

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2017

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.SUNDAR

T.C. (A) No.526 of 2017

Commissioner of Income Tax
Chennai. ... Appellant

-vs-

M/s.A.L.Homes
22, 2nd Street, Nehru Nagar,
Adyar, Chennai-20. ... Respondent

Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order dated 19.02.2016 made in I.T.A.No.1723/Mds/2012 on the file of Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, for the Assessment Year 2009-10. Preferred the order of the Commissioner of Income-Tax (Appeals)VIII, Chennai dated 14/6/2012 for the Assessment year 2009-10 and preferred against the Assessment order under section 143(3) of the Income Tax Act passed by the Income Tax officer, Business World-III (1) Chennai dt 30/12/2011.

For Appellant : Mr.S.Rajesh

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J U D G M E N T

(Judgment of the Court was delivered by
The Hon'ble Chief Justice)

This appeal filed by the Revenue is against an order dated 19.02.2016 passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai, dismissing the appeal being I.T.A.No.1723/Mds/2012 filed by the Revenue against an order of the Commissioner of Income Tax (Appeals)-VIII, Chennai, dated 14.06.2012, deleting certain additions made by the Assessing Officer to the income declared by the respondent-assessee, for the Assessment Year 2009-10.

2.From the facts as recorded, it appears that the respondent- assessee constructed flats at Old Mahabalipuram Road. The construction commenced in the Financial Year 2006-07 and was completed in the Financial Year 2008-09. The expenditure relating to Financial Year 2009-10 relates to unfinished work, such as flooring, lift, electric and other miscellaneous work.

3.In the course of assessment for the Assessment Year 2008-09, the Assessing Officer made a reference to the District Valuation Officer for estimation of the cost of construction. By a letter dated 31.01.2011, the District Valuation Officer estimated the cost of construction at Rs.48,45,39,000/-. The respondent-assessee objected to the valuation report, inter alia, contending that the assessee had been maintaining regular books of accounts and that cost of construction could not have been referred to the District Valuation Officer for estimation without first rejecting the books of accounts. The Assessing Officer, however, found that as per books of accounts of the respondent-assessee, the cost of construction was Rs.45,13,46,810/-. The District Valuation Officer estimated the cost at Rs.48,45,39,000/-. The difference of Rs.3,31,92,190/- was found to be unaccounted investment made by the respondent-assessee. The Assessing Officer, accordingly, added Rs.3,31,92,190/- to the income of the respondent-assessee.

4.The assessee filed an appeal before the Commissioner of Income Tax (Appeals) - VIII, which was registered as I.T.A.No.121/11-12(A)-VIII. The appeal was allowed by an order dated 14.06.2012, whereby the addition of Rs.3,31,92,190/- was deleted.

5.In deleting the addition, the Commissioner of Income Tax (Appeals) accepted the contention of the assessee that the Assessing Officer could not have made a reference to the District Valuation Officer for estimation of the cost, when the books of accounts of the assessee had not been rejected. Reliance was, in this context, placed on a decision of this Court in Arosan Subbiah vs. CIT, reported in 20 DTR 113 (2009).

6.The Commissioner of Income Tax (Appeals) further found that in any case, the difference in cost between the book figure and the estimate of the District Valuation Officer was only 6.85%. Statutorily, a reference to the District Valuation Officer might be made, only if, in the opinion of the Assessing Officer, the difference would exceed 15%. The Commissioner of Income Tax observed that margin of 15% was thus, an accepted norm in cases of valuation of property.

7. Before the learned Tribunal, it was argued on behalf of the respondent-assessee that the District Valuation Officer had estimated the cost of construction, ignoring the fact that after construction, the assessee had sold the flats to individual customers, who had made additional construction or improvements in the building and the cost of such additional construction or improvement could be added to the income of the purchasers of the flats and not to the income of the respondent-assessee.

8. The learned Tribunal, on consideration of the rival submissions, upheld the contention of the learned counsel for the respondent-assessee that when the assessee had been maintaining books of accounts, the Assessing Officer could not have referred the valuation of the cost of construction to the District Valuation Officer without rejecting the books of accounts maintained by the respondent-assessee. The learned Tribunal also found that it was not in dispute that the respondent-assessee had sold the flats and the majority of the purchasers had occupied the same. The cost of the improvements made had only to be considered as income in the hands of the purchasers.

9. The finding that additional constructions were made by purchasers and the cost thereof could not be added to the income of the respondent-assessee is a factual finding, which does not warrant interference under Section 260-A of the Income Tax Act.

10. The question of whether cost of construction can be referred to the District Valuation Officer for estimation without first rejecting the books of accounts maintained by the respondent-assessee has been answered in favour of the assessee by the Supreme Court in *Sargam Cinema vs. Commissioner of Income Tax*, reported in (2010) 328 ITR 513 (SC).

11. The learned counsel appearing on behalf of the appellant-Revenue has drawn our attention to the judgment of a Division Bench of the High Court of Andhra Pradesh in *Bharathi Cement Corporation (P) Ltd. vs. Commissioner of Income Tax*, reported in (2013) 33 taxmann.com 643 (Andhra Pradesh). The Division Bench of the High Court of Andhra Pradesh observed that for probing into the valuation of investment and the source of money for such investment, Section 142A(1) does not require that the Assessing Officer should first reject the books of accounts as a pre-condition for enquiring into the valuation of investments. The Division Bench further went on to add that no formal order rejecting the books of account was necessary, when there is no sufficient material or information to arrive at the fair market value of the investments so made.

12. However, the judgment of the Supreme Court in *Sargam Cinema (supra)* clearly lays down the law. The judgment in

Sargam Cinema (supra) may be short, as argued. However, the binding value of a judgment as a precedent does not depend on its length. The Supreme Court clearly held that "the Tribunal decided the matter rightly in favour of the assessee inasmuch as the Tribunal came to the conclusion that the assessing authority could not have referred the matter to the Departmental Valuation Officer (DVO) without the books of account being rejected. In the present case, a categorical finding is recorded by the Tribunal that the books were never rejected. This aspect has not been considered by the High Court. In the circumstances, reliance placed on the report of the DVO was misconceived." The judgment of the High Court was set aside on that ground.

13. Since the issue is covered by the judgment of the Supreme Court in Sargam Cinema (supra), this Tax Case Appeal is not entertained. There is no substantial question of law involved.

This Tax Case Appeal is, accordingly, dismissed. No costs.

sra

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

- 1.The Assistant Registrar,
Income Tax Appellate Tribunal,
'C' Bench, Chennai.
- 2.The Commissioner of Income-Tax
(Appeals)-VIII, Chennai.
- 3.The Income Tax Officer,
Business Ward-III(1),
Chennai.

+1CC to Mr.T.R.Senthil Kumar Advocate in SR.NO.68798

SS
MLT 13/11/2017

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