Board has given the direction that, quote "*on consideration of the matter in consultation with the Ministry of Law, it is felt that the foregoing interpretation would go against the purpose and spirit of the section. As the section contemplates investment of the net consideration in specified assets for a minimum period and as earnest money or advance is part of the sale consideration the Board have decided that if the assessee invests the earnest money or the advance received in specified assets before the date of transfer of asset the amount so invested will qualify for exemption under Section 54E of the IT Act, 1961*"unquote.

4. From the side of the Revenue, Id. D.R. Mr. P. L. Kureel and Mr. O. P. Vaishnav appeared and stated that the Income Tax Act and the Income Tax Rules have used two types of phraseology in respect of the computation of period for the purpose of prescribing a limitation. The first type of wordings used are **"not exceeding 6 months from the date on which application is made"** or **"any**

time within a period of 6 months after the date of such transfer". According to Id. D.R. these words are used in Section 54EC and Section 281 B of IT Act as well as in IT Rule 10K(2), Rule 11AA(6). The second type of wordings used are **"6 months/4 months/1 month from the end of the month"** in which a particular order is made/received/application is received. This wording is found in Section 275 and Section 154(8) of IT Act as well as in IT Rule 6DDA(5). According to Id. D.R. the wordings are unambiguous and the intention of the legislation is apparent that wherever the **end of the month** is to be calculated then the intention is made clear in the statute itself. Otherwise as per the language, **a particular date** is to be taken into account for the purpose of calculation of days/months. He has therefore pleaded that in a situation when the intention of the legislation is clear then there is no necessity to take the help of "General Clauses Act, 1897".

4.1 Coming to the provisions of Section 54EC, Ld. D.R. has pleaded that the limitation of period for an investment has been prescribed as "at any time within a period of 6 months from the date of such transfer". In ordinary sense, a **'month'** is a period from a specified date in a month to the date numerically corresponding to the date in the following months, less one. Ld. D.R. has given example that if a particular date is 10th June, 2008, one month shall be up to 9th July, 2008. Therefore, the term "month" has been used in Section 54EC in ordinary sense and the same should not exceed more than 30 days. He has thus pleaded that the wordings of the Section should not be replaced by any

other wordings. Therefore, in the said example, one month cannot be extended up to 31st July, 2008. If that would have been the intention of the legislation then certainly these words ought to have been prescribed in the provisions of Section 54EC of the Act.

4.2 Ld. D.R. has placed reliance on a decision of ***Dhanraj Singh Choudhary v. Nathulal Vishwakarma order dated 08.12.2011 reported in 16 taxmann.com249 (SC),*** relevant portion quoted as under:

> *"The punishment for professional misconduct has twin objectives - deterrence and correction. Having regard to the over all facts and circumstances of the case which have been noted above, we are of the view that if the advocate* ***appellant is suspended from practice for a period of three months effective from today*** *the above objectives would be met. We order accordingly."*

The Hon'ble Court has specified that 3 months were to be taken from that day when the order was pronounced because the wordings were "for a period of 3 months effective from today". Likewise, in the case of *Chironjilal Sharma HUF vs. UOI,(an unreported decision),* the relevant extract of the order placed in the compilation, the Hon'ble Supreme Court has directed that the "interest was to be paid within 2 month from today". In an identical fashion, the Hon'ble Bombay High Court in case of***JethmalFaujimal Soniv. ITAT*** *in W.P. No. 1744 of 2010 in order dated April 12, 2010 reported in [2010]* ***231 CTR 332(Bom.)*** had directed the Tribunal to dispose of the pending appeal within a period of four months from today. The Id. D.R. has also cited few unreported decisions of the Tribunal as follows:

i. Hon'ble ITAT 'G' Bench; Kumarpal Amrutlal Doshi Vs. The DCIT (Appeal)-33, Navi Mumbai, in A.Y. 2006-07 in ITA No, 1523Mum/2010, order dated 09.02.2011.

