

आयकर अपीलीय अधिकरण, “ई” खंडपीठ मुंबई
INCOME TAX APPELLATE TRIBUNAL, MUMBAI-“E”, BENCH

सर्वश्री राजेन्द्र, लेखा सदस्य एवं संदीप गोसाईं, न्यायिक सदस्य

Before S/Sh. Rajendra, Accountant Member & Sandeep Gosain, Judicial Member

आयकर अपील सं./ITA No.913/Mum/2013, निर्धारण वर्ष/Assessment Year 2007-08

Income tax officer-21(2)(2) C-10/Room No.507, 5 th Floor, Bandra Kurla Complex Bandra, Mumbai-400 051.	Vs.	Shri Sanjiva Shetty 5/215, Kuntipura CHS Sardar Nagar No.1 Sion, Koliwada, Mumbai-400 022. PAN No.AAVPS 1368 Q
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(अपीलार्थी / Assessee)

(प्रत्यर्थी / Respondent)

निर्धारिती ओर से/ Assessee by : None

राजस्व की ओर से/ Revenue by : Sh. Sachidanand Dubey-DR

सुनवाई की तारीख/ Date of Hearing : 16- 11 -2015

घोषणा की तारीख / Date of Pronouncement : 01.01.2016

आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश

Order u/s.254(1) of the Income-tax Act, 1961 (Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the order dt.5/11/2012 of CIT(A)-32, the Assessing Officer(AO) has filed the present appeal.

2.The only ground of appeal deals with deduction under section 54EC of the Act amounting to Rs.30.00 lacs. During the assessment proceedings, the AO found that the assessee had transferred a capital asset on 22.6.2006 on which capital gain of 42.96 lacs was worked out, that the assessee had claimed deduction of Rs.30.00 lacs against the long term capital Gains (LTCG), that he had claimed to have made investment of Rs.30.00 lacs in REC Bonds, that the bonds were purchased on 31.7.2007. The AO held that the asset was transferred on 22. 12. 2006, that the period of six months for availing the deduction u/s. 54EC expired on 22.6.2007, that the assessee had made investment on 31.7.2007, that the assessee had claimed that the scheme for eligible bonds was closed w.e.f. 31.3.2007 and later on it was again opened w.e.f. 2.7.2007, that he had issue cheque dt.15.6.2007, that the cheque was issued before the expiry of six months to the agent who invested in the bonds in the month of July. However, the AO did not agree with the contention of the assessee and held that investment u/s.54EC was beyond the time limit, accordingly he denied the deduction to the assessee.

3. Aggrieved by the order of the AO the assessee preferred an appeal before the First Appellate Authority (FAA). Besides the argument advanced before the AO, the assessee stated that the CBDT had issued a circular, that his case was covered by the Circular, that the scheme was not open on 22.6.2007. After considering the submission of the assessee and the assessment order, the FAA held that the scheme for making investment in the eligible bonds u/s.54EC was open from 22.1.2007 to 31.3.2007 only, that on the last day of expiry of limitation on 22.06.2007 there was no scheme open for subscription, that as soon as subscription opened on 02.07.2007 the assessee invested in the bonds, that the bonds were allotted to him on 31.07.2007, that the assessee could not be held in default for violation of conditions of section 54EC, that scheme re-opened on 2.7.2007, that the assessee had issue the cheque dt.15.6.2007, that the CBDT had extended the applicability of the scheme to those earlier cases where Long Term Assets were transferred between 29.9.2005 to 30.9.2006. He referred

to the case of Ram Agarwal(81 ITD 163) and Aspi Girwala (ITAT Ahmedabad) and held that the assessee was eligible to claim deduction u/s. 54EC of the Act.

4. During the course of hearing before us the Departmental Representative (DR) supported the order of the AO.

5. We have perused the material on record. We find that the AO had denied the benefits of provisions of section 54EC, as he was of the opinion that investment in bonds was not made within the period of six months, that the FAA had allowed the appeal, that he had held that assessee could not make investment as the scheme was not open on the last day of six months. In our opinion section 54EC is one of the benevolent provisions and was inserted in the Act with a specific purpose. The assessee made the investment as soon as the scheme re-opened in July. In these circumstances, we are of the opinion that the order of the FAA does not suffer from any legal infirmity. So, confirming the same we decide the effective ground of appeal against the AO.

As a result, appeal filed by the AO stands dismissed.

फलतः निर्धारिती अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है.

Order pronounced in the open court on 1st January, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 01 जनवरी, 2016 को की गई।

Sd/-

Sd/-

(संदीप गोसाईं/Sandeep Gosain)

(राजेन्द्र / Rajendra)

न्यायिक सदस्य/Judicial Member

लेखा सदस्य/Accountant Member

मुंबई Mumbai, दिनांक Date: 01.01.2016

व.नि.स./v.Sr.PS.

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

1. Assessee /अपीलार्थी
2. Respondent /प्रत्यर्थी
3. The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त,
4. The concerned CIT /संबद्ध आयकर आयुक्त
5. DR " A" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि के खंडपीठ, आ.अ.मुंबई
6. Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.