IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'A' KOLKATA

[Before Hon'ble Shri N.V.Vasudevan, JM & Shri Waseem Ahmed, AM]

ITA No.1987/Kol/2013
Assessment Year : **2009-10**

D.C.I.T. Circle-6, Kolkata	-versus-	M/s. Kilburn Engineering Ltd. Kolkata (PAN:AABCK 3421 H)
(Appellant)		(Respondent)

For the Appellant: Shri R.S.Biswas, CIT
For the Respondent: Shri Sunil Singhi, AR

Date of Hearing : 13.02.2017.
Date of Pronouncement : 01.03.2017.

ORDER

PER N.V.VASUDEVAN, JM:

This is an appeal by the Revenue against the order dated 01.03.2013 of CIT(A)-VI, Kolkata relating to A.Y.2009-10.

2. Grounds of appeal raised by the revenue read as follows :-

"1. Whether on the facts and circumstances of the case, Ld. CIT(A) erred in law in deleting the addition made by the A.O amounting to Rs 10,00,00,000/- u/s 54G(2) of the IT Act,1961.

2. Whether on the facts and circumstances of the case, Ld. CIT(A) erred in allowing the deduction u/s 54G of the IT Act even when the deposit has not been made within the due time as provided in the Act.

3. That the appellant craves for leave to add, delete or modify any of the grounds of appeal before or at the time of hearing."

3. There is a delay of about 12 days in filing this appeal by the revenue. The delay in filing the appeal has been explained in an affidavit filed before as one of administrative delay. The learned counsel for the Assessee has no objection for condoning the delay in filing appeal. Keeping in mind the reasons given in the application for condonation of delay and the submissions of the ld. Counsel for the assessee, we condone the delay in filing the appeal by the revenue.

4. As far as the issue raised by the revenue in the grounds of appeal is concerned, the same relates to eligibility of the assessee's for exemption u/s 54G of the Income Tax Act, 1961 (Act) in respect of a sum of Rs.10 crores. Sec.54G of the Act reads as follows:

> **"Exemption of capital gains on transfer of assets in cases of shifting of industrial undertaking from urban area.**
>
> **54G.** (1) Subject to the provisions of sub-section (2), where the capital gain arises from the transfer of a capital asset, being machinery or plant or building or land or any rights in building or land used for the purposes of the business of an industrial undertaking situate in an urban area, effected in the course of, or in consequence of, the shifting of such industrial undertaking (hereafter in this section referred to as the original asset) to any area (other than an urban area) and the assessee has within a period of one year before or three years after the date on which the transfer took place,—
>
> (*a*) purchased new machinery or plant for the purposes of business of the industrial undertaking in the area to which the said undertaking is shifted ;
>
> (*b*) acquired building or land or constructed building for the purposes of his business in the said area ;
>
> (*c*) shifted the original asset and transferred the establishment of such undertaking to such area; and
>
> (*d*) incurred expenses on such other purpose as may be specified in a scheme framed by the Central Government for the purposes of this section,
>
> then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—
>
> (*i*) if the amount of the capital gain is greater than the cost and expenses incurred in relation to all or any of the purposes mentioned in clauses (*a*) to (*d*) (such cost and expenses being hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year ; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its being purchased, acquired, constructed or transferred, as the case may be, the cost shall be *nil* ; or
>
> (*ii*) if the amount of the capital gain is equal to, or less than, the cost of the new asset, the capital gain shall not be charged under section 45 ; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its being purchased, acquired, constructed or transferred, as the case may be, the cost shall be reduced by the amount of the capital gain.
>
> *Explanation.*—In this sub-section, "urban area" means any such area within the limits of a municipal corporation or municipality as the Central Government may, having

regard to the population, concentration of industries, need for proper planning of the area and other relevant factors, by general or special order [39], declare to be an urban area for the purposes of this sub-section.

