

**HIGH COURT OF KARNATAKA**

**Venkatesh Murthy**

**v.**

**Income Tax Officer, Ward 5(3), Bangalore**

**DILIP B. BHOSALE AND B. MANOHAR, JJ.**

**IT APPEAL NOS. 719 & 720 OF 2007**

**APRIL 4, 2014**

**A. Shankar** and **M. Lava** for the Appellant. **K.V. Aravind** for the Respondent.

**JUDGMENT**

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**Dilip B. Bhosale, J.** - These two Income Tax Appeals, filed under Section 260-A of the Income Tax Act, 1961, (for short 'the Act'), arise from the common order dated 18.05.2007, whereby, ITA No.836/2006 pertaining to the Assessment year 2003-04, has been dismissed by the Income Tax Appellate Tribunal, Bangalore Bench-'B' (for short 'the Tribunal'). The Tribunal upheld the Long Term Capital Gain Tax (for short 'LTCG') and denied exemption under Section 54-F of the Act and so also penalty under Section 271(1)(c) of the Act.

**2.** Both the appeals before the Tribunal were filed by the appellant-assessee against two different orders passed by the 1st Appellate Authority, both dated 11.08.2006. By the first order, the Appellate Authority upheld the order of the Assessing officer, whereby, he brought capital gain of Rs.5,15,970/- to LTCG tax and initiated penalty, proceedings under Section 271(1)(c) separately. In view thereof, a separate order imposing penalty under Section 271(1)(c) came to be passed by the Assessing Officer vide order dated 30.05.2006. By this order, he imposed penalty equal to the amount of LTCG tax. That order was also carried in appeal, which the 1st Appellate Authority confirmed vide order dated 11.08.2006 in ITA No.64/CIT(A)-II/2006-07.

**3.** Mr. Shankar, learned counsel appearing for the appellant-assessee, at the outset, submitted that, if he succeeds in satisfying this Court for setting aside the order of penalty passed under Section 271(1)(c) of the Act, he has instructions not to press the appeal, rejecting his claim for exemption under Section 54-F of the Act, though according to him, he has good case on merits.

**4.** In view thereof, first we would like to examine the legality and correctness of the order passed under Section 271(1)(c) of the Act, impugned in ITA No.720/2007.

**5.** The appellant had filed return of income on 30.09.2003. In the return, he left a note regarding capital gain stating that he deposited the said amount in his savings account with Vijaya Bank. He did not open "capital gain account" as contemplated by Section 54-F(4) of the Act. In view thereof, the Assessing Officer reopened the assessment under Section 148 of the Act to bring to tax the capital gains on the ground that the bank account, in which the amount was deposited was not capital gains scheme account. The assessee, in the return of income had declared Rs.24,57,000/- as capital gains liable to tax and paid the tax accordingly with interest, in response to the notice under Section 148 of the Act. The assessment, thereafter, was completed accepting the return, so filed in regard to the capital gains and the penalty proceedings under Section 271(1)(c) were initiated.

6. The Assessing officer initiated penalty proceedings under Section 274 r/w Section 271(1)(c) of the Act against the assessee by issuing notice dated 25.11.2005. In response to the notice, the assessee filed reply dated 25.05.2006. It would be advantageous to reproduce the i reply for better appreciation of the case pleaded by the assessee. The reply dated 25.05.2006 reads thus:—

- "1. In my case the assessment year 2003-04 has been completed on 25.11.2005 by bringing to tax the long term capital gain of Rs.24,57,000/- by reopening the assessment after issue of notice under Section 148 on 14.11.2005. Immediately after receipt of notice u/S 148 and after discussion with the ITO, I have paid the sum of Rs.5,15,970/- on 15.1.1.05.
2. In this connection, I would like to mention that my proprietary business is an age old concern of 16 years and I have been filing my returns regularly for the last 10 years approximately and I am a regular assessee and I am a layman and do not know the full provision of the IT Act and my tax matters have been handled by my Auditor.
3. For the financial year relevant to assessment year 2003-04 though I sold the landed property, the sale consideration was put in my Bank account at Vijaya Bank instead of capital gains account. I should have deposited the sale consideration into Capital Gains account. However, the sale consideration has been used for investment for purchase of vacant land. The bank account i.e., Vijaya Bank transaction has been reflected in my statement of accounts.
4. I have co-operated with the department by paying the tax promptly before the assessment could be completed in order to obtain peace of mind.
5. I would like to mention here that I have purchased a property by entering into an agreement of sale with Smt. B.J. Prema on 15-10- 2003 for Rs.23 lakh. But, unfortunately to my bad luck the property is under litigation among the family members of Smt. B.J. Prema who have brought stay on the property. Though the title of the property is very clear and B.J. Prema who is also my relative has promised to register the property in my name after the case is settled. Now, I am running from pillar to post and though I had sold my property and invested the amount in another property I am suffering due to mental stress and strain due to the litigation in spite of paying the long term capital gain tax. I am enclosing the copies of the court papers and stay order for your kind consideration.
6. I have neither concealed my income nor have furnished inaccurate particulars with regard to the capital gain transaction.
7. Under the circumstances and my pathetic condition, I pray and kindly request that the penalty proceedings initiated may kindly be dropped and do the justice in the matter of equity."

