In the High Court of Judicature at Madras

Dated: 23.07.2015

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The Honourable Mr.JUSTICE R.SUDHAKAR
and
The Honourable Ms.JUSTICE K.B.K.VASUKI

Tax Case (Appeal) No.512 of 2015

Commissioner of Income Tax
No.63, Race Course Road,
Coimbatore. .... Appellant/Respondent

Vs.

M/s.Gracious Knits
No.19/1, Rajivgandhi Nagar,
Chandrapuram East,
Tirupur - 641 608 .... Respondent/Appellant

APPEAL under Section 260A of the Income Tax Act against the order dated 17.10.2014 in I.T.A.No.1360/Mds/2014 on the file of the Income Tax Appellate Tribunal, Madras 'D' Bench for the assessment year 2008-09 against the order passed by the Commissioner of Income Tax (Appeals_-II, Coimbatore, dated 31.3.2014 in IT Appeal No.116/12-13 for the assessment year 2008-2009 as against the order passed by the Income Tax Officer, Ward 1(3) Tirupur in PAN/GIN.No.AACFG9802G, order dated 31.10.2013 for the assessment year 2008-2009.

For Appellant : Mr.T.R.Senthil Kumar
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 2008-2009 raising the following substantial questions of law:

"1. Whether in the facts and circumstances of the case, the Tribunal was right in directing the Assessing Officer to adopt the State P.W.D. rates on the ground that the building is located in interior Tamil Nadu?

2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the CPWD rates cannot be applied for the building in question when the DVO has clearly elaborated on the reasons for adopting the CPWD rates which is also in consonance with the Board's circular dated 13.12.1998 as against the State PWD rates?

3. Whether in the facts and circumstances of the case, the Tribunal was right in directing the AO to adopt State PWD rates whereas with the details given by the assessee, valuation is possible only as per CPWD rates?"

2. The respondent/assessee is carrying on business manufacturing hosiery garments. The assessment in this case relates to the assessment year is 2008-2009. The assessee filed its return of income for the said assessment year admitting total income of Rs.7,14,250/-. The case was selected for scrutiny and the Assessing Officer had completed the assessment. Thereafter, survey under Section 133A was conducted in the business premises of the assessee on 26.6.2008 and the Managing Partner of the firm admitted that certain amount was incurred for the construction of the factory building of the firm, which was accounted in the books of accounts of the firm. Thereafter, the assessment was reopened and assessment was once again made by the Assessing Officer by making addition of Rs.62,33,232/- being the difference in the value of the building accounted in the books of the accounts of the assessee, which was determined by the District Valuation Officer. Aggrieved by the said order of assessment, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), who upheld the order of the Assessing Officer, thereby dismissed the appeal.

3. Aggrieved by the said order of the Commissioner of Income Tax (Appeals), the assessee pursued the matter once again before the Tribunal contending that the District Valuation Officer had adopted the CPWD rate, but the property is situated in Tamil Nadu. The Tribunal, after hearing both sides, allowed the appeal holding as follows:

"We have heard rival submissions and carefully perused the materials available on record. We find merits in the arguments made by the Ld. A.R. The construction of the building is located in the interior Tamilnadu and the rates specified by the PWD would be more appropriate than the rates specified by the CPWD. Therefore, the Ld.DVO ought to have considered the rates prescribed by the PWD while valuing the building constructed by the assessee. Moreover, in many instances various judicial authorities have recommended 5% to 7.5% discounting factor in valuing the building on account of self-supervision and bulk purchase of materials. In the case of the assessee, there is no reason is stated by the Revenue as to why this benefit should be denied. The Revenue has also not brought out any materials on record to establish that the assessee had not supervised the construction of the building by its staff/partners. Considering the facts and circumstances of the case and the prayer and arguments of the Ld. Counsel for the assessee which was restricted to only these two issue and since the same could not be satisfactorily controverted by the Ld.Ar., we are of the considered view that the Ld.DVO/Ld.A.O., should have adopted the value specified by the PWD authorities instead of the value prescribed by the C.P.W.D. Authorities and further grant reduction of 7.5% on account of self-supervision and bulk purchase to the assessee. Therefore, we hereby direct the Ld. Assessing Officer to value the cost of the building as indicated herein above and complete the assessment accordingly. We further make it clear that our aforesaid decision is based on the arguments made by the Ld.A.R. and the Ld.D.R. at the time of hearing of the case before us and no further issues or grounds were raised by either party."

4. Aggrieved by the above-said order of the Tribunal, the Revenue is before this Court raising the above-mentioned substantial questions of law.

5. Heard the learned Standing Counsel appearing for the appellant and perused the materials placed before this Court.

6. In an identical circumstance, this Court, while deciding the issue that "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?", this Court following the decision in the case of T.M.P.N.Murugesan -vs- Commissioner of Income-tax reported in 217 Taxmann 40, held as follows:

"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. "

7. A perusal of the order of the Commissioner of Income Tax (Appeals) shows that the Commissioner of Income Tax (Appeals) was of the view that the State P.W.D rates should not be accepted, since the District Valuation Officer is expert in the subject. This finding of the Commissioner of Income Tax (Appeals) 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 Tirupur, 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.

8. 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.
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> 8. We do no 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. "

9. In the light of the above, following the decision of this Court dated 22.07.2014 in T.C.(A)No.255 of 2015 and the decision in the case of T.M.P.N.Murugesan -vs- Commissioner of Income-tax reported in 217 Taxmann 40, we do not find any reason to interfere with the order of the Tribunal. Accordingly, the Tax Case (Appeal) stands dismissed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal,
   Madras 'D' Bench.

2. The Commissioner of Income Tax
   (Appeals)-II, Coimbatore.

3. The Income Tax Officer,
   Ward I (3), Tirupur.

4. The Commissioner of Income Tax,
   No.63, Race Course Road,
   Coimbatore.

+ 1 cc to Mr.T.r. Sentilkumar, Advocate SR.37693

T.C.(A) No.512 of 2015

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Eu 08.09.15