

(2002) 10 KL CK 0007

In the High Court Of Kerala

Case No : IT Appeal No's. 117, 145 and 165 of 2000 18 October 2002 & Income Tax A. No's. 117, 145 and 165 of 2000

Capricon Shopping Complex

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 18-10-2002

Acts Referred:

Citation : (2003) 127 TAXMAN 230

Hon'ble Judges : K. Balakrishnan Nair, J;G. Sivarajan, J

Bench : Full Bench

Advocate : M. Pathrose Mathai and K. Mathew John, for the Assessee P.K.R. Menon and George K. George, for the Revenue, for the Appellant;

Judgement

G. Sivarajan, J.

These three appeals are filed by the assessee against the common order of the Income Tax Appellate Tribunal, Cochin Bench in I.T. Appeal Nos. 537,538 and 539 (Coch) of 1995 in respect of the assessment years 1987-88, 1988-89 and 1989-90. The assessee is the same in all these appeals. The assessee had constructed a commercial building and the construction was completed during the accounting year relevant to the assessment year 1989-90. In the assessment, the assessee had shown the cost of construction at Rs. 19,29,051. The assessing authority was not prepared to accept the accounts maintained by the assessee in respect of the cost of construction of the building and, therefore, he had referred the matter for valuation by the Departmental Valuer. As per the report of the Departmental Valuer, the cost of construction of the building came to Rs. 29,03,400. This was adopted by the assessing authority and accordingly took the view that the difference between the cost of construction estimated by the Departmental Valuation Cell and the cost of construction furnished by the assessee, a sum of Rs. 10,54,359 has to be treated as unexplained investment in the building. The assessee being aggrieved by the said determination filed appeal before the Commissioner (Appeals) II, Cochin. The appellate authority by a

common order dated 7-4-1995 for all the three years modified the cost of construction to Rs. 24,67,590 as against Rs. 29,83,400 fixed by the assessing authority. This represented the average of the cost fixed by the Departmental Valuer and the cost furnished by the assessee. In further appeal by the assessee the Income Tax Appellate Tribunal dismissed the appeal confirming the order of the first appellate authority.

2. Shri Pathrose Mathai, the learned counsel appearing for the assessee submits that the assessing authority was not justified in rejecting the regular books of account maintained by the assessee on certain flimsy grounds that the transportation cost of sand and certain payments of supervision charges have not been recorded in the books. The counsel also submits that the question of referring the cost of construction to the Departmental Valuer arises only if there is substantial variation in the cost of materials and expenses recorded in the regular books of account. The counsel further submits that the cost of construction as fixed by the first appellate authority and confirmed by the Tribunal is on the high side.

3. We have also heard Shri P.K.R. Menon, learned Senior Central Government Standing ounsel for taxes appearing for the respondent.

4. We have also perused the orders of the authorities and the Tribunal. The assessing authority, it is seen, had rejected the books of account of the assessee with regard to the cost of construction of the commercial building on the ground that certain expenses incurred in connection with the construction of the building have not been recorded in the regular books of account. Though the assessee had offered certain explanations in the matter, we find that the assessing authority as well as the two appellate authorities have not accepted the said explanations. In spite of our anxious consideration, we are not able to find out any question of law arising from the finding so arrived at by the Tribunal. Coming to the cost of construction of the building, the assessee had shown the cost of construction of the commercial complex in the accounts at Rs. 19,29,051; the Departmental Valuer had fixed the cost of construction at Rs. 29,83,400; the first appellate authority had fixed the cost of construction at Rs. 24,67,500. It is seen that the first appellate authority after due consideration of all the relevant matters thought that the cost of construction can be fixed by adopting the average of the cost of construction furnished by the assessee and the cost of construction reported by the Departmental Valuer. The Tribunal found that the assessing officer was justified in referring to the matter to the Valuation Cell. Once the regular books of account of the assessee is rejected, it is for the assessing authority to estimate the cost of construction of the commercial complex. It is in those circumstances the assessing authority had referred the mater to the Departmental Valuer and the assessing authority had determined the cost of construction at the figure reported by the said valuer. The assessee got relief from the first appellate authority and the Tribunal confirmed the same. Admittedly the assessee had not shown any payment of supervision charges,

transportation charges, etc., in the accounts. All the authorities have found that the books of account are not properly maintained. The valuation report submitted by the assessee also differed. The first appellate authority found that the valuation report of the assessee and the department cannot be sustained and took the average of both which method was accepted by the Tribunal also. We are unable to find out any question of law arising from the finding so arrived at by the Tribunal. No other points are raised for consideration in these appeals. There is no merit in these appeals.

There three appeals are accordingly dismissed.