

(2008) 08 PAT CK 0136
In the Patna High Court
Case No : Tax Cases No's. 23, 24 of 1999

Commissioner of Income Tax

APPELLANT

Vs

M/s Mithila Prop. Pub. and Contract

RESPONDENT

Date of Decision : 28-08-2008

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 147, 147(a), 147(b), 148

Citation : (2008) 4 PLJR 785

Hon'ble Judges : Ravi Ranjan, J; Chardramauli Kr. Prasad, J

Bench : Division Bench

Advocate : K.N. Jain and Dr. R. Usha, for the Appellant; Harshwardhan Prasad and Archana Sinha, for the Respondent

Final Decision : Disposed Off

Judgement

Chardramauli Kr. Prasad & Dr. Ravi Ranjan, JJ.—Both these cases have come up for our opinion on references made by the Patna Bench of the income tax Appellate Tribunal at the request of the revenue and the assessee. The assessee is a Private Limited Company and engaged in business of letting out of its godown for the assessment years in question. The assessee filed its return of income showing the total loss of Rs. 88,995, but the assessment was completed on a total income of Rs. 2,34,100/- u/s 143(3) of the Income Tax Act. Subsequently notice u/s 148 of the Income Tax Act, hereinafter referred to as the Act, was issued and fresh assessment proceedings were started.

2. The assessee Company had constructed the Warehouse and declared its cost of construction at Rs. 22,89,737/- in the assessment year 1983-84. The Warehouse was constructed between the period 1.10.1977 to 30.9.1983. The matter was referred to the departmental valuation cell and the Departmental Valuer determined, originally the cost of construction at Rs. 71,42,000/- but it was reduced in the second valuation report to Rs. 36,03,300/-.

3. On the basis of the valuation report of the departmental valuer the original

assessment for the year in question was reopened and the assessee was asked to explain the difference in the valuation as per the valuation report and the cost of construction shown by it, covering all the assessment years for the period from 1.10.1977 to 30.9.1983.

4. For the assessment year under consideration the investments shown by the assessee was Rs. 1,88,966/- whereas according to the valuation report it was Rs. 2,97,419/-. A difference of Rs. 1,08,453/- was found and in the absence of proper and satisfactory explanation from the assessee the aforesaid amount was added in its total income as unexplained investment by the Assessing Officer.

5. The assessee challenged the aforesaid decision in appeal before the Commissioner of Income Tax (Appeal), who upheld the order of the Assessing Officer. According to Commissioner of Income Tax (Appeals) the valuation report from the valuation cell constituted the information in regard to the understatement of the investment in the godown. In his opinion the departmental valuer being a technical expert determines the cost of the construction on the basis of knowledge and expertise possessed by him. The Commissioner of Income Tax (Appeals), however, modified the cost of construction taking into account the supervision charges etc. He reduced the quantum of undisclosed investment in the godown to the tune of Rs. 57,442/- from Rs. 1,08,453/-.

6. The assessee carried the matter further in appeal before the Patna Bench of Income Tax Appellate Tribunal, hereinafter referred to as the Tribunal. The Tribunal upheld the order of the Commissioner of Income Tax (Appeal) so far as it related to reopening of the assessment u/s 147 of the Act. In relation to cost of construction the Tribunal observed that since the claim of the assessee that it maintained proper books of account and each and every expenses of the cost of construction are entered in the books of account, directed the Assessing Officer to re-examine the books of account of the assessee. While doing so, the Tribunal observed that if there are no effective defects in the books of account relating to the cost of construction, the Assessing Officer should accept the cost of construction as per the books of account. On these facts the Tribunal, at the instance of the Revenue has referred the following question for our opinion:-

Whether on the facts and in the circumstances of the case, the order of the Tribunal is erroneous in view of the fact that in absence of any defect in the report of District Valuation Officer who is an expert, the same should have been brushed aside or treated as non est.?

7. Following questions have also been referred for our opinion at the instance of the assessee:-

1. Whether on the facts and in the circumstances of the case, the Tribunal was, correct in law in holding that the Valuation Officer's report constitutes information for the purpose of reopening of a completed assessment by seeking resort to the provisions as contemplated in Section 148 of the Act?

2. Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in setting aside the matter relating to determination of the cost of construction to the AO notwithstanding the fact that the same Bench of Tribunal in identical cases had accepted the cost of construction of investment in the property on the basis of books of accounts maintained by an assessee following the ratio of the judgment of the Hon''ble Rajasthan High Court in the case of Pratap Singh Amroh Singh Rajendra Singh (supra)?

8. Mr. K.N. Jain, Senior Advocate, appears on behalf of the assessee, whereas the revenue is represented by Mr. Harshwardhan Prasad.

9. It is common ground that answer to the first question referred for our opinion at the instance of the assessee, if answered in its favour, answer to the other questions shall be rendered academic.

10. Mr. Jain, contends that Departmental Valuer's report is not information, so as to enable the Assessing Officer to exercise the power u/s 148 of the Act. He points out that there is no provision under the Act, which gives the departmental valuer's report any special status. According to him departmental valuer's report is nothing but a piece of evidence and its value is to be appreciated like any other evidence. He points out that distinction has to be made between a case in which final assessment has been made and the departmental valuer's report is considered for passing the order of assessment than with a case in which after final assessment, it is reopened.

11. In support of the submission he has placed reliance on a decision of Rajasthan High Court in the case of Commissioner of Income Tax vs. Smt. Prem Kumari Surana (206 ITR 715) and our attention has been drawn to the following passage from the said judgment:-

Apart from what has been said above, on merits also, we find that the question has to be answered against the Department on the ground that no proceedings u/s 147(b) of the Act could be initiated on the basis of the valuer's report. It is only an information which, without being substantiated by convincing evidence or circumstances, could not be the basis for reopening of an assessment order. In L.B. Kharawala Vs. Income Tax Officer, Company Circle-V, Ahmedabad, , Dinkarrai Anantrai Mankad Vs. Income Tax Officer, Circle-II, Ward-I, and Sardar Kehar Singh Vs. Commissioner of Income Tax and Others, , it has been held that the valuation report did not constitute information under Clause (b) of Section 147 of the Act and as such the same cannot be a valid basis for reassessment.

12. Reliance has also been placed on a decision of the Gauhati High Court in the case of Bhola Nath Majumdar Vs. Income Tax Officer and Others, and our pointed attention has been drawn to the following passage from the said judgment:-

Valuation report is only an opinion of a valuer. The same does not amount to information within the meaning of Section 147(b) nor it can form a ground for reason to believe that the assessee had failed to disclose his income fully and

truly within the meaning of Section 147(a) of the Act. The condition precedent for assumption of jurisdiction u/s 147(a) of the Act is reason to believe of the Income tax Officer. If that be so, then a report or information of a valuer cannot substitute the words "reason to believe" of the Income Tax Officer.

13. Yet another decision on which reliance has been placed is the decision of the Bombay High Court in the case of Commissioner of Income Tax Vs. Vinod Danchand Ghodawat, in which it has been held as follows:-

There would be no finality, if the Departmental valuer's report obtained subsequent to the order of the regular assessment. Hence, the Tribunal was right in deleting the said addition. Accordingly, question no. 3 is answered in the affirmative, i.e. in favour of the assessee and against the Department.

14. Reliance has also been placed on a decision of Punjab & Haryana High Court in the case of Commissioner of Income Tax Vs. Darshan Singh, in which it has been held as follows:-

Thus the report of the Departmental Valuation Officer was clearly invalid. If the said report is excluded from consideration, there is no material whatsoever warranting satisfaction on the part of the Assessing Officer about the escapement of income.

15. Reference has also been made to a decision of the Madras High Court in the case of Commissioner of Income Tax Vs. V.T. Rajendran, in which relying on the judgment of the Rajasthan High Court in the case of Tara Chand Mundhara (supra), Bombay High Court in the case of CIT vs. Vinod Danchand Ghodawat (supra) and Punjab and Haryana High Court in the case of CIT vs. Darshan Singh (supra), it has been held that reopening of the proceeding of assessment on the basis of the report of the Valuation Officer determining the cost of construction higher than what was disclosed by the assessee is not justified.

16. Mr. Prasad, however contends that the departmental valuer's report is an information sufficient for exercise of the power of reassessment under the Act. In support of the submission, reliance has been placed on a decision of the Andhra Pradesh High Court in the case of Daulatram and Others Vs. Income Tax Officer and Another .

17. Having appreciated the rival submission, we find substance in the submission of Mr. Jain and the decisions relied on clearly support his contention.

18. In our opinion, the valuation report submitted by the Departmental Valuation Officer, in the absence of any statutory provision placing the same on a higher pedestal, is nothing more than a piece of opinion expressed by him and that alone cannot constitute an information so as to give the Assessing Officer an apprehension to comprehend that the income chargeable to tax has escaped the assessment. An information can be said to be sufficient enabling the Assessing Officer to reopen the assessment order is to be of the nature apprising the Assessing Authority for the first time relating to taxable income. Valuer's report

does not amount to information within the meaning of Section 147(b) of the Act and singularly cannot form a ground for reason to believe that the assessee had failed to disclose its income fully and truly within the meaning of Section 147(b) of the Act. In the case in hand no reason at all has been furnished, excepting the report of the departmental valuer. In the face of it, we are of the opinion that the report of the departmental valuer alone is not sufficient for reopening the assessment.

19. Now reverting to the decision of the Andhra Pradesh High Court in the case of Daulatram (*supra*), relied on by Mr. Prasad, same is clearly distinguishable. In the said case the question was about the power of Income Tax Officer to determine value of capital asset by making reference to the Valuation Officer. In the present case the issue is as to whether the Departmental valuer's report constitutes information for the purpose of completed assessment.

20. The aforesaid discussion lead us to conclude that the Valuation Officer's report do not constitute information for reopening of a completed assessment and accordingly, answer to the first question at the instance of the assessee is in the negative, in favour of the assessee and against the revenue and it is held that the tribunal was not right in holding that the Valuation Officers' report constitute information for the purpose of reopening of the completed assessment by seeking resort to Section 148 of the Act.

21. In view of our answer to the aforesaid question the other questions referred to us at the instance of the revenue as also the assessee are rendered academic.

22. Let our opinion be forwarded to the Patna Bench of the Income Tax Appellate Tribunal, Patna. Tax cases stand disposed off accordingly.