ii. Hon'ble ITAT 'C' Bench, Ahmadabad; Shri Apsi Ginwala, Shree Ram Engg. & Mfg Industries Vs. ACIT, Circle-5, Baroda in ITANo. 3226/Ahd/2011 and the case of Shri Rustam Ginwala, Shree Ram Engg. & Mfg W Industries Vs. ACIT, Circle-5, Baroda in ITA No. 3227/Ahd/2011 in A.Y. 2008-09.

iii. Hon'ble High Court of Bombay; Hindustan Unilever Ltd. Deputy Commissioner of Income-tax 1(1), Mumbai in W.P. No. 85 of 2009 vide order dated April 1, 2010 reported in [2010] **191 Taxman 119 (Bom.)**

iv. Hon'ble ITAT Amritsar Bench; S. Lakha Singh Bahra Charitable Trust vide order dated 15,06.2011 reported in **15 Taxmann.com 97(Asr).**

Revenue's line of reasoning is that in these cases, '**a month'** is understood as per the ordinary sense i.e. the month is a period from a specified date in a month to the date numerically corresponding date in the following month.

5. We have heard both the sides at length. The legal issue involved is within a narrow compass, as also revolves around few succinct facts. A sale was executed and registered on 10th of June, 2008. As per the Revenue Department, the assessee was required

u/s.54EC to invest in NHAI bond on or before 10th of December, 2008,i.e. within six months, however, the said investment was stated to be made by the assessee on 17th of December, 2008. At this juncture it may not be out of place to mention that there was a claim of the assessee that the said cheque was tendered on 8th of December, 2008, hence the said investment was otherwise made before the expiry of limitation as prescribed. Be that as it was, this controversy of exact date of investment, shall be addressed after addressing the main controversy that whether the said investment of the assessee which was allegedly made on 17th of December, 2008 was within the phraseology, **"at any time within a period of six months after the date of such transfer"** as prescribed in Section 54EC. For ready reference, the relevant portion of the section is reproduced below:

> *"**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."*

5.1 After hearing the submissions of both the side we are of the view that to resolve the controversy exactly, it is required to know that for the purpose of Sec 54 EC of the IT Act 1961, the period of investment should be calculated as six months after the date of transfer or to be reckoned 180 days from the date of transfer. This is the crux of the issue.

5.2 We shall first deal with the arguments of learned DR because this controversy was referred to us at the behest of the Revenue Department. The argument of learned DR is that the term "month" is to reckon from the date when an event takes place upto the date of the following month. In other words learned DR has pleaded that in ordinary sense a "month" is a period form a specified date in a month, to the date numerically corresponding to that date in the following month, less one. The argument is that since the statute has prescribed the limitation of six months, therefore, those words i.e.*"at any time within a period of six months"* must not be replaced by the words *"at any time within a period of end of six months"*.

5.3 We have duly analyzed this argument. The term 'month' is not defined in The Income Tax Act, therefore seeking the help of an another statute ; hence, examined the term "month" as per **General Clauses Act, 1897** which says-

"Section 3 defines - (35) "month" shall mean a month reckoned according to the British calendar.

It may not be out of place to mention that in Section 54E, 54EA and 54EB, the phrase is identical, i.e., "within a period of six months after the date of such transfer". We have been informed that this phrase otherwise is not used by the legislator in any other provisions of IT Act, 1961 or IT Rule, 1982. Which means a specific period is prescribed for the purpose of investment in certain specified assets in respect of computation of capital gain. Meaning thereby, an incentive is prescribed by the statute to a tax payer, who has earned Long Term Capital Gain, to get relief if

invest the gain in any of the specified asset. But the investment has to be made at any time within a period of six months after the date of such transfer.

5.4 Being a beneficial provision through which an incentive is given, an argument has been raised, that such provision should be interpreted liberally. For this legal proposition of **liberal interpretation** decisions cited are namely, **Bajaj Tempo Ltd. Vs. CIT, 196 ITR 188 (SC)**, CIT Vs. **Gwalior Rayan Silk Manufacturing Company, 196 ITR 149 (SC)** and **CIT Vs, Vegetable Products Ltd., 88 ITR 192 (SC).** Even it has also been argued that the highest Revenue Authority, i.e., CBDT has also taken due cognizance of such incentive provisions, therefore, granted relaxation. Such as in **CBDT Circular No.794 dated 9th of August, 2000; CBDT Circular No.359 dated 10th of May, 1983** and **Circular No.791 dated 2nd of June, 2000.** Certain Tribunals have also accepted the legal aspect of 'liberal interpretation' of statute in respect of provisions of Section 54E or Sections 54EA such as in the case of **Mahesh Nemchandra Ganeshwade Vs. ITO, 17 ITR (Tribunal) 116 (Pune), Bhikhulal Chandak (HUF) Vs. ITO, 126 TTJ 345 (Nagpur), Chanchal Kumar Sirkar Vs. ITO, (2012) 16 ITR (Tribunal) 91 (Kolkata).** We are in agreement with this legal proposition being laid down by the Hon'ble courts but to resolve this controversy we feel that a little more deliberation is required instead of deciding only on the basis of this thumb-rule.

5.5 While dealing with this type of incentive provisions we may like to mention that it is neither a question of **"liberal interpretation of statute"** or a **'literal interpretation of statute',** but it is a matter of "**purposive construction of statute"** or **"constructive interpretation of statute"**. A true intention of the enactment is required to be considered by a court of law. In the present case, the intention is to attract investment to be used for the development of infrastructure etc. The question as to whether a statute is mandatory or directory, depends upon the intent of the legislator and not upon the language in which it is clothed. The meaning and intention of the legislator is to judged by the language, but these are to be considered not only from phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other.

Therefore, we have examined the General Clauses Act, 1897 where the "month" shall mean **'a month reckoned according to British calendar'.** This controversy has earlier been addressed by certain higher forum and then it was decided that the question whether "month" means a "lunar month" or a "calendar month" would depend on intention for the usage of the term " month". In British Calendar a month is a unit of period used in a Calendar. It may not be out of context to mention that this system was invented by Mesopotamia. An average length of a month is 29.53 days; but in a calendar year there are 7 months with 31 days, 4 months having 30 days and one month has 28/29 days. It can be possible that under common parlance probably it meant a lunar

month but in calculating the specified number of months that had elapsed after occurrence of a specified event then a General Rule is that the period of a month ends on the last day. Therefore, a month ends by the last date of that month. One of the ITAT Bench, Mumbai in the case of **Yahya E. Dhariwala, 49 SOT 458 (Mum)** has also opined that quote "six months period should be reckoned from the end of the month in which the transfer takes place "unquote. Thereafter in the case of **Aquatech Engineers, 36 CCH 167 (Mum Trib.)**, again it was decided to grant the exemption of investment u/s.54EC if the same has been made by the end of the month.

5.6 In certain other context few Hon'ble High Courts have also taken a view that **a month is to be reckoned according "british calendar".** We have noted that in the case of CIT vs. **SLM Maniklal Industries, 274 ITR 485, the Hon'ble Jurisdictional High Court** has opined that the issue of interpretation of the term "month" is no longer res integra because in the case of **CIT vs. Kadri Mills (Caimbatore Ltd.), 106 ITR 846** (Madras) it was laid down that the month to be reckoned according to British calendar. The issue before the Hon'ble Court was that whether the Tribunal was right in law and on facts in canceling the penalty levied u/s. 271(1)(a), observing that month meant calendar month and not the lunar month of 28 or 30 days. This issue was dealt at some length by Hon'ble Madras High Court in the case of **CIT vs. Kadri Mill Caimbatore Ltd., 106 ITR 846** (Mad.). In this case, the observation of the Hon'ble Court was that IT Act, 1961 itself does not define the word "month" however