7. The Tribunal while dealing with the reply filed by the assessee, took note of the fact that though the assessee had declared the transaction relating to income from capital gains and claimed exemption under Section 54 of the Act, he had not declared the same for the assessment year 2003-04 when the transaction had taken place during the previous year relevant to the assessment year 2003-2004 and that the assessee filed a revised return of income only after

notice under Section 148 of the Act was issued, disclosing the transaction and admitting LTCG of Rs.24,57,000 for the assessment year 2003-04. Taking note of these facts, the Assessing Officer observed that the assessee had filed inaccurate particulars. However, penalty was imposed mainly on two grounds. Firstly, the assessee had not complied with the conditions laid down by Section 54(2) of the Act by way of depositing long term capital gain in a specified account before the date of filing of return of income under Section 139 (1) of the Act, and secondly, during the course of assessment proceedings and till the completion of the same, the assessee had not furnished any information regarding court matter-litigation against the purchase of new property. The Assessing Officer also noticed that the assessee had not invested the amount for purchase of residential property. These findings of the Assessing Officer were confirmed by the first Appellate Authority and then by the Tribunal.

**8.** At the outset, we find that the Assessing Officer quoted wrong provision of law viz., Section 54 when admittedly; the exemption was claimed under Section 54F of the Act. The assessee had sold a plot of land for Rs.30,00,000/- vide registered sale deed dated 11-12-2002 and he was supposed to invest/utilize the said amount for purchasing a residential house on or before 10-12-2004 or to construct a residential house on or before 10-12-2005 as contemplated by Section 54F of the Act. The assessee accordingly had paid Rs. 13,00,000/- as earnest money on 31-07-2003 for purchasing a property and then he paid Rs. 10,00,000/- on 15-10-2003, Rs.3,00,000/- on 17-10-2003 and Rs.70,000/- on 15-12-2003. Accordingly, he paid to the owner of the property Rs.26,70,000/- before 10-12-2004. The cost of the property was Rs.27,36,000/- Thus, hardly Rs.66,000/- were in balance. Since the property was in litigation, the transaction was not completed. The Assessing Officer, in the order, observed that the assessee had not furnished any information regarding the Court matter-litigation against the said property. This observation is factually incorrect. In paragraph-5 of the reply dated 25-5-2006 the assessee had clearly made reference to the copies of the court paper and stay order in respect of said property which were enclosed with the reply. The respondents have not disputed this before us. It is true that the assessee had not deposited the long term capital gain in the capital gain account, and he had deposited the said amount in his savings account with Vijaya Bank. However, it is not in dispute that he paid Rs.26,70,000/- to the owner of the property from the said account. Having considered the overall facts and circumstances of the case, in our opinion, the Assessing Officer ought to have exercised the discretionary powers, while considering to impose penalty under Section 271(1)(c). That apart, the assessee in response to the notice under Section 148 of the Act had paid LTCG tax and interest. In our opinion, against this backdrop, this is a fit case where the Assessing Officer ought not to have imposed any penalty in exercise of the discretion vested in him. The order imposing penalty, thus deserves to be set-aside. Order accordingly. No order as to costs.

**9.** Insofar as ITA No.719/2007 is concerned, learned counsel for the appellant does not press the same on merits. Hence, the order, rejecting the exemption under Section 54F of the Act is confirmed. The appeal (ITA No.719/2007) filed by the assessee is accordingly dismissed with no order as to costs.