
(2014) 09 MAD CK 0062

In the Madras High Court

Case No : Tax Case (Appeal) Nos. 362 to 369 of 2014

Commissioner of Income Tax

APPELLANT

Vs

Shivlal

RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Income Tax Act, 1961 — Section 142A, 143, 143(3), 144, 147

Citation : (2015) 371 ITR 109

Hon'ble Judges : R. Sudhakar, J;G.M. Akbar Ali, J

Bench : Division Bench

Advocate : J. Narayanasamy, Standing Counsel, Advocates for the Appellant

Judgement

R. Sudhakar, J.—The above tax case (appeals) are filed by the Revenue as against the common order of the Income-tax. Appellate Tribunal in eight appeals--four by the assessee?, and four by the Revenue, for the assessment year 2004-05. The brief facts are as follows:

The assessees, Sha, Jhumarlal, Smt. Chandra Bai Shri Shivlal and Smt. Sadhana Bai, had together purchased a property during the financial year 1999-2000 for a total consideration of Rs. 58,49,320. The share of each of the assessee in the said consideration was Rs. 14,62,330, The building in the said property was demolished and a new house was constructed in the land during April, 2001, to March, 2004, During the course of regular, assessment of Shri Shivlal, the Assessing Officer called upon, him to submit the details of the cost of construction of, the building, namely, Door No. 87, Mint Street, Chennai - 79. The valuation made, by the registered valuer was furnished by the assessee and in the valuation report, the value of the building was shown as Rs. 74.85 lakhs. The details of construction expenses filed by all the assessees gave the figure of Rs. 1,28,92,674, which includes the value of the land and incidental expenses. After excluding the value of the land, the cost of construction admitted by the assessee, as worked out by the Assessing Officer, came to Rs. 72,21,622 against the value of Rs. 74.85 lakhs by the registered valuer. The assessee, Shri Shivlal

was examined, who had stated that no books were maintained for the construction work.

2. The Assessing Officer made a reference to the Departmental Valuation Officer (DVO) under section 142A of the Income-tax Act. The Departmental Valuation Officer fixed the cost of construction at Rs. 1,74,20,000. Since the property was owned by the four assessees, the cost of construction was worked out at Rs. 43,55,000 per assessee. However, as per the assessees, the cost of construction in respect of each of the assessee would amount to Rs. 17,70,041, totalling to Rs. 72,21,625. The difference amount was considered as unexplained investment by the individual assessees under section 69B of the Income-tax Act. The assessment in respect of Shri Shivlal was completed under section 143(3) of the Income-tax Act and in respect of other assessees, proceedings under section 147 of the Income-tax Act was initiated and additions towards alleged unexplained investment were done in the reassessment.

3. Aggrieved by such addition towards unexplained investment, the assessees preferred an appeal before the Commissioner of Income-tax (Appeals), who reduced the addition in respect of each of the assessee to a lesser amount and spread this addition to various assessment years, namely, 2003-04 and 2004-05. Not satisfied with the order of the Commissioner of Income-tax (Appeals), both the assessees as well as the Revenue preferred appeals before the Income-tax Appellate Tribunal.

4. The Tribunal, after considering the rival contentions of both sides, was of the view that in determining the cost of construction, which is the main plank of the assessees' case, the issue was whether the cost of construction should be based on the CPWD rates or the rates prescribed by the State Public Works Department. The Tribunal accepting the contention of the assessee remanded the matter to the Assessing Officer for reconsideration of this issue as to how the cost of construction should be determined. The Tribunal in paragraph 14 of the order observed as follows:

"We are, therefore, of the opinion that for determining the cost of construction, the matter requires a revisit by the Assessing Officer. He has to give cogent reason for arriving at the cost of construction whether based on the CPWD rates or State PWD rates, in accordance with law, and also give reason why the books, in whatever form maintained by the assessee, could not be considered."

5. In so far as the Department's appeals challenging the reduction of addition and spreading over of the addition to various assessment years by the Commissioner of Income-tax (Appeals), the Tribunal did not accept the argument of the Revenue and remanded the matter to the Assessing Officer.

6. Aggrieved by the order of the Tribunal, the Revenue is before this court.

7. Learned counsel, appearing for the Revenue, vehemently contended that the Commissioner of Income-tax (Appeals) has no power to spread over the addition

to various assessment years and, hence, the Tribunal is not justified in remitting the matter to the Assessing Officer.

8. Heard learned standing counsel appearing for the Revenue and perused the materials placed before this court.

9. The only aspect that needs to be considered is whether the Commissioner of Income-tax (Appeals) was justified in spreading over the additions to various assessment years. We find that the Tribunal has considered the issue in paragraphs 15 and 16 of the order, which reads as follows:

"15. Coming to the second aspect raised by the Revenue in their appeals that the Commissioner of Income-tax (Appeals) did not have any power for giving direction for another year, the hon'ble apex court in the case of Rajinder Nath (supra), has clearly held at paragraph 7 of its judgment as under (page 18 of 120 ITR):

"7. The expressions "finding" and "direction" are limited in meaning. A finding given in an appeal, revision or reference arising out of an assessment must be a finding necessary for the disposal of the particular case, that is to say, in respect of the particular assessee and in relation to the particular assessment year. To be a necessary finding, it must be directly involved in the disposal of the case. It is possible in certain cases that in order to render a finding in respect of A, a finding in respect of B may be called for. For instance, where the facts show that the income can be belong either to A or B and no one else, a finding that it belongs to B or does not belong to B would be determinative of the issue whether it can be taxed as A's income. A finding respecting B is intimately involved as a step in the process of reaching the ultimate finding respecting A. If, however, the finding as to A's liability can be directly arrived at without necessitating a finding in respect of B, then a finding made in respect of B is an incidental finding only. It is not a finding necessary for the disposal of the case pertaining to A. The same principles seem to apply when the question is whether the income under enquiry is taxable in the assessment year under consideration or any other assessment year. As regards the expression "direction" in section 153(3)(ii) of the Act, it is now well settled that it must be an express direction necessary for the disposal of the case before the authority or court. It must also be a direction which the authority or court is empowered to give while deciding the case before it. The expressions "finding" and "direction" in section 153(3)(ii) of the Act must be, accordingly, confined. Section 153(3)(ii) is not a provision enlarging the jurisdiction of the authority or court. It is a provision which merely raises the bar of limitation for making an assessment order under section 143 or section 144 or section 147; Income Tax Officer, A-Ward, Sitapur Vs. Murlidhar Bhagwandas, Lakhimpur Kheri, and N. Kt. Sivalingam Chettiar Vs. Commissioner of Income Tax, Madras, . The question formulated by the Tribunal raises the point whether the Appellate Assistant Commissioner could convert the provisions of section 147(1) into those of section 153(3)(ii) of the Act. In view of section 153(3)(ii) dealing with limitation merely, it is not easy to appreciate the

relevance or validity of the point."

When the assessee himself claims that the construction was spread over to two to three years, in our opinion, the finding of the Commissioner of Income-tax (Appeals) that addition, if any, made for unexplained cost of construction, has to spread over to such years, is nothing but a finding which is necessary for disposal of the case. It is an issue directly involved in the appeals before him and such directions, in our opinion, were not beyond the powers of Commissioner of Income-tax (Appeals).

16. As for the decision of the hon''ble apex court in the case of Foramer France (supra), relied on by the learned authorised representative, the question there was applicability of section 153(3)(ii) of the Act and whether the observation of the Tribunal was a direction necessary for disposal of the appeal, relating to the concerned petitioners. In our opinion, this judgment of the hon''ble apex court do not circumscribe the powers of the Commissioner of Income-tax (Appeals) in any manner. In the decision of Banwarilal and Sons, the hon''ble Delhi High Court was seized of the issue whether directions given by Appellate Assistant Commissioner in the said case, were necessary for disposal of the appeal and whether such direction could be considered as one coming within the ambit of section 153(3)(ii) of the Act. Here, the issue before us is not the question of any limitation or issue of notice. In the case of Sun Metal Factory (I) P. Ltd. (supra), decided by co-ordinate Bench of this Tribunal, the Commissioner of Income-tax (Appeals) held that the addition made by the Assessing Officer was not based on any evidence found during search and, after giving such a finding, directed the Assessing Officer to reopen the assessment for given assessment years. Here, neither assessments were based on any search nor can it be said that the Commissioner of Income-tax (Appeals) had enlarged the scope of appeals by giving a direction to split the unexplained investment on cost of construction to the period of construction."

10. On going through the order of the Commissioner of Income-tax (Appeals) and that of the Tribunal, we find that the issue as to whether the addition should be spread over to various assessment years in an admitted case of construction between 2001 and 2004 is academic and we are not inclined to interfere with the order of the Tribunal. We find that the reasoning of the Tribunal relying on the decision of the apex court is justified. Accordingly, we find no question of law much less substantial question of law that arises for our consideration in these appeals. Accordingly, all the above Tax Case (Appeals) are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.