IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE: SHRI G.S. PANNU, ACCOUNTANT MEMBER
AND
SHRI R.S. PADVEKAR, JUDICIAL MEMBER

ITA No. 2277/PN/2012
Assessment Year : 2008-09

M/s. Chakrabarty Medical Centre, C/o Dr. Mrinmay J. Chakrabarty, F-602, Maestros, Salunkhe Vihar Road, Wanowrie, Pune-411040 (Appellant) PAN No. AABFC5809Q	**Vs.**	**Tax Recovery Officer, (IT), Ahmednagar Range, Ahmednagar** (Respondent)

ITA No. 2396/PN/2012
Assessment Year : 2008-09

Income Tax Officer, Ward-1, Aayakar Bhavan, Behind Natraj Hotel, Aurangabad Road, Ahmednagar (Appellant)	**Vs.**	**Dr. Shri Mrinmay J. Chakrabarty, F-602, Maestros, Salunkhe Vihar Road, Wanowrie, Pune-411040** (Respondent) PAN No. AAKPC5126F

ITA No. 2397/PN/2012
Assessment Year : 2008-09

Income Tax Officer, Ward-1, Aayakar Bhavan, Behind Natraj Hotel, Aurangabad Road, Ahmednagar (Appellant)	**Vs.**	**Dr. Mrs. Neela M. Chakrabarty, F-602, Maestros, Salunkhe Vihar Road, Wanowrie, Pune-411040** (Respondent) PAN No. AAOPC0532B

CO No. 68/PN/2014
Assessment Year : 2008-09

Income Tax Officer, Ward-1, Ahmednagar (Appellant)	**Vs.**	**Dr. Mrinmay J. Chakrabarty, F-602, Maestros, Salunkhe Vihar Road, Wanowrie, Pune-411040** (Respondent) PAN No. AAKPC5126F

CO No. 69/PN/2014
Assessment Year : 2008-09

Income Tax Officer, Ward-1, Ahmednagar (Appellant)	**Vs.**	**Mrs. Neela M. Chakrabarty, F-602, Maestros, Salunkhe Vihar Road, Wanowrie, Pune-411040** (Respondent) PAN No. AAOPC0532B

Revenue By: **Shri A.K. Modi**
Assessee By: **Dr. Sunil Pathak & Nikhil Pathak**

Date of hearing : **23-01-2015**
Date of pronouncement : **30-01-2015**

ORDER

PER R.S. PADVEKAR, JM:-

In this batch of three appeals and two Cross Objections, one appeal is by the assessee firm and two appeals are filed by the Revenue against the order of Ld. CIT(A) in cases of the two partners. The partners have also filed Cross Objections in the appeals filed by the Revenue, challenging the impugned orders of the Ld. CIT(A)-I, Pune dated 30-09-2012 for the A.Y. 2008-09. As the facts and issues are interlined, hence, these appeals are disposed of by this common order for the sake of convenience. The assessee has taken the following revised grounds in place of original grounds:

1. *The learned CIT(A) erred in holding that the capital gains of Rs.1,64,76,685/- on sale of hospital land and building was taxable as short term capital gains in the hands of the appellant firm and not in the hands of the two partners, Dr. Mrinmay Chakrabarty and Mrs. Neela Chakrabarty.*

2. *The learned CIT(A) erred in holding that the above referred capital gains were taxable in the hands of the firm as the property belonged to the firm and u/s 45(4) as this property was distributed amongst the partners.*

3. *Without prejudice, the learned CIT(A) failed to appreciate that the proportionate capital gains on sale of land was taxable as long term capital gains.*

4. *Without prejudice, the appellant firm be granted deduction u/s 54EC on account of investment in the bonds made by the partners from the capital gains taxed in its hands.*

2. We first take the appeal filed by the assessee firm being ITA No. 2277/PN/2012. The first issue which arises from grounds taken by the

assessee firm is whether Ld. CIT(A) erred in holding that the short term capital gains on the sale of land and hospital building of Rs.1,64,76,685/- was taxable in the hands of the assessee firm and not in the hands of the two ex-partners i.e. Dr. Mrinmay Chakrabarty and Dr. (Mrs.) Neela Chakrabarty.

