

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.468 & 469/Mds/2003

निर्धारण वर्ष / Assessment Years : 1998-99 & 1999-2000

The Assistant Commissioner of
Income Tax,
Central Circle II(5),
Chennai - 600 034.

v. M/s Kalyani Constructions Pvt.
Ltd.,
No.9, Bazullah Road, T. Nagar,
Chennai - 600 017.

PAN : 1-K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Shiva Srinivas, JCIT

प्रत्यर्थी की ओर से/Respondent by : None

सुनवाई की तारीख/Date of Hearing : 25.07.2016

घोषणा की तारीख/Date of Pronouncement : 15.09.2016

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

These appeals of the Revenue were disposed of earlier by an order dated 25.08.2006. The Revenue challenged the correctness of the order of this Tribunal dated 25.08.2006 before the Madras High Court. The Madras High Court by judgment dated 13.01.2015, set aside the order of this Tribunal dated 25.08.02016

and remanded back the matter to the file of this Tribunal for reconsideration. Accordingly, the appeal was posted for hearing for final disposal.

2. Dr. Anita Sumanth, the Ld.counsel for the assessee, by a letter dated 11.07.2016, informed the Registry that she has received a letter dated 09.07.2016 from the assessee saying that they do not wish to pursue the matter since the tax amount has already been paid. Accordingly, she informed the Registry that she is withdrawing her Vakalathnama. A copy of the letter of the assessee dated 09.07.2016 is also available on record which reads as follows:-

“We wish to inform you that the company has already paid the taxes and it being department appeal the company does not intend to be represented for the ITAT hearing dated 27th July, 2016.”

In view of the above letter of the assessee, it is obvious that the assessee is not willing to appear before this Tribunal, therefore, we heard the Ld. Departmental Representative and proceed to dispose of the appeal on merit.

3. Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that this Tribunal found that the assessee leased out a

vacant area to the extent of 43,011 sq.ft. The balance property was held as stock-in-trade. The assessee being a developer of the property, the Assessing Officer has determined the annual letting value of the area lying vacant which was held by the assessee as stock-in-trade. According to the Ld. D.R., the Tribunal found that when the property was held as stock-in-trade, there cannot be estimation of any annual letting value for the purpose of assessing the same under the head "income from house property" or "business income". Accordingly, the addition made by the Assessing Officer as confirmed by the CIT(Appeals) was deleted. However, the Revenue took the matter before the High Court. The High Court found that this Tribunal exceeded the scope of the appeals, therefore, the matter was remanded back to the Tribunal for reconsideration. The Ld. D.R. further clarified that the Assessing Officer himself assessed the income as income from house property and the CIT(Appeals) confirmed the same and the issue before this Tribunal is only with regard to estimation of annual letting value for the purpose of assessing the income from house property. The Ld. D.R. further submitted that the annual letting value assessed by the Assessing Officer at the rate of ₹ 170/- per sq.ft. is very reasonable, therefore, the order of the CIT(Appeals) that the amount determined

as annual letting value cannot be approved is not correct. According to the Ld. D.R., once the CIT(Appeals) confirmed that the income has to be assessed as income from house property, the annual letting value of property has to be estimated and it has to be assessed accordingly.

4. We have considered the submission of Ld. Departmental Representative and perused the relevant material available on record. The Assessing Officer assessed the income on letting out of property under the head "income from house property" and estimated the annual letting value at ₹170/- per sq.ft. On appeal by the assessee, the CIT(Appeals) confirmed the income under the head "income from house property". However, the CIT(Appeals) found that the annual letting value cannot be estimated. The CIT(Appeals) also referred the judgments of Apex Court in Dewal Daulat Raj Kapoor v. New Delhi Municipal Committee (1980) 122 ITR 700 and Mrs. Sheel Kauchish v. CIT (1981) 131 ITR 435 and found that the annual letting value should be determined in accordance with Rent Control Legislation.

5. In this case, what was let out by the assessee is constructed building/vacant space, which was treated as stock-in-trade. The

question arises for consideration is estimation of annual rental value for the purpose of assessment. The annual rental value has to be determined as per the rent control regulation applicable for building. We have carefully gone through the provisions of Section 23 & 24 of the Income-tax Act, 1961 (in short 'the Act'). The rent receivable has to be estimated. The classification of rental income under the head "house property" is not disputed either by assessee or by Revenue. The dispute is with regard to estimation of expected rent.

6. Having gone through the material available on record, this Tribunal is of the considered opinion that when the assessee has not challenged the assessment of income under the head "income from house property", the rent receivable has been rightly estimated by the Assessing Officer. Therefore, this Tribunal is unable to uphold the order of the lower authority. Accordingly, the order of the lower authority is set aside and that of the Assessing Officer is restored.

7. In the result, both the appeals filed by the Revenue are allowed.

Order pronounced on 15th September, 2016 at Chennai.

sd/-

(डि.एस. सुन्दर सिंह)

(D.S. Sunder Singh)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 15th September, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-II, Chennai
4. आयकर आयुक्त/CIT – Judicial, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.