

(2013) 06 MAD CK 0270

Madras High Court

Case No: Tax Case (Appeal) No. 185 of 2010

CIT

APPELLANT

Vs

K. Jayakumar

RESPONDENT

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**Date of Decision:** June 4, 2013**Citation:** (2013) 216 TAXMAN 166**Hon'ble Judges:** K.B.K. Vasuki, J; Chitra Venkataraman, J**Bench:** Division Bench**Advocate:** N.V. Balaji, for the Appellant;

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### Judgement

Chitra Venkataraman, J.

In spite of service of notice on the assessee on 24-2-2010, there is no appearance on behalf of the assessee. Hence, after hearing the Revenue and going through the records, the present order is passed in this Tax Case Appeal relating to the assessment year 1998-99. The Revenue has filed this Tax Case Appeal raising the following substantial questions of law:

(i) Whether in the facts and circumstances of the case, the Tribunal was right in directing the assessing officer to restrict the addition to Rs. 8 lacs as offered by the assessee?

(ii) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the CPWD rates cannot be applied to the commercial cum residential complex constructed at Coimbatore on the ground that Coimbatore is a small town?

It is seen from the facts herein that the assessee had constructed a shopping-cum-residential complex at 405, Rangai Gounder Street, Coimbatore, and the construction was completed in the previous year relevant to the assessment year 1998-99. The cost of construction was Rs. 96,22,000. The assessing officer, however, referred the matter to the District Valuation Officer u/s 133(6) of the Income Tax Act. He adopted the CPWD rates to arrive at the probable cost of construction at Rs. 1,40,37,000, thus indicating a difference of Rs. 44,15,000. The

assessee objected to the valuation done by the District Valuation Officer. After considering the objections, as against the claim of 20% for own supervision and purchase of material, the assessing officer adopted an allowance of 10% as against 7.5% arrived at by the District Valuation Officer. Aggrieved by the order of assessment, the assessee went on appeal before the Commissioner of Income Tax (Appeals). The first appellate authority held that the assessing officer has no power to refer the valuation to the District Valuation Officer u/s 133(6) and u/s 142(2) or u/s 131 of the Income Tax Act, for valuing the appellants property, by following the decisions of the Apex Court reported in [Amiya Bala Paul Vs. Commissioner of Income Tax, Shillong](#), . He nevertheless pointed out that there is a substantial difference between CPWD rate and State PWD rate. The Revenue went on appeal before the Income Tax Appellate Tribunal, wherein, it pointed out that the construction was done in a small town and hence, CPWD rates could not have been applied. It further pointed out that the construction was with reference to the shopping-cum-residential complex and that no wood work like provision of almirahs, doors and windows were required and that no decorative work were required. Since the assessee was an experienced hand in the construction line, a reduction was to be given on account of builders profit. In the circumstances, the Tribunal accepted the plea of the assessee for an addition of Rs. 8 lakhs towards cost of construction returned by it. Thus, the assessing officer was directed to make an addition of a sum of Rs. 8 lakhs to be distributed in the assessment years 1997-98 and 1998-99. Aggrieved by this, the present appeal has been filed by the revenue, relating to the assessment year 1998-99.

2. Learned Standing Counsel appearing for the Revenue pointed out that while there could be a substantial difference in the rates between CPWD and the State PWD, yet, the Tribunal committed a serious error in accepting the plea of the assessee by adding a sum of Rs. 8 lakhs without any basis. In the circumstances, he pleaded for setting aside the order of the Tribunal. He further pointed out that the construction is made in a big city, namely, Coimbatore, and that it is not a small city, as had been stated in the order. We have perused the orders passed by the authorities below. We agree with the contention of the learned Standing Counsel appearing for the Revenue that the order of the Tribunal is totally without any basis. As rightly pointed out by the learned Standing Counsel, the construction of the shopping and residential complex is in Coimbatore, which is not a small town, but a Corporation. A reading of the order of assessment shows that the Income Tax Officer had not agreed with the Valuation Officers report as it is, particularly when he noted that the assessee himself had undertaken the supervision. Thus, the assessing officer partially agreed with the assessee and allowed the valuation at 10% instead of 7.5%, towards supervision charges. The assessing officer also accepted the contention that water connection was already existing; apart from that, certain other concessions were given. However, the basis of valuation as regards the cost of construction, nevertheless, was that of the District Valuation Officer, adopting CPWD

rates. It is not denied by the Revenue that there is a variation between the CPWD rates and the State PWD rates. Considering the geographical location, the availability of work force and the cost of materials, unless there are similarities in the rates under CPWD and the State PWD, we do not think, we can blindly go by CPWD rates for the purpose of arriving at the cost of construction. In the circumstances, while setting aside the order of the Tribunal, we remit back the matter to the assessing officer for working out the cost of construction, to be distributed in assessment years 1997-98 and 1998-99 by taking State PWD rates and for passing orders in accordance with law, after giving the assessee an opportunity of hearing.

The Tax Case Appeal stands disposed of accordingly. No costs.