Commissioner of Income Tax Vs Supriya Enterprises

Court: High Court Of Kerala

Date of Decision: Aug. 12, 1997

Acts Referred: Income Tax Act, 1961 â€" Section 256

Citation: (1998) 232 ITR 887

Hon'ble Judges: K.K. Usha, J; G. Sivarajan, J

Bench: Division Bench

Advocate: P.K.R. Menon and N.R.K. Nair, for the Appellant; Joseph Markose and Thomas Vellapally, for the Respondent

Judgement

K.K. Usha, J.
These reference cases arise out of a common order passed by the Income Tax Appellate Tribunal, Cochin Bench, in I.TA

Nos. 10 and 11/Coch of 1988, filed by the assessee and I. T. A. Nos. 141 and 142/Coch. of 1988 filed by the Revenue. The relevant assessment

years are 1985-86 and 1986-87. The following question of law has been referred to this court for its opinion at the instance of the Revenue :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in reducing the addition of Rs. 51,86,290 made for the

assessment year 1985-86 to Rs. 5,00,000 and the addition of Rs.23,97,200 for the assessment year 1986-87 to Rs. 3,00,000 ?

2. The assessee, a registered firm with 20 partners, entered into an agreement with Malabar Industrial Company Ltd. on July 18, 1982, for sale of

the company''s Skinnerpuram Estate having an extent of 698.92 acres to the assessee or its nominee for a consideration of Rs. 210 lakhs. An

amount of Rs. 5 lakhs was paid as advance.

3. As per the agreement the balance consideration was to be paid in instalments and possession of the estate has to be given in the following

manner :

(i) On payment of Rs. 90 lakhs on or before September 22, 1982, an area of 192.57 acres would be released ;

(ii) On payment of Rs. 70 lakhs on or before December 31, 1982, a further extent of 200 acres would be released ;

(iii) The balance area has to be released on payment of Rs. 45 lakhs on or before April 30, 1983.

4. The assessee could not pay the instalments on the due dates due to labour trouble and litigations before this court. Therefore, the company

extended the time and the entire dues to the company were finally settled on September 24, 1984.

5. A search u/s 132 of the Income Tax Act was conducted on January 15, 1985, at the residential permises of three partners of the firm.

Simultaneously search was conducted at the office of the company and the assessee-firm. Certain files, deeds of settlement including torn copies of

agreements were seized. After the search, the assessee approached the Commissioner of Income Tax to settle its Income Tax by assessing a profit

of Rs. 25 lakhs distributed equally among the assessment years 1985-86 to 1987-88. According to the assessee, the sale price of 699 acres was

at the rate of Rs. 40,000 per acre. After deducting the cost and other overhead expenses of Rs. 2,54,60,000, the balance profit was shown as Rs.

25 lakhs. The above proposal was not accepted by the Department. The assessing authority estimated the average rate of sale consideration at Rs.

50,000 per acre and on that basis calculated the average gross profit at Rs. 12,362.37 per acre. The assessment was thus completed for the

assessment years 1985-86 and 1986-87.

6. Aggrieved by the assessment orders the assessee went in appeal before the Commissioner of Income Tax (Appeals) who adopted the average

gross profit per acre at the rate of Rs. 10,129.38 and fixed the income for the assessment years 1985-86 and 1986-87 at the rate of Rs.

41,23,000 and Rs. 19,10,000 as against the Assessing Officer''s figure of Rs. 51,86,290 and Rs. 23,97,200. The Department as well as the

assessee took up the matter in appeal before the Tribunal. Partly allowing the appeals filed by the assessee, the Tribunal restricted the addition for

the years 1985-86 and 1986-87 to Rs. 5,00,000 and Rs. 3,00,000, respectively.

