(2015) 01 MAD CK 0052

In the Madras High Court

Case No : Tax Case (Appeal) Nos. 607 and 608 of 2007

Commissioner of Income Tax APPELLANT

Vs

Kalyani Constructions P. Ltd. RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Citation : (2015) 01 MAD CK 0052

Hon'ble Judges : R. Karuppiah, J.;R. Sudhakar, J.

Bench : Division Bench

Advocate : M. Swaminathan, Standing Counsel, for the Appellant; Anita Sumanth, Advocates for the Respondent

Judgement

R. Sudhakar, J.—The above Tax Case (Appeals) filed by the Revenue as against the order of the Income Tax Appellate Tribunal, were admitted by this Court on the following substantial questions of law:

"(i) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the value of the vacant area had to be assessed under the head ''Income from house property'' when the said issue was not in appeal before the Tribunal?

(ii) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the Annual letting value of the rate of Rs.170/- cannot be adopted for the vacant area of the land held by the assessee even though the assessee had returned the said value while arriving at the closing stock?"

2. The assessment in these cases relates to the assessment years 1998-99 and 1999-2000. The respondent/assessee is engaged in the business of civil construction. The Assessing Officer, while completing the assessment in respect of the assessment years in question, found that certain area of land was vacant and was neither sold nor let out. Hence, the Assessing Officer brought to tax the said vacant land by adopting the annual letting value at Rs.170/- per sq.ft. The Assessing Officer assessed the value of the vacant land under the head ''income

from house property'' and made additions towards Annual Letting Value of the vacant space.

3. Aggrieved by the order of the Assessing Officer, the assessee filed appeals before the Commissioner of Income Tax (Appeals), who while confirming decision of the Assessing Officer in assessing the Annual Letting Value of the vacant space under the head ''income from house property'' deleted the additions made by the Assessing Officer towards the Annual Letting Value, as the determination of Annual Letting Value is not in conformity with the guidelines given by the Court.

4. As against the said order of the Commissioner of Income Tax (Appeals), the Revenue pursued the matter before the Income Tax Appellate Tribunal.

5. It is the case of the Department that the order of the Assessing Officer assessing the Annual Letting Value of the vacant space under the head ''income from house property, which was confirmed by the Commissioner of Income Tax (Appeals), has not been challenged by the assessee before the Tribunal.

6. The issue that the Department pursued before the Tribunal as against the order of the Commissioner of Income Tax (Appeals) is that in respect of both the assessment years viz., 1998-99 and 1999-2000, for the vacant land at 24168 sqf.t. and 42,246 sq.ft. respectively, based on the closing stock value of the assessee''s statement, the rate has been fixed for determining Annual Letting Value at Rs.170/- per sq.ft. and that was added to the income. It was also the case of the Department that the Commissioner of Income Tax (Appeals) was not justified in deleting the additions while upholding the assessment of Annual Letting Value of vacant space under the head ''income from house property'' by the Assessing Officer.

7. The Tribunal, however, in paragraph 4 of the order, took a different view and upheld the order of the Commissioner of Income Tax (Appeals) holding that the property in question was held as stock- -in-trade and therefore the Annual Letting Value cannot be brought to tax under the head ''house property''. For better clarity, we extract hereunder the relevant portion of the order of the Tribunal:

"4. We have heard both the parties. The Assessing Officer has worked out annual letting value by adopting Rs.170/Sq.ft, which was arrived at by dividing the closing stock at Rs.1,04,13,599/- by the area of 61,355 sq.ft. The assessee has leased out area of 43,011 Sq.ft in assessment year 1998-99 and 24,933 Sq.ft in assessment year 1999-2000. In the case before us, a part of the property has been sold and another part of the property has been let out. The balance property is held as stock in trade. The assessee is a developer of properties. The Assessing Officer has determined annual letting value of area lying vacant, which is held by the assessee as stock in trade. Ld. CIT(A) has upheld the stand taken by assessee that annual letting value of vacant area is chargeable to tax under the head ''house property''. We are unable to subscribe his view for the reasons that where a property is held as stock in trade, annual letting value cannot be brought to tax under the head ''house property'' or as ''business income''. The view expressed by ld. CIT(A) will be applicable in the cases, where properties are not held as stock in trade. Since the part of the property held as stock in trade cannot be brought to tax under the head ''income from house property'', it is held that Assessing Officer was not justified in estimating annual letting value and assessing the same as ''income from house property''. Accordingly for different reasons as mentioned above, we uphold the order of CIT(A), deleting the addition made by the Assessing Officer." 8. Aggrieved by the order of Tribunal, the Revenue is before this Court.

9. Learned Standing Counsel appearing for the Revenue submitted that the Tribunal while taking note of the order of the Commissioner of Income Tax (Appeals) holding that it is a case of income from house property, there was no justification in deleting the addition. He further submitted that the Department''s appeal before the Tribunal was against the order of deletion of addition made towards the determination of Annual Letting Value and also on the plea that the assessee had already accepted this income as income from house property. Hence, the addition made by the Assessing Officer is in order.

10. Heard learned Standing Counsel appearing for the Revenue and the learned counsel appearing for the assessee and perused the materials placed on record.

11. It is seen from the order of the Tribunal that the Tribunal has taken a different view that the assessee has held the balance property as stock-in-trade. Since the order of the Commissioner of Income Tax (Appeals), confirming the assessment of Annual Letting Value of the vacant space under the head ''income from house property in respect of both the assessment years, has not been challenged by the assessee, the Tribunal is not justified in coming to a conclusion that the property is held as stock-in-trade, thereby, upholding the deletion of the addition of Annual Letting Value. To that extent, the order of the Tribunal becomes beyond the scope of appeal. Hence, we find that the issue has to be re-addressed by the Tribunal.

12. Accordingly the order of the Tribunal stands set aside and the matter is remanded back to the Tribunal for fresh consideration of the appeal filed by the Department.

13. In the result, both the Tax Case (Appeals) are disposed of accordingly. No costs.