(2008) 08 MAD CK 0093

In the Madras High Court

Case No : Tax Case (Appeal) No''s. 1396 and 1397 of 2008 and M.P. No. 1 of 2008

Commissioner of Income Tax		APPELLANT
	Vs	
Ideal Garden Complex P. Ltd.		RESPONDENT

Date of Decision : 19-08-2008

Acts Referred:
Income Tax Act, 1961 — Section 119, 143(1), 143(3), 147, 148
Wealth Tax Act, 1957 — Section 16(2), 16(4), 17, 2

Citation : (2008) 307 ITR 176

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : T. Ravikumar, for the Appellant;

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The Revenue seeks the admission of the tax case for the assessment years 1997-98 and 1998-99 on the following substantial questions of law:

(i) Whether the Tribunal was right in dismissing the appeal preferred by the Revenue without going into the merits of the case on the ground that the disputed tax exceeds the monetary limit prescribed in the Central Board of Direct Taxes circular dated March 27, 2000 ?

(ii) Whether the right of appeal conferred u/s 254 of the Income Tax Act could be restricted or whittled down by the Central Board of Direct Taxes ?

(iii) While the Tribunal took into consideration of the circular issued by the Central Board of Direct Taxes whether it is empowered to neglect exemptions contained in the same and the subsequent clarifying circular issued by the Central Board of Direct Taxes ?

(iv) Whether the Tribunal was right in holding that the circular of the Central Board of Direct Taxes restricts the right of appeal conferred u/s 254 of the

Income Tax Act, even in spite of the judgment of the jurisdictional High Court reported in Commissioner of Income Tax Vs. P.S.T.S. Thiruvirathnam and Sons, ?

(v) Whether the Tribunal is right in not considering the issue as one involving the substantial question of law and ought not to have dismissed the appeal without going into the merits of the case ? and

(vi) Whether or not on the admitted facts of the case that the income of the assessee an income from the property in view of the judgment of the jurisdictional High Court reported in Commissioner of Income Tax Vs. Indian Metal and Metallurgical Corporation, ?

2. The assessee-company owned a commercial complex and received rentof Rs. 14.61 lakhs for the period 1996-97 relating to the assessment year1998-99. In the Income Tax assessment completed u/s 143(3)/147, it has been held that the income from letting of commercial complex is assessable as income from house property in terms of Sections 22 to 24 of the Income Tax Act as against business income as claimed. Therefore, the value of commercial complex as reduced by debts owned by the assessee a son the valuation date is assessed to wealth-tax. As there was reason to believe that net wealth chargeable to tax has escaped assessment, proceedings were initiated u/s 17 of the Wealth-tax Act. In responseto the notice under Sections 17 and 16(4) served, the assessee filed a returnon June 29, 2000, admitting "nil" value of the net wealth.

3 In the note appended to the statement of wealth, the assessee stated as under:

(i) The building owned by the assessee has constructed on leasehold land. Hence, the value of the building or superstructure alone is included.

(ii) Since the building is a business asset. WDV of the building has been admitted as per Rule 14 of Schedule III to the Wealth-tax Act.

(iii) Investment representing shares in companies and current assets are not assets within the meaning of Section 2(ea) of the Wealth-tax Act.

4. In response to notice u/s 16(2) served, the assessee''s representative appeared and after hearing the case, the net wealth of the assessee has been computed at Rs. 17,19,535.

5. In respect of Income Tax assessment for the assessment year 1992-93, the assessee has filed the returns of income which were processed u/s 143(1). During the previous year relevant to assessment year 1992-93, the assessee-company completed construction of commercial complex building at a cost of Rs. 40,65,287 and claimed depreciation.

6. The Revenue is of the view that as the assessee''s income is from letting out commercial complex, the same is assessable as income from house property. For escapement of income, proceedings were initiated u/s 147 and notice u/s 148 was issued with the prior approval of the Joint Commissioner of Income Tax, Salem Range, Salem.

7. The assessee objected to the proposal for reassessment of income under the head "House property" since the proposed action was as a result of objection from audit party relying on the decision of this court in the case reported in Commissioner of Income Tax Vs. Indian Metal and Metallurgical Corporation, and the decision relied on by the audit party was entirely on different facts the proposed reassessment was not justified.

8. It was also the case of the assessee that the building, i.e., the superstructure alone is owned by the company and the land belongs to Sri A. Sethu and it has been taken on lease and on which the building has been constructed which is duly reflected in the balance-sheet. In view of various conditions which do not give absolute right over the property and the assessee is not the owner of the land, the income cannot be treated as income from property.

9. Further, it was argued that the main object of the company is to take land on lease and construct building and let it out as commercial complex and accordingly, the income should be assessed under the head "Business income". In support of the claim, the assessee quoted the case law in the case of (2000) 72 ITD 262 and Sanmar Holdings Ltd. v. ITO decided by the Madras Bench of the Income Tax Appellate Tribunal. After considering the objection of assessee and by relying on the decision of this court reported in Commissioner of Income Tax Vs. Indian Metal and Metallurgical Corporation, , the income has been taken as income from house property. Aggrieved over the same, the assessee preferred an appeal before the Commissioner of Wealth-tax (Appeals).

10. The Commissioner of Wealth-tax (Appeals) allowed the appeal directing the Assessing Officer to treat the income as that of business instead of income from house property placing reliance on Rule 14 of Schedule III to the Wealth-tax Act. The Revenue aggrieved over the same, preferred an appeal to the Income Tax Appellate Tribunal.

11. It is seen that at the time of hearing, the assessee''s counsel submitted that the tax effect involved in this appeal is less than Rs. 1,00,000 and hence, the Department is precluded from filing appeal against such cases as per the Circular of Central Board of Direct Taxes, dated March 27, 2000. Accepting the plea of the assessee, the Tribunal, in its order dated August 18, 2005, dismissed the Revenue''s appeal. In so doing, it followed the decision reported in Commissioner of Income Tax Vs. Kodananad Tea Estates Co. and Others, and The Commissioner of Income Tax Vs. Pithwa Engg. Works, wherein it was held that the aforementioned circular is applicable even to old references which are still undecided. Aggrieved by the said order, the Revenue is on appeals before this court seeking admission.

12. It may be noted that this court considered a similar issue in the decision rendered on August 16, 2007, in T. C. No. 222 of 2004 (Commissioner of Income Tax Vs. Associated Electrical Agencies,). Based on Instruction 1979 in Circular F. No. 279/126/98 ITJ, dated March 27, 2000, referring to the statutory

power u/s 119 of the Income Tax Act, 1961 under which the circular was issued, this court held that (page 500)

10. We are of the considered view that none of the exceptions stated in the circular are applicable to the facts of the present case. The circular was stated to be issued by invoking the statutory power u/s 119 of the Income Tax Act. The appeal is filed u/s 260A of the Income Tax Act. It is well-settled principle of law that each and every provision of a statute has to be given the same importance. One provision cannot be elevated to a higher pedestal than the other provision, of course, unless or otherwise specifically stated either in the scheme, the Act or in the provision itself that a particular provision is subjected to or qualified by any other provision or the provision can be given effect to notwithstanding anything contained in any other provisions by assigning overriding effect. Hence, the contention that notwithstanding the circular, which was issued u/s 119 of the Income Tax Act, the appeal could be filed by the Revenue u/s 260A has to be rejected for the reason that if the contention is accepted, one of the sections would become virtually otiose and that cannot be the intention of the law makers.

13. Thus, following the long line of case law reported in Commissioner of Income Tax Vs. Rajasthan Patrika Ltd., and Commissioner of Income Tax Vs. P.S.T.S. Thiruvirathnam and Sons, to which one of us is a party (K. Raviraja Pandian J.), Commissioner of Income Tax Vs. Digvijay Singh, and Commissioner of Income Tax Vs. Camco Colour Co., , this court held that the uniform line of judicial opinion is that if the tax effect is less than what is stated in the circular, the Revenue need not agitate the issue on appeal and that the circular is binding on the Revenue.

14. In the light of the said view expressed by this court and on the admitted fact that the tax effect is also negligible and less than Rs. 1,00,000 and the case not falling under any of the stipulations of the circular, we do not find any justification to admit these appeals. Consequently, the same are dismissed.