Section 3 of General Clauses Act, 1987 define the word "month" means a month reckoned according to British calendar. In this context a decision of Hon'ble Calcutta High pronounced in the case of **Brijlal Lohia & Mahabir Prasad Khemka 124 ITR 485** has also been generally cited wherein it was held that the words "however considering month during which the default continued" as appeared in Section 271(1)(a) refer only to a month during the whole of which the default continued and not to a month during which only part of which default continued. Likewise in the case of **Harnand Rai Ramanand 159 ITR 988 (Raj.)**,and **B.V.Aswathaiah & Brothers 155 ITR 422(Kar.)** it was held that a month is a **British calendar month** .

6. The subtle question is that whether the word "month" refers in this section a period of 30 days or it refers to the months only. Section 54EC, if we read again prescribes that an investment is required to be made within a period of six months. Whether the intention of the legislator was to compute six calendar months or to compute 180 days. To resolve this controversy, we are guided by a decision of Hon'ble Allahabad High Court pronounced in the case of **Munnalal Shri Kishan Mainpuri, 167 ITR 415** where answering the dispute in respect of law of limitation the Hon'ble Court has clearly held that there is nothing in the context of section 256(2) to warrant the conclusion that the word 'month' in it refers to a period of 30 days, therefore, refers to six months in Section 256(2) is to six calendar months and not 180 days. Rather, in this cited decision an interesting observation of the court was that

while comparing the precedents the contextual setting is to be examined and if entirely distinct and different then do not warrant to apply universally. Even in the case of Tamal Lahiri Vs. Kumar P. N. Tagore, 1978 AIR 1811/1979 SCC (1) 75, it was opined while interpreting Section 533 of Bangalore Municipal Act, 1932 that the expression six months in the said section means six calendar months and not 180 days. A copy of the judgment is placed before us. The purpose of mentioning this plank of argument is that after scrutinizing few more Sections of The Act it is evident that on some occasion the Legislature had not used the terms " Month" but used the number of days to prescribe a specific period. For example in **Section 254(2A) First Proviso** it is prescribed that the Tribunal may pass an order granting stay but for a period not exceeding one hundred and eighty days. This is an important distinction made in this statute while subscribing the limitation/ period. This distinction thus resolves the present controversy by itself.

7. So the logical conclusion is that in the absence of any definition of the word ' month' in The Act, the definition of General Clauses Act 1897 shall be applicable and by doing so there is no attempt on our part to interpret the language of Sec. 54EC , what to say a liberal or literal interpretation. We hereby hold that the Legislature has in its wisdom has chosen to use the word ' month'. This was done by keeping in mind the definition as prescribed in General Clauses Act 1857. Therefore we have also read the word 'month' within the recognized ways of

interpretation. Rather we have also seen both; the conventional as well as lexicon meaning. Here there in no attempt to supply *casus-omissus* but replicated as per the language used.

7.1 In the present case there is no dispute about the investment which had actually been made by the assessee. The said investment had been made in the month of December, 2008. However, alleged to be few days late from the date of transfer in the month of June, 2008. It is not the case of the Revenue that the appellant had altogether fudged the dates. Once the purpose of the introduction of the section was served by making the investment in the specified assets then that purpose has to be kept in mind while granting incentive.

7.2 We hereby hold that the investment in question qualifies for the deduction U/s 54EC. Resultantly assessee's grounds are hereby allowed. The question referred is answered in favour of the assessee.

Sd/-	**Sd/-**	**Sd/-**
(N.S. SAINI)	**(G.C. GUPTA)**	**(MUKUL Kr. SHRAWAT)**
ACCOUNT MEMBER	**VICE PRESIDENT**	**JUDICIAL MEMBER**

Ahmedabad; Dated 25/03/2014

Prabhat Kr. Kesarwani, Sr. P.S.