

**IN THE HIGH COURT OF KARNATAKA, BANGALORE**

**DATED THIS THE 2<sup>nd</sup> DAY OF JULY, 2013**

**BEFORE**

**THE HON'BLE MR.JUSTICE RAM MOHAN REDDY**

**WRIT PETITION No. 42424 OF 2012 (T-IT)**

BETWEEN:

P S SESHADRI  
S/O. P R SRINIVASAN  
AGE 75 YEARS  
No. 269, 11<sup>TH</sup> CRCSS,  
M S R NAGAR  
BANGALORE – 560 054.

... PETITIONER

(BY SRI. A SHANKAR & M LAVA, ADVOCATES)

AND :

THE CHIEF COMMISSIONER OF  
INCOME TAX  
BANGALORE – II  
C R BUILDINGS, QUEEN'S ROAD  
BANGALORE - 560 001.

... RESPONDENT

(BY SRI. E I SANMATHI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER PASSED BY THE RESPONDENT DT. 26.04.2012 VIDE ANN-A AND DIRECT THE RESPONDENT TO WAIVE THE INTEREST LEVIED U/S 234A & 234B OF THE ACT.

THIS WRIT PETITION COMING ON FOR PRL.HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

Petitioner, a retired scientist from the Indian Defence Organisation, claims to have acquired under a deed of settlement dated 14.2.1981 a certain immovable property at Chennai valued at Rs.60,000/-, which when sold under a registered sale deed dated 16.3.2006 fetched a consideration of Rs.1,99,00,000/-. With an intention to invest the sale consideration under Bonds issued by the National Highways Authority of India or Rural Electrification Corporation, for short 'Capital Gains Exemption Bonds' under Section 54EC of the Income Tax Act, 1961, for short 'Act', made an application to the National Highways Authority of India on 8.8.2006 to invest Rs.1,82,00,000/- in the absence of a limit on the quantum of investment under Section 54EC. Petitioner filed a return of income-tax on 25.9.2006 declaring income of Rs.2,01,284/- and paid self assessment tax of Rs.3,321/- and thereafter on 09.10.2006 filed a revised return of income disclosing

sale of property at Chennai claiming exemption of investment under the 'capital gain bonds,' which out of inadvertence was not set out in the original return of income filed on 25.9.2006. The National Highways Authority having noticed that the petitioner had not mentioned the PAN number issued a letter which was responded to by letter dated 15.8.2006 furnishing the PAN number. That application when rejected by the National Highways Authority of India, the application was returned with the Demand Drafts for Rs.1,82,00,000/- by letter dated 5.10.2006 Annexure-F. Petitioner claiming to be under the bonafide belief that he would be allotted the capital gain bonds made the application for investment and seek exemption from paying long term capital gains tax.

2. The Central Board of Direct Taxes (CBDT) issued a circular dated 30.6.2006 Annexure-G under Section 119(2)(c) of the Act extending the time limit for

investment in the 'Capital Gains bonds' upto 31.12.2006 without a ceiling limit and thereafter upto 31.3.2007 however imposing a maximum ceiling limit of Rs.50 lakhs, with retrospective effect from 01.03.2006.

3. Petitioner addressed a letter dated 30.8.2007 Annexure-H to the Commissioner of Income Tax setting forth the aforesaid facts and sought a remedy over the next course of action. According to the petitioner he was advised by the department to apply in the next issue of bonds and accordingly during January of 2007 petitioner made an application to the National Highways Authority for investment of Rs.50 lakhs in the 'Capital Gain Bonds'. According to the petitioner he had no intention of evading tax, being a hon'ble citizen, and having served the Nation in the Defence and in fact, followed up the matter with the Income-tax Department by another letter dated 17.9.2007 Annexure-J. Petitioner's application for capital gain bonds when

rejected, voluntarily paid capital gains tax of Rs.29,09,800/- on 25.9.2007 under the challan Annexure-K.

4. Petitioner's return was processed and after assessment was issued with an intimation under Section 143(1) on 10.1.2008 Annexure-L, since the department selected petitioner's return for scrutiny and passed an assessment order on 11.03.2008 Annexure-N under subsection (3) of Section 143 of the Act determining tax liability of Rs.36,94,298/- including interest under Section 234A, 234B and 234C, which was rectified under Section 154 of the Act by giving credit of Rs.29,09,800/- being the tax amount paid, to reduce the tax liability to Rs.6,98,430/- being the interest portion as follows:

Interest levied u/S 234-A – Rs.87,342/-

Interest levied u/S 234-B –Rs.6,12,768/-

5. Petitioner's application dated 19.5.2009 Annexure-O before the CBDT for waiver of interest in terms of the notification dated 26.6.2006 Annexure-N when not acted upon led to the petitioner filing an application before the respondent-Chief Commissioner of Income-tax, Bangalore-3 Annexure-P, which when rejected by order dated 26.4.2012, Annexure-A has presented this petition.

6. Learned counsel for the petitioner submits that under the notification dated 29.6.2006 issued under Section 54EC and the explanation (b)(i) to sub-section (3), not imposing a limitation on the investment in the capital gain bonds, the amendment by Finance Act 2007 to explanation (b) of Section 54EC imposing a limitation of Rs.50 lakhs over the investment, with retrospective effect from 1.4.2006 of which the petitioner had no knowledge, was an extraordinary circumstance which ought to have weighed in the mind

of the Chief Commissioner of Income-tax, to extend the benefit of waiver of interest under Section 234B, by placing reliance upon the observations of the Gujarat High Court in **Bhanuben Panchal and Chandrikaben Panchal -v- Chief Commissioner of Income Tax**<sup>1</sup> as also on the unreported opinion of this court in **M/s UB Global Corporation Limited -v- Chief Commissioner of Income tax** in W.P.No.16136/2011 DD 11.3.2013. Learned counsel hastens to add that the Chief Commissioner of Income tax while rejecting the applications for exemption of interest under Section 234B fell in error in observing that Clauses (a), (b) and (c) of the Notification dated 26.6.2006 Annexure-N does not take into its fold circumstances as made out by the petitioner.

7. Learned Sr.counsel for the respondent-revenue seeks to sustain the order as being well merited, fully justified and not calling for interference. According to

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<sup>1</sup> (2004)269 ITR 27 Gujarat para 7

the learned Sr.counsel the amendment to the proviso to Sec. 54EC(1) w.e.f. from 1.4.2007 is over investments made on or after 01.04.2007 in the long term specified assets by an assessee during any financial year does not exceed Rs.50 lakhs. However exemption over and above Rs.50 lakhs investment in Capital gain bonds under Section 54EC of the Act, though was available to the petitioner, having not invested the said sum within the extended period from 16 3 2006 the date of sale of the asset, is disentitled to waiver of interest. In addition it is submitted that the decision in Bhanuben's case (supra), as well as the opinion of this court were on different factual matrix, hence inapplicable to the facts of this case and that clauses (a), (b) and (c) of the notification Annexure-N have justifiably no application, and seeks to sustain the order Annexure-A.

8. The following facts are not in dispute:



(i) that on 16.3.2006 when petitioner sold the immovable property for a consideration of Rs.1,99,00,000/- was entitled to invest in 'Capital Gain Bonds' within a period of six months therefrom and seek exemption from payment of capital gains tax under Section 54EC of the Act; (ii) the Central Government issued notifications dated 29.06.2006 that NHAI and REC are permitted to issue Bonds for Rs.1,500/- and 4,500/- crores, respectively, from 01.07.2006; (iii) the application dtd. 08.08.2006 made to the National Highways Authority to invest in the Bonds, the entire sum of Rs.1,82,00,000/- being the amount of capital gains since there was no limitation over such an investment at that relevant point of time, was rejected for not furnishing the PAN number, though furnished within seven days; (iv) the Director, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, Govt. of India issued an order dated 30.6.2006 Annexure-G under Section 119(2)(c) of the Act stating

that with a view to remove the hardship caused to the tax payers the limitation of six months for making investment under Section 54EC of capital gains arising from the transfer of a long-term capital asset between 1.1.2006 to 30.6.2006 is extended upto 31.12.2006; (v) the Central Government issued the notification No.380/2006 dated 22.12.2006 permitted the issue of Bonds for an amount of Rs.3500 crores redeemable after three years by Rural Electrification Corporation as a long term specified asset for the purpose of Section 54EC of the Act subject to limitation of Rs.50 lakhs; (vi) petitioner's application and investment when accepted led to issue of 'Capital Gains Bonds' for Rs.50 lakhs during January, 2007; (vii) the limitation for making investment under Section 54EC was extended upto 31.3.2007 by letter dated 7.11.2007 enclosed to Annexure-J.

9. In order to appreciate the rival contentions it is useful to refer to relevant provisions of the statute as well as the notifications. Clause (b) of sub-sec. (1) of Sec. 54 EC of the Act as it stood before insertion of the Proviso by Finance Act 2007 w.e.f. 01.04.2007, provides that 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 Sec. 45. However the proviso inserted by Finance Act 2007 w.e.f. 1.4.2007 reads thus :-

“Provided that the investment made on or after the 1<sup>st</sup> day of April, 2007 in the long-term specified asset by an assessee during any financial years does not exceed fifty lakh rupees.”

Explanation (b) under subsection (3) of Section 54EC of the Act as it stood prior to its amendment reads thus:

“(b) “long-term specified asset” means any bond, redeemable after three years and issued on or after the 1<sup>st</sup> day of April, 2006, -

- (i) by the National Highways Authority of India constituted under section 3 of the National Highways Authority of India Act, 1988 (68 of 1988), and notified by the Central Government in the Official Gazette for the purposes of this section; or
- (ii) by the Rural Electrification Corporation Limited, a company formed and registered under the Companies Act, 1956 (I of 1956), and notified by the Central Government in the Official Gazette for the purposes of this section.”

This explanation as substituted by the Finance Act, 2007 with retrospective effect from 1.4.2006 reads thus:

“(b) “long-term specified asset” for making any investment under this section during the period commencing from the 1<sup>st</sup> day of April, 2006 and ending with the 31<sup>st</sup> day of March, 2007, means any bond, redeemable after three years and issued on or after the 1<sup>st</sup> day of April, 2006, but on or before the 31<sup>st</sup> day of March, 2007 -

- (i) by the National Highways Authority of India constituted under section 3 of the National Highways Authority of India Act, 1988 (68 of 1988); or

(ii) by the Rural Electrification Corporation Limited,  
a company formed and registered under the  
Companies Act, 1956 (1 of 1956),

and notified by the Central Government in the Official Gazette for the purposes of this section with such conditions (including the condition for providing a limit on the amount of investment by an assessee in such bond) as it thinks fit.

(Provided that where any bond has been notified before the 1<sup>st</sup> day of April, 2007, subject to the conditions specified in the notification, by the Central Government in the Official Gazette under the provisions of clause (b) as they stood immediately before their amendment by the Finance Act, 2007, such bond shall be deemed to be a bond notified under this clause.”

The notifications under Section 54EC, explanation (b)(i) reads thus:

**“Notification No.S.O.963(E),  
dated 29<sup>th</sup> June 2006**

In exercise of the powers conferred by sub-clause (i) of clause (b) of the Explanation to section 54EC of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the bonds for an amount of rupees one thousand five hundred crores (redeemable after three years) to be issued by the National Highways Authority of India constituted under section 3of the

National Highways Authority of India Act, 1988 (68 of 1988) during the financial year 2006-07 as “long-term specified asset” for the purpose of the said section.”

**“Notification No.S.O.964(E),  
dated 29<sup>th</sup> June 2006**

In exercise of the powers conferred by sub-clause (ii) of clause (b) of the Explanation to section 54EC of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the bonds for an amount of rupees four thousand five hundred crores (redeemable after three years) to be issued by the Rural Electrification Corporation Limited, a company formed and registered under the Companies Act, 1956 (1 of 1956), during the financial year 2006-07 as “long-term specified asset” for the purpose of the said section”

Even according to the learned counsel for the parties, the notification No.380/2006 dt. 22.12.2006 issued by the Central Government for Bonds for Rs.3,500/- crores to be issued by the Rural Electrification Corporation Limited, in exercise of powers under Sub clause (ii) of Clause (b) of the explanation to Sec.54EC of the Act, states that (i) a person who has made an investment of more than Rs. 50 lakhs in the bonds notified as ‘long-term specified

Asset' for the purpose of Sec. 54EC of the Act under the notifications dated 29.06.2006, shall not be allotted any bonds under the notification and (ii) that a person not covered by (i) shall not be allotted the bonds notified as 'long-term specified asset' by the notification for an amount of exceeding Rs. 50 lakhs as reduced by the aggregate of the investment, if any, made in similar bonds under the notifications dated 29.06.2006.

10. Applying the aforesaid statutory provisions and the notifications to the facts of the case, petitioner having sold a long term capital asset on 16.3.2006 for a sale consideration of Rs.1,99,00,000/- from out of which Rs.1,82,00,000/- was the capital gain, was entitled to make an investment of the entire sum of Capital Gain in the 'capital gain bonds' so as not to be charged to tax under sec. 45 of the Act and seek exemption from capital gain tax under Section 54EC of the Act as it stood in the statute book prior to its

amendment by finance Act 2007. The Amendment by Finance Act 2007 brought about two changes to Sec. 54EC by insertion of the proviso to sub sec (1) of Sec 54EC that investment made on or after 1.4.2007 in long term specified asset by an assessee during any financial year does not exceed Rs. 50 lakhs; (ii) the substitution of explanation (b) to sub-sec. (3) of sec. 54EC, providing Rs. 50 lakhs as the limit on the amount of investment by an assessee in the 'bond' during the period commencing from 01.04.2006 to 31.03.2007 i.e. with retrospective effect from 01.04.2006, while the proviso states that bonds issued before the amendment Act, shall be deemed to be bonds notified under the amended clause (b). Thus the insertion of the proviso to Sub-Sec. (1) of Sec. 54EC though states that the limit of Rs. 50 lakhs is for investments made on and after 01.04.2007 nevertheless the substitutions of clause (b) to the explanation to Sub-Sec. (3) is w.e.f. 01.04.2006. Therefore, even if the petitioner had made the



investment of Rs.1,82,00,000/-, a day after 01.04.2006 in 'capital gain bonds' would be entitled to exemption under Section 54EC to the extent of Rs.50 lakhs only. The substitution of clause (b) to the explanation by the Finance Act of 2007 obviously cannot be within the knowledge of the petitioner. In fact the Govt. of India in its order 119(2)(c) of the Act on 30.6.2006 Annexure-'G' extended the period for investment from six months to 30.6.2006 and thereafterwards upto 31.3.2007 without an indication over the limit of the investment. Therefore the petitioner was under the bonafide belief that he could make an investment of the capital gain in 'bonds' permitted under Section 54EC of the Act. Be that as it may, petitioner invested Rs.50 lakhs in terms of the notification dt. 22.12.2006, in the capital gains band, being the limit set out in the said notifications.

11. It is in this backdrop of facts that petitioner claims to have not paid the tax of Rs.29,09,800/- and

did so only on 25.09.2007 Annexure – K after the amendment to explanation (b) to subsection 3 to section 54EC of the Act by Finance Act, 2007.

12. Section 234B provides for interest for default in payment of advance tax by an assessee who is liable to pay advance tax under Section 208 or when the advance tax paid by such assessee under Section 210 is less than 90% of the assessed tax. In such cases assessee is liable to pay simple interest at the rate of one percent for every month or part of a month comprised in the period from the 1<sup>st</sup> day of April next following such financial year to the date of determination of total income under sub-section (1) of Section 143 and where a regular assessment is made to the date of such regular assessment on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid as aforesaid falls short of the assessed tax.

13. There is no dispute that in order to obviate hardship to the assesseees, the CBDT issued the order Annexure – N under Section 119(2)(a) of the Income Tax Act, 1961 permitting waiver of interest under Section 234(a), 234(b) and 234(c) of the Act on 26.6.2006 Annexure-N. Paragraphs 2(a) to (d) and 3 read thus:

“2(a).Where during the course of proceedings for search and seizure under section 132 of the Income – tax Act, or otherwise, the books of account and other incriminating documents have been seized, and the assessee has been unable to furnish the return of income for the previous year, during which the action under section 132 has taken place, within the time specified in this behalf, and the Chief Commissioner/Director General is satisfied, having regard to the facts and circumstances of the case, that the delay in furnishing such return of income cannot reasonably be attributed to the assessee.

b) Any income chargeable to income tax under any head of income, other than “Capital Gains” is received or accrued after due date of payment of the first or subsequent instalments of advance tax which was neither anticipated nor was in the contemplation of the assessee, and the advance

tax on such income is paid in the remaining instalment or instalments, and the Chief Commissioner / Director General is satisfied on the facts and circumstances of the case that his is a fit case for reduction or waiver of the interest chargeable under section 234C of the Income – Tax Act.

- c) Where any income was not chargeable to income – tax in the case of an assessee on the basis of any order passed by the High Court within whose jurisdiction he is assessable to income-tax, and as a result, he did not pay income-tax in relation to such income in any previous year, and subsequently, in consequence of any retrospective amendment of law or the decision of the Supreme Court of India, or as the case may be, a decision of a larger Bench of the jurisdictional High Court (which was not challenged before the Supreme Court and has become final), in any assessment or re-assessment proceedings the advance tax paid by the assessee during such financial year is found to be less than the amount of advance tax payable on his current income, and the assessee is chargeable to interest under section 234B or section 234C, and the Chief Commissioner / Director General is satisfied that this is a fit case for reduction or waiver of such interest.

- d) Where a return of income could not be filed by the assessee due to unavoidable circumstances and such return of income is filed voluntarily by the assessee or his legal heirs without detection by the assessing officer.”

14. The preamble to the order dated 26.6.2006 makes reference to the words ‘class of cases or class of incomes’ as specified in paragraph 2 thereunder’. A bare reading of paragraph 2(a), (b), (c) and (d) it is possible to infer that they are instances which are illustrative though not exhaustive. Obviously because it is not possible to enumerate all kinds of hardships that would befall an assessee so as to claim the benefit of waiver of interest under Section 234B and 234C. In paragraph 2(a) the waiver or reduction of interest if there is delay on the part of the assessee in filing the return due to seizure of books of accounts and other documents during search or seizure under Section 132 of the Act. While under Section 2(b) if any income chargeable to income tax under any head of income

other than 'capital gains' received or accrued after the due date of payment of the first or subsequent instalment of advance tax, neither anticipated nor in the contemplation of the assessee, while paragraph (c) refers to any income not chargeable to income tax in the case of an assessee on the basis of the order passed by the High Court within whose jurisdiction he is assessable to income tax and did not pay income tax in relation to such income and subsequently as a consequence of a retrospective amendment of the law or the decision of a larger Bench of the Supreme Court, in an assessment or re-assessment if it is found that the advance tax is paid less than the amount payable on his current income and paragraph 2(d) provides for instances where return of income could not be filed by the assessee due to unavoidable circumstances and such return of income is filed voluntarily by the assessee or his legal heirs without direction by the Assessing Officer.

