



दआयकर अपीलीय अधिकरण “B” न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI**

**BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.1964/Mum/2014

(निर्धारण वर्ष / Assessment Year : 2009-10)

Niamat Mahroof Virji, Unit 232, 2 <sup>nd</sup> floor, Bussa Udyog Bhavan, T.J. Road, Sewree. Mumbai - 400 015.	<b>बनाम/</b> v.	I.T.O. 17(3)(3), Piramal Chambers, Opp Parel P.O., Mumbai.
स्थायी लेखा सं./PAN : AAHPV1071H		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

Assessee by	None
Revenue by :	Shri Neil Philip

सुनवाई की तारीख / **Date of Hearing** : 03-11-2016

घोषणा की तारीख / **Date of Pronouncement** : 19-12-2016

आदेश / ORDER

**PER RAMIT KOCHAR, Accountant Member**

This appeal, filed by the assessee, being ITA No. 1964/Mum/2014, is directed against the appellate order dated 27<sup>th</sup> December, 2013 passed by learned Commissioner of Income Tax (Appeals)- 29, Mumbai (hereinafter called “the CIT(A)”), for the assessment year 2009-10, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 26<sup>th</sup> December, 2011 passed by the learned Assessing Officer (hereinafter called “the AO”) u/s 143(3) of the Income-tax Act,1961 (Hereinafter called “the Act”).

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called “the tribunal”) read as under:-

“A) Addition u/s.50C - Rs.19,104/-

1. The learned Commissioner of Income Tax (Appeals)-29, Mumbai [CIT(A)] erred on facts and in law in sustaining the addition made by the learned Income Tax Officer - 17(3)(3), Mumbai u/s 50C of the Income Tax Act, 1961 to the extent of Rs.19,104/-.

2. The appellant prays that your honours hold that the appellant has not received such excess amount and hence addition u/s.50C of Rs.19,104/- may be deleted.

B) Disallowing the exemption claimed u/s. 54EC - Rs. 17,50,000/-

3. The learned CIT-(A) erred on facts and in law in disallowing the exemption claimed by the appellant u/s. 54EC of Rs. 17,50,000/-.

4. The appellant prays that your honours hold that the appellant had rightly claimed exemption u/s. 54EC of Rs. 17,50,000/- and hence disallowance in this regard may be deleted.”

3. The brief facts of the case are that the assessee is an individual and during the year under consideration the assessee had shown income from house property, business, other sources and capital gains. The assessee has earned capital gain on the sale of ancestral property along with her brother and cousins viz. Devji Kanji Building , Princess Street, Mumbai vide Indenture of Assignment made on 13<sup>th</sup> October, 2008 for a total consideration of Rs.1,05,00,000/- . The assessee declared long term capital gains of Nil after claiming deduction u/s. 54EC of the Act .

4. The first and second ground of appeal raised by the assessee is with respect to adoption of value as adopted by stamp valuation authorities of

Rs.1,06,12,500/- by the AO as full value of consideration for the purposes of Section 48 of the Act owing to deeming provisions of Section 50C of the Act , as against the actual agreement value of Rs 1,05,00,000/- for sale of the ancestral property by the assessee along with her brother and cousins. Thus, the addition of Rs.19,104/- was made by the AO in the hands of the assessee as long term capital gains on sale of the ancestral property as assessee's share in said property owing to difference as detailed above u/s 50C of the Act . The assessee did not challenge the value adopted by stamp duty valuation authorities and did not sought before the authorities below to refer the matter to the DVO for valuation. The same is also not been contended before us to refer the matter to DVO for valuation in the grounds of appeal raised by the assessee before the tribunal. Section 50C of the Act is a deeming provisions and is reproduced hereunder:

***“[Special provision for full value of consideration in certain cases.***

**50C.** (1) *Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority of a State Government (hereafter in this section referred to as the “stamp valuation authority”) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purposes of [section 48](#), be deemed to be the full value of the consideration received or accruing as a result of such transfer.*

(2) *Without prejudice to the provisions of sub-section (1), where—*

(a) *the assessee claims before any Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;*

(b) *the value so adopted or assessed by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,*

*the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of*

*sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.*

*Explanation.—For the purposes of this section, “Valuation Officer” shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).*

*(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.]”*

The law as contained in Section 50C of the Act is very clear and as in the instant case actual sale consideration is Rs.1,05,00,000/- which is lower than the value as adopted by stamp duty valuation authorities which comes to Rs.1,06,12,500/- . The deeming fiction of Section 50C of the Act shall come into operation and the value as adopted by stamp valuation authorities shall be deemed to be the full value of consideration for the purposes of Section 48 of the Act. The assessee has not challenged the value as adopted by stamp duty valuation authorities as full value of consideration and has not sought reference to DVO before the authorities below as also before us in the memo of appeal filed with the tribunal . The assessee’s contentions lack merits and are dismissed keeping in view the mandate of Section 50C of the Act. This disposes of ground no 1 and 2 raised in memo of appeal filed with the tribunal. We order accordingly.

