

(2006) 11 MAD CK 0158
In the Madras High Court
Case No : T.C. (A) No. 2494 of 2006

Commissioner of Income Tax

APPELLANT

Vs

D. Subramanian

RESPONDENT

Date of Decision : 06-11-2006

Acts Referred:

Citation : (2008) 296 ITR 348

Hon'ble Judges : P.P.S. Janarthana Raja, J;P.D. Dinakaran, J

Bench : Division Bench

Advocate : T. Ravikumar, for the Appellant;

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—The above tax case appeal is directed against the order of the Income Tax Appellate Tribunal in I. T.A. No. 552/Mds/2004, dated December 16, 2005, for the assessment year 1999-2000.

2. The brief facts are that the assessee constructed a kalyana mandapam. On scrutiny of assessment, the Assessing Officer referred the cost of construction to the Valuation Officer, who arrived at the cost of Rs. 52,93,400. On completion of assessment, the Assessing Officer, after allowing 15 per cent, rebate towards self supervision held that the assessee had admitted sources and accordingly, added a sum of Rs. 20,00,390. Aggrieved, the assessee went on appeal before the Commissioner of Income Tax (Appeals), who after holding that the Assessing Officer had no powers to refer the cost of construction to the Valuation Officer, reduced the addition made by the Assessing Officer from Rs. 20,00,390 to Rs. 3,51,000 and partly allowed the appeal. Exasperated by the order of the Commissioner of Income Tax (Appeals), the Revenue preferred an appeal before the Income Tax Appellate Tribunal. The Appellate Tribunal, by impugned order dated December 16, 2005, remanded the matter to the Assessing Officer to carry out the exercise of comparing the report of the Departmental Valuation Officer with that of the registered valuer with a further direction to apply the State PWD

rates instead of applying the Central PWD rates to arrive at the actual cost of construction.

3. Aggrieved over the same, the Revenue has preferred the present appeal raising the following substantial questions of law:

1. Whether, on the facts and circumstances of the case, the Tribunal was right in remanding the case back to the Assessing Officer on the ground that the Commissioner of Income Tax (Appeals) had not compared the registered valuer's report and the valuation officer's report while arriving at the cost of the construction?

2. Whether, on the facts and circumstances of the case, the Tribunal was right in directing the Assessing Officer to apply the State PWD rates and not the Central PWD rates while arriving at the cost of construction?

4. Even at the outset we may say that the issues raised in this appeal with regard to the determination of cost of construction on the basis of the reports of the registered valuer and the Departmental Valuation Officer and with regard to the application of the State PWD rates or the Central PWD rates to arrive at the actual cost of construction are purely questions of fact.

5. On going through the order of the Tribunal, we find that the Commissioner of Income Tax (Appeals) had only taken into account the registered valuer's report and had not compared the same with the Departmental Valuation Officer's report, which exercise of comparison would only ensure that there is no difference between these two reports regarding area of construction and details of infrastructure, etc. Moreover, the valuation cannot be an arithmetical appreciation of the materials used for the construction nor the expenses incurred by the assessee in that regard, as variations are bound to be there between the Central PWD rates and the State PWD, rates themselves.

6. Hence, as already stated, we hold that the determination of the cost of, construction either on the basis of the report of the registered valuer or on the basis of the Departmental Valuation Officer cannot be gone into in this appeal, as it is purely a question of fact. Similarly, the application of the State PWD rates or the Central PWD rates to arrive at the cost of construction also cannot be gone into, as variations are bound to be there even between themselves.

7. The above view of ours is also supported by the decision of the Rajasthan High Court in Commissioner of Income Tax Vs. Elegant Homes Pvt. Ltd., , wherein it has been held that the cost of construction was basically a question of fact and therefore, the view taken by the Income Tax Appellate Tribunal on the issue of investment in construction, could not be interfered with.

8. Hence, we find no question of law much less substantial question of law that would arise for consideration in this appeal. The tax case appeal is, accordingly, dismissed.