

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 06.10.2009

Coram

The Honourable Mr. Justice F.M. IBRAHIM KALIFULLA

and

The Honourable Mrs. Justice R. BANUMATHI

T.C. (A) No.913 of 2009

The Commissioner of  
Income Tax,

Erode.

... Appellant

..vs..

Shri K.K. Palanisamy

... Respondent

Tax Case Appeal filed against the order dated 11.1.2008 passed by the  
Income Tax Appellate Tribunal, "D" Bench, Chennai passed in ITA No.1165/Mds/2004.

For Appellant : Mr. T. Ravikumar

JUDGMENT

(Judgment was delivered by F.M. IBRAHIM KALIFULLA, J.)

The Revenue has come forward with this appeal raising the following  
substantial question of law:-

"Whether on the facts and in the circumstances of the case, the Tribunal was  
right in law in holding that the re-opening of assessment under section 147 was  
not proper and denial of exemption under Section 54 was bad for the  
assessment year 1995-96?"

2. As it is seen from the order of the assessing Authority passed under Section  
143(3) read with 147 of the Income-tax Act, 1961 (hereinafter referred to as "the  
Act"), the assessee's return for the assessment year 1995-96 was originally

processed under Section 143(1)(a) of the Act on 23.9.1996. Subsequently, it was taken up for scrutiny under Section 143(3) of the Act. At that point of time, the sale of house property by the assessee for a consideration of Rs.18, 00,000/- was very much known to the assessing Authority. The assessee admitted the capital gain of Rs.6, 07,035/-.

3. The assessment was concluded under Section 143(3) of the Act and was completed on 27.2.1997, which determined the capital gain of Rs.1,00,000/- as against "nil" capital gain determined earlier under Section 143(1)(a) of the Act. The deduction claimed by the assessee under Section 54 of the Act to the extent of Rs.12, 50,000/- was allowed at that point of time. It is only thereafter the present reassessment proceedings came to be initiated by issuing notice under Section 148 of the Act. The alleged escapement of capital gain taxed on the sum of Rs.1, 37,788/-, which was earlier allowed under Section 54 in the proceedings dated 27.2.1997.

4. The Assessing Authority, having determined the tax liability by an order dated 27.2.1997, the matter went before the Commissioner of Income-tax (Appeals), who took the view that it was not really a case of escaped assessment, but was one of change of opinion by the assessing Authority. In the order of the Commissioner of Income-tax (Appeals), in paragraph 4.4, the Commissioner of Income Tax(Appeals) noted that the claim of the assessee for deduction under Section 54(1) of the Act to the extent of Rs.12,50,000/- was considered by the assessing Authority while passing orders under Section 143(3) of the Act. Under the circumstances, the present attempt of the assessing Authority in reopening the case under Section 147 of the Act cannot be permitted. The Tribunal also confirmed the view of the Commissioner of Income-tax (Appeals), taking note of all the above factors.

5. In this context, in the decision of the Honorable Supreme Court reported in (2003) 264 ITR 566 (COMMISSIONER OF INCOME TAX v. FORAMER

FRANCE, the Supreme Court made it clear that when the reassessment notices were issued and when admittedly there is no failure on the part of the assessee, who disclosed fully and truly all the material facts for assessment, it can only be construed as change of opinion and that it will not come under the category of escapement of assessment.

6. Having regard to the above legal position, we do not find any scope to entertain this appeal inasmuch as there is no question of law much less substantial question of law for consideration. The appeal fails and the same is dismissed.

(F.M.I.K.J.) (R.B.I.J.)  
06.10.2009

Index:- Yes.

Internet:- Yes.

ssa.

To

The Commissioner of  
Income Tax,  
Erode.

F.M. IBRAHIM KALIFULLA, J. &  
R. BANUMATHI, J.

T.C. (A) No.913 of 2009

