(2016) 01 CAL CK 0058

In the Calcutta High Court

Case No : ITA 423 of 2005

Commissioner of Income Tax, Kol-II — APPELLANT

Vs

Martin Burn Ltd. — RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:
Income Tax Act, 1961 — Section 23, Section 23(1)(b)

Citation : (2016) 01 CAL CK 0058

Hon'ble Judges : G.C. Gupta and Asha Arora, JJ.

Bench : Division Bench

Advocate : J.P. Khaitan, Sr. Adv., S.N. Dutta, P. Bag, Siddharth Das and C.S. Das, Advocates, for the Appellant;

Final Decision : Dismissed

Judgement

1. The appeal is directed against a judgment and order dated 7th June, 2005 by which the learned Tribunal agreeing with the views expressed by the CIT(A) dismissed the appeal preferred by the revenue.

2. Aggrieved by the order of the Tribunal, the revenue has come up once again in appeal. The first question proposed is as follows:

"[1] Whether the I.T.A.T. erred in law in holding that the compensation amount paid by the assessee to various parties for acquiring permanent right to possession of a particular house property is revenue expenditure whereas the said expenses incurred being of enduring in nature which is a capital expenditure and as such the decision of the I.T.A.T. is perverse?"

3. The question of the amount paid by the assessee to various parties in order to obtain vacant possession of the house property does not become capital expenditure for the simple reason, as pointed out by the learned Tribunal, that "the property was shown as stock in trade by the assessee. Therefore, the expenditure incurred for acquiring such property cannot be said as capital in nature."

4. Mr. Dutta, learned advocate for the revenue, submitted that the property has been shown as stock in trade by way of an afterthought. We do not find any basis for any such submission from the order of the Tribunal or from the order of the CIT(A) or from the order of the Assessing Officer.

5. The second question proposed by the revenue is as follows:

[2] Whether the I.T.A.T. was justified in reversing the order of A.O. who computed the assessment of the rents received by the assessee on the basis of fair rental value as provided in section 23 of the Income Tax Act, 1961 whereas the I.T.A.T. computed the rental income after taking into account the interest free security deposit received by the assessee from different tenants which is in contravention of section 23 of the Income Tax Act, 1961 and as such the decision of the I.T.A.T. is perverse?"

6. The view taken by the Tribunal apropo to the question is as follows:

"Since the property was tenanted and was subjected to Tenancy Act the annual value is to be taken as determined under the Tenancy Act or the actual rent received by the assessee whichever is higher and in this case the rent received by the assessee is much higher than the annual value determined under the Tenancy Act. Therefore, we do not see any infirmity in the order of the Ld. C.I.T.(A) in same is upheld and the ground No. 2 taken by the Revenue is rejected".

7. The aforesaid view of the Tribunal is based on the following views expressed by the CIT(A):

"I have carefully gone through the facts of the case and also perused the documents produced. The appellant has produced before me the evidence of actual cost of construction ad market value of the land at the time of commencement of the construction of the premises on the basis of which I came to the conclusion that standard rent is much lower than actual rent received. It is undisputed that appellant has not received any extra amount of rent from the tenants than disclosed in the return. It is also undisputed that there is no much variation in the rent received over the years and the same was accepted in all the years. I, therefore, hold that annual value of the property in the instant case has to be determined on the basis of the actual rent received as per sec. 23(1)(b). I, therefore, delete the addition made under the head "income from House Property".

8. The reasoning advanced by the learned Tribunal and the CIT(A) was not assailed by the learned advocate appearing for the revenue. He merely drew our attention to the assessment order made by the Assessing Officer in order to show that property was let out by the assessee to Punjab National Bank on 16th December, 1986 at the rate of Rs. 16.50 per Sq.ft. whereas property was let out to Hanuman Family Trust on 1st June, 1988 at the rate of Rs. 1 per S.ft. He submitted that it appears that a sum of Rs. 118.60 lakhs were taken from Hanuman Family Trust as interest free deposit. Even assuming that the assessee

had taken interest free deposit, as indicated above, that would also not make any difference because it is nobody''s case that the assessee has not accounted for the said sum of Rs. 118.60 lakhs.

9. In case the said sum has been invested, the assessee is getting interest which is taxable income arising out of business or profession or other sources as the case may be. In case the money has been utilised in business, to that extent the business has been enriched and does not have to depend upon borrowed funds. In case the said sum had been borrowed, the applicable interest would have been deducted from the taxable income of business or profession.

10. We, as such, find no merit in this submission advanced by Mr. Dutta. For the aforesaid reason, we refuse to admit the appeal, which is, accordingly, dismissed.