5. The assessee has made investments in REC Bonds of Rs. 17,50,000/- on 30<sup>th</sup> April, 2009, wherein the property was sold on 13-10-2008. The AO observed that as per the provisions of section 54EC of the Act, the assessee was required to invest the capital gains earned on sale of property within six

months of the sale of property on 13-10-2008 and in assessee's case the period envisaged in the provisions of section 54EC of the Act for making investment in bonds as stipulated u/s 54EC of the Act has expired on 12<sup>th</sup> April, 2009. The AO observed that the assessee has made investment on 24<sup>th</sup> April, 2009 and the bonds were issued on 30-04-2009, which is beyond the prescribed limit i.e. within six months from the transfer of the property which in the opinion of authorities below had expired on 12<sup>th</sup> April, 2009 while the assessee made investment beyond the period stipulated u/s 54EC of the Act and hence not eligible for deduction u/s 54EC of the Act. The assessee submitted that the assessee had made investment of Rs. 9 lacs in REC Bonds and Rs. 8.50 lacs in NHAI Bonds on 31<sup>st</sup> March, 2009 through broker India Infoline Limited, but the said investment could not go through as the books of the said companies were closed on 28<sup>th</sup> March, 2009. Hence, application was submitted in HDFC bank on 24<sup>th</sup> April, 2009 and the REC bonds were issued on 30<sup>th</sup> April, 2009. The contentions of the assessee were rejected by the A.O. and the AO held that since the investment in the specified securities as stipulated u/s 54EC of the Act were not paid on or before 12<sup>th</sup> April, 2009, the assessee is not entitled to claim deduction u/s. 54EC of the Act which was disallowed by the AO vide assessment order dated 26.12.2011 passed u/s 143(3) of the Act.

6. Aggrieved by the assessment order dated 26.12.2011 passed by the A.O. u/s 143(3) of the Act, the assessee filed first appeal before the Id. CIT(A).

7. Before the Id. CIT(A), the assessee made elaborate submissions that as per section 54EC of the Act the investment should be made in a specified long term assets at any time within a period of six months after the date of such transfer and the assessee has complied with this condition as the word 'month' has to be reckoned according to British Calendar in terms of section 3(35) of the General Clauses Act, 1897 and hence six months period should

be reckoned from end of month in which transfer took place. The assessee relied on the decision of ITAT Mumbai Bench in the case of Yahya E Dhariwala v. DCIT, 17 taxmann.com 159(Mum), CIT v. Brijlal Lohia & Mahabir Prasad Khemka [1980] 124 ITR 485(Cal.) and in the case of CIT v. Kadri Mills (Coimbatore) Ltd. [1977] 106 ITR 846 (Mad.) . It was also submitted that the assessee made investment in REC Bonds/NHAI bonds through broker India Infoline Limited on 31<sup>st</sup> March 2009, but these companies closed their books on 28-03-2009 and investment could not be made. The funds continued to lie in bank account which were earmarked for investment in specified long term assets for claiming deduction u/s 54EC of the Act. The assessee submitted that there were no specified long term asset available from 29-3-2009 onwards and only when REC launched specified long term asset , the assessee invested Rs.17.50 lacs in it on 24-04-2009 against which bonds were allotted only on 30-4-2009. The assessee thus prayed that deduction claimed u/s 54EC for the investment made in specified long term assets should be allowed. However, the ld. CIT(A) was not in agreement with the contentions of the assessee and observed that as per section 54EC of the Act, the long term capital gains has to be invested in the specified long term asset within six months from the date of the transfer of the original asset. The ld. CIT (A) held that the last date for making the investments was on or before 12<sup>th</sup> April, 2009 whereas the assessee has made investment on 24<sup>th</sup> April, 2009 which is much beyond the period of six months, hence, assessee is not eligible for exemption of the capital gains u/s 54EC of the Act and accordingly the learned CIT(A) upheld the assessment order of the A.O. , vide appellate orders dated 27-12-2013 passed by learned CIT(A).

8. Aggrieved by the appellate order dated 27-12-2013 passed by the ld. CIT(A), the assessee is in appeal before the Tribunal.

9. At the time of hearing before the Tribunal, none appeared on behalf of the assessee, hence, we proceed to dispose of the appeal after hearing the ld. D.R.

10. The ld. D.R. submitted that the assessee has made investment in REC bonds only on 24<sup>th</sup> April, 2009 which is much beyond the expiry of period of six months which expired on 12-04-2009 as per the provisions of section 54EC of the Act hence the assessee is not entitled for the exemption of long term capital gains u/s 54EC of the Act . The ld. D.R. further relied on the order of the ld. CIT(A).

