

In the High Court of Judicature at Madras

Dated: 22.07.2014

Coram

The Honourable **Mr.JUSTICE R.SUDHAKAR**
and
The Honourable **Mr.JUSTICE G.M.AKBAR ALI**

Tax Case (Appeal) No.255 of 2014

Commissioner of Income Tax
Trichy

.... Appellant

Vs.

Shri Raya R.Govindarajan
46, J.P.Koil West Street,
Kumbakonam - 612 001.

.... Respondent

APPEAL under Section 260A of the Income Tax Act against the order dated 23.3.2012 in I.T.A.No.184/Mds/2011 on the file of the Income Tax Appellate Tribunal, Madras 'C' Bench for the assessment year 2007-08.

For Appellant : Mr.J.Narayanaswamy
Standing Counsel for Income Tax

J U D G M E N T

(Delivered by R.SUDHAKAR,J.)

This Tax Case (Appeal) is filed at the instance of the Revenue as against the order of the Income Tax Appellate Tribunal for the assessment year 2007-2008.

2. The respondent/assessee is carrying on Hotel business in the name and style of 'Hotel Rayas'. The assessment year in this case is 2007-2008. It is the case of the assessee that construction of hotel was started during April, 2006 and completed in March, 2007. The assessee filed return of income for the assessment year 2007-08 electronically on 13.10.2007 admitting a total income of Rs.9,12,613/-. The said return was processed under Section 143(1) of the Income Tax Act and was taken up for scrutiny and notice under Section 143(2) of the Income Tax Act was issued on 10.3.2008. The assessee was called upon to give details of the cost of construction and the source of income for the said construction vide Department's letter dated 06.11.2009. In response to the same, the assessee produced the bills, vouchers, documents and records and admitted initially a sum of Rs.1,05,80,000/- towards cost of construction, whereas, the Department valuer, valued the cost of the construction at Rs.2,13,60,000/-. Thereafter, it appears, that the assessee had stated that the actual cost of construction upto 31.3.2007 was Rs.1,52,16,465/- and not

Rs.1,05,80,000/-. In effect, the assessee had admitted a sum of Rs.1,07,80,041/- as cost of construction upto 31.3.2006. The assessee had given the working of the cost of construction on various heads by relying upon certain materials. The Valuation Cell of the Department, however, did not accept such working and proceeded to value the property at Rs.2,13,60,000/-.

3. The contention of the assessee before the Assessing Officer was that if the rate fixed by the State P.W.D. was adopted by the Valuation Cell, then there is not much of a difference between the cost admitted by the assessee and the cost determined by the Valuation Cell. The assessee also contended that the Valuation Cell has adopted the rates fixed by the Central P.W.D to arrive at a higher figure of Rs.2,13,60,000/- towards the cost of construction. According to the assessee, this may not be appropriate and correct.

4. The Assessing Authority, however, declined to accept the valuation as propounded by the assessee based on the rates fixed by the State P.W.D and proceeded to determine the cost of construction as per the Valuation Cell, which is based on the rates fixed by the Central P.W.D. According to the Assessing Officer, the method of valuation is scientifically arrived by the Central P.W.D. The net result of the Assessing Officer's finding as above results as follows:

Total Cost of construction as reported by Valuation Cell	Rs.2,13,60,000
Less: Deduction as discussed above	Rs.1,92,445/-
Net Cost of construction	Rs.2,11,67,555/-
Less: Cost of Construction as admitted by the assessee	Rs.1,52,16,465/-
Difference in cost of construction	Rs.59,51,090/-

Hence a sum of Rs.59,51,090/- was treated as unaccounted investment in the cost of construction under Section 69 of the Income Tax Act for the assessment year 2007-08 and accordingly, the tax payable by the assessee was determined at Rs.26,64,612/-. Penalty proceedings was to be initiated separately in terms of Section 271(1)(c) of the Income Tax Act.

5. Aggrieved by the order of the Assessing Officer, the assessee has preferred an appeal before the Commissioner of Income Tax (Appeals), who by order dated 10.11.2010, relying upon the decision of this Court in the case of **CIT V. V.T.Rajendran** reported in **288 ITR 312** as well as the earlier orders of the Tribunal, accepted the contentions of the assessee. The Commissioner of Income Tax (Appeals), while allowing the appeal filed by the assessee, held as follows:

"I find force in the contention of the authorized representative. The Assessing Officer had not pointed out any defect in the construction cost recoded in the books of account before making a reference to the Valuation Cell and on this point

alone, respectfully following the decisions of the Jurisdictional High Court and Tribunal relied on by the appellant, the addition deserves to be deleted. The learned representative has gone a step ahead and had effectively countered the cost estimation by reworking the estimate and proving that there are deficiencies in the report as to the adoption of period of construction; inclusion of items separately accounted and adoption of CPWD Rates instead of State PWD Rates which has resulted in huge difference. However if the above said deficiencies are cured and the cost reworked, the difference on estimation is less than 5%. Hence appellant is otherwise also entitled to succeed on merits. I, therefore, hold that the cost declared by the appellant should be accepted in place of the cost determined by the Valuation Cell."

