(2014) 09 AP CK 0093

In the Andhra Pradesh High Court

Case No : I.T.T.A. No. 93 of 2003

The Commissioner of Income Tax		APPELLANT
	Vs	
Lakshmi Constructions		RESPONDENT

Date of Decision : 09-09-2014

Acts Referred:
Income Tax Act, 1961 — Section 142A, 260A

Citation : (2014) 369 ITR 271

Hon'ble Judges : L.N. Reddy, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : J.V. Prasad, Advocate for the Appellant; Y. Ratnakar, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.—The respondent is a firm and is assessed to tax. In its returns submitted for the year 1991-92, it has disclosed a sum of Rs. 23,75,000/- towards cost of construction of a building. Incidentally, the firm was maintaining books of account. During the course of processing the returns, the Assessing Officer referred the matter to a Valuer, who, in turn, reported that the estimated cost of the building is Rs. 41,33,000/-. Taking the same into account, the Assessing Officer added a sum of Rs. 17,48,000/- as unexplained investment. Feeling aggrieved by that, the respondent filed an appeal before the Commissioner (Appeals). The Commissioner took the view that the Assessing Officer could not have added the amount unless he rejected the books of account. Accordingly, he remanded the matter to the Assessing Officer.

2. Not satisfied with the outcome of the appeal before the Commissioner (Appeals), the respondent filed I.T.A. No. 1040/Hyd./96 before the Hyderabad Bench A of the Income Tax Appellate Tribunal. Through its order, dated 25.10.2002, the Tribunal allowed the appeal holding that the very reference to the Valuation Officer could not have been made, unless the Assessing Officer rejected or doubted the veracity of the books of account of the respondent. The said order is challenged in this appeal filed u/s 260A of the Income Tax Act (for

short the Act).

3. Heard Sri. J.V. Prasad, learned Standing Counsel for the appellant and Sri. Y. Ratnakar, learned counsel for the respondent.

4. The only dispute is about the value of the building constructed by the respondent firm. The respondent furnished its value at Rs. 23,75,000/-. The particulars thereof were mentioned in the books of account. The Assessing Officer could have doubted the value of the building, if only he did not believe the books of account or rejected them. However, straightaway, he referred the matter to the Valuer. The report was taken into account and the difference of the amount was treated as unexplained investment.

5. The Commissioner made an observation that no amount could have been added as unexplained investment, unless the books of account were doubted or rejected. He impliedly disapproved the report of the Valuation Officer. However, the matter was remanded for fresh exercise in this behalf. It is in this context that the respondent filed an appeal before the Tribunal canvassing the correctness of the order passed by the Commissioner; and the appeal was allowed.

6. The books of account maintained by an assessee have their own significance and importance in the context of the assessment under the Act. It is on account of the availability of books of account, that the assessee is relieved from the burden of maintaining the other evidence. An Assessing Officer is conferred with the power to satisfy himself about the correctness of the books of account. In a given case, if they are found to be not reliable, he can make an observation to that effect and undertake his own exercise, to arrive at the conclusion about the income and expenditure of the assessee.

7. Even the Commissioner (Appeals) was of the view that the books of account commended their own acceptability and any addition of amount towards unexplained investment could have been done only after verification from the books. That very observation, if not principle, cuts into the justification for referring the matter to the Valuation Officer. The reason is that it is only when the Assessing Officer did not take the contents of the books of account, on their face value, that he could have resorted to an independent valuation. It is here, that the Tribunal maintained the subtle distinction and held that even before ordering the valuation of any property by independent Valuer in respect of an assessee, who maintained books of account, the Assessing Officer must, as a first step, express his lack of confidence in the books of account. That not having been done in the instant case, the very reference to the Valuation Officer cannot be sustained in law.

8. In Sargam Cinema Vs. Commissioner of Income Tax., the Hon''ble Supreme Court held that the Assessing Authority cannot refer the matter to a Departmental Valuation Officer unless the books of account maintained by the assessee were rejected or disbelieved. The same was followed by the Punjab and

Haryana High Court in Nirpal Singh Vs. Commissioner of Income Tax.

9. Though the Tribunal did not take note of any precedents, obviously because they were not cited, the view taken by it accords with the principle laid down by the Hon''ble Supreme Court. Added to that, the assessee firm is said to have been wound up in the year 1992 itself.

10. Though Section 142A of the Act was amended in the year 2004 with retrospective effect from 1972, we find it difficult to sustain the exercise undertaken by the Assessing Officer on the touch stone of that provision. Viewed from any angle, we do not find any merits in the appeal.

11. The appeal is accordingly dismissed. There shall be no order as to costs.

12. Miscellaneous petitions, if any, filed in this appeal shall also stand disposed of.