11. We have heard ld. D.R. and also perused the material available on record. We have observed that the assessee along with his brother and cousins has sold the ancestral property on 13-10-2008 and received the consideration of Rs. 1,05,00,000/- and the long term capital gains were computed by the authorities below at Rs. 17,69,104/- . The assessee invested amount of Rs.17,50,000/- in REC bonds on 24-04-2009 wherein bonds were allotted on 30-04-2009. As per the provisions of 54EC of the Act, the assessee was required to invest the capital gains in long term specified assets within six months from the date of transfer of original asset. Since the assessee invested in REC Bonds on 24-04-2009, it was held by the authorities below that the said investment is beyond six months from the date of transfer of original asset and hence conditions of Section 54EC of the Act were not complied with and the assessee is not entitled for deduction u/s 54EC of the Act. Section 54EC of the Act 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, that is to say,—*

*(a) if the cost of the long-term specified asset is not less than the capital gain arising from the transfer of the original asset, the whole of such capital gain shall not be charged under [section 45](#);*

*(b) if the cost of the long-term specified asset is less than the capital gain arising from the transfer of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the long-term specified asset bears to the whole of the capital gain, shall not be charged under [section 45](#) :*

*[**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 fifty lakh rupees.]*

*(2) Where the long-term specified asset is transferred or converted (otherwise than by transfer) into money at any time within a period of three years from the date of its acquisition, the amount of capital gains arising from the transfer of the original asset not charged under [section 45](#) on the basis of the cost of such long-term specified asset as provided in clause (a) or, as the case may be, clause (b) of sub-section (1) shall be deemed to be the income chargeable under the head “Capital gains” relating to long-term capital asset of the previous year in which the long-term specified asset is transferred or converted (otherwise than by transfer) into money.*

*Explanation.—In a case where the original asset is transferred and the assessee invests the whole or any part of the capital gain received or accrued as a result of transfer of the original asset in any long-term specified asset and such assessee takes any loan or advance on the security of such specified asset, he shall be deemed to have converted (otherwise than by transfer) such specified asset into money on the date on which such loan or advance is taken.*

*[(3) Where the cost of the long-term specified asset has been taken into account for the purposes of clause (a) or clause (b) of sub-section (1),—*

*(a) a deduction from the amount of income-tax with reference to such cost shall not be allowed under [section 88](#) for any assessment year ending before the 1st day of April, 2006;*

*(b) a deduction from the income with reference to such cost shall not be allowed under [section 80C](#) for any assessment year beginning on or after the 1st day of April, 2006.]*



*Explanation.—For the purposes of this section,—*

*(a) “cost”, in relation to any long-term specified asset, means the amount invested in such specified asset out of capital gains received or accruing as a result of the transfer of the original asset;*

*[(b) “long-term specified asset” for making any investment under this section during the period commencing from the 1st day of April, 2006 and ending with the 31st day of March, 2007, means any bond, redeemable after three years and issued on or after the 1st day of April, 2006, but on or before the 31st day of March, 2007,—*

*(i) by the National Highways Authority of India constituted under section 3 of the National Highways Authority of India Act, 1988 (68 of 1988); or*

*(ii) by the Rural Electrification Corporation Limited, a company formed and registered under the Companies Act, 1956 (1 of 1956),*

*and notified by the Central Government in the Official Gazette for the purposes of this section with such conditions (including the condition for providing a limit on the amount of investment by an assessee in such bond) as it thinks fit:]*

*[Provided that where any bond has been notified before the 1st day of April, 2007, subject to the conditions specified in the notification, by the Central Government in the Official Gazette under the provisions of clause (b) as they stood immediately before their amendment by the Finance Act, 2007, such bond shall be deemed to be a bond notified under this clause;]*

*[(ba) “long-term specified asset” for making any investment under this section on or after the 1st day of April, 2007 means any bond, redeemable after three years and issued on or after the 1st day of April, 2007 by the National Highways Authority of India constituted under section 3 of the National Highways Authority of India Act, 1988 (68 of 1988) or by the Rural Electrification Corporation Limited, a company formed and registered under the Companies Act, 1956 (1 of 1956).]*

Section 54EC of the Act clearly stipulates that the investment has to be made in specified long term assets within a period of six months after the date of transfer of the original asset. The word “month” is not defined under the Act. The word ‘month’ is defined under Section 3(35) of The General Clauses Act, 1897 which is reproduced as hereunder:

*“3. Definitions.-*

*In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,-*

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*35. “Month” shall mean a month reckoned according to the British calendar.”*

