$~R-11-16

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

% **DECIDED ON: 19.02.2015**

\+ ITA 120-125/2000

COMMISSIONER OF INCOME TAX .... Appellant in all cases

versus

NISHI MEHRA ..... Respondent in ITA 120/2000

ARUN MEHRA ..... Respondent in ITA 121/2000

SUSHIL MEHRA ..... Respondent in ITA 122/2000

SUBHASH MEHRA ..... Respondent in ITA 123/2000

SURBHI MEHRA ..... Respondent in ITA 124/2000

MANJU MEHRA ..... Respondent in ITA 125/2000

Appearance: Mr. Nitin Gulati, Jr. Standing Counsel for Revenue.
Ms. Kavita Jha with Ms. Shardha, Advocates for assessee.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K. GAUBA

S.RAVINDRA BHAT, J. (OPEN COURT)

1. The sole question framed for consideration in these appeals is as follows: -

> "Whether ITAT has rightly interpreted scope, power and jurisdiction of the Assessing Officer in block assessment proceedings and the term "undisclosed income?"

2. All the appeals arise out of the common order made by the ITAT. The Revenue contends that the direction of the ITAT to delete the amounts sought to be brought to tax under Section 153A of the Income Tax Act was unjustified. The assessees had purchased eight different properties; they are related to each other. The search operations were conducted in the premises of M/s Mehra Art Palace and its partners Arun Mehra, Subhash Mehra and Sushil Mehra on 27.03.1996. Mehra Art Palace was used to export as well as sell handicrafts in the domestic market. The allegations made by the Revenue against the firm and its partners were that the high profit margins enjoyed by it were concealed and only modest amounts were disclosed in the ITRs. After issuing notice, the AO taking into consideration the materials brought on the record referred the properties for valuation to the District Valuation Officer under Section 142A of the Income Tax Act. Based upon the report received which was considered after hearing counsel for the assessee, the AO made additions. The AO concluded that a comparison between declared value and the value determined (by the DVO) disclosed serious discrepancy. He, therefore, added the difference and brought them to tax in the block assessment orders. These orders were carried in appeal to the ITAT being

IT (SS) Appeal Nos.75-80/(Del)/1997, pertaining to the block assessment years 1986-87 to 1995-96.

3. The ITAT considered the submissions and concluded that the AO could not have brought to tax the amounts that he ultimately did merely based upon the DVO's report in the absence of any material pointing to under valuation. The ITAT noted that due disclosure of the acquisition of these properties had been made in the course of regular assessments and that those valuations have been accepted by the income tax authorities and wealth tax authorities as well. The ITAT thereafter allowed the appeal on the basis of the following reasoning: -

> *"5.5 After reading these provisions we find that these provisions are not applicable on the facts of the present case as the assessee has already declared all these properties in dispute and all the assessments have already been completed by the Income Tax Department while accepting the declared rental income as well as declared wealth by these assessees in their income-tax and wealth-tax returns. Nowhere by the order of the Assessing Officer or the submission of the learned DR reveals that any fresh material was found in the course of search or there was any material with the department to suspect that the investment in these properties were suppressed. After completion of the search the matter was referred to the valuation officer just to ascertain the value of these properties. In our considered view there was no material in referring the matter to the Valuation Cell. It was just to collect the evidence which is not permissible in law. There should be any evidence or material with the Department to suspect any transaction. Only on the basis of the presumption the suspicion is not*

tenable. The Assessing Officer in these cases made enhancement on the basis of only valuation report. Except this evidence there was no material or basis with the Assessing Officer; neither any material was available on the date of search nor there was any information with the department. Therefore, in view of these facts and circumstances we are of the view that the action of the Assessing Officer was out of purview of section 158BC, under Chapter XIV-B of the Income Tax Act. Accordingly we hold that the additions made on account of revaluation of these properties were invalid. Accordingly, we quash the additions in respect of all these properties belonging to various assessees named above.

5.6 on merit also we find that these additions cannot be sustained as the assessees had already declared the value of investment by filing his/her returns of income and wealth and they were duly accepted by the Department and no proceedings were initiated against those assessments passed by the then Assessing Officer. It means that the returned incomes and returned wealth were duly accepted by the department.

5.8 The facts in the present cases are similar to the case decided by the Madhya Pradesh High Court (supra). Therefore, the action of the Assessing Officer on merit also cannot be sustained. We have also perused other case laws, as relied upon by the learned AR and by the learned DR and find that these additions cannot be sustained on merit also. As we have already stated that facts of these cases are very clear and they are not under the purview of Chapter XIV-B of the Income Tax Act, therefore, for this reason and for other reasons, as discussed above, we delete the additions in all these cases. These grounds of the assessees are allowed."

