

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"G" Bench, Mumbai**

**Before Shri G. Manjunatha, Accountant Member  
and Shri Ravish Sood, Judicial Member**

**ITA Nos. 7394 & 7395/Mum/2019  
(Assessment Year:2011-12)**

Smt. Suryakala P Shah  
L/H of Late Shri Prabhulal G Shah  
Plot No. 17, Prabhu-Vijay,  
Kapol Co-op Hsg Society VL Mehta Road,  
JVPD Scheme Juhu,  
Mumbai, Maharashtra – 400049

ACIT – 25(3)  
2<sup>nd</sup> Floor, Kautilya Bhavan,  
BKC, Mumbai,  
Maharashtra - 400051

Vs.

PAN – BAHPS9791N

**(Appellant)**

**(Respondent)**

Appellant by: Shri V. Chandrashekhar &  
Shri Harshad Shah, A.Rs  
Respondent by: Shri V. Vinod Kumar, D.R  
Date of Hearing: 25.02.2020  
Date of Pronouncement: 28.02.2020

**ORDER**

**PER RAVISH SOOD, JM**

The captioned appeals filed by the assessee are directed against the respective orders passed by the CIT(A)-32, Mumbai, dated 28.03.2014 and 20.09.2019 for A.Y: 2011-12, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 10.02.2014 AND order passed under Sec. 154 of the Act, dated 01.06.2015, respectively. As the issues involved in the captioned appeals are inextricably interlinked, or in fact interwoven, therefore, the same are being taken up and disposed off by way of a common order. We shall first advert to the appeal filed by the assessee against the order passed by the CIT(A), dated 28.08.2014, which in turn arises from the order passed by

the A.O under Sec. 143(3) of the Act. The assessee has assailed the impugned order on the following grounds of appeal before us:

- “1. The Commissioner of Income tax (Appeal)-32 [CIT(A)] erred in upholding the Original Assessment Order u/s-143(3) of the Assessee Officer (AO) for not allowing the claim of Appellants 2<sup>rd</sup> investment of Rs.50 lacs made on 20th June 2011 in REC Bonds for claiming deduction u/s-54EC of the Act in respect of Capital Gain added on Sale of Capital Assets on 23rd Feb 2011, which was within six (6) months from the sale date, as the Assessing had not discussed the same in Assessment Order and the Grounds of Appeal are not emanating from the Assessment Order.
2. On the facts of the case and in law, the CIT(A) erred in upholding the AO Order in not considering 2<sup>nd</sup> investment of Rs.50 lacs made on 20th June 2011 in REC Bonds for claiming deduction u/s-54EC of the Act in respect of Capital Gain from Sale of Capital Assets on 23 Feb 2011 which was later noted in the Remand Report Para 3 of AO dated 03.06.2019 that the Assessee can't claim more than Rs.50.00.000/- in one year as per the provisions of section 54EC of the Act, while the section had limit of investment of Rs.50 lakhs in one Financial Year and not one Assessment Year.
3. Without prejudice to above, the CIT(A) erred in upholding the AO order in denying full deduction u/s-54EC of the Act in respect of both investments in REC Bonds, without considering the legal provision and judicial pronouncements.
4. Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.”

2. Briefly stated, the assessee had filed his return of income for A.Y. 2011-12 on 14.09.2011, declaring a total income of Rs. 24,43,077/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had sold 98 plots during the year for a total consideration of Rs.1,14,65,600/-. On a perusal of the computation of income, it was observed by the A.O that for the purpose of computing the 'Long term capital gain' (LTCG) on the sale of the aforesaid plots, the assessee had only accounted for part of sale consideration of Rs.60,33,300/-, against which the LTCG was worked out by him at Rs.48,25,100/-. On being called upon to explain the aforesaid discrepancy, it was fairly admitted by the assessee that part of the sale consideration was wrongly split and considered by him for computing the LTCG in the immediately succeeding year i.e A.Y. 2012-13. As per the details furnished by the assessee, it was noticed by the A.O that the assessee had worked out the total LTCG on the sale of the aforesaid 98 plots at an amount of Rs.89,91,850/-. Against the LTCG of Rs.48,25,100/- that was offered in his return of income for the year under consideration, the assessee had claimed a deduction under Sec. 54EC of Rs.50 lac investment that was made by him in REC bonds on 31.03.2011. Observing, that as the assessee had sold the aforesaid 98 plots during the year under consideration,

therefore, the entire LTCG on the said sale transaction ought to have been offered for tax during the year under consideration itself i.e A.Y: 2011-12, the A.O recomputed the LTCG in the hands of the assessee at Rs.89,91,850/-. After allowing the aforesaid claim of deduction of Rs. 50 lac that was raised by the assessee in his return of income under Sec. 54EC of the Act, the A.O brought the balance LTCG of Rs.39,91,850/- to tax in the hands of the assessee. On the basis of his aforesaid observations the A.O assessed the income at Rs.64,34,930/-, vide his order passed under Sec. 143(3), dated 10.01.2014.