3. The facts which revealed from the record are as under. The assessee was a partnership firm which filed the return of income for the A.Y. 2008-09 on 26-09-2008 declaring the loss of (-) Rs.6,480/-. It appears that there was no regular assessment u/s. 143(3) of the Act. Subsequently, the Assessing Officer initiated the proceedings u/s. 147 and issued the notice u/s. 148 of the Act. The reasons given by the Assessing Officer issuing the notice u/s. 148 are reproduced in Para No. 3 which are as under:

> *"During the course of assessment proceedings for A.Y.2008-09 in the case of Dr.(Mrs) Neela Chakraborty, Ahmednagar, it has come to the notice that Dr.(Mrs) Neela Chakraborty was a partner in the firm M/s Chakraborty Medical Centre. She along with her husband Dr. Mrinmoy Chakraborty purchased a plot during the period 1983-1987 and constructed a hospital building on the said plot in 1988. Subsequently, they had constituted a partnership firm on 01/04/1992 under the name & style M/s Chakraborty Medical Centre. Thereafter, the land and the building of the hospital have been shown as the asset of the partnership firm. The land, building and the machinery of the hospital has been sold on 31/12/2007 to Dreams Investment, Ahmednagar, for a consideration of Rs.1,90,00,000/-. The partnership firm has been dissolved w.e.f. 02/04/2008.*
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> *It is further noticed that the consideration has been equally shared by the partners Dr. Neela Chakraborty and Dr. Mrinmoy Chakraborty.*
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> *From the above, it is seen that the land and the building and other assets of the firm have been sold on 31/12/2007 and the firm has been dissolved w.e.f. 02/04/2008. Therefore, the assets of the firm have been sold before the dissolution of the firm and the capital gain*

arising from such a sale has to be taxed in the hands of the firm. It is seen that the firm has been showing the assets in its balance-sheet and regularly claiming depreciation. Further, it is seen that when the assets were sold the firm was still in existence. These facts clearly go to show that the capital gain arising from sale of land and building should be taxed in the hands of the firm.

I have, therefore, reason to believe that a sum of Rs.1,90,00,000/- chargeable to tax for A.Y. 2008-09 as stated above is an escapement of income being not offered in the return of income already filed. The case is therefore required to be reopened u/s 147 by issue of notice u/s 148.

Issue notice u/s 148."

4. In sum and substance, it was noticed by the Assessing Officer that the assessee firm has sold the hospital building and land for the sale consideration of Rs.1,90,00,000/- in the F.Y. 2007-08 (A.Y. 2008-09) and in the opinion of the Assessing Officer the assessee firm should have offered the short term capital gain for tax. The assessee firm had a hospital building and land situated at Cantonment Excise Area, Ahmednagar which was known as "Chakraborty Medical Centre" and said property was sold on 15-11-2007 for a consideration of Rs.1,90,00,000/- to Dreamz Investments. The assessee firm took the contention before the Assessing Officer that the partners of the firm Dr. Mrinmay Chakrabarty and Dr. (Mrs.) Neela Chakrabarty have started construction of building in their individual capacity for running a nursing home as per the loan sanctioned letter dated 04-08-1988. It was a contention of the assessee before the Assessing Officer that even if the said property was shown in the balance sheet of the assessee firm, the ownership of the said property was with the partners who have introduced the said property towards their capital contribution when the assessee firm was formed w.e.f. 01-04-1992. The assessee firm was consisting of three partners – (i) Dr. Mrinmay Chakrabarty, (ii) Dr. (Mrs.) Neela Chakrabarty and (iii) Dr. Sandeep Chakrabarty. The assessee also

contended that even though the assessee firm was claimed the depreciation on the building which was used for the hospital purpose but the ownership of said property was remained with the partners only and hence, the capital gain was taxable in the individual hands of the two partners i.e. Dr. Mrinmay Chakrabarty and Dr. (Mrs.) Neela Chakrabarty.

