

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 20th DAY OF FEBRUARY 2018

BEFORE

THE HON'BLE Dr.JUSTICE VINEET KOTHARI

WRIT PETITION Nos.54836-837/2017 (T-IT)

BETWEEN:

1. NATARAJU (HUF)
S/O. LATE MADAPPA
AGED ABOUT 49 YEARS.
2. S. JEEVAN
AGED ABOUT 11 YEARS
S/O LATE SIDDARAJU (HUF)
3. S. PAVAN
AGED ABOUT 9 YEARS
S/O LATE SIDDARAJU (HUF)

REPRESENTED BY THEIR NATURAL GUARDIAN
Mrs. GEETHA W/O LATE SIDDARAJU

ALL RESIDING AT
VAJAMANGALA VILLAGE
VARUNA HOBLI, MYSURU.

... PETITIONERS

(By Ms. VANAJA M.R. ADV.,)

AND:

1. PR. COMMISSIONER OF INCOME-TAX
MYSURU, 21/16, RESIDENCY ROAD
NAZERBAD, MYSURU-570 010.
2. INCOME - TAX OFFICER
WARD-1(1), MYSURU-570010.

... RESPONDENTS

(By Mr. JEEVAN J. NEERALGI, ADV.,)

THESE W.Ps. ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-1 TO RECONSIDER THE REVISION PETITIONS FILED BY THE PETITIONERS DTD:9.3.2015 AND 17.3.2015 FILED ON 8.5.2015 FOR THE ASSESSMENT YEAR 2006-07 [ANNEXURE C AND C1]

THESE W.Ps. COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Ms. Vanaja M.R. Adv. for Petitioners

Mr. Jeevan J. Neeralgi, Adv. for Respondents

1. The petitioners have filed these writ petitions in this Court on **06.12.2017** aggrieved by the impugned order passed by the 1st Respondent-Prl.Commissioner of Income Tax, Mysuru, rejecting the petition of the petitioner-assessee under Section 264 of the Income Tax Act, 1961, filed by **Mr.Siddaraju s/o late Madappa**, who expired during the pendency of the said proceedings before the learned Commissioner but the fact of the death of the said person on **21.04.2016**, does not appear to have been brought to the notice of

the 1st Respondent-Prl.Commissioner of Income Tax during the pendency of the said proceedings.

2. The said petition under Section 264 of the Income Tax Act, 1961 therefore filed by the assessee aggrieved by the order passed by the Assessing Authority for **A.Y.2006-07** seeking to tax the Long term capital gains on the sale of agricultural lands by entering into the Joint Development Agreement with M/s.Skill Tech Engineers and Contractors on **25.01.2006** of the agricultural lands situated in **Sy.No.119**, Part, measuring 1 Acre 22½ Guntas and **Sy.No.213/1**, Part, 3 Acres and 4½ Guntas situated at **Vajamangala village, Varuna Hobli, Mysore taluk**, for the consideration of **Rs.44,41,250/-**.

3. The Assessing Authority by passing the impugned order on **21.03.2014**, raised a demand of **Rs.12,21,132/-** against the petitioner-assessee

including the tax and interest under **Sections 234A** and **234B** of the Act.

4. Instead of availing the remedy by way of an appeal before the Commissioner of Income Tax (Appeals) or ITAT in usual course, the assessee preferred a petition under Section 264 of the Act before the learned Commissioner on **17.03.2015** which came to be rejected by the learned Prl.Commissioner of Income Tax by the impugned order vide **Annexure-D** dated **27.03.2017**.

5. The reasons assigned by the Respondent-Prl.Commissioner of Income Tax for rejecting the said petition under Section 264 of the Act as recorded in the impugned order are quoted below for ready reference:-

“6. In the assessee’s case, by virtue of development agreement the transfer has taken place during the previous year 2005-06 relevant to assessment year 2006-07 and hence the capital gain is chargeable to tax for the

assessment year 2006-07. **Since the assessee has not filed the return of income admitting the capital gains a notice under section 148 of the act was correctly issued.** Moreover, the assessing officer had given ample opportunities to the assessee to present their case which was not availed by the assessee. Due to the non-compliance to the notices issued to the assessee, the Assessing Authority was left with no other option except to complete the assessment under section 144 of the act to the best of his judgment based on the materials available on record. Similarly, for the defaults committed by the assessee for non-compliance of notices and also not disclosing the income to the Department, the assessing officer had levied the penalties under respective Section of the Act.

