

(2013) 11 KL CK 0001

In the High Court Of Kerala

Case No : IT Appeal No. 251 of 2012 (Arising out of Order of ITAT in IT Appeal No. 154/Coch. of 2011, dated 10-8-2012)

C.S. Daniel

APPELLANT

Vs

Deputy Commissioner of Income Tax

RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

Citation : (2014) 220 TAXMAN 336

Hon'ble Judges : Manjula Chellur, C.J;A.M. Shaffique, J

Bench : Division Bench

Advocate : Anil D. Nair, J.R. Prem Navaz, R. Sreejith and Smt. Nivedita A. Kamath, for the Appellant; Jose Joseph, for the Respondent

Judgement

Dr. Manjula Chellur, C.J.—By consent of both the parties, we heard the appeal on merits. The entire issue revolves around whether the appellant had incurred an additional expenditure of Rs. 22,10,000/- for additional construction of one room and renovation as contended by the learned counsel for the appellant, for the assessment year 2006-07. The following substantial questions of law would arise for consideration: (i) In the facts and circumstances of the case, ought not the Tribunal have held that the valuation report relied on by the authority below was factually wrong and erroneous?

(ii) In the facts and circumstances of the case, ought not the Tribunal have held that the assessment completed and confirmed adopting the Chennai rates for the purpose of valuation was wrong and that the valuation had to be done as per the State PWD rates?

(iii) In the facts and circumstances of the case, ought not the Tribunal have allowed the appeal on the premises that the valuation adopted was erroneous and against the settled position in law?

(iv) In the facts and circumstances of the case, ought not the Tribunal have held that the estimation of household expenses is highly exaggerated.

It is not in dispute that the appellant herein had constructed a house in the year 1995-96. He claimed expenditure of Rs. 20 lakhs and odd for the assessment year 2006-07 towards extension and renovation. However, the Department estimated the cost of renovation and construction at Rs. 42,10,000 i.e. Rs. 22,10,000/- over and above what was claimed by the appellant assessee. It is also not in dispute that this happened pursuant to a search in the premises of the appellant on 22.03.2007. The entire issue revolves round the valuation made by the Department after personal inspection of the building in question as per Annexure-B. It is not in dispute that neither the assessing officer nor the Commissioner of income tax (Appeals) agreed with the claim of the appellant assessee. Therefore he went before the Tribunal. Even the Tribunal accepted the report of the District Valuation Officer, Chennai and opined that assessee did not point out any flaw in the valuation report and therefore the assessing officer as well as the Commissioner of income tax (Appeals) were justified in rejecting the contention of the assessee. Aggrieved by the same the assessee is before this Court.

2. According to the learned counsel for the assessee, District Valuation Officer is very much available at Thiruvananthapuram, therefore there was no need for the Department to secure the information of the District Valuation Officer from Chennai who proceeded to value the renovation and cost of construction based on Central Public Works Department rates and not based on State Public Works Department rates. According to the learned counsel for the appellant, settled position is, when the rates declared by State PWD are available, that alone would govern the issue and not the CPWD rates.

3. As against this, learned Standing Counsel for revenue contends that the assessee never raised the contention that District Valuation Officer is placing reliance on CPWD rates, at any stage of proceedings, therefore, it is not open for him to raise such controversy before this Court.

4. As a matter of fact we have gone through the valuation report at Annexure-B. There is specific statement that the valuation is arrived at based on CPWD rates. On going through the orders of the three authorities what we notice is the consistent stand of the revenue was that the assessee was not able to explain any flaw in the valuation report. Therefore, the valuation report has to be relied upon. What rate has to be the basis to arrive at valuation of the renovation and additional construction, definitely is a question of law, therefore, even if such issue was not raised earlier before any authority, as the said issue would go to the root of the matter, we are of the opinion, such issue could be entertained before this Court. We place reliance on an earlier decision of this Court in I.T.A. No. 109 of 2008 dated 21.10.2008 wherein their Lordships at paragraph 5 onwards opined that the valuation of property has to be made keeping in view the Kerala PWD rates and not Central PWD rates. It is also pertinent to mention that in each State depending upon the scarcity of the material available as well as the cost of labour, the cost of construction may vary from State to State,

therefore it is just and proper to place reliance on the local PWD rates rather than Central PWD rates in order to arrive at the valuation of the property. Ultimately the Assessing Officer will have the other materials supplied by the assessee to know what exactly was the material used and what was the prevailing rate of such material apart from ascertaining the rates from PWD department which rate varies from time to time. Ultimately the Assessing Officer would take into consideration what was the prevailing rates of PWD in the State of Kerala adopted for the particular assessment year in order to arrive at the cost of renovation and construction claimed by the assessee for the assessment year 2006-07.

In that view of the matter, we are of the opinion, the orders of the three authorities based on the Central PWD rates is set aside by remanding back the matter to the Assessing Officer who shall rely upon the report of the District Valuation Officer at Thiruvananthapuram so far as value of the renovation and cost of construction for the assessment year 2006-07 and then proceed in accordance with the procedure contemplated.