ORDER SHEET

ITA 730 OF 2004
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

M/S. SUSHIL KUMAR CO.
Versus
COMMISSIONER OF I.TAX - IV, KOLKATA

BEFORE:
The Hon'ble JUSTICE SOUMITRA PAL
The Hon'ble JUSTICE MIR DARA SHEKO
Date : 13th October, 2015.

For Appellant : Mr.Ananda Sen,Advocate
Mr.B.Mal,Advocate

For Respondent/Revenue : Mr.P.K.Bhowmik,Advocate
R.N.Bandyopadhyay,Advocate
Mr.Aniket Mitra,Advocate

Soumitra Pal, J. :-

This appeal, relating to the assessment year 1998-99, was admitted on the following substantial questions of law :

"1. *Whether on the facts and in the circumstances of the case and on a true and proper interpretation of the relevant provisions of law regarding the question of mesne profit the Tribunal could upheld the order of the Assessing Officer by simply following the decision of the special Bench of the Tribunal when there was contrary view of the* *jurisdictional High Court directly on point and in favour of the assessee to the effect that mesne profit being nothing but an amount received as compensation in consequence of wrongful possession of property and therefore, the same could not be made taxable either as a capital or revenue receipt which view was expressed by the other High Courts and the same view being arrived at without taking into consideration the full legal position on the point but approval of the same by only taking into consideration part of the whole facts was perverse ?*

2. *Whether on the facts and in the circumstances of the case and on a true and proper interpretation of the position of law in regard to mesne profit the Tribunal erred in law in approving the order of the Assessing Officer to the extent that the mesne profit could be taxable under the head income from other sources' when in reality the legal profit or the measures adopted to estimate the mesne profit which the assessee has received did not or could not have the effect of measuring the character of the compensation awarded to a person who has been wrongfully deprived of the property as a revenue receipt and the contrary view as held by the Tribunal without considering the legal position by simply following the decision of the special bench of the tribunal is perverse ?*

It is evident that the Income-Tax Appellate Tribunal while passing the order allowing the appeal of the Revenue, had followed the decision of the Special Bench of the Income Tax Appellate Tribunal, Kolkata dated 14th August, 2003 passed in I.T.A.No.94 and 95/Cal/2001 for the assessment years 1996-97 and 1997-98 with regard to the same assessee.

Mr.Ananda Sen, learned advocate for the appellant submits that the Tribunal while passing the order under challenge erred in following the decision of the Special Bench as the issue stands covered by the judgement of the jurisdictional Court in CIT v. Smt.Lila Ghosh reported in 205 ITR 9 (Cal). Submission is as the suit, being L.E. & C Suit No.208/251 of 1989, filed by the appellant before the Small Causes Court at Bombay, ended in a compromise with a compromise decree being passed on 26th October, 1989 holding that the defendants be decreed and ordered to pay the plaintiff, that is, the appellant herein, the mesne profit from the date of filing of the suit till the office premises is vacated by the defendant, the Special Bench erred in holding that the amount received by the assessee for the assessment year in question was not for wrongful possession of the property and accordingly, does not fall within the ambit of mesne profits. As it is a settled proposition of law that a compromise decree is as good as a decree passed in usual proceedings, the Special Bench of the Tribunal erred in overlooking the compromise decree. Mr.Sen has filed notes of submission and has relied on several judgments.

Mr. P.K.Bhowmik, learned advocate for the respondent referring to Section 2(12) and Order 20 Rule 12 of the Code of Civil Procedure submits that as mesne profits is with regard to the unlawful possession of the premises and the loss of income due to unauthorized occupation, Court has to determine the loss and award mesne profits. Since the leave and license agreement entered by and between the appellant and M/s. Imkemix India Ltd. dated 1st September, 1989 is nothing but an agreement for use of the property with the right to renew the same and not for wrongful possession, it is merely an agreement for use of the property. Accordingly, the amount realized by the appellant does not come within the meaning of mesne profits stipulated under the Code. Moreover, the decree is not binding on the Revenue authorities who are free to enquire into the real nature of the suit. Relying on the order of the Special Bench of the Tribunal, it is submitted that as it is binding on the Tribunal, the Tribunal was justified in passing the impugned order dated 24th May, 2004. Submission is it is apparent from the order of the Special Bench that though the assessee was requested by the Bench to furnish a copy of the plaint filed before the Small Causes Court, however, for reasons best known to the assessee it was not filed. As the plaint was also neither filed before the Assessing Officer nor before the CIT (A), quite rightly adverse presumption was drawn by the Special Bench.

Heard the learned advocates for the parties.

The terms of agreement dated 1st September, 1989 reveal it was a leave and license agreement. It appears that within a few days from the date of entering into the agreement, the suit was filed before the Small Causes Court at Bombay which it ended with the passing of the compromise decree dated 25th October, 1989 on the terms and conditions as mutually agreed between the parties to the suit. In view of the law laid down in Kumar Sudhendu Narain Deb: (1991) 1 SCC 206, relied on behalf of the appellant, a decree passed in terms of settlement has a binding force as any other decree. The appellant in the income tax proceedings had relied on the said decree. However, as evident from paragraph 19 of the order of the Special Bench in assessee's own case, though sought for repeatedly by the Assessing Officer, CIT(A) and the Special Bench of the Tribunal, the assessee failed to file a copy of the plaint. In such facts and circumstances, the Special Bench was justified in drawing adverse presumption since as a Tribunal specifically adjudicating revenue matters, it has the authority to examine the plaint which lead to the passing of the compromise decree to investigate the real nature of the issue involved in the suit. The written notes of submission filed by the appellant is silent why the plaint was not filed. Hence, the judgments cited by the appellant are not applicable.

Therefore, for the reasons, as aforesaid, the question no.1 is answered in the negative, against the assessee and in favour of the revenue. The question no.2 is also answered in the negative, against the assessee and in favour of the revenue.

Thus, the appeal is dismissed.

(SOUMITRA PAL, J.)

I agree.

(MIR DARA SHEKO, J.)

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