

(2002) 07 MAD CK 0243**Madras High Court****Case No:** Tax Case Appeal No's. 16 to 18 of 2002 and TCMP No's. 1 and 2 of 2002

A. Abdul Rahim

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision: July 16, 2002**Acts Referred:**

- Income Tax Act, 1961 - Section 260A, 69

Citation: (2002) 258 ITR 714**Hon'ble Judges:** V.S. Sirpurkar, J; N.V. Balasubramanian, J**Bench:** Division Bench**Advocate:** Anitha Sumanth, for the Appellant; T.C.A. Ramanujam, for the Respondent**Final Decision:** Dismissed

Judgement

N.V. Balasubramanian, J.

Rule returnable forthwith. Mr. T.C.A. Ramanujam, learned senior standing counsel takes notice for the Department.

2. This appeal is preferred against the order of the Income Tax Appellate Tribunal for the assessment years 1988-89, 1989-90 and 1990-91.

3. The short question that arises is whether the estimate made by the Income Tax Officer, which was reduced by the Commissioner of Income Tax, and which was further reduced by the Income Tax Appellate Tribunal is proper and whether any question of law arises out of the order of the Appellate Tribunal.

4. The assessee had constructed a multi-storeyed building in Nagapattinam in an area of about 17,000 sq. feet and it was a commercial building let out to a bank, telegraph office and a portion of it was also let out for running a lodge apart from ground floor being used for shop rooms let out to different persons. The assessee has estimated the cost of construction at Rs. 15,85,000, and the Assessing Officer referred the question of valuation of the property to the Departmental Valuation

Officer and he has reported that the estimated cost of construction would be Rs. 29,87,680. The Assessing Officer did not accept the explanation offered by the assessee and he held that the difference in the amount between the estimated cost of construction of the assessee and the value determined by the Departmental Valuation Officer amounting to Rs. 14,02,680 would represent the unexplained investment of the assessee and added the same in the assessments spreading over the period of the said investment for the period of three years, namely, 1988-89, 1989-90 and 1990-91. The assessee took up the matter in appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) found that the accounts maintained by the assessee were not correct and he found many defects in the accounts maintained by the assessee for the construction of the building in question. He rejected the books of account maintained by the assessee, but, however, he felt that certain reduction was called for, and accordingly determined the cost of construction of the building to be Rs. 26,88,914, and reduced the difference to Rs. 11,03,914, and partly allowed the appeal. The assessee, not satisfied with the reduction granted by the Commissioner of Income Tax (Appeals), preferred a further appeal before the Income Tax Appellate Tribunal. Before the Tribunal, the submission on behalf of the learned senior counsel appearing for the assessee was that the Valuation Officer should have adopted the State P. W. D. rates instead of the Central P. W. D. rates as the building was constructed in Nagapattinam and further reduction should also be given in the cost of service provided in the building. The Tribunal held that in the case of Dr. Dhass, the Tribunal had adopted the C. P. W. D. rates and granted reduction at the rate of 25 per cent. The Tribunal after taking into account, the nature of the building, location of the building and also the profit element involved by the self-supervision of the assessee, granted further reduction of 15 per cent. on the C. P. W. D. rates. As far as the cost of services provided in the building, namely, water supply, sanitation and electricity installation are concerned, the Tribunal held that further reduction of 11 per cent. should be granted and after granting necessary reduction, the Tribunal further reduced the cost of construction to Rs. 22,48,535 and held that the difference of Rs. 6,63,535 should be taken as unexplained income of the assessee which should be spread over for the period of three years and partly allowed the appeal preferred by the assessee. The assessee has preferred this appeal challenging the order of the Income Tax Appellate Tribunal.

5. Heard Mrs. Anitha Sumanth, learned counsel appearing for the assessee, and Mr. T.C.A. Ramanujam, learned senior standing counsel for the Department.

6. We find that the findings rendered by the Appellate Tribunal are pure questions of fact. The submission by learned counsel for the assessee is that since the building is situate in a rural area in the State, namely, Nagapattinam, the Valuation Officer should not have adopted the C. P. W. D. rates. She referred to the decision of the Allahabad High Court in the case of [Commissioner of Income Tax Vs. Raj Kumar](#), . We are unable to agree. We find that the Tribunal has taken into account, the nature

of the building, the location of building and also took into account that the deduction was already granted on account of self-supervision and then it held that the deduction of 15 per cent. on the C. P. W. D. rates should be granted. As far as the cost of services is concerned, the Tribunal held that the estimate should be reduced to 11 per cent. and thus the cost of construction was arrived at. We are of the view that the finding determining the cost of construction of the building is a pure question of fact, particularly when the cost of construction was arrived at on an estimated basis. We therefore hold that no question of law is involved in estimating the cost of construction of the building. The Tribunal, after taking into account, the nature of the building has held that the C. P. W. D. rate should be adopted and has granted further reduction of 15 per cent. It is not pointed to us that it is a trite law that in all the cases where the C. P. W. D. rates are adopted, there should be reduction of 25 per cent. of the C. P. W. D. rates, as pleaded by the assessee. The percentage of deduction to be granted would depend upon the facts of each case. Further, there was hardly any satisfactory explanation from the assessee against the adoption of C. P. W. D. rates except the general statement that the cost of construction would be more in urban areas than in rural areas. As pointed out earlier, the assessee has not produced any material to establish the same and the assessee has also failed to prove that the adoption of the C. P. W. D. rates was arbitrary or unreasonable. The Tribunal, in our view, has arrived at the cost of construction of the building on a reasonable basis and it cannot be stated that the valuation of the building as a whole determined by the Tribunal is in any way arbitrary, unreasonable or perverse. Learned counsel for the assessee also submitted that while 15 per cent. reduction was granted with reference to the cost of superstructure, it was not granted with reference to other items. So far as the other items are concerned, they are only cost of the services and as for the cost of services, the Tribunal has granted reduction of 11 per cent. instead of 15 per cent. In our view, it is not necessary that the uniform rate of 15 per cent. should be adopted for the cost of services also. Accordingly, we find that no question of law, much less, a substantial question of law arises out of the order of the Appellate Tribunal, calling for our interference. Accordingly, the appeals fail and they are dismissed in the admission stage itself in limine. No costs. T. C. M. Ps. Nos. 1 and 2 of 2002 are closed.