

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

BEFORE SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER
AND SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

ITA No.555/Bang/2013
Assessment year : 2008-09

Shri T.V. Prabhu, No.17, 3 rd Cross, Journalist Colony, Bangalore – 560 002. PAN: ADTPP 8594J	Vs.	The Commissioner of Income Tax, Karnataka (Central), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri C. Ramesh, CA
Respondent by	:	Shri G.R. Reddy, CIT(DR-I)

Date of hearing	:	19.01.2016
Date of Pronouncement	:	20.01.2016

ORDER

Per Asha Vijayaraghavan, Judicial Member

This appeal is by the assessee directed against the order dated 22.03.2013 passed by the Commissioner of Income Tax, Karnataka (Central), Bangalore u/s. 263 of the Income-tax Act, 1961 [“the Act”].

2. The brief facts of the case are that a search and seizure operation u/s. 132 of the Act was conducted on Sri R.V. Devraj on 6.1.2009. In this connection, residence of the assessee was also search on 6.1.2009 and a

survey u/s. 133A was carried out in the office of the assessee at NO.17, Journalist Colony, Bangalore. No books/documents were impounded during the course of survey.

3. Based on the documents found and seized during the course of search on 6.1.2009 at the office premises of M/s. Mookambika Promoters vide A/MKP/02 and A/MKP/12, satisfaction was drawn for action u/s. 153A of the Act and accordingly notice u/s. 153A r.w.s. 153C of the Act dated 31.5.2010 was issued and served on the assessee on 5.6.2010.

4. The assessee was a corporator at Sudhamanagar Constituency from the year 2002 to 2007. He was a partner in M/s. Mookambika Associates, M/s. Mookambika Promoters, M/s. Mookambika Finance and M/s. R V T V Residency.

5. The assessee filed return for AY 2008-09 for the first time in response to notice u/s. 153C on 23.9.2010 declaring total income of Rs.7,51,235 comprising income from other sources. Agricultural income of Rs.2,17,000 was declared for the year.

6. During the course of assessment, the AO noted that the assessee had sold agricultural land at Hluvenhalli Village for a consideration of Rs.41,50,000 vide Sale Deed Dated 30.5.2007 and invested the entire proceeds in purchase of residential property at No.136/3, Old Mission Compound, Lalbagh Road, Sudhamanagar, Bangalore vide Sale Deed

dated 14.6.2007 and thereby claimed deduction u/s. 54F. The AO allowed deduction u/s. 54F claimed by the assessee and completed the assessment observing as under:-

“5. During the year, the assessee had sold agricultural land at Hluvenhalli Village for a consideration of Rs.41,50,000/- vide sale deed date 30-5-2007 and invested the entire proceeds in purchase of residential property at No.136/3, Old Mission compound, Lalbagh Road, Sudhamanagar, Bangalore, vide sale deed dated 14-6-2007 and thereby claimed exemption u/s. 54F. The relevant property documents have been verified and placed on record. Further details such as confirmation from creditors etc., filed have been verified. With this the assessment completed as under:”

7. The CIT in exercise of his jurisdiction u/s. 263 of the Act was of the view that deduction u/s. 54F of the Act claimed by the assessee was not in accordance with the provisions of the Act, as the assessee was having more than one residential house other than the new asset on the date of transfer of the original asset. Notice u/s. 263 of the Act was issued. In reply, the assessee stated that as per statement of affairs filed along with the return, the assessee was in possession of the following three properties as on the date of transfer of the original asset:-

(a) The immovable property at No.136/6, Lalbagh Road, Bangalore is an old residential house.

(b) The immovable property at Siddaiah Road, Bangalore is a commercial property, on which M/s. RVTV Residency of which assessee is a partner, constructed a hotel building. The investment in this building was a subject matter of assessment for

AYs 2006-07 and 2007-08. The hotel building was complete as on 31.3.2007 relevant to AY 2007-08.

(c) The site at No.22, 1st Cross, Sudhamanagar, Bangalore is a vacant site.

8. The assessee contended before the CIT that he was in possession of only one residential house and sub-clause (i) of clause (a) proviso to section 54F of the Act provided that provisions of section 54F shall not apply to the assessee who owns more than one residential house, other than the new asset on the date of transfer of the original asset. It was therefore argued that there was no error in the assessment order passed by the AO.

9. The Id. CIT, after considering the submissions of the assessee, observed that the AO never called for and examined the nature of above properties shown in the Balance Sheet before arriving at a conclusion as to whether sub-clause (i) of clause (a) proviso to section 54F of the Act is applicable or not. He was of the view that the AO had not obtained necessary evidences and conducted detailed investigation to ascertain the nature of properties to arrive at a correct conclusion. The Id. CIT therefore held the order passed by the AO was erroneous and prejudicial to the interests of the revenue and directed the AO to conduct necessary investigation and arrive at a fresh conclusion regarding the deduction u/s. 54F claimed by the assessee.

10. Aggrieved, the assessee is in appeal before us.
11. The Id. counsel for the assessee reiterated the submissions made before the CIT. On the other hand, the Id. DR supported the order of the Id. CIT.
12. We have heard both the parties and perused the material on record. We find that the Hon'ble High Court of Karnataka in the case of *CIT v. Infosys Technologies Ltd., 341 ITR 293 (Kar)* has held at paras 27 & 28 of the judgment as follows:-

“27. The assessing authority performs a quasi-judicial function and the reasons for his conclusions and findings should be forthcoming in the assessment order. Though it is urged on behalf of the assessee by its learned counsel that reasons should be spelt out only in a situation where the assessing authority passes an order against the assessee or adverse to the interests of the assessee and no need for the assessing authority to spell out reasons when the order is accepting the claim of the assessee and the learned counsel submit that this is the legal position on authority, we are afraid that to accept a submission of this nature would be to give a free hand to the assessing authority, just to pass orders without reasoning and to spell out reasons only in a situation where the finding is to be against the assessee or any claim put forth by the assessee is denied.

28. We are of the clear opinion that there cannot be any dichotomy of this nature as every conclusion and finding by the assessing authority should be supported by reasons, however brief it may be, and in a situation where it is only a question of computation in accordance with the relevant articles of a double taxation avoidance agreement and that should be clearly indicated

in the order of the assessing authority, whether or not the assessee had given particulars or details of it. It is the duty of the assessing authority to do that and if the assessing authority had failed in that, more so in extending a tax relief to the assessee, the order definitely constitutes an order not merely erroneous but also prejudicial to the interests of the Revenue and, therefore, while the Commissioner was justified in exercising the jurisdiction under section 263 of the Act, the Tribunal was definitely not justified in interfering with this order of the Commissioner in its appellate jurisdiction.”

13. Following the judgment of the Hon'ble jurisdictional High Court in the case of *CIT v. Infosys Technologies Ltd. (supra)*, we find that there is no infirmity in the impugned order of the Id. CIT u/s. 263 of the Act and dismiss the assessee's appeal.

14. In the result, the appeal by the assessee is dismissed.

Pronounced in the open court on this 20th day of January, 2016.

Sd/-

(INTURI RAMA RAO)
Accountant Member

Sd/-

(ASHA VIJAYARAGHAVAN)
Judicial Member

Bangalore,
Dated, the 20th January, 2016.

/D S/

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.