(2002) 04 GUJ CK 0005

In the Gujarat High Court

Case No : Tax Appeal No. 123 of 2002 29 April 2002 A.Y. 1993-94

Ramesh Chandra M. Luthra APPELLANT

Vs

Asstt. Commissioner of Income Tax RESPONDENT

Date of Decision : 29-04-2002

Acts Referred:

Income Tax Act, 1961 — Section 132, 143(2)

Citation : (2002) 176 CTR 39 : (2003) 128 TAXMAN 765

Hon'ble Judges : R.K. Abichandani, J;Kundan Singh, J

Bench : Full Bench

Advocate : S. N. Soparkarwith Mrs. Swati Soparkar and T.P. Hemani, for the Assessee and B.B. Naik, for the Revenue, for the Appellant;

Judgement

R.K. Abichandani, J.

Admit. The following question of law is formulated.

Has the Tribunal committed an error in exercise of its jurisdiction in setting aside the appellate order of Commissioner (Appeals) without taking into consideration the reasons for which that order was made ?

2. At the request of the learned counsel appearing for both the sides, since the matter involves a short point, it has been taken up for final disposal. The matter pertains to the assessment year 1993-94. The assessee filed returns of income on 31-1-1994, declaring the total income of Rs. 1,29,000. In response to the notice issued u/s 143(2) of the Act, the assessee appeared through its authorised representative and during the proceedings, it was found that the assessee had maintained two sets of accounts, one is in respect of processing division and the other construction division. The business of processing division was in the name and style of Girish Silk Mill. The construction division business was in the name of Garden Avenue Apartments.

3. During the search proceedings u/s 132 which was carried out on 17-11-1992, a disclosure of Rs. 25 lakhs was made in the group of assessees including the

disclosure of Rs. 5 lakhs in the name of the assessee for the accounting year relevant to the said assessment year. An unaccounted expenditure incurred towards construction work of Garden Avenue Apartments of Rs. 3 lakhs was disclosed in the said disclosure of Rs. 5 lakhs. The assessee debited a sum of Rs. 3,14,964 on account of miscellaneous construction expenses. The assessing officer disallowed the said construction expenses and found that the disclosed income of Rs. 3 lakhs had been nullified by debiting miscellaneous construction account and correspondingly crediting to construction account. In the appeal before the Commissioner (Appeals)-I, the District Valuation Report was brought to the notice of the appellate authority pointing out that as per that valuation report, the cost of construction of Garden Avenue Apartments, came to Rs. 68,12,280 against the cost Rs. 63,83,693 recorded in the books of account leaving out an amount of Rs. 4,24,587. It was submitted before the appellate authority that this difference was because of the fact that the appellant had understated the cost of construction to that extent in the books of account showing that an amount of Rs. 3 lakhs was invested in the construction of Garden Avenue Apartments. It was, therefore, argued that the assessing officer was not justified in disallowing the cost of construction to the extent of Rs. 3 lakhs. The Commissioner (Appeals) considered these contentions in the following terms.

"I have carefully considered the submissions made by the learned counsel of the appellant. It is seen that the appellant has given clear and unequivocal bifurcation of the undisclosed income of Rs. 5 lakhs. In the bifurcation, the appellant has clearly mentioned that the amount of Rs. 3 lakhs has been spent for construction of Garden Avenue Apartment. It has also seen that in his statement u/s 132(4) during the course of search, the appellant has also made it clear in reply to question No. 6 that a part of the undisclosed income has been used in building construction in apartment. The fact that the appellant has invested a part of undisclosed income for the purpose of construction of Garden Avenue Apartment has also been proved by the valuation report of the DVO wherein the cost of construction has been estimated at Rs. 68,12,280 as against the cost of construction disclosed by the appellant in the books of account amounting to Rs. 63,87,693 whereby leaving to a difference of Rs. 4,24,587 which apparently represents the undisclosed income of Rs. 3 lakhs."

4. It appears from the order of the Tribunal that it has not bestowed its attention to the above material reasoning adopted by the Commissioner (Appeals) for deciding the appeal. It was incumbent on the Tribunal before upsetting the order of Commissioner (Appeals) to consider the reasons given by that authority for its decision. As held by the Supreme Court in Omar Salay Mohamed Sait Vs. Commissioner of Income Tax, Madras, it is necessary that every fact for and against the assessee must have been considered with due care by the Tribunal and it must have given its finding in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence pro and contra in regard to each one of them and what were the findings reached on

the evidence on record before it. This court in Rajesh Babubhai Damania Vs. Commissioner of Income Tax, observed that it was the duty of the Tribunal to ascertain the reasons which were given by the Commissioner (Appeals) in whose order, the order of the assessing officer had merged.

5. Since the Tribunal has not appropriately considered the reasoning given by the Commissioner (Appeals) and has given its finding without dealing with the reasoning of the Commissioner (Appeals) reproduced hereinabove we are of the view that the impugned order of the Tribunal cannot be sustained and the Tribunal should consider the matter on merits in accordance with law. This appeal is accordingly allowed and the impugned order of the Tribunal is set aside with a direction to it to reconsider the revenue''s appeal No. ITA No. 3125/Ahd/1995 and take a fresh decision thereon in accordance with law expeditiously. There shall be no order as to costs.