



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

ITA No.454 of 2011 & ITA No.584 of 2011

% Decision delivered on: 19th September, 2011

+ **ITA No.454 of 2011**

COMMISSIONER OF INCOME TAX
DELHI - I, NEW DELHI . . . Appellant

Through: Mr. Deepak Chopra, Sr.
Standing Counsel.

VERSUS

AERENS INFRASTRUCTURE &
TECHNOLOGY LTD. . . .RESPONDENT

Through: Mr. P.C. Yadav, Advocate.

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**CORAM :-**

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. The respondent-assessee filed the income tax return declaring income at ₹1,60,450/-. During the assessment proceedings, the Assessing Officer (AO) noticed that the assessee had purchased a property at 2nd Floor, G-25, Green Park (Main), New Delhi for a consideration of ₹11,84,926/-. Since the valuation was found to be on lower side, the AO made the reference to District Valuation Officer (DVO) under Section 142A of the Income Tax Act (hereinafter referred to as 'the Act'). DVO could not send report and therefore, the AO framed the assessment under Section 143(3) of the Act on the basis of material available accepting the same income. On receipt of valuation from DVO, the AO found difference of ₹48,68,774/- between the valuation made by the DVO and value declared by the assessee.
2. Armed with this Report, the AO issued notice to the assessee under Section 148 of the Act stating that he had reasons to



believe that the income to the aforesaid amount had an escaped assessment. The assessee submitted that the reference of valuation was not valid and that the property was shown as stock-in-trade and not investment. However, the AO was not convinced with the same and made addition of ₹48,68,774/- to the income of the assessee.

3. The assessee went in appeal and therein assailed the aforesaid order by questioning the validity of the re-assessment proceedings initiated under Section 147 of the Act as well as the order of the Assessing Officer (AO) on the merits. Though the CIT (A) upheld the notice to re-assessment proceedings, on merits, the CIT (A) partly allowed the appeal of the assessee. The CIT (A) held that there was no circle rate fixed for valuation of stamp duty on sale of properties. DVO had correctly adopted the method of valuation based on comparative sale of another property. Though the CIT (A) had asked the assessee to file any comparative sale instance involving auction by the Government agencies like DDA and others, no information could be filed by the assessee. However, considering the location of the property at 2nd floor vis-à-vis first floor of the property taken-up for comparative sale instance, the CIT (A)



gave further relief of ₹10 lac to the assessee by reducing the difference to this extent.

4. Aggrieved by this order, the assessee and the Department both filed appeals before the Income Tax Appellate Tribunal ('the Tribunal' for brevity). The Department challenged reduction of ₹10 lacs by the CIT (A) and the assessee challenged the addition made by the AO on the basis of valuation. The Tribunal has passed a common order allowing the appeal of the assessee and dismissing the appeal of the Revenue. The Tribunal deleted the addition of ₹48,68,774/- made by the AO on account of difference between the value determined by the DVO and the purchase consideration shown by the assessee holding that the reference made by the AO invoking the provisions of Section 142A was without jurisdiction and therefore, no addition could have been made by the AO on the basis of valuation made by the DVO.
5. Questioning the aforesaid order of the Tribunal, the instant appeal is preferred. It is to be borne in mind that the assessee had purchased the property in question and shown the sale consideration in his books of accounts giving particular value in a case like this. Provisions of Section 69A



of the Act were to be considered. As per this provision, if the assessee has made any investment or is found to be the owner of any bullion, jewellery or other valuable articles and the AO finds that the amount incurred on making such investment or acquiring such bullion, jewellery or other valuable articles exceeded the amount recorded in this behalf in the books of accounts maintained by the assessee and if the assessee does not offer any explanation about such excess amount or the explanation offered by him is not acceptable, the excess amount may be deemed to be income of the assessee for such financial year. Taking note of these facts, the Tribunal observed that a positive act of finding by the AO to the aforesaid effect was required, viz., the AO had to first record that there was an excess expenditure incurred by the assessee in acquiring the articles. It is only when such a finding is recorded next stage is the invocation of Section 142A of the Act. This exercise was not done by the AO in the instant case, at all. The Tribunal also commented upon the report of the DVO, on the basis of which the addition was made in the following manner:

"5. In respect of the merits of the addition, which has a bearing to the revenue's appeal, it is noticed that the assessee did represent before the A.O. that the

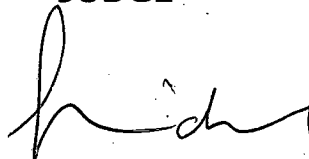


valuation report of the DVO contains various defects. This was done by a letter-dated 17.11.2006. A perusal of the assessment order shows that the A.O. has not considered the objection filed by the assessee. It is further noticed that the CIT (A) has considered the objection and has found weight in the objection and had consequently made an *ad hoc* reduction of ₹10 lacs from the addition made by the A.O. which was on the basis of the difference between the value as declared by the assessee and the value as estimated by the DVO. The CIT (A) has further rejected the comparative cases given by the assessee which relates to sale of property executed in 2001 to 2003 on the ground that during this period there was no circle rates fixed for valuation of the stamp duty on the sale of the property. However, it is noticed that in the DVO's report the DVO has considered a property, which was sold in May 1999. Where there was no circle rates during the year 2001-2003 there could be no circle rates for the year 1999. A perusal of the order of the CIT (A) also clearly shows that the CIT (A) has given reduction taking into consideration the location of the property on the 2nd floor as against floor taken in the comparative sale instances. A perusal of the comparative case taken by the DVO shows that the comparative case taken is also of the front portion and 1st floor property whereas the assessee's property is of a side road property and on the 2nd floor. In these circumstances, once the Ld. CIT (A) has accepted that there is a difference between the comparative case taken by the DVO with that of the assessee obviously there cannot be any correction that can be made by the CIT (A) to such valuation. In these circumstances, the *ad hoc* reduction as given by the CIT (A) itself is wrong as there is no basis or method for the reduction. In fact, the defect having been accepted the valuation report itself was no more a reliable document for the purpose of making any addition and the addition itself which has been made on the basis of such report is liable to be deleted in toto and we do so. In these circumstances, the appeal of the assessee is allowed and the appeal of the revenue is dismissed."



6. We are of the view that this is a correct finding of the Tribunal. No question of law arises, these appeals are accordingly dismissed.


(A.K. SIKRI)
JUDGE


(SIDDHARTH MRIDUL)
JUDGE

SEPTEMBER 19, 2011
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