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

\+ **[ITA 798 OF 2011]**

% **JUDGMENT DELIVERED ON: 01.6.2011**

M/S SHAGUN BUILDWELL LTD. **. . . APPELLANT**
Through : Mr. K.R. Manjani, Advocate.

VERSUS

ASSTT. COMMISSION OF INCOME TAX **. . .RESPONDENT**
Through: Mr. Dipak Chopra, Advocate.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA

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 appellant who is engaged in real estate business filed its return for the assessment year 2002-04 declaring an income of ₹ 18,054/- which was accepted as such. In the return the assessee/appellant had also shown that it has purchased 1st Floor alongwith 40% ownership right in the property A-2/43, Rajouri Garden, New Delhi @ 25,50,000/- as per registered deed brought

on record alongwith valuation report. The AO made reference to the District Valuation Officer (DVO) under Section 142-A of the Income Tax Act (hereinafter referred to as the 'Act'). However, since the assessment was getting time barred and the report of the DVO had not been received by that time, the assessment order was passed. Thereafter the AO received report of DVO as per which the value of the aforesaid property was shown @ ₹ 58,19,100/- as against the value shown by the assessee as per registered sale deed @ ₹ 25,50,000/-. This report of the DVO became the basis for the Assessing Officer to issue notice under Section 148 of the Act for reassessment of the proceedings. After issuing the said notice and furnishing 'Reasons to Believe' the reassessment was completed by making addition of ₹ 32,69,100/- in the income of the assessee. The assessee preferred appeal thereagainst before the CIT (A) challenging the invocation of Section 148 of the Act and also the addition on merits. The CIT (A) repelled the challenge in so far as reopening of the assessment proceedings are concerned holding that the Assessing had not in fact made the reference to DVO during the course of the original assessment proceedings but could not await the said report as the assessment was getting time barred and in these circumstances when the DVO report was received specifically it formed relevant material on the basis of which Assessing Officer could form an

opinion that the income had escaped assessment. He thus upheld the validity of the reopening of assessment under Section 147 of the Act. The AO also dealt with the contention of the assessee that no reference under Section 142A of the Act was permissible as the property was held as "stock- in-trade" and hence no unexplained investment was made. The CIT (A) rejected this argument observing that provisions of Section 142A of the Act could be invoked whether it was for investment purposes or "stock- in- trade" and there was no distinction made in the Act about the reference to DVO. The only requirement as per law was the existence of valuable article or thing which is either undisclosed or partly disclosed in the books of accounts. Since the existence of property was not in dispute but the purchase amount was not fully disclosed, the AO was justified in making the reference to DVO. The CIT (A) thereafter took up the matter on merits. He found that DVO while arriving at the valuation of the property in question had taken comparable instances of Punjabi Bagh area which was approved by the appropriate authority in the Income Tax Department and on that basis valuation was arrived at. The CIT (A) held that AO was justified in acting on the basis of the said report of the DVO.

2. On this premise, the CIT (A) made his calculations and an amount of ₹ 15,000/- instead of ₹ 17,000 was adopted by the DVO for the reasons stated in his order. On this basis he reduced the addition of ₹ 15,23011/-. The reasons given by the CIT (A) for reducing the land cost at ₹ 15,000 /- are as under:-

> "while upholding such valuation in principle, some adjustments needed in respect of land valuation as well as in construction value. Being a vacant plot of land the value of property taken up for comparison commands more valuation than subject property being semi finished building. Further it is a corner plot, hence due credit is to be given to these characteristics which play a crucial role in valuation of properties. Accordingly the land cost is taken at the rate of ₹ 15,000/- per sq. mtr. Assessee holds 40% of ownership in the land of 587.79 sq. mtr and balance 60% held by its sister concern. That means appellant share in the land component is 235.11 sq. mtr. By adopting the value of land @ 15,000/- that the total investment in land comes to ₹ 35,26,650/- as against the amount of ₹ 48,68,187/- arrived by DVO towards assessee's share in the land portion. As far as construction cost is concerned it is undisputed that the building acquired by the assessee is not provided with various facilities. The first floor was valued by DVO at ₹ 9,50,912/-.
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> Considering the nature of construction facilities provided, subsequent value addition made by assessee and age of building, further discount of 20% needs to be allowed from the valuation of DVO. Thereby cost of construction is reworked at ₹ 7,60,730/- after allowing discount. Such discount is necessitated due to the fact that the aid building was not provided with any basic facilities even partition walls etc. Consequently the total cost (both land and building) comes to ₹ 40,73,011/- (after allowing

> 5% deduction on account of co-ownership) as against the value of ₹ 58,19,100/- computed by AO and ₹ 25,50,000/- declared by appellant as the investment in the property. Resultantly the unexplained investment of ₹ 15,23,011/- is to be added to the total income in place of ₹ 32,69,100/-. Accordingly AO is directed to substitute this amount and re-compute the income of the assessee."