4. Aggrieved, the assessee assailed the assessment before the CIT(A). It was the claim of the assessee before the CIT(A), that the A.O was in error in not considering his investment of Rs. 50 lac in REC bonds on 20.06.2011 for deduction under Sec. 54EC of the Act. However, the CIT(A) being of the view that the aforesaid issue did not emanate from the assessment order, dismissed the appeal.

5. The assessee being aggrieved with the order passed by the CIT(A) has carried the matter in appeal before us. We find that the present appeal filed by the assessee involves a delay of 1863 days. The legal heir of the assessee (since deceased) explaining the reasons leading to the aforesaid delay had filed an application seeking condonation of the same, along with an 'affidavit' dated 30.11.2019 in support thereof. It is the claim of Smt. Suryakala P Shah, Wd/ o Late Shri Prabhulal G Shah (assessee), in her status as that of the legal heir of the deceased assessee, that after the assessee's appeal was dismissed by the CIT(A), vide his order dated 28.08.2014, an application under Sec. 154 of the Act, dated 17.12.2014 seeking rectification of the assessment order was filed by him with the A.O on 23.12.2014. In the mean time, the assessee Shri Prabhulal G Shah who had suffered a paralytical attack expired on 16.03.2015. It is stated that the A.O had thereafter vide his order passed under Sec. 154, dated 01.06.2015 rejected the rectification application of the assessee, for the reason, that there was no mistake apparent from the record in the assessment order that was passed under Sec. 143(3), dated 10.01.2014. As the A.O in his aforesaid order had not given any finding on merit as regards the assessee's entitlement for deduction under Sec. 54EC for the investment of Rs.50 lac that was made by him in REC bonds on 20.06.2011, therefore, an appeal against the order passed by the A.O under Sec.154, dated 01.06.2015 was filed by the legal heir of the deceased assessee before the CIT(A). However, the appeal against the order passed by the A.O under Sec. 154,

dated 01.06.2015 was dismissed by the CIT(A), vide his order dated 20.09.2019. It is stated by the legal heir of the deceased assessee that being left with no other alternative, an appeal had been preferred before the Tribunal against the order passed by the CIT(A), dated 20.09.2019 (received on 05.10.2019), wherein the order passed by the A.O u/s 154 of the Act was upheld by him. Apart from that, it is stated by the legal heir of the deceased assessee that by way of abundant caution an appeal had also now been filed against the order of the CIT(A), dated 28.04.2014, wherein the quantum assessment framed by the A.O u/s 143(3) was confirmed. In the backdrop of the aforesaid facts, the legal heir of the deceased assessee had submitted that the delay involved in filing of the present appeal in all fairness may be condoned, failing which the assessee would be made to suffer undue hardship.

6. At the time of hearing of the appeal, the Id. Authorized Representative (for short 'A.R') took us through the facts which had led to the delay in filing of the present appeal before us. It was the claim of the Id. A.R that as the aforesaid delay had occasioned not on account of any malafide intention on the part of the assessee/legal heir, therefore in all fairness the same may be condoned.

7. Per contra, the Id. Departmental Representative (for short 'D.R') objected to the seeking of the condonation of the aforesaid delay by the assessee. It was submitted by the Id. D.R that as an inordinate delay was involved in filing of the present appeal, therefore, the same did not merit to be condoned.

