(2009) 01 MAD CK 0002

In the Madras High Court

ITO APPELLANT

Vs

Arasan Subbiah RESPONDENT

Date of Decision : 05-01-2009

Acts Referred:
Income Tax Act, 1961 — Section 143, 148, 69B

Citation : (2009) 01 MAD CK 0002

Hon'ble Judges : P.P.S. Janaithana Raja, J;K. Raviraja Pandian, J

Bench : Division Bench

Judgement

K. Raviraja Pandian, J.—This appeal is by the revenue against the order of the Tribunal dated 12-1-2001 passed in ITA No.

975/Mad/1995. The relevant assessment year is 1989-90.

2. The material facts culled out from the statement of facts are as follows:

The assessee is a person assessed to Income Tax for the assessment year 1989-90. The assessing officer made assessment u/s 143{3) read with

Section 148 of the Act determining the total income of Rs. 2,67,790 which included disputed additions of Rs. 2,21,683 being undisclosed income

u/s 69B of the Act representing unexplained investment in construction and Rs. 25,000 being unexplained deposit in savings bank account.

Aggrieved by the same, the assessee preferred an appeal before the Commissioner (Appeals) who deleted the addition. The revenue filed further

appeal before the Tribunal. The Tribunal dismissed the appeal. Hence, the present appeal at the instance of the revenue.

3. The appeal is admitted on the following substantial question of law:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in deleting the additions made u/s 69B towards the differences in the value of cost of construction admitted by the assessee and rejecting the Asstt. Valuation Officers report for the assessment year

1989-90 ?

4. Learned Counsel for the revenue argued the matter for having a relook of the order passed by the Tribunal.

5. On the materials placed on record, it is clear that the assessee has maintained books of accounts which have been made available for the

purpose of assessment. The assessing officer has not rejected the books of accounts maintained by the assessee, which he maintained in the usual

course of business. Nor did the assessing officer establish that there was difference in. the area of construction of the building. The only difference

is that the Valuation Officer has valued the building at a. higher rate, due to the difference in the figure adopted by him.

6. In a similar set of facts, this Court has considered the issue in the case of K.K. Seshaiyer Vs. Commissioner of Income Tax, and held in favour

of the assessee by observing that when the actual cost of construction was duly recorded by the assessee in their books of accounts, which rate

has been accepted by the Tribunal and there was no finding that the building was larger than the assessee had claimed or had better quality of

construction or fixtures than the assessee had recorded in his books, the opinion of the valuer could not be straightaway substituted for the actual

cost that was recorded in the assessees books. The Tribunal had not found that the books maintained by the assessee were not credible. In those

circumstances of the case, the Division Bench found fault with the order of the Tribunal in accepting the valuation of the house properties.

7. The facts are identical in this case. As stated earlier, the books of accounts have not been rejected by the assessing officer as not credible. In

those circumstances of the case, the Tribunal has taken a correct view that the valuation reflected in the books of accounts has to be taken, rather

than the one furnished by the Valuation Officer. Hence, we do not find any merit in this appeal.

8. In the facts and circumstances of the case and in the light of the decision of the Division Bench referred to supra, the question of law framed has

to be answered in the affirmative against the revenue and in favour of the assessee. The appeal is dismissed. No costs.