

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" SMC" BENCH, AHMEDABAD**

**BEFORE Ms SUCHITRA KAMBLE, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.809/AHD/2023

निर्धारण वर्ष/Asstt. Year: 2013-2014

Pratibhaben Anandbhai Pandya, 71, Serendeep Mansions, Near Hanumanji Mandir, VIP Road, Ghuma-Shela, Ahmedabad-380058. PAN: APXPP5405Q	Vs.	Income Tax Officer, Ward-3(3)(4), Ahmedabad.
--	-----	--

(Applicant)		(Respondent)
-------------	--	--------------

Assessee by :	Shri S.N Divatia, with Shri Samir Vora, ARs
Revenue by :	Shri B.P Makwana, Sr.DR

सुनवाई की तारीख/**Date of Hearing** : **07/02/2024**

घोषणा की तारीख /**Date of Pronouncement**: **21/02/2024**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), Ahmedabad, arising in the matter of assessment order passed under s. 147 r.w.s. 144 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2013-14.

2. The only grievance raised by the assessee is that the Ld. CIT(A) erred in confirming the disallowance of exemption claimed by the assessee u/s 54EC of the Act for Rs. 16,30,417/- only.

3. In the present case, the assessee has neither filed return of income u/s 139(1) of the Act, nor in response to the notice issued u/s 148 of the Act, whereas the assessee has sold immovable property where his share is of Rs. 16,30,417/- only. As per the assessee, there was investment in the REC Bonds which are liable for exemption u/s 54EC of the Act. Therefore, according to the assessee the income was not chargeable to tax and accordingly return was not filed. However, the AO was of the view that for claiming exemption u/s 54EC of the Act, it was compulsory for the assessee to file the return of income. Thus, the AO in the absence of return filed by the assessee has disallowed the exemption claimed u/s 54EC of the Act and added to the total income of the assessee.

4. Aggrieved assessee preferred an appeal to the Ld. CIT(A), who has also confirmed the order of the AO by observing as under:

Since the claim was not made for seeking exemption u/s.54EC in the ITR, the benefit of exemption u/s.54 EC is held to be rightly denied by the AO. Under the given situation. Hence the addition made by AO is sustained. However, the AO is directed to consider reasonable cost of acquisition with indexation based on details obtained from sub-registrar office/appellant, in view of natural justice, as per law. Thus, Ground of appeals Nos. 1 and 2 are partly allowed for statistical purposes.

5. Being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

6. The Ld. AR before us filed a paper book running from pages 1 to 57 and contended that it is not mandatory to file the return of income u/s 139(1) of the Act, for claiming exemption u/s 54EC of the Act. It was also pointed out by the Ld. AR for calculating the capital gain, the investment made in certain bonds and properties have been saved for calculating the income chargeable to tax under the head capital gain. Accordingly, the Ld. AR submitted that the assessee should be allowed the benefit of exemption u/s 54EC of the Act.

7. On the other hand, the Ld. DR vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. The facts in present case are not in dispute which have been elaborated in the preceding paragraph and therefore for the sake of convenience and brevity, we are not inclined to repeat the same.

8.1 The issue before us is limited to the extent whether the assessee is eligible for exemption u/s 54EC of the Act without filing the return of income. In this regard, we have perused the provisions of section 54EC of the Act r.w.s. 139(1) of the Act and note that it has nowhere been provided that for claiming exemption u/s 54EC of the Act, the assessee has to file the return of income. Even at the time of hearing the Ld. DR has not brought our attention to such provision of the Act, suggesting that it is mandatory, for claiming exemption u/s 54EC of the Act, to file the return of income. Accordingly, we are not convinced with the findings of the Ld. CIT(A). Thus, we direct the AO to allow the exemption to the assessee on account of investment made in REC Ltd. as per the provision of law even if the assessee does not file the return of income. Hence, the ground of appeal of the assessee is allowed.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Court on 21/02/2024 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

(True Copy)
21/02/2024