(2006) 12 MAD CK 0077

In the Madras High Court

Case No : T.C. (A) No''s. 2661 and 2662 of 2006 and M.P. No. 1 of 2006

The Commissioner of Income Tax — APPELLANT

Vs

D. Laxmanakumar — RESPONDENT

Date of Decision : 05-12-2006

Acts Referred:

Citation : (2008) 296 ITR 70

Hon'ble Judges : P.P.S. Janarthana Raja, J;P.D. Dinakaran, J

Bench : Division Bench

Advocate : J. Narayanaswamy, for the Appellant;

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—The above tax case appeals are directed against the common order of the Income Tax Appellate Tribunal in ITA.Nos.433 and 434/Mds/2003, dated 25.11.2005.

2.1. The Revenue is the appellant. The assessment years involved are 1998-99 and 1999-2000. The assessee, who is a medical practitioner, constructed a nursing home during the period February 1996 to October 1998. On a survey conducted by the Income Tax department on 3.11.1998, it was found that the cost of construction as shown by the assessee at Rs. 19,40,500/- has been underestimated and the assessing officer, based on the report of the Departmental Valuation Officer, estimated the cost of construction at Rs. 37,31,906/- and accordingly, called upon the assessee to explain as to why the difference amount of Rs. 17.92 lakhs should not be treated as unexplained investment. After a detailed enquiry, the assessing officer completed the assessment and brought to tax a sum of Rs. 18 lakhs by treating it as unexplained investment.

2.2. Against the said order of assessment, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who, by order dated 11.12.2002, reduced the cost of construction by Rs. 5 lakhs. On further appeal by the assessee, the Income Tax Appellate Tribunal, placing reliance on the decision of the Apex Court in Commissioner of Income Tax Vs. Dr. B. Venkata Rao, , held that the cost of construction of the nursing home is entitled for depreciation on the ground that it is a plant.

3. Aggrieved by the said decision of the Tribunal, the Revenue has preferred the present appeal raising the following substantial question of law:

In the absence of any application of functional test being applied to a building, to determine whether it was constructed specifically to enable it to perform as a part of the plant when the Tribunal is justified in holding that the building which are nursing home even in the absence of any equipment being implanted in the building is a plant and would consequentially be entitled for depreciation?

4. Mr. J. Narayanaswamy, learned Counsel appearing for the Revenue, fairly submits that the issue raised in the above question is covered against the Revenue by the decision of the Apex Court in Commissioner of Income Tax Vs. Dr. B. Venkata Rao, . The Apex Court, in the said decision, applying the functional test as held by the Allahabad High Court in S.K. Tulsi and Sons Vs. Commissioner of Income Tax, , affirmed the view of the Karnataka High Court in Commissioner of Income Tax Vs. Dr. B. Venkata Rao, and dismissed the appeal filed by the Revenue by holding as follows:

... it was clear from the order of the Tribunal as also the assessment order that the assessee''s nursing home was equipped to enable the sterlisation of surgical instruments and bandages to be carried on. It was reasonable to assume in the circumstances, particularly having regard to the Tribunal''s order which stated that the sterlisation room covered about 250 sq. ft that the nursing home was also equipped with an operation theatre. In the circumstancess, the assessee was entitled to depreciation at 10 per cent, on the nursing home building on the ground that it was a "plant".

5. The Allahabad High Court in S.K. Tulsi and Sons Vs. Commissioner of Income Tax, , described the meaning of "plant" as follows:

... In order to find out whether a building or structure or a part thereof constitutes "plant", the functional test must be applied. If it is found that the building or structure constitutes an apparatus or a tool of the taxpayer by means of which the business activities are carried on, it would amount to "plant" but where the structure plays no part in the carrying on of those activities but merely constitutes a place within which they are carried on, the building cannot be regarded as a plant.

6. Admittedly, in the instant case, the assessing officer and the Commissioner as well as the Tribunal observed that the assessee, who is a medical practitioner, is running a nursing home. Hence, applying the ratio laid down by the Apex Court in Commissioner of Income Tax Vs. Dr. B. Venkata Rao, we hold that the cost of construction of the nursing home of the assessee is entitled for depreciation on

the ground that it is a plant.

In view of the above, we uphold the order of the Tribunal and finding no substantial question of law, the appeals stand dismissed.