15. Clause (b) of Subsection (3) of Section 54EC as it stood prior to its substitution by Finance Act 2007 was without any limit over the 'capital gain' investment in capital gains bonds for exemption under Sec. 54EC, from capital gain tax under Sec. 45 of the Act, moreso in the light of the order passed by the CBDT extending the period of limitation for such investment upto 31.3.2007. The substitution by Finance Act 2007 with retrospective effect from 1.04.2006 is to the detriment of the petitioner, dehors which petitioner would have had the benefit of exemption from capital gain tax as the entire capital gain of Rs. 1,82,00,000/-.

15. While there can be no dispute that the tax liability of Rs.29,09,800/- was discharged on 25.9.2007 nevertheless during the period from 1.4.2006 to 31.3.2007 and upto the Finance Act, 2007, receiving the assent of the President of India, petitioner was under the bonafide belief that he would be entitled to

exemption from payment of capital gains tax under Section 54EC of the Act on Rs.1,82,00,000/-. In the circumstances, it would be incongruous to hold that paragraph 2(c) of the notification Annexure-N applies to cases where orders are passed by the High Court and are subsequently set-aside by a larger Bench of the Supreme Court or where there is retro activity of an amendment to the statutory provision. The very fact that the words 'retrospective amendment of law' used in paragraph 2(c) to establishes that it is one of the unavoidable circumstance by which an assessee would stand to benefit the waiver of interest under Section 234(b) of the Act.

17. The division bench of the High Court of Gujarat in **Bhanuben's** case (Supra<sup>4</sup>) regard being had to the facts obtaining therein over delay in filing the return of income resulting in late payment of taxes, an unavoidable circumstance, observed thus:



*“7. It is thus clear that Clause (a) to (d) all state the circumstances beyond the control of the assessee and they may be considered as the species or illustrations of unavoidable circumstances or circumstances beyond the control of the assessee which is the genus contained in Clause (e) providing that where a return of income could not be filed by the assessee due to unavoidable circumstances and such return of income is filed voluntarily by the assessee or his legal heirs without detection by the AO, waiver of interest can be considered. It appears to the Court that when the circumstances leading to delay in filing of return of income are also the circumstances resulting into late payment of taxes and when the same set of circumstances are considered to be unavoidable circumstances responsible for the delay in filing of the return of income, ordinarily, such circumstances would also qualify to be considered as unavoidable circumstances responsible for the delay in late payment of taxes.”*

18. Following the very same reasoning of the Gujarat High Court and keeping in mind that clauses (a) to (d) of the Notification Annexure-N are species or illustrations of unavoidable circumstances or circumstances beyond the control of an assessee, which is a genus contained in clause (c) providing that where a return of income could not be filed by the assessee due to unavoidable circumstances i.e. the retro active operation w.e.f. 1.4.2006 of clause (b) of explanation to

sub-sec. (3) of Section 54EC of the Act substituted by the Finance Act, 2007, coupled with the voluntary payment of tax liability on 26.9.2007, the Chief Commissioner of Income-tax was not justified in declining the benefit of a waiver of interest under Section 234B. The rejection of the claim of the petitioner on the premise that paragraph 2(c) of the notification Annexure-N is not exhaustive, pales into insignificance.

19. Petitioner having made out a case for consideration for waiver of interest under Section 234B of the Act, the order Annexure-A of the Chief Commissioner of Income Taxes calls for interference. The Finance Act 2007 having received the assent of the President on 11.5.2007 and the payment of tax on 25.9.2007 is after a four months delay, hence, ends of justice would be met by waiving interest upto 80% under Section 234B of the Act.

In the result, this petition is allowed in part. The order Annexure-A of the Chief Commissioner of Income Tax is quashed insofar as it relates to the levy of interest under Section 234B is concerned while the petitioner is directed to pay 20% of the interest demanded under Sec. 234B of the Act for the assessment year 2006-07. The challenge to the demand of interest under Sec. 234A of the Act is not pressed.

**Sd/-  
JUDGE**