5. It is pertinent to note here that both the partners of the assessee firm have declared the capital gain on the sale of the said property in their individual capacity and also claimed the benefit of investment u/s. 54 and 54EC of the Act. The Assessing Officer was not impressed with the contention of the assessee firm. He has observed that during the existence of the assessee firm, the property i.e. land and building was sold on 15-11-2007 where as the firm was dissolved on 01-04-2008. He has also observed that at the time of sale the property i.e. hospital building, belong to the assessee firm. The Assessing Officer also referred to the audited statement of account of the assessee and observed that the assessee has claimed the depreciation on the hospital building. The Assessing Officer also referred to the different clauses of the partnership deed and observed that as per the Clause-18 of the partnership deed, the partners are supposed to account for profit if a partner derives any profit from any transaction of the firm or the firm's account. The Assessing Officer has observed that the partners have received the sale consideration of the hospital building individually and credited the same in their respective bank accounts. The Assessing Officer brought to tax the short term capital gain of Rs.1,64,76,685/- rejecting the contention of the assessee firm that the capital gain cannot be brought to tax in the hands of the firm as the assessee firm was not the owner of the property. The assessee challenged the action of the Assessing Officer bringing to tax the capital gain on the sale of the land and building of the hospital premises but without successes. Before the Ld. CIT(A) the assessee took

the contention that there was a family arrangement between Dr. Mrinmay Chakrabarty and Dr. (Mrs.) Neela Chakrabarty and their son Dr. Sandeep Chakrabarty, who was also the partner of the assessee firm. It is claimed that as per the family settlement he (son) would have no share in the ownership rights in the hospital building and land. It appears that to demonstrate that there was a family arrangement, Dr. Sandeep Chakrabarty filed his affidavit dated 12-09-2012 in support of a plea that he had no interest in the land and hospital building. The Ld. CIT(A) confirmed the action of the Assessing Officer. Now, the assessee is in appeal before us.

6. We have heard the rival submissions of the parties and perused the record. The issue before us is in a narrow compass. The assessee firm was having the three partners which are already mentioned here-in-above. The land and hospital building was owned by the two partners individually i.e. Dr. Mrinmay Chakrabarty and Dr. (Mrs.) Neela Chakrabarty, before the formation of the assessee firm in 1992. Both these partners introduced the said hospital building and land as their capital contribution by way of transfer of partner's capital accounts and the hospital building for all the accounts purposes. As per the facts on record, the assessee firm carried out it's operation from the hospital premises after it's formation. The contention of the assessee firm is that there was no transfer of the ownership to the assessee firm by the partners even though the land and hospital building was introduced as a capital contribution. It is a contention of the assessee firm that even if the immovable property is introduced by the partners towards their capital contribution but same must be by way of proper conveyance deed registered under the Indian Registration Act.

7. We find that the identical issue has come for the consideration before the Hon'ble High Court of Allahabad in the case of K. D. Pandey Vs. Commissioner of Wealth Tax, Lucknow 108 ITR 214. In the said

case the assessee who was running a hotel as its sole proprietor and entered into a partnership with his son to run the same business. In the wealth tax assessment, he claimed that he had transferred his entire business assets including the hotel building to the partnership and the building became the property of the firm. The Wealth Tax Officer included the entire value of the building in the assessee's net wealth. The assessee challenged the same before the Assistant Appellate Commissioner and succeeded. The matter was carried further by the Revenue to the Tribunal and the Tribunal held that there was no effective transfer of the building from the assessee to the partnership firm and that he continued to be the owner of the hotel building and that the entire value thereof should be included in his net wealth. The matter was further carried to the Hon'ble Allahabad High Court by the assessee. Their Lordship referred to Sec. 14 of the Indian Partnership Act, 1932, Sec. 5 of the Transfer of Property Act, 1882 and Sec. 17(1)(b) of the Registration Act, 1908 and held that the partner can bring his immovable property into the stock or capital of the firm otherwise than by means of a registered instrument of conveyance. The operative part of the decision is as under:

