

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'G', New Delhi**

**Before : Shri Bhavnesh Saini, Judicial Member And  
Shri L.P. Sahu, Accountant Member**

**ITA No. 2611/Del./2010  
Assessment Year: 2006-07**

Sandeep Kumar Mittal, Prop. Sri Bankey Bihari Papers, A-2/106, Milan Vihar Apartment-72, I.P. Extension, Delhi. (PAN-AADPM6092R) <b>(Appellant)</b>	vs.	D.C.I.T., Circle 39(1), New Delhi.  <b>(Respondent)</b>
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<b>Appellant by</b>	Ms. Sonia & Sh. V.R. Sachdeva, C.As.
<b>Respondent by</b>	Sh. Kaushlendra Tiwari, Sr. DR

<b>Date of Hearing</b>	18.08.2017
<b>Date of Pronouncement</b>	13.10.2017

**ORDER**

**Per L.P. Sahu, A.M.:**

This is an appeal filed by the assessee against the order of Id. CIT(A)-XXVIII, New Delhi dated 26.03.2010 for the assessment year 2006-07 on the following grounds :

*"1. That on the facts and in the circumstances of the case the Ld. CIT(Appeals)-XXVIII, Delhi was not justified in confirming the addition to the extent of Rs.14,35,103/- out of the total additions of Rs.25,59,603/- as investment in the industrial property No. A-28, Sector 8, Noida on the basis of the report of the Departmental Valuation Officer by the Ld. Deputy Commissioner of Income Tax (in short DCIT).*

*2. That on the facts and in the circumstances of the case the Ld. CIT (Appeals)-XXVIII, Delhi was not justified in restricting the disallowance to*

*the extent of Rs.48,000/- out of Rs.96,000/- made by Ld. DCIT in respect of rent of property No. A-2/106, Milan Vihar Apartments, 72, I.P. Estate, Delhi-110092.*

*3. That, on the facts and in the circumstances of the case the Ld. CIT(Appeals) was wrong in confirming the addition u/s. 40A(3) read with Rule 6DD of Rs.5,040/- made by Ld. A.O. out of amount of Rs.25,200/- spent on purchase of mobile hand set.”*

2. As emerged from the above grounds of appeal and the attending facts of the present case, we find that there are three issues to be decided in this appeal as under :

- (i). Sustenance of Rs.14,35,103/- out of addition of Rs.25,59,603/- made on account of unexplained investment in property u/s. 69B.
- (ii). Sustenance of addition of Rs.48,000/- out of Rs.96,000/- made on account of excess rent paid as claimed by assessee.
- (iii). Sustenance of addition of Rs.5040/- made u/s. 40A(3).

3. The brief facts relevant to the sustenance of first addition are that during the year under consideration, the assessee purchased an industrial property consisting of semi built-up structure having covered area of 444.60 sq. meter on plot of 800 sq. meter at A-28, Sector-8, Noida (U.P.) for a consideration of Rs.58,00,000/- plus stamp duty vide sale deed executed on 18.01.2006. On perusal of sale deed, it was noticed that the sub-Registrar valued the property at Rs.79,87,500/-. The AO observed that as per local enquiry conducted by Inspector, the value of the property shown by the

assessee was at lower side. Accordingly, reference was made to the Departmental Valuation Officer who vide report dated 23.12.2008 reported the fair market value of the property at Rs.85,66,200/- (Rs.79,83,000 for building and Rs.5,83,000 for construction of shed till 31.03.2006) as against the declared value of property of Rs.60,11,097/- (Rs.58,00,000 for building and Rs.2,11,097/- for shed). The Assessing Officer, however, after considering the objections of the assessee on the valuation of property made by DVO, determined the total value of property at Rs.85,70,700/- (considering the value of building at Rs.79,87,500/- as adopted by sub-registrar for the purpose of stamp duty and value of shed at Rs.5,83,200 as adopted by DVO) as against Rs.60,11,097/- declared by the assessee. Accordingly, the difference of Rs.25,59,603/- was added to the income of the assessee as unexplained investment u/s. 69B of the IT Act.

