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IN THE HIGH COURT OF KARNATAKA  
CIRCUIT BENCH AT DHARWAD

Dated this the 6<sup>th</sup> Day of January 2012

Present

THE HON'BLE MR.JUSTICE K.SREEDHAR RAO

and

THE HON'BLE MR.JUSTICE A.S.BOPANNA

I.T.A. No.5067/2010

BETWEEN:

Shri. Gouli Mahadevappa,  
Ramarathna Oni,  
Gangavathi.

...Appellant

(By Sri. N.G.Rasalkar, Advocate)

AND :

1. Income-Tax Officer,  
Ward 2, Hospeth.

2. Commissioner of  
Income Tax (Appeals)  
Hubli.

...Respondents

(By Sri. Y.V.Raviraj, Advocate)

This ITA is filed under Section 260-A of the Income Tax Act, 1961, against the order dated 16.07.2010 passed in ITA No.587/Bang/2009 on the file of the Income Tax Appellate

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Tribunal, 'B' Bench, Bangalore, dismissing the appeal filed by an assessee.

This appeal coming on for admission this day, **K.Sreedhar Rao, J**, delivered the following:

### JUDGMENT

The appellant-assessee sold a house plot in RMV II Stage, Bangalore, for ₹20,00,000/- under registered sale deed dated 05.06.2004. The Assessing Authority found that the registration value of the property fixed under the Karnataka Stamp Act is ₹36,00,000/-. The assessee, however, had reinvested ₹24,00,000/- for construction of residential house at Gangavathi and sought exemption from the payment of capital gain tax under Section 54F of the Income Tax Act (for short 'the IT Act').

2.The Assessing Authority found that under Section 50C of the IT Act, the value of the property is ₹36,00,000/-. The cost price of site paid by the assessee at ₹1,93,506/- was deducted and the net income chargeable to tax under Capital Gains was assessed at ₹34,06,494/-. Further, the Assessing Authority given deduction of ₹20,00,000/- towards investment in construction of residential house at Gangavathi and assessed the long term Capital Gain at



₹14,06,494/- and the tax payable is assessed at ₹4,96,989/-. The assessee filed an appeal before the Commissioner of Income Tax (Appeals) who confirmed the order of the Assessing Officer. The assessee filed an appeal before the Income Tax Appellate Tribunal, Bangalore. The Appellate Tribunal upheld the order of the Assessing Authority and dismissed the appeal. The assessee, aggrieved by the said order of the Appellate Tribunal, has filed this appeal.

3. The assessee has formulated as many as 8 substantial questions of law in the appeal memo, which are as follows:

“ (a) Whether on the facts and the circumstances of the case, the Income Tax Tribunal is justified in upholding the Order of the Assessment order passed by the Assessing authority and the Appeal order of the Commissioner of Income Tax (Appeals) Hubli?


(b) Whether on the facts and the circumstances of the case, the Income Tax Tribunal is correct in law in holding that the “Capital gains” and “the Net Consideration” have to be worked out within the frame work of section 54F of the Act, without imposing any fiction created by any other section and



that the capital gains arising from the transfer of any long term capital asset for the purpose of section 54F has to be worked out applying section 48 without imposing section 50C into it?

(c) Whether on the facts and the circumstances of the case, the Income Tax Tribunal is correct in law in rejecting the contentions that provisions of Section 54F(1)(a) of the Income Tax Act will become unworkable, if the construction placed thereon, would require the consideration as per section 50C of the Act to be taken to work out the amount fo exemption of the capital gains in other words whether it is correct to hold that the operation of legal fiction under section 50C of the Act has to be restricted only for the purpose of section 48 of the Act as wrongly interpreted by the Income Tax Tribunal and not to be applied for the entire Chapter VI E relating to taxation of capital gains, especially to Section 45 of the Income Tax Act?

(d) Whether on the facts and the circumstances of the case, the Income Tax Tribunal is correct in law in rejecting the contention that the term capital gain in section 54F has to be arrived by imposing section 50C of the Act in order to comply with the provisions of charging section 45 of the Income Tax Act?



(e) Whether on the facts and the circumstances of the case, the Income Tax Tribunal is correct in law in rejecting the contention that the harmonious construction of section 54F of the Act and Section 45(1) of the Act along with computational provisions of Section 48 read with section 50C of the Act can only be achieved if the provisions of Section 54F are given its natural and literal meaning and not a strained meaning by subjecting it to the provisions of section 50C of the Act?

(f) Whether on the facts and the circumstances of the case, the Income Tax Tribunal is correct in law in holding that the denial of benefit of exemptions under section 54F(a)(a) on condition of compliance, by referring to Section 50C of the Act by the Lower authorities as being correct?

(g) Whether on the facts and the circumstances of the case, the Income Tax Tribunal is correct in law in holding that the legal fiction created by virtue of section 50C in determining the Capital gain cannot be extended to Section 54F of the Act and that Section 54F of the Act has to be applied only for the definite and limited purpose for which it is created?



