**IN THE INCOME TAX APPELLATE TRIBUNAL**
**BANGALORE BENCH "C"**

**BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER AND**
**SHRI JASON P. BOAZ, ACCOUNTANT MEMBER**

I.T.A. No.236/Bang/2012
(Assessment Year : 2008-09)

Shri Vivek Jairazbhoy,
No.17/2, Millers Road,
Bangalore-560 046. .... Appellant.
PAN AACCG 0855E

Vs.

Dy. Commissioner of Income Tax,
(International Taxation), Circle 2,
Bangalore-560 001. ..... Respondent.

Appellant By : Shri V. Chandrashekar.
Respondent By : Shri Etwa Munda.

Date of Hearing : 20.11.2012.
Date of Pronouncement : 14.12.2012.

**O R D E R**

**Per Shri Jason P. Boaz :**

This appeal by the assessee is directed against the order of the CIT(A)-IV, Bangalore dated 21/12/2011 for the assessment year 2008-09.

2. The facts of the case, in brief, are as under:-

2.1 The assessee, a non residential individual, working as a Scientist with Ford Motor Company, U.S.A., filed his return of income for the assessment year 2008-09 on 30/3/2009 declaring income of Rs.1,63,74,362/- comprising capital gains of Rs.1,57,82,650/- on sale of an agricultural property bearing Survey No.43/1, situated at Kothanur Village, K R Puram Hobli, Bangalore measuring about 6 acres 5 guntas for a sale consideration of Rs.3,50,93,750/- which

was purchased by Regd. Sale Deed dated 25/11/1981 at a total consideration of Rs.48,500/- in December, 2007 and interest income of Rs.5,91,712/-. The return was processed under section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and taken up for scrutiny by issue of notice under section 143(2) of the Act. The assessment was completed by an order dated 16/12/2010 determining the income from long term capital gains (LTCG) at Rs.2,98,26,515/- by making the following disallowances:-

| | | |
|---|---|---|
| (i) | Indexed cost of improvement | Rs.53,47,235 |
| (ii) | Expenses incurred on transfer of property | Rs. 35,00,000 |
| (iii) | Professional fees paid to Chartered Accountant | Rs. 1,96,630 |
| (iv) | Rebate for reinvestment u/s 54EC | Rs. 50,00,000 |

2.2 Aggrieved by the order of assessment, the assessee carried the matter in appeal before the CIT(A)-IV, Bangalore. The learned CIT(A) disposed off the assessee's appeal by order dated 21/12/2011 allowing the assessee partial relief of Rs.10,00,000/-, being the amount paid to the Advocate for putting through the sale transaction out of the disallowed sum of Rs.35,00,000/- mentioned at (ii) of the disallowances above. The learned CIT(A) confirmed the other disallowances mentioned at (i), (iii) and (iv) above.

3.0 Aggrieved by the order of the learned CIT(A) dated 21/12/2011 the assessee is now in appeal before the Tribunal. In this appeal, the grounds raised are as under:-

*" 1. The order of the authorities below in so far as it is against the appellant is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the appellant's case.*

*2. The appellant denies himself liable to be assessed over and above the income reported of Rs.1,63,74,362 by the appellant under the facts and circumstances of the case.*

*3. The learned authorities below are not justified in law in disallowing a sum of Rs.55,47,235 as indexed cost of improvement under the facts and circumstances of the case.*

*4. The learned authorities below failed to appreciate the fact that the appellant had incurred a sum of Rs. 12,13,075 as cost of improvement and thus calculated indexed cost of acquisition as per the provisions of Act. The authorities below failed to appreciate the fact that without any cost of improvement there cannot be any damages as claimed by the appellant under the facts and circumstances of the case.*

*5. The learned CIT (Appeals) is not justified in law restricting the claim of the expenses incurred by the appellant towards the sale of the property amounting to Rs.10,00,000 as against the actual expenditure incurred by the appellant towards the protection and incidental expenses incurred by the appellant for transfer of the property which was incurred wholly and exclusively towards the transfer of the property under the facts and circumstances of the case.*

*6. The learned authorities below are not justified in law in disallowing the claim of exemption of Rs.50 lakhs being the investment made in the NHAI Bonds which the appellant is eligible to invest under the provisions of section 54EC of the Act under the facts and circumstances of the case.*