3. Aggrieved by this order, both the assessee as well as the Revenue filed appeals before the Tribunal. The grounds of challenge raised by the assessee were the same which was advanced before the CIT (A) as well. The ITAT has upheld the order of the CIT (A).

4. Insofar as validity of reopening of the reassessment under Section 148 of the Act is concerned, it has also upheld the action of the AO in referring matter to DVO under Section 142 A of the Act. However, when the ITAT took up the issue of valuation arrived at by DVO which was reduced by the CIT (A) for the reasons extracted above, the ITAT was of the view that there was no rational justification for not accepting the price adopted by the DVO which needed to be upheld. For this reason, the ITAT has thus accepted the appeal of the Revenue by restoring the order of the AO on the basis of the DVO report without any modification

therein. The precise reasons given by the Tribunal can be located in the following discussion:-

> "Since the Punjabi Bagh and Rajouri Garden are at a distance of 2-3 KMs and located near the Ring Road, the land price of the area would be identical. Since the DVO has relied on the price of land sold in 1999 subject to certain modification @ ₹ 17,186/- in our considered opinion in the absence of negative points, the price adopted by DVO has to be upheld. However, the Ld. CIT (A) had adopted the rate of land @ ₹15,000/- per sq. mtrs. Without giving any reasons. He has discussed the general principles on the basis of which the value of property may be determined. In the absence of any such negative point, in our considered opinion, Ld. CIT (A) was not justified in reducing the cost of land @ ₹ 15,000 per sq. mtr. The Ld. CIT (A) has again allowed deduction of 20% in respect of building on DVO's report without giving the details. The assessee had not given any material to prove that discount allowed on the building @ 20% was justified. He had simply submitted that allowance should have been more than 20%. Since the Ld. CIT (A) has not given any reasons for deduction in the value of the land was well as the building, in our considered opinion, the reduction allowed by the Ld. CIT (A) is not justified."

5. Insofar as reopening of the assessment and reference to DVO under Section 142A of the Act is concerned, no fault can be found in the action of the AO duly upheld by the CIT (A) as well as the ITAT. However, the ITAT was not fully justified in tinkering with the order of the CIT (A) insofar as valuation of the property is concerned.

6. As noticed above, the CIT (A) has reduced the value of land as well as value of construction. The reasons given by the CIT (A) for reducing of the value of the land was two fold namely (i) it was a corner plot and (ii) there was joint ownership in the said property in which the assessee had purchased 40% of the land.

7. These two reasons, as rightly observed by the ITAT, may not be valid for reduction of the value of the land in the facts of this case. A corner plot may not necessarily be of lesser value on the contrary sometimes such plots which are opened on three sides command higher value. The CIT (A) accepts mentioning that it was a corner plot but did not give any further description as to why he was treating this plot to be a lesser. Insofar as joint ownership is concerned, an important fact is that other 60% was purchased by none else but the sister concern of the assessee herein. To this extent, therefore, we concur with the approach of the Tribunal. However, in so far as valuation of the construction of cost is concerned, we are of the opinion that CIT(A) had rightly reduced the cost from 9,50,000/- to ₹ 7,60,730/- keeping in view that it was a semi furnished building and was lacking in various facilities. Reduction of cost by 20% as done by the CIT (A) seems

to be justified and the Tribunal has not given any reasoning in not accepting this approach of the CIT (A).

8. In these circumstances, this appeal is partly allowed to the extent that the valuation cost of construction would be taken at ₹ 7,60,730/-.

9. The appeal stands disposed of.

(A.K. SIKRI)
JUDGE

(M.L. MEHTA)
JUDGE

JUNE 1, 2011
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- Rev. pet - 471/11 - for review of order dt: 1-6-11