4. Before the Id. CIT(A), the assessee made elaborate submissions and also filed following additional evidences in the shape of (i). Comments/opinion dated 09.02.2009 of assessee's approved valuer Sh. I.S. Chauhan on the Valuation Report dated 23.12.2008 of the DVO and (ii) certified copies of 7 instances of agreement to sale/sale deeds obtained from the office of the sub-registrar during the period from 06.04.2005 to 26.10.2005. The detailed

submissions/objections of the assessee were sent to the AO for comments, on which the AO sought comments from the DVO on the registered valuer's report and objections of the assessee. The DVO after considering the objections of the assessee and registered valuer's report observed that since the assessee had issued the first cheque for purchase of property on 25.10.2005 and it was in clearance on 03.11.2005, it would be proper to adopt the value of the building at the circle rate prevailing before 05.11.2005, i.e., Rs.5800/- per sq. meter. He, however, commented that deduction of 10% taken by the registered valuer on account of locational defect in the property both in respect of land and structure is not justified keeping in view the earlier report of registered valuer M/s. M.K. Associates who determined the fair market value of the properties in that circle at Rs.7000/- per sq. meter. Based on these observations, the DVO again determined the value of property at Rs.74,46,200/- in the following manner :

Value of land	= 800 Sqm. x Rs.5800/Sqm.	Rs.46,40,000/-
Value of structure (as per DVO's earlier valuation Report dated 23.12.2008.		Rs.22,23,000/-
Addl. Construction of shed as per earlier report		Rs.5,83,200/-
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		Rs.74,46,200/-
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Thus, in the second round, the DVO determined the valuation of property at Rs.74,46,200/- as against Rs.85,66,200/- determined by him vide earlier report dated 23.12.2008 and Rs.60,11,097/- declared by the assessee. The Id.

CIT(A), after adopting the valuation of property at Rs.74,46,200/- as determined by the DVO second time, restricted the addition to Rs.14,35,103/- vide impugned order, aggrieved by which the assessee has challenged the sustenance of this addition by way of ground No. 1 of this appeal.

5. The ld. AR, reiterating the detailed submissions made before the ld. CIT(A) and the documentary evidences submitted before him, contended that the ld. CIT(A) was not justified in sustaining the impugned addition without considering the evidences so laid before him in right perspective. It is submitted that the circle rate of the area in the present fact situation has no role to play while determining the investment in property in the hands of the assessee-purchaser. Secondly, the objections of the assessee regarding deduction of 10% towards locational defects in the property and seven instances given by assessee of the same area have also not been considered by any of the authorities below. He relied on the submissions and comments made by registered valuer submitted before the ld. CIT(A) and urged for deletion of addition sustained by first appellate authority.

6. On the other hand, the ld. DR relied on the order of the first appellate authority and submitted that there is no material on record to interfere with the impugned order.

7. We have considered the rival submissions and have also gone through the entire material available on record and we find substantial force in the contentions of the assessee on this issue. It is not in dispute that as per sale deed, the impugned property was purchased by the assessee at the value lower than the stamp valuation. It is notable that none of the authorities below have any basis to discard the investment in property declared by the assessee. A perusal of the assessment order shows that while valuing the impugned property, the Assessing Officer has not even completely relied on the valuation made by the DVO, but adopted the value of shed as determined by DVO and value of building as determined by Sub-registrar for the purpose of stamp duty. The conclusions of various Revenue authorities regarding valuation of the impugned property, are swinging around the valuation on circle rate for the purpose of stamp duty as per section 50C of the Act. In fact, full value of consideration as contemplated u/s. 50C is considerable only in the hands of the seller for the purpose of computing the capital gains and not for determining the investment in property by the purchaser thereof, i.e., the

assessee here. So in our opinion, the circle rate does not have any bearing on the actual investment made by the assessee as purchaser and the valuation made on the basis of circle rate, in our considered opinion, has nothing to do with the actual investment made by the assessee. The DVO in the instant case has also made different valuations of the impugned property at different points of time and the Id. CIT(A) has also adopted the valuation of property made by DVO in the second round, without giving any cogent finding on justification thereof. The assessee had submitted certified copies of seven sale deeds of properties in the same vicinity and for the same period, which corroborate the valuation declared by the assessee for the impugned property. The Revenue has not brought any counter instance on record to disbelieve the valuation declared by assessee nor commented upon the instances laid by assessee. The assessee had also submitted the vouchers for AC sheets laid on the pillars and for some renovation to belie the value of shed determined by the authorities below, on which no comments are found on record on behalf of the Revenue. All the payments have been made by the assessee to the seller by way of account payee cheques and the department has utterly failed to bring any material on record to establish that the assessee had made investment in the property over and above declared by it in its books of accounts and the sale deed. In presence of all these facts, we find no

justification to sustain the addition of Rs. 14,35,103/- made by the Id. CIT(A). Accordingly, the first ground of appeal deserves to be allowed.

8. Adverting to the second issue, the brief facts of the case are that the assessee is proprietor of M/s. Bankey Behari Papers and debited expenses of Rs.96,000/- on rent paid for the premises A-2/106, Milan Vihar Apartments. A survey u/s. 133A was conducted on 19.09.2007 on this premises, along with other premises, as mentioned at para 7 of the assessment order, and statements of Smt. Parul Mittal, wife of assessee were recorded. She was asked to answer “whether any activity of Bankey Behari Papers or any work relating to it, are running from this premises”. In her statements, she answered this question in negative. Based on this statement the AO observed that the flat A-2/106, Milan Vihar Apartment is a residential premises and this address was mentioned in the balance sheet to make it appear as an office premises for which the assessee is paying rent. The AO, therefore, disallowed the rent expenses of Rs.96,000/- debited in the Profit and loss account, but did not mention any such disallowance in the computation of income made at the end of the assessment order. The Id. CIT(A) in appeal restricted the addition to Rs.48,000/-.

9. Heard both the parties and perused the material on record. The Id. CIT(A) appears to have considered the submissions of the assessee that during the year, the assessee had shifted his place of business from Multan Dhanda, Pahar Ganj to Milan Vihar Apartments, I.P. Extn. Delhi and this office was used for placement of orders for purchase, meetings with suppliers, arranging dispatches, delivery etc. and as such these premises were used for business purpose including interacting with certain suppliers such as Dev Priya group because they have their offices in Vikas Marg, which is near to this premises. Keeping in view the above explanation of the assessee and also the fact that the wife of assessee in her statement could not tell anything about receipt of rent from the assessee, we find no justification to interfere with the conclusion reached by the Id. CIT(A) for restricting 50% of the addition made by the AO. Accordingly, second ground of appeal deserves to be dismissed.

10. The last ground challenges the disallowance of Rs.5040/- u/s. 40A(3) representing to 20% of the payment made in cash of Rs.25,200/- for purchase of mobile set. The contention of the assessee was that the disallowance could not be made u/s. 40A(3), as this was a capital expenditure and it has not been debited to the profit and loss account. The Id. CIT(A) has rejected this plea on the premise that the provisions of section 40A(3) do not make any distinction

between the capital and revenue expenditure and the assessee failed to establish non-applicability of section 40A(3) on this disallowance. We do not find any material on record to disturb the finding reached by the Id. CIT(A) on this count. Therefore, the disallowance sustained by the Id. CIT(A) of Rs. 5040/- deserves to be confirmed. Accordingly, ground No. 3 of appeal is bound to fail.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 13.10.2017.

**Sd/-**  
**(Bhavnes Saini)**  
**Judicial member**

**Sd/-**  
**(L.P. Sahu)**  
**Accountant Member**

Dated: 13.10.2017

*\*aks\**

*Copy of order forwarded to:*

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>Commissioner</i>	(4)	<i>CIT(A)</i>
(5)	<i>Departmental Representative</i>	(6)	<i>Guard File</i>

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Delhi Benches, New Delhi*