IN THE ITAT CHENNAI BENCH 'B'

M. Nataraj

v.

Deputy Commissioner of Income-tax, Co. Circle -I(3), Coimbatore*

ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
AND CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
IT APPEAL NO. 2168 (MDS.) OF 2012
M.P. NO. 115 (MDS.) OF 2013
[ASSESSMENT YEAR 2006-07]
AUGUST 23, 2013

ORDER

Abraham P. George, Accountant Member - Through this Miscellaneous Petition, assessee seeks a rectification of the order dated 2.5.2013 of this Tribunal. As per the assessee, direction given by the Tribunal for applying clause (b) of Section 54EC(1) of Income-tax Act, 1961 (in short 'the Act') has resulted in an additional burden and liability on the assessee.

2. Nobody appeared on behalf of assessee. There was a request for adjournment. However, on the first date of hearing, which was 26.7.2013, nobody appeared despite issue of notice. Again notice was issued Registered Post on 04/07/2013 for hearing on 23.8.2013. Since sufficient advance notice was given to the assessee, the reason given as his authorized representative was out of station, cannot be accepted. Hence, the petition for adjournment is rejected and we are disposing of this Miscellaneous Petition on merits.

3. In the written submission, it is stated by the assessee that the quantum of relief allowed under Section 54EC was never a subject matter of appeal before the CIT(Appeals) or the Tribunal. Assessing Officer had considered allowance of exemption under clause (a) of Section 54EC(1) of the Act. Since this aspect was never in appeal, the Tribunal had no powers, according to him, to direct the Assessing Officer to apply clause (b) of Section 54EC(1) of the Act. Therefore, according to him, directions were required, to ensure that the Assessing Officer retained the relief already given under Section 54EC of the Act.

4. Per contra, Shri Guru Bashyam, appearing for the Revenue, submitted that there was no error in the order of the Tribunal warranting interference. In any case, according to him, the grievance raised in the Miscellaneous Petition, if allowed, would result in a review of the order of the Tribunal for which it was having no power.

5. We have perused the orders and heard the rival submissions. The issue adjudicated by this Tribunal was with regard to an addition made for long term capital gain. Contention of the assessee was that the consideration received on sale of asset stood invested in a specific asset mentioned under Section 54EC(1)(a) of the Act. Assessing Officer had referred the valuation to the District Valuation Officer, since assessee had objected to adopt the value fixed by Stamp Valuation Authority. The reason why this Tribunal held that clause (b) of Section 54EC(1) alone could be applied, is clear from its findings given at paras 12 and 13 of its order which are reproduced hereunder:—

'12. No doubt, it has been clearly mentioned by the Co-ordinate Bench that deeming provision of Sec.50C would not be applicable for construing the meaning of the term 'full value of consideration' vis-à-vis application of Sec.54F of the Act. Crux of the decision is that once the entire amount of consideration stood deployed, or invested in accordance with Sec.54F, then provision of Sec.50C could not be invoked. The same view was also taken by the Jaipur Bench in the case of *Shri Prakash Karnawat* v. *ITO* (*supra*). However, admittedly in the given case, entire capital gains were not invested by the assessee in the bonds. The total sale consideration received was Rs. 79 lakhs and the capital gains on such transaction after deducting indexed cost of acquisition, as per the assessee's own working out to Rs. 75,15,796/-. Assessee had invested only Rs. 75 lakhs in the SIDBI capital gain Bonds. Had the assessee invested whole amount of Rs. 75,15,796/- which was the capital gains arising out of the transaction, then may be, the full value of consideration could be taken as the amount specified in the conveyance deed, for the purpose of giving effect to the exemption under section 54EC of the Act. However, assessee here has endeavored to make an artificial split of a single transaction. The sale of 7.98 acres of land was effected through a single document and the sale consideration mentioned shown was Rs. 79 lakhs. In our opinion an artificial split of a single transaction for claiming a better benefit than what is lawfully available cannot be accepted or encouraged. The sale executed through a single conveyance deed can be considered only as one single transaction, not amenable to any such split. It was not a case of two separate transactions. Assessee had simply taken out 0.02 acres from 7.98 acres of land, and considered it as an independent sale.

Once, the entire capital gains was not invested in a long term specified asset , what has to be applied is clause (b) of Sec.54EC (1) of the Act. The said Sec.54EC(1) is reproduced hereunder:-

"54EC. *Capital gain not to be charged on investment in certain bonds*.— (1) Where the capital gain arises from the transfer of a long-term capital asset (the capital asset so transferred being hereafter in this section referred to as the original asset) and the assessee has, at any time within a period of six months after the date of such transfer, invested the whole or any part of capital gains in the long-term specified asset, the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

(*a*) the cost of the long-term specified asset is not less than the capital gain arising from the transfer of the original asset, the whole of such capital gain shall not be charged under section 45;

(*b*) if the cost of the long-term specified asset is less than the capital gain arising from the transfer of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the long-term specified asset bears to the whole of the capital gain, shall not be charged under section 45 :

Provided that the investment made on or after the 1st day of April, 2007 in the long-term specified asset by an assessee during any financial year does not exceed fifty lakh rupees."

