आयकर अपीलीय अधिकरण "ए" न्यायपीठ मुंबई में।

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

श्री दिनेश कुमार अग्रवाल, न्यायिक सदस्य **एवं**

श्री डी. करुणाकर राव, लेखा सदस्य के समक्ष ।

BEFORE SHRI DINESH KUMAR AGARWAL, JM AND
SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं./I.T.A. No. 9074/Mum/2010

(**निर्धारण वर्ष /** Assessment Year : 2007-08)

Mr. Ashok M. Chawla, 203 Shanti Sadan, Lokhandwala Complex, Andheri (W), Mumbai – 400 053.	बनाम/ Vs.	Asstt. Commissioner of Income Tax- Central Circle -32, Aayakar Bhavan, Ground floor, M.K. Road, Mumbai – 400 020.
स्थायी लेखा सं./PAN : ADCPC5506C		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी की ओर से / **Appellant by :**	Shri Rahul K. Hakani
प्रत्यर्थी की ओर से/ **Respondent by :**	Shri Manoj Kumar

सुनवाई की तारीख /**Date of Hearing : 30-01-2013**

घोषणा की तारीख /**Date of Pronouncement : 06-02-2013**

आदेश / O R D E R

PER DINESH KUMAR AGARWAL, JM. :

This appeal preferred by the assessee is directed against the order dtd. 1-11-2010 passed by the ld. CIT(A)- 41, Mumbai for the assessment year 2007-08.

2. Briefly stated facts of the case are that the assessee an individual. He has shown income from salary, business income, long term capital gain and

income from other sources. During the course of assessment proceeding, the A.O. observed that the assessee has shown long term capital gain from sale of property (Ravikiran) situated at Oshiwara, Andheri (West) which was purchased on 5-1-99 from Ravikiran Estate Pvt. Ltd. The said property was sold on 21-5-2006 as per sale deed agreement, and was registered on 22-5-2006. The sale was made for Rs. 21 lacs, the brokerage was paid Rs. 21,000/-, the sale value of the property was shown at Rs. 20,79,000/- on which the A.O. has worked out capital gain Rs. 13,77,010/-. The A.O. further observed that the assessee has invested Rs. 14 lacs in "Rural Electrification Corporation Ltd.", a Government of India Enterprise on 28-2-2007 for exemption of capital gain u/s 54EC of the Income tax Act, 1961 (the Act). According to the A.O. since the capital gain was invested after six months from the date of sale of capital asset, the claim of exemption u/s 54EC of the Act is not as per law and, hence, he rejected and taxed the capital gain Rs. 13,77,010/- as long term capital gain. Accordingly the A.O. completed the assessment at an income of Rs. 23,40,960/- vide assessment order dtd. 30-11-2009 passed u/s 143(3) of the Act. On appeal, the ld. CIT(A) while agreeing with the views of the A.O., confirmed the disallowance made by the A.O.

3. Being aggrieved by the order of the ld. CIT(A), the assessee is in appeal before us challenging in all the grounds the sustenance of disallowance of claim u/s 54EC of the Act.

4. At the time of hearing the ld. Counsel for the assessee while referring to the facts of the case with relevant dates submit that the issue is fully covered by the decision of the Hon'ble Bombay High Court in the case of CIT vs. Cello Plast (2012) 209 Taxman 617 (Bom). He, therefore, submits that following the same, the deduction u/s 54EC of the Act be granted to the assessee. He also placed on record the copy of the said judgment.

5. On the other hand, the ld. D.R. while relying on the order of the A.O. and the ld. CIT(A) also relied on the order of the Tribunal in the case of Smt. Anuradha Venkatesan vs. ITO (2013) 29 taxmann.com 68 (Chennai). He, therefore, submits that the order passed by the ld. CIT(A) in sustaining the disallowance of deduction be upheld.

6. We have carefully considered the submissions of the rival parties and perused the material available on record. We find that for deciding this issue, it is useful to set out the relevant facts chronologically:

FACTS:

21-5-2006	Date of Sale of property. Long Term Capital Gain of Rs. 13,77,010/-.
21-5-2006 to 1-7-2006	REC bonds were not available during this period. (As per decision of Bombay High Court (supra) (para 10)
30-6-2006	CBDT Circular extending time to invest in S. 54EC Bonds upto 3 1/12/2006.
1-7-2006 to 3-8-2006	REC bonds became available. (As per decision of Bombay High Court (supra) (para 10)
4-8-2006 to 22-1-2007	REC bonds were not available (As per decision of Bombay High Court (supra) (para 10)
17-10-2007	As REC bonds were not available assessee deposited Rs. 14,00,000/- with Capital Gains Scheme.

21-11-2006	Six months period from date of sale of property expired.
31-12-2006	Period Extended by CBDT expires.
22-1-2007	REC Bonds became available. (As per decision of Bombay High Court (supra) (para 10)
2-2-2007	Assessee immediately applied for Bonds by making payment out of Deposit in Capital Gains Scheme.
28-2-2007	Allotment of Bonds to Assessee.

We further find that in the case of Cello Plast (supra) the relevant facts were set out as under (para 10):-

22-3-2006	The respondents sold their factory building.
22-3-2006 to 1-7-2006	During this period, REC bonds were not available.
30-6-2006	CBDT Circular extending the time to invest in the section 54EC bonds upto 31-12-2006.
1-7-2006 to 3-8-2006	REC bonds became available during this period as stated in a letter dated 10-4-2008 from REC Ltd. filed with the Assessing Officer by the respondents.
04-08-2006 to 22-1-2007	REC Bonds were not available during this period.
21-9-2006	Six months from the date of sale of the property by the respondents. In normal course, therefore, the last date for the respondents to invest in bonds to avail of the benefit under section 54EC.
30-10-2006	As the REC bonds were still not available, the respondents invested Rs. 50,00,000/- in fixed deposits issue by the State Bank of India. The respondents by a letter dated 30-10-2006 instructed the State Bank of India to invest Rs. 50,00,000/- in FDs stating that the same will be withdrawn and invested in bonds when available.
31-12-2006	Last date for investing in bonds to avail of the benefit under section 54EC as per the CBDT circular dated 30-6-2006.
22-1-2007 to 31-1-2007	REC bonds once again available (as stated in a letter dated 10-4-08 from REC Ltd. to the respondent).
31-1-2007	Respondents purchased REC bonds.

On the above facts, their Lordships while allowing the claim of the assessee have held vide para 22 of the judgment as under:-

> **"**22**.** In the present case, the bonds were not available from 4/8/2006 to 22/1/2007. The last date for investment in the normal course would have been 21/9/2006 which was extended upto 31/12/2006. The respondents ought to

> be entitled to an extension of the number of days between 4/8/2006 to 21/9/2006 at the very least and, in any event, to a reasonable extension. The respondents admittedly invested in the bonds on 31/1/2007 i.e. within nine days of their being available once again from 22/1/2007. Considering that the bonds were not available for such a long period, an extension of merely nine days is extremely reasonable in the present facts".

Since the facts of the present case are almost similar to the facts of Celloplast (supra), which is binding on us, therefore, the decision relied on by the ld. D.R. is not applicable to the present case. This being so and keeping in view the assessee has made investment in REC bonds within reasonable extension of time, the disallowance made by the A.O. and sustained by the ld. CIT(A) is deleted. The grounds taken by the assessee are, therefore, allowed.

7. In the result, assessee's appeal stands allowed.

परिणामतः निर्धारिती की अपील स्वीकृत की जाती है ।

Order pronounced in the open court on 6-02-2013 .

आदेश की घोषणा खुले न्यायालय में दिनांकः 6-02-2013 को की गई ।

Sd/-	Sd/-
(D. KARUNAKARA RAO)	(DINESH KUMAR AGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 6-02-2013

व.नि.स./ *r.k.* , Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-41, Mumbai
4. आयकर आयुक्त / CIT – Central -III Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai 'A' Bench
6. गार्ड फाईल / Guard file.

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आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**

Sr. No.	Details	Date	Initials	Designation
1	Draft dictated on	30-1-13		Sr.PS/PS
2	Draft Placed before author	4-2-13		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6	Kept for pronouncement on			Sr.PS/PS
7	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date on which file goes to the AR			
10	Date of Dispatch of order			

In the result, the appeals of the assesses/revenue are allowed/dismissed/partly allowed/allowed for statistical purposes/partly allowed for statistical purposes.

परिणामतः निर्धारिती / राजस्व की अपीलें स्वीकृत / खारिज / आंशिक स्वीकृत / सांख्यकीय उद्देश्य के लिए स्वीकृत / सांख्यकीय उद्देश्य के लिए आंशिक स्वीकृत की जाती है ।

Order pronounced in the open court on .
आदेश की घोषणा खुले न्यायालय में दिनांकः को की गई ।

( ) ( )

लेखा सदस्य / ACCOUNTANT MEMBER न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated / /2012

व.नि.स./ , Sr. PS

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आयकर अपीलीय अधिकरण के सदस्यों के नाम

जी.ई. वीरभद्रप्पा, अध्यक्ष /G.E. Veerbhadrappa, President

डी.मनमोहन, उपाध्यक्ष / D. Manmohan, VP

बी.आर.मित्तल, न्यायिक सदस्य / B.R.Mittal, JM

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राजेन्द्र सिंह, लेखा सदस्य/ Rajendra Singh, AM

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राजेन्द्र, लेखा सदस्य /Rajendra, AM

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Gift Tax/ दान कर

Estate duty / संपदा शुल्क

Cross objection/ प्रत्याक्षेप

Sur Tax / अति कर

Expenditure Tax / व्यय कर

IT (SS)/ आयकर अपील (तलाशियां और अभिग्रहण)

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B/बी

C/सी

D/डी

E/ई

F/एफ

G/जी

H/एच

I/आई

J/जे

K/के

L/एल

M/एम

श्रीमती दिवा सिंह, न्यायिक सदस्य/ Smt. Diva Singh, JM

आई.सी. सुधीर, न्यायिक सदस्य/ I.C. Sudhir,

श्री ए.डी. जैन, न्यायिक सदस्य/

श्री सुधाकर रेड्डी, लेखा सदस्य/

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श्री टी.आर. सूद, लेखा सदस्य

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श्री महावीर सिंह, न्यायिक सदस्य

श्री सी.डी.राव

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श्री पी.के. बंसल

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श्री आर.एस. पडवेकर, न्यायिक सदस्य

श्री जी.एस. पन्नू

श्री आर.के. पांडा

श्री टी.के, शर्मा, न्यायिक सदस्य

श्री डी.के- श्रीवास्तव