

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 16TH DAY OF OCTOBER 2008

PRESENT

THE HON'BLE MR.JUSTICE K.SREEDHAR RAO

AND

THE HON'BLE MR.JUSTICE C.R.KUMARASWAMY

I.T.A.NO.144 OF 2004

BETWEEN:

1. The Commissioner of Income Tax
Company Circle
C.R.Building
Queens Road
Bangalore
2. The Deputy Commissioner of Income Tax
Company Circle 4(1)
C.R.Building
Queens Road
Bangalore

-Appellants

(By Sri M.V.Seshachala, Advocate)

AND:

M/s Bedi and Bedi Pvt.Ltd.
CASA Grand 18/3
III Cross
Nandi Durga Extension
Jayamahar
Bangalore 560 046

-Respondent

(By Sri S.Parthasarathi and Y.V.Raviraj, Advocates)



This Income Tax Appeal is filed under Section 260A of the Income Tax Act, 1961, seeking to set aside the orders passed by the Income Tax Appellate Tribunal, Bangalore in ITA No.350/Bang/2003 dated 20.10.2003 and confirm the orders passed by the Appellate Commissioner confirming the order passed by the Assistant Commissioner of Income Tax, Company Circle 4(1), Bangalore.

This Income Tax Appeal coming on for Hearing this day, SREEDHAR RAO, J. delivered the following:

J U D G M E N T

Respondent-assessee, owner of non-agricultural land, entered into a written agreement with a builder for development of the property on 1.11.1991. Possession of the property was delivered to the builder under the agreement. Cash consideration amount agreed to be payable by the developer in a sum of Rs.59,58,512/-, was agreed to be payable in instalments. From the date of agreement, builder started paying the instalments in accordance with the terms of the contract. The developer paid the complete sale consideration in instalments in the year 1994-95 in full and final settlement. Assessee filed returns for capital gains for the assessment year



1996-97. The A.O. reopened the assessment in the year 1994-95 and assessed capital gains for the said assessment year.

2. Per contra, it is the contention of the assessee that the capital gains have to be assessed when the possession of the property was delivered under the agreement for sale under Section 53A of Transfer of Property Act, or in the alternative, the capital gains can be reckoned from the date of registration of sale which pertains to the assessment year 1996-97.

3. The Commissioner of Income Tax (CIT, for short) in appeal upheld the order of the Assessing Authority. Tribunal set aside the order of the CIT and upheld the contention of the assessee. State is in appeal.

4. Following are the substantial questions of law for our consideration:

- (1) Whether the Tribunal was correct in holding that there was no transfer as per Section 2(47) of the Act read with Section 53A of the Transfer of Property Act as held by the assessing officer that the entire consideration amount had been received by the assessee and possession of the



property taken over by the purchaser before 31.03.1994 and therefore capital gains tax arose during the assessment year 1994-95?

(2) Whether the Tribunal was correct in holding that the assessing officer was not correct in re-opening assessments under Section 147 of the Act as there was no escapement of income as contemplated under the said provision for the assessment year 1994-95?

(3) Whether the Tribunal was correct in holding that the capital gains arising on the sale of the property cannot be brought to tax during the assessment year 1994-95 as the same had been assessed during the assessment year 1996-97 which had been done by the assessing officer only on a protective basis?

4. Section 2 (47) of the Income Tax Act defines and relates 'transfer' to the capital assets, sale, exchange or relinquishment of the asset, or the extinguishment of any rights therein or any transaction involving the allowing of the possession of any immovable property to be taken under section 53A of the Transfer of Property Act, 1882.



5. In the instant case, delivery of possession is effected under an agreement for sale on 1.11.1991. Technically that should be reckonable date for assessing capital gains. It is also the case of the assessee that he had executed a registered sale deed in favour of the nominees of the builder and thereby all his rights in the property got fully extinguished in the financial year 1995-96. Assessee had received complete consideration amount in the assessment year 1994-95. There was no delivery of possession or extinguishment of right for the said assessment year. Therefore, transfer in question becomes assessable for the assessment year 1992-93 or 1996-97, and at any rate, it cannot be for the year 1994-95.

6. It is submitted that the assessee has submitted returns for the assessment year 1996-97 and the assessment order is finalised. In that view, it is no more desirable to harp on technicalities to upset the assessment order, since the issue is only a technical issue without any financial implication for the revenue.



7. In that view, questions of law framed are held against the State. Appeal is dismissed.

Sd/-
Judge

Sd/-
Judge

*rk