*7. The learned authorities below are not justified in law in not allowing the professional charges paid by the appellant amounting to Rs. 1,96,630 to the chartered accountant for advising on the transfer of the property holding that the same is not an allowable expenditure under the facts and circumstances of the case.*

*8. The appellant denies himself liable to be charged to interest under sections 234A, 234B & 234C of the Income Tax Act, 1961, under the facts and circumstances of the case.*

*9. The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*

*10. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity."*

4.0 We have heard both the parties on their respective contentions. The learned AR of the assessee has filed a paper book, compilation of 107 pages and also placed on record certain judicial decisions and copies of CBDT Circulars in support of the assessee's case. The learned DR has also placed on record copies of certain judicial decisions in support of the stand of Revenue. After consideration of the same, the issues in dispute will now be disposed off.

5.0 The grounds raised at Sl.No.1, 2, 9 and 10 (supra) are general in nature and therefore, no adjudication is called for thereon.

6.1 In the ground raised at S.Nos.3 & 4, the assessee has challenged the action of the authorities below in disallowing a sum ofRs.55,47,235 claimed as indexed cost of improvement while computing LTCG on sale of the said property at S.No.43/1, Kothanur village, K.R. Puram Hobli, Bangalore, without appreciating the fact that the assessee had actually incurred an amount of Rs.12,13,075 as cost of improvement thereon during the period 1983 to 1985 and had attached the valuation certificate of an approved valuer in regard to the same. The learned counsel for the assessee filed a copy of the valuation report which contained an estimate of the losses determined at Rs.12,13,075 suffered by the assessee due to acts of damages, pilferage and valuation committed in the property sold. The learned counsel for the assessee in his arguments, while conceding that no part of the sale consideration can be said to have been received towards the assets which did not exist at the time of the sale however urged that the assessee had made improvements to the property after purchasing it in the form of additions to movable and immovable assets. He drew our attention to the valuation report at page 25 of the paper book compilation in which the list of structures on the said land, namely, Vivek Farms are mentioned; a gate and gate pillars, multipurpose room near gate, electric room, RCC structure near open well, main bungalow etc. The learned counsel for the assessee submitted that it is clear from the sale deed dt.25.11.1981 (at pages 14 to 22 of assessee's paper book) for purchase of the said property, that what the assessee had purchased was only agricultural lands and that he developed the same by constructing a farm house bungalow and also other improvements which were transferred to the purchaser of the

property vide Regd. Sale Deed dt.14.12.2007 (at pages 78 to 92 of assessee's paper book). It was thus contended by the learned counsel for the assessee that the sale consideration includes these immovable assets and therefore a reasonable amount has to be allowed as cost of constructing these immovable assets.

6.2 Per contra, the learned Departmental Representative supported the findings in the orders of the authorities below and prayed that the grounds raised by the assessee be dismissed.

6.3 We have heard both parties and carefully perused and considered the material on record. Section 48 of the Act lays down that while computing capital gains the income chargeable to tax shall be computed by deducting from the full value of consideration received the following amounts, namely :-

(i) expenditure incurred wholly and exclusively in connection with such transfer;

(ii) the cost of acquisition of the asset and the cost of improvement thereto.

In order to ascertain as to whether at the time of sale or transfer of the said property, any improvement to the property was in existence, we have perused both the sale deed 25.11.1981 whereby the assessee purchased the said property and sale deed dt.14.12.2007 whereby he sold the said property in the relevant period. On perusal thereof we find that when the property was purchased by the assessee on 25.11.1981 the said property was agricultural land with no structure thereon as admitted. We also find that according to the sale deed dt.14.12.2007 the said property continued to be agricultural land, but however notably find no mention therein of any bungalow / building being thereon or any details of improvements made

thereto as claimed. We have also perused the valuation report dt.4.8.1999 (at pages 23 to 31 of the assessee's paper book) and find that this was made in regard to complaints and FIR's lodged with the Police Department by the father of the assessee and the valuation is stated to have been made based on documents and information furnished to the valuers by the owner. We also find that the assessee has not brought on record any evidence whatsoever to establish that he had in fact incurred any expenditure on such improvement as claimed. In this factual matrix, we are of the considered opinion that, the question of allowing any deduction under section 48(ii) of the Act for indexed cost of improvement at Rs.53,40,235 as claimed by the assessee is not warranted. We, therefore, decline to interfere in the finding of the learned CIT(Appeals) that the Assessing Officer was justified in denying the said deduction while computing LTCG on the sale of the said property. We accordingly dismiss the grounds raised at 3 and 4 (supra) by the assessee.

