

**In the Income-Tax Appellate Tribunal,  
Agra Bench, Agra  
Before Shri A.D. Jain, Judicial Member And  
Dr. Mitha Lal Meena, Accountant Member**

**ITA Nos. 47to52/Agra/2017  
AYs: 2008-09 to 2013-14**

(Shri) Raj Kumar Mittal, 50, Bagh Chhingamal, Firozabad <b>PAN AARPM 7385 F</b>  (Appellant)	vs.	DCIT, Central Circle, Aaykar Bhawan, Agra  (Respondent)
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<b>Appellant by</b>	Shri Anurag Sinha, Advocate
<b>Respondent by</b>	Shri Inderjeet SinPgh, CIT DR

<b>Date of Hearing</b>	11.09.2017
<b>Date of Pronouncement</b>	29.09.2017

**ORDER**

**PER DR MITHA LAL MEENA, AM:**

These appeals by assessee are directed against the order of the Commissioner of Income Tax-(Appeals)-IV, Kanpur, [herein after referred to as “the CIT(A)”], dated 05.12.2016, in respect of Assessment Years 2008-09 to 2013-14.

2. The assessee has taken up a single common issue in all the 6 assessment years under appeal, i.e., regarding confirmation of additions on the basis of the Departmental Valuer's report that "after purchase on 07.09.2007 assessee carried out alteration and addition work thoroughly of very richer specification", which according to the assessee is based on no evidence. Therefore, all these appeals are being decided by this consolidated order, for the sake of convenience.

3. Briefly stated, the facts on record are that the assessee is an individual deriving business Income from proprietorship concern-s namely, M/s Mittal Ceramics and Partnership Firms, M/s Industrial & Building Glass Industries and M/s Swastik Coal Suppliers. A search action u/s 132(1) of the I.T. Act, was conducted on 17.10.2012 in the case of the assessee and his other family members. In pursuance to the action u/s 132(1), the case of the assessee was centralized vide order of the Ld CIT-II, Agra, dated 21.03.2013. Notices were issued and the assessments were completed under section 153A of the Act, by making identical additions on the basis of the report of the Departmental Valuer ("the DVO" in short), in respect of the same property from A.Y 2008-2009 to A.Y 2012-2013.

3.1 The assessee, alongwith his other family members, had purchased a residential house bearing House No.55 at Ganesh Nagar, Firozabad, vide purchase deed dated 16.09.2007, in the previous Year 2007-08, relevant to the Assessment Year 2008-2009, for a total consideration of Rs. 62,32,500/-, including expenses for Registration. The AO had adopted the assessee's share in the property at 25% instead of 20% as shown by the assessee. It is noted by the lower authorities that the assessee had furnished Xerox copy of purchase deed Dated 17.08.2004, as per which, the property was purchased at Rs. 35 lacs, by the person who later on sold the same property to the assessee, vide registered purchase deed dated 07.09.2007, for Rs. 57,00,000/- plus stamp duty of Rs. 5,10,000/- plus Rs. 22,500/- towards incidental expenses, aggregating to Rs. 62,32,500/-(APB, Pages,44-71).During the course of assessment proceedings, the AO referred the property for purpose of valuation to the DVO, who estimated the investment at Rs. 1,57,97,400/- as against Rs.62,32,500/-shown by the appellant. The AO, accordingly, worked out the difference and made addition in respect of Assessment Years from 2007-08 to A.Y 2012-2013, based on DVO report (APB, Page 63),as follows:

A.Y.	Declared Value (assumed in case of non-declaration by assessee)	Estimated by the V.O.	Year wise Investment assumed	Differences
2008-2009	10%	Rs.15,79,740/-	6,23,250/-	9,56,490/-
2009-2010	15%	Rs.23,69,610/-	9,34,875/-	4,34,735/-
2010-2011	15%	Rs.23,69,610/-	9,34,875/-	14,34,735/-
2011-2012	20%	Rs.31,59,480/-	12,46,500/-	19,12,980/-
2012-2013	20%	Rs.31,59,480/-	12,46,500/-	19,12,980/-
2013-2014	20%	Rs.31,59,480/-	12,46,500/-	19,12,980/-
Total	100%	Rs.1,57,97,400	62,32,500/-	95,64,900/-

