DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.1294 OF 2017

Pr. Commissioner of Income Tax-22 ..Appellant
vs.
M/s. K.S. Constructions ..Respondent

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Mr. Suresh Kumar for appellant.

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CORAM : NITIN JAMDAR &
M.S.KARNIK, JJ.

DATE : 6 JANUARY 2020

P.C.:-

Heard learned counsel for the Appellant.

2. The Appellant – Revenue has challenged the order dated 12 August 2016 passed by Income Tax Appellate Tribunal in Income Tax Appeal No.7660/M/2014.

3. The Appeal pertains to the Assessment Year 2010-2011.

4. The Appellant – Revenue has framed the following questions as a substantial questions of law :-

"(A) Whether on the facts and circumstances of the case and in law the Hon'ble Income Tax Appellate Tribunal erred in deleting the addition of Rs.4,16,70,874/- on account of suppressed sale consideration in respect of the unit sold by the assessee at a lower rate than the other flats

in the same building even after the assessee failed to justify sufficiently before the Assessing Officer as to why the aforesaid flats were sold at a lower price ?"

(B) Whether on the facts and circumstances of the case and in law the Hon'ble Income Tax Appellate Tribunal should have upheld the addition of Rs.4,16,70,874/- towards suppressed sale consideration where the Hon'ble Income Tax Appellate Tribunal vide order dated 15/6/2011 in Income Tax Appeal No.55378/Mum/2009 in the case of ITO 19(3)(1) Mumbai vs Diamond Investment & Properties (Assessment Year 2005-06) had upheld similar addition of suppressed sale consideration under similar facts and circumstances which was upheld by Hon'ble Bombay High Court order dated 20/3/2014 in Income Tax Appeal No. 14 of 2012 ?"

5. The Respondent – Assessee had sold six units from a commercial complex. An addition of Rs.4.16 crore was made to the income of assessee. Assessee firm is builder and developer and engaged in the activity of buildings and redevelopment of real estate projects. Assessee during the year declared income from business and other sources. During assessment proceedings, Respondent showed income from sale of commercial units located in a commercial complex. Assessing Officer called for reasons for variation in the sale rate per sq. mtr. in respect of the units. The Respondent claimed that market value, as assessed by the stamp duty registering authority in the case of Unit No. 302 was Rs.1,44,58,500/-, as against agreement price of Rs.1.51 crore,

which is higher than the market value assessed by the stamp duty registering authority. The Assessing Officer observed that sale price of Unit No. 302 was less than the price at which similar commercial units had been sold to other buyers in the same building during the similar time period, therefore, the claim of assessee that sale price of Unit No. 302 was higher than the stamp duty is not relevant. Assessing Officer also rejected the submission of assessee that Unit No. 302 suffers from design disadvantages and it could not get any customers to purchase the premises of Unit No. 302. The Assessing Officer held that the prevailing rates were in the range of Rs.2,38,576/- to Rs.2,94,485/- per sq.mtr. and Respondent was unable to give convincing explanation. Accordingly, the Assessing Officer applied the rate of Rs.2,94,485.29 per sq. mtr. for computing the sale price of Unit No. 302 (192.78 sq. mtr.) and difference of Rs.4,16,70,874/- was treated by him as unaccounted income of assessee from sale of Unit No. 302, and added same to the income of assessee.

6. The Respondent filed an Appeal to the Commissioner of Income Tax (Appeals), who allowed the Appeal after considering the difference of sale transaction and holding that the sale was not under valued. The Tribunal has upheld the order passed by the Commissioner of Income Tax (Appeals).

7. Both, the Commissioner of Income Tax (Appeals) and Tribunal, have assessed the facts on record. The finding of fact is that Unit No. 302 suffers structural and locational disadvantage from the units which were taken into consideration as comparable units. The Tribunal also took into consideration that the price for sale consideration for Unit No. 302 was higher than the ready reckoner prepared by the State of Maharashtra for the stamp duty valuation. There is thus a finding of fact rendered by two authorities concurrently. The issue being one of the fact after assessment of evidence and the approach of the authorities in assessing the evidence is not having been found perverse, the Appeal does not give any rise to any substantial question of law. The Appeal accordingly dismissed.

(M.S.KARNIK, J.) **(NITIN JAMDAR, J.)**

Diksha Rane Digitally signed by Diksha Rane Date: 2020.01.15 17:43:56 +0530