

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

% Judgment delivered on: 23.01.2013

+ **ITA 42/2013**

COMMISSIONER OF INCOME TAX ... Appellant

versus

ABHINAV KUMAR MITTAL ... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Sanjeev Rajpal

For the Respondent : None

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE R.V.EASWAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This appeal has been filed by the revenue against the order dated 29.06.2012 passed by the Income Tax Appellate Tribunal in ITA 4460/Del/2010 pertaining to the assessment year 2006-07.

2. The facts are that the respondent/ assessee had filed a return declaring an income of ₹ 39,90,410/- on 18.07.2006. Subsequently, a search was conducted under Section 132 of the Income Tax Act, 1961



(hereinafter referred to as 'the said Act') on 26.04.2007 as also a survey operation under Section 133A in the premises of A. K. Capital Services Limited and its group companies as also in the premises of the Directors of those companies and their relatives. Thereafter, a notice under Section 153C of the said Act was issued on 07.10.2009. A response was issued by the assessee by their letter dated 13.10.2009 and the return already filed on 18.07.2006 was requested to be treated as the return in response to the said notice under Section 153C.

3. The Assessing Officer, in the course of the assessment proceedings, considered the valuation of three properties which had been purchased by the assessee in the relevant year. The three properties included two office premises at Ahmedabad and one commercial property at Kolkata. The Assessing Officer referred the question of valuation of the said properties to the District Valuation Officer (DVO). The DVO submitted his report on 14.12.2009 in respect of the Ahmedabad properties and on 24.12.2009 in respect on the Kolkata property. As per the said report, the DVO has valued the said properties as under:-



Sl. No.	Address of the property	Value determined by DVO [in ₹]	Value declared by the assessee [in ₹]	Difference [in ₹]
(i)	101, Kaivana Building Malkans, Near Polytechnic Ahmedabad	44,00,600/-	18,00,000/-	26,00,600/-
(ii)	102, Kaivana Building Malkans, Near Polytechnic Ahmedabad	41,57,300/-	17,36,000/-	24,21,300/-
(iii)	Commercial Property Chowranghee, Kolkata	43,19,800/-	32,11,680/-	11,08,120/-

4. The difference in the values, as declared by the assessee and as opined by the DVO, amounted to ₹ 50,21,900/- in respect of the properties at Ahmedabad and an amount of ₹ 9,57,038/- was the difference in respect of the Kolkata property. These additions were made by the Assessing Officer under Section 69 of the said Act.

5. Being aggrieved by the said additions, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who deleted the additions. The Income Tax Appellate Tribunal confirmed the said deletion. The issue that is sought to be raised here is that the deletion was



not in accordance with law. However, we find that the Income Tax Appellate Tribunal as well as the Commissioner of Income Tax (Appeals) had concluded, on facts, that there was no material found during the search to justify the reference to the DVO for his valuation of the said properties. The Tribunal held that there must be some material to show that the investment made by the assessee was outside the books. This, according to the Tribunal, was a condition precedent for making a reference to the DVO. The Tribunal also held that, in any event, the DVO's report was based on incomparable sales and, therefore, could not be relied upon. The Tribunal also held that the burden was on the revenue to show that the real investment in the said properties was greater than the apparent investment, as disclosed by the respondent/ assessee. The Tribunal held, on facts, that the said burden had not been discharged by the revenue. Consequently, the Tribunal held in favour of the assessee and against the revenue and found that the reference to the DVO itself was not in accordance with law.

6. We have no reason to differ from the view taken by the Tribunal, particularly, as no material was found in the search and seizure



operations, which would justify the Assessing Officer's action in referring the matter to the DVO for his opinion on valuation of the said properties. If that be the case, then the valuation arrived at by the DVO would be of no consequence. In any event, the Tribunal has also, on facts, held that the DVO's valuation was based on incomparable sales, which is not permissible in law.

7. For these reasons, no question of law arises for our consideration. The appeal is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

R.V.EASWAR, J

JANUARY 23, 2013
SR