8. We have deliberated at length on the facts leading to the delay involved in filing of the present appeal, as could be gathered from the application filed for condonation of delay, and also the averments of the Id. A.R before us. As is discernible from the aforesaid application and the facts placed before us, it is claimed that the delay involved in filing of the present appeal had occasioned, for the reason, that the L/heir of the assessee instead of assailing the confirming of the quantum assessment by the CIT(A), vide his order dated 28.04.2014, before the Tribunal, had rather taken recourse to and focussed on the alternative remedy by filing an application under Sec. 154 before the A.O, and thereafter pursuing the same before the appellate forums. It is claimed by the L/heir, that after the A.O had assessed the balance LTCG of Rs.39,91,850/- (after allowing deduction under Sec. 54EC of only the investment made in REC bonds on 31.03.2011 of Rs. 50 lac), the assessee remaining under a bonafide belief that

the A.O had erred in not allowing his claim for deduction under Sec. 54EC in respect of his balance investment of Rs.50 lac in REC bonds that was made on 20.06.2011, had thus filed an application under Sec. 154 with the A.O. As the application filed by the assessee under Sec. 154 was dismissed by the AO, vide his order dated 01.06.2015, the assessee holding a conviction that necessary relief would be allowed by the CIT(A), had thus preferred an appeal against the aforesaid order with the first appellate authority. However, the aforesaid appeal against the order passed by the A.O under Sec.154, dated 06.06.2015 was also dismissed by the CIT(A). As observed by us hereinabove, it was only after the dismissal of the appeal by the CIT(A), vide his order dated 20.09.2019, that the assessee after unsuccessfully exhausting the remedy that was available to him under Sec. 154 of the Act, had chosen to assail the order passed by the CIT(A), dated 28.08.2014 i.e after a lapse of a period of more than 5 years ago.

9. We have given a thoughtful consideration to the aforesaid facts and are unable to persuade ourselves to subscribe to the claim of the assessee that the delay in filing of the appeal against the order passed by the CIT(A), dated 28.08.2014, was backed by a bonafide mistake. As can safely be gathered from the records, the assessee/Legal heir of the deceased assessee were consistently represented before the Assessing Officer, CIT(A) and even as on date before us by a Chartered accountant. As such, now when the assessee/Legal heir of the deceased assessee had throughout availed the professional assistance of a Chartered accountant, therefore, it is difficult for us to comprehend that they had remained unaware of the fact that an appeal was maintainable against the order of the CIT(A), dated 28.08.2014 before the Tribunal. As a matter of fact, we find that the assessee/Legal heir of the deceased assessee had instead of assailing the impugned order of the CIT(A) before the Tribunal within the stipulated time period, had consciously chosen to take recourse to and exhaust the alternative remedies i.e filing of an application under Sec. 154, and thereafter pursuing the same before the appellate forums. Interestingly, even in the application filed by the assessee seeking condonation of delay it is stated by the L/heir of the deceased assessee that the appeal against the impugned order i.e the order of the CIT(A), dated 28.08.2014 (upholding the order passed by the A.O under Sec. 143(3), dated 10.01.2014) is being filed only by way of "abundant caution". As such the lackadaisical approach adopted by the assessee as regards filing of an appeal against the order of the CIT(A), dated 28.08,2014, can safely be gathered beyond any doubt. As such, we are unable to find ourselves to be in agreement with the claim

of the assessee that the failure in filing the appeal within the stipulated time period with the Tribunal was due to bonafide reasons. Although, a delay in filing of an appeal that is backed by a bonafide reason merits to be condoned, but then, we also cannot remain oblivious of the fact that an assessee who had consciously chosen not to avail a legal remedy and had adopted a lackadaisical approach be thereafter allowed to approach the Tribunal after lapse of many years, with a request that the inordinate delay in filing of the appeal be condoned. In our considered view, the legislative mandate in stipulating a limitation to file an appeal within the prescribed limitation cannot be permitted to be defeated when a litigant has taken a conscious decision not to pursue further proceedings. Our aforesaid view is supported by the judgment of the **Hon'ble Supreme court** in the case of **Somerset Place Co-operative Housing Society Ltd. Vs. Income-Tax Officer 16(2)(1) [ITA (L) No 874 of 2014, dated 13.02.2015]**. Accordingly, as the reasons shown by the L/heir of the deceased assessee does not fall within the parameters of sufficient cause so as to confer a benefit of condonation, therefore, finding no justifiable reason for condoning the inordinate delay of 1863 days involved in filing of the present appeal, we reject the application filed by the assessee.

9. As the appeal filed by the assessee is beyond the stipulated time period contemplated under sub-section (3) of Sec. 253 of the Act, therefore, the same is dismissed as not maintainable.

