IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 04.03.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MRS. JUSTICE S.VIMALA

T.C.A. NO. 488 OF 2008

Commissioner of Income Tax
Coimbatore. .. Appellant

- Vs -

K.Jayakumar .. Respondent

Appeal filed under Section 260-A of the Income Tax Act against the order dated 27.01.06 passed by the Income Tax Appellate Tribunal, 'D' Bench, Chennai, made in ITA No.1886/Mds/2003.

For Appellant : Mr. T.Ravikumar

For Respondents : Mr. S.Sridhar

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order of the Tribunal in dismissing the appeal filed by it, the Revenue is before this Court by filing the present appeal. This Court, vide order dated 2.7.08, while admitted the appeal, framed the following substantial questions of law for consideration :-

"*1) Whether on the facts and in the circumstances of* *the case, the Tribunal was right in directing the Assessing Officer to restrict the addition to Rs.8 Lakhs as offered by the assessee?*

2) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the CPWD rates cannot be applied to the commercial-cum-residential complex constructed at Coimbatore on the ground that Coimbatore is a small town?"

3. The short facts, in a nutshell, are as hereunder :-

The assessee constructed a shopping-cum-residential complex and returned the cost of construction at Rs.96,22,000/=, whereas the Assessing Officer, while completing the reassessment, arrived at the cost of construction based on the DVO report at Rs.1,34,04,992/=. The difference of Rs.37,82,992/= was made as an addition. The said addition was distributed in two assessment years, viz., 1997-98 and 1998-99 at Rs.27,63,062/= and Rs.10,19,930/= respectively.

4. Aggrieved against the said assessment, the assessee/appellant preferred appeal to the CIT (Appeals). On consideration of the entire matter, the CIT (Appeals) allowed the appeal filed by the assessee following

the decision of the Supreme Court in the case of ***Amiya Bala Paul – Vs – CIT (262 ITR 407 (SC))***, wherein the Supreme Court held that the Assessing Officer cannot refer the question to the DVO for estimating the cost of construction. The Revenue, aggrieved by the said order, preferred appeal to the Tribunal. Before the Tribunal, the assessee had offered for the addition of Rs.8 Lakhs as it was submitted that Coimbatore was a smaller town. The said addition was agreed by the Tribunal and the appeal filed by the Revenue was allowed in part affirming the other part of the order of the CIT (Appeals). Aggrieved by the said order of the Tribunal, the Revenue is before this Court by filing the present appeal raising the above substantial questions of law.

5. Heard Mr.Ravikumar, learned counsel appearing for the appellant/Revenue and Mr.Sridhar, learned counsel appearing for the respondent/assessee and perused the materials available on record.

6. It is brought to the notice of this Court by the learned counsel appearing on either side that the issue in the present case stands covered by the judgment of this Court in ***Commissioner of Income Tax – Vs – Raya R.Govindarajan (T.C.A. No.255 of 2014 dated 22.7.2014)***. In the said case, this Court held as hereunder :-

*"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 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."*

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.

7. Accordingly, following the decision cited supra, this Court is of the considered view that the Tribunal was justified in partly allowing the appeal

filed by the Revenue and consequently, the order of the Tribunal dated 27.1.06 stands confirmed. The ***substantial question of law is answered in favour of the appellant/assessee and against the Revenue.***

8. In the result, the appeal is dismissed. However, in the circumstances of the case, there shall be no order as to costs.

(R.S.J.) (S.V.J.)
04.03.2015

Index : Yes/No
Internet : Yes/No
GLN

To

1. The Asst. Commissioner of Income Tax
   Company circle II (4)
   Chennai 600 034.

2. The Income Tax Appellate Tribunal
   'B' Bench, Chennai.

<u>R.SUDHAKAR, J.</u>
AND
<u>S.VIMALA, J.</u>

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