

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE SHRI MUKUL Kr. SHRAWAT, JUDICIAL MEMBER AND
SHRI T.R. MEENA, ACCOUNTANT MEMBER**

**ITA No.2365/Ahd/2010
A.Y. 2007-08**

Popatlal N. Vora Inheritance Trust, 15, Sadma Society, Naranpura, Ahmedabad. PAN: AAATP 1532 C	Vs	ITO, Ward 10(4). Ahmedabad
(Appellant)		(Respondent)

Revenue by :	Shri O. P. Batheja, Sr.D.R.
Assessee(s) by :	Shri Tushar P. Hemani, A.R.

सुनवाई की तारीख/**Date of Hearing** : **25/10/2013**
घोषणा की तारीख/**Date of Pronouncement**: **22/11/2013**

आदेश/ORDER

PER SHRI MUKUL KUMAR SHRAWAT, JUDICIAL MEMBER

This is an appeal filed by the Assessee arising from an order of learned CIT(Appeals)-XVI, Ahmedabad, dated 17.05.2010. The grounds which are argued before us are reproduced below:

“The ld. CIT(A) has erred in law and on facts in confirming the action of ld. AO in disallowing deduction of Rs.87,29,080/- u/s. 54EC of the Act in the hands of Appellant Trust.

Alternatively and without prejudice, if the claim of deduction in the hands of the appellant trust is not granted, the said deduction may be directed to be granted in the hands of the individual beneficiaries of the appellant trust.”

2. Facts in brief as emerged from the corresponding assessment order passed u/s. 143(3), dated 1.12.2009 were that the assessee is a trust and during the year disclosed a capital gain of Rs.87,29,080/-. It was informed that the assessee had invested a sum of Rs.1,12,00,000/- in

Rural Electrification Corporation Ltd. On the said investment, the assessee had claimed exemption u/s. 54EC. A building was owned by the Trust which was sold for a consideration of Rs.2,05,00,000/-. The REC bonds were purchased in the name of the following persons:

<i>Name of householder</i>	<i>Date of investment</i>	<i>No. of bonds</i>	<i>Unit price</i>	<i>Total amount</i>
<i>Prafulchandra P Vora & Indumate P. Vora</i>	<i>18.5.2007</i>	<i>280</i>	<i>10,000</i>	<i>28,00,000</i>
<i>Shantilal Popatlal Vora & Uday Shantilal Vora</i>	<i>18.5.2007</i>	<i>280</i>	<i>10,000</i>	<i>28,00,000</i>
<i>Savita Jayantilal Vora</i>	<i>18.5.2007</i>	<i>280</i>	<i>10,000</i>	<i>28,00,000</i>
<i>Krunal J Vora & Ranjan</i>	<i>18.5.2007</i>	<i>280</i>	<i>10,000</i>	<i>28,00,000</i>
			<i>Total</i>	<i>1,12,00,000</i>

3. As per AO, the said investment was not qualified for deduction u/s. 54 EC because the said “specified asset” was not purchased in the name of the assessee. The exemption u/s. 54 EC was denied; hence an appeal was preferred.

4. Before learned CIT(A), assessee has explained the facts of the case as under:

“4.1 Late Shri Popatlal N. Vora died in Mumbai on 21/07/1990. Late Shri Popatlal N. Vora had executed Will on 15/03/1980. Late Shri Popatlal N. Vora owned properties and assets which as per his Will dated 15-3-1980 were for the benefit of his daughter-in-laws and son of these daughter-in-laws. In execution of the powers, the then executor on 24-2-1992 executed a discretionary trust to hold and administer the properties and assets of late Shri Popatlal N. Vora. Popatlal N. Vora Inheritance Trust was settled on 24/02/1992 pursuant to and in accordance with directions in Will of late Shri Popatlal N. Vora.

On 31-12-2003 immovable property having land admeasuring 10890 sq. ft. i.e. 1011.71 sq. mts. and super structure consisting of ground, first and second floors, with tenants in possession, was transferred in the name of four sons S/Shri Jayantilal P. Vora, Shantilal P. Vora, Prafulchandra P. Vora and

Pravinchandra P. Vora. The property in the revenue records was transferred in favour of four trustee- sons and legal heirs of Late Shri Popatlal N. Vora. They were trustees of Popatlal N. Vora Inheritance Trust. Late Shri Jayantilal Popatlal Vora who was a trustee of Popatlal N. Vora Inheritance Trust expired on 29/12/2000. Smt. Savita Jayantilal Vora was appointed as Trustee of the Trust in the place of late Jayantilal Popatlal Vora.

The trustees decided to sell the property which was fully tenanted property and distribute the proceeds received on sale of immovable property.

The trustees entered into Memorandum of Understanding (MOU) for sale of "Vora Building Property" on 10/06/2006 with Hilltop Estates Pvt. Ltd.

On 29/09/2006 Sale Deed was executed between Shri Prafulchandra Popatlal Vora, Shri S. P. Vora, Shri Pravinchandra P. Vora and Smt. Savita Jayantilal Vora, Trustees of Popatlal N. Vora Inheritance Trust and Hilltop Consultants Pvt. Ltd. (earlier known as Hilltop Estates Pvt. Ltd.), a Private Limited Company. The said Sale Deed was registered with the Registrars, Andheri, Mumbai.

