(1986) 06 KAR CK 0006

In the Karnataka High Court

Case No : Income-tax Reference Case No''s. 4 and 5 of 1983

Commissioner of Income Tax APPELLANT

Vs

J.R. Subramanya Bhat RESPONDENT

Date of Decision : 09-06-1986

Acts Referred:
Income Tax Act, 1961 — Section 256 (2), 53, 54

Citation : (1987) 165 ITR 571

Hon'ble Judges : Jagannatha Shetty, Acting C.J.;N.D. Venkatesh, J;Mohammad Sharif, J

Bench : Full Bench

Advocate : K. Srinivasan, for the Appellant; B. Bhavanishankar Rao, for the Respondent

Judgement

Jagannatha Shetty, Actg. C.J.

1. This is a reference u/s 256(2) of the Income Tax Act, 1961, whereunder the following two questions have been referred by the Tribunal for our opinion :

"(1) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the old house can be said to have been mainly used for the residence of the assessee ?

(2) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the assessee is entitled to exemption u/s 54 of the Income Tax Act, 1961 ?"

2. The assessee was the owner of a building at 15th Cross, Malleswaram. The building consisted of ground floor and first floor. The ground floor was occupied by the assessee and the first floor was let out. The assessee sold the building on February 9, 1977, for Rs. 1,20,000. He worked out the capital gains at Rs. 83,968 which he claimed as exempt from tax u/s 54 of the Income Tax Act. Some time earlier to March, 1976, he has commenced construction of a new house. It was evidently prior to the sale of his old house. He completed the

construction of the new house in March, 1977.

3. The Income Tax Officer rejected the claim of the assessee on the ground, among others, that the construction of the new building had commenced much earlier to the sale of the old building and the major portion of the building was let out by the assessee and, therefore, he was not liable for exemption u/s 54 of the Act. On appeal, the Appellate Assistant Commissioner partly allowed the claim of the assessee, against which the Department preferred an appeal to the Tribunal. The assessee filed cross objection in that appeal.

4. The Tribunal has held that the ground or land appurtenant to the building was in the occupation of the assessee. It has further held that though the commencement of the new building was earlier to the sale of the old building, the new building was completed in March, 1977, which was within the two-year period contemplated by section 54. So stating, the Tribunal allowed the relief claimed by the assessee.

5. There is no dispute that the building has been constructed within two years from the date of sale of the old building. The old building was sold in February, 1977. The new building was completed in March, 1977, the construction of which had commenced in 1976. Section 54 of the Income Tax Act so far as it is relevant provides :

"Where a capital gain arises from the transfer of a capital asset to which the provisions of section 53 are not applicable, being buildings or lands appurtenant thereto the income of which is chargeable under the head ''Income from house property'', which in the two years immediately preceding the date on which the transfer took place, was being used by the assessee or a parent of his mainly for the purposes of his own or the parent''s own residence, and the assessee has within a period of one year before or after that date purchased, or has within a period of two years after that date constructed, a house property for the purposes of his own residence, 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,......."

6. Under this section, if the assessee has within a period of one year after the date on which the transfer took place purchased or has within a period of two 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 other provisions set out in the said section. The Tribunal on an appreciation of the evidence has firstly found that the building was used by the assessee mainly for his residential purpose. Taking into consideration the area of the building under the occupation of the assessee, it has stated that the ground floor occupied by the assessee including the garage was 1, 330 sq. ft. The land appurtenant to the ground floor excluding the land occupied by the house was 4,795 sq. ft. That was also held to

be under the occupation of the assessee. This building with the land has been sold. It was only the first floor that was let out. The Tribunal took into consideration the extent of the building used mainly for the residential purpose of the assessee and found that the major portion of the building was under the occupation of the assessee. The Tribunal, therefore, concluded that the first condition prescribed u/s 54 was satisfied. This finding, it may be seen, has been arrived at by the Tribunal upon appreciation of the evidence and the factual aspects of the case.

7. So too was the next conclusion reached by the Tribunal. The date of the sale of the old building was February 9, 1977. The completion of the construction of the new building was in March, 1977, although the commencement of the construction started in 1976. It is immaterial, as the Tribunal, in our opinion, has rightly observed, about the date of commencement of the construction of the new building. Since the assessee has constructed the building within two years from the date of sale of the old building, he was entitled to relief u/s 54 of the Act.

8. Both the conclusions reached by the Tribunal are on an appraisal of the evidence on record and they are not shown to be unreasonable or perverse.

9. We, therefore, answer the question in the affirmative and against the Revenue. In the circumstances of the case, we make no order to costs.