

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

INCOME TAX APPEAL No. 73 of 2001

C I T BIKANER
V/S
KISHAN KUMAR & ORS

Mr. KK BISSA, for the appellant / petitioner

Mr. NIRAJ JAIN for Mr. ANJAY KOTHARI, for the
respondent

Date of Order : 5.2.2008

HON'BLE SHRI N P GUPTA, J.
HON'BLE SHRI DEO NARAYAN THANVI, J.

ORDER

REPORTABLE

This is an appeal by the Revenue, seeking to challenge the order of the learned ITAT dated 30.3.2001, affirming the order of the learned Commissioner dated 28.10.99, whereby the addition of Rs.10,84,835/-, made by the Assessing Officer, in the assessment order dated 29.1.99, was deleted.

For the present purposes, it would suffice to say that search operation was undertaken on the residential premises of the assessee on 4.3.97. Then in response to notice issued under Section 158BC, the assessee filed return of income for the block period, declaring undisclosed income of Rs.17,96,620/-. The present

controversy, however, relates only to the additions made by the Assessing Officer, on account of undisclosed investment in the agricultural lands, and plots. The Assessing Officer held the assessee to have purchased the agricultural lands and plots during the block period. Copies of agreements/registered deeds were seized, and from scrutiny thereof, it was observed, that the investment accounted for regarding purchase of these properties, is less than the market value taken by the Registering Authorities, for these properties, and the difference was worked out to Rs.10,84,835/-. A tabulation, in this regard has been given, showing the consideration amount accounted for, the market value adopted by the Sub-Registrar, and the difference considered unaccounted for. These transactions relate to the period 12.6.91 to 27.12.96, and the additions made include additions of Rs.15,500/-, 17,335/-, 18,000/-, 25,000/-, and so on, totaling to Rs.10,84,835/-. The Assessing Officer also considered the explanation of the assessee, and made the addition, only on the basis of the valuation put by the Registering Authorities, on the basis of price index fixed by the State Valuation Authorities (District Level Committees rates), and the difference between the consideration amount, and the value adopted by the Sub-Registrar has been added as above.

In appeal, the learned Commissioner found the contention of the assessee to be more convincing, and

considered that there was some time lag between execution of the agreement and execution of the sale deed, during which time possibility of the increase in the stamp duty is not ruled out. Then it was also noticed, that for certain amounts the assessee had himself made a disclosure. Then regarding the rates, it was also held, that the Assessing Officer had not brought on record any other evidence/materials, about the more payment having actually been made, in support of the findings, and has relied exclusively on the value taken by the Sub-Registrar, which cannot be considered sufficient, rather independent evidence, particularly for sustaining the addition in a block assessment, was required. It was also found, that the stamp duty rates are fixed by the DLC, according to the norms of the particular area, with the sole object to charge stamp duty, and it does not necessarily reflect actual market rate of the property. Thus, the value determined for the purpose of stamp duty alone, without any other evidence/document, or paper, cannot form as unexplained investment. Thus, the addition was deleted.

The Revenue went in appeal and in this regard, the learned Tribunal relying upon a judgment of Hon'ble the Supreme Court in K.P. Varghese Vs. ITO reported in 131 ITR 597, so also on a judgment of Allahabad High Court in Dinesh Kumar Mittal Vs. ITO, reported in 193 ITR 770, found that there is no rule of law, to the effect, that the value

determined for the purpose of stamp duty is actual consideration passing between the parties to sale, it might be more or less. What is actual consideration that pass between the parties is the question of fact, to be determined in each case, having regard to facts and circumstances of that case, and that, in the case in hand, there is no material on record, in respect of various properties to establish, that the actual consideration passing between the parties was more than that declared by the assessee, and that, in such a situation, the value adopted by the Registrar for the purpose of charging the stamp duty cannot justifiably form basis for holding the same to be the actual consideration to have passed between the parties, and in turn for making the addition of the difference between this value and the value declared by the assessee. Thus, the order of the learned Commissioner was affirmed.

This appeal was admitted vide order dated 27.9.2001 by framing the following substantial question of law:-

"Whether on the facts and in the circumstances of this case, the ITAT was justified in law in confirming deletion of addition of Rs.10,84,835/- holding that there could not be any addition on account of difference of price debited in the accounts of books of the assessee and the value adopted by the registering authority for stamp duty purposes, while the actual price paid for purchase of the land is more, as is clearly borne

out from the sale agreement and other incriminating documents seized during the course of search & seizure operation?"

Arguing the appeal, learned counsel for the Revenue reiterated the stand, that the value determined by the Authorities (DLC rates) do represent the fair market value, and since in the present case, the value shown in the document was a deflated figure, and therefore, the learned Assessing Officer was right in making additions of Rs.10,84,835/-.

On the other hand, learned counsel for the assessee supported the impugned judgment, and placed very strong reliance on the judgment of Hon'ble the Supreme Court in K.P. Varhese's case, and also relied upon another judgment of this Court in CIT Vs. Emerald Construction Pvt. Ltd., reported in 291 ITR 59.

We have considered the submissions and have gone through the orders of the learned Authorities below, and the relevant provisions of the law, so also the judgments cited at the bar.

