HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 56 OF 2013

Commissioner of Income Tax-17 .. Appellant.
V/s.
M/s. Bombay Electric Laundry .. Respondent.

Mr. A. R. Malhotra with Mr. N. A. Kazi and Ms. Padma Divakar, for the Appellant.
Mr. M. Subramaniam i/b. Mr. V. S. Hadade, for the Respondent.

CORAM: M.S.SANKLECHA, &
G.S.KULKARNI, JJ.
DATE : 13th JANUARY, 2015.

P.C:-

This Appeal under Section 260A of the Income Tax Act, 1961 (the Act), challenges the order dated 13th June, 2012 passed by Income Tax Appellate Tribunal (the Tribunal) .

2 The Assessment Year (A. Y.) involved is A. Y. 2006-07.

3 The following question of law has been formulated by the Revenue for our consideration:-

> *" Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in sustaining the order of the CIT(A) and thereby deleting the additions made by the A. O. at Rs.2.50 Crores on account of compensation received on surrender of tenancy rights?"*

4 The basic issue which arises in this Appeal is whether tenancy

::: Uploaded on - 19/01/2015 ::: Downloaded on - 28/08/2020 13:03:44 :::

HIGH COURT OF JUDICATURE AT BOMBAY

rights are vested in the Respondent-Assessee or in its individual partners for purposes of determining who is liable to pay tax on the compensation received on surrender of tenancy.

5 The Respondent-Assessee was carrying on business from a rental premises owned by one Mr. V. Shantaram. During the course of assessment proceeding, the Assessing Officer consequent to a survey discovered an Agreement indicating surrender of tenancy by the Respondent-firm in favour of builder–M/s. Veera & Gala Developers. The above agreement provided for a compensation of Rs.2.50 Crores as a consideration for surrender of tenancy by the Respondent-Assessee. During assessment proceedings, the Respondent-Assessee submitted that the tenancy of the premises was in the name of the partners individually and not in the name of the firm. The Respondent-Assessee pointed out that the rented premises was alloted to Mr. Ratwani and Mrs. Ratwani who had migrated from Pakistan as is evident from the communication of the Deputy Custodian of Evacuee Property to the landlord – Mr. V. Shantaram dated 21st December, 1959, directing the landlord to treat Mr. Ratwani and Mrs. Ratwani as his direct tenants. The present partners of the Respondent-Firm are legal heirs of Ratwani's to whom the tenancy was originally allotted. It was brought to the notice of the Assessing Officer that the Respondent-Assessee was made a party to the Agreement at the instance of the builder to ensure a title free of any doubt. The payment was made to the partners and not to Respondent-Assessee by the builder. Further, the partners on receipt of the consideration of Rs.2.50 Crores from the developer had invested the same in NABARD bond for the purpose of exemption under Section 54EC of the Act. As an alternative, it was submitted that the benefits claimed on

::: Uploaded on - 19/01/2015 ::: Downloaded on - 28/08/2020 13:03:44 :::

HIGH COURT OF JUDICATURE AT BOMBAY

exemption under Section 54EC of the Act be extended to the Respondent-firm. The Assessing Officer did not accept either of the two submissions and brought to tax an amount of Rs.2.50 Crores in the hands of the Respondent-Assessee.

6 In Appeal, the Commissioner of Income Tax (Appeals) [CIT(A)] by order dated 25th March, 2009 set aside the order of the Assessing Officer. This was on examination of all documents beginning with the letter dated 21st December, 1959 – wherein the landlord was directed by the Deputy Custodian of Evacuee Property to treat the Ratwani's in there individual capacity as a tenants. The Partnership Deed constituting the Respondent-Assessee was also examined to conclude that the tenancy rights in respect of the rental premises did not belong to the Respondent-Assessee but to its partners to their individual capacity. Accordingly, appeal of the Respondent-Assessee was allowed.

7 The Revenue carried the issue in further Appeal to the Tribunal. By the impugned order, the Tribunal upheld the findings of the CIT(A) and held that the tenancy rights of the rental premises/ properties was always held by the partners and never by the firm. In view of the above, Appeal filed by the Revenue was dismissed by the impugned order dated 13th June, 2012.

8 Mr. Malhotra, learned Counsel appearing for the Revenue submits that the Tripartite Agreement found during the course of survey was entered into between landlord, Respondent-Assessee and the builder. The individual partners who claim to be tenants of the said premises do not find any mention therein. Besides, the rent in respect of the office premises were always paid by the firm. Both these factors would

::: Uploaded on - 19/01/2015 ::: Downloaded on - 28/08/2020 13:03:44 :::

HIGH COURT OF JUDICATURE AT BOMBAY

indicate that the tenancy of the rental premise belonged to the firm and not to the individual partners.

9 We find that the Respondent-Assessee had in fact before Assessing Officer pointed out that the Tripartite Agreement was entered into, making Respondent-Assessee party thereto was on the insistence of the builders so as to take care of builders apprehension in respect of the said property. It was also pointed out that sale consideration was received by the individual partners and not by the firm from the builders. So far as payment of the rent by the firm is concerned, it was a normal allowable business expenditure of the firm. Thus, both the CIT(A) and the Tribunal have come to a concurrent finding of the fact on examination of evidence that the tenancy of the rental premises belonged to the individual partners and not to the Respondent-Assessee. It is also noticed that the amounts received by the partners in the individual capacity, was disclosed in their return of income claiming the benefit of Section 54EC of the Act.

10 We find that as conclusion is based on concurrent finding of fact, no substantial question of law arises for us to entertain the present Appeal.

11 Accordingly, **Appeal is dismissed.** No order as to costs.

(G.S.KULKARNI,J.) **(M.S.SANKLECHA,J.)**

::: Uploaded on - 19/01/2015 ::: Downloaded on - 28/08/2020 13:03:44 :::