

IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE

BEFORE SHRI ABRAHAM P. GEOGE, ACCOUNTANT MEMBER  
AND SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA No.981/Bang/2015
Assessment year : 2007-08

Shri Harikrishna R., No.7 B, Crescent Court, No.8, Crescent Road, Bangalore – 560 001. <b>PAN: ADRPR 4051J</b>	Vs.	The Income Tax Officer, Ward 15(4), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri S. Venkataramani, CA
Respondent by	:	Shri M. Rajashekar, Addl. CIT(DR)

Date of hearing	:	01.02.2016
Date of Pronouncement	:	10.02.2016

**ORDER**

*Per Vijay Pal Rao, Judicial Member*

This appeal by the assessee is directed against the order dated 9.4.2015 of the CIT(Appeals), Bengaluru-3 for the assessment year 2007-08.

2. The assessee has raised the following grounds:-

“1. The CIT(A) erred both in law and on the Facts of the case in sustaining the disallowance of deduction u/s 54F.

2. She failed to appreciate that (the Appellant) the registration of sale deed was conditional and it has become complete only after realisation of sale consideration.

3. While she observed that there was clause in the sale deed which specifically states that the sale subject to realisation of full sale consideration she has no ground to consider that the sale is complete on registration of sale deed.

4. She also failed to appreciate that the date of payments were confirmed by the purchaser of the house property which clearly shows the details working of the sale consideration and there (I) no ground to state that accurate particulars of the transaction were not produced.

5. She erred in holding that the appellant received full consideration before 31<sup>st</sup> March 31.3.2007 and investment (in) u/s 54F should have been done before that instead of waiting beyond March 2007.

6. He failed to appreciate that the Appellant had the option of deduction based on his investments u/s 54F or in another house property and avail benefit u/s 54E. It is only reasonable that the Appellant was pondering over the options and ultimately decided to invest in REC Bonds.

For these reasons and for the reasons as may be set out at the time of hearing the Appellant prays that the disallowance made may be deleted.”

3. The only issue that arises for consideration in the appeal of the assessee for our consideration and adjudication is whether assessee is entitled for deduction u/s. 54EC in respect of investment made in REC Bonds of Rs.50 lakhs on 31.7.2007.

4. The brief facts leading to the controversy are that the assessee sold a residential property vide Sale Deed dated 12.12.2006 for an amount of

Rs.2 crores. The said property was inherited by way of Deed of Settlement dated 28.10.2005. The assessee computed long term capital gain of Rs.1,81,16,030. The assessee claimed exemption u/s. 54 having purchased the residential property for Rs.60 lakhs. Further, the assessee claimed exemption u/s. 54EC for having invested in REC Bonds of Rs.50 lakhs each on 31.3.2007 and 31.7.2007. The Assessing Officer has restricted the exemption u/s. 54EC to Rs.50 lakhs being investment made in REC Bonds on 31.3.2007 and denied the exemption in respect of investment in REC Bonds on 31.7.2007 being beyond six months from the date of sale of the capital asset.

5. The assessee challenged the action of the Assessing Officer before the CIT(Appeals) and submitted that the sale of residential house was conditional and subject to realization of the consideration paid through cheque. The assessee contended that payment of Rs.1 crore was made by the purchaser by way of post-dated cheque dated 26.12.2006. However, this cheque was not honoured. Thus, the assessee claimed that the last cheque of Rs.50 lakhs was honoured only on 27.2.2007 and possession of the property was handed over on 16.2.2007, therefore investment in REC Bonds on 31.7.2007 was within the six months from the date of handing over possession of the property on 16.2.2007.

6. The CIT(Appeals) did not accept the contention of the assessee and confirmed the action of the Assessing Officer in restricting the claim of

exemption u/s. 54EC only to Rs.50 lakhs, which was invested in REC Bonds on 31.3.2007.

7. Before us, the Id. AR of the assessee has reiterated its contention as raised before the authorities below and submitted that the transfer of capital asset by the assessee was subject to realization of the sale consideration paid by the purchaser through post-dated cheque which was not honoured and therefore property was transferred only when the payment was received by the assessee and possession of the asset was handed over to the purchaser. Thus, the Id. AR has submitted when possession of the property was handed over on 16.2.2007, then the investment in REC Bonds made on 31.7.2007 is within the period of six months and consequently, the assessee is entitled for exemption u/s. 54EC.

8. The Id. AR has placed reliance on the letter dated 16.2.2007 whereby the purchaser has confirmed the taking over of possession of the property on the said date.

9. On the other hand, the Id. DR has relied upon the orders of authorities below and submitted that the property was transferred by the assessee by Sale Deed dated 12.12.2006 and the investment made in REC Bonds on 31.7.2007 is beyond six months. Therefore the assessee is not entitled to exemption u/s. 54EC in respect of the said investment which is beyond six months from the date of transfer of capital asset.

10. Having considered the rival submissions as well as relevant material on record, we note that the capital asset being house property in question was sold by assessee by way of Sale Deed dated 12.12.2006. As per the terms and conditions of Sale Deed at page 10, the assessee released and delivered the parental documents and other relevant files and papers to the purchaser directly and transferred all the rights in the schedule premises as well as handed over the possession and administration of the entire property to the purchaser. Therefore, as per the registered Sale Deed dated 12.12.2006, the property was transferred to the purchaser and possession of the property was also handed over to the purchaser by the assessee. The realization of the sale consideration is not a condition of the transfer. However, it is an obligation on the part of the purchaser to pay the sale/purchase consideration. Even if the purchaser fails to make the payment of the sale consideration, the assessee can recover the same by enforcing the rights in the Sale Deed / contractual rights. Even otherwise, transfer of immovable property cannot be subject to any condition for uncertainty and therefore once the parties have agreed and decided to sell/purchase the property in question against the agreed sale consideration, then the transaction of the transfer is completed on the date when the Sale Deed was executed and registered by the parties wherein both the parties have made the statement that all relevant documents, rights in the property as well as possession of the property was conveyed to the purchaser. The subsequent confirmation of taking over of

possession by the purchaser will not alter the status of the transfer of property vide Sale Deed dated 12.12.2006. Once transfer of property was completed on 12.12.2006, then there is no dispute that investment made in REC Bonds on 31.7.2007 is beyond six months and therefore the said investment is not entitled for exemption u/s. 54EC of the Act. Accordingly, we do not find any error or illegality in the impugned orders of authorities below.

11. In the result, the appeal of the assessee is dismissed.

Pronounced in the open court on this 10<sup>th</sup> day of February, 2016.

Sd/-

( ABRAHAM P. GEORGE )  
Accountant Member

Sd/-

(VIJAY PAL RAO )  
Judicial Member

Bangalore,  
Dated, the 10<sup>th</sup> February, 2016.  
/D S/

Copy to:

1. Appellant
2. Respondents
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore.