

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 4<sup>TH</sup> DAY OF JANUARY, 2010

PRESENT

THE HON'BLE MR.JUSTICE D V SHYLENDRA KUMAR

AND

THE HON'BLE MR.JUSTICE N ANANDA

Income Tax Appeal No.449 of 2009

**Between:**

M B RAMESH  
AGED ABOUT 63 YEARS  
S/O SRI C BASAVARAJ URS  
NO.222, NEETHI MARGA  
SIDDARTHA NAGARA  
MYSORE - 11 ... APPELLANT

[BY SRI S PARTHASARATHI, ADV.,]

**And:**

THE INCOME TAX OFFICER  
WARD 1[2], SHILPASHREE  
55/1, VISHWESHWARANAGAR  
MYSORE - 570 008 ... RESPONDENT

THIS APPEAL IS FILED UNDER SEC. 260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 19.6.2009 PASSED IN ITA NO.418/BNG/2006 FOR A.Y.1997-98, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN ITA NO.418/BNG/2006 DATED 19.6.2009 IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL COMING ON FOR ADMISSION, THIS DAY, D V SHYLENDRA KUMAR.J., DELIVERED THE FOLLOWING:

### JUDGMENT

The appellant is an individual assessee and in respect of return of income for the assessment year 1997-98 had claimed certain exemptions under section 54 of the Income Tax Act, 1961 [for short 'the Act'] on the premise that the profits earned out of sale of the residential property has been reinvested in a like property and therefore sought to reduce the taxable income to the extent of exemption permitted in terms of section 54 of the Act.

2. While the assessing authority refused exemption under section 54 of the Act on a factual verification of the place where the assessee claimed to have had the residential property as the assessing authority found only a mud structure not worthy of caption 'residential house', the aggrieved assessee appealed to the first appellate authority.

3. The first appellate authority took the view that the property in question had already been demolished and accepted the claim of the assessee that the assessee had in

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turn sold the property in which the gains had been reinvested by some other person and that person had reinvested for profits etc., and therefore there is no question of denial of benefit under section 54 of the Act under the head 'capital gains'.

4. The revenue went in further appeal to the tribunal who found that as a matter of fact there was never any structure fitting into the description of 'habitable residential house' on the property which had been initially sold by the assessee and therefore allowed the appeal of the revenue, reversed the finding of the first appellate authority and affirmed the order of the assessing authority.

5. For such verification, the tribunal relied upon the Panchayat records which on verification, the Tribunal found that it did not indicate the structure being in place in respect of the property held and sold by the assessee.

6. Sri Parthasarathi, learned counsel for the appellant - assessee would submit that the tribunal was not right in



taking the view that there was no residential property on the site sold by the assessee in respect of which sale the assessee had claimed the benefit under section 54 of the Act for the reason that just because the structure was not a permanent one it cannot be called that it was not a residential house at all; that it was a fact that the assessee had rented out the structure and had been receiving rents and that was proof enough of standing structure on the site in question etc.,.

7. It is also the submission of Sri Parthasarathi, learned counsel for the appellant that there were two adjacent sites and on one side at least there was a structure put up and to that extent the tribunal should have extended the benefit under section 54 of the Act and should not have reversed the finding of the first appellate authority in its entirety.

8. We are unable to appreciate the submission for the simple reason that as to whether there was a structure on both sites or one site or whether there was no structure at



all is a finding of fact which we are afraid cannot disturb in an appeal under section 260-A of the Act.

9. It is for this reason, we are not admitting this appeal which is hereby dismissed.

Sd/-  
JUDGE

Sd/-  
JUDGE

AN/-