ORDER SHEET

IN THE HIGH COURT AT CALCUTTA

Special Jurisdiction
[Income Tax]

ORIGINAL SIDE

GA No. 684 of 2013
ITAT No. 62 of 2013

C.I.T.KOL-IV

Versus

MADAN TEATRES LTD.

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE TARUN KUMAR DAS

Date : 14th May, 2013.

For Appellant : Md. Nizumuddin, Advocate

For Respondent : Mr. Alok Kumar Pal, Advocate

The Court : The assessee sold the property at a sum of Rs.2,51,50,000/- For the purpose of stamp duty, however, the value was estimated at a sum of Rs.5,19,77,000/- and on that basis the stamp duty was realized. During the assessment, it was found that the assessee had disclosed the sale price at a sum of Rs.2,51,50,000/-. The Assessing Officer fixed the sale price at a sum of Rs.5,19,77,000/- and started proceedings under Section 271(1)(C). Penalty for a sum of Rs.30,09,989/-was imposed.

The assessee preferred an appeal. The Appellate Authority allowed the appeal and set aside the order imposing penalty indicated above for the following amongst other reasons:

"However, the capital gain was a loss irrespective of the value of sale consideration of either Rs.2,51,50,000/- taken by appellant in return of income or Rs.5,19,77,000/- taken by Assessing Officer in the assessment order and therefore there was no tax effect and appellant did not litigate further before the Assessing Officer. Appellant has referred to the decision of Hon'ble Supreme Court in the case of Dharmendra Textiles Processors, 306 ITR 277 where it was held that mens rea is not an essential element for imposing penalty u/s.271(1)(c) of the I.T. Act. It has been further clarified by the Hon'ble Supreme Court in the case of CIT Ahmedabad vs. Reliance Petroproducts Pvt. Ltd. arising out of Civil Appeal No.2463 of 2010 in the decision dated 17.03.2010 that a mere making of claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding income of the assessee. The Hon'ble Supreme Court had opined that if no fault can be found with the particulars submitted by the assessee in its Return of income then penalty u/s.271(1)(c) cannot be imposed. In the present case, as far as the amount of consideration of sale for the purpose of computation of capital gain u/s.48 is concerned, even if the valuation of property as per the stamp valuation authority is more than the actual sale consideration, the provisions of section 50C(2) allow the appellant to choose the actual sale consideration if the appellant is convinced about the fair market value of such property being the same as consideration actually received by the appellant. Assessing Officer invoked the provisions of section 50C(1) and deemed the sale consideration at Rs.5,19,77,000/- as per the valuation of stamp valuation authorities and appellant chose not to contest the same u/s. 50C(2) of the

I.T. Act as it would not have made any difference in the tax liability of the appellant because the capital gain still remained a loss. However, the belief of appellant at the time of filing of return of income that the valuation of property by stamp valuation authorities could not be the fair market value of the property is a bona fide belief though not pursued further in view of the provisions of section 50C(2) of the I.T. Act. After considering all facts and circumstances in the present case, I find that the appellant cannot be said to have filed inaccurate particulars of income or to have concealed any income and therefore I cancel the penalty of Rs.30,09,989/- imposed by the Assessing Officer u/s.271(1)(c) of the I.T. Act."

The Revenue preferred an appeal. The learned Tribunal dismissed the appeal holding, inter alia, as follows:

" Thus obviously, it is only on account of deeming provisions of section 50C, the AO has made the addition by adopting the sale consideration of Rs.5,19,77,000/-, being the value adopted for the purpose of stamp valuation. The revenue has also not shown as to how the assessee could be held to have actually received this amount which is in excess of the amount of Rs.2,51,50,000/-. It has also not been shown as to whether any corresponding addition has been made in the hands of the buyer. In any case, the issue is also now squarely covered by the decision of the Coordinate Bench of this Tribunal in the case of Renu Hingorani (supra). In the circumstances, respectfully following the decision of the Coordinate Bench of this Tribunal in the case of Renu Hingorani (supra) as also on account of the fact that the revenue has not been able to dislodge the findings of the ld. CIT(A) that the *bona fides* of the assessee are genuine, the findings of the ld. CIT(A) stand confirmed. In the circumstances, the appeal of the revenue is dismissed."

Mr. Niaumuddin, learned Advocate appearing for the Revenue, contended that the assessee had a choice to dispute the valuation on the basis of the deemed value, but the assessee did not take that opportunity. The assessee had a choice or he could have litigated. The fact remains that the actual amount received was offered for taxation. It is only on the basis of the deemed consideration that the proceedings under Section 271(C) started. The revenue has failed to produce any iota of evidence that the assessee actually received one paise more than the amount shown to have been received by him.

We are, as such, of the opinion that there is no scope to admit the appeal since the same does raise any question of law, substantial or otherwise.

The appeal is, therefore, rejected.

(GIRISH CHANDRA GUPTA, J.)

(TARUN KUMAR DAS, J.)

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