
(2012) 06 GUJ CK 0072
In the Gujarat High Court
Case No : Tax Appeal No"s. 323 and 325 of 2000

Dy. CIT

APPELLANT

Vs

Panna Corporation

RESPONDENT

Date of Decision : 16-06-2012

Acts Referred:

Income Tax Act, 1961 — Section 132(4), 260A

Citation : (2012) 06 GUJ CK 0072

Hon'ble Judges : Harsha Devani, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Sudhir M. Mehta, for the Appellant; Saurabh N. Soparkar and Bandish S. Soparkar and Mrs. Swati Soparkar, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—These appeals arise out of common factual and legal background. They have been heard together and are being disposed of by this common judgment. For the purpose of this judgment, we may refer the facts as emerging in Tax Appeal No. 323 of 2000. This appeal is filed by the Revenue calling in question the judgment of the income tax Appellate Tribunal ("the Tribunal" for short) dt. 1-9-1999. The respondent-assessee is a partnership firm engaged in the business of construction of flats and residential complexes. The assessee started construction of a total of 120 flats in a complex called "Ashoplab Apartments" in the city of Surat. The scheme contained three types of flats admeasuring 725 sq. ft., 750 sq. ft. End 975 sq. ft. respectively. The flats were sold at a disclosed rate of Rs. 185 per square feet. A search was carried out on 4-7-1996. Initially, a disclosure was made of undisclosed income of Rs. 3.5 lakhs by a partner of the assessee-firm Shri K.R. Sardara. This disclosure was confirmed by the other partner of the firm Shri Janakbhai P. Balar in his statement on 5-7-1997. In response to notice issued by the Department, the assessee filed return declaring undisclosed income of Rs. 26 lakhs. During the search of the residential premises of Shri Balar, a loose paper No. 31 was found

and seized. The paper pertained to details of sale of two of the flats. The statement of Shri Balar u/s 132(4) of the Income Tax Act, 1961 was recorded on 4-7-1996. On the basis of the contents of the loose paper and the statement of the partner, the AO came to the conclusion that the assessee-partnership firm was collecting unaccounted cash from the purchasers of the flats. He estimated such cash collection at Rs. 1 lakh per flat. Since for the block period under consideration, 62 flats were sold, he believed that the assessee had earned undisclosed income of Rs. 62 lakhs during that period. He, accordingly, passed an order dt. 30-7-1997 and ordered collection of tax and interest etc., on such basis.

2. The assessee carried the matter in appeal. The Tribunal confirmed the findings regarding cash collection during sale of the flats. With respect to the tax liability of the assessee on account of such on-money receipts, the Tribunal, relying on its earlier decision in the cash of Kishor Mohanlal Telwala, held that not the entire receipt:, but only the profit embedded in such receipt which can be taxed. The Tribunal in view of the fact that the assessee had already disclosed income of Rs. 26 lakhs, believed that no further tax can be imposed. It is this judgment of the Tribunal which the Revenue has challenged in the present appeal.

3. At the time of admission of the appeal, the following question was framed:

Whether the Tribunal is right in law and on facts in deleting the addition, made on account of undisclosed income earned by the assessee out of on-money receipts from the sale of row houses done during the block period ?

4. Learned counsel for the Revenue, Shri Sudhir Mehta submitted that the Tribunal committed a serious error in reversing the order of the AO. He submitted that the on-money collection by the respondent-assessee firm was established. The Tribunal having confirmed such findings, ought not to have rescinded the directions for collection of tax, interest etc.

5. On the other hand, learned senior counsel, Shri S.N. Soparkar appearing for the respondent-assessee opposed the appeal contending that no question of law arises. He drew out attention to section 260A of the Income Tax Act to contend that even after admission of the appeal, it would be open for the assessee to contend that no question of law arises.

6. He submitted that even if the on-money collection of Rs. 62 lakhs is believed, what could be taxed in the hands of the assessee is only the income and not the entire receipt. He submitted that the Tribunal having accepted that such income could not exceed Rs. 26 lakhs out of total receipt of Rs. 62 lakhs, no interference is called for, since estimation of income could not give rise to any substantial question of law.

7. In support of his contentions, the counsel relied on several decisions, reference to which we may make at slightly later stage.

8. Having heard the learned counsel for the parties and having perused the

orders under consideration, what emerges is that the finding arrived at by the AO that the respondent-partnership firm received on-money of Rs. 62 lakhs during the block period for sale of the flats, is not seriously in dispute. The Tribunal confirmed such findings arrived at by the AO. However, the Tribunal did not permit the Revenue to collect the tax on the entire receipt believing that it was only the income embedded in such receipt which can be subjected to tax.

9. As pointed out by the counsel for the respondent, this court in the case of Commissioner of Income Tax Vs. President Industries, had taken a similar view. In the said case, during the course of survey conducted on the premises of the assessee, from the excise records found, an inference was drawn by the AO that sales amounting to Rs. 29 lakhs and odd had not been disclosed in the books of account. The AO made addition of the entire sum of the said undisclosed sales as income of the assessee for the assessment year 1994-95. Such addition was confirmed by the CIT(A). The Tribunal, however, held that the entire sales could not have been added as income of the assessee, but only to the extent the estimated profits embedded in the sales for which the net profit rate was adopted entailing addition of income on the suppressed amount of sales. Such decision was carried in appeal by the Revenue before the High Court. The High Court rejected the appeal, observing that unless there is a finding to the effect that investment by way of incurring the cost in acquiring the goods which have been sold has been made by the assessee and that has also not been disclosed, such addition could not be sustained. It was observed that in absence of such findings of fact, the question whether the entire sum of undisclosed sale proceeds can be treated as income of the relevant assessment year answers by itself in the negative. The High Court rejected the appeal holding that no question of law which requires to be referred arises.

10. In the case of Commissioner of Income Tax Vs. Gurubachhan Singh J. Juneja, once again a somewhat similar issue came up before this court. In the said case, the assessee was engaged in the business of trading of tyres. Search proceedings were carried out at the residential and business premises of the assessee. On the basis of loose sheets which were seized during such search operation, the AO held that sales to the extent of Rs. 10.85 lakhs was not found in the books of account. Such amount was included in the total income of the assessee. The CIT(A) gave substantial relief to the assessee and reduced the income on the basis of gross profit rate. The Tribunal confirmed the order of the CIT(A). On further appeal before the High Court by the Revenue, the High Court refused to refer any question holding that in absence of any material on record to show that there was any unexplained investment made by the assessee which was reflected by the alleged undisclosed sales, the finding of the Tribunal that only the gross profit on the said amount can be brought to tax does not call for any interference.

11. Counsel also relied on the decision in the case of Commissioner of Income Tax Vs. Samir Synthetics Mill, wherein the High Court confirmed the view of the

Tribunal accepting only the profit of unaccounted sale for the purpose of collecting tax.

12. Our attention was also drawn to the decision of the M.P. High Court in the case of Man Mohan Sadani Vs. Commissioner of Income Tax, , wherein referring to and relying upon the decision of this Court in the case of CIT v. President Industries (supra) and other decisions of other High Courts, the M.P. High Court had also taken a similar view. It was observed that entire sale proceeds of the assessee should not be added in his income and that the Tribunal has erred in doing so.

13. We may recall that the Tribunal, in the impugned judgment, relied on its previous judgment in case of (1999) 107 TAXMAN 86 . The said judgment of the Tribunal was apparently carried in appeal by the Revenue. The High Court by a speaking order dt. 24-4-2000, dismissed the appeal holding that no question of law was involved. Significantly, in case or Kishor Mohanlal Telwala (supra), the assessee was engaged in the business of construction. In his case, unaccounted receipt of Rs. 1.47 crores was detected. In this background, the Division Bench confirmed the view of the Tribunal and did not accept the contention of the Revenue that as no accounts had been maintained to substantiate the expenditure incurred by the assessee, the entire amount received by the respondent should be treated as income. The court concluded that the Tribunal was justified in considering that the respondent-assessee ought to have spent reasonable amount for the purpose of receiving such gross receipt.

14. It can, thus, be seen that consistently, this court and some other Courts have been following the principle that even upon detection of on-money receipt or unaccounted cash receipt, what can be brought to tax is the profit embedded in such receipts and not the entire receipts themselves. If that be the legal position, what should be estimated as a reasonable profit out of such receipts, must bear an element of estimation.

15. In view of the legal position that not the entire receipts, but the profit element embedded in such receipts can be brought to tax, in our view, no interference is called for in the decision of the Tribunal accepting such element of profit at Rs. 26 lakhs out of total undisclosed receipt of Rs. 62 lakhs. In other words, we accept the legal proposition, the Tribunal accepting Rs. 26 lakhs disclosed by the assessee as profit out of total undisclosed receipt of Rs. 62 lakhs, would not give rise to any question of law. In the result, the tax appeals are dismissed.