> *"If the hotel building was transferred by the assessee to the partnership firm under an instrument of conveyance, such instrument should have been registered under the Registration Act in order to constitute a valid transfer. It is undisputed that in the present case there was no instrument under which the assessee purported to convey the hotel building to the partnership firm. But the question is whether a partner can bring his individual immovable property into the stock or capital of the firm otherwise than by means of a registered instrument of conveyance.*
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> *In Prem Raj Brahmin vs. Bhani Ram Brahmin (1946) ILR 1946 1 Cal 191, a Division Bench of the Calcutta High Court referred to s. 239 of the Indian Contract Act and s. 14 of the Indian Partnership Act and held that under the provisions of those two Acts for the purpose of bringing the separate properties of a partner into the stock of the*

firm it is not necessary to have recourse to any written document at all, that as soon as a partner intends that his separate properties should become partnership properties and they are treated as such, then by virtue of the provisions of the Contract Act and the Partnership Act, the properties become the properties of the firm and that this result is not prohibited by any provision in the Transfer of Property Act or the Indian Registration Act.

A similar view was taken by a Division Bench of the Patna High Court in Firm Ram Sahay Mall Rameshwar Dayal vs. Bishwanath Prasad AIR 1963 Pat 221. Their Lordships observed thus at page 223 :

"The legal position, therefore, appears to be that no written or registered document is necessary for an individual to contribute any land or immovable property as a contribution against his share of the capital of a new partnership business.

In CIT vs. Janab N. Hyath Batcha Sahib (1969) 72 ITR 528 (Mad) a Division Bench of the Madras High Court held that when a partner brings in certain items into the partnership at the time of its formation, such items become the property of the partnership and that such change of ownership is brought about not by any transfer, but by the very intention of the parties to treat such property belonging to one or more of the members of the partnership as that of the firm.

In Chief Controlling Revenue Authority vs. Chidambaram AIR 1970 Mad 5, a Division Bench of the Madras High Court held that when a partner brings some of his assets with an intention to treat the same as partnership asset, by virtue of s. 14 of the Partnership Act, such property could be thrown into the partnership stock without any formal document so as to make it the property of the firm.

The same view was taken by another Division Bench of the Madras High Court in R. M. Ramanathan Chettiar vs. CED (1975) 99 ITR 410 (Mad).

From the aforesaid decisions it is clear that a partner can bring his immovable property to the stock or capital of the firm as his contribution thereto without a registered instrument. But the learned standing counsel maintained that on this question the Supreme Court and this Court have taken a contrary view. He referred us to

the decision of this Court in Ram Narain & Brothers vs. CIT (1969) 73 ITR 423 (All). There, a partnership firm had purchased certain immovable properties. Subsequently, the partners claimed that the ownership of one of such properties had been transferred by the firm to one of the individual partners by adjustment made in the relevant entries in the books of accounts. One of the questions that arose for determination in that case was whether a property admittedly once owned by the firm as such, ceased to be so owned by it by reason of certain entries made in the account books of the firm. A Division Bench of this Court took the view that the partners of a firm can convert an immovable property belonging to the firm into personal property of any of them by means only of an instrument in writing, that mere entries in the books of accounts of the firm do not have the effect of converting such property of the firm into the personal property of any of the partners and that such property, therefore, continues to remain the property of the firm despite such entry.

In the aforesaid case the question whether a partner can bring his immovable property as his contribution to the stock or capital of the firm without a registered instrument, did not arise for determination. Hence, that decision cannot be of any assistance to the learned standing counsel.

The learned standing counsel next sought to derive support from the following observations of the Supreme Court in CIT vs. Hind Construction Ltd. (1972) 83 ITR 211 (SC) :

"Nor can a person by handing over his goods to a partnership of which he is a partner and that as his share of capital be considered as having sold the goods to the partnership." The aforesaid observations cannot, in our opinion, be understood as laying down the proposition that a partner cannot bring his immovable property as his contribution to the stock or capital of the firm except by means of a registered instrument of transfer.

As a result of the foregoing discussion, our answers to the questions referred to us are in favour of the assessee and as follows :

"(1) On the facts and in the circumstances of the case, the Tribunal was not justified in holding that the business assets consisting of the Grand Hotel could be transferred to the partnership only by a

registered deed and that in the absence of such deed the building remained the individual property of Shri K. D. Pandey.

(2) On the facts and in the circumstances of the case, the Tribunal was not justified in holding that the entire value of the building was assessable in the hands of the assessee, individual."

8. In our opinion the decision in the case of K.D. Pandey (supra) is direct decision on the issue. The Ld. Counsel placed his reliance on the following decisions:

i. CIT Vs. J.M. Mehta & Bros. 214 ITR 716 (Bom).

ii. CIT Vs. Citibank N.A. 261 ITR 570 (Bom).

iii. Raja Fertilizers Vs. ITO 142 ITD 435 (Chennai).

9. In the case of J.M. Mehta & Bros. (supra) the assessee was a registered partnership firm and had purchased a plot of land. The said plot was all through treated as the property of the firm up to 17-03-1976, when by an agreement between the partners, the said asset was taken out of the partnership by crediting the price of the plot to the plot account and debiting the partners' capital accounts in equal proportion. The said plot was sold for Rs.60,000/- on 15-06-1976. There was a death of one partner of the firm and the firm was reconstituted. The Income tax Officer assessed the capital gains in the hands of the firm for the A.Y. 1977-78. The facts in the said case are distinguishable. It is pertinent to note that their Lordships have referred to the decision of the Hon'ble High Court of Patna in the case of Ram Sahay Mall Rameshwar Dayal Vs. Bishwanath Prasad, AIR 1963 Patna 221 in which it has been held that no registered document is necessary when a partner contributes his immovable property as his share of the partnership because of section 14 of the Partnership Act. In our opinion the said decision is not helpful but goes against the assessee. In other two decisions, the issue was not before the High Court or ITAT whether introduction of any immovable property by the partners towards the

capital contribution needs the registration under the Indian Registration Act. We do not find any merit in the contention taken by the assessee. We, accordingly, confirm the order of the Ld. CIT(A) on this issue and Ground Nos. 1 and 2 are dismissed.

10. Now, the next issue is whether the assessee firm can get the benefit of Sec. 54EC, even though an investment in respect of capital gain is made by the two partners individually in the notified securities i.e. bonds issued by the Rural Electrification Corporation Ltd. (RECL). The sale consideration received on the sale of hospital building and land was directly credited to the Bank accounts of the two partners i.e. Dr. Mrinmay Chakrabarty and Dr. (Mrs.) Neela Chakrabarty and there is no dispute about this fact. Both the partners made the investment in the notified bonds in terms of Sec. 54EC of the Income-tax Act as then applicable. The alternate contention of the assessee is that as the firm was immediately dissolved subsequently and whatever is invested by the partners on their individual names is in fact from the funds of the assets of the assessee firm which was sold out. The Ld. AR relied on the decision of the ITAT, B Bench, Pune in the case of Shirish Vinayak Godbole Vs. ITO ITA No. 1320/PN/2010 dated 13-02-2013.

