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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Sep-24-1991

Reported in : (1991)39ITD463(Delhi)

Judge : P Goradia, M Bakhshi

Appellant : Raghvendra Singh

Respondent : inspecting Assistant

Judgement :

1. This appeal arises from the order dated 29-1-1988 passed by the Commissioner of Income-tax (Appeals) -XV, New Delhi (Mrs. K. Shukla).

2. The first ground relates to determination of the income from house property at Rs. 1,09,922 as against the income of Rs. 59,922 declared by the assessee.

3. The assessee is an Individual regularly assessed to tax, under the Income-tax Act as well as under the Wealth-tax Act. The description of the property and income from the said property as per page 26 of the Paper Book are as under: - The House property No. N-26, Panchsheel Park, New Delhi was constructed in the year 1971-72.

It was first let-out w.e.f. April 1972 to October 1972 to M/s.

Industrial Cables (I) Limited @ Rs. 1,000 per month.

The property was vacant during the period November 1972 to February 1973.

The property was further let-out, to Indian Metal and Ferrous Alloys Limited @ Rs. 3,000 per month for the period from March 1973 to March 1974.

The property was vacant for the period from April 1974 to 14-08-1974.

The property was further let-out to The Embassy of Ireland @ Rs. 3,250 per month for the period from 15-08-1974 to 15-07-1976.

The property was further let-out to AFRO Asian Rural Reconstruction Organization w.e.f. 10-09-1976 to 28-01-1980 @ Rs. 6,000 per month.

The property was let out to Bhagirathi Syndicate w: e. f. the 1st day of March, 1980 to 31st October, 1985 @ Rs. 7,000 per month.

The assessee had, on the basis of lease agreement with M/s. Bhagirathi Syndicate, computed the income. It may be stated here that the income declared by the assessee as per the lease agreement dated 1-3-1980 was accepted in the assessments of the assessee for assessment years 1980-81, 1981-82 and 1982-83, completed under Section 143(3) of the Income-tax Act, 1961. However, during the year under consideration for the reasons which are not stated in the assessment order, the Assessing Officer perused the lease agreement dated 1-3-1980 and found that the assessee had also granted the right to sub-lease the said property to M/s. Bhagirathi Syndicate, a partnership comprising of three connected persons. By sub-lease agreement dated 3-6-1980 the said partnership firm had granted sub-lease to the Singapore High Commissioner at monthly rent of Rs. 8,000. Besides by separate agreement dated 3-6-1980, the sub-lessee was to receive further amount of Rs. 4,000 from Singapore High Commissioner by way of hire charges in respect of additional fittings/fixtures and equipments. The Assessing Officer also perused the balance-sheet of firm and found that there were no worthwhile assets which could be leased out to the Singapore High Commissioner and for which an amount of Rs. 4,000 could be received.

The lessees had not even taken the equipments on hire from somebody.

According to him, the additional amount of Rs. 4,000 was in respect of the following additional fixtures, equipments, namely, Inter-com system, guard house, cooling arrangement with coolers and flag pole.

The other fittings and fixtures were normal part of the house. He, therefore, considering other relevant details, came to the conclusion that the firm had not provided the additional fixtures and fittings to the Singapore High Commissioner as it did not own the same nor it took the same on hire from outsiders and, therefore, it had to be presumed that the firm had performed no services by way of provision of the fixtures/fittings. It was, therefore, amply clear that the assessee attempted to divert his income from house property by entering into lease agreement with his controlled partnership firm and by also entering into sub-lease agreement through the said firm. Pressing into service the decisions of the Supreme Court in the cases of Me Dowell & Co. Ltd. v. CTO [1985] 154ITR 148 and Workmen as Associated Rubber Industry Ltd. v. Associated Rubber Industries Ltd. [1986] 157 ITR 77, he rejected the income declared and adopted an amount of Rs. 12,000 per month as annual letting value for the purpose of computing income from house property.

4. Aggrieved, the assessee took the matter before the Commissioner (Appeals), who upheld the assessment. According to her, the earlier decisions for earlier assessment years could not be followed because of new facts. It may be stated here that what are the new facts are not detailed in the order. The assessee's contention that income could not be taxed twice was also rejected on the basis that the taxability of income had not yet become final in the assessment of the assessee.

Aggrieved, the assessee preferred an appeal before the Tribunal.

5. At the time of hearing before us the learned representative of the assessee made elaborate submissions. Before the Bench, number of case laws were cited. Briefly the submissions were as under: - (i) Controversy was covered by the decision of the Tribunal in wealth-tax proceedings for assessment year 1981-82 in W.T.A. No. 474/Del. 1988 dated 14th December, 1988, where for the purpose of valuation of the property the amount of income declared by the assessee was

accepted.

(ii) There were no new facts from those prevailing in earlier assessment years.

(iii) Even if the additional fittings and fixtures were given by the lessee to Singapore High Commissioner and not shown in their books of account, how can there be an inclusion of income in assessee's own case? (v) Even if the principle of res judicata is not applicable to the tax proceedings, yet, there has to be finality and earlier decision could not be revised so as to result injustice.

(vi) The tax planning device and the principles relating thereto were reconsidered in the recent decision by the Supreme Court in CIT v. Arvind Narottam [1988] 173ITR 479 and in the case of M.V. Valliappan v. /TO [1988] 170 ITR 238 (Mad.).

(vii) The principle of apparent being real, was invoked and it was stated that no material was brought on record by the Department to prove the fact otherwise for which reliance was placed on CIT v. Daulat Ram Rawatmull [1973] 87 ITR 349 (SC) and Kalwa Devadattam v. Union of India 6. The learned Departmental Representative vehemently supported the order passed by the tax authorities.

