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## **CIT Vs Vrinda P. Issac**

**ITA No. 413 of 2010**

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**Court:** Karnataka High Court

**Date of Decision:** Oct. 18, 2011

**Acts Referred:**

Income Tax Act, 1961 – Section 139, 139 (4), 143 (3), 263, 54 F

**Citation:** (2013) 212 TAXMAN 101

**Hon'ble Judges:** Ravi Malimath, J; N. Kumar, J

**Bench:** Division Bench

**Advocate:** K.V. Aravind, for the Appellant; A. Shankar and M. Lava, for the Respondent

**Final Decision:** Dismissed

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## **Judgement**

N Kumar J.

1. This is a revenues appeal challenging the order passed by the Tribunal which has set aside the order passed by the Director of Income Tax,

International Taxation, Bangalore u/s 263 of the Income Tax Act, 1961. The assessee is an individual non-resident. She filed her return of income

declaring a total income of Rs. 4 on 31-10-2006. The case was taken up for scrutiny assessment u/s 143(3) of the Act. The assessing officer

noticed that the assessee the income from capital gains and has claimed exemption u/s 54F of the Income Tax Act for" the investment made in a

new asset. The assessing officer accepted the return filed by the assessee and computed the income as Nil. Subsequently, the Director of Income

Tax, International Taxation, on perusal of the assessment proceedings and records, observed that the assessee has capital gains income on being

allocated from M/s. Sankalp Trust and the assessee has shown the long term capital gain of Rs. 25,33,039, which has been accepted by the

assessing officer. Assessment of M/s. Sankalp Trust was also completed and the long-term capital gain has been determined at Rs. 44,50,686.

According to the Revisional authority, there was a mistake in the assessment order in accepting the capital gains because the figure of the share of

the assessee as a beneficiary in the Sankalp Trust has been changed and determined by the assessing officer of M/s. Sankalp Trust. He further

observed that the assessee had claimed deduction u/s 54F as per her statement of income and that the claim of deduction was not in accordance

with sub-section (4) of section 54F, as the assessee has made the investment in the new house by paying Rs. 32 lakhs on various dates starting

from 6-5-2006 to 19-1-2007 and the said asset was also registered in favour of the assessee on 6-11-2007 i.e., well beyond the due date

prescribed under sub-section (1) of section 139 and has also failed to deposit the sale proceeds as provided u/s 54F(4) of the Income Tax Act.

He issued a notice u/s 263 of the Act and after hearing the assessee passed an order taking away the benefit which was granted by the assessing

authority. Aggrieved by the said order, the assessee preferred an appeal of the Tribunal. The Tribunal did not interfere with the order of the

revisional" authority in so far as the capital gains figure, which is to be adopted for the purpose of assessment. However, the Tribunal set aside the

order of the revisional authority on the other aspect viz., application of section 54F of the Act by holding that the investment made by the assessee

being within the time specified under sub-section (4) of section 139 of the income tax Act, the assessee is eligible for exemption u/s 54F of the

income tax Act. The assessee has not preferred any appeal on the first point whereas the revenue preferred an appeal on the second point.

2. The Tribunal in coming to the said conclusion that the investment made by the assessee being within the time specified under sub-section 4 of

section 139 of the Act relied on the judgment of this court in the case of Fathima Bai Vs. ITO Even if two views are possible, the revisional

authority had no jurisdiction to initiate proceedings u/s 263 of the Act. It was held that the order passed by the High Court is incorrect, which

decision cannot be accepted. The Tribunal has followed the judgment of this Court as the decision of the High Court is binding on the subordinate

Courts. If the judgment passed by this Court is erroneous, the revenue should have challenged the said order. At any rate that cannot be a ground

for invoking section 263 of the Act in the facts of this case. In that view of the matter, we do not see any merit in this appeal. Accordingly, no

substantial question of law arises for consideration. Hence, the appeal is dismissed.