

(2012) 02 KAR CK 0026
In the Karnataka High Court
Case No : IT Appeal No. 175 of 2011

Commissioner of Income Tax

APPELLANT

Vs

Sambandam Udaykumar

RESPONDENT

Date of Decision : 15-02-2012

Acts Referred:

Income Tax Act, 1961 — Section 142 (1), 143 (2), 45, 54 F

Citation : (2012) 345 ITR 389 : (2012) 19 TAXMAN 17

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

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

1. The revenue has preferred this appeal against the order passed by the Tribunal granting benefit to the assessee, upholding the order of the Commissioner u/s 54F of the income tax Act, 1961, (For short, hereinafter referred to as, "the Act"). The assessee Sri. Sambandam Udaykumar filed his return of income for the year 2006-07 on 11.10.2006 declaring an income of Rs. 2,13,68,271/-. The case was selected for scrutiny, Notices under sections 143(2) and 142(1) were issued to the assessee. In response to the above notice, the authorised representative of the assessee appeared and submitted the details called for. The said details disclosed that during the year relevant to the assessment year 2006-07, the assessee sold the shares of M/s. Assess Technologies India Pvt. Ltd. for a consideration of Rs. 4,18,08,725/-. Part of the proceeds of the said sale consideration has been invested in purchase of house property to the extent of Rs. 2,16,61,570/- and accordingly claimed exemption u/s 54F of the Act. Necessary inquiries in this regard were conducted by the Revenue. The report was submitted on 3.12.2008. The report disclosed that Villa No. 58, Adarsh Palm Retreat, Outer Ring Road, Marathahalli, Bangalore, belongs to Sri. S. Udaykumar, the assessee. Photographs produced showed the progress

of construction of the Villa. The sworn statement of Mr. Varsha, Senior Marketing Executive of M/s. Adarsh Group showed that the construction activities are stopped at present. The flooring work, electrical work, fitting of door shutters and window shutters are still pending. Therefore the assessing authority came to the conclusion that the construction is not complete even after lapse of three years of time from the date of transfer of the said shares on which the capital was derived. The assessee has only entered into an agreement of sale for construction with M/s. Adarsh Developers and paid an advance of Rs. 1,23,26,050/- as on 31.03.2006 towards the cost investing in house property. Therefore he held that the assessee has neither purchased the property within the period of two years nor constructed the property within the period of three years after the date of transfer of the asset, on which the capital gain was derived, and Section 54F of the Act is not applicable to the assessee. Therefore after taking into consideration the tax paid, he raised a demand for Rs. 32,31,701/-.

2. Aggrieved by the said order, the assessee preferred an appeal to the Commissioner of income tax (Appeals). After considering the various judgments relied on, the Appellate Commissioner held that the house which the assessee intends to purchase/construct is not even fit to be called as a house, not to speak of residential house. It is neither been purchased nor constructed in the true sense of the term. Hence the assessee is not eligible to the benefit u/s 54F of the Act. Therefore, he dismissed the appeal. Aggrieved by the said order, the assessee preferred an appeal to the tribunal.

3. The Tribunal held that the material on record discloses that there was no dispute with regard to the fact that the assessee had invested Rs. 2,16,61,670/- as on 31.10.2006 within twelve months from the date of realization of sale proceeds of shares. The builder's letter set out the details of payment made by the assessee to the builder. Further, it disclosed that substantial construction was completed as on 12.11.2008 i.e., within three years period from the date of sale of shares giving rise to capital gain and only minor fittings like window shutters and some electrical work were required to be made. In other words, the villas were substantially ready and habitable with water connection and also temporary electrical connection. Therefore, the Tribunal was of the opinion that the authorities below were not justified in depriving the exemption legitimately claimed by the assessee u/s 54F of the Act. Therefore, they allowed the appeal, directed that assessee's claim for exemption u/s 54F of the Act to the tune of Rs. 2,16,61,670/- is to be allowed.

4. Aggrieved by the said order, the revenue has preferred this appeal.

5. The substantial question of law that arise for consideration in this appeal is as under:

Whether the Tribunal was correct in holding that the assessee is eligible to claim the deduction u/s. 54F of the Act in respect of building under construction

despite the same having not being constructed within the stipulated period of three years for availing of the benefit?"

6. Learned counsel for the revenue assailing the impugned order of the Tribunal contended that the undisputed material on record discloses that within the period of three years stipulated u/s 54F of the Act, the building is not complete in all respects. It was not in a position to occupy, no sale deed had been executed in terms of the agreement and therefore the Tribunal was not justified in extending the benefit u/s 54F of the Act.

7. Per contra, learned counsel for the assessee submitted that no doubt the building was not complete in all respects and the sale deed was not executed within three years, but within the period of three years, the assessee has invested a sum of Rs. 2,16,61,670/- in construction of the building. After three years period, sale deed is executed in his favour. He has been put in possession and he is living in the said premises. In those circumstances, the Tribunal was justified in extending the benefit of section 54F of the Act to the assessee and therefore no case for interference is made out.

8. Section 54F of the Act provides for exemption from payment of capital gain on transfer of certain capital assets in case the consideration for transfer is invested in acquiring the residential house. It reads as under:

54F. Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house. -(1) Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (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 (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,-

(a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged u/s 45;

(b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged u/s 45:

Provided that nothing contained in this sub-section shall apply where

(a) the assessee,-

(i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or

(ii) purchases any residential house, other than the new asset, within a period of

one year after the date of transfer of the original asset; or

(iii) constructs any residential house, other than new asset, within a period of three years after the date of transfer of the original asset; and

(b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property.

Explanation : For the purposes of this section, "net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

9. A reading of the aforesaid provision makes it very clear that if a capital gain arises from the transfer of any long term capital asset, not being a residential house and the assessee has within the period of one year before or two years after the date on which transfer took place purchased or has within a period of three years after that date constructed a residential house, if the cost of the new asset is not less than the net consideration in respect of the original asset the whole such capital gain shall not be charged u/s 45 of the Act. However, if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to be whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration shall not be charged u/s 45 of the Act.

10. Section 45 of the Act makes it very clear that any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save or otherwise provided in sections 54, 54B, 54D, 54E, 54EA, 54EB, 54F, 54G and 54H is chargeable to income tax under the head "capital gains" and shall be deemed to be income of the previous year in which the transfer took place. The aforesaid sections which form part of section 54 of the Act are cases where capital gain on transfer of capital asset not to be charged in those cases. Section 54F of the Act is a beneficial provision of promoting the construction of residential house. Therefore, the said provision has to be construed liberally for achieving the purpose for which it was incorporated in the statute. The intention of the Legislature was to encourage investments in the acquisition of a residential house and completion of construction or occupation is not the requirement of law. The words used in the section are "purchased" or "constructed". For such purpose, the capital gain realized should have been invested in a residential house. The condition precedent for claiming benefit under the said provision is the capital gain realized from sale of capital asset should have been parted by the assessee and invested either in purchasing a residential house or in constructing a residential house. If after making the entire payment, merely because a registered sale deed had not been executed and registered in favour of the assessee before the period stipulated, he cannot be denied the benefit of section 54F of the Act. Similarly, if he has invested the money in construction of

a residential house, merely because the construction was not complete in all respects and it was not in a fit condition to be occupied within the period stipulated, that would not disentitle the assessee from claiming the benefit u/s 54F of the Act. The essence of the said provision is whether the assessee who received capital gains has invested in a residential house. Once it is demonstrated that the consideration received on transfer has been invested either in purchasing a residential house or in construction of a residential house even though the transactions are not complete in all respects and as required under the law, that would not disentitle the assessee from the said benefit.

11. In fact, Madras High Court had an occasion to consider this aspect in the case of Commissioner of Income Tax Vs. Sardarmal Kothari, where it has been held as under:

4. The requirement of the provision is that the assessee, within a period of three years after the date of transfer, has to construct a residential house in order to become eligible for exemption. In the cases on hand, it is not in dispute that the assessee has purchased the lands by investing the capital gain and they have also constructed residential houses. In order to establish the same, the assessee submitted before the CIT(A) several material evidences, viz., invitation card printed for the house warming ceremony to be held on 12th July, 2003. The assessee has also produced the completion certificates from the municipal authority on 30th Jan., 2004. On the basis of the above documents, the CIT(A) concluded that the requirement of the statutory provision has been complied with by the assessee and that was reconfirmed by the Tribunal in the orders impugned.

12. The said Judgment of the Madras High Court has been affirmed by the Apex Court and the appeal was dismissed at the stage of preliminary hearing in CC Nos. 3953-3954/2009 decided on 6.4.2009.

13. In the instant case, the material on record discloses that the assessee had invested Rs. 2,16,61,670/- as on 31.10.2006 within twelve months from the date of realization of sale proceeds of shares. The developer acknowledging the said amount has given particulars of the stage of construction. According to him, only minor fittings like window shutters and some electrical work were required to be made. In fact, the report of the inquiry conducted by the Department also discloses the flooring work, electrical work, fitting of door and window shutters were still pending. The assessee has produced before the authorities the registered sale deed dated 7.11.2009 showing the transfer of the property in his favour. The said document discloses marble tiles flooring has been done, electricity, water and sanitary connections have been given, wood used is teak in respect of doors and windows. The assessee has been put in possession of the property and he is in occupation. Therefore, the assessee has invested the sale consideration in acquiring a residential premises and has taken possession of the residential building and is living in the said premises. The object of enacting section 54 of the Act i.e., to encourage investment in a residential building is

completely fulfilled.

14. In that view of the matter, the Tribunal was justified in extending the benefit of section 54F of the Act to the assessee and the said order does not suffer from any infirmity which calls for interference. Therefore, the substantial question of law is answered in favour of the assessee and against the revenue.

The appeal is dismissed.