13. Where a transaction calls for a computation specified under clause(b) above, then it is necessary to find out the quantum of capital gains that could be claimed as exempt. For working out such capital gains, section 50C of the Act, which is mandatory in nature cannot

be ignored. Said Sec.50C requires substitution of the consideration mentioned in the deed with the value fixed by Stamp Valuation Authority for the purpose of stamp duty. In the given case, assessee had disputed the valuation and the matter was referred by Assessing Officer to DVO as provided under section 50C(2) of the Act. Once the DVO had given the report, Assessing Officer was bound to apply sub-clause (3) of Sec.50C for working out the capital gains. The said section stipulates that full value of consideration should be taken as the value adopted by Stamp Valuation Authority or the value fixed by the District Valuation Officer (DVO) whichever was lower. When the value fixed by the DVO exceeded the value fixed by the Stamp Valuation Authority, then value fixed by the Stamp Valuation Authority alone had to be considered. Here, the value fixed by the Stamp Valuation Authority was Rs. 3,61,84,512/- whereas the value fixed by DVO was Rs. 1,95,33,000/-. Assessing Officer, in our opinion, therefore, had proceeded in accordance with law, in considering the fair market value at Rs. 1,95,33,000/- . Nevertheless,, for working out the exemption under section 54EC available to the assessee, Assessing Officer was required to apply the proportion mentioned in sub clause (b) of Sec.54EC(1) of the Act, which has not been done. Therefore, we set aside the order of the authorities below and remit the issue of computation of long term capital gains tack to the file of the Assessing Officer, for computing such capital gains in accordance with Sec.54EC (1) (b) of the Act. Ordered accordingly.'

6. Assessee had endeavoured to make an artificial split of a single transaction and thereby to take advantage of clause (a) of Section 54EC(1) of the Act. When the law has laid out a particular course, it has to be followed in letter and spirit. Learned D.R. had during the course of hearing of the appeal taken an argument that assessee's case fell under clause (b) of Section 54EC(1) and not clause (a). This has been specifically mentioned by the Tribunal at para 9 of its order.

7. When an appeal is preferred before the Tribunal by any of the parties, the whole appeal is before the Tribunal. The Tribunal is supposed to pass appropriate order as it may deem fit in the appeal preferred by any of the parties. It is immaterial whether such order will benefit one or the other of the parties in the process it might be in favour of a party, who had not preferred the appeal but is a respondent therein, particularly, when the principle of law is laid down and on such legal principle the appellant may not entitled to any relief. There is nothing to prevent the Tribunal from passing appropriate order in such an appeal preferred by one of the parties even though it might amount to granting of relief to a party, who did not prefer any appeal. In case it is found that such order cannot be passed since no appeal has been preferred by the other party, in that event, the Tribunal has the power to remand the matter for a decision by the Tribunal in accordance with the law laid down. The Tribunal discharges judicial function. It dispenses justice. The principle on which justice is dispensed is founded on fair play and doing justice in the case. Therefore, while the Tribunal lays down a particular proposition of law, it cannot close its eyes and withdraw its selves without applying the principle or the ration laid down in the facts of the case. The Tribunal whenever sitting in appeal has to examine the case before it. It cannot avoid its responsibility when deciding the appeal in a manner, which will render the entire order passed by the Tribunal contradictory. It cannot leave the matter in a fluid state deciding the principle in favour one of the parties and passing an order in favour of the other against whom the principle has been laid down. The Tribunal is not supposed to pass an anomalous order. Neither can it create a confusing state and permit confusion to continue, nor can it pass an incongruous order. It has to decide the case irrespective of the fact as to whether it would amount to granting relief to the other party who did not prefer the appeal.

8. The above position directly evolve out of the decisions rendered by Hon'ble Calcutta High Court in the case of *CCAP Ltd.* v. *CIT* [2004] 270 ITR 248, Hon'ble Andhra Pradesh High Court in *Controller of Estate Duty* v. *Smt. K. Narasamma* [1980] 125 ITR 196 and that of Hon'ble Apex Court in the case of *CIT* v. *Assam Travels Shipping Service* [1993] 199 ITR 1. We are, therefore, of the view that the assessee here is seeking review of the order of the Tribunal and this Tribunal is having no such power to make a review. There was no mistake in the order of the Tribunal much less any mistake apparent on record. We thus do not find any merit in this Miscellaneous Petition moved by assessee.

9. In the result, Miscellaneous Petition filed by the assessee is dismissed.