7.1 In the ground raised at S.No.5, the assessee has challenged the learned CIT(Appeals)'s action / finding in restricting the claim of expenses incurred by the assessee towards sale of the said property to Rs.10 lakhs as against the claim of Rs.40 lakhs being incurred for this purpose. The learned counsel for the assessee submitted that these expenses include amounts aggregating to Rs.20 lakhs paid to one M.S. Narayan, Advocate who is said to have represented and advised the assessee in respect to the transfer of the said property. It is further submitted that the said Advocate has also represented the assessee and successfully defended him in a law suit numbered as OS No.7276/2005, involving the property sold, before the Hon'ble Additional City Civil Judge, Bangalore City (CCH No.8) which was instituted

by one Sri B. Bhaskar and disposed by order dt.27.11.2007 (copy of order furnished at pages 32 to 74 of assessee's paper book) and the said property was sold by the assessee soon thereafter on 14.12.2007. On examination, it was submitted, that the Assessing Officer allowed only an amount of Rs.5 lakhs as expenses incurred for transfer of the said property and disallowed the balance Rs.35 lakhs holding that these cannot be said to have been incurred wholly and exclusively for transfer of the property. The learned CIT(Appeals) however held that without getting the dispute cleared, it was not possible to sell the property and that the payments made to settle the legal disputes was well within the ambit of section 48 of the Act. He allowed a further amount of Rs.10 lakhs out of the balance amount of Rs.15 lakhs paid to M.S. Narayan, Advocate but disallowed a sum of Rs.5 lakhs paid to him, as it was paid by the assessee in March, 2008 which was after a period of six months from the date of sale, holding that the same could not have been incurred in respect of the sale of the impugned property. It is the contention of the learned counsel for the assessee that the balance of Rs.5 lakhs paid to Sri M. S. Narayan, Advocate be allowed as the time lag of 3 months should in no way affect the claim of the assessee and more so when no appeal has been preferred by revenue against the relief of Rs.10 lakhs allowed by the learned CIT(Appeals). It is also submitted that the balance of Rs.20 lakhs paid by cheques by the assessee to four different persons as commission @ Rs.5 lakhs each be allowed as copies of receipts from these parties have been obtained and placed on record.

7.2 Per contra, the learned Departmental Representative supported the orders of the learned CIT(Appeals) on this issue.

7.3 We have heard both parties and carefully perused and considered the material on record. In the relevant period, the assessee claimed to have incurred amounts aggregating to Rs.40 lakhs in connection with the sale / transfer of the said property, the details of which are as under :

| Sl.No. | Name & Address | Date of payment | Amount paid in Rs. |
|---|---|---|---|
| 1. | V Saraswathi, NO.55, Kadirappa Road, Coxtown, Bangalore | 18.12.2007 | 5,00,00 |
| 2. | M S Srinivas, No.16, G-1, Annayappa Block, II Cross, Kumarapark West, Bangalore-560 020 | 18.12.2007 | 5,00,000 |
| 3. | M S Ramanujam, No.16F2, Annayappa Block, II Cross, Kumarapark West, Bangalore-560 020 | 18.12.2007 | 5,00,000 |
| 4. | M S Jayashree, No.528, 2nd Main Raod, A Block, Rajajinagar, Bangalore-560 010 | 18.12.2007 | 5,00,000 |
| 5. | M S Narayan, Advocate, No.4601 & 4602, 6th Floor, High Point IV, 45, Palace Road, Bangalore-560 001 | 12.3.2008 | 5,00,000 |
| 6. | M S Narayan, Advocate, No.4601 & 4602, 6th Floor, High Point IV, 45, Palace Road, Bangalore-560 001 | 18.12.2007 | 5,00,000 |
| 7. | M S Narayan, Advocate, No.4601 & 4602, 6th Floor, High Point IV, 45, Palace Road, Bangalore-560 001 | 7.5.2007 | 5,00,000 |
| 8. | M S Narayan, Advocate, No.4601 & 4602, 6th Floor, High Point IV, 45, Palace Road, Bangalore-560 001 | 6.5.2007 | 5,00,000 |

7.3.2 It is the claim of the assessee that the four payments of Rs.5 lakhs each at S.Nos 5 to 8 of the table to Sri M.S. Narayan, Advocate aggregating to Rs.20 lakhs were made in connection with litigation relating to the said property. The material on record indicates that there was a civil suit No.7276 of 2005 filed against the assessee for specific performance of

sale of the said asset by one Sri A. Bhaskar before the XI Addl. City Civil Judge,Bangalore on 23.9.2005 in which the assessee was represented by Sri M.S. Narayan, Advocate. This suit was dismissed by the Hon'ble Court by its judgment dt.27.11.2007 and thereafter the assessee sold the said property on 14.12.2007. Section 48 of the Act mandates that expenditure incurred wholly and exclusively in connection with the transfer of the said asset and the cost of acquisition of the asset is to be allowed as a deduction from the full value of the consideration received from the transfer on record. On careful consideration of the material on record, we are in agreement with the finding of the learned CIT(Appeals) that the expenses incurred as payment of fees to the Advocate Sri M.S. Narayan of Rs.5 lakhs each on 6.5.2007, 7.5.2007 and 18.12.2007 aggregating to Rs.15 lakhs are incurred wholly and exclusively in connection with the transfer of the said asset for getting the suit dismissed by the Hon'ble City Civil Judge, Bangalore on 27.11.2007 without which it would not have been possible to transfer the said asset. We, however, do not agree with the action of the learned CIT(Appeals) in disallowing the payment of Rs.5 lakhs paid to Sri M.S. Narayan, Advocate on 12.3.2008 only on the ground that there was no rationale in making the said payment on 12.3.2008, almost six months after the sale of the asset for the reasons that –

(i) the said payment of Rs.5 lakhs is made on 12.3.2008 which is almost 3 months after the date sale and not 6 months as held by the learned CIT(Appeals) and

(ii) the time lag of 3 months should in no way affect the claim of the assessee and it is not stipulated anywhere that every payment in connection with the transfer of asset is to be made only prior to the sale of the property.

We, therefore, hold that the 4 payments of Rs.5 lakhs each made by the assessee to Sri M.S. Narayan, Advocate aggregating to Rs.20 lakhs are incurred in connection with the sale / transfer of the said property and are to be allowed as a deduction under section 48 of the Act while computing the LTCG on sale of the said property. It is ordered accordingly.

7.3.3 As regards the other amounts aggregating to Rs.20 lakhs paid @ Rs.5 lakhs each to 4 different persons, namely, Ms. V. Saraswathi, Sri M.S. Srinivas, Sri M.S. Ramanujam and Ms. M.S. Jayashree on 18.12.2007, we are in agreement with the findings of the authorities below that these persons were neither a party to the civil suit nor were connected with the original owners of the land and that merely by making payments by cheque and producing receipts for the same are not sufficient to establish that these expenses were incurred wholly and exclusively for the purpose of transfer of the said property. The learned counsel for the assessee has not been able to controvert the findings of the learned CIT(Appeals) on this issue that the assessee has failed to adduce any evidence to establish that payments aggregating to Rs.20 lakhs to these 4 persons @ Rs.5 lakhs each were incurred wholly and exclusively in connection with the transfer of the said property and we therefore find no reason to interfere with the finding of the learned CIT(Appeals) on this issue. This part of the ground raised by the assessee is accordingly dismissed.

8.1 In the ground raised at S.No.7, the assessee challenges the findings of the authorities below in not allowing the claim of professional charges of Rs.1,96,630 paid by the assessee to M/s. Amarnath Kamath & Co., Chartered Accountant for advising him on the transfer of property on the ground that the same payment is not an allowable expenditure.