7. The assessee has claimed that **only 1/3rd of the total sale consideration should have been assessed in the hands of the assessee since his was a joint family and also his share of sale consideration received has been utilized for purchase of agriculture land for which he is eligible for deduction under section 54B of the Act.** Here, it is pertinent to mention that, as per page 2, para 3 of the Development Agreement dated 25-01-2006

entered into between the assessee as one of the party and the Developer, it is clearly mentioned that "The schedule property is ancestral property of the OWNERS. The RTC records the name of the Owner No.1 and 2. Owner No.1 and 2's sister has been married 20 years back and in future any problem arises the said owners will be solved at their own cost. For this the said owners have agreed and signed in this Development Agreement". In this context, the assessee's contention that 1/3rd of sale proceeds were paid to Smt. Nagaratnamma is examined. No evidence to the effect that any amount has been paid to the sister Smt. Nagaratnamma is furnished. Any return of income filed by Smt. Nagaratnamma, in support of the contention, is also not referred to in the submissions. Unless adequate documentary evidences are produced, the issue cannot be examined and adjudicated by applying the principle of "Diversion of income by overriding title" or "Application of Income".

8. *In view of the foregoing, I decline to interfere with the orders passed by the assessing officer for assessment year 2006-07 in respect of following petitions for revisions under section 264 of the Act".*

7/12

(i) Order under section 144 r.w.s. 147 of the act dated 21-03-2014

(ii) Order under section 271(1)(b) of the act dated 29-09-2014.

9. However concealment penalty under section 271(1)(c) of the act is also levied in this case, although none represented the applicant. Considering the facts and circumstances of the case, it is just and fair to afford another opportunity to the applicant so as to comply with principles of natural justice. In view of this the order passed under section 271(c) of the act is set aside and restored to the file of the assessing officer, with a direction to provide adequate opportunity of hearing to the applicant before concluding the concealment penalty proceedings.

Sd/-

D. Vishnuvardhana Reddy, IRS

Pr. Commissioner of Income-Tax

Mysuru”

6. The learned counsel for the petitioner Ms.M.R.Vanaja submitted that the petitioners-assessees being illiterate agriculturists could not avail the regular remedy of appeal and later on, they preferred the said petition under Section 264 of the Act, which ought to

have been allowed in the facts and circumstances of the case.

She also submitted that the applicant – petitioner Mr.Siddaraju s/o late Madappa had expired during the pendency of the said petition under Section 264 of the Act on **21.04.2016**. therefore, the impugned order vide **Annexure-D** dated 27.03.2017 in the name of Mr.Siddaraju cannot be sustained, while the other petition under Section 264 of the Act by Sri.Nataraju s/o late Madappa, the two being the brothers, also could not be rejected on the aforesaid grounds.

7. Mr.Jeevan J.Neeralgi, learned counsel for the Respondents-Department however supported the impugned orders.

8. Having heard the learned counsels for the parties, this Court is satisfied that the impugned orders under Section 264 of the I.T.Act do not deserve any interference by this Court under Article 226 of the

Constitution of India. The said impugned orders rightly reject the prayer of the petitioners on the ground of non-chargeability of the capital gain tax for **A.Y.2006-07**. Moreover, it cannot be presumed that the petitioners-assesseees being ignorant of relevant provisions of the Act, could not prefer the regular appeals before the appellate authorities namely, before the CIT (Appeals) or before the ITAT in due time.

9. The fact that the revision petitions under Section 264 of the Act was filed by them within a year of passing of the impugned assessment order on **21.03.2014** namely, on **09.03.2015** and **17.03.2015**, shows that the petitioners-assesseees were very well guided about the relevant provisions of the Income Tax Act and for the reasons best known to them, they avoided the appellate remedies provided in the Act.

10. Even otherwise, the ignorance of law is no excuse and no such presumption as prayed for, can be

10/12

drawn in favour of the petitioners-assesseees. The remedy by way of a revision under Section 264 of the Act obviously lies in a narrow compass and the said remedy cannot be treated as a regular remedy bypassing the regular remedy of appeals against the impugned assessment orders and one cannot be allowed to avail the said revisional remedy under Section 264 of the Act in a routine manner bypassing the requirement of payment of tax and allowing the regular appellate authorities to apply their minds to the relevant facts and evidence on record.

11. The said provision also stipulates *interalia* that the non exercise of powers under the said provisions of 264 of the Act declining to interfere at the instance of assesses shall not be deemed to be an order prejudicial to the assessee vide **Explanations (1) & (2)** of **Section 264(7)** of the Act. The said provision also prohibits exercise of such powers by the

11/12

Prl.Commissioner when either the regular remedy by way of appeal has been availed or the limitation thereof has not expired or the assessee gives an Undertaking that he has waived his right to appeal against the impugned order before the said Prl.Commissioner. The time limit of one year also has been provided.

12. Therefore, the fact that the assessee-petitioners preferred these Revision petitions under Section 264 of the Act just before the expiry of one year of the impugned assessment orders passed by the Assessing Authority, on the contrary reflects that the petitioners-assesseees were very conscious and aware of the legal provision and deliberately avoided the availing of the regular remedy by way of an appeal and at the nick time of the expiry of the time period, preferred the present revision petition under Section 264 of the Act, which for good reasons, came to be dismissed by the learned Prl.Commissioner of Income Tax.

12/12

13. This Court finds no grounds to interfere with the said impugned order in the present writ petitions. The writ petitions are found to be devoid of merit and the same are liable to be dismissed and are dismissed accordingly. No costs.

Sd/-
JUDGE

Srl.