(2006) 02 AHC CK 0020

In the Allahabad High Court

Case No : IT Appeal No. 26 of 2006

Commissioner of Income Tax APPELLANT

Vs

Rohtas Projects Ltd. RESPONDENT

Date of Decision : 23-02-2006

Acts Referred:

Income Tax Act, 1961 — Section 131(1), 133, 142A, 142A(1), 153A
Wealth Tax Act, 1957 — Section 38A

Citation : (2006) 204 CTR 139

Hon'ble Judges : Rajiv Sharma, J;Pradeep Kant, J

Bench : Division Bench

Advocate : D.D. Chopra, for the Appellant; S.K. Garg, for the Respondent

Judgement

1. We have heard Sri D.D. Chopra for the appellant and Sri S.K. Garg, senior advocate, appearing n behalf of the respondent.

2. In the relevant assessment year, the assessee was engaged in real estate development and construction activities. In the course of assessment proceedings for the asst. yr. 1998-99, the AO made a reference u/s 131(1)(d) of the Act to the District Valuation Officer (DVO) on 7th Feb., 2001 to estimate the cost of construction of properties constructed by the assessee named as Golf Link Apartments, Park Road, Lucknow and Coronation Farms at Kursi Road, Lucknow. The DVO has submitted his report on 26th Feb., 2002, estimating the cost of construction at Rs. 7,67,47,000 as against the cost of Rs. 5,77,02,689 disclosed by the assessee. The difference of the cost amounting to Rs. 30,55,436 was added by the AO but, the addition was deleted by the CIT(A), on appeal being preferred by the assessee.

The CIT(A) came to the conclusion that the AO was having no jurisdiction to refer the matter to the Valuation Officer for valuing the property. The appellant went in appeal before the Tribunal and the Tribunal again dismissed the appeal after holding that the issue in question was squarely covered in favour of the assessee by the decision of the apex Court in the case of Amiya Bala Paul Vs.

Commissioner of Income Tax, Shillong, wherein it has been held that in an assessment of the assessee to Income Tax, the AO cannot refer to the Valuation Officer the question of the cost of construction of house property built by the assessee It was also held that Section 55A of the IT Act, 1961 has no application to such a matter and that the power of the AO under Sections 131(1) and 133(b) is distinct and does not include the power to refer a matter to the Valuation Officer u/s b5A.

3. The view taken by the Tribunal is not in accordance with law as it ignores the provisions of Section 142A introduced by the Finance (No. 2) Act, 2004, with retrospective effect from 1bth Nov., 1972. Section 142A of the IT Act reads as under:

142A. Estimate by Valuation Officei in certain cases. ??(1) For the purposes of making an assessment or reassessment under this Act, where an estimate of the value of any investment referred to in Section 69 or Section 69B or the value of any bullion, jewellery or other valuable article referred to in Section 69A or Section 69B is required to be made, the AO may require the Valuation Officer to make an estimate of such value and report; the same to him.

(2) The Valuation Officer to whom a reference is made under Sub-section (1) shall, for the purposes of dealing with such reference, have all the powers that he has u/s 38A of the WT Act, 1957 (27 of 1957).

(3) On receipt of the report from the Valuation Officer, the AO may, after giving the assessee an opportunity of being heard, take into account such report in making such assessment or reassessment:

Provided that nothing contained in this section shall apply in respect of an assessment made on or before the 30th day of September, 2004, and where such assessment has become final and conclusive on or before that date, except in cases where a reassessment is required to be made in accordance with the provisions of Section 153A.

4. A bare perusal of the aforesaid section reveals that AO, for the purposes of making an assessment or reassessment under this Act, where an estimate of the value of any investment referred to in Section 69 or Section 69B or the value of any bullion, jewellery or other valuable article referred to in Section 69A or Section 69B is required to be made, may require, the Valuation Officer to make an estimate of such value and report the same to him. Sub-clause (3) of the aforesaid section lays down the proceeding on receipt of the report from the Valuation Officer, which requires of affording an opportunity to the assessee of being heard by the AO while making such assessment or reassessment. The proviso attached to the aforesaid section excludes its applicability only in respect of an assessment made on or before the 30th day of September, 2004, and where such assessment has become final and conclusive on or before that date, except in cases where a reassessment is required to be made in accordance with the provisions of Section 153A. This means that if the assessment has not

become final and conclusive on or before the 30th day of September, 2004, and does not fall in other exceptional clause, the proviso being introduced w. e. f. 15th Nov., 1972 would be attracted in all matters of assessment, or reassessment, which have not become final.

5. In the instant case, the record reveals that the AO has passed the order on 27th March, 2003 and the first appeal was decided on 26th March, 2004, whereas the Tribunal decided the appeal on 9th Aug., 2005, i.e., much after the aforesaid section was inserted in the Act.

The Tribunal though relied upon the judgment of the apex Court in the case of Smt. Amiya Bala Paul (supra) but failed to consider the merit and impact of the provisions of Section 142A, which was inserted with retrospective effect by Finance (No. 2) Act, 2004,

6. For the reasons stated above, the order passed by the Tribunal cannot be sustained as the appeal is required to be reconsidered by the Tribunal keeping in mind the provisions of Section 142A of the Act as well as the ratio laid down by the apex Court in the case of Smt. Amiya Bala Paul (supra).

7. We, therefore, allow the appeal and set aside the order dt. 9th Aug., 2005 passed by the Tribunal and remand the matter to the Tribunal for deciding afresh in accordance with law after affording opportunity of hearing to the parties, expeditiously, and without any unreasonable delay.