4. The Ld. CIT(A) confirmed the addition made by the Assessing Officer referring Section 153A of the Act, interalia, observing as under:

*“4.4 I have carefully gone through the assessment order and written submission sent by post received in this office on 02.12.2016. I do not find merit in the various contentions of the appellant. It is relevant to mention here section 153A of the Act.*

*Explanation for the removal of doubts, it is hereby declared that –*

- (i) Save as otherwise provided in this section. section 153B of the Act and section 153C of the Act, all other provisions of this Act shall apply to the assessment made under this section:*

*A plain reading of this explanation makes it clear that while making an assessment or re-assessment u/s 153A of the Act, provisions of section 142 or 142A of the Act are also applicable. Therefore, it is well within the competence of the A.O. to invoke section 142A of the Act and obtain the valuation of renovation/reconstruction of the house from District Valuation Officer. In fact, it would be unfair, if the A.O does not do so. The house property in itself is a documentary evidence and the A.O. has rightly taken it into cognizance for the assessing its value and consequently the correct total income of appellant. Therefore, I do not find force the contention of appellant given in his written submission. The decision and material facts of the cases relied upon the appellant are distinguishable on facts. Thus, the addition made by Assessing Officer is hereby confirmed for all the assessment years from AY 2008-09 to AY 2013-14.”*

5. The Ld. Counsel for the assessee submitted that in compliance, to the show cause notice dated 16.03.2015, the assessee objected to the proposed addition, vide written submission dated 20.03.2015 with the support of purchase deeds of the said house by the assessee and the immediate seller (APB 17-60); that the assessee had filed detailed written reply before Ld. CIT(A), at the stage of 1<sup>st</sup> appellate proceedings (APB 63-71); that the addition was made solely on the basis of the report of the DVO, as the assessee has purchased a residential house bearing

No. 49 & 50 at Ganesh Nagar, Firozabad, fully constructed, without any evidence on records that after purchase, any amount of investment, was made by the assessee which is not recorded, or which remained unexplained; that the Valuation Report is based on the assumption that as mentioned in para 5.4 of the Report, "A readymade building was purchased by the assessee on 07.09.2007 and further thoroughly addition and alteration and internal work were constructed during A.Y 2007-08 to 2012-13"; that the Report of the Valuation officer is not bona-fide, for the apparent reason that no evidence was available with the Valuation Officer to have come to the conclusion that after purchase during A.Y's 2007-08 to 2012-13, any alteration or internal work was got done by the assessee which is not recorded in the Accounts, or which remained unexplained; and that the DVO has mentioned in para 7.3 that "Assessee purchased readymade building having built up area 343.63 M2 two storied of very ordinary specifications. Then after purchase the assessee done additions and alteration works thoroughly and internal works (and a few works on second floor also) building of very richer specifications and of built up area approximately 66 M2". The Id Counsel for the

assessee submitted that the DVO has no evidence in support of his claim in the Valuation Report that when the residential house, which was purchased by the assessee bears 'Ordinary Construction' and after its purchase thorough addition and alteration work was done by the assessee, and even internal work of two stories and therefore, in the absence of any evidence brought on records, the Report of the Valuation Officer lacks credibility and smacks of malafide action against the assessee.

6. In support, the Id. counsel for the assessee has placed reliance on the decision in 'CIT Vs Bajrang Lal Bansal', (2011) 335 ITR 0572 (Del), where the Hon'ble Delhi High Court directed for deletion of the addition made on the basis of the report of the DVO holding that the report of the DVO alone is not an information warranting addition, in the absence of any incriminating evidence discovered during search (APB, 90-92).

