$ ~R-97 & R-98

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

Date of decision: September 18, 2014

\+ ITA 245/2002

DEEPIKA JAIN

..... Appellant

Through Mr.Shashwat Bajpai, Advocate

versus

INCOME TAX APPELLANT TRIBUNAL

..... Respondent

Through Mr.Rohit Madan, Advocate

\+ ITA 246/2002

VIKAS EXPORTS

..... Appellant

Through Mr.Shashwat Bajpai, Advocate

versus

INCOME TAX APPELLANT TRIBUNAL

..... Respondent

Through Mr.Rohit Madan, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J (ORAL)

1. These two appeals filed by Deepika Jain and Vikas Exports relate to assessment year 1994-95 and the following substantial

question of law was admitted for hearing vide order dated 18.09.2002.

> *"Whether on the facts and in the circumstances of the case, the Income-Tax Appellate Tribunal was justified in setting aside the assessment order without assigning any reason therefor?*

2. As a very short and limited question arises for consideration, we are not referring to the factual matrix in detail but notice that the appellants assessees had jointly purchased along with Vibha Jain, property situated at XI/4834/24, Ansari Road, Daryaganj, New Delhi for consideration of Rs.16 lcas. The individual shares of Vikas Exports, Deepika Jain and Vibha Jain were 50%, 25% and 25% respectively (counsel for the parties are not able to state what had happened in the case of Vibha Jain but no appeal has been preferred in the case of Vibha Jain).

3. During the course of assessment proceedings, the Assessing Officer made reference under Section 131 of the Income Tax Act, 1961 ('Act' for short) to the Departmental Valuation Officer who submitted his report on 07.03.96. He valued the property on the date of purchase at Rs.24,94,900/-. It appears that the appellants assessees objected to the said report on the following grounds:-

(i) *Wrongly provides the extra development gain on account of availing/having the construction right of the basement.*

(ii) *Allowed less depreciation on account of future life of building by treating the life of 65 years for normal RCC building.*

(iii) *Not allowed the rebate on the difference of two side and three side property.*

(iv) *Not allowed the rebate on account of old load built up structure and new RCC constructed property.*

4. The Assessing Officer, however, did not accept the challenge and made addition of Rs.2,33,725/- and Rs.1,11,863/- in the case of Vikas Exports and Deepika Jain respectively. The reasoning given by him reads as under:-

> *"As per, the comparative valuation and the valuation report of the assessee's valuer the assessee claimed the total fair market value of the property as on 18.12.1993 comes to Rs.13,90,600/-. Out of which the assessee's share i.e. 1/4th worked out to Rs.3,47,650/- on examining the assessee valuation report dtd. 11.03.1996 as well as the reply filed by the assessee, which seems to be genuine but the objection filed by the assessee should be raised before the DVO. However, in view of the above and considering all the facts it would be reasonable to allow relief to the extent of 50% of the difference in valuation Rs. 2,23,725/- i.e. Rs. 6,23,725/- - Rs. 4,00,000/- and the remaining 50% i.e. 1,11,863/- is added to the Income of the assessee u/s 69 of the Act."*

5. The appellants assessees, however, succeeded before the

Commissioner of Income Tax (Appeals) who deleted the said addition. He observed that the Departmental Valuation Officer had gone on hypothetical basis and had made his assessment on the basis of possibility of construction of basement and thereby raised the valuation by 25%. The building was 50 years old but the Departmental Valuation Officer had not taken correct depreciation which should have been at least 50% and not 22.5%. Further, the comparable rates were taken of properties which were 3 side open properties, whereas the property in question was open on 2 sides, for which at least 5% deduction, if not more, was required to be made but this distinguishing aspect was ignored. Other aspects were also highlighted. Accordingly, the addition made was deleted.

6. On further appeal, the Tribunal by order dated 28.03.2002 held as under:-

> *"4.We have heard the rival submissions. We are of the view that the report of the Valuation Cell is binding on the AO. Only CIT(A) has the power to give relief. Considering the circumstances we set aside the order of the CIT(A) and the AO. The assessment year is sent back to the AO to be decided a fresh in accordance with law after giving adequate opportunity to the Assessee.*
>
> *For a statistical purposes the appeal is treated as allowed"*

7. The appellants assessees thereafter filed an application for rectification under Section 254(2) of the Act before the Tribunal as in the present cases reference was not made under Section 55A of the Act but under Section 131 of the Act. The valuation report, therefore, was not binding on the Assessing Officer but only a material or evidence which could be relied upon by the Assessing Officer. The application was partly allowed by the Tribunal vide order dated 07.08.2002 recording as under:-

> *"Accordingly the order of the ITAT dated 28.3.2002 setting aside the assessment and restoring it to the file of the AO will continue as it is valid. However, the comments 'that the report of the Valuation Officer is binding of the Valuation Officer. Only the CIT(A) has the power to give relief "will be treated as withdrawn and not a part of the ITAT order. The misc. application stands disposed of accordingly."*

8. When we read the quoted paragraph of order dated 28.03.2002 and the contents thereof and delete the relevant portions from the order passed in terms of order dated 07.08.2002, it is clearly noticeable that the reasoning given in the order dated 28.03.2002 was completely obliterated and the remand made by the Assessing Officer cannot be sustained. The entire premise and foundation of the order dated 28.03.2002 passed by the Tribunal was on the assumption that the Departmental Valuation Officer's

report was under Section 55A of the Act. Once the said premise and reasoning is erased and does not exist, the appeal required complete re-consideration and fresh hearing.

9. In view of the aforesaid position, we answer the question of law in favour of the appellants assessees and against the revenue but pass an order of remand to the Tribunal to decide the appeals of the revenue afresh. To cut short delay, we direct the parties will appear before the Tribunal on 17th November, 2014, when a date of hearing will be fixed. The appeals are disposed of. No costs.

SANJIV KHANNA, J

V. KAMESWAR RAO, J

SEPTEMBER 18, 2014/km