IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR. JUSTICE N.SATHISHKUMAR

Tax Case Appeal Nos.1569 & 1570 of 2008

L.S.Bhikam Chand Jain ....Appellant in both Appeals

-vs-

The Income Tax Officer
Ward-1(2)
Kanchipuram. ...Respondent in both Appeals

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'C' Bench, dated 08.02.2008 in ITA Nos.1796 and 1826/Mds/2007, for the Assessment year 2004-05.

For Appellant : Mr.R.Kumar

For Respondent : Mr.Karthick Ranganathan

JUDGMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

These appeals by the assessee are directed against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, dated 08.02.2008 in ITA Nos.1796 and 1826/Mds/2007, for the Assessment year 2004-05.

2.Heard Mr.R.Kumar, learned counsel for the appellant and Mr.Karthick Ranganathan, learned counsel for the respondent.

3.This Appeal has been admitted on 03.11.2008, on the following Substantial Question of Law:

> *"Whether the Appellate Tribunal is right in law in placing reliance on the Departmental Valuation Officer's report ignoring the ratio of the decisions of this Hon'ble Court in CIT Vs. Apsara Talkies (155 ITR 303) and CIT Vs. V.T.Rajemndram (288 ITR 312)?"*

4.The short issue which falls for consideration is as to whether the Tribunal was right in fixing the cost of construction as Rs.70,00,000/- as against Rs.38,00,000/- admitted by the assessee. The Assessing Officer while completing the assessment, vide order dated 07.02.2006 fixed the cost of construction at Rs. 89,64,700/-.

5.Aggrieved by the same, the assessee preferred appeal to the Commissioner of Income-tax (Appeals)-IX, Chennai (for brevity 'CITA'). The Commissioner vide order dated 30.04.2007 fixed the cost of construction at Rs.55,99,821/-. Both the assessee as well as the Revenue, were on the appeal before the Tribunal. The Tribunal dismissed the appeal filed by the assessee and partly allowed the appeal filed by the Revenue and fixed the cost of construction at Rs.70,00,000/-.

6. We have gone through order passed by CIT(A) and we find that CIT(A) has worked out the cost of construction, taking into consideration the valuers report as well as the cost mentioned in the agreement entered into between the assessee and the contractor and ultimately after granting rebate for self supervision and procurement of materials at 5%, estimated the cost of construction at Rs.55,99,821/-,

as against the cost admitted by the assessee at Rs.38,00,000/-. However, the Tribunal without assigning any reasons has fixed the cost of construction at Rs.20,00,000/- by stating that it would be fair and reasonable to determine the value at that rate. The Tribunal failed to consider the correctness of the order passed by CIT(A) but faulted the Assessing Officer.

7. In our considered view, the Tribunal ought to have assigned reasons as to why it was of the opinion that Rs.70,00,000/- should be fixed as the construction of the hotel building. It is not sufficient to just state that it would be fair and reasonable. Why such value is fair and reasonable should be disclosed and it should be manifest on the face of the order. Faced with this situation, we may have to remand the matter for fresh consideration before the Tribunal. However, we refrain from doing so taking note of the fact that the assessment relates to the assessment year 2004-05 and the assessment was completed on 07.02.2006. The order passed by the CIT(A) was on 31.05.2006 and the Tribunal passed the order on 23.02.2007. Therefore, it will be highly inequitable and harsh on the assessee to remand the matter to the Tribunal. Therefore, we are inclined to give a quietus to the matter by disposing of the appeal.

8. Accordingly, the appeals filed by the assessee are partly allowed and the cost of construction fixed by the CIT(A) is rounded off and fixed at Rs.60,00,000/- and the Substantial Question of Law is left open. No Costs.

[T.S.S., J.] & [N.S.K., J.]
13.11.2018

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To

1.The Income Tax Officer
Ward-1(2), Kanchipuram.

2.The Income Tax Appellate Tribunal Madras 'C' Bench.

T.S.Sivagnanam, J.
and
N.Sathishkumar, J.

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T.C.A.Nos.1569 & 1570 of 2008

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