4. Counsel for the Revenue urged that the impugned order should not be sustained, and that in block assessment proceedings, the Revenue in effect exercised powers vested in it under Section 147/148. Once the block assessment based upon search operations is found to be valid and there are genuine reasons for the AO to suspect the veracity of a particular property transaction, the question of not referring it for proper valuation should not ordinarily arise. Learned counsel highlighted that requiring the Revenue to link the material found post search or during the course of the proceedings would not necessarily be fair and if the AO in the given facts of the case had strong and good reasons to suspect undervaluation, he can as well refer the properties for valuation and, depending upon the report received, adopt the same, of course, after giving due notice and hearing the submissions of the assessee.

5. Counsel for the assessee, on the other hand, urged that the question of law as framed in the context of the present case does not arise for consideration and has since been settled by various decisions. She relied upon the decisions reported as *CIT v. Abhinav Kumar Mittal,* (2013) 351 ITR 20, *CIT v. Naveen Gera,* (2010) 328 ITR 516 and *CIT v. Bajrang Lal Bansal,* (2011) 335 ITR 572. Reliance was also placed upon the Division Bench ruling in *CIT v. Lahsa Constructions (P) Ltd.* (2013) 357 ITR 671 to say that DVO's report could not be the sole basis for addition and that there has to be some further material on record. To the same effect, *CIT v. S.K.*

Construction Company, **(**2008) 167 Taxman 171 was also relied upon. Decisions of other High Courts too were relied upon for this proposition.

6. We have considered the submissions. As apparent from the factual narrative, the materials collected in the search operations impelled the AO to complete the block assessment in this case. Conspicuously, however, there was no material in the course of the search or collected during the proceedings post search, pointing to under valuation of the assessees' properties which were ultimately held to have been the subject of under valuation. Again, significantly the assessees had at relevant time when the actual purchases were effected disclosed the transactional value of those assets; the AO has then unreservedly accepted them. Wealth Tax authorities too had accepted the valuation. In almost identical circumstances, this Court in *Navin Gera (supra)* recollected the previous rulings - including the judgment of the Supreme Court in *K.P. Varghese v. ITO*, (1981) 131 ITR 597 (SC) and held as follows: -

> *"9. We do not find merit in the submission made by Ms. Suruchi Aggarwal that the concealed income was detected during the course of search or any evidence was found which would indicate such concealment. The seized material containing the sale deeds of the properties, which have been relied upon to make reference to the DVO, had already been declared to the Revenue by the respondent-assessee under the VDIS. We are also in agreement with the submission made by Mr. Piyush Kaushik that it is settled law that in the absence of any incriminating evidence that anything has been paid*

over and above than the stated amount, the primary burden of proof is on the Revenue to show that there has been an understatement or concealment of income. It is only when such burden has been discharged, would it be permissible to rely upon the valuation given by the DVO. Further, the opinion of the DVO, per se, is not an information and cannot be relied upon in the absence of other corroborative evidence (See K.P. Varghese v. ITO (1981) 131 ITR 597 (SC), Civil Appeal No.9468 of 2003 (Asstt. CIT v. Dhariya Construction Co. (2010) 328 ITR 5151 (SC) decided by the apex court on February 16, 2010, CIT v. Shakuntala Devi (2009) 316 ITR 46 (Delhi), CIT v. Ashok Khetrapal (2007) 294 ITR 143 (Delhi) and CIT v. Manoj Jain (2006) 287 ITR 285 (Delhi).”

7. Likewise in *Bajrang Lal (supra),* too it was held that *“it is settled law that the primary burden to prove understatement or concealment of income is on the Revenue and it is only when such burden is discharged it would be permissible to rely upon the valuation given by the DVO.”*

8. The decision in *Lahsa Constructions (supra),* which is of more recent vintage also rules to the same effect: -

“Whether an addition can be made solely and on the basis of the report of the Departmental Valuation Officer, is no longer res integra and is covered by the decisions of this court in CIT v. S.K. Construction Co. (2008) 167 Taxman 171, CIT v. Navin Gera (2010) 328 ITR516/(2011) 198 Taxman 93 (Delhi), CIT v. Smt. Suraj Devi, (2010) 328 ITR 604/(2011) 197 Taxman 173 (Delhi) (Mag.), and CIT v. Bajrang Lal Bansal (2011) 335 ITR 572/200 Taxman 188 (Mag.)/12 Taxmann 88 (Delhi). It has been repeatedly held that addition cannot be justified solely relying upon the valuation report. Decision of the Supreme Court in the case of K.P.

Varghese v. ITO (1981) 131 ITR 597/7 Taxman 13 has been followed.

9. In view of the above decisions, it is held that the question of law formulated has to be answered against the Revenue and in favour of the assessees.

10. The appeals have to be and are accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

R.K. GAUBA
(JUDGE)

FEBRUARY 19, 2015
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