6. Aggrieved against the order of the Commissioner of Income Tax (Appeals), the Revenue has preferred an appeal before the Income Tax Appellate Tribunal. The Tribunal accepted the case of the assessee that the valuation should be based on the rates fixed by the State P.W.D. and after taking into consideration the materials placed, partly allowed the appeal holding that the difference between the cost of construction admitted by the assessee at Rs.1,52,16,465/- and the cost of construction as per the rates fixed by the State P.W.D. at Rs.1,58,60,068/- would amount to undisclosed investment under Section 69 of the Income Tax Act and hence a sum of Rs.6,43,603/- was determined as undisclosed investment.

7. Aggrieved by the order of the Income Tax Appellate Tribunal, the Revenue has preferred the present Tax Case (Appeal).

8. Heard Mr.J.Narayanaswamy, learned Standing Counsel appearing for the appellant at length and perused the materials placed before this Court. We have also perused the decisions of this Court reported in **(2011) 331 Taxmann 216 (Madras) (Commissioner of Income-Tax V. Smt. V. Gajalakshmi); (2007) 288 ITR 312 (Commissioner of Income-Tax V. V.T.Rajendran) and 217 Taxmann 40 T.M.P.N.Murugesan -vs- Commissioner of Income-tax.**

9. The issue involved in this Appeal is "in a case of dispute where the assessee's valuation was not accepted, whether the rates fixed by the State P.W.D. or the Central P.W.D. should be adopted?"

10. Since we are considering on this short campus, we are not inclined to issue notice to the respondent/assessee.

11. A perusal of the order of the Assessing Officer shows that the Assessing Officer was of the view that the State P.W.D rates should not be accepted, since the Central P.W.D. has scientifically arrived at the rates. This finding of the Assessing Officer is not supported by any Departmental Notification or circular that only CPWD rates should be accepted. We have

also noticed that in the instant case, construction is in the temple city of Kumbakonam, which is not a Metropolitan town. Nevertheless, the State P.W.D was authorised to give valuation for all constructions in the State of Tamil Nadu. Admittedly, the assessee's property, which is a subject matter of consideration, is in the State of Tamil Nadu. There cannot be a different yardstick adopted for valuation within the State. This will result in incongruous results, as one Officer is taking the rates fixed by the CPWD and another Officer is taking the rates fixed by State PWD.

12. In the case of ***T.M.P.N.Murugesan -vs- Commissioner of Income-tax*** reported in ***217 Taxmann 40***, this Court, while considering the similar issue whether the rates fixed by the CPWD alone could be taken into consideration towards arriving at a cost of construction, held as follows:

"7. It is seen from the narration of the facts that evidently, except for the bare accounts maintained, there are no materials in the form of vouchers, to cross check the quantum of materials used in the construction. In the absence of basic records with regard to the extent of materials, the materials purchased and consumed and the accounts thereby incomplete, the Assessing Officer referred the valuation to the Valuation Officer. As is evident from the reading of assessment order, the Departmental Valuation Officer adopted CPWD rates, which were the rates prevalent in Delhi and other cities for working out the cost of construction of the building and the assessee's claim was rejected.

8. We do not find any justifiable ground to adopt the rate

prevailing in cities like Delhi for the purpose of working out the cost of construction of house at Virudhunagar. When the details regarding the cost of construction at PWD rates for Virudhunagar District is applicable, there is no reason for the Valuation Officer to adopt the rate, which is prevalent at distant places and metropolitan cities like Delhi. Hence, on going through the Valuation report, we find that the authorities below committed serious error, hence, we feel that the proper course herein is to remit the matter back to the Assessing Officer to apply the PWD rates at Virudhunagar District in the year 1998-99 with regard to the cost of construction of the assessee's house, so as to ultimately find out what could be the deemed income under Section 69B for the purpose of assessment. "

13. Therefore, it is evident that in a case of this nature, the Department should give credence to the valuation of the State P.W.D. in relation to the value of construction either on the side of the assessee or on the side of the Department. Since we find that there is no specific notification or circular indicating that CPWD rate alone should be adopted in arriving at the cost of construction, the Tribunal is justified in adopting the valuation of the State P.W.D. rates for the purpose of determining the cost of construction.

14. For the foregoing reasons, we pass the following order:

(i) On the question of law raised, we are of the view that

the Tribunal was justified in partly allowing the appeal filed by the Revenue and Consequently, the order of the Tribunal dated 23.3.2012 stands confirmed.

(ii)Consequently, the question of law is answered against the Revenue.

In the result, this appeal is dismissed. No costs.

Index :Yes/No
Internet:Yes/No
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(R.S.,J) (G.M.A.,J)
22.07.2014

To

1. The Income Tax Appellate Tribunal, Madras 'C' Bench.
2. The Commissioner of Income Tax (Appeals), Tiruchirapalli.
3. The Deputy Commissioner of Income Tax, Circle -I, Kumbakonam.

R.SUDHAKAR,J.
AND
G.M.AKBAR ALI,J.

SI

T.C.(A) No.255 of 2014

22.07.2014