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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Dec-27-2004

Reported in : (2005)93ITD269(Delhi)

Judge : K Singhal, M Nayar

Appellant : Acit

Respondent : Shakti Builders

Judgement :

1. A short but interesting question has arisen in this appeal for our consideration regarding interpretation of the proviso to Section 142A inserted by Finance Act 2004 with retrospective effect. In the present case, the addition of Rs. 12,81,468/- was made by A.O. on account of unexplained investment in construction of a building at P-2, Sriniwaspuri, New Delhi on the basis of difference in the investment declared by assessee and the valuation of cost of construction made by Departmental Valuation Officer in pursuance of the reference made by A.O. On appeal, the CIT(A), on facts, reduced the addition to Rs. 1,12,382/-. Aggrieved by the same, the revenue has preferred this appeal.

2. At the outset, the ld. Counsel for assessee submitted before us that the order of CIT(A) has to be upheld in view of the Supreme Court judgment in the case of Amiya Bala Paul 130, Taxman 511 wherein it has been held that reference made by A.O. for determining the cost of construction was without jurisdiction as none of the provisions authorized the A.O. to make such reference. Consequently, it was

held that no addition could be made on the basis of such report. This contention of assessee's Counsel was seriously objected by the ld. DR by submitting that the judgment of Hon'ble Supreme Court has been nullified by the retrospective insertion of new Section 142A w.e.f.

15.11.72. Hence, all references have become legal. In view of the same, it is contended that appeal of revenue cannot be dismissed on the legal contention raised by the ld. Counsel for assessee.

3. Faced with such situation, the ld. Counsel for assessee has contended that in view of the proviso to newly inserted Section 142 A, the objection of ld. DR is devoid of force. He drew our attention to coma after the figure '2004' and before the word 'and' to contend that it is disjunctive and therefore this proviso is applicable to those cases (i) where assessments were made on or before the 30th September 2004; and (ii) where such assessment has become final & conclusive on or before that date i.e. 30.9.2004. According to him, use of coma by the legislature is deliberate and therefore its due meaning has to be imported. He relied on two Supreme Court judgments in the case of Mohd Shabir v. State of Maharashtra AIR 1979 S.C. 564 and in the case of M.K. Salpekar v. Sunil Kumar Shyam Sunder Chaudhary AIR 1988 SC 1841.

It was also contended by him that literal construction of the statute has to be made if the language is clear and unambiguous. Reliance was placed on the judgment of Supreme Court in the case of Govid Saran Ganga Saran 155 ITR 145 wherein it has been held that recourse to object and reasons cannot be made, where language is clear and unambiguous. In view of this judgment, it was pleaded that no reference can be made to the Explanatory note issued by the Board [268 ITR 144(St)] where such come is missing.

4. On the other hand, the ld. DR has strongly opposed the aforesaid contention of ld. AR by contending that it is the usual practice of legislature to put coma after mentioning the year and therefore such coma cannot be construed in the manner suggested by the ld. A.R. He fully relied on the Explanatory notes issued by the Board where coma has not been used. According to him, it clarifies the legislative intent and consequently, the proviso can be applied only when assessment made

on or before 30.9.2004 has become final and cannot be applied to pending matters. Reliance was also placed on Supreme Court judgments in the case of J.M. Bhatia A.A.C. v. J.M. Shah 156 ITR 474 and in the case of M.K. Venkatachalam v. Bombay Dyeing & Mfg. Co. Ltd. 34 ITR 143. It was further pleaded that if the contention of assessee's counsel is accepted then very object of retrospective operation would be defeated.

5. After giving our due consideration to the contentions of the parties, we are not inclined to accept the contention of the ld.Counsel for assessee. At the outset, it would be appropriate to reproduce the provisions of Section 142A which has been brought on the Statute Book by Finance Act 2004 with retrospective effect from 15.11.1972.

"See 142 A(1) For the purposes of making an assessment or reassessment under this Act where an estimate of the value of any investment referred to in Section 69 or Section 69B or the value of any bullion, jewellery or other valuable article referred to in Section 69A or Section 69B is required to be made, the Assessing Officer may require the Valuation officer to make an estimate of such value and report the same to him.

(2) The Valuation Officer to whom a reference is made under Sub-section (1) shall, for the purposes of dealing with such reference, have all the powers that he has under Section 38A of the Wealth-tax Act 1957 (27 of 1957).

(3) on receipt of the report from the Valuation Officer, the Assessing Officer may, after giving the assessee and opportunity of being hear, take into account such report in making such assessment or reassessment: Provided that nothing contained in this section shall apply in respect of an assessment made on or before the 30th day of September, 2004, and where such assessment has become final and conclusive on or before that date, except in cases where a reassessment is required to be made in accordance with the provisions of Section 153A." 6. The above section has been brought on the statute book retrospectively in order to nullify the effect of the judgment of Hon'ble Supreme Court in the case of Amiya Bala Paul 130 Taxman 511 wherein it has been held that none of the provisions of the Act conferred any power on the A.O. to refer the matter to the

valuation officer for determining the value of investment mentioned in Section 69 or Section 69 A or Section 69 B. Because of this judgment, all the references to valuation officers made by AO in various cases through out the country became illegal being without authority of law and consequently the additions made on the basis of valuation reports made by valuation officers could be quashed/set aside/deleted by the appellate authorities/tribunal/courts. Faced with this situation, the Parliament inserted Section 142A with retrospective effect so as to save the past actions of A.O. However, the Parliament in its own wisdom considered it necessary to exclude certain assessments from retrospective application of Section 142A. Accordingly, a proviso was added to such Section. It is the scope of this proviso which is required to be considered by us in this appeal.

7. Whenever a provision is inserted in the statute book retrospectively, all the authorities administering the Act as well as the courts are bound to take legal cognizance of such provisions. Such provision is always presumed to be on the statute book from the date of its application. Hence such provision has to be applied by the appellate authorities /tribunals/courts in all the pending cases. The second consequence of such retrospective enactment is that concluded assessments can be reopened /revised/ rectified as the case may be if the period of limitation is available.

8. In our humble opinion, the legislature has excluded only the cases falling in the second category i.e. the concluded assessments from the operation of the provisions of the main section in order to avoid the hardships/chaos which would have been caused/created because of the retrospective operation of such section. In other words, the legislature considered it necessary to confer the powers on A.O.retrospectively only in those cases which are pending for adjudication before the higher forum. If the contention of Assessee's Counsel is accepted then the entire purpose of the retrospective legislation would be lost. Any interpretation which renders the provisions redundant cannot be made. The construction of the statute should be in such a manner so as to augment the object and not to frustrate it.

9. The entire emphasis of the ld. Counsel for Assessee is on the use of coma after the figure 2004 and before the word 'and', in the said proviso. According to him, the use of coma is disjunctive and, therefore, not only the concluded assessments are excluded but also the assessment which are pending before the higher forum. Reliance has also been placed on certain judgments to support his contention. There is no dispute to the legal proposition canvassed by him that plain and natural meaning should be given to the language used by the legislature but it is also the settled rule of interpretation that no construction can render the provisions of Statute as redundant. If literal construction results in absurdity, then, such construction must be avoided and the provisions should be construed in the manner which would advance the object for enacting such provision. Reference can be made to the judgment of Hon'ble Supreme Court in the case of J.H.Gotla, 156 ITR 323 wherein it has been held :- "If a strict and literal construction of the statute leads to an absurd result, i.e. a result not intended to be subserved by the object of the legislation, ascertained from the scheme of the legislation, then, if another construction is possible apart from the literal construction, then, that construction should be preferred to strict legal construction.

Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the legislature, the court might modify the language used by the legislature so as to achieve the intention of the legislature and produce a rational result." In view of the above rule of interpretation, we are of the view that contention of learned counsel for assessee cannot be accepted. If we accept the contention of learned AR then in all cases where assessment has been made on or before 30th September, 2004, would be outside the scope of Section 142A. Such contention, in our opinion, runs counter to the legislative intent of retrospective amendment. The very purpose of inserting Section 142A with retrospective effect would be frustrated.

Therefore, such contention of assessee's counsel deserves to be rejected.

10. Having rejected the contention of the learned counsel of assessee, it is held that proviso is applicable only to those cases where assessments have been made on or before 30.9.04 and such assessment has become final and conclusive

by such date. Consequently, where such assessments have not become final due to pendency of appeal, this proviso would not be applicable and reference made by AO to DVO would be deemed to have been validly made. Therefore, in the present case, the appeal of revenue cannot be dismissed on the basis of Supreme Court judgment in the case of Amiya Bala Paul (supra).

11. Coming to the merits of the case, it would be appropriate to state the facts in brief. The assessee was engaged in the business of civil construction. In the year under consideration, assessee was engaged in construction of building of 30 flats at P-2, Shriniwaspuri Extension, New Delhi. A survey Under Section 133 was conducted at business premises of assessee in the course of which statement of partner Shri R.K. Batra was recorded wherein he agreed to declare an amount of Rs. 5 lakhs as an additional investment in construction of such building. For asstt.year 1994-95, it declared NIL income as project was not yet completed. However, it declared the cost of construction as under: Not satisfied with such declaration, the AO made reference to the valuation officer for determining the cost of construction, who determined the same, after applying CPWD rates of 1976 at Rs. 62,63,226/-. He also valued the extra fittings at Rs. 2,94,774/-. This total value was taken at Rs. 65,58,000/-. The AO accepting the valuation report, bifurcated the cost of construction as under: In view of the same, the AO made addition of Rs. 12,81,468/- being the difference between declared value and value determined by AO for the year under consideration on the basis of valuation report.

