(2009) 01 MAD CK 0155

In the Madras High Court

Case No : T.C.A. No. 354 of 2004

Commissioner of Income Tax — APPELLANT

Vs

S.I. Property Development Ltd. — RESPONDENT

Date of Decision : 27-01-2009

Acts Referred:
Income Tax Act, 1961 — Section 260A

Citation : (2009) 313 ITR 177

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : Arun Kurian Joseph, for Pushya Sitaraman, for the Appellant;

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The Revenue is on appeal u/s 260A of the Income Tax Act, 1961, against the order passed by the Income Tax

Appellate Tribunal ""B"" Bench, Chennai, dated July 10, 2003, in I.T.A. No. 415/Mds/1996 by formulating the following question of law:

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in deleting the disallowance of Rs. 17,31,850

made out of the head office expenses and also the addition of 10 per cent. of Rs. 1,73,185 towards estimated profits on contract receipts is valid

in law?

2. The assessee-company is engaged in the business of construction of flats, contract and real estates. During the year, the assessee-company was

being converted into a public limited company from a company in which public are not substantially interested. The Assessing Officer was of the

opinion that the head office was controlling the project and, therefore, some expenditure of the Madras head office should be allocated for the project work for determining the profit. The Assessing Officer disallowed Rs. 17,31,851 out of the head office expenses and addition of 10 per

cent. of the same as estimated profit on contract receipt on the allowable expenditure. Against that order, the assessee preferred an appeal before

the Commissioner of Income Tax (Appeals), who deleted the disallowance of Rs. 17,31,851 made out of head office expenses and with regard to

the addition made of 10 per cent. towards estimated profit on contract receipts, the Commissioner (Appeals) was of the view that it was another

form of depreciation which has already been considered once and, therefore, claiming it as 10 per cent. of the estimated profit on contract receipt

and making an addition was a double deduction and accordingly deleted it. Against that order, the Department preferred an appeal to the Tribunal.

The Tribunal by the impugned order held that ""in the hands of the company profit is the ultimate of all its activities. Even if the head office expenses

are to be allocated, which is only called for from the point of view of project profit, it would have no effect in so far as the determination of income

is concerned. If the expenses are to be allocated to the project, then the expenses in the head office would have to be reduced to that extent by

means of a contra entry and the net effect would be that at only one place the expenditure can be claimed."" The Tribunal concluded that the

addition was uncalled for. Thus, dismissed the appeal filed by the Revenue, by observing that no interference is called for with the conclusion

reached by the Commissioner of Income Tax (Appeals). The correctness of the same is now canvassed before us.

3. We have heard the argument of learned Counsel on either side and perused the materials on record.

4. Learned counsel appearing for the Revenue submitted that the issue involved in this appeal is covered by a judgment of this Court reported in

Commissioner of Income Tax Vs. S.I. Property Development Ltd., .

The issue involved in the present case has been formulated as a question of law in respect of the assessment years 1987-88 and 1988-89 and was

agitated before this Court in the above judgment reported in Commissioner of Income Tax Vs. S.I. Property Development Ltd., , wherein this

Court, while dismissing the appeals, held that ""since the method adopted by the asses-see had been followed by it consistently and the Department had accepted the method in earlier years, it would not be fair to the assessee to change the method in the current year. That the method adopted

by the assessee had not been brought before the High Court on reference in the earlier years was of no effect"" and answered the question

whether, on the facts and in the circumstances of the case, the Tribunal was right in law in deleting disallowance of Rs. 14,28,410 and Rs.

9,75,653 for the assessment years 1987-88 and 1988-89, respectively, being the overhead expenses attributable to the incomplete project ""Lake

Shore Manor Project"", in favour of the assessee and against the Revenue.

5. Therefore, following the abovesaid judgment, the question of law is answered in favour of the assessee and against the Revenue.