11. In the case of Shirish Vinayak Godbole (supra) the assessee sold the immovable property which was a flat and made an investment towards purchase of a flat for the residence of his wife and daughter who have been separated from him as per mutual understanding. The assessee took the contention that he is entitled for the deduction u/s. 54 of the Income-tax Act in respect of the flat purchased in the name of assessee's wife out of the capital gain on the sale of his flat in Santan Cooperative Housing Society, Erandwane, Pune-411004. The contention of the assessee found favour before the Tribunal and it is held that even if the property was purchased on the name of his wife the assessee can claim benefit of deduction u/s. 54(2) of the Act. The operative part of the

decision is as under:

> *15. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT(A) and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. In the instant case, the assessee sold his residential property for a consideration of `50 lakhs and purchased two flats, one flat for his self occupation and another flat for a consideration of `29,60,000 in the name of his wife for the residence of his wife and daughter.*
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> *15.1 It is the submission of the learned counsel for the assessee that the amount incurred for purchasing the flat for the wife of the assessee at `29,60,000 should be allowed as an expenditure being encumbrance on the property. The alternate contention of the learned counsel for the assessee that since the property is purchased in the name of the wife, therefore, in view of the decision of Hon'ble Karnataka High Court in the case of DIT (International Taxation) Vs. Mrs. Jennifer Bhide (Supra), benefit of deduction u/s.54(2) should be allowed to the assessee in respect of the said flat instead of the flat purchased in the name of the assessee.*
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> *15.2 Since the flat purchased in the name of the wife is higher and it is beneficial to the assessee we find the alternate contention of the learned counsel for the assessee is acceptable.*
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> *15.3 The Hon'ble Karnataka High Court in the case of DIT (International Taxation) Vs. Mrs. Jennifer Bhide (Supra) at Para 7 of the order observed as under:*
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> > *"7. On careful reading of s. 54 as well as s. 54EC on which reliance is placed makes it clear that when capital gains arise from the transfer of long term capital asset to an assessee and the assessee has within the period of one year before or two years after the date on which the transfer took place purchase or has within the period of three years after the date of construction of residential house then instead of 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 provision made under the section which grants exemption from payment of capital gains as set out thereunder. Therefore, in the entire s. 54, the purchase to be made or the construction to be put up by the assessee, should*

be there in the name of the assessee, in not expressly stated. Similarly even in respect of s. 54EC, 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 the capital gains in the long-term specified asset then she would be entitled to the benefit mentioned in the said section. There also it is not expressly stated that the investment should be in the name of the assessee. Therefore, to attract s. 54 and s. 54EC of the Act, what is material is the investment of the sale consideration in acquiring the residential premises or constructing a residential premises or investing the amounts in bonds set out in s. 54EC. Once the sale consideration is invested in any of these manner the assessee would be entitled to the benefit conferred under this provision. In the absence of an express provision contained in these sections that the investment should be in the name of the assessee only any such interpretation were to be placed, it amounts to Court introducing the said word in the provision which is not there. It amounts Court legislating when the Parliament has deliberately not used those words in the said section. That is the view taken by the Hon'ble Madras High Court and Hon'ble Punjab & Haryana High Court and we respectfully agree with the view expressed in the aforesaid judgment."

15.4 Respectfully following the decision of the Hon'ble Karnataka high Court cited (Supra), we are of the considered opinion that the flat purchased by the assessee in the name of his wife out of the sale consideration of flat in the name of the assessee should be considered as allowable deduction u/s.54(2) of the Income Tax Act. Since in the instant case the flat in the name of the assessee was sold on 08-05-2006 for `50 lakhs and since flat in the name of the wife and daughter has been purchased on 22-03-2006 for a consideration of `28 lakhs, plus registration expenses etc, therefore, the assessee is entitled to benefit of deduction u/s.54(2) in respect of the property purchased in the name of his wife. However, since the total cost of the property including stamp duty and registration expenses is not verifiable, we deem it proper to restore the issue to the file of the AO with a direction to verify the details and allow the deduction accordingly in respect of the flat purchased by the assessee in the name of his wife instead of the flat purchased in his name. We hold & direct accordingly.

