

**IN THE INCOME TAX APPELLATE TRIBUNAL PANAJI BENCH, PANAJI**

**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAM LAL NEGI, JM**

ITA No.343/Pan./2017  
(Assessment Year: 2013-14)

Shri Fremioth Savio Menezes H. No. 301, A1, Kerant, Caranzalem, Goa	Vs.	Asst. CIT, Circle 1(1), Aayakar Bhavan, EDC Complex, Patto Plaza, Panaji, Goa
PAN/GIR No. BGBPM 3399 C		
<b>(Appellant)</b>	:	<b>(Respondent)</b>
<b>Appellant by</b>	:	None
<b>Respondent by</b>	:	Shri Y. V. Raviraj
<b>Date of Hearing</b>	:	14.11.2018
<b>Date of Pronouncement</b>	:	14.01.2019

ORDER

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)– 2 Panaji, pertaining to assessment year 2013-14.

2. The grounds of appeal read as under:

1. The Assessing Officer and Commissioner of Income Tax (Appeals) were not justified in disallowing exemption u/s. 54EC contending that the investment in REC Bonds is made beyond the stipulated time.
2. The Commissioner of Income Tax (Appeals) has erred in not observing the principal of natural justice in confirming disallowance u/s. 54EC which was disallowed without giving any opportunity of explanation to the assessee.
3. The Assessing Officer and Commissioner of Income Tax (Appeals) have shown disregard to the intent of assessee to pay the amount due within stipulated time.

3. Brief facts of the case are as under:

As per the Assessing Officer (A.O. for short), the assessee earned long term capital gain (LTCG) of Rs.1,52,36,235/- on transfer of his immovable property. The assessee claimed deduction u/s. 54EC of Rs.45,00,000/- by showing an investment of the

said amount in REC bonds. The assessee had transferred his immovable property being plot of land by executing an agreement to sell on 04.09.2012. It was submitted by the assessee before the AO as well as during appellate proceedings that the rights in the property were transferred on execution of agreement to sell on 04.09.2012. As per section 54EC, the assessee gets 6 months' time to invest in the eligible bonds. Accordingly, the assessee should have invested the proceeds of LTCG in eligible issue of bonds on or before 03.03.2013. However, the assessee invested the proceeds of LTCG in REC bonds on 08.03.2013. The assessee admits that the cheques issued to REC for investment in bonds though were presented to the bank on 04.03.2013 were debited in assessee's bank accounts on 08.03.2013. Hence, the AO held that the assessee had invested in REC bonds beyond the permissible time limit for claiming exemption u/s. 54EC of the IT. Act and accordingly, the AO disallowed the said exemption claimed by the assessee and added to the total income of the assessee.

4. Before the Id. CIT(A), it was submitted that the assessee had given the cheque to the bank on 04.03.2013 but the cheque was cleared on 08.03.2013 and the delay if any was merely four days and, hence, the same should be condoned. However, the Id. CIT(A) did not agreed with the assessee's contention and upheld the A.O.'s action.

5. Against the above order, the assessee is in appeal before us.

6. We have heard the Id. Departmental Representative. None appeared on behalf of the assessee. In our considered opinion, the issues raised can be adjudicated by hearing the Id. Departmental Representative and perusing the records.

7. Upon careful consideration, we note that the assessee has duly issued the cheque for the investment in accordance with the act. The delay of the bank in clearing the

amount is a meager delay of only four days. This delay is attributable to the banking channel and, hence, in our considered opinion, adverse inference cannot be drawn against the assessee on the technical ground of delay of merely four days in clearance of the cheque. Hence, we set aside the orders of the authorities below and decide the issue in favour of the assessee.

8. In the result, this appeal by the assessee is allowed.

*Order pronounced by listing the result on the Notice Board of the Bench under Rule 34(4) of the Appellate Tribunal Rules, 1963.*

**Sd/**

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**RAM LAL NEGI  
JUDICIAL MEMBER**

**Sd/-**

**SHAMIM YAHYA  
ACCOUNTANT MEMBER**

DATED: 14.01.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Panji City concerned;*
- (5) *The DR, ITAT, Panji;*
- (6) *Guard file.*

Roshani, Sr. PS

By Order

(Sr. P.S./P.S.)  
ITAT