
(2002) 06 MAD CK 0206
In the Madras High Court
Case No : T.C. No. 167 of 2001

Commissioner of Income Tax

APPELLANT

Vs

K. Manickam

RESPONDENT

Date of Decision : 13-06-2002

Acts Referred:

Income Tax Act, 1961 — Section 44AD, 69

Citation : (2004) 187 CTR 493 : (2002) 258 ITR 175 : (2003) 132 TAXMAN 12

Hon'ble Judges : V.S. Sirpurkar, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : T.C.A. Ramanujam, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Balasubramanian, J.—This is an appeal u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), and the appeal was admitted on the following question of law :

"Whether, on the facts and in the circumstances of the case the Appellate Tribunal was right in law in deleting the addition of Rs. 2.5 lakhs in the total income of the assessee in the light of the amendment made to Section 44AD from April 1, 1994, which is prospective and not retrospective in operation ?"

2. The respondent (hereinafter referred to as "the assessee") is a building contractor and his business is the construction and sale of flats. The assessee for the assessment year 1991-92 offered his income including the net profit that arose from the sale of flats. The assessee, during the previous year relevant to the assessment year 1991-92, had constructed 12 flats and the cost of construction of the flats as admitted by him was Rs. 16.55 lakhs. The assessee also filed a report of the approved valuer and the approved valuer estimated the cost of construction of the flats to be Rs. 15.72 lakhs. The Assessing Officer referred the matter of valuation of the flats to the Departmental Valuation Officer and the Departmental Valuation Officer estimated the cost of construction at Rs.

38.95 lakhs. The Income Tax Officer brought to tax the difference of the amounts, viz., a sum of Rs. 22.40 lakhs as unexplained investment u/s 69 of the Act.

3. The assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) went into the matter in detail looked into the accounts, the date of purchase of the land and the periods of construction which were spread over a period of three years. The Commissioner of Income Tax (Appeals) also noticed that the tax clearance certificates were issued by the Income Tax Officer u/s 230A of the Act for the sale of five flats during 1989-90 and he also took into account the nature of the construction of the flats and the fact that the assessee was having a jelly quarry of his own and jelly materials for the construction were obtained at less than market price from his own quarry. He also found that the assessee was also having his own metal crushing unit and a tractor with trailer for transporting the materials. He also took into account the cost of various items of materials used in the construction and taking into account the entire facts of the case, he held that there was no substantial under valuation in the cost of construction as admitted by the assessee. However, the Commissioner of Income Tax (Appeals) held that since the possibility of some escapement of income cannot be ruled out and sustained an addition of a sum of Rs. 2.5 lakhs and he also directed that the sum of Rs. 2.5 lakhs should be spread over two years, viz., one lakh rupees should be assessed in the assessment year 1991-92 and the balance of Rs. 1.5 lakhs should be brought to tax in the assessment year 1990-91.

4. The assessee preferred an appeal before the Income Tax Appellate Tribunal. The Appellate Tribunal found that the Department has not brought any material to show that the assessee had really invested more amount than that was accounted for and there are no materials to show that the assessee had invested a huge sum, which was added by the Income Tax Officer, in the construction of flats. The Appellate Tribunal also found that the report of the Departmental Valuation Officer has no semblance of reality whatsoever, and keeping in view the period of construction, the Appellate Tribunal found that the valuation made by the Departmental Valuation Officer was arbitrary. The Appellate Tribunal also found that the Department has not established the case of understatement of sale value of the flats. In the circumstances, the Appellate Tribunal held that the cost of construction of the flats could not be taken at Rs. 38.95 lakhs as determined by the Departmental Valuation Officer.

5. As far as the addition sustained by the Commissioner of Income Tax (Appeals) of the sum of Rs. 2.5 lakhs is concerned, the Appellate Tribunal found that the Commissioner of Income Tax (Appeals) sustained the addition on some possible reasons for escapement, but he has not given any details regarding the escapement. The Appellate Tribunal incidentally referred to Section 44AD of the Act which came into effect from the subsequent assessment year 1995-96 and observed that the profit shown by the assessee was 11.5 per cent. which was

more than 8 per cent. fixed in Section 44AD of the Act. The Appellate Tribunal therefore held that the addition of Rs. 2.5 lakhs, sustained by the Commissioner of Income Tax (Appeals) is not warranted, and deleted the same. It is against this order, the present appeal has been filed by the Revenue.

6. We heard Mr. T.C.A. Ramanujam, learned standing counsel for the Income Tax Department. Learned counsel for the appellant assailed the correctness of the order of the Income Tax Appellate Tribunal.

7. We find that the ultimate finding of the Appellate Tribunal that no addition is warranted on the facts of the case is based on appreciation of evidence. The Appellate Tribunal has taken into account the nature of construction and the cost of construction and the profit margin of the assessee on the sale of flats. The Appellate Tribunal found that the Department has not established by any material that the assessee had really invested huge sum in the construction of flats. The Appellate Tribunal also found that the Department has not established that there was an understatement in the sale value of the flats.

8. The Appellate Tribunal incidentally referred to Section 44AD of the Act to show that the profit margin shown by the assessee at 11.5 per cent. is more than 8 per cent. as fixed in Section 44AD of the Act. We find that the Appellate Tribunal has not relied on the provisions of Section 44AD of the Act which came into force subsequently to delete the addition, but an incidental reference to that section was made in support of the conclusion already arrived at. We find that the order of the Appellate Tribunal deleting the addition of Rs. 2.5 lakhs sustained by the Commissioner of Income Tax (Appeals) is ultimately based on appreciation of evidence and the findings rendered by the Appellate Tribunal, in our view, do not give rise to a question of law, much less a substantial question of law which warrants interference by this court.

9. We have already set out the question of law and the question does not bring out the controversy in question and we reframe the question as under : "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in deleting the addition of a sum of Rs. 2.5 lakhs in the total income of the assessee ?"

10. We hold that the question raised is not a question of law but a pure question of fact. Accordingly, the appeal stands dismissed.