10. Resultantly, the appeal filed by the assessee is dismissed as not maintainable.

**ITA No.7395/Mum/2019**  
**A.Y. 2011-12**

11. We shall now advert to the appeal filed by the assessee against the order passed by the CIT(A), dated 20.09.2019, which in turn arises from the order passed by the A.O under Sec. 154 of the Income Tax Act, 1961 (for short 'Act'), dated 01.06.2015. The assessee has assailed the impugned order by raising before us the following grounds of appeal:

- "1. The Ld Commissioner of Income tax (Appeal)-37 [CIT(A)] erred in upholding the Rectification Order u/s-154 of the Learned Assessing Officer (AO) in not considering that there is any mistake apparent from record, even after the earlier CIT(A) Order had dismissed the appeal observing that the Grounds of Appeal for denying deduction u/s-54EC were not emanating from the Assessment Order and the issue should be raised issued 154/264 before AO/CIT.

2. Without prejudice to above, the CIT(A) in effect erred in upholding the Original Assessment Order u/s.143(3) of AO, as noted in the Remand Report Para 3 of AO dated 03.06.2019 for not allowing the claim of Appellant's 2<sup>nd</sup> investment of Rs.50 lacs made on 20th June 2011 in REC Bonds for claiming deduction u/s. 54EC of the Act in respect of Capital Gain added from Sale of Capital Assets on 23rd Feb 2011, which was within six (6) months from the sale date, on the ground that the Assessee can't claim more than Rs.50,00,000/- in one year as per the provisions of section 54EC of the Act, while the section had limit of investment of Rs.50 lakhs in one Financial Year and not one Assessment Year
3. On the facts of the case and in law, the CIT(A) erred in upholding the AO order in denying full deduction u/s. 54EC of the Act in respect of both investments in Rural Electrification Bonds, without considering the legal provision and judicial pronouncements.
4. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above."

12. Briefly stated, the assessee during the year under consideration had sold 98 plots for a total consideration of Rs.1,14,65,600/-. Observing, that the assessee had only accounted for a part of the sale consideration of Rs.60,33,300/-, the A.O called upon him to explain the aforesaid discrepancy. In reply, it was submitted by the assessee that the LTCG pertaining to the balance sale consideration was wrongly offered by him for tax in the immediately succeeding year i.e. A.Y. 2012-13. On a perusal of the records, it was observed by the A.O that the assessee had worked out the aggregate LTCG on the sale of the aforesaid 98 plots at Rs. 89,91,850/-. Being of the view, that LTCG arising from the sale of the aforesaid 98 plots was liable to be assessed during the year under consideration itself, the A.O assessed the entire amount of LTCG of Rs. 89,91,850/- in the hands of the assessee for the year under consideration. After allowing the assessee's claim for deduction under Sec.54EC of Rs.50,00,000/- in respect of the REC bonds which were purchased by him on 31.03.2011 (as was claimed by the assessee in his return of income), the A.O worked out the balance LTCG at Rs.39,91,850/-, and assessed the same to tax in the hands of the assessee for the year under consideration.

13. Observing, that the A.O while assessing the entire amount of LTCG of Rs.89,91,850/- in the hands of the assessee for the year under consideration had erred in not allowing deduction under Sec.54EC (upto the extent of the balance LTCG of Rs. 39,91,850/-) for the REC bonds of Rs.50,00,000/- that were purchased by him on 20.06.2011, the assessee filed a rectification application under Sec.154 of the Act. However, the A.O being of the view that there was no mistake apparent from the record in the order passed under Sec. 143(3), dated 10.01.2015, dismissed the application vide his order dated 01.06.2015.

14. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, the CIT(A) being of the view that there was no error in the order passed by the A.O under Sec.154 of the Act, dismissed the appeal.