7. It is contended by the Revenue that the Tribunal has committed a grave error in discarding the findings of the lower authorities while computing

the quantum of addition to be made. According to the Income Tax Officer, during the accounting period relevant to the assessment year 1985-86

the assessee had given possession of 471 acres of land to various parties. The total profit should be calculated by taking this as the basis and

multiplying it by the profit per acre. As mentioned earlier, the Income Tax Officer had estimated the sale rate of Rs. 50,000 per acre. In coming to

the above figure, the assessing authority relied on the seized materials. He found that in respect of 27 persons whose names are given in paragraph

10 of the assessment order, the assessee had collected by way of advance an amount which would show that the expected price was more than

Rs. 50,000. He also found that in the case of one of the employees of M. I. C. Ltd. to whom property was allotted in lieu of compensation, the

amount due to him was Rs. 97,108. He was required to pay in addition a further amount of Rs. 1,70,000. According to the Income Tax officer,

this would show that average price per acre was more than Rs. 90,000. Another employee, Sri P. G. Varghese, was directed to pay Rs. 60,000

for one acre and Sri C. S. Abraham Rs. 2,54,000 for three acres. He had also pointed out instances where the assessee had allotted more area to

certain purchasers disproportionate to the advance received. There was no evidence of excess payment being returned. From this the Income Tax

Officer came to the conclusion that there is no refund of such excess amount and the entire amount has been appropriated by the assessee as

purchase price. The contention raised by the assessee that in the sale transaction which took place through A & G Enterprises the assessee had no

role to fix the sale price was not accepted by the Income Tax Officer. According to him, the terms of the agreement would show that the value had

to be fixed by the assessee. Thus, the Income Tax Officer estimated the value of transactions at Rs. 50,000 per acre for 684 acres and for the

balance of 15 acres at Rs.15,000 per acre. The profit for the assessment year 1985-86 was assessed at Rs. 51,86,290 and for 1986-87 Rs.

23,97,200. The Commissioner of Income Tax (Appeals) agreed with the view expressed by the Income Tax Officer. But he found that in respect

of sales relating to 220 acres effected through A and G Enterprises the assessee was entitled to only a commission from the sale by A and G

Enterprises and that the firm itself kept the profit which has been made in the transaction. The first appellate authority estimated the sale value at a

lower figure and fixed it at Rs. 40,000 per acre. The estimated income for the assessment year 1985-86 was reduced to Rs. 41,23,000 and for

1986-87, to Rs. 19,10,000.

8. It is the contention of learned standing counsel for the Revenue that the Tribunal has committed a grave error in entering the above findings and

further reducing the quantum of addition. He submits that it is open to this court to interfere with the finding of fact entered by the Tribunal

regarding the estimated rate of sale consideration, since the Tribunal has entered those findings in excess of its jurisdiction. In support of his

contention that if circumstances warrant this court has the power to interfere with the finding of fact entered by the Tribunal, he relied on a decision

of the Supreme Court in The Commissioner of Income Tax, Bihar and Orissa, Patna Vs. S.P. Jain, . In the above decision, the circumstances

under which the High Court would get jurisdiction to interfere in the findings entered by the Tribunal are explained as follows (page 381) :

In our view, the High Court and this court have always the jurisdiction to intervene if it appears that either the Tribunal has misunderstood the

statutory language, because the proper construction of the statutory language is a matter of law, or it has arrived at a finding based on no evidence

or where the finding is inconsistent with the evidence or contradictory of it, or it has acted on material partly relevant and partly irrelevant or where

the Tribunal drawn upon its own imagination, imports facts and circumstances not apparent from the record, or bases its conclusions on mere

conjectures or surmises, or where no person judicially acting and properly instructed as to the relevant law could have come to the determination

reached. In all such cases the findings arrived at are vitiated.

9. On the facts of that case, the Supreme Court took the view that as the Tribunal had failed to take into account the relevant material on record in

arriving at its findings and had further acted on inadmissible evidence and misread the evidence and based its conclusion on conjectures and

surmises, the High Court could ignore the findings of the Tribunal and re-examine the issues arising on the basis of material on record. It was

further held that neither the Tribunal nor the High Court had given good reasons for displacing the conclusions reached by the Income Tax Officer

and the Appellate Assistant Commissioner and it had failed in its duty to examine the reasons given by those authorities before rejecting them.

Another decision relied on by learned standing counsel is that of this court in Commissioner of Income Tax Vs. Nirmal Liquors, . In the above

case, this court found that the procedure adopted by the Tribunal in reversing the decision of the Commissioner of Income Tax was infirm. The

Tribunal has summarised the decision arrived at by the Income Tax Officer and also the Commissioner of Income Tax and thereafter it had

proceeded to summarise the pleas urged by the assessee as well as by the Revenue. Then, on its own, the Tribunal reached the conclusion it did

without, in any manner, demonstrating or finding that the decision appealed against was wrong or otherwise unsustainable. Reliance was also

placed by learned standing counsel on a decision of the Orissa High Court in (1949) 17 ITR 355 (Orissa) . It was held therein that the Tribunal

while considering the view taken by the Income Tax Officer must not arrive at its own conclusion unsupported by any facts which are justly

receivable as evidence. It was contended by learned counsel for the assessee that even by applying the principles laid down by the decisions relied

on by the Revenue in the facts of this case this court would not interfere with the finding of fact entered by the Tribunal, since reasons had been

given by the Tribunal to come to the conclusion that the appellate authority as well as the assessing authority had committed mistakes in computing

the quantum of addition. Learned counsel submitted that this court would not interfere when an overall reasoning is available in the order of the

Tribunal to support its findings. Reliance was placed by learned counsel on the following observation of the Supreme Court in Commissioner of

Income Tax Vs. Karam Chand Thapar and Bros. P. Ltd., , (head-note) :

It is equally well-settled that the decision of the Tribunal has not to be scrutinised sentence by sentence merely to find out whether all facts have

been set out in detail by the Tribunal or whether some incidental fact which appears on the record has not been noticed by the Tribunal in its

judgment. If the court, on a fair reading of the judgment of the Tribunal, finds that it has taken into account all relevant material and has not taken

into account any irrelevant material in basing its conclusions, the decision of the Tribunal is not liable to be interfered with, unless, of course, the

conclusions arrived at by the Tribunal are perverse.

10. It is contended by the assessee that the decision of the Tribunal in the present case cannot be termed as ""perverse"". Detailed reasons have

been given by the Tribunal for deviating from the view taken by the assessing authority as well as the first appellate authority. No material which

cannot be accepted in evidence has been relied on. Under these circumstances, according to learned counsel for the assessee, this court would not

interfere with the finding entered by the Tribunal.

11. We will now consider whether the finding entered by the Tribunal regarding the quantum of addition is supported by reasons. The Tribunal had

come to the conclusion that the assessee had not maintained accounts as understood in Section 145 of the Income Tax Act. It also found that the

Income Tax Officer was competent to reject the book results and make an estimate. There were about 100 purchasers who had been allotted

land. Some materials were found with the assessee during the search regarding the advance taken from the purchasers. These advances were

reflected in suspense account No. 1, which the officer came across during the search. There was no other account found with the assessee and

therefore the Tribunal took the view that the buyers had paid only that amount which was credited to them in suspense account No. 1. This

document is a piece of evidence which is relevant in estimating the income. The Tribunal also noted that even though no proper books of account

had been maintained, the assessing authority accepted the expenses claimed by the assessee. What was disbelieved by the Income Tax Officer

was only the rate at which sale of property was effected.

12. The conveyance deed was ultimately made by NUCL to the individual purchaser. These registered documents reflect the price of the land.

According to the Tribunal, this is a piece of evidence which cannot be discarded. The Tribunal also took into consideration the settlement of

account between the firm and the individual purchaser. In the case of one of the purchasers, Mrs. Elizabeth Joseph, it was shown in annexure-A to

the deed of settlement that Rs. 57,000 was paid to the firm on January 18, 1984. Annexure-B gave the details regarding splitting of the amount.

