

**IN THE HIGH COURT OF DELHI****ITA No. 42/2005****Judgment reserved on : February 14, 2005**  
**Date of pronouncement : March 3, 2005****Commissioner of Income Tax** .....Petitioner  
through: **Mr. Sanjiv Khanna,**  
**Advocate.****Versus****Sudhish Kumar** .....Respondent  
through : **NEMO.****CORAM :****HON'BLE MR. JUSTICE SWATANTER KUMAR**  
**HON'BLE MR. JUSTICE MADAN B. LOKUR**

1. Whether reporters of local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be referred in the Digest?

**SWATANTER KUMAR, J.**

1. Commissioner of Income Tax, Delhi, has questioned the correctness and legality of the order passed by the Income



Tax Appellate Tribunal, Delhi, dated 23<sup>rd</sup> July, 2004 wherein it held that the Assessing Officer does not have the power under the Act to refer the Valuation Officer, the question of cost of construction of the property, subject matter of the present writ petition.

2. The Assessee had filed return for the assessment year 1996-97 declaring a total income of Rs.59,210/- which was processed under Section 143 (1) (a) on 31<sup>st</sup> March, 1998 on the returned income. Subsequently, and with the prior approval of the competent authority, a notice under Section 143 (2) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was issued. The Assessee attended the proceedings in furtherance to the said notice. Documents including the map plan of the property was also filed. The cost of construction was shown as Rs.5,50,000/- for 4000 sq. ft. approximately, giving the rate of Rs.140/- per sq. ft. The Assessing Officer felt that normally the cost of construction should be Rs.500/- per sq. ft. and he rejected the accounts produced by the assessee as unreliable under Section 145 of the Act. During the course of proceedings the Assessing Officer referred the matter to a Valuer and after



seeking the report of the Valuer, made additions to the income of the assessee. Against the said order of the Assessing Officer dated 31<sup>st</sup> March, 1999 the assessee preferred an appeal which was partially allowed in certain aspects, but answering the question of jurisdiction of the Assessing Officer, as afore-referred, against the assessee, whereafter the assessee challenged the order of the authorities before the Income Tax Appellate Tribunal.

3. Both the Revenue as well as the assessee went up in appeal before the Income Tax Tribunal. During the course of hearing, though the assessee had raised various grounds but it has been recorded by the Appellate Tribunal that only one ground was pressed, i.e. in regard to questioning the addition of Rs.1,02,137/- out of a total addition of Rs.7,05,000/-. The Tribunal recorded its finding as under:-

\*After hearing the rival parties we find that the entire addition was based on a contracted price of Rs.25 lacs adopted by the AO purely on hypothetical considerations. As noted by us in the earlier paragraphs, Smt. Narang has affirmed the contract price of Rs.5.50 lacs and that there was no evidence or material with the AO that the assessee had received anything over and above the stated price. Under such



circumstance, the action of the AO in resorting to estimation clearly lacked factual support. Thus, we sustain the conclusions drawn by CIT (A) in this regard. The revenue, accordingly falls on this ground also.

Ground no.3 : The AO made an addition of Rs.4,91,000/- u/s 69 of the I.T. Act on account of unexplained investment in the property no. 2059, Outram Lanes, Kingsway Camp, Delhi. The facts are that during the year under consideration, the assessee purchased the ground floor of the said property for a consideration of Rs.2,75,000/- and sold it for Rs.2,90,000/- thereby earning a short term capital gain of Rs.15,000/-. From a perusal of purchase and sale deeds, the AO inferred that assessee remodeled the property before selling and presumed that certain investments must have been made which has not been disclosed. The AO referred the matter to the valuation cell to estimate the cost of construction. On the basis of the report of the DVO, he treated an amount of Rs.4,91,100/- as unexplained investment under Section 69. The CIT (A) has since deleted the addition by noticing various infirmities.

Without going in detail into the merits of the impugned issue, we are of the view that the said ground can be disposed of by adverting to the following short premise. That the revenue has not doubted the sale consideration received. The impugned addition is only towards alleged low cost of construction and has been made merely on the basis of the DVO's report is also not disputed. Under the aforesaid undisputed circumstances, the impugned addition is untenable having regard to the decision of the Apex Court in the case of **Smt. Amiya Bala Paul 262 ITR 407 (SC)**. It is settled by the Hon'ble Apex Court that in the course of assessment



proceedings, the AO does not have power under the Act to refer to the valuation officer the question of the cost of construction of house property. Therefore, in this view of the matter, the reference made to the valuation officer was itself without jurisdiction and therefore any addition made in pursuance to such reference is liable to be set aside in view of the aforesaid, we sustain the conclusion drawn by the CIT (A) in deleting the impugned addition, albeit on different grounds."

4. The afore-mentioned findings recorded by the Tribunal are primarily findings of fact. The action of the authorities was held to be untenable. The Assessing Officer has obviously no jurisdiction to refer the matter to the Valuation Officer in relation to cost of construction of the house property and furthermore, the report of the DVO is stated to have been not disputed. We see no reason to take a view different than one which has been taken by the Appellate Tribunal primarily on the factual matrix of the case.

5. While relying upon the provisions of Section 142A of the Act, the learned Counsel for the appellant contended that the Assessing Officer could take into consideration the report submitted by the Valuation Officer in accordance with those




provisions, and as such the findings recorded by the Tribunal to the contrary, are vitiated in law. Section 142A of the Act was introduced by the Finance (No. 2) Act of 2004 and was given a retrospective effect w.e.f. 15.11.1972 but with an exception added to the Section by virtue of the proviso. In terms of the proviso, nothing contained in the Section shall apply in respect of an assessment made on or before 30.09.2004 and where such an assessment has become final and conclusive on or before that date except in cases where re-assessment is required in terms of Section 153A of the Act. Admittedly, there is no record before us to show that an opportunity was provided to the assessee before the report of the Valuation Officer was taken into consideration by the Assessing Officer. Furthermore, it is also an admitted case that the order of assessment was made on 31.3.1999, much before the cut-off date and the order of the CIT (A) was passed on 12.1.2000 and that of the Income Tax Appellate Tribunal was passed on 23.7.2004. In other words, the assessee would be fully protected under the proviso as the order of assessment had become final and rights of the parties stood settled on all questions of facts. It cannot even be argued before us that dehors the provisions of Section 142A of the Act, the Assessing



Officer could assume to himself such powers. The provisions of Section 142A are unambiguous in language and leave no scope for any interpretation to the contrary.

6. For the reasons aforesaid, we are of the considered view that the present appeal does not raise any question of law, much less a substantial question of law in terms of the judgment of this Court in Commissioner of Income Tax vs. S.R. Fragnances Ltd. 2004 ITR Vol. 270 page 580. Consequently, the appeal is dismissed, while leaving the parties to bear their own costs.

  
SWATANTER KUMAR  
(JUDGE)

  
MADAN B. LOKUR  
(JUDGE)

March 31<sup>st</sup>, 2005  
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