(2002) 08 RAJ CK 0103

In the Rajasthan High Court

Case No : IT Appeal No. 46 of 1999 6 August 2002 Block period 1985-86 to 1995-96

Commissioner of Income Tax APPELLANT

Vs

Elegant Homes (P) Ltd. RESPONDENT

Date of Decision : 06-08-2002

Acts Referred:
Income Tax Act, 1961 — Section 158BC

Citation : (2002) 177 CTR 261

Hon'ble Judges : Y.R. Meena, J;Shashi Kant Sharma, J

Bench : Full Bench

Advocate : R.B. Mathur, for the Revenue and Anant Kasliwal, for the Assessee, for the Appellant;

Judgement

By the Court

The present appeal had been admitted in terms of the following questions :

"1. Whether the judgment passed by the learned Tribunal suffers from the perversity or not ?

2. Whether the learned Tribunal was right in its wisdom to apply the Rajasthan PWD rates for working out the cost of construction of the said property for Income Tax purpose, instead of CPWD rates ?

3. Whether the learned Tribunal was right in deleting the addition of Rs. 41,400 by holding that when entries find place in the regular cash book, then no addition can be made in the block assessment until there is evidence to the contrary ?

4. Whether the addition on the basis of examination of regular books of accounts seized during the course of search is out of purview of the block assessments ?"

2. A search and seizure operation was carried out at the residential and business premises of the director of the assessee-company on 9-11-1995, and some incriminating documents/papers pertaining to the assessee-company were found

during the search and seizure operation and same were seized.

A notice u/s 158BC(b) of the Income Tax Act, 1961, was issued to the assessee company on 16-1-1998, whereby the assessee was called upon to file the return of income for the block period i.e., 1985-86 to 1995-96. In response to the said notice, the assessee-company had filed the return showing ''nil'' income of all these years. Another notice u/s 158BC(b) was also issued to the assessee-company along with the questionnaire asking the assessee-company to explain the incriminating documents/papers, etc. seized pertaining to the assessee-company. In response to the aforesaid notice one Mr. Ravi Mathur attended the proceedings before the assessing officer and the case was discussed at length. After considering the material on record and the explanation furnished by Mr. Mathur, an addition of Rs. 41,400 has been assessed for assessment year 1993-94 and an addition of Rs. 2,76,302 has also been made in the assessment year 1996-97.

3. Before us, the issue relates to the investment made for the construction of the building where the issue was whether the valuation of the building should be at the rate of Public Works Department (hereinafter referred to as the PWD) or at the rate of Central Public Works Department (hereinafter referred to as the CPWD). The other issue before us is that whether Rs. 41,400 deposited by the assessee-company be treated as undisclosed income of the assessee or not ?

4. Mr. Mathur, learned counsel for the revenue, submits that when the amount of Rs. 41,400 was found to be credited in the name of the various parties, they were not produced, the assessing officer, has rightly assessed the tax treating it as undisclosed income. He further submits that the valuation of the constructed building could be assessed as per the CPVTD rate and it also depends upon various factors, no straitjacket formula shall apply to assess the valuation of the constructed building on the basis of PWD or CPWD rates. He supported the view taken by the assessing officer.

5. Mr. Kasliwal, learned counsel for the assessee, submits that the deposits made by Shri Ram Kumar Dhanuka should not be taxed as he is one of the collaborator and the returns were not filed by the assessee-firm in these years as assessee was engaged only in one project. Unless that project is complete they are not bound to show any income in that assessment year from 1986-87 onwards. Mr. Kasliwal further submits that as the Tribunal has found just and reasonable cause to apply the PWD rate for assessing the investment, it is a question of fact and unless it is perversed, the finding of the Tribunal should not be disturbed.

6. The admitted facts of the case are that a search and seizure operation was carried out at the residential and business premises of the director of the assessee-company on 9-11-1995, and some incriminating documents/papers were found during the search and the same were seized. However, no returns were filed prior to that. The block period was 1986-87 to 1996-97. In response to the notice issued for the assessment of the income of the block year, the

assessee had filed return showing his income as ''nil''. During the course of assessment, the assessing officer found that there were deposits of Rs. 41,400 in the name of various parties. As the ''genuineness of cash credits are not proved, the assessing officer had assessed this income of the assessee as undisclosed income for the assessment year 1993-94.

7. There is no dispute that the entries of the said deposits were found in the regular cash-book of accounts of the assessee which were seized during the course of search and when they were not proved nor creditors were produced by the assessee, it can be treated as undisclosed income of the assessee for the assessment year 1993-94.

8. Section 158B(b) relates to undisclosed income which reads as under :

"Undisclosed income" includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions, where such money bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents only or partly income or property which has not been or would not have been disclosed for the purposes of this Act (or any expense, deduction or allowance claimed under this Act, which is found to be false)".

9. The Tribunal has deleted the addition on the ground that as the entries are shown in the regular cash books, therefore, it cannot be said that the income is undisclosed income. In fact, in the case in hand, the assessee had not filed the return till the date of search and even after search the assessee had shown the income as nil for the assessment year 1993-94. When the assessee was asked to prove the genuineness of the cash credits, he had failed to discharge its burden. When the assessee had filed the return in response to the notice after search, the income which not been taxed or shown can be assessed as ''undisclosed'' income of assessee.

10. Admittedly, Rs. 41,400 had never been offered for tax and it was never shown as income of the assessee the entries of these deposits were found in the regular cash books maintained by the assessee. When the entries were found in the books of assessee, the assessee could not explain the genuineness of the deposits, this amount was never disclosed, it is an undisclosed income of the assessee. The Tribunal has committed an error in holding that as the entries were found in the regular books of accounts, therefore, it cannot be treated as undisclosed income.

11. The view is contrary to the provisions of Chapter XIV-B of the Income Tax Act, 1961. In Chapter XIV-B of the Act, special provisions for assessment in search cases have been given and if any amount of income has not been taxed and during the course of search, if some undisclosed'' income is found on the basis of material seized, that should be treated as undisclosed income as per the scheme of special assessment under the aforesaid chapter.

12. The other issue relates to the valuation of the constructed building whether for the purpose of investment the rate of PWD should be adopted or rate of CPWD should be adopted. This court has already taken a view that there is no straitjacket formula to apply for the valuation of the constructed building by adopting the rate of PWD or CPWD that depends upon the location of the building, material used and the utility of the building. Therefore, blindly we cannot go by the rate of PWD or CPWD. However, Mr. Kasliwal, learned counsel for the assessee, submits that even if PWD rate is adopted, even otherwise tax effect is negligible.

13. Considering the facts and circumstances of this case, and the facts that it is basically a question of fact based on finding of facts. Therefore, we are not inclined to interfere with the view taken by the Tribunal on the issue of investment in construction.

In the result, the appeal is partly allowed and stands disposed of accordingly.

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