ORDER SHEET

ITA 257 OF 2009
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

C.I.T., CENTRAL-II, KOLKATA
Versus
M/S. GANESH NARAYAN BRIJLAL LTD.

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE ARINDAM SINHA

Date : 10th August, 2016.

For Appellant/Petitioner : Mr.M.P.Agarwal,Advocate

For Respondent : Mr.Avra Majumder,Advocate
Mr.Aveek Bose,Advocate

The Court : The subject matter of challenge in the appeal is a judgement and order dated 20th March, 2009 passed by the learned Income Tax Appellate Tribunal, "A" Bench, Kolkata in ITA 104/Kol/2009 pertaining to assessment year 2005-06 by which an appeal preferred by the revenue was dismissed.

The aggrieved revenue has come up in appeal.

The following question of law has been suggested :-

"*Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is correct in deleting addition of Rs.74,22,427/- being rental received by the assessee but not returned as income on the ground it pertained to portion sold to three companies by executing registered transfer deeds even though the entire rent was received by the assessee and tax was deducted at source therefrom."*

Mr.Agarwal, learned advocate appearing for the appellant/revenue submitted that he has instructions not to press the aforesaid question. He submitted that he would like to press another question which is as follows :

> *"Whether the assessee is entitled to get the benefit of the tax deducted at source when the case of the assessee is that the rent realized belonged to the assessee only partially ?*

From the assessment order the following facts and circumstances are discernable.

> *"It is evident from the TDS certificates submitted along with the return of income during the relevant year, the total rent received by the assessee company was Rs.1,07,69,778/- against whom TDS of Rs.5,59,807/- was claimed. But in P/L account, Rs.33,47,351/- only was taken as the rental income by the assessee company. On being asked, it was submitted by the assessee company in course of assessment proceedings that some portion of the building was sold to three companies*

> *namely, M/s.Nadia Security Printing and Stationery Co.Ltd, M/s.Nadia Pulb & Board Ltd and M/s. Deepsikha Properties Ltd.”*

Mr.Agarwal drew our attention to the computation made by the assessing officer from which it would appear that the assessee got credit of a sum of Rs.5,69,782/-, deducted on account of tax by the tenants. He contended that in case, the rent did not belong to the assessee in its entirety, the assessee could not have in that case claimed the benefit of the tax deducted at source in its entirety. Mr.Avra Mazumder, learned advocate for the assessee submitted that the assessee has paid the share of the co-owners of the property including the amount deducted on account of tax. There is, as such, no reason why the assessee should not be entitled to the benefit of the tax deducted at source.

Mr.Agarwal seeking to counter the submission advanced by Mr.Mazumder, drew our attention to sub-section (1) of Section 199 of the Income Tax Act, 1961, which provides as follows :

> “ *199.* ***Credit for tax deducted.*** *(1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or*

of the owner of property or of the unit-holder, or of the shareholder, as the case may be."

Mr.Agarwal contended that in case, the assessee is interested in claiming the benefit of the tax deducted at source in its entirety, the assessee cannot avoid the liability to pay tax on the entire rental income. We have not been impressed by the submission advanced by Mr.Agarwal.

The assessee is undoubtedly an owner of the property but he is not an absolute owner. His ownership is restricted to a certain percentage of the right in the property. The assessee has collected the rent payable with respect to the property in its entirety and thereafter has passed on the rent including the amount deducted on account of the tax to the other co-owners. There is, as such, no reason why the assessee should not be entitled to enjoy the benefit of tax deducted at source. Mr. Agarwal did not dispute that the assessee has paid the share of the co-owners including the share in the amount of tax deducted at source.

In the facts of the case, we find no merit in the submission advanced by Mr.Agarwal. The question is, therefore, answered in the affirmative and against the revenue. The appeal is, as such, dismissed.

It is recorded that there is an application for condonation of delay of 35 days. We have taken up the appeal for hearing after having condoned the delay.

(GIRISH CHANDRA GUPTA, J.)

(ARINDAM SINHA, J.)

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