

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.238/Ind/2023**  
**(Assessment Years:2011-12)**

Pankaj Vyas House No.20, Geet Gunglows, Phase-5, Narela Shankari Bhopal	Vs.	ITO-1(2) Bhopal
(Appellant / Assessee)		(Revenue)
<b>PAN: ABTPV 2610H</b>		
Assessee by	Shri Ashish Goyal & N.D. Patwa, ARs	
Revenue by	Shri Harshit Bari, Sr.DR	
Date of Hearing	31.10.2023	
Date of Pronouncement	31.10.2023	

**O R D E R**

**Per Vijay Pal Rao, JM:**

This appeal by the assessee is directed against the order dated 14.02.2023 of Commissioner of Income Tax(Appeal), National Faceless Appeal Centre, Delhi for Assessment Year 2011-12. The assessee has raised following grounds of appeal:

*“1. That the Ld. AO was not justified in passing the re-assessment order, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*

*2. That the Ld. CIT(A) was not justified in confirming the re-assessment order, which is bad-in-law, void ab initio, barred by*

*limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*

*3. The Ld. CIT(A) was not justified in confirming the addition of Rs. 7,50,000/- in respect of long term capital gain and its exemption u/s 54EC, without considering the facts & circumstances of the case.*

*4. The appellant carves leave to add, amend or modify any of the grounds of appeal.”*

2. The solitary issue raised by the assessee is regarding the confirmation of addition of Rs.7,50,000/- made by the AO in respect of long term capital gain by denying exemption u/s 54EC. Based on AIR information regarding investment made by the assessee in bonds or debenture to the tune of Rs.15,00,000/- the AO reopened the assessment by issuing notice u/s 148 on 28.03.2018. In response to the notice u/s 148 the assessee filed his return of income declaring total income of Rs.1,87,033/- after claiming the deduction u/s 54EC of Rs.15,00,000/- on account of purchase of bond issued by NHAI and Rural Electrification Corporation Ltd. (REC) of Rs.15,00,000/-. The AO denied the claim of deduction u/s 54EC on the ground that the assessee has not filed return of income u/s 139 and therefore, the claim of the assessee u/s 54EC is an afterthought and not acceptable. On appeal the CIT(A) has accepted the claim of deduction u/s 54EC but it was restricted to 50% on the ground that property sold by the assessee may be a joint property.

3. Before the Tribunal the Ld. AR of the assessee has submitted that the assessee sold a plot of land for consideration of Rs.27,00,000/- on 31.01.2011 and earned long term capital gain of Rs.14,99,896/- which was invested in the bonds of NHAI and RECL on 31.03.2011 which is within the prescribed time limit. In support of his contention he has referred to the sale deed dated 31.03.2011 and bank account statement as well as investment receipt placed at page no.21 to 26 of the paper book. The Ld. AR has further submitted that though the CIT(A) has accepted the eligibility of the assessee to claim the benefit u/s 54EC however, he has arbitrarily restricted the exemption u/s 54EC to 50%. He has referred to the order of the CIT(A) and submitted that this finding of the CIT(A) is

contrary to the record as evident from the sale deed whereby the assessee has sold the land in question. Thus, Ld. AR has submitted that the assessee was exclusive owner of the said plot of land which was sold on 31.01.2011 and therefore, the question of joint property or restricting the claim to 50% does not arise.

4. On the other hand, ld. DR has relied upon the orders of the authorities below and submitted that the assessee has not filed relevant record before the AO. Further the assessee has not claimed the deduction u/s 54EC in the return of income u/s 139 of the Act. Therefore, the same cannot be claimed in the reassessment proceedings.

5. We have considered the rival submissions as well as relevant material on record. The AO has denied the claim of deduction u/s 54EC on the ground that the assessee has not filed return of income u/s 139 and therefore, the claim of the assessee is not justified being afterthought. On appeal the CIT(A) has accepted the entitlement of the assessee to claim exemption u/s 54EC but the same was restricted to 50% as under:

*“In view of the above, the appellant submission has been considered and found to be satisfactory. It is crystal clear that the appellant filed ITR manually with the exemption u/s 54EC and the appellant fulfilled all the conditions u/s 54EC of the IT Act, 1961. The appellant also purchased the capital gain bonds issued by NHAI and RECL within the time limit mentioned u/s 54EC. But it is not clear that property sold by the appellant's name or joint property (ownership). Hence, in the absence of property ownership documents, the appeal is decided material available as per records. In view of the above, the disallowance made by the AO is restricted to Rs.7,50,000/-. The appeal on this ground is allowed.”*

6. It is manifest from the impugned order of the CIT(A) that there was no basis for restricting the claim of Rs.7,50,000/- when investment was made by the assessee in the bond issued by the NHAI and RECL total amounting to Rs.15 lac. We further note that sale deed dated 31.01.2011 has been executed by the assessee as an exclusive sole owner of the plot of land and therefore, the question of joint ownership does not arise. Accordingly having considered the facts and circumstances of the case

when the plot of land was sold by the assessee who was the sole owner of the plot of land in question then the claim of exemption u/s 54EC ought to have been allowed to the extent of investment made by the assessee subject to the quantum long term capital gain arising from the transactions. Accordingly the claim of the assessee u/s 54EC of Rs.14,99,896/- is allowed and addition made by the AO on this account is deleted.

7. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on conclusion of hearing  
on 31.10.2023

**Sd/-**  
**(B.M. BIYANI)**  
Accountant Member

**Sd/-**  
**(VIJAY PAL RAO)**  
Judicial Member

**Indore, 31.10.2023**

**Patel/Sr. PS**

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

By order

Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore