

HC slams revenue for contending that profits on sale of flats were business profits first time before ITAT

Summary – The High Court of Karnataka in a recent case of Bernard Mathias Prabhu, (the Assessee) held that where revenue all through treated proceeds of flats received under land development agreement, etc. as short term capital gains, it could not for the first time before Tribunal claim it as business income.

Facts

- In December 1996, the assessee acquired a plot of land with an old house. On the very same day, he entered into a 'Joint Development Agreement' with a firm, in terms of which the assessee was entitled to 14 flats. Accordingly, in April 2000, the developer handed over 14 flats to the assessee. The assessee had sold 13 flats. There was a delay in completing the construction. Therefore, the assessee was also paid Rs. 8 lakhs as compensation. The Assessing Authority treated the entire amount as short term capital gain as against long-term capital gain claimed by the assessee.
- On appeal, the Commissioner (Appeals) set aside the order of the Assessing Authority and treated the income as a long-term capital gain.
- The revenue preferred appeal before the Tribunal and for the first time, it was contended that the said income was to be assessed as 'income from business'. The Tribunal declined to entertain the said ground, on the ground that it was not the case of the revenue either before the Assessing Authority or before the First Appellate Authority and thus, it dismissed the appeal.
- On appeal to High Court:

Held

- It was clear that the Assessing Authority assessed the said income as a short-term capital gain. It was the assessee who preferred an appeal to the Appellate Authority contending that it was a long-term capital gain, which case was accepted by the Appellate Authority.
- The revenue neither before the Assessing Authority nor before the First Appellate Authority claimed it as business income. Therefore, for the first time, before the Tribunal without any factual foundation, the said contention could not have been raised. The Tribunal was thus justified in declining to entertain the appeal on that ground. Accordingly, the appeal was to be dismissed.