

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

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER  
AND SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA No.1396/Bang/2013
Assessment year : 1998-99

M/s. Fabsun Engineering Pvt. Ltd., No.A-2, Castel No.5, Cornwell Road, Bangalore – 560 025. <b>PAN: AAACF 2575Q</b>	Vs.	The Income Tax Officer, Ward 11(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ian Lewis, Advocate
Respondent by	:	Shri P. Dhivahar, Jt. CIT(DR)

Date of hearing	:	24.02.2015
Date of Pronouncement	:	27.02.2015

**ORDER**

Per N.V. Vasudevan, Judicial Member

This appeal is by the assessee against the order dated 30.8.2013 of the CIT(Appeals)-I, Bangalore relating to assessment year 1998-99.

2. The Assessee is a company. During the previous year relevant to AY 98-99, i.e., on 26.9.1997, the Assessee sold property at 47E, Bommasandra Industrial Area, Anekal, Bangalore for a sale consideration of Rs.90 lacs. There is no dispute that on such transfer there was a short

term capital gain of Rs.85,11,648. The Assessee claimed that the capital gain is not chargeable to tax and is exempt u/s.54G of the Act. Section 54G, was inserted by the Finance Act, 1987 w.e.f. 1st April, 1988. The relevant provisions of Sec.54G of the Act reads as follows:

“54G. Exemption of capital gains on transfer of assets in cases of shifting of industrial undertaking from urban area.-(1) Subject to the provisions of sub-section (2), where the capital gain arises from the transfer of a capital asset, being machinery or plant or building or land or any rights in building or land used for the purposes of the business of an industrial undertaking situate in an urban area, effected in the course of, or in consequence of, the shifting of such industrial undertaking (hereafter in this section referred to as the original asset) to any area (other than an urban area) and the assessee has within a period of one year before or three years after the date on which the transfer took place,-

(a) purchased new machinery or plant for the purposes of business of the industrial undertaking in the area to which the said undertaking is shifted;

(b) acquired building or land or constructed building for the purposes of his business in the said area;

(c) shifted the original asset and transferred the establishment of such undertaking to such area; and

(d) incurred expenses on such other purpose as may be specified in a scheme framed by the Central Government for the purposes of this section,

then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,-

(i) if the amount of the capital gain is greater than the cost and expenses incurred in relation to all or any of the purposes mentioned in clauses (a) to (d) (such cost and expenses being hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and

for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its being purchased, acquired, constructed or transferred, as the case may be, the cost shall be nil ; or

(ii) if the amount of the capital gain is equal to, or less than, the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its being purchased, acquired, constructed or transferred, as the case may be, the cost shall be reduced by the amount of the capital gain.

Explanation : In this sub-section, "urban area" means any such area within the limits of a municipal corporation or municipality as the Central Government may, having regard to the population, concentration of industries, need for proper planning of the area and other relevant factors, by general or special order, declare to be an urban area for the purposes of this sub-section."

3. The intention for enacting section 54G was to promote decongestion of urban areas as also balanced regional growth. With that intent, section 54G exempted capital gains on transfer of plant, machinery, land, building, etc. used for the purposes of the business of industrial undertaking. It envisages transfer in the course of, or in consequence of, shifting of industrial undertaking from an urban area to a non-urban area. Capital gains would be exempt to the extent it is utilised within a period of one year before or three years after the date of transfer in (i) acquiring new plant, machinery, land, building, etc. for the purpose of the business of the undertaking in the area to which it is shifted, (ii) incurred expenses in the purchase of new plant and machinery, etc. and in shifting of the establishment of the undertaking; and (iii) incurring other expenses as

would be specified in a scheme to be drawn up by the Central Government. It may be noted that no such scheme had been notified by the Government as on the date of transfer of capital asset by the Assessee.

4. The Assessee claimed before the AO that it proposed to set up another industrial unit in a non-urban area at Anathapur District of AP for which it had advanced substantial amounts to M/S.APSFC and M/S.APIDC for the purchase of land in non-urban area in Anathapur District, State of Andhra Pradesh.

5. The first question which the AO took up for consideration was as to whether the property transferred by the Assessee was a capital asset, being machinery or plant or building or land or any rights in building or land used for the purposes of the business of an industrial undertaking situate in an urban area. The AO noticed that as per Explanation to Sec.54G(1) "Urban Area" means any such area within the limits of a municipal corporation or municipality as the Central Government may, having regard to the population, concentration of industries, need for proper planning of the area and other relevant factors, by general or special order, declare to be an urban area for the purposes of this sub-section. The AO further found that no town or city within the State of Karnataka had been notified for the purposes of the provisions of Sec.54G of the Act. Therefore the AO denied the benefit of exemption u/s.54G of the Act to the Assessee.

6. Before the AO, the Assessee had placed reliance on the decision of the ITAT Bangalore Bench in ITA No.768/Bang/1995 dated 20.11.1995 in the case of M/S.Fibre Boards wherein the tribunal held that since no area had been notified as an urban area, the Assessee could not be denied the benefit of a benevolent section. The Tribunal further held that the definition of "Urban Land" as per the other provisions of the Act and the general understanding should be applied, in the absence of any notification. The AO held that the aforesaid decision was rendered different circumstances and hence not applicable to the facts of the Assessee's case. The order of the AO is dated 16.8.2004.