(2) The amount of capital gain which is not appropriated by the assessee towards the cost and expenses incurred in relation to all or any of the purposes mentioned in clauses (*a*) to (*d*) of sub-section (1) within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for all or any of the purposes aforesaid before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme [40] which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for all or any of the purposes aforesaid together with the amount, so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for all or any of the purposes mentioned in clauses (*a*) to (*d*) of sub-section (1) within the period specified in that sub-section, then,—

(*i*) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires ; and

(*ii*) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

5. The undisputed facts are that the Assessee's industrial undertaking was situated at Bhandup, Mumbai. Under a scheme to shift its factory from Mumbai, an urban area, to another area which is not an urban area, the Assessee sold its Land & Building at Bhandup, Mumbai to Housing Development and Infrastructure Ltd.(HDIL), under two agreements dt. 08.11.2007 & dt. 30.01.2009 for a consideration of Rs. 115 Crores. The sale consideration was payable by HDIL in instalments. There is no dispute that Long Term capital gain (LTCG) of Rs.81,57,21,820 resulted on account of sale of the property at Bhandhup and the transfer of the capital asset had taken place during the previous year relevant to AY 2009-10. To claim exemption u/s.54G of the Act, the Assessee had to comply with the conditions laid down in Sec.54G(1) of the Act by spending the capital gain for the purposes set out in Sec.54G(1) of the Act. The Assessee has a time frame of three years after the date on which the transfer took place to comply with the conditions laid down in Sec.54G(1) of the Act. Section

54G(2) of the Act provides that if the Assessee is not in a position to spend the capital gain in the manner laid down in Sec.54G(1) of the Act on or before the due date for filing the return of income for the relevant AY in which the capital gain arose, he has to deposit the unutilized for all or any of the purposes mentioned in Sec.54G(1) of the Act, in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit. Such deposit of unutilized capital gain has to be deposited in the account on or before the date of furnishing the return of income under Section 139 of the Act. Section 54G(2) further provides that such deposit should be made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of Section 139 of the Act. Section 139 of the Act has two time limit for filing return of income. The first time limit is one laid down in Sec.139(1) of the Act of "due date"for filing return of income. Such due date in this case is 30.9.2009. There is another date given for filing revised return of income in Sec.139(5) of the Act, which lays down that if any person, having furnished a return under sub-section (1) of Sec.139 of the Act, discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. The period of one year from the end of the relevant AY would, in the present case, be 31.3.2011. The Assessee filed the revised return in this case on 28.10.2010.

6. HDIL paid the following sums towards sale consideration:

28.01.2009	Rs.20,00,00,000
9.7.2009	Rs.10,00,00,000
20.8.2009	Rs.10,00,00,000
7.9.2009	Rs.10,00,00,000
21.10.2009	Rs.10,00,00,000
20.11.2009	Rs.10,00,00,000
11.12.2009	Rs. 8,50,00,000
	Rs.78,50,00,000

7. The Assessee claimed exemption u/s.54G(1) of the Act on a sum of Rs.35,61,43,054. The AO allowed exemption u/s.54G(1) of the Act to the extent of Rs.25,61,43,054/-. The dispute in this appeal is with regard to eligibility of exemption on deposit of unutilized capital gain of Rs.10,00,00,000 that was deposited in a specified account as laid down in Sec.54G(2) of the Act on 30.3.2010 by the Assessee. We have already seen that the first part of Sec.54G(2) gives time limit for making investment upto the time limit for filing return of income u/s.139 of the Act which includes both Sec.139(1) of the Act and Sec.139(5) of the Act. The second part of Sec.54G(2) however adds a rider that "such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of Section 139". If the time limit laid down in the first part is taken into account viz., time limit u/s.139 of the Act which includes both Sec.139(1) & 139(5) of the Act, than the deposit of Rs.10 crores by the Assessee in the specified account was eligible for exemption u/s.54G of the Act because the time limit laid down in Sec.139(5) of the Act was 31.3.2011 and the deposit of Rs.10 crores was made on 30.3.2010. If the time limit laid down in the second part is taken into account viz., Sec.139(1) of the Act which is 30.9.2009 in the present case, than the deposit of Rs.10 crores by the Assessee in the specified account was not eligible for exemption u/s.54G of the Act as it was made beyond the time limit.

8. The Assessing Officer applied the second part of Sec.54G(2) and denied exemption u/s.54G of the Act to the Assessee to the extent of Rs.10,00,00,000/-. Before CIT(A), the Assessee pointed out that in the Original Return the Assessee had claimed an exemption of Rs. 25,61,43,054/- and enhanced the same to Rs. 35,61,43,054/- after depositing Rs. 10,00,00,000/- in Capital Gain Scheme Account on 30.03.2010 and filed a revised return u/s 139 of the Act on 28.10.2010 claiming exemption u/s 54G of the Act and that in the circumstances, the Assessing Officer should have accepted that Revised Return of Income was filed in accordance with law and have allowed deduction as claimed therein. It was further submitted that the facts of the Assessee's case was similar to the case already been decided by ITAT, 'A' Bench, Kolkata vide consolidated order in the case of Chanchal Kumar Sircar v/s Income Tax Officer, Wd-

