

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

ON THE 5TH DAY OF DECEMBER, 2018

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

AND

THE HON'BLE MR. JUSTICE K. NATARAJAN

INCOME TAX APPEAL NO.217 OF 2018

BETWEEN:

1. THE PR. COMMISSIONER OF INCOME-TAX
5TH FLOOR, BMTc BUILDING,
80 FEET ROAD, KORAMANGALA,
BENGALURU.
2. THE ASST. COMMISSIONER OF
INCOME-TAX,
CIRCLE-1(2)(1),
2ND FLOOR, BMTc BUILDING,
80 FEET ROAD, KORAMANGALA,
BENGALURU.

... APPELLANTS

(BY SRI K.V. ARAVIND, ADVOCATE)

AND:

SHRI DILIP RANJREKAR
NO.6B, NITESH MAYFAIR,
31, KASTURBA ROAD CROSS,
BENGALURU.

... RESPONDENT

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BENGALURU, IN I.T.A. NO.858/BANG/2016 DATED 10-11-2017 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-1(2)(1), BENGALURU.

THIS INCOME TAX APPEAL COMING ON FOR ADMISSION THIS DAY, RAVI MALIMATH, J., DELIVERED THE FOLLOWING:

J U D G M E N T

The assessee is a Consultant. He filed his return of income for the Assessment Year 2012-13 declaring a income of Rs.1,18,03,300/-. His case was taken up for scrutiny and the assessment was completed under Section 143(3) of the Income Tax Act, 1961, (for short, 'the Act'). The assessee's income was determined at Rs.5,16,93,547/- based on additions and deletions. Aggrieved by the same, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The appeal was partly allowed by granting

relief. The Authority deleted the additions made by the Assessing Officer on account of denial of exemption under Section 54 of the Act. However, he did not render any finding on the variations made by the Assessing Officer to the computation of the long term capital gain. In respect of the additions on account of withdrawal from provident fund amount, the Commissioner of Income Tax (Appeals) deleted Rs.82,00,783/- without rendering any finding in respect of the interest received on Provident Fund balance. Aggrieved by the same, the Revenue and assessee approached the Tribunal. The Tribunal partly allowed the appeal filed by the Revenue as well as the assessee's cross-objection. Questioning the same, the Revenue has filed this appeal on the following substantial question of law:

Whether on the facts and in the circumstances of the case and in law, the Tribunal is right in law in holding

that assessee is entitled for Section 54 deduction in respect of amount invested within one year as non-completion of the construction of flat was beyond the control of the assessee by placing reliance on the decision of B.S. Shanthkumari and Sambandam Udaykumar of this Hon'ble Court?

2. The Tribunal, while considering the said issue, relied on the earlier judgment of this Court in the case of COMMISSIONER OF INCOME-TAX v. SAMBANDAM UDAYKUMAR reported in (2012) 19 TAXMANN.COM 17 (KAR.), wherein it was held that the assessee had invested certain amounts within a period of twelve months from the date of realisation of sale proceeds of share. The sale deed was produced before the Assessing Authority showing the transfer of property in his name. The assessee was also put in possession of the property. Therefore, the material indicated that the assessee had invested the sale consideration in

acquiring a residential premises and taken possession of the same. The object of enacting Section 54 of the Act is to encourage investment in a residential building is completely fulfilled. It was held that the Tribunal was justified in extending the benefit of Section 54F of the Act to the extent of investment made within a period of twelve months.

3. In the instant case, the investment is made in a new property. The construction was not completed within a period of three years as narrated in Section 54 of the Act. The delay was not because of the assessee, but beyond his control, since the construction was put up by the builder. He has invested the amount of Rs.2,26,82,097. Therefore, following the aforesaid judgment, the Tribunal rightly held that the said investment is made towards construction of the property. Therefore, it requires to be exempted. Under these circumstances, we do not find any error in

arriving at such a conclusion. Therefore, we are of the view that the said substantial question of law would not arise for consideration in this appeal.

4. However, the learned counsel for the appellants pleads that based on the available material, yet another substantial question of law arises for consideration. Therefore, he has filed a memo indicating the substantial question of law. The same reads as under:

Whether the Tribunal was correct in holding that a sum of Rs.37,93,588/- being the accumulated balance upto retirement is eligible for exemption under Section 10(12) of the Act?

5. In the instant case, The assessee retired on 1-4-2002. As on that date, the amount accumulated in the Provident Fund was Rs.37,93,888/-. He did not

withdraw the same. He sought to withdraw it on 11-4-2011. The accumulated balance as on that date was Rs.82,00,783/- which constituted the interest on the amount of Rs.37,93,588/- as on 1-4-2018 onwards.

6. By relying on the provisions of Section 10(12) of the Act, the Tribunal held that so far as to the extent of the amount as on the date of retirement is concerned, the assessee is eligible for exemption. Therefore, law has been rightly applied by the Tribunal. Hence, we do not find the same constitutes any substantial question of law. What is relied by the Assessing Officer is only the amount as was available on the date of retirement as on 1-4-2002. It is the amount on that date that was held to be eligible for exemption and not the accumulated amount. Therefore, no substantial question of law requires to be determined by this Court.

Hence, the appeal, being devoid of merit, is dismissed.

SD/-
JUDGE

SD/-
JUDGE

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