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

+ **INCOME TAX APPEAL NO. 411/2010**

Date of decision: 29th August, 2013

COMMISSIONER OF INCOME TAX

..... Appellant

Through Mr. Sanjeev Rajpal, Sr. Standing
Counsel.

versus

DINESH KUMAR AGARWAL

..... Respondent

Through Mr. Ankit Gupta, Advocate.

INCOME TAX APPEAL NO. 1026/2010

COMMISSIONER OF INCOME TAX NEW DELHI

..... Appellant

Through Mr. Sanjeev Rajpal, Sr. Standing
Counsel.

versus

M/S ASHOKA ICE AND COLD STORAGE NEW DELHI

..... Respondent

Through Mr. Manu K. Giri & Mr. Anoop
Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SANJEEV SACHDEVA



SANJIV KHANNA, J. (ORAL):

These two appeals can be disposed of by a common order as they are somewhat connected. The issue pertains to the sale consideration disclosed by the seller-M/s Ashoka Ice and Cold Storage and the purchaser Dinesh Kumar Agarwal of property No. C-15, Lawrence Road Industrial Area vide documents executed on 3rd January, 2005. The total sale consideration disclosed by the two assesseees was Rs.64,32,800/-. For the sake of completeness, we record that the Assessment Year in question in the two appeals is 2005-06.

2. By order dated 16th March, 2012, the following substantial questions of law were framed in the case of M/s Ashoka Ice and Cold Storage:-

“(i) Whether the Income Tax Appellate Tribunal was right in upholding the order of the CIT (Appeals) and deleting the addition made by the Assessing Officer on account of understatement of sale consideration?

(ii) Whether the order passed by the Income Tax Appellate Tribunal is perverse?”

3. Similarly, in the case of Dinesh Kumar Agarwal, vide order dated 15th November, 2011, the following two questions of law were framed:-

“(i) Whether the Income Tax Appellate Tribunal was justified in deleting of Rs.1,06,12,000/- addition made by the



Assessing Officer on account of unexplained investment in property under Section 69B of the Income Tax Act, 1961?

(ii) Whether the order passed by the Income Tax Appellate Tribunal is perverse?”

4. Liberty was granted to the Revenue to file additional documents on record within two days. We record and notice that no additional documents have been filed on record except the remand report dated 8th August, 2007 and valuation report of the District Valuation Officer (DVO), Income Tax Department.

5. The Assessing Officer in the two assessment orders has relied upon the report of the DVO, who had determined the value of the property on the date of transfer at Rs.3,30,24,000/-. The Assessing Officer, however, felt that the report of the DVO requires moderation after noticing the fact that the property was leasehold and 36 years out of 99 years of lease were over. He also referred to the fact that the lease deed postulated payment of 50% unearned increase and determined the value of the property as Rs.1,65,12,000/- and observed that the difference between the value determined by him and the value mentioned in the documents dated 3rd January, 2005, i.e., Rs.1,06,12,000/- should be treated as unexplained payment and receipt. He has mentioned that Rs.15,17,000/- in cash were found and seized from Seema Kuthiala wife of Sumant Kuthiala, partners of M/s Ashoka Ice and Cold Storage. Seema Kuthiala had



18.75% share in this concern.

6. The aforesaid addition under Section 69B was deleted by the first appellate authority, which view has been affirmed by the tribunal. They have referred to the DVO report and pointed out several flaws in the same. DVO, for the purpose of valuation, had taken the market price of land in Okhla Industrial Area, New Delhi in 1994 and had referred to 1994 DDA rate of land fixed for Lawrence Road Industrial Area. He came to the conclusion that the difference in land rate in Okhla and Lawrence Road Industrial Area in 1994 was 38.75%, i.e., land at Okhla was more expensive by 38.75%. Thereafter, the DVO referred to one sale deed in Okhla Industrial Area in the year 2001 for a plot measuring 1648 square metres. This property was sold for Rs.3,70,00,000/-. After making some reductions for cost of building etc., he computed the value of the property at Lawrence Road Industrial Area by giving benefit of 38.75% in the year 2001. For the balance period of 41 months from July, 2001 to 3rd January, 2005, he applied rate of 1% per month, i.e., he increased the value of the property as determined in 2001 by 41%.

7. It is apparent that the DVO report is flawed and defective on several accounts, which have been noticed in the order passed by the CIT (Appeals) and the tribunal. Firstly, the only one case was taken into consideration and the method of computation adopted by the DVO



is rather far-fetched and based upon surmises and conjecture

Multiplication of 41 months at the rate of 1% per month itself is highly debatable. Difference of 38.75% is also debatable.

8. What had perturbed and created doubt was reference made by the CIT(Appeals) in his order in the case of M/s Ashoka Ice and Cold Storage to a valuation report of K.R. Sharma dated 22nd June, 1999. The said report was seized during the course of search in the case of M/s Ashoka Ice and Cold Storage on 14th February, 2005. The CIT (Appeals) in his order has mentioned that as per the seized document, value of the land as on 22nd June, 1999 was Rs.1,26,30,730/- and the cost of construction was Rs.6,28,237/-. In the remand report dated 8th August, 2007 reference is made to this document, i.e., valuation report of K.R. Sharma dated 22nd June, 1999.

9. We are rather surprised that the tribunal did not take notice of this document and the CIT (Appeals) has mentioned this document and the contention of the Revenue, but did not deal with the same and examine the same while accepting the appeal. We are also surprised that the Assessing Officer in the two assessment years did not mention and refer to this document.

10. This document, i.e., valuation report dated 22nd June, 1999 is also referred to in the order passed by the CIT (Appeals) in the case of Dinesh Kumar Agarwal and thereafter there are certain other observations about the said report dated 22nd September, 1999 to the



effect that registered value had determined the value Rs.38,72,031.57.

11. Learned counsel appearing for the Revenue has submitted that the report of K.R. Sharma dated 22nd September, 1999 is not available and cannot be traced out. The said report has not been filed on record. Learned counsel for the Revenue submits that this report is not relevant as it relates to the year 1999 whereas the transaction in question is of 2005.

12. In the absence of the said report, which has not been placed on record, it is difficult to hold that the order passed by the tribunal is perverse. On the question of DVO report relied upon by the Revenue, we have already noticed that there are contradictions and the report is not reliable. The primary reason why substantial questions of law were framed in the case of M/s Ashoka Ice and Cold Storage on 16th March, 2012 and in the case of Dinesh Kumar Agarwal on 15th November, 2011 (orders to which one of us, Sanjiv Khanna, J. was a member) was the valuation report of K.R. Sharma dated 22nd September, 1999. As the said report has not been placed on record, we do not think the order passed by the tribunal rejecting the valuation report of the DVO can be questioned and challenged as perverse. Second question is accordingly decided against the Revenue. In view of the aforesaid position, we need not examine the first question as the report of the DVO itself has



been rejected and this effects the foundation and the basis of the order passed by the Assessing Officer. We may note that Mr. Anoop Sharma has raised and questioned the re-opening, but we need not examine the said question in view of our order passed today. Appeals are accordingly dismissed.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

**AUGUST 29, 2013
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