**(2011) 05 KAR CK 0031**

**In the Karnataka High Court**

**Case No :** IT Appeal No. 106 of 2005 (A.Y. 1990-91)

CIT and Another — APPELLANT

Vs

T. Satish U. Pai — RESPONDENT

**Date of Decision :** 24-05-2011

**Acts Referred:**
Income Tax Act, 1961 — Section 2 (42A), 50, 50 B

**Citation :** (2011) 202 TAXMAN 16

**Hon'ble Judges :** V.G. Sabhahit, J;Ravi Malimath, J

**Bench :** Division Bench

**Advocate :** E.R. Indra Kumar for E.I. Sanmathi, for the Appellant; S. Parthasarathi, for the Respondent

## Judgement

V.G. Sabhahit, J.—This appeal has been admitted for consideration of the following substantial question of law :

Whether the Tribunal is justified in holding that section. 50 of the IT Act is not attracted and the capital gain is to be calculated under section. 50B of the Act ?

2. However, it was submitted by the learned counsel appearing for the appellant and the respondent that provision of section 50B of the Act has come into effect from 1-4-2000 and agreement of sale is dt. 31-1-1990.

3. We have heard the learned senior counsel appearing for the appellant and the learned counsel appearing for the respondent and the contentions urged on the finding of the appellate authority and the Tribunal.

4. The substantial question of law that would arise for consideration is framed as follows :

Whether the finding of the Tribunal in holding that section. 50 of the IT Act is not attracted and in confirming the order of the appellate authority which has reversed the order of the assessing authority is perverse and arbitrary and calls for interference in this appeal ?

 

5. The material facts of the case leading to this appeal are as follows : The respondent herein had two factories, one known as packing unit styled as Compack and the other is known as MICR Printing Unit. It was sold with all its assets and liabilities as going concern under the agreement of sale dt. 31-1-1990 to M/s Manipal Power Press for a consideration of Rs. 8,50,000. However, as per the balance sheet on the date of sale there was a net deficit of Rs. 8,12,994, which was also taken over by the purchaser and wherefore, the total consideration would be Rs. 16,62,995. Though the respondent had shown capital gain at Rs. 6,37,415, a revised assessment was filed stating that the said income does not constitute capital gains and the respondent is not liable to pay the capital gains. The AO after considering the objections of the assessee held that the transaction dt. 31-1-1990 attracted capital gains under section. 50 of the Act and treated capital gains as short-term capital gains and passed an order of assessment on 25-2-1993. Being aggrieved by the order of assessment dt.'' 25-2- 1993, an appeal was filed by the assessee before the (IT(A-III) Bangalore contending that the agreement of sale clearly decides that it was a slump sale and wherefore, the capital gains is not attracted as held by the Supreme Court and wherefore, the AO was not justified in imposing tax on short-term capital gains under section. 50 of the Act. The appellate authority by an order dt. 23-12-1996 held that the sale in question dt. 31-1-1990 was a slump sale and did not constitute capital gains and set aside the order passed by the assessing authority regarding demand for tax on capital gains and interest imposed thereon and allowed the appeal. Being aggrieved by the order of the appellate authority dt. 23-12-1996, Revenue preferred an appeal ITA No. 155/Bang/1997 to the Tribunal and the assessee had filed a CO. No. 49/Bang/2003 being aggrieved by the finding against the assessee holding that the transaction dt. 31-1-1990 was a slump sale and did not attract section. 50 and it attracted section. 50B of the Act. The Tribunal by an order dt. 30-8-2004 held that section. 50 is not attracted and upheld the contention raised in the cross-objection and provision of section. 50B would be applicable and accordingly, dismissed the appeal filed by the Revenue and allowed the cross-objection by holding that the transaction was slump sale and wherefore capital gains was not attracted.

