
(2002) 04 DEL CK 0138

In the Delhi High Court

Case No : Income-tax Reference No. 250 of 1983

Commissioner of Income Tax

APPELLANT

Vs

Pragati Construction Co.

RESPONDENT

Date of Decision : 23-04-2002

Acts Referred:

Income Tax Act, 1961 — Section 37

Citation : (2002) 175 CTR 118

Hon'ble Judges : S.B. Sinha, C.J.; A.K. Sikri, J

Bench : Division Bench

Advocate : R.D. Jolly and Ajay Jha, for the Appellant; Anoop Sharma, for the Respondent

Judgement

S.B. Sinha, C.J.—The question referred for opinion of this court by the Income Tax Appellate Tribunal in terms of Section 256(1) of the Income Tax Act, 1961, is as under :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in confirming the order of the Commissioner of Income Tax (Appeals) and upholding that the provision of Rs. 97,040 for registration charges of plots by the assessed in its accounts were chargeable as accrued liability against the profit of the year under consideration ?"

2. The fact of the matter is as follows :

The assessed is a registered firm. It carries on the business of construction and sale of flats in multi-storeyed commercial buildings. Allegedly, during the accounting period of the relevant assessment year, it had completed certain works. In its return, it claimed a deduction of Rs. 97,040 on account of provision of registration fee. The said claim was disallowed by the Assessing Officer stating :

"No registration has yet been done and only provision of Rs. 97,040 is made. These cannot be allowed now as there is no such ascertained liability. Even in

terms of the agreement these expenses appeared to be borne by the flat/shop owners in terms of Clause 33(a) of the agreement. The question of allowance, if at all, these are admissible can be considered at the time of its payment."

The assessed preferred an appeal there against which was allowed by. the Commissioner of Income Tax stating :

"No registration has yet been done and only provision of Rs. 97,040 is made. This cannot be allowed now as there is no such ascertained liability. Even in terms of the agreement these expenses appeared to be borne by the flat/shop owners in terms of Clause 33(a) of the agreement. The question of allowance, if at all these are admissible, can be considered at the time of its payment." (sic)

An appeal was made by the Revenue to the Income Tax Appellate Tribunal on the following grounds :

- (a) the assessed in this case is not expected to be liable for this expense; and
- (b) any further liability can be claimed only if it has been ascertained.

3. Mr. Jolly, learned counsel appearing on behalf of the Revenue, would submit that the question is covered by a Division Bench decision of this court in I. T. R. No. 147 of 1981 -- Commissioner of Income Tax Vs. Vishal Builders P. Ltd., . Learned counsel would contend that from the order of the Tribunal dated January 21, 1982, it would appear that the Tribunal, inter alia, relied upon the case of Vishal Builders Pvt. Ltd. in I. T. R. No. 1546 and C, O. No. 154 of 1977 which was the subject-matter of the aforementioned I. T. R. No. 147 of 1981.

4. Mr. Sharma, learned counsel appearing on behalf of the assessed, on the other hand, would submit that the registration fee was claimed as "expenses" although the same was not incurred during the period in question having regard to the fact that the assessed was maintaining its books of account on the mercantile basis.

5. Learned counsel would contend that having regard to the fact that the sale price of the land has been taken on receivable basis, there is absolutely no reason as to why the registration charges would not be computed on payable basis for the purpose of determining the profit and loss during the relevant assessment year. In support of the said contention, reliance has been placed on Commissioner of Income Tax, Bombay City I Vs. Lever Brothers (India) Ltd., ; Metal Box Company of India Ltd. Vs. Their Workmen, and Commissioner of Income Tax, Delhi Vs. Nav Bharat Nirman (P.) Ltd., .

6. Learned counsel further submitted that the Commissioner of Income Tax himself wrote a letter to the Delhi Development Authority who, in response, categorically stated that the liability to pay the registration charges is on the assessed. It was, Therefore, submitted that the liability being an admitted one, the same would come within the purview of "expenditure" which could be taken into consideration for the purpose of determination of the profit and loss. It was

contended that the Delhi Development Authority being a statutory authority, it could fix the liability.

7. Although, prima facie, the submission of Mr. Sharma appears to be attractive, it is not in dispute that in the agreement entered into by and between the assessed who is the promoter and the buyer is contained in annexure E. Clause 33 of the said agreement is as follows :

"33(a) All costs, charges and expenses in connection with the formation of the co-operative society, limited company or any other corporate body of buyers as well as the cost of the preparing, engrossing, stamping and registering all the agreements, deeds of assignment, sale deeds, conveyance or any other documents to be executed under these presents by the promoter or the buyer as well as the entire professional costs of the attorneys of the promoter in preparing and approving all such documents shall be borne by the society or limited company if formed and otherwise proportionate by all the holders of flats/shops/godowns in the said building. The promoter shall not be liable to contribute any amount towards such expenses. The same will be the position regarding the lease to be executed by the Delhi Development Authority, if it is executed directly in favor of the company/society or incorporated body of buyers. The proportionate share of such expenses without loss of time the buyer shall along with the last Installment thereof deposit with the promoter a sum of Rs. 1,000 for each flat/shop/godown of area less than 500 sq. ft., Rs. 2,000 for area more than 500 sq. ft. but less than 1,000 sq. ft. and Rs. 3,000 for area more than 1,000 sq. ft. but less than 2,000 sq. ft. or more. After meeting the cost on actual basis, the balance, if any, will be transferred to the cooperative society, limited company or corporate body of buyers when formed and will be used for further share of his expenses and outgoings.

(b) If the co-operative society or limited company or the incorporated body abovementioned is not formed for any reason whatsoever then the promoter may transfer and assign the said building to the person who have purchased all the flats/shops/godowns in the said building each of such purchaser having a share in said property in such proportion as the price paid by him to the total price of all the flats/shops/godowns aggregated together. All costs of such transfer shall be borne by all the purchasers and the share money and deposit mentioned in para. 33(a) above shall be appropriated towards the said expenses."

8. There may not be any dispute that a liability which is admitted and which is to be incurred at the time of sale of the flat/land for the accounting period, the same may be taken into consideration. But, in the instant case, having regard to the pro forma of the agreement, there cannot be any doubt whatsoever that the registration charges are to be borne by the allottees and not by the assessed. Once such a fact is brought on record, it is futile to urge that the expenditure would be an admitted liability. At all material times, the assessed knew that it would not have to incur the expenditure towards the registration charges and, thus, could not claim the same.

9. In this view of the matter, we are of the opinion that the decisions which have been referred to by Mr. Anoop Sharma, cannot be said to have any application in the facts and circumstances of the case.

10. For the reasons aforementioned, the question referred for the opinion of this court is answered in the negative, i.e., in favor of the Revenue and against the assessed.