(2011) 10 KAR CK 0002

In the Karnataka High Court

Case No : ITA No. 412 of 2007

CIT APPELLANT

Vs

Razia Sulaiman RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:

Citation : (2011) 10 KAR CK 0002

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

Bench : Division Bench

Advocate : K.V. Aravind and M.V. Seshachala, for the Appellant; P. Dinesh and S. Parthasarathi, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—The revenue has preferred this appeal against the order passed by the Tribunal, which has declined to interfere with the well-considered order passed by the Commissioner of Income Tax (Appeals) who has held that sale of the land results in capital gains and not the business income as held by assessing authority. The assessee is the co-owner of the land in question. He entered into an agreement to develop the land owned by him with M/s. Prestige Garden Developers, Copper Arch No. 83, Infantry Road, Bangalore '' 560001, the builder. Thereafter, he has sold only undivided share in the land. The superstructure did not belong to him and it belonged to the builder, who had sold the same to the third parties. What the appellant has achieved is a cost free superstructure, the value of which is consideration for undivided share in the land to the nominee of the builder. Essentially what the assessee did was to transfer apart of the land to various nominees of the builder. The assessee had no choice in so far as selling the land is concerned. The Tribunal has set out in detail the terms of the sale deed, which reflects the aforesaid facts. On consideration of the said clauses and the undisputed facts of the case, the Commissioner of Appeals came to the conclusion that the assessee was not in the business of selling of sites or flats. He entered into a joint development agreement to get a good price for the land

and therefore, what is liable to be paid is capital gains and not the tax on his business income as he was not in the business of selling the flats or the land. Therefore, the Tribunal relying on the judgment of the Apex Court in the case of Janki Ram Bahadur Ram Vs. Commissioner of Income Tax, Calcutta, and the judgment of this court in the case of The CIT & Ors. v. Hotel Sreeraj in ITA No. 282/2002 disposed off on 6-12-2007 rightly dismissed the appeal upholding the order of the appellate Commissioner. In the facts of this case, we do not see any justification to interfere with the well-considered order passed by the appellate authorities. No substantial question of law is involved in this appeal. Hence, no merit. The appeal is dismissed.

