(2013) 02 GUJ CK 0089

In the Gujarat High Court

Case No : Tax Appeal No. 644 of 2012

CIT APPELLANT

Vs

Umiya Investments RESPONDENT

Date of Decision : 04-02-2013

Acts Referred:

Citation : (2013) 02 GUJ CK 0089

Hon'ble Judges : Sonia Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Paurami B. Sheth, for the Appellant;

Judgement

1. Revenue has preferred this Tax Appeal u/s 260A of the income tax Act, 1961 (Hereinafter referred to as ''Income Tax Act'') against the order dt. 26-3-2012 passed by the Income Tax Appellate Tribunal, raising following substantial questions of law for our consideration:-- A Whether the Appellate Tribunal was right in law and on facts in confirming the deletion of addition of Rs. 1,42,00,000 by CIT(A) made by Assessing Officer on account of unexplained investment in purchase of land?

B Whether the Appellate Tribunal is right in law and facts in confirming the deletion of the addition of Rs. 36,52,656 made by Assessing Officer being unaccounted profit on sale of the land, without considering the provisions of section 53A of the Transfer of Property Act?

Learned counsel Ms. Paurami Sheth has argued on the line of Appeal Memo and with her assistance, we have examined the material on record.

2. The first question concerns deletion of addition of Rs. 1,42,00,000. As can be noted from the record that a search was carried out in the premises of Shyam Group and the documents were ceased by the Assessing Officer. The document in the form of agreement to sale for the purchase of land bearing survey No. 791 at Rs. 801 per sq.yd. was found. A notice dt. 29-7-203 was issued u/s 141(1) of the Income Tax Act, directing the assessee-respondent to produce relevant

documents. After duly considering the record produced by the Chartered Accountant of the assessee-respondent, the Assessing Officer added Rs. 1,42,00,000 towards unexplained investment.

By preferring an appeal before the CIT(A), assessee challenged the said order, which partly allowed the said appeal.

The revenue preferred two appeals against the said order of the CIT(A) and the same were dismissed by the Tribunal, whereby it confirmed the findings of the CIT(A) that the payment of Rs. 98,00,000 and Rs. 39,00,000 were made out of sale consideration received by the assessee-respondent from M/s. Trimurti Associates. The Tribunal, after detailed examination of the fact presented before it, concluded thus:

8. We have heard both the sides at some length and carefully perused the orders of the authorities below in the light of compilation filed. The short issue is that whether two major amounts i.e. Rs. 98 and Rs. 39 Lakh were out of the amount received from M/s. Trimurti Associates. We have noted that vide a Banakhat dt. 20-5-1996 the assessee has agreed to make a total investment of Rs. 1.42 crores as per the three dates noted hereinabove. Meanwhile, when the instalments of Rs. 98 Lakh was due on dt. 20-5-1997, facts have revealed; that the assessee has entered into a sale agreement with M/s. Trimurti Associates dt. 4-26-1996 and accordingly an amount of Rs. 1,42,27,709 was received in the following manner:

On 13-4-1996 Rs. 5 Lakhy (Banachitti)

On 20-4-1996 Rs. 98 Lakh (Banakhat)

On 13-9-1996 Rs. 46,27,700

We have noted that Learned CIT(A) has accepted the said factual aspect that on receiving the aforesaid two major amounts from M/s. Trimurti Associates, the assessee has made the payment towards purchases to M/s. Ambika Corporation. Since the assessee has successfully established the nexus which was found correct by Learned CIT(A) being based upon the evidence and the Banakhat already on record, we hereby do not find any reason to interfere with the said factual finding of Learned CIT(A). Still we are left with an initial payment made by the assessee of Rs. 5 Lakh. This amount was stated to be duly reflected by the eight co-owners in their respective assessments. Some of the co-owners have made statement and therein confirmed their share of investment Rather, Learned CIT(A) has noted that the said investment was brought to tax substantive basis in the hands of the respective co-owners. It has also been noted that those co-owners have finished confirmation letters in support of the investment made by each of them. In one of the case of co-owner, namely, Shri Hasmukhlal P. Patel, there is reference of an order of CIT(A)-XVII dt. 31-3-2004 No. CIT(A)XVII/DCIT. CIR-10(1)57/2001-02, wherein the addition of Rs. 62,500 stood deleted. Learned CIT(A) discussed the investment in each hand of the co-owners and thereupon decided to delete the addition. Once the aforesaid initial investment of Rs. 5 Lakh stood explained and assessed as per law in the hands of the co-owners, therefore, there was no legal requirement to take the same action in the hands of the assessee. Under the totality of the facts and circumstances, the view taken by the Learned CIT(A) is hereby confirmed and these two grounds of the revenue is therefore deleted.

On the basis of entire factual details based on the material evidence produced before the Tribunal, it had concluded the existence of nexus of sale and purchase made. The payment was made to M/s. Ambika Corporation after having received the amount from M/s. Trimurti Associates by the assessee-respondent. The initial amount of Rs. 5 Lakh was paid by the assessee-respondent and the Tribunal found convincing evidence to accept the version of the assessee-respondent. Thus, from the totality of the facts and circumstances, when it deleted the said amount, no fault much less any illegality can be noticed, giving rise to any question of law.

As far as the second question is concerned, it concerns deletion of Rs. 36,52,656 made by Assessing Officer being unaccounted profit on sale of the land.

The Tribunal noted thus:

13. We have heard both the sides and perused the documents placed on record in the light of the orders of the authorities below. Learned CIT(A) has appreciated two facts, as is evident from the para reproduced herein above; that the actual possession was handed over on 10-1-2003 on the land in question. And another fact was also appreciated that due to disputed between the parties a ''civil suit'' was filed against the purchasers of M/s. Trimurti Associates. Later thereafter vide a civil suit bearing No. 4801-98 the dispute was compromised. As per the terms of the said compromise, the land ad measuring about 25,342 sq. yds was agreed to be transferred. Because of the said fact, Learned CIT(A) has categorically held that the compromise itself proved that the land was not transferred earlier but transferred only after the compromise. On account of these two facts, it was concluded that the provision of section 2(47) of the Act have not applied on the facts of the case since no transfer took place during the block period hence the profit was wrongly taxed. Rather, there was a mention of another supplementary agreement-cum-possession agreement dated 20-1-2003 in support of the fact that possession was handed over later on. It was pointed out that a return of income was filed in the regular course for A.Y. 2003-04 on 30-3-2005 declaring ''business profit'' at Rs. 35,43,481. On account of these facts, once admitted factual position was that the possession of the land had not been handed over during the block period in question and that the possession was handed over after the dispute was settled through a compromise suit in the civil court and that thereafter the profit in question was declared in A.Y. 2003-2004; we hereby confirm all those finding of Learned CIT(A) and find no force in the grounds of the Revenue. Accordingly, these grounds of the Revenue are hereby dismissed.

It was noted by the Tribunal that the disputes were pending before the Civil Court where a compromise by and between the parties had been effected. There was no question of any transfer till the said compromise was affected in the Civil Suit No. 4801-98. Therefore, it allowed the order of the CIT(A) holding that the profit under question in such circumstances was declared in assessment year 2003-2004 and this interpretation is in consonance with the provisions of law where, in fact, there was no transfer within the meaning of section 2(47) of the Transfer of Property Act. Therefore, the business profit of Rs. 36,52,656 assessed as undisclosed profit by the Assessing Officer, was rightly directed to be deleted by both the authorities. The question answered by both the authorities is predominantly based on material available and interpreting the same in accordance with law, the question of law is accordingly answered.

In view of discussion held herein above, Tax Appeal deserves no further consideration and therefore, the same is dismissed.

