

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.186 OF 2009

Sudhakar T. Pendse)
401, Anuradha Amrut Kumbh)
CHSL Off. Chitale Path, Dadar,)
Mumbai 0 400 028.)..Appellant.

V/s.

Income Tax Officer,)
Ward 18(2)(4), Second Floor,)
Piramal Chambers, Lal Baugh,)
Mumbai-400 012.)..Respondent.

Mr.K.Gopal with Jitendra Singh for appellant.

Mr.P.S.Sahadevan for respondent.

CORAM : V.C.DAGA AND
J.P.DEVADHAR, JJ.

DATED : 22ND APRIL, 2009.

ORAL JUDGMENT (PER J.P.DEVADHAR, J.)

1. The basic question raised in this appeal is, whether the Tribunal is justified in sustaining the addition of Rs.3.17 crores as undisclosed income in the hands of the appellant.

2. The Assessment year involved herein is the Block period from 1-4-1995 to 19-12-2001.

3. The appellant is a Director of M/s.Nalini Properties Pvt.Ltd. On 19/12/2001 the premises of the petitioner as well as the premises of M/s.Nalini

Properties Pvt.Ltd. and its accountant were searched. The search resulted in seizing the minutes of the Board of Directors of M/s.Nalini Properties (P) Ltd. held on 22/6/2000, wherein it was decided to share the profits in the ratio of 66% to the appellant and 34% to the company.

4. It is pertinent to note that the appellant is signatory to the said Board resolution and in implementation of the said resolution, the 66% profit has been credited to the ledger account of the appellant in the books of the company for the previous year ending 31/3/2000 at Rs.3,17,53,495/-.

5. Since the said amount was not offered to tax in the return of income filed by the appellant, a show cause notice was issued calling upon the appellant to show cause as to why the said amount should not be taxed and the assessment should not be completed under section 145(3) of the Income Tax Act, 1961 ('Act' for short). The appellant contended that he was following the cash system of accounting and since the amount of Rs.3,17,53,495/- was not actually received, the same was not offered to tax. The assessing officer rejected the contention of the appellant and passed a block assessment order section 158BC of the Act by holding that the appellant was following mercantile system of accounting and,

therefore, the amount of Rs.3,17,53,495/- is assessable as undisclosed income in the hands of the appellant on accrual basis. However, in view of the fact that in the assessment of M/s.Nalini Properties Pvt. Ltd., the deduction of Rs.3,17,53,495/- claimed by M/s.Nalini Properties Pvt. Ltd. was disallowed and the matter was pending before the appellate authority, the assessing officer taxed the amount of Rs.3,17,53,495/- in the hands of the appellant on protective basis.

6. Challenging the block assessment, the appellant filed an appeal before CIT(A). During the appellate proceedings, the appellant filed a letter on 1/9/2004 to the effect that it would be difficult for him to prove his claim of changing the method of accounting from mercantile system to cash system and, therefore, the amount of Rs.3.17 crores be treated as undisclosed income of the appellant in the block period. Accordingly, the appeal filed by the appellant was dismissed by CIT(A).

7. However, challenging the order of CIT(A) the appellant filed an appeal before I.T.A.T. By the impugned order dated 17/4/2008 the Tribunal held that the amount of Rs.3.17 crores is liable to be taxed as undisclosed income in the hands of the appellant and that no addition is called for in the hands of the

company. Challenging the order of the Tribunal, the present appeal is filed.

8. The basic argument of the appellant is that firstly, no incriminating documents were seized from the residence of the appellant regarding the receipt of Rs.3.17 crores and, therefore, no addition could be made in the block assessment. Secondly, the question of accrual of income is a matter to be considered in regular assessment and not in block assessment, hence addition of undisclosed income in the block period is without any basis, especially when M/s.Nalini Properties Pvt. Ltd. has recorded the transaction in its regular books of accounts.

9. We see no merit in the above contentions because, having agreed before the CIT (A) that it is difficult for him to prove that he has changed the method of accounting from mercantile system to cash system and, therefore, the amount of Rs.3.17 crores be taxed as undisclosed income in the block period, it is not open to the appellant to challenge the decision of CIT(A) on merits. Moreover, before the Tribunal, the appellant had not produced any material to show that he had in fact changed the method of accounting from mercantile system to cash system. The finding of fact recorded by the Tribunal is that M/s.Nalini Properties Pvt.Ltd. is a closely held company of the

appellant where the family members of the appellant are on the board of directors. The appellant was a party to the board resolution dated 22/6/2000 and in implementation of the board resolution, the account of the appellant was credited by the amount of Rs.3.17 crores. The appellant initially claimed that in the assessment year in question he had followed cash system of accounting and having realised that it is difficult to sustain his argument, agreed before CIT (A) that the said amounts be taxed as undisclosed income in the block period.

10. In these circumstances, we see no merit in the appeal and the same is hereby dismissed.

(V.C.DAGA, J.)

(J.P.DEVADHAR, J.)