32(l), Kolkata (I.TA Nos. 1146/KoI/2011)and Chapal Sircar v/s Income Tax Officer, Wd-32(1), Kolkata(ITA Nos. 1147/Kol/2011). In that case, the date of transfer was hence for the purposes of capital gains transfer of capital asset was completed on 02.07.2004 and assessee has made investment with NABARD on or after 02.01.2005 i.e. after six months and therefore the AO held that the assessee was not entitled for exemption u/s. 54EC of the Act. The appellate authority found that though the transfer had taken place during the previous year, the sale consideration was received by the Assessee at a later point of time and that within one month of the receipt of sale consideration the deposit into specified account was made. The appellate authority took the view that 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 if the assessee receives part payment as on the date of transfer and receives part payment after six months then it would lead to an impossible situation by asking assessee to invest money in specified asset before actual receipt of the same. Reliance was placed by the appellate authority for the aforesaid view from the decision of Hon'ble Andhra Pradesh High Court in the case of s. Gopal Reddy Vs. CIT (1990) 181 ITR 378 (AP), 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. 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. Reliance was also placed on the decision of Hon'ble Allahabad High Court in the case of CIT Vs. Janardhan Dass (late through legal heir Shyam Sunder) (2008) 299ITR 210 (All)

wherein Hon 'ble High Court held that if the agricultural land is purchased within a period of two years from receipt of enhancement compensation, the capital gain or no capital gain, as the case may be, will be charged under section 54B(2) of the Act.

9. The Assessee also placed reliance on the decision of the Hon'ble ITAT Pune Bench "A ", Pune in the case of Shri Mahesh Nemichandra Ganeshwade v/s Income-tax Officer, Wd 3(4), Pune, dated 29/03/2012 laying down identical proposition.

10. The CIT(A) agreed with the submissions of the assessee and he held as follows :-

"35. The Hon'ble ITAT Kolkata Bench 'A ' in the case of Chanchal Kumar Sircar v. Income-tax Officer, Ward-32(1) in IT Appeal Nos. 1146 and 1147 (Kol.) of 2011 for Assessment Year 2005-06 dated February 21, 2012 reported in (2012) 50 SOT 289 (Kol) has held that when an 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 within one month of the receipt of sale consideration being part payment is eligible for exemption u/s. 54EC of the Act. It observed as under:-

"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.()7.2004 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/KoI/2011 in the case of Shri Chanchal Kr. Sircar, hence AO will allow exemption in this case also. "

36. The Hon'ble ITAT Pune Bench 'A' in the case of Mahesh Nemichandra Ganeshwade v. Income-tax Officer in IT Appeal Nos. 594 to 597 and 727 & 728 (Pune) of 2010 dated March 29, 2012 reported in (2012) 51 SOT 155 (Pune); 147 TTJ 488 for the Assessment Year 2006-07 held that the investments of RS.12,50,000/- and RS.37,50,000/- made on 3.8.2007 and 27.10.2007 respectively having been made within six months of receipt of such consideration is allowed exemption from tax on capital gains. It observed as under:-

"18. In our considered opinion, the interpretation placed by the CBDT in consultation with the Ministry of Law to the condition of making investment within six months from the date of transfer in section 54EC would support the claim of the assessee in this case also for exemption from capital gain with respect to the impugned sum of Rs 50 lakhs invested in specified assets on 3.8.2007 and 27.10.2007. In the present case, admittedly the impugned amount of sale proceeds have been received by the assessee

much after the date of transfer i. e. 12. 7.2005, so however, it is also emerging from the record that the investments of Rs 12,50,000/- and Rs 37,50,000/- made on 3.8.2007 and 27.10.2007 respectively have been made within six months of receipt of such consideration. Therefore, having regard to the interpretation placed by the CBDT to understand the requirement of making investment within six months from the date of transfer in section 54EC of the Act we are inclined to uphold the plea of the assessee for exemption from tax on capital gains qua impugned amount of Rs 50 lakhs. Therefore on this aspect, assessee has to succeed. Thus, this Ground of appeal is allowed. "

