(2006) 03 RAJ CK 0047

In the Rajasthan High Court

Commissioner of Income Tax APPELLANT

Vs

Emerald Construction P. Ltd. RESPONDENT

Date of Decision : 09-03-2006

Acts Referred:

Citation : (2007) 212 CTR 20 : (2007) 291 ITR 59

Hon'ble Judges : Rajesh Balia, J;Rajendra Prasad Vyas, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Having heard learned Counsel for the appellant, we are of the opinion that no question of law arises against the order of the Income Tax Appellate Tribunal dated January 12, 2005. The Assessing Officer has made additions in the income from undisclosed sources by taking the consideration for transfer of shops made by the assessee at 8 per cent. higher than what was stated in the transfer deed, he by opining that status of transferred shop as semi-finished was only for the purpose of paying less stamp duty, but actual transfer was of finished shop. This addition has been made on the supposed enquiry made from some shopkeeper in the market, about which the assessee was never informed and he had no chance to lead evidence to controvert and explain the case to the Assessing Officer. No inquiry was conducted and no material was brought to show that the actual consideration received by the assessee for shops in question, was more than what was stated. Yet, the additions made by the Assessing Officer on the basis of the market price determined by the Registrar, Stamps for the purpose of determining the stamp duty payable on execution of any document of sale was taken to be the basis for making additions by holding that the sale price declared by the assessee be estimated more than 8 per cent. of the receipts shown.

2. This finding was not upheld by the Commissioner of Income Tax (Appeals) by finding that:

It appears that the building known as Emerald Complex Housing Shops/offices has been got constructed by the appellant-company through a contractor and cost of construction up to this stage is accounted for in the books of account of the appellant which is also verifiable from the statement of the said contractor Sh. Manzoor Ali and payments were also made to him by account payee cheques. The sale price of shops/offices was determined after negotiations and the Registrar of Properties registered the sale of such properties in the condition described in the sale deed after inspection of the said properties as per their norms. These facts are not disputed by the Assessing Officer. However, the Assessing Officer observed that the shops/ offices were sold in finished condition and only furnishing was further required but the appellant purposefully mentioned in the registration deed semi-finished to show lesser cost for the purpose of stamp duty. The Assessing Officer has drawn support for this conclusion from the statement of Sh. Sajjat Hussin, reveals that the amount of consideration mentioned by him is not different than what is claimed by the appellant but the Assessing Officer''s conclusion of understatement of sale price is based on the description on the property as unfinished in the sale deed which is stated by this buyer Sh. Sajjat Hussain, as finished and on the strength of these evidence the books of account of the appellant have been rejected. In my view there is no other material except statement of one purchaser Sh. Sajjat Hussain, on which she has relied on. The Assessing Officer off, in her comments has also not elaborated how and in what form the concealment has been revealed by the purchaser during the course of local enquiry and/or statement recorded. She has accepted the explanation furnished by the appellant regarding difference in value taken by the Registrar for stamp duty as compared to the sale price. It is also seen from the observation of the Assessing Officer in the assessment order that the lesser cost of shops/offices has been shown for the purpose of stamp duty whereas in the comments on written submission one of the points relied on by the Assessing Officer''s estimation is difference in the sale amount and the value taken by the Registrar which is more than the sale amount and to this extent there appears contradiction in the observations and comments of the Assessing Officer. As regards the statement of the buyer Sh. Sajjat Hussain, mentioned above there seems no dispute about the amount of sale consideration paid by the buyer as nothing adverse has been pointed out by the Assessing Officer and the amount has been paid through cheque and he has nowhere admitted about any other payment. Rather with reference to specific question No. 16 regarding concealment of consideration with planning it is clarified that whatever is written in the deed (about finished or unfinished) came to his notice today only and as per the terms of the transaction shops were to be handed over after completion along with key of the shutter. He further stated that he has not spent anything on finishing of the shops and why it has been written unfinished in the registration deed is not known to him. It appears that the Assessing Officer has given more weight age to this aspect of the statement of the buyer in coming to her conclusion but the appellant could not get any opportunity to cross-examine this buyer whose statement has been solely relied on in the assessment. The buyers including this buyer have not disclosed any specific fact relating to concealment of sale consideration and it is presumed by the Assessing Officer that since the shops were purchased in finished condition over and above price has been charged. No evidence whatsoever in this respect has been brought on record to substantiate the finding to discharge her burden. Therefore, this part of his statement can be said to have disclosed fact regarding description of property sold by the appellant which is not consistent with the fact described by the appellant. This aspect may be relevant and a starting point in conducting further enquiry to ascertain correct facts and together material/ evidence regarding actual sale consideration passed in the transaction and it may be an indirect evidence having remote connection with sale price but not sufficient evidence to form any opinion about the sale price. The ipso facto does not prove that the sale consideration is necessarily understated due to such difference in description of properties. In my view it cannot be said to be independent, sufficient and conclusive evidence to prove higher sale price received by the appellant which seems to have been presumed by the Assessing Officer for completing assessment and also in her comments on written submissions. In this context the term finished and unfinished is only relative and not absolute and certain to convey any exact stage or position of shops constructed. The books of account are maintained as per the prescribed method of accounting which has not been held defective proving results disclosed unreliable and no specific defects or inconsistency has been pointed out in the manner of maintenance of books of account and results disclosed cannot be rejected merely on the ground of such difference in description even if it is proved to exist actually.

The appellant has maintained the books of account and the cost of construction has been shown therein and the consideration shown in the sale deed has also been accounted for on the basis of some tangible evidence. The other relevant evidence in the form of enquiry from the Registrar, statement of contractor and other, etc., seems to have not been given due weight and before coming to adverse conclusion. Therefore, in my view there is no sufficient evidence to come to a logical conclusion that there is understatement of sale consideration. There is no basis or logic brought on record for increasing the sale consideration by 8 per cent. for the estimate purpose. The material relied on by the Assessing Officer may not help her to justify rejection of books of account. The estimated addition on account of estimated receipt deserves to be deleted and ordered accordingly.

3. Apparently, the finding recorded by the Commissioner of Income Tax (Appeals) and affirmed by the Tribunal is founded on appreciation of relevant material and sound reasoning about non-existence of any relevant material to support the additions made by the Assessing Officer.

4. Learned Counsel for the appellant tried to persuade us that the finding is perverse in view of certain enquiry alleged to have been made by the assessing authority.

5. Having perused the assessment order, we are of the opinion that this contention is not sustainable. There is no reference to any material which is related to the consideration of the shop in question being stated lesser than what has actually been passed. There are inquiries conducted by the Assessing Officer about the transfer of shops in finished or unfinished conditions but what is meant by finished or unfinished shop is not explained. Admittedly the shops were transferred without any fixtures and furniture. There is positive evidence even by the solitary witness relied on by the Assessing Officer that he has not paid any price extra than what has been stated in his sale deed. Moreover, it is also stated that this enquiry is conducted behind the back of the assessee and could not have otherwise been used as basis for making any additions in the declaration of income made by the assessee. In these circumstances, no question of law arises for consideration in this appeal.

6. The appeal is dismissed in limine.