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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Jul-30-2004

Reported in : (2005)1SOT460(Delhi)

Appellant : Distinctive Properties and Leasing

Respondent : ito

Judgement :

This appeal by the assessee is directed against the order of the CIT (A) on the following grounds : "1. The addition under section 41(1) of the Income Tax Act sustained by CIT (A) was wrong on fact and bad in law with regard to amount of accrued liability not paid.

2. The CIT (A) has erred to sustain the addition of Rs. 1,00,450 received in preceding year under section 41 (1) without any basis and said addition was bad in law and against the facts of the case." During the course of hearing the learned counsel for the assessee has opted not to press ground No. 1. Accordingly, the same is dismissed, as not pressed.

Apropos ground No. 2 it is noticed from the record that the assessee has received a sum of Rs. 1, 14,800 from Shri Sudershan Kapoor during the financial year 1989-90 on booking of flat No. 205 in Devika Apartments, Vaishali, Ghaziabad and this amount was shown as a credit liability. No further payment was received from him on account of various instalments due and ultimately during the year 1989-90 the booking was cancelled and the amount of Rs. 14,350 was deducted as

cancellation charges and remaining amount of Rs. 1,00,450 remained outstanding in his name, but this amount was neither paid to Shri Sudershan Kapoor nor claimed by him or his legal heirs till the end of the impugned financial year. It was also noted by the assessing officer that Shri Sudershan Kapoor has passed away and since the possibility of claim of refund by his legal heirs was completely ruled out, the trade liability has been ceased to exist and accordingly after invoking the provisions of section 41 (1) of the Act, this amount was treated as income of the assessee.

The assessee preferred an appeal before the CIT (A) with the submission that this amount was shown as outstanding in the name of the Shri Sudershan Kapoor and the possibility of its claim of refund by his legal heirs has not been ruled out. As such, it cannot be held that this liability has been ceased and it becomes income of the assessee under provisions of section 41(1) of the Act. The CIT (A) re-examined the issue in the light of the relevant provisions of law and arrived at a conclusion that this amount was never claimed either by Shri Sudershan Kapoor or the legal heirs, after his death. As such, the assessing officer has rightly treated this amount as the income of the assessee-company. The relevant observations of the CIT (A) are extracted hereunder for the sake of reference: "I have considered the submissions made by the authorized representative of the appellant and the facts discussed by the assessing officer in the assessment order. It is observed that the appellant company was engaged in the business of construction and following the project completion method of accounting. The appellant company has started the Vaishali Project in 1989 and completed in 1997.

The flat of Shri Sudershan Kapoor was booked in 1989 and paid the amount of Rs. 1,15,500. As stated above the appellant company has cancelled booking and deducted cancellation charges of Rs. 14,350 in 1999 and the balance amount retained. The amount has not been refunded to Shri Sudershan Kapoor or his legal heir. The appellant company has failed to establish before the assessing officer as well as at the appellate stage that the amount has been asked as refund by the legal heir. No such proof have been submitted at the assessment stage as well as at the appellant stage. In view of the above cited judgment of Allahabad High Court the authorized representative of the appellant argued that it cannot be

taxed under section 41(1) of the Act. The case of the appellant company is altogether different with the case cited above. In the present case the appellant company has itself cancelled the booking in 1999. Looking to the fact that the appellant company has failed to establish the fact that the amount has been claimed as refund by party or by legal heir etc. The appellant company has already been claimed all the expenses relevant to the project started at Vaishali in 1989 and the same was completed in 1997. The expenses of Vaishali project has already been allowed to the appellant. Therefore, the advance amount received on booking of the flat in 1989 as the booking and subsequently cancelled the booking in 1999 by the appellant company itself and the advance amount received is retained after deducting certain expenses as cancellation charges. The balance amount retained by the appellant definitely income in the hands of the appellant company as it is not paid to any person nor appellant has established the fact. that any person has claimed as refund. Therefore, the balance amount of Rs. 1,00,450 is the income of the appellant company related to Vaishali Project as all the expenses related to Vaishali Project have already been allowed to the appellant company. Therefore, the amount of Rs. 1,00,450 is to be treated as income of the appellant company. The addition made on this account is confirmed." Aggrieved the assessee has preferred an appeal before the Tribunal and reiterated his contentions. During the course of hearing a specific query was asked from the assessee's counsel about the present status of this amount and in response thereto it was submitted that this amount still shown in the books of account of the assessee and it has not been claimed so far by the legal heirs of Shri Sudershan Kapoor. Since his membership was cancelled in the year 1999 and thereafter no claim of refund was made either by Shri Sudershan Kapoor in his life time or his legal heirs after his death, there is no possibility of any claim or refund in future because it is barred by limitation. Since this amount has not been paid to the legal heirs of Shri Sudershan Kapoor, I am of the view that the lower authorities have rightly treated this amount as income of the assessee. Moreover, I do not find any force in the contention of the assessee that section 41(1) cannot be invoked in the instant case because the assessee was engaged in the construction business and the amount was received as an advance of booking of flat, which was shown by the assessee as a trade liability. Once the trade liability is ceased to exist, it

becomes an income of the assessee under the provisions of section 41(1) of the Income Tax Act. I, therefore, do not find any merit in the assessee's appeal. Accordingly, I dismiss the same.

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