(2008) 10 KAR CK 0009

In the Karnataka High Court

Case No : ITA No. 435 of 2004 A.Y. 1988-89

Fathima Bai — APPELLANT

Vs

ITO — RESPONDENT

Date of Decision : 17-10-2008

Acts Referred:
Income Tax Act, 1961 — Section 148, 54, 54 (1), 54 (2)

Citation : (2008) 10 KAR CK 0009

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

Bench : Division Bench

Advocate : Raghuraman and Chythanya, for the Appellant; M.V. Seshachala, for the Respondent

Final Decision : Allowed

Judgement

1. The appellant/assessee sold an immovable house property in the assessment year 1988-89 for a consideration of Rs. 10,00,000 by a registered sale deed dated 27-7-1987. The assessee entered into an agreement for purchase of an urban house property for a sum of Rs. 8,50,000 and had paid Rs. 3,50,000 in the assessment year 1988-89. The assessee purchased the said property by a registered sale deed on 15-12-1988 by paying a balance of Rs. 5,00,000. The assessee had to file returns by 30-7-1988.

2. The assessing officer issued notice to the assessee u/s 148 of the Income Tax Act. The assessee on 27-2-2000 filed the returns declaring the income as nil for tax purpose.

3. It is the contention of the assessee that in the assessment year of sale, the assessee entered into an agreement for purchase and paid an advance of Rs. 3,50,000. The balance was paid and registered sale deed is taken in the next year.

4. The assessing officer held that the unutilised sale price of Rs. 5,00,000 is not invested as required u/s 54(2) of the Income Tax Act. Therefore, the assessee is

not entitled to exemption and that the assessee is liable to pay capital gain tax of Rs. 5,00,000. The Commissioner (Appeals) in appeal upheld the order of the assessing officer The Tribunal also upheld the order of the assessing officer. The assessee is in appeal.

5. The following is the substantial question of law that would arise for consideration :

Whether the Tribunal was justified in holding that the deposit of Rs. 5,00,000 made by the appellant in a bank account before the due date for filing the return of income is not eligible for deduction u/s 54 of the Act under the facts and circumstances of the appellants case ?

6. The provisions of sections 54(1) and (2) and 139(4) of the Act are extracted hereunder for convenient reference :

54(1) : Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or HUF, the capital gain arises from the transfer of 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,--

(i) if the amount of the capital gain is greater than the cost of the residential house so purchased or constructed (hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of new asset shall be charged u/s 45 as the income of the previous year, and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil, or

(ii) if the amount of capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged u/s 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of capital gain.

54(2) : The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income u/s 139, shall be deposited by him before due date applicable in the case of the assessee for furnishing the return such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139 in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:

Provided that the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section(1), then,--

(i) the amount not so utilised shall be charged u/s 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

139(4) : Any person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under sub-section (1) of section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier :

Provided that where the return relates to a previous year relevant to the assessment year commencing on the 1-4-1988, or any earlier assessment year, the reference to one year aforesaid shall be construed as a reference to two years from the end of the relevant assessment year.

7. The section 54(1) declares that when the assessee sells any long-term capital asset, the assessee should purchase the building within one year before the transfer or within two years after the transfer by investing capital gains. In which event the assessee will not be liable for capital gain tax.

8. The section 54(2) declares that within one year from the date of transfer if the capital gain is not invested in purchase of building, he should deposit the amount in the Capital Gain Account Scheme or else the assessee should invest the capital gains before filing of return within the permitted period u/s 139. In which event, the assessee will not be liable to pay capital gain tax.

9.The section 139(4) declares that the assessee should file returns within the time prescribed, if he fails to file returns, he may file returns for any previous year at any time before expiry of one year from the end of relevant assessment year.

10. In the instant case, the due date for filing of return is 30-7-1988. u/s 139(4) the assessee was entitled to file return in the extended time, which is within 31-3-1990.

11. The extended due date u/s 139(4) would be 31-3-1990. The assessee did not file the return within the extended due date, but filed the return on 27-2-2000. However, the assessee had utilised the entire capital gains by purchase of a house property within the stipulated period of section 54(2) i.e., before the extended due date for return u/s 139. The assessee technically may have defaulted in not filing the return u/s 139(4). But, however, utilised the capital gains for purchase of property before the extended due date u/s 139(4). The contention of the revenue that the deposit in the scheme should have been made before the initial due date and not the extended due date is an untenable contention.

12. The Gauhati High Court in Commissioner of Income Tax Vs. Rajesh Kumar Jalan, has taken a similar view that the time-limit for deposit under the scheme or utilisation can be made before the due date for filing of returns u/s 139(4).

13. For the reasons and discussions made above we answer the substantial question of law in favour of the assessee. The appeal is allowed.