

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER,**

ITA No.3866/Mum/2023

(A.Y. 2018-19)

Ashok Ganeshlal Mundra 601, A Wing, Hansa C.H.S Ltd. Behind Rameshwar Mandir, Jogeshwari (East) Mumbai – 400 060	Vs.	Asst. Dir. Of I. Tax CPC (JAO: Ward Mum-W - 331(1), ITO, Ward 3(1)(1) Aayakar Bhavan, M.K. Road, Mumbai- 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:ABBPM0548H		
Appellant	..	Respondent

Appellant by :	Ajay Singh & Akshay Pawar
Respondent by :	Manoj Kumar Sinha

Date of Hearing	05.03.2024
Date of Pronouncement	15.03.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A) NFAC, dated 22.09.2023 for A.Y. 2018-19. The assessee has raised the following grounds before us:

“I. Denial of Exemption of Rs.47,18,400/- claimed U/s 54EC of the Act, in respect of investment in Capital Gains Bonds:

1. On the facts and in the circumstances of the case and in law, the Id. C.I.T. (Appeals) NFAC, erred in upholding the Order Dt 29-01-2020 passed u/s 154 by ADIT, CPC denying the relief for exemption of Rs.47,13,400 U/s 54EC for Investment of Rs. 50 Lakhs in Capital Gains REC Bonds.
2. The Id. CIT. (Appeals) failed to appreciate and consider that the exemption was claimed U/s 54 EC of the Act, however the same was not reflected in ITR-3 of CPA due to technical snag which is to be resolved by DIT (Systems).
3. Without prejudice the appellate authority ought to have considered the claim on its own merits, when details of investment made in REC Bonds were on record

II. Set-off of Short Term Capital Loss against Long Term Capital Gains:

4. *On the facts and circumstances of the case and in law, the Id. C.1.T. (Appeals) erred in confirming the set-off of Short Term Capital Loss of Rs. 4,79,109/- against Long Term Capital Gains of Rs. 47,18,400/- under an erroneous premise that the appellant is not eligible for carry forward of Short Term Capital Loss.*

III. Denial of Deduction Us 80TTA for Savings Bank Interest Income:

5. *On the facts and circumstances of the case and in law, the Id. CIT. (Appeals) erred in not allowing deduction of Rs. 10,000/- u/s 80TTA in respect of Savings Bank Interest of Rs.80,321/- included in Income from Other Sources.*

IV. Levy of Tax u/s. 115BBE of the Act:

6. *On facts and circumstances of the case and in law the Id. CIT(A) erred in observing that no tax was charged u/s. 115BBE of the Act.*

7. *The appellant craves leave to add, alter or delete any grounds of appeal.”*

2. Fact in brief is that return of income declaring total income of Rs.20,86,260/- was filed on 10.09.2018 which was processed by CPC on 30.09.2018, without considering exemption of Rs.47,18,400/- u/s 54EC in respect of investment of Rs. 50,00,000/- made in Capital Gains Bonds of Rural Electrification Corporation Ltd. In support of his claim of deduction u/s 54EL of the Act the assessee filed rectification application u/s 154 of the Act which was rejected by CPC vide order passed u/s 154 of the Act on 29.01.2020. The assessee claimed that he had sold a residential flat in Pune for consideration of Rs.1.50 crores and determined long term capital gain of Rs.47,18,400/-. The assessee had invested a sum of Rs.50,00,000/- in capital gain investment bonds and claimed the same as exempt u/s 54EC of the Act.

3. The assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee.

4. During the course of appellate proceedings before us the Id. Counsel contended that because of system error while processing the return of income filed, the CPC has not considered the assessee's claim of deduction u/s 54EC in spite of fact that assessee has provided due information in the return of income filed. The Id. Counsel referred page

no. 34 of the return of income filed wherein under the head deduction claimed the assessee had given the relevant detail which were not considered by the CPC. The ld. Counsel further submitted that before the ld. CIT(A) the assessee has also filed copy of REC Bonds to the amount of Rs,50,00,000/- against which assessee has claimed deduction u/s 54EC. The ld. Counsel has also filed copy of bank statement provided to the ld. CIT(A) in support of the claim of the assessee that amount paid for purchase of bonds was debited to the bank account of the assessee.

On the other hand, the ld. D.R supported the order of lower authorities.

5. Heard both the sides and perused the material on record. During the year under consideration the assessee had sold a residential flat in Pune for a consideration of Rs.1.50 crores and determined long term capital gain of Rs.47,18,400/-. The assessee had invested a sum of Rs.50,00,000/- in Capital Gains Investment Bonds, therefore, claimed exemption u/s 54EC of the Act. However, the CPC had not granted the exemption claimed by the assessee and also rectification application filed by the assessee was also rejected by the CPC. We have perused the copy of return of income filed by the assessee on ITR-3 placed in the paper book. It is noticed that in the return of income under the head information about deduction claimed at page no. 34 of the paper book, the assessee has shown the date of transfer of original asset on 28.06.2017 and also mentioned that Rs.50 lacs was invested in the specified bonds on 10.08.2017, therefore, deduction of Rs.47,18,400/- was claimed u/s 54EC of the Act However, without controverting these material facts and evidences, the ld. CIT(A) has dismissed the appeal of the assessee without any valid reason. This is undisputed facts that assessee has invested in the REC Bonds to the amount of

Rs.50,00,000/- against issuing of cheques from the bank account of the assessee on 10.08.2017 as evident from the copy of bank statement placed in the paper book. After taking into consideration the above facts and material as discussed supra in this order we find that decision of Id. CIT(A) in sustaining the disallowance of deduction claimed u/s 54EC of the Act is not justified, therefore, we direct the AO to allow the claim of the assessee for deduction u/s 54EC of the Act. Accordingly, ground no. 1 of the appeal of the assessee is allowed. Since we have allowed the ground no. 1 of appeal of the assessee and the ground no. 2 is consequential to ground no. 1 therefore the same is not required any adjudication.

6. Ground no. 3 is relating to issue of claim of deduction of Rs.10,000/- u/s 80TTA in respect of Saving Bank interest of Rs,80,321/-. After hearing both the sides and considering the material on record this ground of appeal is restored to the file of the assessing officer for allowing the claim of deduction after necessary verification. Accordingly, the ground no. 3 is allowed for statistical purposes.

7. Ground no. 4 pertaining to charging of tax u/s 115BBE of the Act is not pressed therefore the same stand dismissed.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 15.03.2024

Sd/-

(Kavitha Rajagopal)
Judicial Member

Place: Mumbai

Date 15.03.2024

Rohit: PS

Sd/-

(Amarjit Singh)
Accountant Member

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.