IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

ITA.No. 260 of 2013 ()

AGAINST THE ORDER IN ITA 176/COCH/2012 of I.T.A.TRIBUNAL,COCHIN BENCH DATED 26-04-2013.

APPELLANT/RESPONDENT/APPELLANT:

SHRI, GEROGE DOMINIC,
C/O.CASINO HOTEL, W/ISLAND, COCHIN-3.

BY ADVS.SRI.JOSEPH MARKOSE (SR.)
SRI.V.ABRAHAM MARKOS
SRI.BINU MATHEW
SRI.TOM THOMAS (KAKKUZHIYIL)
SRI.ABRAHAM JOSEPH MARKOS
SRI.ABRAHAM VARGHESE THARAKAN

RESPONDENT/APPELLANT/DEPARTMENT:

ASSISTANT COMMISSIONER OF INCOME TAX,
CIRCLE 3 (1) MATTANCHERRY.

BY SRI. P.K.R. MENON (SR.) STANDING COUNSEL FOR INCOME TAX
SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 16-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

I.T.A.NO.260 OF 2013

APPENDIX

APPELLANT'S ANNEXURES:

ANNEXURE-A	A TRUE COPY OF THE ASSESSMENT ORDER DATED 28.12.2009.
ANNEXURE-B	A TRUE COPY OF THE ORDER PASSED IN THE APPEAL DATED 31.05.2012 OF THE COMMISSIONER OF INCOME TAX (APPEALS)-II.
ANNEXURE-C	A TRUE COPY OF THE ORDER DATED 26.04.2013 PASSED BY THE ITAT IN ITA NO.176/COCH/2012.

RESPONDENT'S ANNEXURES: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

I.T.A.No.260 of 2013

Dated this the 16th day of July, 2015

JUDGMENT

Antony Dominic, J.

The assessee has filed this appeal against the order passed by the Income Tax Appellate Tribunal, Cochin Bench in I.T.A.No.176/Coch/2012. By this order, the Tribunal has confirmed the order passed by the Assessing Officer denying exemption under Sec.54F of the Income Tax Act, 1961, which order was confirmed by the Commissioner of Income Tax (Appeals). It is aggrieved by these orders, the appeal is filed. The questions of law raised are the following:

> *"(a) Whether in the facts and circumstances of the case the Tribunal is justified in holding that the appellant is ineligible to claim exemption under Section 54F of the Act.*
>
> *(b) Whether in the facts and circumstances of the case the finding of the Tribunal that the residential house at Kadavanthra the construction of which had commenced before the date of transfer of the original asset and completed subsequently cannot be considered as an existing building on the date of transfer of the*

original asset in conformity with the object behind Section 54F of the Act.

(c) Whether in the facts and circumstances of the case is not the appellant eligible to get exemption from payment of tax on capital gain in respect of a flat acquired from M/s. JGT Constructions."

2. We heard the learned Senior Counsel for the appellant and the learned Senior Standing Counsel appearing for the Revenue.

3. The assessee had transferred an original asset mentioned in Sec.54F in the assessment year 2007-2008 and also acquired a new asset. However, he constructed a residential house which was completed in the assessment year 2009-2010. Taking note of this and also the proviso to Sec.54F that nothing contained in sub-section (1) of Sec.54F shall apply where the assessee constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset, the benefit of exemption be denied. It is this order of the Assessing Officer which was confirmed by all authorities.

4. Admittedly, the construction of the residential house was completed in the assessment year 2009-2010 and the original asset was transferred in the assessment year 2007-2008. This shows that the construction of the residential house was within a period of three years after the date of transfer of the original asset. Such being the case, the benefit of Sec.54F was rightly denied to the asssessee.

In such circumstances, we do not find any illegality in the orders passed. Therefore, answering the questions of law raised against the assessee, the appeal is dismissed.

Sd/-

ANTONY DOMINIC
JUDGE

Sd/-

SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-