(h) Whether, the order passed by the Income Tax Tribunal suffers from perversity on account of the Tribunal embarking upon the speculative assets and theorizing when the adjudication of the appeal preferred by the petitioner having regard to the subject matter of 'lis' before the Tribunal based upon the respective position and stand of each of the parties to the appeal, did not entail such consideration and evaluation as pursued by the Tribunal and the lower authorities?"

4. After considering the arguments of the appellant and the Revenue, the following substantial questions of law would arise for consideration in this appeal:

1. Whether the registration value fixed by the State authorities under the Stamp Act would constitute full consideration value for the purpose of levy of long-term capital gains?
2. Whether the assessee is entitled to contend that the sale consideration shown in the sale deed is the fair market value?
3. Whether the long-term capital gain has to be assessed on the value stated in the sale deed?



5. The provisions of Section 50C of the IT Act are extracted hereunder for convenient reference:

**“Special provision for full value of consideration in certain cases.** 50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereinafter in this section referred to as the “stamp valuation authority”) for the purpose of payment of stamp duty in respect of such transfer the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

(2) Without prejudice to the provisions of sub-section (1), where –

(a) the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;

(b) the value so adopted or assessed or assessable by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no



reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-section (2), (3), (4), (5) and (6) of section 16A, clause (l) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

*Explanation 1.*—For the purposes of this section, “Valuation Officer” shall have the same meaning as in the in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

*Explanation 2.*—For the purposes of this section, the expression “assessable” means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.





(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed or assessable by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed or assessable by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.”

Section 50C(1) is a deeming provision wherein the registration value fixed by the State Government under the Stamp Act is deemed to be considered as the full value consideration. Section 50C(2), however, permits the assessee to contend before the Assessing Authority that the registration value fixed by the State under the Stamp Act is excessive and does not correspond with the fair market value of the property as on the date of the transfer and that the assessee should not have challenged the levy of stamp duty under the Stamp Act as being excessive and disproportionate to the fair market value of the property before the authorities under the Stamp Act or file any appeal, revision or reference to any Court or High Court against such order. In which event the Assessing Authority would refer the matter to the Valuation Officer to assess



the fair market value of the property, keeping in view all the relevant consideration including the registration value fixed by the State. Sub-section 3 provides that if the fair market value fixed by the Valuation Officer is in excess of the registration value, then the registration value should be considered for levy of the capital gains tax. If the Valuation Officer finds that the value of the property is less than the registration value, then, accordingly, the Assessing Authority should levy capital gains tax on the basis of market value stated by the Valuation Officer.

6. In the instant case, it is to be noticed that the assessee has not availed the opportunity to question the correctness of the registration value fixed by the State Government. If he had done so, then the Assessing Authority would have invoked the power of appointing Valuation Officer for assessing the fair market value. When the registration value is not the disputed question, now, at this stage, it is not permissible for the assessee to contend that the registration value is excessive and disproportionate to the market value of the property. In the absence of contra material, the deemed full value of consideration as stated in Section 50C of the IT Act would come into effect.



7. The assessee before the Assessing Authority had stated that he has invested ₹20,00,000/- out of the sale consideration and further investment of ₹4,00,000/- of agricultural income towards construction of the house at Gangavathi. The total amount shown to be invested for construction of house at Gangavathi is ₹24,00,000/-. The Assessing Authority has disallowed the benefit of exemption of ₹4,00,000/-. That part of the order of the Assessing Authority and the Appellate Authority does not appear to be sound and proper. The ultimate object and purpose of Section 50C of the IT Act is to see that the undisclosed income of capital gains received by the assessee should be taxed and the law should not encourage and permit the assessee to peg down the market value at their whims and fancy to avoid tax. In other words, the ultimate object is to curb the growth of black money. When the capital gain is assessed on notional basis, whatever amount invested in new residential house within the prescribed period, under Section 54F of IT Act the entire amount invested, should get the benefit of deduction irrespective of the fact that the funds from other sources are utilized for new residential house. In that context, whatever total amount actually invested by the assessee for construction of house at Gangavathi should be deducted



irrespective of the fact that part of the funds invested are from different sources and not from the capital gains. In that view of the matter, the amount assessable towards net capital gain should be ₹10,06,494/-.

8. The counsel for the appellant submits that levy of interest is harsh. The provisions 50C of the IT Act was the latest introduced provision. The assessee was not aware of the said provision. It is further submitted that assessee is a resident of Gangavathi; the plot at Bangalore was allotted to him as he was a freedom fighter and he was not aware of the actual market value of the property at Bangalore; he was guided by the real-estate agent; the plot at Bangalore was unproductive not yielding any income; he was urgently in need of money for construction of the house at Gangavathi; and therefore, the appellant-assessee sold the plot at Bangalore, bonafidely, for a sum of ₹24,00,000/- and there is no attempt on his part to conceal the income to evade tax. The submissions made at the Bar may be good for avoiding penalty, but however, Section 234A & 234B mandates levy of interest at 12% per annum which the assessee cannot avoid and the Court has no jurisdiction to interfere with the same.



In that view of the matter, the appeal is partly allowed. The net capital gain should be assessed at ₹10,06,494/- with proportionate interest as assessed by the Assessing Authority.

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JUDGE

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