

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3378 OF 2008
(Arising out of S.L.P.(C) No.23777/2007)

Commr. of Income Tax, New Delhi ...Appellant(s)

Versus

M/s. Realest Builders & Services Ltd. ...Respondent(s)

WITH

CIVIL APPEAL NO. 3379 OF 2008
(Arising out of S.L.P.(C) No.23778/2007)

ORDER

In S.L.P.(C) No.23777/2007:

Leave granted.

This Civil Appeal is directed against the judgment and order dated 17th January, 2007 passed by the High Court of Delhi in I.T.A.No.708/2006 by which the Department's Appeal stood dismissed.

The short point arising in this case is: Whether income accrued to the assessee on registration of the sale deed in favour of the third party (plot purchaser) or whether it accrued at the time of execution of the tripartite agreement? According to the Department, income accrued on the date of execution of the tripartite agreement when the assessee received full consideration of the plot and not in the year in which the sale deed stood executed.

...2/-

C.A....@ SLP(C) 23777/07 etc...contd..

-2-

In his assessment order, the AO has given the working in support of his order based on the basic sale price paid by the third party to the assessee, the cost per Sq.Mtr., the price paid by the assessee for the individual plot to DLF and the profits worked out on that basis. The working shows that profit is worked out on sale of individual plots.

According to the assessee, since there was no transfer of right, title and interest upto the date of execution of conveyance, income did not accrue to the assessee till the date of conveyance and, therefore, there was no accrual of income at the time of execution of the tripartite agreement(s) which took place during the Assessment Year 1994-95.

We are proceeding on the basis that the transaction in this case is genuine as there is no challenge on that account by the Department. The basic controversy is in the context of the year in which taxability arose. The basic controversy is in which year the liability arose - whether it arose during the Assessment Year 1994-95 or whether it accrued in the year when conveyance stood executed. Under the Income Tax Act, under Section 145, it is always open to the Department to insist on the change in the method of accounting followed by the assessee over the years (which is

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C.A....@ SLP(C) 23777/07 etc...contd..

-3-

the case herein) if the impugned method of accounting results in under estimation of profits/net income. In this case, no allegation of that nature was ever made by the Department. In fact, the chart annexed at page 29 (Assessment Order) also does not indicate whether the impugned method of accounting followed by the assessee results in under estimation of the profits/net income. Therefore, though we do not agree

with the reasons given by the High Court in its impugned judgment, since the Department has not gone into the above vital aspect regarding method of accounting under Section 145 of the Income Tax Act, we see no reason to interfere with the impugned judgment.

Before concluding, we may state that the High Court has proceeded on the basis of 'rule of consistency'. We do not agree with the view taken by the High Court on that count. In cases where the Department wants to tax an assessee on the ground of the liability arising in a particular year, it should always ascertain the method of accounting followed by the assessee in the past and whether change in method of accounting was warranted on the ground that profit is being under estimated under the impugned method of accounting. If the AO comes to the conclusion that there is under estimation of profits, he must give facts and

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C.A....@ SLP(C) 23777/07 etc...contd..

-4-

figures in that regard and demonstrate to the Court that the impugned method of accounting adopted by the assessee results in under estimation of profits and is therefore rejected. Otherwise, the presumption would be that the entire exercise is Revenue neutral. In this case, that exercise has never been undertaken. The AO was required to demonstrate both the methods, one adopted by the assessee and the other by the Department. In the circumstances, we see no reason to interfere with the conclusion given by the High Court and the Tribunal.

Civil Appeal is, accordingly, dismissed.

In S.L.P.(C) No.23778/2007:

Leave granted.

Civil Appeal is dismissed in terms of our above order in Civil Appeal

arising out of S.L.P.(C) No.23777/2007.

.....J.
(S.H. KAPADIA)

.....J.
(B. SUDERSHAN REDDY)

New Delhi,
May 07, 2008.

