

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No.1274/Ahd/2017
(Assessment Year : 2011-12)

Shri Rajiv Manibhai Patel, Vs. ACIT(International Taxation),
17, Everest Industrial Vadodara, Race Course Circle,
Estate, Yamuna Mill Road, Baroda – 390 007.
Pratapnagar,
Vadodara – 390 004.

[PAN No.ACWPP 2581 R]

(Appellant)

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(Respondent)

Appellant by : Ms. Kinjal Shah, A.R.
Respondent by: Ms. Nilam Das Gupta, Sr.D.R.

Date of Hearing 18.02.2019
Date of Pronouncement 28.02.2019

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is against the order dated 29.10.2015 passed by the Commissioner of Income Tax (Appeals) –13, Ahmedabad under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short ‘the Act’) arising out of the order dated 26.12.2014 passed by the Assistant Commissioner of Income Tax (Intl. Taxation), Vadodara for the Assessment Year 2011-12 with the following grounds:

- “1. *Comm. of Income Tax (A)-13, Ahmedabad (hereinafter referred to as the CITA) has erred both on facts and in Law in confirming*

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order of AO confining deduction u/s 54EC to Rs.50 Lacs instead of the same correctly claimed at Rs. 1 Crore.

2. *It is submitted that since the Appellant has complied with provisions of Section 54EC as interpreted by different Hon. Courts and since investment in bonds is made in two separate financial years but within six months from sale of property, deduction of Rs.1 crore ought to have been granted u/s 54EC.”*

2. The case of the assessee, a non-resident, for the purposes of the Income Tax Act, 1961 during the assessment year under consideration. The case of the assessee was reopened u/s 147 by issuing a notice u/s 148 of the Act dated 14.03.2014, after recording the reasons for such reopening. The assessee thereafter submitted that his original return for A.Y. 2011-12 may be considered as due compliance with the notice u/s 148 of the Act. The hard copy of the ITR along with computation of income was supplied by the assessee which revealed that the assessee's total income was Rs.63,37,488/-. The reasons for reopening of such assessment was also supplied to the assessee in terms of his request made to the authorities which in short was that on examining the assessee's computation of income, it was noticed that the assessee claimed deduction amounting to Rs.1 crore u/s 54EC of the Act whereas as per Section 54EC since the maximum permissible amount of deduction is Rs.50 lacs. Thus, there was an excess claim of deduction u/s 54EC of the Act, made by the assessee.

3. The fact, behind this is that the assessee during the year under consideration sold an ancestral bungalow namely “Swashraya” being a co-

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owner thereof having 1/3rd share of the said property for a consideration of Rs.6,60,00,000/- on 26.10.2010. As a result whereof Rs.2,20,00,000/- being 1/3rd of the share was received by the assessee. Since the bungalow was constructed by his father of 1981 taking the benefit of appropriate indexation, the long term capital gain was worked out at Rs.1,77,08,765/- in the hands of the assessee out of which, Rs.22,49,455/- was claimed to have been invested in the residential flat on 03.11.2010 and sought the benefit of section 54 of the Act. Apart from that Rs. 50 lacs was deposited in NHAI bonds on 30.11.2010 by the assessee and claimed deduction u/s 54EC of the Act. Further an amount of Rs.50 lacs was also deposited in NHAI bonds on 13.04.2011 upon which further benefit u/s 54EC of the Act was claimed. It was the case of the assessee that the investment made in NHAI bonds were within six months on the sale of the property and therefore the assessee was entitled to get deduction of the entire investment of Rs.1 crore u/s 54EC. The Learned AO observed that in terms of the Financial Act, 2014 all ambiguity in relation to the interpretation of Section 54EC has been removed where the maximum permissible investment was restricted to Rs.50 lacs only. Though, the provision has been inserted w.e.f. 01.04.2015, it merely means that there shall be no ambiguity after 01.04.2015 for all prospective sellers of immovable property. In that view of the matter, the Learned AO was of the view that the assessee has made an excess claim of Rs.50 lacs, which was not permissible to be allowed u/s 54EC of the Act. Claim for exemption for long term capital gain on the balance amount of Rs.50 lacs invested in NHAI bonds on 13.04.2011 was rejected and the same was brought to tax. In appeal, the said finding and the addition made by the Learned AO was confirmed against which the instant appeal before us.