8.2 We have heard both parties, perused and carefully considered the material on record. The learned counsel for the assessee argued that the provisions of section 48 of the Act was similar to that of section 37 of the Act and just as expenses incurred by a business by way of payment to chartered accountants for audit of books, filing of returns of income, etc. of a business house are allowed under section 37 of the Act, similarly the payment made for advise on capital gains ought to be allowed under section 48 of the Act for the assessee who has no other source of income other than capital gain and interest income as a result of sale of property. After careful consideration, we do not find the arguments put forth by the learned counsel for the assessee to be sustainable. We, rather, agree with the finding of the learned CIT(Appeals) that this expense on payments to chartered accountants is not allowable as a deduction under section 48 of the Act which computing LTCG as it is clear that this expense is not incurred in connection with the cost of improvement or in connection with the transfer of the said property. We, therefore, dismiss this ground raised by the assessee.

9.1 In the ground raised at S.No.6, the assessee challenges the action of the learned CIT(Appeals) in disallowing the claim of exemption of Rs.50 lakhs being the investment made in NHAI Bonds which he was eligible to invest in as per the provisions of section 54EC of the Act.

9.2 The assessee, in the relevant period, sold agricultural property measuring 6 acres and 5 guntas situated at Survey No.43/1, Kothanur Village, K.R. Puram Hobli, Bangalore on 14.12.2007 for a consideration of Rs.3,50,93,750. As per the details on record, the assessee invested a sum of Rs.50 lakhs on 3.3.2008 in bonds issued by Rural Electrification Corporation

(REC Ltd) and a further sum of Rs.50 lakhs by cheque dt.4.6.2008, which got encashed on 9.6.2008, in bonds of National Highways Authority of India (NHAI). Thus in all he has invested an amount of Rs.1 Crore out of sale consideration in bonds issued by REC Ltd and NHAI. The Assessing Officer relying upon the proviso to sectin 54EC restricted the claim of exemption to Rs.50 lakhs holding the same to be the maximum amount of exemption permissible under section 54EC of the Act. The proviso to section 54EC reads as under :

> *" 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 Rs.50,00,000."*

The Assessing Officer was of the view that a literal interpretation of the proviso would lead to discrimination between a person who sells property in any month from April to September of a financial year and a person who sells a property in any month from October to March of the same year as the former can avail of an exemption of a maximum amount of Rs.50 lakhs as that is the maximum amount that can be invested in a financial year and also within six months from the date of the sale is Rs.50 lakhs whereas the latter category can avail an exemption of Rs.1 Crore by investing a sum of Rs.50 lakhs before 31st March of the relevant financial year and a further sum of Rs.50 lakhs in the immediately succeeding financial year and at the same time ensuring that the second investment of Rs.50 lakhs is also made before the expiry of six months period from the date of sale. The Assessing Officer therefore was of the view that the time limit of section 54EC is to limit the exemption to Rs.50 lakhs and hence restricted the exemption to Rs.50 lakhs.

9.3 The learned CIT(Appeals) while disposing off the appeal appeared to agreed in principle with the assessee that as per the proviso to section 54EC of the Act the limit of Rs.50 lakhs pertains to the investment that can be made in a single financial year and that the section does not prevent an assessee from availing exemption of Rs.1 Crore in the event the assessee were to invest a sum of Rs.50 lakhs in a particular financial year and a further sum of Rs.50 lakhs in the immediately succeeding financial year, subject to the basic condition of section 54EC of the Act that both investments are made within a period of six months from the date of sale of the property. The learned CIT(Appeals) however restricted the claim of deduction to Rs.50 lakhs by holding that the second investment of Rs.50 lakhs in NHAI Bonds falls outside the period of six months from the date of sale i.e. 14.12.2007, since the Bonds were allotted by NHAI only on 30.6.2008. The learned CIT(Appeals) in his order goes on to observe that inspite of the fact that the assessee had tendered the payment and the NHAI has also encashed the same before the expiry of six months from the date of sale, the assessee is not entitled to exemption under section 54EC due to the fact that NHAI have allotted the Bonds on 30.6.2008 which is after the period of six months from the date of sale of the said property on 14.12.2007.

9.4 The issues now before us for adjudication are the following :

(i) Whether the proviso to section 54EC of the Act restricts the exemption to Rs.50 lakhs or does it merely restrict the investment that can be made in a single financial year to Rs.50 lakhs ?

(ii) If the answer to the above is that it is the investment that is restricted and not the exemption, then in view of the fact that NHAI had allotted the Bonds only on 30.6.2008 in respect of the second investment of Rs.50 lakhs, which is beyond the period of six months from the date of sale of property, can it be said that the second investment of Rs.50 lakhs is said to have been made outside the period of six months and no exemption is to be allowed under section 54EC of the Act in respect of the same.

