

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD**

[Before Shri Pramod Kumar, Accountant Member]

ITA No. 3273/Ahd/2015
Assessment Year : 2008-09

Gayatri B ShahAppellant
71, Kasturi Nagar,
Manjalpur, Baroda-390011
[PAN : AWAPS 1343 L]

Vs.

The ITO,Respondent
Ward 1 (2)(1),
Baroda

Appearances by:

Aditi P Sheth for the appellant
Deepak Sutharia for the respondent

Date of concluding the hearing : 21.08.2017
Date of pronouncing the order : 27.10.2017

O R D E R

1. By way of this appeal, the assessee appellant has challenged correctness of order dated 8th September 2015 passed by the CIT(A) in the matter of assessment under Section 143(3) r.w.s. 147 of the Income-tax Act, 1961, for the assessment year 2008-09.

2. The only grievance pressed by the learned counsel is as follows:-

"3.00 Denial of exemption to the tune of Rs.21,16,172/- u/s 54EC of the Act

3.01 On the facts and circumstances of appellant's case as well as in law, the Id. CIT(A) has erred in confirming action of Id AO of denial of exemption u/s 54EC of the Act not appreciating that the appellant had invested in REC Bonds to the tune of Rs.25,00,000/- out of advance money received towards sale of property."

3. To adjudicate on the above grievance, only a few material facts need to be taken note of. During the course of assessment proceedings, it was noticed that the assessee had sold a plot of land, on 20.12.2007, for Rs.98,19,220/- in respect of which capital gain was worked out at Rs.51,16,172/-. The assessee had invested

Rs.55,00,000/- in REC Bonds, which were eligible for exemption under Section 54EC, and, accordingly, taxable capital gains were computed at NIL. However, the Assessing Officer declined the exemption under Section 54EC in respect of qualifying investment of Rs.25,00,000/- on the ground that the said investment was made on 31.03.2007, i.e. prior to the sale of capital asset in question. Aggrieved, assessee carried the matter in appeal before the CIT(A) and contended that the investment of Rs.25,00,000/- was made out of related advance payments received by the assessee aggregating to Rs.39,27,674/- received prior to 31.03.2007. Learned CIT(A), however, confirmed the action of the Assessing Officer. The assessee is aggrieved and in further appeal before me.

4. I have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

5. I find that the issue in appeal is now squarely covered, in favour of the assessee, by Hon'ble Bombay High Court's judgment in the case of CIT vs. Subhash Vinayak Supnekar, [2017] 77 taxmann.com 226 (Bombay), which observes as follows:-

"6. We find that the Sale Deed dated 5th April, 2007 is produced. This itself in clause (d) thereof records the fact that the Agreement to Sale had been entered into on 21st February, 2006 in respect of the subject property and the amounts being received by the vendor (respondent assessee) under that Agreement to Sale. Thus, these amounts when received as advance under an Agreement to Sale of a capital asset are invested in specified bonds, the benefit of Section 54EC of the Act is available. In the above view, the Tribunal holds that the facts of the present case are similar to the facts before the Tribunal in Bhikulal Chandak HUF (supra). The Revenue does not dispute the same before us. Moreover, on almost identical facts, this Court in Mrs.Parveen P. Bharucha Vs. DCIT, 348 ITR 325, held that the earnest money received on sale of asset, when invested in specified bonds under Section 54EC of the Act, is entitled to the benefit of Section 54EC of the Act. This was in the context of reopening of an assessment and reliance was placed upon CBDT Circular No. 359 dated 10th May, 1983 in the context of Section 54E of the Act.

7. Mr. Bajpayee, learned Counsel for the Revenue very fairly points out that the Revenue had preferred an appeal against the order of the Tribunal in Bhikulal Chandak HUF (supra) to this Court (Nagpur Bench) being Income Tax Appeal No.68 of 2009. This Court by an order dated 22nd August, 2010 refused to entertain the Revenue's above appeal from the decision of the Tribunal in Bhikulal Chandak HUF (supra). In the above view, the question as proposed for our consideration in the present facts does not give rise to any substantial question of law. Thus, not entertained."

6. Respectfully following the above judicial precedent, I uphold the plea of the assessee and direct the Assessing Officer to grant exemption under Section 54EC in respect of investment of Rs.25,00,000/- on 31.03.2007. The assessee gets the relief accordingly.

7. In the result, the appeal is allowed. Pronounced in the open court today on the 27th October, 2017.

Sd/-

Pramod Kumar
(Accountant Member)

Ahmedabad, the 27th day of October, 2017

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Copies to: (1) The appellant
(2) The respondent
(3) Commissioner
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

TRUE COPY

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad