(2012) 07 P&H CK 0092

In the Punjab And Haryana At Chandigarh

Case No : IT Appeal No. 74 of 2012

Commissioner of Income Tax — APPELLANT

Vs

Chohan Resorts — RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:
Income Tax Act, 1961 — Section 142(1), 142A, 142A(1), 143(3), 144

Citation : (2012) 07 P&H CK 0092

Hon'ble Judges : G.S. Sandhawalia, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : G.S. Hooda, for the Appellant;

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—Delay in refiling the appeal is condoned. This appeal has been filed by the Revenue under s. 260A of the IT Act, 1961 (in short "the Act") against the order dt. 13th June, 2011 passed by the Tribunal, in ITA No. 02/Asr/2011 (arising out of ITA Nos. 339/Asr/2010 and 339/Asr/2010) for the asst. yr. 2007-08, claiming the following substantial question of law :

Whether on the facts and circumstances of the case, the Hon''ble Tribunal is justified in holding that the AO was not justified in referring the matter to the DVO without books of account being rejected and therefore, reliance placed on the report of the DVO was misconceived and the orders of the lower authorities are liable to be set aside, without appreciating that even when the books of the assessee may be not so incomplete, incorrect, concocted, inaccurate and/or untrue as to be rejected outright vis-a-vis the accounting of his various sources of income, the same books could still be sans the total amounts of undisclosed investments in a property; and without appreciating that in such a situation, it would not be necessary to reject the books of accounts under s. 145 of the Act, for assessing the income of the assessee [by way of best judgment assessment, which is invariably an approximation and under s. 144 of the Act, instead of under s. 143(3) of the Act, and yet it would be necessary to bring to the ambit of tax the undisclosed income, not recorded in the books, yet invested in a property, under the provisions of s. 69 or 69B of the Act; and also not appreciating that in these cases, the provisions of s. 142A are the only means by which to bring to book the otherwise not recorded investments, by way of deeming of income; and also not appreciating that the plain interpretation of s. 142A(1) of the IT Act, 1961 also does not envisage any such essential and obligatory requirement of invocation of the provisions of s. 145 of the Act so that the AO can lean on the shoulders of the DVO for an expert estimation of a property on which he has genuine and reasonable reasons to believe that the investment in the property has not been fully disclosed in the books of the assessee and has thus an element of undisclosed income having been ploughed into it, which have to be assessed under the deeming provisions of s. 69 or 69B of the Act ?

2. Put shortly, the facts for adjudication of the present appeal are that the assessee filed its return of income on 6th Aug., 2007 for the asst. yr. 2007-08 declaring a total income of Rs. 2010. Its case was taken up for scrutiny. The AO found that in the balance sheet filed along with the return, the assessee had shown investment of Rs. 5,73,000 in the land account and Rs. 47,43,576 in the building account. The AO issued notice under s. 142(1) of the Act asking the assessee to furnish the details of sources of investments but the assessee failed to furnish the requisite information. The IT Inspector was asked to make the enquiries to ascertain the value of the land and cost of construction of building of Chohan Resorts who vide report dt. 13th May, 2009 estimated the cost of construction at Rs. one crore. Since the difference between the cost of building declared by the assessee and that as estimated by the Inspector was very large, the AO asked the Departmental Valuation Officer (DVO) to determine the cost of the construction. The DVO assessed the cost of the property at Rs. 1,02,54,500. A copy of the report was also sent to the assessee on 7th Oct., 2009 for its objections, if any. The assessee vide its letters dt. 30th Nov., 2009 and 2nd Dec., 2009 furnished the copy of its building account as per its books of account along with the copies of bills of items used in the building and vouchers on account of labour paid. The assessee also offered its comments on the DVO''s report and raised the objections against the same. The AO vide order dt. 24th Dec., 2009 (Annex. A1) added Rs. 55,10,924 being the difference determined by the DVO in respect of M/s Chohan Resorts and the cost declared by the assessee under s. 69B of the Act and the total income of the assessee was assessed at Rs. 55,12,930. Feeling aggrieved, the assessee filed an appeal before the Commissioner of income tax (Appeals) [in short "the CIT(A)"]. The CIT(A) vide order dt. 2nd July, 2010 (Annex. A2) confirmed the addition made by the AO. Being dissatisfied, the assessee filed an appeal against the order of the CIT(A) before the Tribunal who vide order dt. 13th June, 2011 (Annex. A3), deleted the addition made by the AO and upheld by the CIT(A) and directed the AO to accept the returned income of the assessee. Hence, the present appeal by the Revenue.

3. We have heard the learned counsel for the appellant.

4. The point for consideration in the present appeal is whether the Revenue was justified in referring the matter to the DVO for assessing the value of land and cost of construction of building of Chohan Resorts. The Tribunal relying upon the decision of the Hon''ble apex Court in Sargam Cinema vs. CIT (2011) 241 CTR (SC) 179 held that the books of account maintained by the assessee were never rejected and, thus, there was no occasion for the Department to refer the matter to the DVO. The relevant findings recorded by the Tribunal read thus :

9.2. In view of the facts and the circumstances of the present case, we hold that the AO was not justified in referring the matter to the DVO without books of account being rejected and, therefore, reliance placed on the report of the DVO was misconceived and the orders of the lower authorities are liable to be set aside. While taking such a view, we are fortified by the decision of the Hon''ble Supreme Court in the case of Sargam Cinema vs. CIT (2011) 241 CTR (SC) 179, wherein the Hon''ble Supreme Court held as under :

4. In the present case, we find that the Tribunal decided the matter rightly in favour of the assessee in as much as the Tribunal came to the conclusion that the assessing authority could not have referred the matter to the DVO without the books of account being rejected. In the present case, a categorical finding is recorded by the Tribunal that the books were never rejected. This aspect has not been considered by the High Court. In circumstances, reliance placed on the report of the DVO was misconceived.

9.3 From the above judgment, it is clear that the Hon''ble Supreme Court has ruled that without the books of account being rejected, reference made to the DVO was not tenable. Respectfully following the judgment of the Hon''ble Supreme Court in the case of Sargam Cinema vs. CIT (supra), we hold that no addition can be made on the basis of report of the DVO without the books of account being rejected, wherein every expenditure relating to the construction is recorded and those books of account have not been rejected by the AO under s. 145 of the Act. Consequently, we delete the impugned addition and direct the AO to accept the returned income.

5. Learned counsel for the Revenue was unable to justify that when the books of account in respect of cost of construction have been maintained by the assessee and the same were not rejected, how the matter could be referred to the DVO for assessing the value. Wherever the books of account are maintained with respect to the cost of construction, the matter can be referred to the DVO after the books of account are rejected by the Revenue on some legal or justified basis. In the absence of the same, the reference to the DVO cannot be upheld. In view of the above, we do not find any substance in the appeal. No question of law arises in this appeal for consideration of this Court. Dismissed.