

## No concealment penalty if partner had bona fide belief that firm had invested his capital gains in new property

**Summary – The High Court of Madras in a recent case of S.S.M. Ahmed Hussain, (the Assessee) held that where assessee paid sale proceeds of an agricultural land for purchasing agricultural land/residential house, to a firm, whose partner owned property to be purchased and assessee claimed section 54F/54B exemption but firm did not purchase same, exemption benefit was to be withdrawn; however, no concealment penalty was to be levied as assessee acted in good faith**

### Facts

- The Assessee had paid (sale consideration of agricultural land) to a firm Alpha for purchase of agricultural land in his name. He accordingly claimed deduction under section 54B.
- In survey, a partner of Alpha submitted that Alpha had not purchased agricultural land on behalf of the assessee. Thereafter, in response to a notice under section 148 the assessee filed a revised return of income admitting income after withdrawing the deduction claimed under section 54B and paid the taxes on capital gains.
- The Assessing Officer arrived at the finding that the assessee had not actually invested the amount received from sale of land in purchase of property and, in reality, no payment for purchase of agricultural land had been made to Alpha and, thus, it was a fit case for levy of penalty and imposed minimum penalty.
- The assessee appealed to the Commissioner (Appeals), who dismissed the appeal.
- The Tribunal allowed the appeal of the assessee and deleted the penalty.
- On appeal.

### Held

- The Tribunal after hearing the parties and on perusing the records found that the Assessing Officer had failed to appreciate that the assessee had originally disclosed the details of receipts from sale of property at Neelangarai. The Tribunal also observed that it was not disputed that the assessee had paid money to Alpha of which one of the co-owners of the property was partner, and had, accordingly, claimed deduction under section 54F/54B.
- Tribunal arrived at the factual finding that the assessee had *bona fide* believed that Alpha had, as per mutual agreement, invested the money in residential property to enable the assessee to claim the benefit of section 54F/54B. The Tribunal arrived at the finding that the Assessing Officer had not considered the explanation offered by the assessee as *bona fide* and simply rejected the explanation stating that the assessee had made a wrong claim in the original return of income and had failed to disclose all material facts truly and wholly.
- The Tribunal observed that it was not the case of the Assessing Officer that the assessee's claim was either false or bogus. Neither the Assessing Officer nor the Commissioner (Appeals) had examined

the claim of the assessee of having given money to Alpha for the purpose of investment in residential property. The Tribunal held that the Assessing Officer could not presume that the explanation given by the assessee was false or bogus without making investigation.

- In the instant case, the Tribunal has arrived at the factual finding that it was not the case of the Assessing Officer that the assessee's claim was false or bogus and neither the Assessing Officer nor the Commissioner (Appeals) had examined the claim of the assessee that the assessee had given money to Alpha for the purpose of investment in residential property and the assessee's remittance cannot be a reason for levy of penalty.
- In the instant case, the Tribunal arrived at the factual finding that there was no concealment and there was an apparently *bona fide* explanation for the claim under section 54F/54B which had not at all been properly considered by making an investigation.