Section 54EC of the Act clearly stipulates that investment should be made in a specified assets at any time within a period of six months after the date of transfer of the asset. In the instant case, the assessee complied with this condition as the word “month” has to be reckoned as per the British Calendar. The REC bonds were subscribed by the assessee on 24-04-2009 and were allotted to the assessee by REC on 30<sup>th</sup> April, 2009 which is within six months after the date of transfer of asset as per British Calendar month, hence, the assessee fulfilled the conditions laid down under section 54EC of the Act and as such assessee is eligible for deduction u/s 54EC of the Act of Rs.17,50,000/- invested in long term specified assets being REC Bonds on 24-04-2009 which is within six months from the end of the month in which transfer took place i.e. October 2008 , the original asset having being sold on 13-10-2008 . Our above view is supported by decisions of Hon’ble Madras High Court in the case of Kadri Mills (Coimbatore) Limited (supra) wherein the Hon’ble Court held that as definition under the General Clauses Act, 1897 will apply to the term “month” occurring in the Act. The Hon’ble Calcutta High Court in Brijlal Lohia and Mahabor Prasad Khemka(supra) held that as month is not defined under the Act, the expression under the General

Clauses Act , 1897 shall apply. The Special Bench of the tribunal has in *Alkaben B. Patel v. ITO* ( 2014) 43 taxmann.com 333(Ahd. Trib )(SB) has held that in terms of General Clauses Act ,1897 period of six month mentioned in Section 54EC of the Act has to be regarded as six British Calendar months , wherein the Special Bench of the tribunal held as under:

*“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:*

*"54EC. Capital gain not to be charged on investment in certain bonds.—  
(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 from 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. v. CIT* [1962] 196 ITR 188/62 *Taxman* 480 (SC), *CIT v. Gwalior Rayon Silk Mfg. Co. Ltd.* [1962] 196 ITR 149/62 *Taxman* 471 (SC) and *CIT v. Vegetable Products Ltd.* [1973] 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 v. ITO* [2012] 51 SOT 155/21 [taxmann.com](http://taxmann.com) 136 (Pune), *Bhikulal Chandak (HUF) v. ITO* [2009] 126 TTJ 545 (Nag.), *Chanchal Kumar Sircar v. ITO*, [2012] 50 SOT 289/18 [taxmann.com](http://taxmann.com) 304 (Kol.). 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 be 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 v. Dy. CIT* [2012] 49 SOT 458/17 [taxmann.com](http://taxmann.com) 159 (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.), 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 v. SLM Maneklal Industries Ltd.* [2005] 274 ITR 485/[2007] 158 Taxman 30 (Guj.), 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 v. Kadri Mills (Coimbatore Ltd.)*, 106 ITR 846 (Mad.) 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 Kadri Mill (Caimbatore) Ltd. (*supra*). 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 CIT v. Brijlal Lohia & Mahabir Prasad Khemka [1980] 124 ITR 485/[1981] 5 Taxman 93 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 v. CIT [1986] 159 ITR 988/24 Taxman 571 (Raj.), and B.V.Aswathaiah & Bros. v. ITO [1985] 155 ITR 422/[1986] 27 Taxman 560 (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 CIT v. Munnalal Shrikishan [1987] 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 v. Kumar P. N. Tagore AIR 1978 (SC) 1811, 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.”*

Thus based on our above reasoning and detailed discussions, the assessee succeeds on these grounds and we hold that the word 'month' as stipulated in Section 54EC of the Act clearly postulate that the investment in long term specified assets is to be made within six months from the date of transfer of original asset , as the word 'month' has not been defined under the Act , the reference to Section 3(35) of General Clauses Act,1897 has to be adopted which provides “Month” shall mean a month reckoned according to the British calendar. The REC bonds were subscribed by the assessee on 24-04-2009 and were allotted to the assessee by REC on 30<sup>th</sup> April, 2009 which is within six months after the date of transfer of asset as per British Calendar month, hence, the assessee fulfilled the conditions laid down under section 54EC of the Act and as such assessee is eligible for deduction u/s 54EC of



the Act of Rs.17,50,000/- invested in long term specified assets being REC Bonds on 24-04-2009 which is within six months from the end of the month in which transfer took place i.e. October 2008 , the original asset having being sold on 13-10-2008 . The assesses appeal on this ground is allowed. This disposes of ground no 3 & 4 raised by the assessee in memo of appeal filed with the tribunal. We order accordingly.

12. In the result, appeal of the assessee is partly allowed as indicated above.

Order pronounced in the open court on 19<sup>th</sup> December, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 19-12-2016 को की गई ।

Sd/-  
(JOGINDER SINGH)  
JUDICIAL MEMBER

sd/-  
(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 19-12-2016

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व.नि.स./ R.K., Ex. 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)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "B" Bench
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई/ ITAT, Mumbai