(5136)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2007

CORAM

THE HON'BLE MR.JUSTICE K.RAVIRAJA PANDIAN

AND

THE HON'BLE MRS.JUSTICE CHITRA VENKATARAMAN

T.C.(A) No.1487 of 2007

Commissioner of Income Tax
Madurai. Appellant

v.

P.Jeyavelan Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench dated 13.1.2006 in ITA No.530/Mds/2004, for the assessment year 1999-2000.

For Appellant : Mr.J.Naresh Kumar,
Jr. Standing Counsel for IT Dept.

JUDGMENT

(Judgment of the Court was delivered by K.RAVIRAJA PANDIAN, J.)

The tax case appeal is filed against the common order of the Income-tax Appellate Tribunal in ITA No.524 & 530/Mds/2004 dated 13.01.2006 for the assessment year 1998-1999 and 1999-2000.

2. The material facts, as culled out from the statement of facts in the memorandum of grounds of appeal, are as follows :

The respondent-assessee along with his daughter put up a hospital at the cost of Rs.22,25,000/-. The construction commenced in September, 1997 and was completed in February, 1999. The assessing officer referred the matter to the valuation cell and the cost of construction was estimated by the cell at Rs.43,45,300/- as against the cost of Rs.22,25,000/- admitted by the assessee and his daughter in the books of accounts. The assessing officer proposed to asses the difference as unexplained investment for the assessment years 1998-99 and 1999-2000. It was the case of the assessee that the construction was undertaken by a contractor by name P.Manoharan and according to him, the rate of construction was at Rs.420/- per sq. ft. Rejecting the explanation offered by the assessee, the assessing officer proceeded to determine the cost of construction on the basis of the report received from the valuation cell after allowing certain deductions, by determining the excess investment in the building at Rs.14,81,300/- and apportioned the same in the ratio of 50% : 50% in respect of the assessee and his daughter respectively as unexplained investment. The addition for the assessment years 1998-99 and 1999-2000 were at Rs.3,06,247/- and Rs.4,14,404/- in respect of the assessee.

3. The assessee filed an appeal before the Commissioner of Income-tax (Appeals), who, by order dated 28.11.2003 in Appeal No.157/2003-04 held that the assessing officer has no power to refer the matter to the valuation cell and that the rates adopted by the assessing officer are higher and excessive and on that ground allowed the appeal. The revenue, not satisfied with the order of the Commissioner of Income Tax (Appeals) filed an appeal before the Income Tax Appellate Tribunal. The Tribunal, by its common order dated 13.01.2006 made in I.T.A. Nos.524 and 530(Mds)/2004 for the assessment years 1998-99 and 1999-2000 in respect of the assessee and ITA Nos.525 and 529(Mds)/2004 for the very same assessment years in respect of the assessee's daughter, dismissed the appeals. Aggrieved by the order made in respect of ITA No.530(Mds)/2004, this appeal is filed by the revenue by formulating the following substantial questions of law :

1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that CPWD rates cannot be adopted for valuation of cost of construction of the property, and only state PWD rates are to be adopted ?
2. Whether in the facts and circumstances of the case, the Tribunal was right in rejecting the valuation report in toto, without giving any factual finding as to whether the rates adopted in respect of various items is excessive ?

4. When the matter was taken up for admission today, the learned Standing Counsel appearing for the appellant-revenue fairly submits that the appeal filed before this Court in Tax Case Appeal No.597 of 2007 against the common order of the Tribunal made in respect of the assessment year 1998-99, was dismissed by this Court by order dated 13.06.2007 and that order would squarely cover the issue in this appeal.

5. Heard the learned standing counsel appearing for the Revenue and perused the materials available on record, including the order made in Tax Case Appeal No.597 of 2007 dated 13.06.2007. It is held in that case as follows :

"4. This Court, in COMMISSIONER OF INCOME-TAX v. V.T.RAJENDRAN (T.C.Nos.1256 to 1258 of 2006 dated 10.7.2006) held that the report of the Departmental Valuation Officer cannot be a basis because the valuation cannot be an arithmetical appreciation of the materials used for the construction nor the expenses incurred by the assessee in that regard, as the variations are bound to be there in the value of the construction between Central PWD rates and State PWD rates themselves.

5. Further, in COMMISSIONER OF INCOME-TAX v. D.SUBRAMANIAN, (T.C.No.2494 of 2006 dated 6.11.2006), this Court, following the decision rendered in COMMISSIONER OF INCOME-TAX v. V.T.RAJENDRAN (T.C.Nos.1256 to 1258 of 2006 dated 10.7.2006), held that the determination of cost of construction on the basis of the valuation reports as well as the application of State PWD rates or Central PWD rates while arriving at the cost of construction are purely questions of fact and hence, cannot be gone into.

6. That apart, the Rajasthan High Court in COMMISSIONER OF INCOME-TAX v. ELEGANT HOMES PVT.LTD.[(2003) 259 ITR 232], also held that the cost of construction was basically a question of fact and therefore, the view taken by the Income-tax Appellate Tribunal on the issue of investment in construction, could not be interfered with."

K.RAVIRAJA PANDIAN, J.
and
CHITRA VENKATARAMAN, J.

6. Following the judgment in Tax Case Appeal No.597 of 2007 decided on 13.06.2007, this appeal is dismissed. No costs.

(K.R.P.,J.) (C.V.,J.)

28.11.2007

Index : Yes
Internet : Yes

krr/mf

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Madras Bench "C".
2.The Secretary, Central Board
of Direct Taxes, New Delhi.
3.The Commissioner of Income-
Tax (Appeals), Madurai.
4. The Income-tax Officer,
Ward 1(1), Dindigul.

T.C.(A). No.1487 of 2007