9.5 The learned counsel for the assessee has placed reliance on the decision of the ITAT, Ahmedabad Bench in the case of Aspi Ginwala & Others Vs. ACIT in ITA Nos.3226 & 3227/Ahd/2011 dt.30.3.2012 wherein on similar facts i.e investment of Rs.50 lakhs each was made in two different financial years but within the period of six months from the date of sale, it was held in para 8 of the said order that the assessee is entitled to exemption of Rs.1 Crore as the six months period for investment in eligible investments involved in two financial years.

9.6 The learned Departmental Representative however placed before us an earlier judgment, contrary to the decision of the Ahmedabad Bench of the ITAT, rendered by the ITAT, Jaipur Bench in the case of ACIT Vs. Raj Kumar Jain & Sons in ITA No.648/JP/2011 dt.30.1.2012 wherein the Tribunal on similar facts, was of the view that a liberal interpretation will lead to discrimination adversely affecting those who sell a property at any time from April to September of a financial year vis-à-vis those who sell property in the period October to March of the same financial year. In this view of the matter, they came to the conclusion that

for the investment to be made within a period of six months, the exemption under section 54EC of the Act is to be restricted to Rs.50 lakhs only.

9.7 The learned counsel for the assessee placed reliance on circular No.3/2008 dt.12.3.2008 issued by CBDT, being an explanatory note on the provisions relating to Direct Taxes in Finance Act, 2007. In the said para 28.2 thereof the reason for it to set a limit on the quantum of investment by a person in a financial year, reads as under :

> " **28.2** The quantum of investible bonds issued by NHAI and REC being limited, it was felt necessary to ensure that the benefit was available to all the investors. For this purpose, it was necessary to ensure that the limited number of bonds available for subscription is also available for small investors. Therefore, with a view to ensure equitable distribution of benefits amongst prospective investors, the government decided to impose a ceiling on the quantum of investment that could be made in such bonds. Accordingly, the said section has been amended so as to provide for a ceiling on investment by an assessee in such long-term specified assets. Investments in such specified assets to avail exemption under section 54EC, on or after 1st day of April, 2007 will not exceed fifty lakh rupees in a financial year."

It is clear form the Circular no.3/2008 of CBDT (supra) that the Government only intended to restrict the investment in a particular financial year and thus has fixed a limit of Rs.50 lakhs as permissible investment in a particular financial year. It also appears clear that the Government did not intend to restrict the maximum amount of exemption permissible under section 54EC of the Act. The fact that the Legislature has consciously used the words "in a financial year" in the proviso to section 54EC of the Act also fortifies the same. If the Legislature wanted to restrict the exemption itself to Rs.50 lakhs it could have simply dispensed with using the words "in a financial year."

9.8 The judicial decisions relied upon by the learned counsel for the assessee also support the stand of the assessee. The Hon'ble Apex Court while deciding the case of Vikrant Tyres Ltd Vs. First ITO reported in 247 ITR 821 have already laid down the law on interpreting of statutes by holding thereof that :-

> *" It is settled principle in law that the courts while construing Revenue Acts have to give a fair and reasonable construction to the language of a statute without leaning to one side or the other, meaning thereby that no tax or levy can be imposed on a subject by an Act of Parliament without the words of the statute clearly showing an intention to lay the burden on the subject. In this process, the courts must adhere to the words of the statute and the so called equitable construction of those words of the statute is not permissible. The task of the court is to construe the provisions of the taxing enactments according to the ordinary and natural meaning of the language used and then to apply that meaning to the facts of the case and in that process if the tax payer is brought within the net he is caught, otherwise he has to go free."*

In the case of CWT Vs. Hashmatunnisa Begum reported in 176 ITR 98 (SC), the Hon'ble Apex Court held that while interpreting statutes, literal construction has to be applied regardless of results and that only in a situation where two views are reasonably possible, should reference be given to that view which promotes constitutionality and not where the statute can be read only in a particular way.

The following decisions of the Hon'ble Apex Court have laid down the proposition that provisions for deduction, exemption or relief are to be construed liberally in order to advance the objective and not to frustrate it.