37. The appellant has deposited the amount of Rs.8,00,000,00/- on 1.12.2009; RS.71 ,55,000/- on 1.12.2009 and RS.2,50,00,000/- on 27.3.2010 and RS.10,00,00,000/- on 27.3.2010. The appellant has deposited Rs.47,33,55,000/- and is requesting for deduction of RS.35,61,43,054/- only since the payments were received late and the buyer has defaulted. It is no doubt that the possession was given by the appellant but the payments were not received as per schedule. In the absence of receipt of money it was impossible to deposit in the capital gain scheme and specially for the assessee which has come out of the BIFR only because of receipt of money from the sale of land and it has to invest for shifting of plant and machinery to start manufacturing the machines to be delivered as per orders to avoid the heavy penalty clauses. The appellant was caught in a web of financial constraints relating to shifting of plant; manufacturing and supply of machines as per order and non receipt of payment from an undertaking of Govt. of Maharashtra even after getting the land registered in the name of the buyer. In the facts and circumstances and relying upon the judgment of Hon'ble ITAT Kolkata Bench 'A' in the case of Chanchal Kumar Sircar v. Income-tax Officer, Ward-32(1) and the Hon'ble ITAT Pune Bench 'A' in the case of Mahesh Nemichandra Ganeshwade v. Income-tax Officer (supra), it is held that the appellant having deposited the money within the due date of filing of 'revised return permitted u/s 139(5) and subsequently filing the revised return claiming deduction on account of deposits in the capital gain scheme; shifting of industry from urban area to non urban area; depositing of Rs.47,33,55,000/- and claiming a deduction of Rs.35,61 ,43,054/- only etc., it is held that the appellant is entitled for deduction of Rs.35,61,43,054/- u/s 54G. This ground of appeal is allowed."

11. Aggrieved by the order of CIT(A), the revenue has preferred the present appeal before the tribunal. We have already seen that the first part of Sec.54G(2) gives time limit for making investment upto the time limit for filing return of income u/s.139 of the Act which includes both Sec.139(1) of the Act and Sec.139(5) of the Act. The second part of Sec.54G(2) however adds a rider that "such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of Section 139". If the time limit laid down in the first part is taken into account viz., time limit u/s.139 of the Act which includes both Sec.139(1) & 139(5) of the Act, than the deposit of Rs.10 crores by the Assessee

in the specified account was eligible for exemption u/s.54G of the Act because the time limit laid down in Sec.139(5) of the Act was 31.3.2011 and the deposit of Rs.10 crores was made on 30.3.2010. If the time limit laid down in the second part is taken into account viz., Sec.139(1) of the Act which is 30.9.2009 in the present case, than the deposit of Rs.10 crores by the Assessee in the specified account was not eligible for exemption u/s.54G of the Act as it was made beyond the time limit.

12. The ld. DR relied on the order of the AO. The ld. Counsel for the assessee reiterated the submissions as were made before CIT(A) and relied on the order of CIT(A). He also placed reliance on the decision of the Hon'ble Punjab and Haryana High Court in the case of CIT vs Jagriti Agarwal 203 Taxman 203 (P&H) and the Hon'ble Kerala High Court in the case of CIT vs J.Palimar Krishna (2011) 244 CTR 618 (Ker).

13. We have given a very careful consideration to the rival submissions. There is no dispute on the facts of the case. The dispute in this appeal is with regard to eligibility of exemption on deposit of unutilized capital gain of Rs.10,00,00,000 that was deposited in a specified account as laid down in Sec.54G(2) of the Act on 30.3.2010 by the Assessee. We have already seen that the first part of Sec.54G(2) gives time limit for making investment upto the time limit for filing return of income u/s.139 of the Act which includes both Sec.139(1) of the Act and Sec.139(5) of the Act. The second part of Sec.54G(2) however adds a rider that "such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of Section 139". If the time limit laid down in the first part is taken into account viz., time limit u/s.139 of the Act which includes both Sec.139(1) & 139(5) of the Act, than the deposit of Rs.10 crores by the Assessee in the specified account was eligible for exemption u/s.54G of the Act because the time limit laid down in Sec.139(5) of the Act was 31.3.2011 and the deposit of Rs.10 crores was made on 30.3.2010. If the time limit laid down in the second part is taken into account viz., Sec.139(1) of the Act which is 30.9.2009 in the present case, than the deposit of Rs.10 crores by the Assessee in the specified account was not eligible for exemption u/s.54G of the Act as it was made beyond the time limit. In the case of

Jagriti Agarwal (supra), the Hon'ble Punjab & Haryana High Court dealt with a case of deduction u/s.54 of the Act wherein similar provision as is contained in Sec.54G(2) of the Act was considered by the Hon'ble Punjab & Haryana High Court. Sec.54(2) of the Act reads thus:

> "(2) The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme [37] which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :"

14. The Hon'ble Punjab & Haryana High Court held Sec.139(4) which is akin to Sec.139(5) of the Act in the present case, was part of Sec.139(1) and therefore if deposit of unutilized capital gain is made within the time limit made in Sec.139(4) of the Act, the deduction cannot be denied to an Assessee. The following were the relevant observations of the Hon'ble Court.

> "Having heard learned counsel for the parties, we are of the opinion that sub-s. (4) of s. 139 of the Act is, in fact, a proviso to sub-s. (1) of s. 139 of the Act. Sec. 139 of the Act fixes the different dates for filing the returns for different assessees. In the case of assessee as the respondent, it is 31st day of July of the assessment year in terms of cl. (c) of the Expln. 2 to sub-s. (1) of s. 139 of the Act, whereas sub-s. (4) of s. 139 provides for extension in period of due date in certain circumstances. It reads as under : "(4) Any person who has not furnished a return within the time allowed to him under sub-s. (1), or within the time allowed under a notice issued under sub-s. (1) of s. 142, may furnish the return for any previous year at any time before the expiry of one year from the

end of the relevant assessment year or before the completion of the assessment whichever is earlier : Provided that where the return relates to a previous year relevant to the assessment year commencing on the 1st day of April, 1988 or any earlier assessment year, the reference to one year aforesaid shall be construed as a reference to two years from the end of the relevant assessment year." A reading of the aforesaid sub-section would show that if a person has not furnished the return of the previous year within the time allowed under sub-s. (1) i.e., before 31st day of July of the assessment year, the assessee can file return before the expiry of one year from the end of the relevant assessment year.

The sale of the asset having taken place on 13th Jan., 2006, falling in the previous (sic— assessment) year 2006- 07, the return could be filed before the end of relevant asst. yr. 2007-08 (sic—2006-07) i.e. 31st March, 2007. Thus, sub-s. (4) of s. 139 provides extended period of limitation as an exception to sub-s. (1) of s. 139 of the Act. Sub-s. (4) is in relation to the time allowed to an assessee under sub-s. (1) to file return. Therefore, such provision is not an independent provision, but relates to time contemplated under sub-s. (1) of s. 139. Therefore, such sub-s. (4) has to be read along with sub-s. (1). Similar is the view taken by the Division Bench of Karnataka and Gauhati High Courts in Fatima Bai and Rajesh Kumar Jalan cases (supra) respectively.

In view of the above, we find that due date for furnishing the return of income as per s. 139(1) of the Act is subject to the extended period provided under sub-s. (4) of s. 139 of the Act."

15. We are of the view that the ratio laid down by the Hon'ble Punjab & Harayana High Court will hold good in the context of a revised return filed u/s.139(5) of the Act as well. Hence the deposit made by the Assessee in the present case has to be held to be within the time limit specified in Sec.54G(2) of the Act and therefore the Assessee is entitled to exemption u/s.54G of the Act. Apart from the above, we are also of the view that decisions of ITAT Kolkata Bench 'A' in the case of Chanchal Kumar Sircar v. Income-tax Officer, Ward-32(1) and the ITAT Pune Bench 'A' in the case of Mahesh

Nemichandra Ganeshwade v. Income-tax Officer (supra), supports the plea of the Assessee. It has been held in those decisions that 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 if the assessee receives part payment as on the date of transfer and receives part payment after six months then it would lead to an impossible situation by asking assessee to invest money in specified asset before actual receipt of the same. We are of the view even on this basis the order of the CIT(A) deserves to be upheld. We therefore do not find any grounds to interfere with the order of the CIT(A). Consequently, we dismiss the appeal by the revenue.

16. In the result, appeal by the revenue is dismissed.

Order pronounced in the open Court on 01.03.2017.

Sd/- Sd/-

[Waseem Ahmed] [N.V.Vasudevan]
Accountant Member Judicial Member

Dated :01.03.2017.

[RG PS]

Copy of the order forwarded to:

1.M/s. Kilburn Engineering Ltd.,4, Mango Lane, Kolkata-700001.
2.D.C.I.T.,Circle-6, Kolkata..
3. CIT(A)-VI, Kolkata.
4. CIT-XI, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

Asst. Registrar, ITAT, Kolkata Benches