7. In exercise of powers conferred u/s.54G of the Act, the Central Government by notification dated 27.4.2006 notified "Anekal" where the Assessee's property was situate as urban area for the purpose of Sec.54G of the Act.

8. On appeal by the Assessee the CIT(A) confirmed the order of the AO by his order dated 25.8.2006. The CIT(A) noticed that the decision of the Tribunal rendered in the case of M/S.Fibre Board (supra) had since been reversed by the Hon'ble Karnataka High Court in ITRC No.26/1997 dated 26.5.2005 whereby the Hon'ble Karnataka High Court after noticing the notification of Urban Areas in and around Bangalore by notification dated 27.4.2006 referred to in the earlier paragraph, held that such notification cannot have any retrospective effect.

9. On further appeal by the Assessee the ITAT in ITA No.948/Bang/2006 order dated 26.10.2006 set aside the order of the CIT(A) and remanded the issue to the AO on the representation of the Assessee that the Assessee has moved the CBDT to make the notification dated 27.4.2006 retrospective from 1.4.1988.

10. As per the directions of the ITAT the AO passed an order giving effect to order of ITAT on 31.12.2008 holding that no notification giving retrospective effect to notification dated 27.4.2006 was passed. The CIT(A) by his order dated 26.8.2010 confirmed the order of the AO. On further appeal by the Assessee, the ITAT in ITA No.1213/Bang/2010 dated 31.10.2011 restored the issue to the AO for fresh consideration to afford opportunity to the Assessee and adjudicate the issue.

11. On 24.12.2012 the AO passed an order giving effect to the directions of the tribunal dated 31.10.2010 holding that no notification giving retrospective effect to notification dated 27.4.2006 was passed. On further appeal, the CIT(A) by his order dated 30.8.2013 confirmed the order of the AO. The Assessee has filed the present appeal before the Tribunal against the order of the CIT(A).

12. We have heard the rival submissions. Explanation to section 54G(1) of the Act expressly provides that having regard to the population, concentration of industries, need for proper planning of the area and the other factors, the Central Government by general or special order declared

to be an urban area for the purpose of sub-section(1) of section 54G of the Act. The CBDT has issued notification dated 27/04/2006 for the purpose of exemption of capital gains u/s 54G in conformity to the Explanation above, declaring Bangalore as urban area. Such notification as we have already seen has been held by the Hon'ble Karnataka High Court as applicable from the date of notification and has no retrospective effect. In view of the legal position mentioned above, the assessee's contention is not tenable.

13. The assessee raised another issue that under section 280ZA of the Act, which was a section providing for relief to Assesseees who relocate their industries to Backward area, Bangalore was notified as urban area for the purpose of giving relief for shifting the industry from Bangalore to other backward area. Section 280ZA of the Act was introduced by the Finance Act 1965 with effect from 01/04/1965 and omitted by the Finance Act 1987 with effect from 01/04/1988. Section-280Z provided for relief by way of reduction of a fraction of tax on capital gains arising from the sale of the assets at the old place from where an industrial undertaking is shifted in terms of the scheme of the Central Government announced for this purpose. In order to be eligible for the concession specified conditions have to be fulfilled. Though the expression industrial 'undertaking' has not been defined in this chapter, it should bear the meaning assigned to it in section 80J of the Act formerly section 84 of the Act.

14. CBDT has issued notification urban areas u/s 280Y(d) vide Notification No.S.O.3419 dated 22/09/1967 thereby Bangalore Corporation is declared as "urban areas" for the purpose of XXIIB of the Act. Moreover, this notification is applicable for tax credit certificates for shifting of industrial undertaking from urban areas u/s 280Y(d) r.w.s. 280ZA of the Act and same cannot be held to be applicable for exemption u/s 54G of the Act.

15. It is also seen that the Hon'ble High Court of Karnataka has held that Notification dated 27.10.2006 cannot apply retrospectively. In such circumstances, we are of the view that the Id. CIT(Appeals) was justified in upholding the order of the Assessing Officer denying the benefit of section 54G to the assessee.

16. The Id. counsel for the assessee filed before us Notification No.9447 dated 6.1.1994. The said Notification was issued by the Central Govt. notifying areas which have to be regarded as urban areas for the purpose of section 2(1A) & 2(14) of the Act, which defines agricultural income and capital assets respectively. It was pointed out by him that municipal area of Bangalore and area upto a distance of 8 Kms. from municipal limits of Bangalore in all directions have been notified as urban areas. According to him, definition of urban area cannot be different for the purpose of section 54G.

17. We are unable to accept the aforesaid argument of the Id. counsel for the assessee. The benefit conferred u/s. 54G of the Act is a specific

benefit. Explanation below section 54G(1) of the Act contemplates notification by the Central Government for the purpose of allowing deduction u/s. 54G of the Act. The Notification issued under a different provision of the Act which is meant for different purpose cannot be applied while dealing with the provision of section 54G of the Act. We therefore reject the argument of the ld. counsel for the assessee.

18. We do not find any merit in this appeal by the assessee. Consequently the same is dismissed.

19. In the result, the appeal is dismissed.

Pronounced in the open court on this 27<sup>th</sup> day of February, 2015.

Sd/-  
( JASON P. BOAZ )  
Accountant Member

Sd/-  
( N.V. VASUDEVAN )  
Judicial Member

Bangalore,  
Dated, the 27<sup>th</sup> February, 2015.  
/D S/

Copy to:

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

By order

Assistant Registrar/  
Senior Private Secretary  
ITAT, Bangalore.