(2010) 02 CAL CK 0070

In the Calcutta High Court

Case No : Income Tax A. No. 383 of 2009

CIT APPELLANT

Vs

Umedbhai International P. Ltd. RESPONDENT

Date of Decision : 02-02-2010

Acts Referred:
Income Tax Act, 1961 — Section 55A

Citation : (2011) 330 ITR 506

Hon'ble Judges : Kalyan Jyoti Sengupta, J;Kalidas Mukherjee, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal is sought to be preferred against the judgment and order of 1 the Income Tax Appellate Tribunal dated July 24, 2009 on the grounds formulated as stated hereunder:

A. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal erred in law in holding that the assessing officer did not form opinion before referring the matter to the departmental Valuation Officer without appreciating the fact that the assessing officer did note same in writing in the order-sheet dated 12-12-2005?

B. Whether on the facts and circumstances of the case the Income Tax Appellate Tribunal erred in law in not considering the fact that the Income Tax Act, 1961 does not prescribe manner of forming opinion before referring the matter to the departmental Valuation Officer u/s 55A of the Income Tax Act, 1961?

2. We have gone through the judgment and order of the Commissioner of income tax (Appeals) and also the judgment and order impugned before us. While reading the same we are of the view that in this matter no question of law is involved far less substantial one for the following reasons as stated hereunder.

3. The Assessee is a trading company. On 15-9-1977 it purchased an old rice mill

with land appurtenant thereto at a consideration of Rs. 2,35,000. As the Assessee-company could not run the rice mill it during the relevant previous year converted the entire land of rice mill into its stock-in-trade and started selling the said stock-in-trade in part by part. The total land holding so converted, was 8.25 acres. The Assessee-company got the property valued by registered valuer on 18-4-2002 to determine the fair market value as on 1-4-1981 and it was valued at Rs. 71,91,850.

4. The Assessee on the basis of the registered valuers report worked out the indexed cost as on 1-4-2002 at Rs. 3,06,37,281. It was taken as the opening stock of land in the assessment year under consideration. With the returns the aforesaid valuation report was submitted. However, the assessing officer did not accept valuation and referred the matter to the departmental Valuer u/s 55A of the said Act to determine the fair market value as on 1-4-1981 and it was done by the departmental Valuer at Rs. 18,73,800. The assessing officer did not accept the valuation report submitted by the Assessee on the ground that the same was not prepared on the basis of any sale instance. Naturally the assessing officer proceeded on the basis of the valuation of the departmental Valuer which made a lot of difference in assessing tax liability. Basing on the departmental valuation report the assessing officer came to conclusion that the Assessee had overstated the value of the opening stock at Rs. 2,26,54,893 and instead of accepting the loss, as shown in the return the assessing officer has determined the net profit of Rs. 6,09,025. Thus the conclusion was arrived at by the assessing officer was based on valuation. Therefore, the point raised before the Commissioner (Appeals) that the valuation was got to be done by the assessing officer without compliance with Section 55A of the Income Tax Act, 1961. According to the Assessee reference to the valuation officer is without jurisdiction as per condition for reference was not satisfied. According to the Assessee before making any reference the assessing officer has to form opinion that the value so claimed is less than the fair market value without doing so reference is without jurisdiction. On this limited point the Commissioner (Appeals) allowed the appeal and held that the reference was not done by the assessing officer in compliance with the provisions of Section 55A of the said Act. The Tribunal also upheld this finding.

5. Reading the aforesaid question we are not concerned with any other portion of the judgment and order of the learned Tribunal.

6. The Commissioner (Appeals) as well as the learned Tribunal has come to fact findings that the department has not brought any material on record that the assessing officer had formed an opinion having regard to the nature of the assessment and considering the other relevant circumstances for making reference to the departmental Valuation Officer u/s 55A of the said Act. This concurrent fact findings of two authorities are not questioned to be perverse.

7. This Court cannot make any endeavor to make any fact finding nor does it wish to do in the absence of plea of perversity. In this case the admitted position

is that the Assessee submitted valuation made by the registered valuer. Hence Clause (a) of the aforesaid section is applicable in this case which is set out hereunder:

55A. With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter, the assessing officer may refer the valuation of capital asset to a Valuation Officer--

(a) in a case where the value of the asset as claimed by the Assessee is in accordance with the estimate made by a registered valuer, if the assessing officer is of the opinion that the value so claimed is less than its fair market value.

(b) in any other case, if the assessing officer is of the opinion

(i) that the fair market value of the asset exceeds the value of the asset as claimed by the Assessee by more than such percentage of the value of the asset as so claimed or by more than such amount as may be prescribed in this behalf, or

(ii) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do.

8. Thus it is clear based on the aforesaid concurrent fact findings that the formation of opinion of the assessing officer that the value claimed by the Assessee less than its fair market value is sine qua non. Reasons recorded after order of reference for valuation of the registered valuer is not the substitute of pre-decisional formation of opinion.

9. Therefore, the learned Tribunal has correctly held accepting the decision 9 of the first appellate authority that on the facts and circumstances of the case there is no applicability of Clause (b) of Section 55A which is meant for other purpose. Both the authorities have considered the well settled principles of law regarding the applicability of Section 55A and various judgments of the court on this issue have been considered. We have no doubt those judgments have been appropriately applied. When the law is settled and also the provisions of the aforesaid Section 55A are clear we do not think that any point of law needs to be decided in this case.

10. Hence we are not inclined to admit the appeal. Accordingly, the same is dismissed.

11. All parties shall act on a xerox signed copy of this order on usual undertakings.