

(2002) 10 KL CK 0005
In the High Court Of Kerala
Case No : Income Tax A. No. 146 of 2000

S.V. Vijayalakshmi

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 16-10-2002

Acts Referred:

Citation : (2003) 180 CTR 52 : (2003) 260 ITR 138 : (2003) 127 TAXMAN 408

Hon'ble Judges : K. Balakrishnan Nair, J;G. Sivarajan, J

Bench : Division Bench

Advocate : S. Ananthakrishnan, for the Appellant; P.K.R. Menon and George K. George, for the Respondent

Final Decision : Dismissed

Judgement

G. Sivarajan, J. 1. The appellant is a dealer in rice and is an assessee on the files of the Income Tax Officer, Ward I, Thiruvananthapuram, the respondent herein. The assessment year concerned is 1990-91. The appellant returned an income of Rs. 69,370. During the accounting period relevant to the said assessment year, the appellant has completed the construction of a commercial building named as "S. K. Towers". As per the books of account maintained by the assessee, the total cost of construction came to Rs. 18,49,189. The assessing authority referred the matter to the Departmental Valuer and obtained a valuation report. As per the said valuation, the cost of construction came to Rs. 26,18,700. The assessing authority deducted Rs. 1,12,838 added by the Departmental Valuer as expenses on account of stronger foundation and Rs. 49,050 towards architect's fee and determined the cost of construction of the building at Rs. 24,56,812 and treated the difference of Rs. 6,07,623 as the income from undisclosed sources. In appeal by the appellant, the Commissioner of Income Tax (Appeals) reduced the said addition to Rs. 2 lakhs. In further appeal by the assessee, the Tribunal confirmed the order of the Commissioner.

2. Shri S. Ananthakrishnan, learned counsel appearing for the appellant, submits that the appellant has been maintaining regular books of account with respect to

the cost of construction of the building, that the assessing authority, without finding any irregularity in the said accounts had referred the matter for a valuation report from the Departmental Valuer and completed the assessment on the basis of the said valuation report. Counsel further submits that the Tribunal should have deleted the entire addition holding that there is no justification for referring the matter to the Departmental Valuer or for relying on the valuation report of the Departmental Valuer ignoring the regular books of account and the valuation report submitted by the appellant.

3. We also heard Shri P. K. R. Menon, learned senior standing counsel for the Revenue. Senior counsel submits that the remand report obtained by the Tribunal would clearly disclose the reason for rejecting the books of account maintained by the appellant and for obtaining the valuation report of the Departmental Valuer. Senior counsel further submits that the Tribunal has considered the entire material on record and found as a fact that the cost of construction of the building determined by the Commissioner of Income Tax (Appeals) does not call for any further interference.

4. The contention of the appellant is that she has been maintaining regular books of account with regard to the cost of construction of the building "S. K. Towers" and the total cost of construction as per the said books of account came only to Rs. 18,49,189. The appellant has also produced a valuation report of a registered valuer which also showed the approximate cost of construction as Rs. 18.3 lakhs only. The remand report obtained by the Tribunal from the assessing authority shows that the appellant had maintained regular books of account in respect of the expenditure incurred in the construction of the building. The assessing authority also found that in respect of the expenditure for purchase of steel rod, cement, aluminium fittings, etc., the accounts are supported by bills. It also shows that with respect to the expenses incurred for bar binder, painter, bricks, electrician, plumber, etc., the entries in the accounts are not supported by vouchers. In view of the fact that all the expenditure incurred by the assessee and recorded in the books of account are not supported by bills or vouchers, the assessing authority cannot be found fault with for not accepting the accounts. When the accounts maintained by the appellant could not be accepted, certainly, the assessing authority has to determine the cost of construction of the building to find out as to whether any expenditure has been incurred from unaccounted sources. It is in view of the above that the assessing authority had obtained the valuation report of the Departmental Valuer. The assessing authority gave some deduction from the value estimated by the Departmental Valuer at Rs. 26,18,700 to Rs. 24,56,812. However, the first appellate authority has considered the case of the appellant and had granted relief to the extent of Rs. 4,07,620 and sustained the addition of Rs. 2 lakhs only. Even after bestowing our anxious consideration to the various contentions taken by counsel for the appellant, we are not in a position to take a different view from the one taken by the Tribunal. The Tribunal had adverted to the remand report which showed that all the expenses recorded in the books of account are not supported by vouchers and

bills and upheld the rejection of the accounts of the appellant. When the accounts are rejected, the assessing authority has to estimate the cost of construction for which he has to refer the matter to the Departmental Valuer. Hence, the authority cannot be found fault with for referring the matter to the valuation cell and in relying on the report submitted by the valuation cell. In fact, the first appellate authority took note of the various circumstances and granted substantial relief to the appellant. The Tribunal had sustained the same. According to us, no substantial question of law much less, any question of law arises from the order of the Tribunal. We are in full agreement with the order of the Tribunal. There is no merit in this appeal and it is accordingly dismissed.