(i) CIT Vs. Gwalior Rayon Silk Manufacturing Co. Ltd. (196 ITR 149)(SC)

(ii) CIT Vs. Vegetable Products Ltd. ( 88 ITR 192)

(iii) Bajaj Tempo Ltd. Vs. CIT (196 ITR 188)(SC)

Taking into consideration the overall facts and circumstances of the case, the CBDT's Circular No.3/2008, and the principles laid down by the Hon'ble Apex Court for interpreting statutes, we are of the considered view that it would be in the fitness of things, to follow the decision of the ITAT, Ahmedabad Bench in the case of Aspi Ginwala & Others (supra) relied on by the assessee and hold that the assessee is entitled to total deduction under section 54EC of the Act spread over a period of two financial years @ Rs.50 lakhs each on investments made in specified instruments within a period of six months from the date of sale of the property.

10.1 We now proceed to address the issue at (ii) as laid out in para 9.4 (supra). As per facts on record, the assessee had issued a cheque for Rs.50 lakhs to NHAI for allotment of Bonds that was encashed by NHAI on 9.6.2008. The sale of the said property took place on 14.12.2007 and the six months period ended on 13.6.2008. NHAI, however, as evident from the record, has allotted the bonds only on 30.6.2008 which is after the six month period. The learned CIT(Appeals) held that the date of allotment is what is to be considered for reckoning the six months period and the same (viz. 30.6.2008) being beyond the period of six months, in the instant case, has denied the exemption claimed under section 54EC of the Act for the second investment of Rs.50 lakhs.

10.2 The assessee has placed reliance on a decision of the ITAT, Bombay Bench in the case of Kumarpal Amrutlal Doshi Vs. DCIT in ITA No.1523/Mum/2010 dt.9.2.2011 wherein the Tribunal relying on the decision of the Hon'ble Apex Court in the case of CIT Vs. Ogale Glass Works Ltd (25 ITR 529) has held that payment by cheque subsequently realized on the cheque being honoured and encashed relates back to the date of receipt of the cheque and in law the

date of payment is the date of delivery of the cheque. In the cited case the assessee therein had issued a cheque to NABARD on 9.2.2006 which was within the period of six months as specified in sectin 54EC. The cheque got encashed on 15.2.2006 which was after a period of six months. The Tribunal held that the date of payment is the date of tender of the cheque i.e. 9.2.2006. In the instant case of the assessee, the cheque dt.4.6.2008 issued by the assessee for NHAI Bonds was encashed by NHAI on 9.6.2008 which is before the expiry of the period of six months (i.e. 13.6.2008) and therefore the assessee in the present case is on an even better footing than the case relied upon by the learned counsel for the assessee.

10.3 Further, in the case of Aspi Ginwala & Others (supra) cited earlier in this order, the assessee was unable to invest in Bonds within a period of six months as the issue was not open and did so the moment the same was made open to public and thus the allotment was made after the statutory period of six months. The ITAT, Ahmedabad Bench, relying on an earlier decision of the ITAT, Mumbai in the case of Ram Agarwal Vs. JCIT reported in 81 ITD 163 held that the assessee therein was prevented by sufficient cause from investing within the statutorily permitted period of six months and allowed the assessee exemption under section 54EC of the Act in respect of the said investment. In the present case before us, the assessee has made payment for the investment in NHAI which was encashed on 9.6.2008 well within the statutorily permitted period of six months from the date of sale of the property (i.e. upto 13.6.2008). What is to be reckoned here is the date of payment and not the date of allotment as the same is not in the control of the assessee. In this view of the matter, we hold that the date of payment (i.e. date of encashment of cheque) is to be reckoned for calculating

the six month period and since in this case the date of payment / encashment being well within the period of six months, the assessee is entitled to exemption under section 54EC of the Act even on the second investment of Rs.50 lakhs made in Bonds issued by NHAI. It is ordered accordingly.

11. In the result, the assessee's appeal is partly allowed.

Order pronounced in the open court on 14th Dec., 2012.

| | |
|---|---|
| Sd/- | Sd/- |
| **(N.V. VASUDEVAN)** | **(JASON P BOAZ)** |
| Judicial Member | Accountant Member |

*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, - C Bench.
6. Guard File.

(True copy) By Order

Sr. Private Secretary, ITAT, Bangalore