12. The matter was carried in appeal before CIT(A), who after examining the facts on record and after inspecting the building recorded the following findings: 1. That out of total built up area of 1404 sq. mtr., 333 sq. mtr.

Constituted the RCC structure as against 111 sq.mtr taken by the DVO. Hence, report of DVO, to that extent, was wrong.

2. That CPWD rates revised in 1992 were available with the department and, therefore, there was no justification for applying 1976 rates with indexation by DVO. 3. That area of 172 sq. mtr. related to projections. Cost of projection could not be equated with covered area as such projections are without walls/ceilings.

Hence, 50% of cost of covered area would be reasonable.

4. That stilted area does not bear first class construction.

Further, it cannot be used for any other purpose except car parking.

Hence, 45% discount should be allowed as against 35% allowed by DVO.In view of the above findings, the CIT(A) determined the cost of construction at Rs. 41,11,328/- as per details given by him at Page 11 of his order. Regarding extra fittings, he upheld the valuation of DVO i.e. Rs. 2,94,774/-. The total value was thus determined at Rs. 44,06,102/- as against Rs. 65.58 lakhs taken by DVO. The difference between the value determined by CIT(A) and declared by assessee was worked out at Rs. 2,06,789/-. Since, it related to 3 years, the CIT(A) retained addition of Rs. 1,12,3 82/- for the year under consideration.

Aggrieved by the same, the revenue is in appeal before the Tribunal.

13. After hearing both the parties, we do not find any reason to interfere with finding of facts recorded by CIT(A). The learned DR has not been able to point out any defect in the finding of CIT(A). The CIT(A) has inspected the building himself and found some defect in the valuation report. Even the rates of CPWD for 1976 with indexation were wrongly applied by DVO when revised rates for 1992 were available. All findings of CIT(A) remains uncontroverted. Accordingly, the order of CIT(A) is upheld on this issue.

14. The next issue relates to the deletion of addition of Rs. 3 lakhs made by AO Under Section 68. One of the partners Shri H.C. Bhatia had introduced the sum of Rs. 9.5 lakhs in his capital account out of which the AO was satisfied with the sum of Rs. 6.5 lakhs. However, he made addition of Rs. 3 lakhs in respect of two sums of Rs. 1.5 lakhs each credited on 30.12.93 and 17.11.93 as he could not produce the bank pass book. The CIT(A) deleted the addition by observing as under: "I have considered the facts and circumstances of the case and in my opinion the addition is not justified. Firstly, Shri H.C. Bhatia is not a new person but is a partner of the firm. Secondly, he has been regularly introducing money in his account. In the previous year he introduced Rs. 11 lakhs. In the present year he

introduced Rs. 9.50 lakhs. Thirdly, all the money has been brought in either by cheque or D.D. Fourthly, Mr. H.C. Bhatia has confirmed the transaction and has also informed that he is assessed to tax by the ITO, Ward 22(7), Mumbai. Fifthly, the assessing officer himself has accepted the credit introduced by Mr. H.C. Bhatia amounting to Rs. 6.5 lakhs.

There is, therefore, no justified in not accepting the credit worthiness of Mr. H.C. Bhatia in respect of two amounts of Rs. 1.50 lakhs each. Further, during the course of appellate proceedings, the assessee produced some more evidence by way of a letter of Mr.

Bhatia dated 21.2.98 wherein he has confirmed once again that he has deposited Rs. 3 lakhs in his account by way of D.D. from Allahabad Bank and Canara Bank. It is therefore, held that the assessee has fully proved the identity and creditworthiness of the partner who has introduced the amount. The addition is not warranted. It is deleted." 15. After hearing both the parties, we do not find any infirmity in the observations of CIT(A). Shri H.C. Bhatia is regular assessee. Having accepted the major portion of construction made by him, there was no justification for making addition when the amount was received by cheque/DD. At the best, it was a case of addition Under Section 69 in the hands of H.C. Bhatia and not in the case of assessee Under Section 68. Further, on the basis of evidence, the CIT(A) has found that contribution by Mr. Bhatia stood proved. "This finding also remains uncontroverted. Hence, the order of CIT(A) is upheld on this issue also.

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