(1996) 09 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Original Writ Petition No's. 65 of 1993, 884 of 1995 and 72 of 1996

Prem Hotel APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 27-09-1996

Acts Referred:

Income Tax Act, 1961 — Section 131(1)(d), 55A

Citation : (1997) 93 TAXMAN 237

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Judgement

Bilal Nazki, J.—The aforementioned three writ petitions raise a common question of law and facts, and are, therefore, decided by a

common judgment. In OWP No. 72 of 1995 it is alleged that the petitioner-firm constructed New Choice Resorts building at Greater Kailash By-

Pass, Jammu, and started a club therein. The petitioner-firm is a partnership concern. It is submitted that they maintained their accounts in due

course of their business, and the account books were got audited by a firm of Chartered Accountants, namely, Gupta Sushil Co. They further

submit that the income tax returns were submitted to the income tax Department as required under law. While these were pending for assessment

before the assessing authority, i.e., the ITO, respondent No. 1 sent a notice to the petitioners on 5th of December, stating therein that petitioners

have submitted the report of the approved valuer but not the balance sheet. Accordingly, according to the petitioners, a balance sheet was

submitted to respondent No. 1. The petitioners submitted that the valuation of the property raised by the petitioners was got done by Shri C.P.

Gupta, Valuer registered under No. 2846 with the Ministry of Finance. In the meanwhile, respondent No. 1 on 21-09-1994 wrote a letter to

respondent No. 2, by virtue of which he referred the case to him for determination of the cost of construction of the building in question. This letter

was purported to have been written in terms of section 131(1)(d) of the income tax Act, 1961 ('the Act') read with section 55A of the Act. The

respondent No. 2 after receipt of the said letter, wrote a letter to respondent No. 3 stating therein that the reference received could not be

entertained by him as it was within the powers of respondent No. 3. Accordingly, he sent the reference received by him to respondent No. 3, and

respondent No. 3 entertained the reference and started proceedings against the petitioner. The reference made by respondent No. 1 to respondent

No. 2 and thereafter by respondent No. 2 to respondent No. 3 has been challenged by the petitioners in this writ petition.

2. Similarly, in OWP No. 65 of 1993, the petitioner submits that he started a Roller Flour Mill, and the income tax return was filed and it was

declared therein that the building had been constructed at a cost of Rs. 54,61,451.08. This cost of construction was claimed on the basis of an

assessment made by an approved valuer of the income tax Department. The income tax return had been filed by the petitioner-concern also, and

the assessment was pending, when the petitioner received a notice from respondent No. 2 (income tax authority) for making reference of the

assessment in terms of section 131(1)(d), read with section 55A of the Act, to respondent No. 3.

3. The third case is OWP No. 884 of 1994. The petitioner in this case submits that he constructed first, second and third floors of a building in

which a hotel is housed, during the period January 1990 to July 1992; and the amount spent on the construction of the building was reflected in the

books of account. A certificate to this effect has been given to the petitioner by at Chartered Accountant, and the valuation of the property was got

done by a valuer approved by the Ministry of Finance, Government of India. Return was filed by this petitioner-concern, which was also pending

disposal before the ITO. A reference was made by the ITO to respondent No. 2 in terms of section 131(1)(d) read with section 55A to determine

the cost of construction and machinery. The respondent No. 3 in this case also entered into reference, and started investigating into the matter.

Hence this writ petition.

The notice which was sent by respondent No. 1 to this writ petitioner, reads, as under:

No. ITO/W. 4/JMU/1994-95 /609 Office of the Income Tax Officer, Ward-4, Jammu.

To

The Valuation Officer (Plant and Machinery) C/o The Chief Engineer, Valuation, Income Tax Department, 3-Tolstoy Marg, Rohit House, New

Delhi.

Sir,

Sub : - Elucidation with regard to the cost of erection of plant & machinery known as M/s Prem Hotel, Katra situated at Katra, Jammu C/o 76,

Kalijani, Jammu - Issue of commission u/s 131(1)(d) of the income tax Act, 1961 read with section 55A of the income tax Act, 1961.

The assessee Prem Hotel, Katra C/o 76-Kalijani, Jammu in its return of income for the assessment year 1993-94 has in respect of immovable

property comprising of plant & machinery declared the cost of installation at Rs. 1,94,300.

2. In order to elucidate the correctness of the cost of erection of machinery & plant, I require and authorise you u/s 131(1)(d), read with section

55A, of the income tax Act, 1961 to kindly inspect the property and to make- such investigation and seek clarification and materials from the

assessee and other concerned persons as are deemed fit to determine the true and correct cost of erection of plant & machinery of this Hotel

complex known as Prem Hotel, Katra C/o 76- Kalijani, Jammu. It is further requested that the valuation report in the matter may kindly be sent by

30-9-1994.

3. This may please be treated as commission issued to you under the aforesaid section of the income tax Act, 1961.

Yours faithfully,

Sd/ - (B.L. DHAR)

INCOME TAX OFFICER,

WARD-4

JAMMU

Copy forwarded to M/s Prem Hotel, Katra C/o 76-Kalijani, Jammu for information and extending assistance and cooperation in the matter. It is

requested that full details with regard to the valuation of the aforesaid immovable property may please be furnished to this office within a week's

time of the receipt of this information.

Sd/ - (B.L. DHAR)

INCOME TAX OFFICER,

WARD-4

JAMMU

4. From the perusal of said letter, it is apparent that the ITO was of the opinion that the cost of construction was exorbitant, therefore, he referred

the matter to the Commissioner. During the course of hearing it has been stated at the Bar that the assessment proceedings which were pending

before the ITO, when the notice impugned was issued, have now been decided and the accounts /expenditure furnished by the petitioners have

been accepted by the ITO. I agree with Mr. D.S. Thakur that the assessment made by the assessing authority, i.e., the ITO will not come in the

way of income tax authorities, if it is found that the accounts submitted were not correct. The matter was heard in detail. While going through the

impugned notice, I have found that the Assistant Director, income tax, has framed the opinion that the construction cost was exorbitant. No

reasons thereof have been given. It is a settled principle of law that if a person wants to reopen a matter or expresses doubts about the accounts

furnished by the petitioners, he must at least give a show-cause notice to them. Therefore, without going into the arguments advanced at the Bar, I

am convinced that the orders impugned by which the Valuation Officer, the income tax Department, was directed to reassess the property, could

not have been issued without first giving a hearing to the petitioners, particularly when the income tax Department itself has accepted their accounts

during the assessment proceedings. Besides, the requirement of giving a show-cause notice, the requirement which has to be read into section

55A, the Assistant Director, income tax, was bound to disclose the reasons for framing the opinion that the property was overvalued so that the

petitioners could meet the objection.

5. For this reason alone, I quash the impugned orders, by which reference was made to the Evaluation Officers, income tax Department and allow

the writ petitions. However, the respondents shall be free to refer the matter to the Evaluation Officers, after giving a show-cause notice to the

petitioners as to why the property in question be not reassessed while giving such notice, the respondents shall also take into consideration the final

assessment orders passed by the ITO and shall also state the reasons on the basis of which the valuation projected by the petitioners, is not

acceptable to the respondents. After giving a chance to the petitioners to show cause against such a notice, the competent authority under the Act

shall be within his rights to pass appropriate orders, after taking into consideration the objections, if any, filed by the petitioners. These petitions

are, accordingly, disposed of.