



the matter is taken up for final disposal.

2. The following question is required to be determined by this court:

Whether the rejection of books of accounts, Registered Valuer's Report and cost of construction shown by the appellant and making addition of Rs.10 lakhs is without any basis or material and hence perverse?

3. The Assessment Order in question is of 1990-1991. On various grounds, the appellant before us, filed the appeal before the Tribunal. The Tribunal after hearing the matter remanded the matter to the Assessing Officer in respect of some of the grounds. However, as regards the issue of the valuation of the property, the Tribunal observed as under:

“ There now is the report of the DVO and the report of the registered valuer of the assessee and the books of accounts and vouchers. We have perused minutely the order passed by the Commissioner of Income-tax [Appeals] and we have already reproduced earlier the major points of difference. One course of action open to us is to restore the matter back to the file of any of the authorities to re-decide some of the factual aspects, but considering the fact that this would only prolong the litigation and since the matter is factual, the same can be disposed of by the Tribunal taking into account the facts and circumstances of the case. It is a question of one valuation report pitted against the other and both



cannot be wrong and on the same analogy both cannot be right. In some of the major differences, there is a large variation in the measurements, the quantity as also the rates and it is apparent that some of the points go in favour of the Revenue and yet others, which are in favour of the assessee. Without saying anything further, we feel in the interest of justice that considering the entire spectrum of the case, it would be fair and reasonable in case an addition of Rs.10,00,000/- is sustained on all counts and the balance addition sustained by the Commissioner of Income-tax [Appeals] to the tune of Rs. 11,04,374/- is deleted. We direct accordingly. This takes care of the grounds in appeal upto 6.1.”

4. So far as grounds 7 and 8 were concerned, the Tribunal remanded the matter to give another opportunity to the assessee. When on one issue the matter was remanded, the Tribunal ought to have examined the question of valuation also in the same light more particularly, when the Tribunal has observed that both the reports cannot be wrong and on the same analogy both cannot be right. It is also observed that there is a large variation in the measurements, the quantities as also the rates. It is also observed that some points are in favour of the Revenue and some are in favour of the Assessee.

5. In view of what is stated hereinabove, we are of the opinion that without answering the question, the matter is required



to be remanded to the Assessing Officer insofar as the issue of valuation is concerned.

The order of the Tribunal as regards the question of valuation is set aside. To this extent, the appeal is allowed with no order as to costs.

B. Paet
CHIEF JUSTICE

Badar Durrez Ahmed
BADAR DURREZ AHMED, J

July 05, 2004

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