6. Being aggrieved by the order of the Tribunal dismissing the appeal and allowing the cross-objection dt.'' 30-8-2004, this appeal is filed by the revenue contending that section. 50B, which came into effect from 1-4-2000, was not applicable to the transaction which took place on 31-1-1990 and the transaction did not constitute slump sale and mere recital in the agreement would not make it slump sale and wherefore, an order passed by the Tribunal and the appellate authority are liable to be set aside and the order passed by the AO may be restored.

7. The learned senior counsel appearing for the appellant submitted that the finding of the appellate authority and the Tribunal that the transaction in question is a slump sale and capital gains is not attracted is baseless as no reasons have been assigned and wherefore, the finding is capricious and

 

arbitrary and therefore, liable to be set aside and further submitted that the order passed by the AO is justified and may be restored and also further submitted that the provisions of section. 50B of the Act is not applicable and the order of the Tribunal to that extent is also liable to be set aside.

8. The learned counsel appearing for the respondent submitted that the agreement of sale and the material on record shows that the impugned transaction is a slump sale and not a capital gains as defined under section. 2(42A) of the Act and once it is held that impugned transaction is a slump sale, only capital gains whether long-term or short-term is attracted, hence, the finding of the appellate authority and the Tribunal is justified. He further submitted that even assuming that the order passed by the Tribunal and the appellate authority is arbitrary and perverse, it has not been opposed by proper reasoning showing that it is not a slump sale. The order passed by the AO cannot also be sustainable insofar as it relates to imposition of tax under section. 50 of the Act imposed as a short-term capital gains and wherefore, the order passed by the AO is also liable to be set aside.

9. The appeal has been admitted for abovesaid consideration of substantial question of law that is modified by us as referred to above.

10. We have given careful consideration to the contentions urged by the learned counsel appearing for the parties and scrutinized the material on record.

11. The material on record would clearly show that the impugned transaction is dt. 31-1-1990 and wherefore provision of section. 50B of the Act, which has come into effect from 1-4-2000 is not applicable and wherefore finding of the Tribunal to that effect cannot be sustained. However, on perusal of the order passed by the appellate authority and the Tribunal, it is clear that they proceeded on the basis that the impugned transaction is a slump sale and there is no finding supported by any reason as to how the impugned transaction would constitute slump sale. Mere recital in the agreement of sale by itself is not conclusive to find out as to whether the impugned transaction is a slump sale and wherefore as rightly pointed out by the learned counsel appearing for the appellant it is clear that the finding of the Tribunal and confirming the order of the appellate authority that the impugned transaction is a slump sale which is not based upon reasoning, based on the facts of the case on pure question of fact is perverse cannot be sustained. The same cannot be gone into in this appeal. It is also clear from the order passed by the AO that the AO has proceeded on the basis presuming that transaction attracts capital gains and treated transaction as short-term capital gains under section. 50 of the Act and there is no finding as to whether the impugned transaction is a slump sale, which attract capital gains cannot be sustained.

12. Under these circumstances, in view of the submissions made by the learned counsel appearing for the parties, we hold that the order passed by the Tribunal, appellate authority and the AO is liable to be set aside and requires to be

 

remitted back to the AO to find out as to whether the impugned transaction is a slump sale and if so, whether it would attract the provision of. 50 or 50B of the Act as admittedly provision of section. 50B of the Act is not applicable. Accordingly, we answer the substantial question of law in favour of the respondent-assessee and pass the following order :

1. The order passed by the Tribunal, Bangalore in ITA No. 155/Bang/1997 and the C.O. No. 49/Bang/2003 dt. 30-3-2004 confirming the order of the appellate authority, CrT(A-III) ITA No. 15/MNG/CIT(A) dt. 23-12-1996 is set aside.

2. The order of assessment passed by the AO dt. 25-2-1993 is also set aside.

3. The matter is remitted back to the AO to pass fresh orders after affording opportunity to the assessee in accordance with law in the light of the observations made in the body of the order.

4. The AO shall dispose of the proceedings within a period of three months from the date of receipt of this order or production of certified copy, whichever is earlier.