

(2008) 10 KAR CK 0084
In the Karnataka High Court
Case No : Income-tax Appeal No. 113 of 2004

Commissioner of Income Tax and Another	APPELLANT
Vs	
D. Ananda Basappa	RESPONDENT

Date of Decision : 20-10-2008

Acts Referred:

General Clauses Act, 1897 — Section 13
Income Tax Act, 1961 — Section 54, 54 (1), 54 F

Citation : (2009) 223 CTR 186 : (2009) 309 ITR 329 : (2009) 2 KCCR 50 SN :
(2009) 180 TAXMAN 4

Hon'ble Judges : K. Sreedhar Rao, J;C.R. Kumaraswamy, J

Bench : Division Bench

Advocate : M.V. Seshachala, for the Appellant; K.R. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

1. The respondent-assesses is a Hindu undivided family. The assessee sold a residential house for Rs. 2,12,50,000 in the year October, 1995. The assessee purchased two residential flats adjacent to each other from M/s. Ormonde Private Developers Ltd. The assessee has, however, taken two separate registered sale deeds in respect of the two flats situate side by side purchased on the same day. The vendor has certified that he has effected necessary modifications to the two flats to make it one residential apartment. The assessee sought for exemption u/s 54 of the Income Tax Act.

2. The assessing authority gave exemption for capital gains to the extent of purchase of one residential flat. It was found in the inspection by the inspector that the residential flats were in occupation of two different tenants disclosing separate enjoyment. Therefore, it is held that Section 54(1) of the Income Tax Act does not permit exemption for the purchasers for more than one residential premises. The Commissioner of Income Tax confirmed the order of the assessing authority. The Tribunal, in appeal set aside the order of the Commissioner of Income Tax and held that the purchase of the two flats made by the assessee

has to be treated as one single residential unit and that the assessee is entitled for full exemption.

3. The following are the substantial questions of law framed for consideration:

(a) Whether the Tribunal was correct in holding that out of the sale proceeds of the property bearing No. 9, Brunton Road, Bangalore, owned by the assessee he could invest the same in two residential flats bearing No. G-01 and G-02, and claim deduction in respect of both these flats in accordance with Section 54 read with Section 54F of the Act for the assessment year 1996-97?

(b) Whether the proviso to Section 54F of the Act, as it stood prior to the amendment brought about by the Finance Act, 2000, can be read to mean that for the assessment year 1996-97 the assessee would be entitled to relief in respect, of more than one dwelling unit for the purpose of claiming exemption under the head "Capital Gains"?

4. In the provision of Section 54(1) of the Income Tax Act, the relevant portion is extracted herein for convenient reference:

Subject to the provisions of Sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property (hereafter in this section referred to as the original asset), and the assessee has within a period of one year before or two years after the date on which the transfer took place purchased or has within a period of three years after that date constructed a residential house, then, instead of the capital gain being charged to Income Tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section", that is to say,-

5. A plain reading of the provision of Section 54(1) of the Income Tax Act discloses that when an individual-assesses or Hindu undivided family-assesses sells a residential building or lands appurtenant thereto, he can invest capital gains for purchase of residential building to seek exemption of the capital gains tax. Section 13 of the General Clauses Act declares that whenever the singular is used for a word, it is permissible to include the plural.

6. The contention of the Revenue is that the phrase "a" residential house would mean one residential house and it does not appear to the correct understanding. The expression "a" residential house should be understood in a sense that building should be of residential in nature and "a" should not be understood to indicate a singular number. The combined reading of Sections 54(1) and 54F of the Income Tax Act discloses that, a non residential building can be sold, the capital gain of which can be invested in a residential building to seek exemption of capital gain tax. However, the proviso to Section 54 of the Income Tax Act, lays down that if the assessee has already one residential building, he is not

entitled to exemption of capital gains tax, when he invests the capital gain in purchase of additional residential building.

7. When a Hindu undivided family's residential house is sold, the capital gain should be invested for the purchase of only one residential house is an incorrect proposition. After all, the Hindu undivided family property is held by the members as joint tenants. The members keeping in view the future needs in event of separation, purchase more than one residential building; it cannot be said that the benefit of exemption is to be denied u/s 54(1) of the Income Tax Act.

8. On facts, it is shown by the assessee that the apartments are situated side by side. The builder has also stated that he has effected modification of the flats to make it as one unit by opening the door in between two apartments. The fact that at the time when the inspector inspected the premises, the flats were occupied by two different tenants is not the ground to hold that the apartment is not a one residential unit. The fact that the assessee could have purchased both the flats in one single sale deed or could have narrated the purchase of two premises as one unit in the sale deed is not the ground to hold that the assessee had no intention to purchase the two flats as one unit.

9. For the reasons and discussion made above, the substantial questions of law are answered in favour of the assessee. The appeal is dismissed.