
(2005) 03 DEL CK 0014

In the Delhi High Court

Case No : ITA 42 of 2005

Commissioner of Income Tax

APPELLANT

Vs

Sudhish Kumar

RESPONDENT

Date of Decision : 03-03-2005

Acts Referred:

Citation : (2005) 195 CTR 77 : (2005) 276 ITR 563 : (2005) 146 TAXMAN 612

Hon'ble Judges : Swatanter Kumar, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : Sanjiv Khanna, for the Appellant; Nemo, for the Respondent

Judgement

Swatanter Kumar, J.—Commissioner of Income Tax, Delhi, has questioned the correctness and legality of the order passed by the Income Tax Appellate Tribunal, Delhi, dated 23rd July, 2004 wherein it held that the Assessing Officer does not have the power under the Act to refer the Valuation Officer, the question of cost of construction of the property, subject matter of the present writ petition.

2. The assessed had filed return for the assessment year 1996-97 declaring a total income of Rs.59,210/- which was processed u/s 143(1)(a) on 31st March, 1998 on the returned income. Subsequently, and with the prior approval of the competent authority, a notice u/s 143(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was issued. The assessed attended the proceedings in furtherance to the said notice. Documents including the map plan of the property was also filed. The cost of construction was shown as Rs.5,50,000/- for 4000 sq. ft. approximately, giving the rate of Rs.140/- per sq. ft. The Assessing Officer felt that normally the cost of construction should be Rs.500/- per sq. ft. and he rejected the accounts produced by the assessed as unreliable u/s 145 of the Act. During the course of proceedings the Assessing Officer referred the matter to a Valuer and after seeking the report of the Valuer, made additions to the income of the assessed.

Against the said order of the Assessing Officer dated 31st March, 1999 the assessed preferred an appeal which was partially allowed in certain aspects, but answering the question of jurisdiction of the Assessing Officer, as afore-referred, against the assessed, where after the assessed challenged the order of the authorities before the Income Tax Appellate Tribunal.

3. Both the Revenue as well as the assessed went up in appeal before the Income Tax Tribunal. During the course of hearing, though the assessed had raised various grounds but it has been recorded by the Appellate Tribunal that only one ground was pressed, i.e. in regard to questioning the addition of Rs.1,02,137/- out of a total addition of Rs.7,05,000/-. The Tribunal recorded its finding as under:-

After hearing the rival parties we find that the entire addition was based on a contracted price of Rs.25 lacs adopted by the AO purely on hypothetical considerations. As noted by us in the earlier paragraphs, Smt. Narang has affirmed the contract price of Rs.5.50 lacs and that there was no evidence or material with the AO that the assessed had received anything over and above the stated price. Under such circumstance, the action of the AO in resorting to estimation clearly lacked factual support.

Thus, we sustain the conclusions drawn by CIT (A) in this regard. The revenue, accordingly fails on this ground also.

Ground no.3 : The AO made an addition of Rs.4,91,000/- u/s 69 of the I.T. Act on account of unexplained investment in the property no. 2059, Outram Lanes, Kingsway Camp, Delhi. The facts are that during the year under consideration, the assessed purchased the ground floor of the said property for a consideration of Rs.2,75,000/- and sold it for Rs.2,90,000/- thereby earning a short term capital gain of Rs.15,000/-. From a perusal of purchase and sale deeds, the AO inferred that assessed remodeled the property before selling and presumed that certain investments must have been made which has not been disclosed. The AO referred the matter to the valuation cell to estimate the cost of construction. On the basis of the report of the DVO, he treated an amount of Rs.4,91,100/- as unexplained investment u/s 69. The CIT (A) has since deleted the addition by noticing various infirmities.

Without going in detail into the merits of the impugned issue, we are of the view that the said ground can be disposed of by adverting to the following short premise. That the revenue has not doubted the sale consideration received. The impugned addition is only towards alleged low cost of construction and has been made merely on the basis of the DVO's report is also not disputed. Under the aforesaid undisputed circumstances, the impugned addition is untenable having regard to the decision of the Apex Court in the case of Smt. Amiya Bala Paul 262 ITR 407 (SC). It is settled by the Hon''ble Apex Court that in the course of assessment proceedings, the AO does not have power under the Act to refer to the valuation officer the question of the cost of construction of house property.

Therefore, in this view of the matter, the reference made to the valuation officer was itself without jurisdiction and Therefore any addition made in pursuance to such reference is liable to be set aside in view of the aforesaid, we sustain the conclusion drawn by the CIT (A) in deleting the impugned addition, albeit on different grounds.

4. The afore-mentioned findings recorded by the Tribunal are primarily findings of fact. The action of the authorities was held to be untenable. The Assessing Officer has obviously no jurisdiction to refer the matter to the Valuation Officer in relation to cost of construction of the house property and furthermore, the report of the DVO is stated to have been not disputed. We see no reason to take a view different than one which has been taken by the Appellate Tribunal primarily on the factual matrix of the case.

5. While relying upon the provisions of Section 142A of the Act, the learned Counsel for the appellant contended that the Assessing Officer could take into consideration the report submitted by the Valuation Officer in accordance with those provisions, and as such the findings recorded by the Tribunal to the contrary, are vitiated in law. Section 142A of the Act was introduced by the Finance (No. 2) Act of 2004 and was given a retrospective effect w.e.f. 15.11.1972 but with an exception added to the Section by virtue of the proviso. In terms of the proviso, nothing contained in the Section shall apply in respect of an assessment made on or before 30.09.2004 and where such an assessment has become final and conclusive on or before that date except in cases where re-assessment is required in terms of Section 153A of the Act. Admittedly, there is no record before us to show that an opportunity was provided to the assessed before the report of the Valuation Officer was taken into consideration by the Assessing Officer. Furthermore, it is also an admitted case that the order of assessment was made on 31.3.1999, much before the cut-off date and the order of the CIT (A) was passed on 12.1.2000 and that of the Income Tax Appellate Tribunal was passed on 23.7.2004 In other words, the assessed would be fully protected under the proviso as the order of assessment had become final and rights of the parties stood settled on all questions of facts. It cannot even be argued before us that de hors the provisions of Section 142A of the Act, the Assessing Officer could assume to himself such powers. The provisions of Section 142A are unambiguous in language and leave no scope for any interpretation to the contrary.

6. For the reasons aforesaid, we are of the considered view that the present appeal does not raise any question of law, much less a substantial question of law in terms of the judgment of this Court in Commissioner of Income Tax Vs. S.R. Frangrances Ltd., . Consequently, the appeal is dismissed, while leaving the parties to bear their own costs.