The trust having received sale proceeds of Rs.205 lacs, deposited them with Bank of India in Fixed Deposits as the distribution of corpus of trust had not taken place. The investment in specified securities u/s. 54EC of the Act could not be made as new series of bonds were not announced. As soon as bonds were available, the trust liquidated the fixed deposits credited the sale proceeds to the bank account of the trust with Bank of India, Sion Branch, Mumbai.

Each of the trustee was given Rs.28 lacs. Rs. 28 lacs were transferred from Bank of India A/c of the trust, to the Bank of India A/cs of Shri Prafulchandra P. Vora and Shri Shantilal Popatlal Vora. Rs.56 lacs by four cheques were transferred to the trustee Shri Prafulchandra P. Vora's HDFC Bank A/c No.00131006203124 and Rs.28 lacs each (Rs.25 lacs + Rs.3 lacs) transferred to trustees and beneficiary (i) Smt. Savitaben Jayantilal Vora and (ii) beneficiary Smt. Ranjanben P.

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Vora. Immediately, on receipt of these funds these trustees/beneficiaries invested these amounts in REC Bonds.

Entries are reflected into following accounts. Xerox copies of these bank statements are enclosed in Paper Book.

a) Receipt and deposit of sale proceeds of "Vora Building Property" into bank account of Popatlal N. Vora Inheritance Trust - Bank of India A/c No. 004120100012771 Sion Branch, Ahmedabad, Please see page nos. 20-24 of Paper Book.

b) Transfer of Rs.28 lacs was made to each trustee/beneficiary by issue of cheques in January, 2007 and first week of February, 2007. These amounts in

turn were transferred to the bank account of the trustees/beneficiaries from respective bank account of the trustees/beneficiaries. Investment on the next day was made into specified securities i.e. REC Bonds for deduction U/S.54EC of the IT Act. Please refer page nos.40-81 of Paper Book.”

4.1. The assessee has also explained the reason for not making the investment in the name of the Trust as follows:

“It is further submitted that the Appellant Trust could not have made investments in the name of Appellant Trust on account of certain clauses in the Trust Deed. Late Shri Popatlal N. Vora had executed Will on 15.03.1980. Late Popatlal N. vora owned properties and assets which as per his Will dated 15.3.1980 were for the benefit of his daughter-in-laws and son of these daughter-in-laws. In execution of the powers, the then executor on 24.2.1992 executed a discretionary trust to hold and administer the properties and assets of late Shri Popatlal N. Vora. Popatlal N. Vora Inheritance Trust was settled on 24.02.1992 pursuant to and in accordance with directions in Will of late Shri Popatlal N. Vora Clause 3.5 of the said Trust Deed provides that the period of distribution of the corpus of the Trust shall be the period of 18 years from the date of Shri Popatlal N. Vora Shri Popatlal N. Vora died on 21.07.1990 and therefore the corpus of the Trust is required to be distributed and settled on the expiry of 18 years from the date 21.07.1990 which is 20.07.2008. Copy of Trust Deed is enclosed in Paper Book for Additional Evidences at Page Nos. 21-31. The Appellant Trust sold the property on 29.09.2006 and the investment in the Bonds of REC was required to be made within 60 months of the expiry of the financial year in which the capital assets is sold, i.e. 30.09.2007. It is the requirement of the provisions of Section 54EC that the investment in the bonds of REC has to be made for minimum period of 3 years. Presuming that the investment could have been in the name of Appellant Trust then the funds from the REC bonds would have realized from the 3 years from the date of investments which would have been after the period of date of vesting of corpus of the Trust to the beneficiaries and therefore the Appellant Trust could not have been able to distribute the corpus of the Trust could not have been able to distribute the corpus of the Trust on the vesting date i.e. 20.07.2008 for which the Trust was created. Therefore, the investments were made in the name of the Trustees/Beneficiaries and not in the name of the Appellant Trust.”

4.2 However, learned CIT(A) was not convinced and he has held that the investment in REC bond was made in the name of the trustees and not in the name of the beneficiaries; hence, the deduction u/s.54EC was rightly denied by the AO. Being aggrieved, the assessee is further in appeal.