7. On going through the findings and the material placed before us and to which our attention was drawn, and considering the judicial pronouncements and the law applicable, we cannot uphold the appellate order on this ground, either on facts or on law. The Tribunal in this case under the wealth-tax proceedings for assessment year 1981-82 had given a finding that the assessee had received an amount of only Rs. 8,000 (there appears to be some difference in figure because as per the agreement it is only Rs. 7,000) and accordingly made the valuation under Rule IBB of the Wealth-tax Rules. In a reference preferred by the Department, the Hon'ble High Court while giving direction under Section 27(3) of the Wealth-tax Act in R.A. No. 561/Del./1989 (W. T.C. No.26/91) for assessment year 1981-82 has stated that the amount of Rs. 8,000 adopted by the Tribunal in place of Rs. 12,000 contended by the Department was a finding of fact. Therefore, it is clear from this aspect that on fact the Tribunal had already taken a view that the assessee had not received or is not entitled to receive more than the amount stated by the assessee. In this year the controversy is whether an amount of Rs. 7,000 should

be adopted or Rs. 12,000. Keeping aforesaid finding in mind let us consider the language of Section 23 of the Act regarding annual value how to be determined. It suites that for the purpose of determining the annual letting value of any property, it shall be deemed to be a sum for which the property might reasonably be expected to let from year to year. In this case such expected rent, on the basis of Supreme Court decisions as per the Rent Control Act is much lower than that declared by the assessee. Then, the said Section 23 further states that where the property is tenanted and the annual rent received or receivable by the owner is in excess of the controlled rent, as stated earlier, the higher rent is to be adopted. As we have stated earlier, the assessee has received an amount of Rs. 7,000.

Therefore, only this amount has to be adopted for the purpose of Section 23 of the Act. Even as per the agreement, the assessee is not entitled to any further amount or any extra amount from the lessee or from the sub-lessee. Therefore, no further amount is receivable by the assessee. Therefore, clearly under Section 23, nothing more than the amount declared by the assessee can be adopted. Hence as per law also assessee's stand is correct.

8. We are entirely in agreement with the assessee that unless there are new facts, the earlier decision taken in tax proceedings, keeping in mind the controversy and the facts, no deviation should be made. We find from the findings recorded that no reasons are given by the Assessing Officer why the decision taken in the earliest year, i.e., assessment year 1980-81, was not required to be followed in the year under consideration especially when the same was followed for subsequent two assessment years, i.e., in assessment years 1981-82 and 1982-83. Not only this, but nowhere it is staled that the facts in earlier years were different and if so, how? It may further be stated here that the presumption drawn by the Assessing Officer was only on the basis of the balance-sheet of the partnership firm but without calling for the explanation with regard to physical existence of the assets given on hire, ownership thereof and if existing, why they were not shown in the balance-sheet of the partnership firm. These findings should be enough to decide the controversy in favour of the assessee and, therefore, we need not go into the other contentions raised by the assessee stated here in above. This ground is, therefore, decided in favour of the assessee.

9. The second ground raised is against rejection of the claim of loss of Rs. 80,000 on sale of shares. The assessee held 20,000 4% cumulative non-redeemable preference shares of Rs. 10 each in M/s. Raisina Agencies and Investments Pvt. Ltd. The cost of these shares were Rs. 2, 00,000. These shares were sold to his daughter Smt. Indira K.P. Singh for the value of Rs. 1,20,000. The assessee, therefore, claimed capital loss on sale of shares. These shares were purchased in September 1984.

The Assessing Officer found from the share transfer form that the said shares had been transferred to assessee's daughter in her capacity as member of M/s. Haryana Syndicate. The Directors of Limited Company are the assessee and his daughter, namely, Smt. Indira K.P. Singh and the members of Haryana Syndicate are Smt. Indira K.P. Singh and four private limited companies which are part of D.L.F. group. The Assessing Officer took into consideration the relevant financial data as reflected by the financial statements of M/s. Haryana Syndicate and M/s. Raisina Agencies and Investments Pvt. Ltd., and the composition of the share capital of the said company and held that the contention of the assessee that preference shares had to be valued as per Rule 1-C of the Wealth-tax Rules for the purpose of sales consideration could not be accepted. According to him, the transfer of these preference shares was -merely a smoke screen to incur capital loss and, therefore, not admissible. This was confirmed in appeal by the Commissioner (Appeals), who confirmed the finding that the transaction was a device only to reduce the tax liability of the assessee.

10. The representatives of both the sides were heard. It is not in dispute that the shares were actually transferred in the register of members of Raisina Agencies and Investments Pvt. Ltd. Besides M/s.

Haryana Syndicate holds the beneficial interest in the shares so transferred. The amount received by the assessee is admittedly Rs. 1,20,000 but the loss is taken as not allowable only because the transaction is taken as smoke screen. We are not in a position to uphold the finding recorded by the tax authorities especially when the legal form of transaction is accepted and there is no evidence to hold that the transfer is not legally effected. The finding recorded about the device to

avoid tax liability is given an inadequate material because it is not known what is the impact on the persons who have acquired interest in the shares to whom they have been transferred.

Merely because the partners of M/s. Haryana Syndicate are of the D.L.F.group, it cannot be presumed that the transaction was not intended to be followed up and legal consequences flowing from the transaction could be ignored. This could not be done even if the sale consideration is found to be inadequate. Therefore, this ground is also decided in favour of the assessee. The Assessing Officer shall work out the quantum of loss after considering the nature of the asset as long term.

11. To the extent as above, the appellate order is modified and the Assessing Officer is directed to modify the assessment.