At the outset, we may refer to the provisions of Section 158BC, which provides, that the Assessing Officer shall proceed to determine the undisclosed income of the block period in the manner laid down in Section 158BB, and

the provisions of Section 142, sub-section (2) & (3) of Section 143, Section 144 and 145 shall, so far as may be, may be applied, and a look at Section 158BB shows, that thereunder undisclosed income of the block period is to be the aggregate of the total income of the previous years falling within the block period, computed in accordance with the provisions of the Act, on the basis of the evidence found as a result of search or requisition of books of accounts, or other documents, and such other materials, or information, as are available with the Assessing Officer, and relatable to such evidence, as reduced by the aggregate of the total income, or as the case may be as increased by the aggregate of the losses, for such previous years, determined in accordance with the further sub-clauses. Thus, the computation of the income is to be made on the basis of the evidence found as a result of search, or requisition of books of accounts, or other documents, and such other material, or information, as are available with the Assessing Officer, and relatable to such evidence. This provision does not include any fictional, or presumptive income, to be liable to, or capable of being, included in the aggregate of the undisclosed income. Obviously therefore, the determination of value of the assets acquired, i.e. the fair market price at the time of purchase, cannot be dependent on the norms/rates (DLC rates) as may be fixed by the concerned committees. There may be cases, where the assets may have been purchased at

the price higher than the DLC rates, and rather there may be cases, where the assets may be acquired at a price lesser than the DLC rates. The reasons for either of the situations are enumerable, and cannot be put into any straight jacket.

One more aspect of the matter in this regard is, that the settled legal position, as laid down by Hon'ble the Supreme Court, in CIT v. M/s Shoorji Vallabhdas & Co., reported in 46 ITR 144, E.D. Sasson & Co. Ltd. v. CIT, reported in 26 ITR 27, and Kedarnath Jute Mfg.Co. Ltd, reported in 82 ITR 363 that the income is to be taxed is to be the actual income received, and not any supposed income, or presumed income. The interpretation sought to be placed by the learned counsel for the assessee, if were to be accepted, it obviously would have a necessary consequence of attracting the liability of capital gain tax in the hands of the seller, assuming the asset to have been sold at DLC rates, while a look at the provisions of Section 50C, appearing in Chapter relating to capital gains shows, that according to this provision, where the consideration received or accruing as a result of transfer by an assessee of a capital asset, being land or building, is less than the value adopted or assessed by the Authorities of the State Government, being Stamp Valuation Authorities, for the purpose of payment of stamp duty in respect of such transfer, the value so adopted is deemed to be the full

value of consideration received, or accruing, as a result of such transfer, for the purpose of Section 48. but then sub-section (2) specifically provides, that without prejudice to provisions of sub-section (1), where the assessee claims before the Assessing Officer, that the value adopted or assessed by the Stamp Valuation Authority exceeds the market value of the property as on the date of transfer, the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer, and the relevant provisions of the Wealth Tax Act, with necessary modifications have been provided to apply, subject further to the exception, that where the Valuation Officer values the assets at a price higher than the value adopted by the Stamp Valuation Authority, such higher value shall be taken to be the consideration received or accrued as a result of the transfer. But then, in our view, this provision also does show, that the valuation put by the Stamp Valuation Authority is not required to be adopted as the valuation of the property, as a rule of thumb. Since this provision was inserted w.e.f. 1.4.2003, the fact does remain that at the relevant time, there was no provision under the Act, to provide for a presumption about the valuation of the asset, to be the one, as determined by the Stamp Valuation Authorities, irrespective of the actual consideration, for which it was conveyed.

The obvious result is, that it becomes a pure

question of fact, as to whether the consideration shown in the document of conveyance, is the actual amounts paid by way of consideration, to be taken to be undisclosed income of the assessee, or it is a deflated figure, and therefore, addition is required to be made. If it is taken to be deflated figure, then it is for the department to lead positive evidence, about the fair market value of the property, and further to show, that the property was undervalued in the document of sale, before authorising the Assessing Officer to make any addition in the income, on that count.

Hon'ble the Supreme Court in K.P. Varghese's case was dealing with the provisions of Section 52(2) as it was then existed, which also related to computation of the capital gain, and it was held as under:-

"it is a well-known fact borne out by practical experience that the determination of fair market value of a capital asset is generally a matter of estimate based to some extent on guess work and despite the utmost bona fides, the estimate of the fair market value is bound to vary from individual to individual".

Then it was further held that Section 52(2) does not create any fictional receipt, it does not deem as receipt something, which in fact is not received. It was also held that it is not enough to attract the applicability of sub-section (2) that the fair market value

of the capital asset transferred by the assessee as on the date of the transfer exceeds the full value of the consideration declared in respect of the transfer by not less than 15% of the value so declared but it is further more necessary that the full value of the consideration in respect of the transfer is understated, or in other words, shown at a lesser figure, than the actually received by the assessee. Thus, even according to this judgment, it is to be shown by the department, that the purchase price shown in the documents is not the real price, but something more has been paid and for that purpose, it may prove the fair market value of the property.

Admittedly, in the present case, apart from relying upon the Stamp Valuation Authority's rates there is no other material. And in our view, Stamp Valuation Authority's rates cannot be taken, by itself, as the price, for which the property was purchased by the seller for the purpose of making assessment under Section 158BC read with Section 158BB of the Act.

The net result of the aforesaid discussion is that the question, as framed, is answered against the Revenue and in favour of the assessee, and the appeal is, therefore, dismissed.

(DEO NARAYAN THANVI), J.
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(N P GUPTA), J.