4. At the time of hearing of the instant appeal the Learned Counsel appearing for the assessee submitted before us that similar issue relating to the dispute regarding the claim of entire Rs. 1 lac u/s 54EC as raised by the assessee has already been dealt with by the Co-ordinate Bench in ITA No.2291/Ahd/2015 for A.Y. 2011-12 in favour of the assessee relying upon the judgment passed by the Co-ordinate Bench in ITA No.3603/Ahd/2015. The Learned AO further submitted that the Ld. Tribunal was pleased to hold that deduction claim of Rs.50 lacs each though spread over to two financial years since falling within 6 months of the capital asset's transfer in question is allowable. It was further observed that the second proviso to section 54EC(1) of the Act introduced by Financial Act (Act no.2) 2014 w.e.f 07.04.2015 does not have retrospective effect and therefore, not applicable to the case of the appellant. He therefore prayed for the same relief before us. On the contrary, the Learned DR relied upon the order passed by the authorities below.

5. Heard the respective parties, perused the relevant materials available on record. We have also carefully considered the order passed by the Co-ordinate Bench in ITA No.2291/Ahd/2015 for A.Y. 2011-12; the relevant paragraph whereof is as follows:

“2. Learned representatives fairly agree that the grievances in the appeal are covered, in favour of the assessee, by a decision of the co-ordinate bench in the case of co-owner i.e. Shri S.M. Patel vs. ACIT (ITA No.3603/Ahd/2015; order dated 08.01.2018) wherein the co-ordinate bench, speaking through one of us (i.e. learned Judicial Member), has inter alia observed as follows:-

"2. Relevant facts are in a very narrow compass. This assessee jointly sold the capital asset in question in the relevant previous year on 26.10.2010 for Rs.6,60,00,000/-. His 1/3rd share therein was of Rs.2,20,00,000/-. He thereafter invested Rs.1crore (supra) in NHAI bonds to claim Section 54EC deduction. Both the lower authorities declined the same on the ground that the said statutory provision caps the re-investment amount to Rs.50lacs only. They therefore restrict assessee's claim to Rs.50lacs to disallow the remaining equal amount. We find no force in this approach. Hon'ble Madras high court's judgment in [CIT vs. C. Jaichander](#) (2015) 370 ITR 579 (Madras) has admittedly upheld a co-ordinate bench's decision that such a deduction claim of Rs.50 lacs each spread over to two financial years but falling within six months of the capital asset's transfer in question is very much allowable. We further take note of the fact that the legislature has inserted second proviso to Section 54EC (1) introducing the above cap on re-investment quantum by the Finance (Act No.2), 2014 w.e.f. 01.04.2015 whereas we are dealing with assessment year 2011-12. This is not the Revenue's case that the above amendment carries any retrospective operation. We therefore reject Mr. Kabra's vehement contentions supporting the impugned disallowance. The assessee's sole substantive ground is accepted."

6. Applying the ratio laid down in the above judgment it can be concluded that when the case of the assessee was reopened on 14.03.2014, this amendment was not in existence and therefore restrictions imposed by statute under first proviso of section 54EC of the Act will not be applicable here. Thus we find substance in the argument advanced by the Ld. AR.

Taking into consideration the order passed by the Learned Tribunal we are of the view that the assessee is entitled to exemption on the investment made of Rs.50 lacs in NHAI bond on 13.04.2011 for long term capital gain

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since the same was invested within 6 months from the transfer of the capital asset. In that view of the matter respectfully following the decision passed by the Co-ordinate Bench, with the aforesaid observation we delete the addition made by the authorities below.

7. In the result, assessee's appeal is allowed.

This Order pronounced in Open Court on	28/02/2019
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad; Dated 28/02/2019
Priti Yadav, Sr.PS

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-13, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad