

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' C '**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER AND
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER**

I.T. A. Nos.944 & 945/Bang/2011
(Assessment Year : 2001-02 & 2003-04)

M/s. Consulate Constructions,
Unit No.102, Consulate - 1,
No.1, Richmond Road,
Bengaluru-560 025

.... Appellant.

Vs.

Dy. Commissioner of Income Tax,
Circle 1(1), Bengaluru.

..... Respondent.

Appellant By : Shri A.Shankar, Advocate.
Respondent By : Dr. K. Shankar Prasad, JCIT (D.R)

Date of Hearing : 4.12.2014.
Date of Pronouncement : 6.2.2015.

O R D E R

Per Shri Jason P. Boaz, A.M. :

These Appeals by the assessee are directed against the common order of the Commissioner of Income Tax (Appeals)-I, Bangalore dt.17.8.2011 for Assessment Years 2001-02 and 2003-04. Having been heard together, these appeals are disposed off by way of this common order.

2. The facts of the case, briefly are as under :-

2.1 The assessee, a firm engaged in the business of construction as builders and developers, filed its return of income for Assessment Year 2001-02 on 18.10.2011 declaring loss of

Rs.15,51,760. For Assessment Year 2003-04, the assessee filed the original return of income on 13.10.2013 declaring income of Rs.5,66,847. The assessee subsequently filed a revised return of income on 11.8.2004 declaring income of Rs.27,16,848. For Assessment Year 2001-02 the assessee had shown receipts of lease rentals amounting to Rs.16,31,016. For Assessment Year 2003-04, the assessee had shown receipts of Rs.1,03,63,744 and Rs.1,25,806 from lease rentals of office space and fit outs respectively under the head 'Income from Business'. For both these assessment years, the returns of income filed by the assessee were processed but not taken up for scrutiny. Subsequently, for both these assessment years, proceedings under Section 147 of the Income Tax Act, 1961 (herein after referred to as 'the Act') were initiated to bring to tax the income from rental receipts declared by the assessee under the head 'Business Income' for assessment as 'Income from House Property'. After recording reasons to this effect, the Assessing Officer issued notices under Section 148 of the Act to the assessee on 20.3.2008 after obtaining the approval of the Addl. CIT, Range 1, Bangalore vide letter dt.18.3.2008.

2.2 The reasons recorded by the Assessing Officer for initiating proceedings under Section 147 of the Act were communicated to the assessee and the assessee's objections thereto were made before the Assessing Officer vide letter dt.19.12.2008. The objections filed by the assessee were considered and disposed off by the Assessing Officer in the body of the assessment order. The Assessing Officer completed the assessment, for both assessment years under Section 144 r.w.s. 147 of the Act vide order dt.29.12.2008 for Assessment Years 2001-02 and vide order dt.30.12.2008 for Assessment Year 2003-04; making certain additions / disallowances to the returned incomes and also in assessing the income from lease rental

receipts as income from house property' as against 'business income' by relying on the decision of the Hon'ble Apex Court in the case of Shambu Investments Pvt. Ltd. V CIT reported in 263 ITR 143. In this manner, the income for Assessment Year 2001-02 was determined at Rs.6,94,757 as against the loss of Rs.15,51,760 declared in the return of income. For Assessment Year 2003-04, the Assessing Officer determined the assessee's income at Rs.1,24,58,002 as against the income of Rs.27,16,848 declared by the assessee in the return of income.

2.3 Subsequently, the Assessing Officer passed rectification order under Section 154 of the Act for Assessment Year 2001-02 dt.13.3.2009 wherein the assessee's loss was determined at Rs.18,194 as against income of Rs.6,94,757 determined in the order of assessment dt.29.12.2008. For Assessment Year 2003-04, the Assessing Officer passed an order under Section 154 of the Act dt.16.10.2009 wherein the total income was determined at Rs.1,13,35,883 as against the income of Rs.1,24,58,002 determined in the order of assessment dt.30.12.2008.

2.4 Aggrieved by the orders of assessment for Assessment Years 2001-02 and 2003-04 dt.29.12.2008 and 30.12.2008 respectively, the assessee preferred appeals before the CIT (Appeals) - I, Bangalore. The learned CIT(A) disposed the assessee appeals for both the assessment years by way of the common impugned order dt.17.8.2011 allowing the assessee partial relief. In the impugned orders, the learned CIT(A), inter alia, upheld the action of the Assessing Officer on the issue of initiating the assessment proceedings under Section 147 of the Act and issuing notices under Section 148 of the Act. The learned CIT (Appeals) also upheld

the Assessing Officer's action in treating the lease rental receipts as 'income from house property' and not 'business income' as declared by the assessee.

3. Aggrieved by the orders of the CIT (Appeals) - I, Bangalore dt.17.8.2011 for Assessment Year 2001-02 and 2003-04, the assessee has preferred these appeals which will be disposed off in seriatum :-

Assessee's appeal in ITA No.944/Bang/2011 for Assessment Year 2001-02.

4.0 For Assessment Year 2001-02, the grounds raised are as under :-

"1. The order of the learned authorities below in so far it is against the appellant is opposed to law, equity, weight of evidence, probabilities, facts of and the circumstances in the appellant's case.

2. The order passed by the learned Assessing Officer is bad in law as the mandatory conditions required for assumption of jurisdiction in terms of section 148 of the Act have not been assumed in accordance with law.

3. The order passed without considering the reply of the appellant to the assumption of the jurisdiction is in violation of the principles of natural justice and hence liable to be cancelled in accordance with the decision of the special bench of the Tribunal in the case of colonizers.

4. The order passed under section 144 of the Act is not tenable in law as the appellant had given all the details called for and hence the basis for the Assessing Officer passing such an order is not forthcoming and thus the order requires to be cancelled.

5. The order passed by the learned CIT (Appeals) on a wrong appreciation of facts is against the principles of natural justice under the facts and circumstances of the case.

6. The appellant denies itself liable to be taxed on an originally assessed income of Rs.6,94,757 and subsequently rectified under Section 154 of the Act determining the total loss at Rs.18,914 as against the returned loss of Rs.15,51,760 on the facts and circumstances of the case.

7. The learned authorities are not justified in law in treating the business income of the appellant received from the temporarily letting out commercial complex as income from house property without applying the party of the decision of the Apex Court in the case of Vikram Cotton Mills Ltd., reported in 169 ITR 597 on the facts and circumstances of the case. The assessment of a sum of Rs.01,69,449 as income from house property in the order of rectification is not in accordance with law.

8. The Assessing Officer failed to appreciate that the status of the appellant is firm and any receipts or income has to be treated as income from business as per the provisions of

section 28 of the Act and not under the head income from house property under the facts and circumstances of the case.

9. The order passed by the learned authorities without considering the directions of the Hon'ble Tribunal in the appellant's own case for the A.Y. 2002-03 amounts to judicial indiscipline under the facts and circumstances of the case.

10. The appellant craves leave to add, alter, amend, modify, substitute or delete any of the grounds urged above.

11. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity."

Assessee's appeal in ITA No.945/Bang/2011 for A.Y. 2003-04.

5. For Assessment Year 2003-04, the grounds raised are as under :-

"1. The order of the learned authorities below in so far it is against the appellant is opposed to law, equity, weight of evidence, probabilities, facts of and the circumstances in the appellant's case.

2. The order passed by the learned Assessing Officer is bad in law as the mandatory conditions required for assumption of jurisdiction in terms of section 148 of the Act have not been assumed in accordance with law.

3. The order passed without considering the reply of the appellant to the assumption of the jurisdiction is in violation of the principles of natural justice and hence liable to be cancelled in accordance with the decision of the special bench of the Tribunal in the case of colonizers.

4. The order passed under section 144 of the Act is not tenable in law as the appellant had given all the details called for and hence the basis for the Assessing Officer passing such an order is not forthcoming and thus the order requires to be cancelled.

5. The order passed by the learned CIT (Appeals) on a wrong appreciation of facts is against the principles of natural justice under the facts and circumstances of the case.

6. The appellant denies itself liable to be taxed on an originally assessed income of Rs.1,24,58,002 and subsequently rectified under Section 154 of the Act determining the total income at Rs.1,13,35,883 as against the returned income of Rs.27,16,848 on the facts and circumstances of the case.

7. The learned authorities are not justified in law in treating the business income of the appellant received from the temporarily letting out commercial complex as income from house property without applying the party of the decision of the Apex Court in the case of Vikram Cotton Mills Ltd., reported in 169 ITR 597 on the facts and circumstances of the case. The assessment of a sum of Rs.44,26,674 as income from house property in the order of rectification is not in accordance with law.

8. The Assessing Officer failed to appreciate that the status of the appellant is firm and any receipts or income has to be treated as income from business as per the provisions of

section 28 of the Act and not under the head income from house property under the facts and circumstances of the case.

9. The order passed by the learned authorities without considering the directions of the Hon'ble Tribunal in the appellant's own case for the A.Y. 2002-03 amounts to judicial indiscipline under the facts and circumstances of the case.