12. There is no dispute on the legal position that the investment made by two partners on their individual names in the notified RECL bonds is otherwise eligible investment for getting the exemption from the taxable capital gain u/s. 54EC of the Act as applicable to A.Y. 2008-09. As per facts on record, the assessee firm has been dissolved on 02-04-2008 and before the dissolution the professional assets i.e. hospital building and land were sold out. As per the well settled law, partnership is not a legal entity in strict sense and in all the movable and immovable assets which are held by the partnership, there is an interest of every partner though not specifically defined in terms of their shares. On perusal of the language used in Sec. 54EC, it is provided that the assessee has to make the investment within a period of six months in the notified securities after the date of transferred of capital asset. The words used in Sec. 54EC are - "the assessee has invested the whole or any part of capital gains in the long-term specified asset". As we have held that the property which was sold out, it was property of the assessee firm and hence, the capital gain is taxable in the hands of the assessee firm. At the same time even though the bonds are purchased on the names of the two partners, it can be said that irrespective of the way, how the sale consideration was credited to the bank accounts of two partners, but the benefit of Sec. 54EC cannot be deprived to the assessee firm. As admittedly, even on the dissolution of the firm the assessee as a partner has a right to get back their capital as per the final valuation done on the date of dissolution or otherwise. In fact, for taking said view we get the support from the decision in the case of DIT (International Taxation) Vs. Mrs. Jennifer Bhide 252 CTR 444 (Kar). In the said case Sec. 54 as well as Sec. 54EC were before the Hon'ble High Court. The operative part of the finding of the High Court is as under:

> *"7. On careful reading of s. 54 as well as s. 54EC on which reliance is placed makes it clear that when capital gains arise from the transfer of long term capital asset to an assessee and the assessee*

has within the period of one year before or two years after the date on which the transfer took place purchase or has within the period of three years after the date of construction of residential house then instead of 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 provision made under the section which grants exemption from payment of capital gains as set out thereunder. Therefore, in the entire s. 54, the purchase to be made or the construction to be put up by the assessee, should be there in the name of the assessee, in not expressly stated. Similarly even in respect of s. 54EC, 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 the capital gains in the long-term specified asset then she would be entitled to the benefit mentioned in the said section. There also it is not expressly stated that the investment should be in the name of the assessee. Therefore, to attract s. 54 and s. 54EC of the Act, what is material is the investment of the sale consideration in acquiring the residential premises or constructing a residential premises or investing the amounts in bonds set out in s. 54EC. Once the sale consideration is invested in any of these manner the assessee would be entitled to the benefit conferred under this provision. In the absence of an express provision contained in these sections that the investment should be in the name of the assessee only any such interpretation were to be placed, it amounts to Court introducing the said word in the provision which is not there. It amounts Court legislating when the Parliament has deliberately not used those words in the said section. That is the view taken by the Hon'ble Madras High Court and Hon'ble Punjab & Haryana High Court and we respectfully agree with the view expressed in the aforesaid judgment."

13. In the present case, there is another angle to look into. Admittedly the assessee firm has claimed the depreciation on the hospital building and hence, Sec. 50 is applicable. In terms of Sec. 50 whatever Capital Gain is worked out on the depreciable asset then the same is treated as Short Term Capital Gain. The next question before us is whether the assessee firm can claim the benefit of Sec. 54EC which is specified for the benefit of Long Term Capital Gain. This issue is decided in favour of the assessee by the Hon'ble High Court of Bombay in the case of CIT Vs.

ACe Builders (P) Ltd. 281 ITR 210. We, accordingly, hold that even though the assessee firm has claimed the depreciation on the hospital building but benefit of Sec. 54EC can be given following the legal principles laid down by the Hon'ble Bombay High Court in the case of ACe Builders (P) Ltd. (supra). We, accordingly, direct the Assessing Officer to give the benefit of Sec. 54EC to the assessee firm subject to ceiling of Rs.50 Lacs as per proviso to Sec. 54EC of the Act. In the result, Ground No. 4 is allowed.