Consideration paid to the company as per sale deed dated February 29, 1984, was Rs. 45,000 and amount proposed for disbursement of

expenses incurred by the firm and services rendered by the firm was Rs. 12,000. The total would come to Rs. 57,000. The Tribunal examined

whether the Income Tax Officer had with him such evidence which would show that the value of the property is not what has been recorded in the

registered document. The Tribunal, then proceeded to examine such materials as quoted in para. 25 of the order. It did not accept the contention

raised by the assessee that the torn papers obtained at the time of search cannot be looked into at all. According to the Tribunal, even though they

may not be primary evidence, it can be looked into for the limited purpose of corroboration. We do not find anything wrong in the manner in which

the Tribunal proceeded to consider the materials relied on by the Income Tax Officer for estimating the value.

13. The Tribunal has correctly found that in making the estimate of income a uniform rate of Rs. 50,000 per acre cannot be assumed. Even though

the assessee had sold 698 acres of land, it comprised plantations of different age. Therefore, the value would differ. So also there are lands

covered by rocks which should also be valued at a lesser rate. On principle, there cannot be any dispute on the view taken by the Tribunal as

above.

14. The Tribunal found that the buyers would come under two different categories. Regarding the first category, the Department had accepted the

sale rate reflected in their documents. Since the sale value has been accepted by the officer regarding 27 purchasers, covering 71 acres, there is no

necessity for estimating the sale price. The Tribunal also found that the land allotted to the employees of MICL covering about 11 acres also

should be outside the area of estimate.

15. The second category of sales are those where the Department had a case that full consideration was not recorded even in the statement of

accounts. In this category, there were cases where the advances were properly recorded, but as per the final document, there was excess advance

received and there is no evidence to show that the excess had been refunded. In the other set of cases even the advances received were not

properly recorded. The Tribunal took the view that in the first class of cases under the second category since the suspense account shows

advances in excess of the sale consideration and the assessee had not proved by evidence the refund of the excess, it should be presumed that the

entire advance has been appropriated towards the sale price, commission and service charges. In this type of cases, the torn and mutilated papers

recovered from the premises of the assessee during the search could be considered as evidence. According to the Tribunal, if those papers show

that the intended agreement was for a higher rate than what was shown in the document and higher amounts tally with the advances received, then,

it has to be held that the advances received were the true consideration. The estimate would be on the basis that the amount received represented

the sale consideration. The Tribunal then proceeded to consider the second type of cases coming under the second category. It found that since

the case of the Department that the assessee had collected unrecorded amounts, each transaction has to be considered individually with reference

to the evidence relied on by the Department. Individual cases were therefore considered by the Tribunal and it came to its own conclusion

regarding the amount alleged to have been received by the assessee in those cases. The Tribunal found that the estimate should be based on the

excess advance collected but at the same time in many cases there were no excess advances. On the other hand, in certain cases there was deficit

payment and the buyer had to make up the consideration by subsequent payment. It was on the basis of all these materials and after detailed

discussion, the Tribunal came to the conclusion that an addition to the extent of Rs. 5,00,000 for 1985-86 and Rs. 3,00,000 for the year 1986-87

to the income returned by the assessee would be just and reasonable.

16. We are of the view that the Tribunal has not taken into account any irrelevant material in support of its conclusions and it has not omitted to

consider any relevant material. On considering the entire order we cannot find that it is perverse. Its conclusions are supported by reasons. Under

these circumstances, it is not for this court to consider whether a different factual conclusion could have been arrived at on the basis of the materials

considered by the Tribunal.

17. The addition of Rs. 25 lakhs shall be distributed between the years 1985-86 and 1986-87 in the ratio of 5 : 3. To the above shall be added

Rs.5 lakhs for 1985-86 and Rs. 3 lakhs for the year 198G-87.

18. We answer the question referred in the affirmative, in favour of the assessee and against the Revenue.

19. A copy of this judgment under the seal of this court and the signature of the Registrar will be sent to the Income Tax Appellate Tribunal,

Cochin Bench.