
(2011) 07 KAR CK 0194

In the Karnataka High Court

Case No : IT Appeal No's. 3224 and 3225 of 2005 A.Y. 1995-96 and 1996-97

CIT

APPELLANT

Vs

R. Hanumaiah Associates

RESPONDENT

Date of Decision : 12-07-2011

Acts Referred:

Citation : (2011) 07 KAR CK 0194

Hon'ble Judges : V.G. Sabhahit, J;Ravi Malimath, J

Bench : Division Bench

Advocate : E. Sanmathi Indira Kumar, for the Appellant; S. Parthasarathi, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—These two appeals are disposed of by a common order as they involve common questions of law and fact and have been admitted by order dated 4-12-2006 for considering the following substantial questions of law:-

1. Whether the Tribunal was correct in holding that the difference between the cost of construction of commercial complex constructed by the assessee at No. 11, Palace Road, Bangalore, declared by the assessee and that worked out by the District Valuation Officer by taking into consideration the contribution of building materials made by the tenants of Rs. 17,95,000 and 10 per cent supervision charges ?

2. Whether the Tribunal was correct in holding that there was no difference in the cost of construction declared by the assessee and that worked out by the District Valuation Officer, by ignoring the fact that the District Valuation Officer had worked out the cost of construction of the building without including the various expenses incurred towards cost of land, furniture, interest on borrowed capital and the work carried out by the tenant like false ceiling, aluminium partitions, internal furnishings, carpet, ceramic tiles flooring, polished granite, dado of the front phase of lift wall, 250 KVA generator set, acoustic enclosures for the

generator, etc., of a sum of Rs. 17,95,000 which had been contributed by the tenants and consequently recorded a perverse finding ?

The material facts leading up-to these appeals are as follows:--

The assessee was assessed in the status of Association of Persons (AOP) and he has derived income from the house property and other source. In respect of the assessment years 1995-96, 1996-97 one of the assessee had not filed the original returns of income. A survey came to the conducted in the premises of the assessee on 29-9-1999. The assessee had constructed a commercial complex at No. 11, Palace Road, Bangalore, the valuation of the property was referred to District Valuation Officer who worked the cost of construction at Rs. 74,94,297. The assessee had admitted the cost of construction at Rs. 56,42,934. The difference of Rs. 14,40,643 and a sum of Rs. 29,52,911 was treated as undisclosed income of the assessee respectively for the said assessment years 1995-96 and 1996-97. Since it was found that the assessee had not maintained any proper books of account or vouchers for incurring the expenditure towards the cost of construction, the Assessing Officer referred the matter to the District Valuation Officer. Accordingly the order of assessment was passed by the Assessing Officer on 27-3-2002 and additional unexplained investment was added to the valuation made towards the cost of construction and the same was confirmed by the appellate authority in appeal. Being aggrieved by the said order the assessee preferred an appeal before the income tax Appellate Tribunal in ITA Nos. 1294/2003 and 1293/Bang./2003. The Tribunal by a common order in both the appeals held that the additions made towards the unexplained expenditure had been satisfactorily explained by the assessee and after taking the cost of the construction Rs. 56,27,477 given by the assessee and the additions of Rs. 17,95,000 the same would come to Rs. 74,22,477. The same figure would be nearer to Rs. 75,94,000 which has been adopted by the DVO and accordingly deleted the additions made by the Assessing Officer which had been confirmed in appeal and allowed the appeal in-part by rejecting the contention of the revenue regarding the unexplained additional investment.

2. Being aggrieved by the order of the Tribunal deleting the unexplained Investment these appeals are filed raising the above said substantial questions of law and the appeals have been admitted to consider the above said questions of law.

3. We have heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent.

4. The learned appearing for the appellants vehemently argued that the order passed by the Tribunal is wholly erroneous and it is passed without reference to the finding given by the Assessing Officer that the DVO had not taken the expenditure into account and the same had not been explained by producing the vouchers or books of account of the assessee and wherefore the order of the Tribunal deleting the addition of unexplained investment is liable to be set aside

and he has taken us through the order passed by the DVO and the appellate authority as also the order of the Tribunal which has gone into these two appeals.

5. The learned counsel appearing for the respondent submitted that according to the report of the DVO the cost of construction was Rs. 75,94,000 and the Tribunal has held that the tenant had made certain improvements in the property for the beneficial enjoyment of the property and even if the said addition is taken into account it would come to Rs. 17,95,000 by adding to the income declared towards construction at Rs. 56,27,477 and the Tribunal further held that the assessee had spent the amount up-to August 1996 which has not been taken into account and what is taken into account by the Assessing Officer is up-to December 1994 only and wherefore the finding given on the question of fact that having regard to the material on record, even if the contention of the revenue is accepted it would come to Rs. 75,94,000 which is nearer to valuation made by DVO and dismissed the appeal by deleting the unexplained investment. The said finding is at para 6. It is well settled that the Tribunal is the final authority on the question of finding of fact. The said finding is based upon the well founded reasons and cannot be said to be arbitrary or perverse as it is clear from the order passed by the Tribunal that they have verified the DVO report and also taken into account the amount spent up-to December, 1994 and the amount incurred to up-to August, 1996. Accordingly, we answer the substantial questions of law against the Revenue and hold that the appeals are devoid of merits and pass the following order:-

Both the appeals are dismissed.