14. Now, we take up the Revenue's appeals being ITA Nos. 2396 & 2397/PN/2012. The Revenue has taken the following grounds which are verbatim in both the appeals:

1. *The order of the learned Commissioner of Income-tax (Appeals) is contrary to law and to the facts and circumstances of the case.*

2. *On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals)-I, Pune has grossly erred in deleting the addition of Rs.80,99,042/- made by the Assessing Officer, on a protective basis, towards Long term capital gain on account of the assessee's 50% share in Sale of Land and Building.*

3. *For these and such other grounds as may be urged at the time of hearing, the order of the Ld. Commissioner of Income-tax (Appeals) may be vacated and that of the Assessing Officer be restored.*

15. In the case of both the partners, the assessments were framed. Both the assessees have disclosed the Long Term Capital Gain of Rs.80,99,042/- i.e. 50% of their respective share in sale consideration of land and hospital building and had also claimed the exemption u/s. 54 and 54EC in respect of whole of amount of Rs.80,99,042/-. The assessee deposited Rs.35,00,000/- in Capital Gains deposit account with Allahabad Bank on 04-04-2008 and invested Rs.50,00,000/- in Rural Electrification Bonds (REB) on 28-01-2008 and claimed exemption u/s. 54 and 54EC in respect of the whole of the amount of the Capital Gain of

Rs.80,99,042/-. At this juncture, we may clarify that it was contention of both the assessees that the hospital building and land which was otherwise the property of the firm was claimed as having the individual ownership of those two partners and accordingly, both the assessees (partners) declared the Long Term Capital Gain in their individual returns and also claimed the benefit by making the investment in the notified bonds u/s. 54EC and also Sec. 54 of the Act. While completing the assessments of these two partners, the Assessing Officer made the addition of Capital Gain on protective basis. The Ld. CIT(A) deleted the addition as he upheld the addition in the hands of the firm on substantive basis. We have held that the Capital Gain is taxable in the hands of the firm upholding the order of the Ld. CIT(A) on substantive basis. Hence, the Revenue's appeals become infructuous and do not survive and hence, both the appeals of the Revenue are dismissed.

16. Now, we take up the Cross Objection being CO Nos. 68 & 69/PN/2012. The assessee has taken the following ground which is common in both the Cross Objection.

On the facts and in law,

1. *The respondent request for deduction u/s. 54, 54F and 54EC from the long term capital gains on sale of hospital land and building.*

17. There is a delay in filing the Cross Objection. The assessee has filed an affidavit explaining the delay.

18. We have heard the parties on the delay in filing the Cross Objections. After considering the reasons given by the assessee as well as considering the complexity of the issue, we condone the delay. The assessee has claimed that the assessee may be given the benefit of Sec. 54 and 54EC. Both the Cross Objections are filed in individual cases of the partners. As we have held that Capital Gain is not taxable in the hands of the partners in their individual capacity, both the Cross

Objections become infructuous. We have already allowed benefit of Sec. 54EC of the Act to the assessee firm. Accordingly, grounds taken by the assessee are dismissed.

19. In the result, the assessee's appeal being ITA No. 2277/PN/2012 is partly allowed and Revenue's appeal being ITA Nos. 2396 & 2397/PN/2012 as well as Cross Objection being CO Nos. 68 & 69/PN/2014 are dismissed.

Pronounced in the open Court on **30-01-2015**

Sd/-	Sd/-
(G.S. PANNU)	**(R.S. PADVEKAR)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Pune, Dated: 30th January, 2015
RK/PS

Copy to

1 Assessee
2 Department
3 The CIT(A)-I, Pune
4 The CIT-I, Pune
5 The DR, ITAT, "B" Bench, Pune.
6 Guard file.

//True Copy//

By Order

Assistant Registrar,
Income Tax Appellate Tribunal,
Pune