15. The assessee being aggrieved, with the order passed by the CIT(A) has carried the matter in appeal before us. It was submitted by the Id. A.R that prior to the amendment made available by way of a 'proviso' in Sec. 54EC, vide the Finance (No.2) Act, 2014 w.e.f 01.04.2015, the assessee pursuant to the cap of Rs. 50 lac that was placed on the investment that was eligible for deduction under the said statutory provision, was however entitled to make an investment upto Rs. 1 crore over a period two years i.e the year of sale, and the immediately succeeding year. As such, it was submitted by the Id. A.R that the assessee as per the mandate of law had validly made an investment of Rs. 1 crore in REC bonds viz. (i). bonds purchased on 31.03.2011 : Rs. 50 lac; and (ii). bonds purchased on 20.06.2011 : Rs. 50 lac. It was submitted by the Id. A.R, that pursuant to his aforesaid investment, the assessee was entitled for claim of deduction under Sec. 54EC of Rs. 89,91,850/- (i.e LTCG on sale of property). In support of his aforesaid claim the Id. A.R relied on the order of ITAT, Ahmedabad in the case of Shri S.P Ginwala Vs. The Assistant Commissioner of Income Tax, Circle-5, Baroda (ITA No. 3226/ Ahd/2011, dated 30.03.2012) and the order of ITAT 'B' Bench, Mumbai in DCIT Vs. Nilesh Ramesh Ganjwala. It was averred by the Id. A.R that the fact that the assessee had made an aggregate investment of Rs.1 crore in REC bonds viz. (i) bonds purchased on 31.03.2011 Rs.50 lac, and (ii) bonds purchased on 20.06.2011: Rs.50 lac, was borne out from 'material' available on the assessment record for the year under consideration, as the same was furnished by the assessee in the course of the assessment proceedings. It was submitted by the Id. A.R that the A.O was in error in restricting the assessee's claim for deduction under Sec.54EC only to the extent of the investment made by him in REC bonds of Rs.50 lac on 31.03.2011. It was submitted by the Id. A.R that as the A.O had overlooked the assessee's entitlement for claim of deduction u/s 54EC as regards the investment made in REC bonds of Rs. 50 lac on 20.06.2011, therefore, the assessment order passed by him suffered from a mistake apparent from record, which therein rendered the same amenable for rectification under Sec. 154 of the Act. As such, it was the claim of the Id. A.R that the lower authorities had erred in not appreciating the facts in the right perspective, and resultantly, had

wrongly restricted the assessee's claim for deduction under Sec.54EC to an amount of Rs.50,00,000/-.

16. Per contra, the Id. Departmental Representative (for short 'D.R') submitted that as the assessee had not raised any claim for deduction under Sec.54EC in respect of the REC bonds of Rs.50,00,000/- purchased on 20.06.2011 in his return of income for the year under consideration i.e A.Y. 2011-12, therefore, the A.O had rightly rejected the application filed by the assessee under Sec. 154 of the Act.

17. We have heard the authorized representative for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. We find that the genesis of the controversy involved in the present appeal revolves around the sustainability of the order passed by the A.O under Sec.154, dated 01.06.2015, wherein he had declined to allow the assessee's claim for deduction under Sec. 54EC in respect of the investment that was made by him in REC bonds of Rs.50 lac on 20.06.2011. Admittedly, the assessee in his return of income for the year under consideration had not raised any claim for deduction under Sec. 54EC for the investment that was made by him in REC bonds of Rs.50,00,000/- on 20.06.2011. We find that as per the judgment of the **Hon'ble Supreme Court** in the case of **Goetz (I) Ltd. Vs. CIT(2006) 284 ITR 323 (SC)**, a claim of deduction not raised by an assessee in the return of income cannot be entertained by the A.O otherwise than by filing of a revised return of income. In the backdrop of the aforesaid judgment of the Hon'ble Supreme Court, the A.O is obligated to restrict the assessee's claim for deduction only to those claims which had been raised in either the return of income or in a revised return of income. In sum and substance, the claim for deduction not raised by the assessee in his return of income, insofar as an A.O is concerned, cannot be entertained. Accordingly, we are of the considered view that in the present case before us, the A.O remaining well within the realm of his jurisdiction had rightly declined to entertain the assessee's claim for deduction under Sec. 54EC in respect of the REC bonds purchased by him on 20.06.2011, for the reason, that no such claim was raised in the return of income that was filed by the assessee before him. On the basis of our aforesaid observations, we are of strong conviction that no infirmity can be found in the order passed by the A.O, rejecting the application filed by the assessee under Sec. 154 of the Act.

18. Resultantly, the appeal filed by the assessee is dismissed.

19. The appeals filed by the assessee i.e ITA No. 7394/Mum/2019 and 7395/Mum/2019 are dismissed.

Order pronounced in the open court on 28.02.2020

Sd/-

(G.Manjunatha)  
ACCOUNTANT MEMBER

Sd/-

(Ravish Sood)  
JUDICIAL MEMBER

Mumbai;

Dated: 28/02/2020

Rohit, P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,  
//True Copy//  
(Sr. Private Secretary)  
**ITAT, Mumbai**