

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF DECEMBER, 2014

PRESENT

THE HON'BLE MR. JUSTICE N.K. PATIL

AND

THE HON'BLE MRS. JUSTICE RATHNAKALA

ITA NO.1020/2008

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX
C R BUILDING
ATTAVARA
MANGALORE.
2. THE ASSISTANT COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE-2(3)
C.R.BUILDING,
ATTAVARA
MANGALORE.

... APPELLANTS

(BY SRI K.V.ARAVIND, ADVOCATE)

AND

THE MEDICAL RELIEF SOCIETY OF SOUTH KANARA
UNIVERSITY BUILDING,
MADHAVA NAGAR,
MANIPAL-576 104.

... RESPONDENT

(BY SRI S PARTHASARATHI, ADVOCATE)

THIS ITA IS FILED U/S.260-A OF I.T.ACT, 1961 AGAINST THE ORDER DATED 26-06-2008 PASSED IN ITA NO.415/BANG/2008, FOR THE ASSESSMENT YEAR 2001-2002, TO (I) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN (II) ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN ITA NO.415/BANG/2008, DATED 26-06-2008 CONFIRM THE ORDERS OF THE ASSESSING OFFICER.

THIS APPEAL COMING ON FOR FINAL HEARING THIS DAY, N.K. PATIL, J., DELIVERED THE FOLLOWING:-

JUDGMENT

In this appeal, the appellants are questioning the correctness of the order dated 26.6.2008 bearing COB.No.24/BANG/2008 (in ITA No.415/BANG/2008), on the file of the Income Tax Appellate Tribunal, Bangalore, confirming the order passed by the Appellate Commissioner and confirm the order passed by the Assistant Commissioner of Income Tax, Central Circle-2(3), Bangalore.

2. In this case, the only substantial question of law to be considered is, whether the appellate authorities were correct in holding that the relinquishment of a right in the partnership firm

Bangalore Housing Development and Investment (Morzaria Housing Complex) by the assessee and receipt of consideration of Rs.33,66,99,989/- would not amount to a transfer and no capital gains tax is leviable and whether it is independent or exemption u/s. 10(23C)(via) of the Act.

3. We have heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent.

4. During the course of submission, the counsel appearing for the appellants submitted that, in the light of the judgment of the Co-Ordination Bench of this Court dated 1.4.2013 passed in ITA No.1344/2006 in the case of The Commissioner of Income Tax, Mangalore and another Vs. M/s.Manipal Academy of Higher Education, this appeal may be disposed of setting aside the order passed by the Appellate Commissioner and the Income Tax Appellate Tribunal and also the order passed by the assessing authority to

enable the original authority to consider the matter afresh in accordance with law, in the light of the order passed by the Co-Ordination Bench of this Court dated 1.04.2013 passed in ITA No.1344/2006 and also relevant provisions of the Act and Rules where exemption given to the respondent is sustainable in law.

5. In reply to the submission made by the learned counsel appearing for the appellants, learned counsel appearing for the respondent Sri S. Parthasarathi fairly submitted and not disputed the judgment passed by the Co-Ordination Bench of this Court dated 1.4.2013 passed in ITA No.1344/2006 and he fairly submits that the submission made by the counsel appearing for the appellants, as stated supra, may be placed on record and this appeal may be disposed of, in terms of the judgment passed in ITA No.1344/2006 dated 1.4.2013, leaving open all the contentions urged by both the parties.

6. The submissions made by the learned counsel appearing for the appellants and learned counsel appearing for the respondent, as stated supra, are placed on record.

7. This appeal is allowed in terms of the judgment dated 01.04.2013 passed in ITA No.1344/2006 (The Commissioner of Income Tax, Mangalore and another Vs. M/s.Manipal Academy of Higher Education), setting aside the order passed by the Assessing Authority, the Appellate Commissioner and Income Tax Appellate Tribunal respectively and the matter stands remitted back to the assessing authority.

It is needless to clarify that the remaining substantial questions of law raised in the memorandum of appeal are left open and it is the duty of the assessing authority to consider the same after affording opportunity of hearing to both the parties afresh and to pass appropriate orders in accordance with law, in the light of the judgment dated 1.4.2013 passed in ITA

No.1344/2006 by the Co-Ordination Bench of this Court.

All the contentions urged by both the parties are left open.

SD/-
JUDGE

SD/-
JUDGE

AP/-/BMV*