10. The learned Assessing Officer is not justified in levying interest under Section 234B and 234D of the Income Tax Act, 1961 under the facts and in circumstances of the appellant's case. The quantification in so far as period and rate are not in accordance with law. The learned Assessing Officer failed to provide the details of the levy of interest both regarding the period of levy, rate of levy and quantum on which the interest has been levied.

11. The appellant craves leave to add, alter, amend, modify, substitute or delete any of the grounds urged above.

12. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity."

6. The grounds raised at S.Nos.1 , 10 & 11 for Assessment Year 2001-02 and the grounds raised at S.Nos.1, 11 & 12 for Assessment Year 2003-04 being general in nature and not urged before us, are dismissed as infructuous.

7. Ground Nos. 2 & 3 - Validity of Assumption of Jurisdiction.

7.1 In these grounds for both assessment years 2001-02 and 2003-04, the assessee contends that the orders of assessment are bad in law as the mandatory conditions required for assumption of jurisdiction under Section 148 of the Act has not been done in accordance with law. The learned Authorised Representative of the assessee raised objections with regard to the invoking of the provisions of section 147 of the Act for assuming jurisdiction, submitting that the Assessing Officer has not obtained the approval of the JCIT and has obtained the approval of the CIT, which is not in accordance with law. It was submitted that the approval obtained from the CIT, in the case on hand who has no jurisdiction, is not in accordance with the procedure laid down by law and therefore all the subsequent proceedings get vitiated and are

bad in law. The learned Authorised Representative submitted that in view of the above, the orders of assessment for both assessment years ought to be held to be bad in law and cancelled.

7.2 Per contra, the learned Departmental Representative submitted that the procedure as mandated by law has been followed while obtaining approval for initiation of proceedings under Section 147 of the Act. The relevant records of assessment called for by us, were placed before the Bench for examination. The learned Dept. Representative also submitted copies of the relevant order sheet notings for examination and also of the letter dt.13.3.2008 addressed by the Assessing Officer to the Addl. CIT, which was received in that office on 14.3.2008 along with the proforma and Annexures for obtaining his approval for initiation of proceedings under Section 147 of the Act. It is only after this approval that notices under Section 148 were issued to the assessee. The learned Departmental Representative submitted that the correct procedure had been followed in obtaining approval of the Addl. CIT. It was submitted that the contention of the assessee that the approval was obtained from the CIT was a factually incorrect assertion by the learned Authorised Representative, as can be seen from the details in the records of assessment placed before the Bench for its perusal. The learned Departmental Representative prayed that in view of the above factual and legal matrix of the case, the assumption of jurisdiction by the Assessing Officer for initiation of proceedings under Section 147 of the Act is in accordance with law and therefore the objections and grounds raised by the assessee ought to be dismissed.

7.3 We have heard the rival contentions and perused and carefully considered the material on record, including the records of assessment which were called for by the Bench in connection

with the contention and objections raised by the assessee on the issue of assumption of jurisdiction under Section 147 of the Act and issue of notices under Section 148 of the Act. As rightly pointed out by the learned Departmental Representative, the sanction and approval for assumption of jurisdiction was obtained by the Assessing Officer from the Addl. CIT and not from the CIT as contended by the assessee. This fact is very clear from the order sheet noting dt.13.3.2008 and also from the Assessing Officer's letter dt.13.3.2008 addressed to the Addl. CIT for obtaining the approval for initiating proceedings under Section 147 of the Act. It is also clear from the order sheet noting dt.19.3.2008 that the Assessing Officer has obtained the approval of the Addl.CIT for initiation of reassessment proceedings, as is envisaged in the provisions of section 151(2) of the Act. We find that it is only after this approval, that the Assessing Officer issued notices under Section 148 of the Act on 20.3.2008. On an appreciation of the records of assessment placed before us for our perusal, we are of the considered opinion that proper sanction has been obtained by the Assessing Officer from the Addl. CIT as per the requirements of section 151(2) of the Act and that the correct procedure has been followed by the Assessing Officer in initiating and invoking proceedings under Section 147 of the Act. Consequently, the objections raised by the assessee in this regard in Grounds Nos.2 & 3 of these appeals are rejected.

8.1.1 In Grounds Nos.4 to 9, for both A.Ys 2001-02 and 2003-04, the assessee contends that the orders of assessment passed under Section 144 r.w.s. 147 of the Act are not tenable in law as the assessee has given all the details called for. Therefore, the basis for the Assessing Officer to pass such orders is on wrong appreciation of facts and against the principles of

natural justice and therefore both the orders of assessment ought to be cancelled. It was further contended that the receipts from lease rentals ought to have been assessed as 'business income' as per the assessee's claim and not as 'income from house property'. It was also contended that the Assessing Officer passed the orders of assessment for the two impugned assessment years without following the observations of the Tribunal in its order in the assessee's own case for Assessment Year 2002-03.

8.1.2 The learned Authorised Representative reiterated the contentions of the assessee as raised in Grounds 4 & 5 (supra). The learned Authorised Representative further contended that the basis for the reopening the assessments for Assessment Years 2001-02 and 2003-04 is based upon the findings in the order of assessment passed for Assessment Year 2002-03. The learned Authorised Representative submits that the findings in the order of assessment for Assessment Year 2002-03 has been set aside to the file of the Assessing Officer by the co-ordinate bench of this Tribunal in its order in ITA No.1292/Bang/2007 dt.24.10.2008, with certain directions and observations at para 6 on pages 12 to 15 thereof. In this context, it is contended by the learned Authorised Representative, that the Assessing Officer even after being aware that the assessment for Assessment Year 2002-03 was set aside to his file for fresh consideration by the above referred order of the co-ordinate bench of the Tribunal, passed the orders of assessment for these two impugned assessment years 2001-02 and 2003-04 without following the observations and directions of Tribunal in its order for Assessment Year 2002-03. The learned Authorised Representative contends that such action by the

Assessing Officer is neither correct nor in keeping with judicial discipline and therefore the orders of assessment for Assessment Years 2001-02 and 2003-04 require to be cancelled.

8.2 Per contra, the learned Departmental Representative submitted that the orders of assessment for Assessment Year 2001-02 and 2003-04 have been passed by the Assessing Officer in accordance with law. The learned Departmental Representative further submitted that the issue of treatment of lease rental receipts by the assessee from its tenants are to be necessarily treated and assessed as 'income from house property' and not as 'business income' as claimed by the assessee, which he claimed were well supported by decisions of the Hon'ble Apex Court. The learned Departmental Representative placed support on the orders of the authorities below and prayed for the assessee's appeal to be dismissed.

8.3.1 We have heard the rival contentions and perused and carefully considered the material on record, including the order of the co-ordinate bench of this Tribunal in the assessee's own case for Assessment Year 2002-03 in ITA No.1292/Bang/2007 dt.29.10.2008. We find that in this order (supra), the co-ordinate bench of this Tribunal has set aside the order of assessment for Assessment Year 2002-03 back to the file for fresh consideration and de novo assessment in accordance with the observations made at para 6 thereof. The learned A.R. contends that the Assessing Officer ought to have considered the observations of the Tribunal in its order for Assessment Year 2002-03 (supra) at para 6 thereof, but clearly failed to do so while concluding the assessments for Assessment Years 2001-02 and 2003-04 which were passed subsequently on 29.12.2008 and 30.12.2008.

8.3.2 On a careful consideration of the facts and circumstances of the case and on appreciation of the rival contentions and material on record, we are of the considered view that, in the interest of equity and justice, the matter / issues with respect to whether the lease rental receipts received by the assessee from its tenants is to be treated and assessed as 'business income' as claimed by the assessee or as 'income from house property' as held by revenue, requires fresh consideration in the light of the observations in para 6 of the decision of the co-ordinate bench of this Tribunal in the assessee's own case for Assessment Year 2002-03. We, therefore, remit this matter to the file of the Assessing Officer for fresh consideration of this issue after affording the assessee adequate opportunity of being heard and to file details / submissions required which will be considered, in the light of our observations above. It is ordered accordingly. In this view of the matter, the grounds raised at S.Nos.4 and 5 are rendered infructuous and are accordingly dismissed.

8.3.3 We wish to make it clear that we have only set aside only the issue of assessment of lease rental receipts received by the assessee from its tenants, whether as 'income from house property' or 'business income', to the file of the Assessing Officer in accordance with our observations in para 8.3.2 of this order (supra) and para 6 of the order of the co-ordinate bench of the Tribunal in the assessee's own case for Assessment Year 2002-03 (supra). In this view of the matter, we also make it clear that we are not adjudicating on the merits of this issue as raised by the assessee at grounds Nos.6 to 9 of these appeals.

9. In the result, the assessee's appeals for Assessment Years 2001-02 and 2003-04 are partly allowed for statistical purposes.

Order pronounced in the open court on 6th Feb., 2015.

Sd/-

(P. MADHAVI DEVI)
Judicial Member

Sd/-

(JASON P BOAZ)
Accountant Member

*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard File.

(True copy)

By Order

Asst. Registrar, ITAT, Bangalore