5. We have heard both the sides. We have perused the material placed before us. At the outset, we have been informed that the trustees are the sons and the beneficiaries are the daughter-in-laws or the grandsons of the settlers. The details of the trustees and beneficiaries is as under:

<i>Trustess</i>	<i>Beneficiaries</i>
<i>1. Shri Jayantilal P. Vora</i>	<i>a. Savitaben J. Vora b. Krunal J. Vora</i>
<i>2. Shri Shantilal P. Vora</i>	<i>c. Shardaben S. Vora d. Uday S. Vora</i>
<i>3. Shri Prafulchandar P. Vora</i>	<i>e. Indumatiben P. Vora</i>
<i>4. Shri Pravinchandra P. Vora</i>	<i>f. Ranjanben P. Vora</i>

5.1 We have been informed that Late P.N. Vora had executed a Will on 15.3.1980. That Will was for the benefit of the daughter-in-laws and grandsons. In execution of powers; the executor has executed a discretionary trust. As per one of the clause of the trust deed, the period of distribution of the corpus of the trust was 18 years from the date of the death of Late P.N. Vora, who died on 21.7.1990. Therefore, the corpus of the Trust was required to be distributed on the expiry of 18 years which was up to 20th of July, 2008. The assessee has furnished the requisite trust deed, etc. before the lower authorities as well as in the compilation before us. The assessee trust had sold the property on 29th of September, 2006 and the investment in REC bond was required to be made within six months of the expiry of the financial year in which the capital asset was sold, which was up to 30th of September, 2007. The minimum period for investment as prescribed u/s.54 EC was three years. Since, the lockin period of three years was beyond the period of 18 years and the date of

vesting of the corpus of the trust was 20th of July, 2008, therefore, it was decided that the investment was to be made in the name of the beneficiaries or the trustees.

6. With this factual background, we have considered few case laws, namely, **JCIT Vs. Smt. Armeda K. Bhaya, 95 ITD 313 (Mum.)**, **ITO Vs. Smt. Saraswati Ramanathan, 116 ITD 234 (Del.)**, **3rd ITO Vs. Vardarjan, 33 TTJ 466 (Mad.)** and **CIT Vs. Kamal Wahal, 351 ITR page 4 (Del.)**. In one of the case, namely, **Smt. Saraswati Ramanathan (supra)**, it was held as under:

“The CIT(A) has further noted that the assessee was 69 years old at the relevant time and it was only a matter of convenience and to avoid any problem in future that the son’s name was included. While availing of the exemptions under the Act of the nature of Section 54EC, it is better to remember that the assessee is required to make an investment. In doing so, the assessee must be accorded the freedom to be practical and wise. Normally, when an investment is made, particularly if it is made by a person of advanced age, precautions are taken to include another name the name of a much younger person, preferably a heir (may be spouse or children) is included so that no problems arise in future in case the person investing dies. It is quite common to find a person investing in a house to include the name of the spouse as a joint name. Even in case of financial assets such as bank deposits it is quite common to find people investing in joint names, more often including the name of the spouse or children. The object in doing so is merely to avoid any problem in future in case anything untoward should happen to the investor. I find it difficult to imagine that it would have been the intention of the Act to place restrictions on such freedoms given to the citizens of the country or on their right to take such precautions in the interests of a secure future. Income-tax is only one aspect of life, and that too for a minuscule part of the citizens of this country; while everyone is given the freedom to make investments in any name he likes, there is no reason why such freedom should be taken away in the case of income-tax assesseees, when the substantial ingredients of the section are complied with and the sale proceeds of the capital asset are channeled into the assets in the national interest which is the main and vital requirement of the section. In any case, the provisions of the Act cannot be interpreted in an unreasonable manner, for, tax laws ‘like all other laws, have to interpreted reasonably and in consonance with justice’ as held by His Lordship Justice K.S. Hegde, speaking for the Supreme Court in R. B. Jodha Mal Kuthiala V. CIT [1971] 82 ITR 570; again His Lordship observed in CGT v. N.S. Getti Chettair [1971] 82 ITR 599 (SC) that: ‘Words

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in a statute are not to be interpreted by having those words in one hand and the dictionary in the other. In spelling out the meaning of the words in a section, one must take into consideration the setting in which those terms are used and the purpose they are intended to serve'. Further it is a well-settled rule of interpretation in income-tax law that a beneficial section has to be construed liberally, having due regard to the object which it intends to serve. The Assessing Officer has interpreted the word 'invested' in section 54EC to mean 'invested in the assessee's name', an approach which has no justification as it adds words into the section and also ignores the purpose which the section is intended to serve.

5. For the above reasons, I agree with the view taken by the CIT(A) that the assessee is eligible for the exemption under Section 54EC. I further find that the Mumbai Bench, ITAT has held in the case of Jt. CIT v. Smt. Armeda K. Bhaya [2005] 95 ITD 313 that for the purpose of section 54 of the Act, it is sufficient compliance with the section that the assessee purchased the new flat in the names of himself, his father and mother and that it was not the requirement of the section that the new flat should be in the assessee's exclusive name. It was held that the main condition of the section was that the sale consideration should be invested in the new house. I respectfully follow the ration of the above decision. I accordingly confirm his order and dismiss the appeal filed by the revenue with no order as to costs."

6.1 Respectfully following the view taken by the Hon'ble Court, we hereby reverse the findings of the authorities below and thereby direct to allow the claim to the assessee. The grounds are allowed.

7. In the result, the appeal of the assessee is allowed.

Sd/-

(T.R. MEENA)

ACCOUNTANT MEMBER

Ahmedabad; Dated /11/2013

Prabhat Kr. Kesarwani, Sr. P.S.

Sd/-

(MUKUL Kr. SHRAWAT)

JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-III, Ahmedabad

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5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad