

(2003) 05 KL CK 0006

In the High Court Of Kerala

Case No : IT Appeal No. 192 of 2000 & Income Tax Appeal No. 192 of 2000 26
May 2003

Hotel Whitelines

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 26-05-2003

Acts Referred:

Income Tax Act, 1961 — Section 69

Citation : (2003) 184 CTR 190 : (2004) 266 ITR 481

Hon'ble Judges : J.M. James, J;G. Sivarajan, J

Bench : Division Bench

Advocate : P. Balachandran, for the Appellant; P.K.R. Menon, for the Respondent

Final Decision : Dismissed

Judgement

G. Swarajan, J.—The matter arises under the IT Act, 1961, (for short "the Act"). The assessee under the Act has filed this appeal against the order of the Tribunal in ITA 524/Coch/1995. The assessment year concerned is 1988-89. The only question involved in this appeal is regarding the valuation of the hotel building constructed by the assessee, over a period of eight years from 1983 to 1991. In the books of accounts maintained by the assessee the cost of construction of this building was shown at Rs. 39,78,765. The assessee had also obtained a valuation of this building by a registered valuer, who had estimated the cost of construction of this building with reference to PWD rate and, after taking into account the inflation, fixed the cost of construction of the building at Rs. 41,55,500. The AO was not prepared to accept the cost of construction furnished by the assessee. He, accordingly, referred the matter to the Departmental Valuer, who had adopted the plinth area method and estimated the cost of construction with reference to CPWD rate at Rs. 90,53,600. Notwithstanding the objection filed by the assessee the AO had accepted the valuation report and took the difference between the cost of construction estimated by the Departmental Valuer and the cost of construction recorded in the accounts, i.e., Rs. 45,85,000 as income the

head "other sources". In appeal, the CIT(A) set aside the assessment and remanded the matter to the AO for fresh consideration. Subsequently, the AO had reduced the cost of construction to Rs. 77,14,141 as against Rs. 90,53,600 originally fixed. The AO had accordingly taken the difference of Rs. 37,35,376 as income under the head "other sources" on account of unexplained investment. In further appeal, by the assessee, the CIT(A) granted partial relief and reduced the addition to 34,18,886. Not being satisfied with the order of the CIT(A), the assessee filed a second appeal before the Tribunal. The Tribunal elaborately considered the report of the Departmental Valuation Officer, the objection filed by the assessee, the clarification given by the Valuation Officer the contentions taken by the respective parties, and reduced the cost of construction substantially, which came down to Rs. 5,52,17,233 resulting in sustaining an addition of Rs. 15,42,968. The assessee is still aggrieved by the cost of construction fixed by the Tribunal.

2. Shri P. Balachandran, learned counsel for the assessee, submits that the authorities were not justified in rejecting the cost of construction of the building recorded in the books of accounts supported by the valuation report of the registered valuer furnished along with the return. Counsel also submits that authorities were not justified in adopting the plinth area method for arriving at the cost of construction instead of the actual cost depicted in the books of accounts. Counsel further submits that the Departmental Valuer had valued other buildings of the size, situated within the vicinity of the building at a much lesser cost as can be seen from the statement at Annexure-F furnished by the assessee before the Tribunal. Counsel also submits that after having more or less accepted the contentions raised by the assessee within regard to the various benefits available to the assessee, the Tribunal was not justified in limiting the deduction as done in the appellate order. Counsel further submitted that though the assessee had placed Annexure-F statement with regard to the valuation of another building by name "T.B.S. Building", made by the same Departmental Valuer and the rate adopted in the valuation, the Tribunal failed to consider the same. Counsel submitted that if the Tribunal has considered the said material, the assessee would have been entitled to further deduction in the cost of construction.

3. We have also heard Shri P.K.R. Menon, senior Central Government standing counsel for Taxes. The senior counsel submitted that the AO found that the cost of construction recorded by the assessee in its books did not represent the actual cost of construction, and, therefore, he had referred the matter to the Departmental Valuer, who had estimated the cost of construction at Rs. 90,53,600. The senior counsel further submitted that the AO, after considering all the objections raised by the assessee, had reduced the cost of construction to Rs. 77,14,141, which the two appellate authorities have considerably reduced and the final result is that the cost of construction has been fixed at Rs. 55,21,733 as against Rs. 39,78,765 recorded in the books of accounts and Rs. 41,55,500 estimated by the registered valuer. The senior counsel also submitted

that the Tribunal has considered all the relevant materials placed by the assessee before it and granted substantial relief.

4. We have considered the rival submissions and have perused the orders of the three authorities. We find that the Tribunal has considered each and every piece of material furnished by the assessee including the objections to the valuation made by the Departmental Valuer and the cost of construction assessed by the AO. On a consideration of all those materials, we are of the view that the Tribunal has granted reasonable relief to the assessee. We do not find any ground to grant any further relief to the assessee,

5. We have already noted the contention of the assessee that the Tribunal has failed to consider Annexure-F statement filed by the assessee before the Tribunal and that if the said piece of material was also considered, the assessee would have obtained further relief. There is no material on record other than the statement produced as Annexure-F to show that the assessee had placed Annexure-F comparison statement before the Tribunal. From the trend of the order of the Tribunal it would appear that if the assessee had produced Annexure-F statement, certainly, the Tribunal would have considered the said material also. However, since the learned counsel for the assessee submits that this material was also placed before the Tribunal, certainly it is a matter for the assessee to bring it to the notice of the Tribunal and, if the Tribunal is convinced that the said statement was before it at the time of hearing of the appeal and that the assessee had made arguments based on that statement, certainly the Tribunal will be entitled to consider the same and pass orders according to law. We make it clear that this judgment will not stand in the way of doing so by the Tribunal.

6. This appeal is dismissed with the above observations.