

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 13th DAY OF OCTOBER 2014

PRESENT

THE HON'BLE MR.JUSTICE N.KUMAR

AND

THE HON'BLE MR.JUSTICE B.MANO HAR

I.T.A.No.1098/2008

BETWEEN:

1. The Commissioner of Income Tax,
C.R.Building,
Queens Road,
Bangalore.

2. The Income-tax officer
Ward-4(1)
C.R. Building,
Queens Road,
Bangalore.

(By Sri.Jeevan J.Neeralgi, Advocate)

...APPELLANTS

AND:

M/s Suraj Towers,
Vaishnavi Infrasctructure (P) Ltd.,
No.2/2, Walter Road,
Opp. Vittal Malya Road,
Bangalore.

...RESPONDENT

(By Sri.A.Shankar and M.Lava, Advocates)

This appeal is filed under Section 260-A of I.T.Act, 1961, arising out of order dated 25-07-2008 passed in ITA No.1195/Bng/2007, for the Assessment year 2002-03, praying to formulate the substantial questions of law stated therein and allow the appeal and set aside the order passed by the ITAT, Bangalore, in ITA No.1195/Bng/2007, dated 25-07-2008 confirm the orders of the Appellate Commissioner and confirm the order passed by the Income tax officer, Ward-4(1), Bangalore in the interest of justice and equity.

This appeal coming on for hearing this day, **KUMAR J**, delivered the following:-

JUDGMENT

The Revenue has preferred this appeal against the concurrent findings recorded by the two Appellate Authorities holding that even if the valuation by DVO is accepted and the difference in the cost of construction is Rs.41,33,983/-, which has to be set off against the expenditure incurred for the said construction and therefore, there won't be any liability to pay tax on the said amount.

2. The assessee is a property developer. He filed the return of income for the Assessment year 2002-03 on 23.10.2002 declaring his total income of Rs.5,72,840/-. The case was selected for scrutiny. The assessee filed the valuation report of an approved valuer. According to which, the cost of construction was determined at Rs.1,13,28,000/- after deducting 15% on account of lower specification and reduced work and Rs.19,99,200/- on account of economy of construction.

3. The Assessing Officer, invoked the provisions of Section 142-A of the Income Tax Act, and referred the matter to the DVO for valuation of the building. According to him, the cost of construction was Rs.1,70,65,000/-. The assessee objected to the said valuation on several grounds. The Assessing Officer came to the conclusion that the assessee had suppressed the investment in the building construction and went ahead to make addition of Rs.41,33,983/- being the difference in the cost of construction of the

building as determined by the DVO and the cause shown by the assessee in its books.

4. The assessee preferred an appeal to the Commissioner of Income Tax (Appeals). The 1st appellate authority accepted the said valuation and held, the said difference in the amount is to be allowed as deduction under Section 37(1) of the Act and as such, it has no impact on the income of the assessee. Hence, the Assessing officer was directed to allow the deduction under Section 37(1) of the Act equal to the amount of addition made by him. It did not consider the objections filed by the assessee to the said valuation.

5. Aggrieved by the same, the Revenue preferred an appeal to the Tribunal. The Tribunal on reconsideration of entire material on record, found no infirmity in the order of the Appellate Authority. He affirmed the findings of the Appellate Authority that any investment in a flat being stock-in-trade to the assessee was being held as capital account by the owner. In fact, additional investment made therein shall not be

considered in the hands of the assessee and therefore, dismissed the appeal. Aggrieved by the said order, the present appeal is filed.

6. The appeal was admitted to consider the following substantial questions of law on 07.07.2009:-

“1. Whether the Appellate Authorities were correct in holding that the difference in the investment in construction of the building as declared by the assessee and worked out by the Valuation Officer cannot be treated as the income of the assessee u/s 69, 69B/69C of the Act as the building should be treated as stock in trade?

2. Whether the Appellate Authorities were correct in holding that the entire addition made u/s 69, 69B/69C of the Act in respect of difference in valuation of building should be allowed deduction u/s 37(1) of the Act without taking into consideration the proviso to Section 69C w.e.f. 1.4.1999 which did not permit such a deduction?”

7. Learned counsel for the Revenue, assailing the impugned order, contended that in view of proviso to Section 69C, the unexplained expenditure which is

deemed to be the income of the assessee shall not be allowed as deduction under any head of income. That proviso equally applies to Section 69-B and therefore, the finding of the appellate authorities allowing the unexplained expenditure as a deduction is erroneous and requires to be interfered with.

8. Per contra, learned counsel for the assessee submitted, the proviso to Section 69C has to be confined to Section 69C only and it has no application to Section 69B and therefore, he submits that there is no substance in the said finding.

9. As the Assessing Officer invoked Section 142-A of the Act and got DVO appointed for the purpose of valuation, no such power is conferred under Section 69C to such Assessing Officer. Therefore, Section 69C is not attracted to this case. The proviso to Section 69C is confined to Section 69C only. No such proviso is found in Section 69B and therefore, the proviso to Section 69C cannot be read as proviso to Section 69B. In terms of Section 69B, the excess amount may be

deemed to be the income of the assessee for such financial year. However, when the said excess amount is in the nature of the investment on building and the said building is sold to prospective purchaser, that investment is in the nature of expenditure. Therefore, that unexplained income has to be set off against the expenditure and the net tax could be 'nil' and that the Appellate Authorities dismissed both the appeals and held that it is strictly in accordance with law. Therefore, we do not see any merits in this case. No case for interference is made out. Substantial questions of law is answered in favour of the assessee and against the revenue.

No merits. Dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

Srl.