
(2013) 11 KAR CK 0024
In the Karnataka High Court
Case No : IT Appeal No. 109 of 2013

Commissioner of Income Tax

APPELLANT

Vs

R. Balaji

RESPONDENT

Date of Decision : 18-11-2013

Acts Referred:

Citation : (2014) 222 TAXMAN 305

Hon'ble Judges : Rathnakala, J;N. Kumar, J

Bench : Division Bench

Judgement

N. Kumar, J.—This appeal is by the Revenue challenging the order passed by the Tribunal directing grant of exemption to the assessee u/s 54F of the income tax Act (hereinafter, "Act" for short) 1961, and for setting aside the order of the Appellate Authority as well as the Assessing Authority. The assessee is a medical practitioner. He filed his returns of income for the assessment year 2008-09 on 04.09.2008 declaring a total income of Rs. 27,22,500/-. The return of income was processed u/s 143(1) of the Act. Subsequently, it was taken up for scrutiny u/s 143(2) of the Act. The assessment was concluded on 20.10.2010 determining the income of the assessee at Rs. 1,03,25,814/- by denying the assessee's claim for exemption u/s 54F of the Act. Aggrieved by the said order, the assessee preferred an appeal to the Commissioner of income tax (Appeals)-II, Bangalore, who dismissed the appeal by order dated 01.12.2011. Aggrieved by the said order, the assessee preferred an appeal to the Tribunal. The Tribunal, on re-appreciation of the entire material on record held, the sale deed under which the assessee purchased the property clearly describes that the assessee purchased a site together with 02 Square RCC roofed house, cement floor, jungle wood doors and windows.

Form No. 1A issued by the Department of Registration and Stamps, Government of Karnataka, dated 16.10.2007 also refers to the Schedule "C" measuring 200 sq.ft. RCC house, with cement floor and all civic amenities. A receipt dated 03.07.2007 showing the payment of property tax for the year 2006-07 and

2007-08 shows the tax was paid for a site and a house and therefore, it was of the view, what the assessee purchased was a residential site with house. However, the Assessing Authority, three years after the purchase of the house inspected and the said Inspector's report dated 19.11.2010 shows there is no house, there is only a watchman shed where building material of the neighbour is collected and acted on the said report without proper verification. Therefore, the Tribunal was of the view the material on record shows the assessee purchased a house with a site, subsequently, he has demolished it. He is in the process of putting up a construction. In the meanwhile, he has accommodated his neighbour to keep his building material by permitting a watchman to live there by putting a temporary shed, but that cannot be construed as a fact, which shows that the case of the assessee is incorrect. Therefore, he proceeded to hold in the light of the undisputed documents, the finding recorded by both the Authorities is unsustainable and therefore, it set aside the said findings and granted relief to the assessee.

2. Learned counsel for the Appellant/Revenue assailing the impugned order contends, the photographs produced by the assessee himself do not show that the construction put up therein is not fit for residence which has no facilities like electricity, water and toilet. It has no windows, no doors and therefore, the Tribunal committed a serious error in interfering with the concurrent finding of fact. We do not see any merit in the said contention. The orders by the lower Authorities are based on the report submitted by the Inspector who visited the place three years after the sale. On the day he inspected, there was a shed constructed for living of the watchman and to store the building material of the neighbour of the assessee who was putting up a construction. That is not the building, which is referred to in the sale deed. On the day the property was purchased, a residential structure measuring about 200 sq.ft. was in existence. The photograph which was produced by the assessee even before the Authorities demonstrate the said fact. May be, that structure is not palatial, it does not have all civic amenities, that was the status of the vendor of the assessee. He sold the site to the assessee who is a doctor by profession. What the law contemplates is, after selling the property, if the assessee invest the sale consideration in purchase of a residential property, he is entitled to exemption u/s 54F of the Act. What should be the extent of construction of residential building, what facilities should be provided in such constructions to be eligible for the exemption, is not set out in the Act. All that the Authorities have to look into is, whether what is purchased is a residential construction or not? If the material on record shows, prior to sale, the vendor lived there with his family and he has sold the site along with the residential construction, merely because the property is not suitable to the assessee and construction material are kept there, is not a ground to deny exemption u/s 54F of the Act. What the Tribunal has held is on careful consideration of the entire material on record. In that view of the matter, we do not see any justification to entertain this appeal. No substantial question of law arises for consideration in this appeal, no merits, accordingly, dismissed. In view

of the appeal being dismissed, I.A. No. 1/2013 is also dismissed.