6.1 The Id. Counsel for the assessee further placed reliance upon the ITAT decision in the case of 'DCIT (Central Circle), New Delhi vs. Abhinav Kumar Mittal', in ITA No. 4460/Del/2010, by order Dated 29.06.2012, wherein the ITAT, Delhi Bench has deleted the addition

as was made in the case of the assessee based solely on valuation Report,(APB-72-83). The said decision of the ITAT was carried in appeal by the Revenue before the Hon'ble Delhi High Court, where also vide order Dated 23.01.2013 reported as 'CIT Vs Abhinav Kumar Mittal' (2013) 30 taxmann.com 357 (Delhi), approved that in the absence of any material found during the course of search, no addition can be made simply on the basis of valuation Report,(APB-84-85). The Hon'ble High Court held as under:

*“Section 69, read with sections 142A and 153C of the Income tax Act, 1961 Unexplained investments Immovable properties Assessment year 200607 Assessing Officer as a result of search conducted under section 132 upon a company and its directors issued on assessee a notice under section 153C He, in course of assessment proceedings, considered valuation of three properties, which had been purchased by assessee in relevant year, and referred question of valuation of properties to DVO On receipt of valuation report, Assessing Officer took into account difference in values as declared by assessee and as determined by DVO and added same to income of assessee as unexplained investments under section 69 Appellate authorities deleted impugned addition made by Assessing Officer No material was found in search and seizure operations to justify reference to DVO DVO's valuation was based on incomparable sales Whether valuation arrived at by DVO was of no consequence Held, yes Whether, therefore, appellate authorities were justified in deleting impugned addition made by Assessing Officer Held, yes [Para 6]”*

6.2 A similar view was reiterated by the Hon'ble Delhi High Court in the case of 'CIT Vs Nishi Mehra', reported as (2015) 56 taxman.com

89 (Del), emphasizing that no addition can be made only on the basis of DVO's Report in absence of any corroborative evidence. (APB, 86-89). The Hon'ble Court deleted the addition, holding as under:

*“Section 69B, read with section 158BA, of the Income Tax Act, 1961 Undisclosed investment (Immovable properties assessment in search cases) Block period 1986-87 to 1995-96 Whether opinion of DVO, per se, is not an information and cannot be relied upon in absence of other corroborative evidence Held, no. Whether where due disclosure of acquisition of properties had been made in course of regular assessments by assessee and those valuations had been accepted by income tax authorities as well as wealth tax authorities, Assessing Officer could not tax said amounts merely based upon DVO's report in absence of any material pointing to undervaluation in block assessment proceedings Held, yes.*

6.3 The Counsel also relied on the case of 'CIT-I Vs. Berry Plastics (p.) Ltd', [2013] 35 Taxmann.com 296 (APB,93) wherein it was held that-

*“Section 69B, read with section 142A of the Income-tax Act, 1961 - Undisclosed investments [Investment in land and buildings] - Assessment year 2006-07 – During relevant year, assessee made some investment in land and building - Assessing Officer referred matter to DVO who valued land and building at a higher amount - In view of difference between disclosed investment of assessee in purchase of property and DVO's estimation of its fair market value, Assessing Officer added certain amount to taxable income of assessee under section 69B - Commissioner (Appeals) deleted addition holding that valuation report of DVO could not be a conclusive evidence and there had to be some clinching evidence in form of proof to show that additional consideration had passed*

*between buyer and seller - Tribunal confirmed order of Commissioner (Appeals) -Whether DVO's report may be a useful tool in hands of Assessing Officer, nevertheless it is an estimation and without there being anything more, cannot form basis for addition under section 69B - Held, yes - Whether, therefore, in absence of any other material on record, impugned addition was correctly deleted - Held, yes [Para 9] [In favour of assessee]"*

7. Per contra, the Id. DR supported the impugned order.
8. We have heard the rival contentions and have perused the material on record. The AO alleged that the assessee had submitted registered deed of the property, but he did not furnish the required bills, vouchers and relevant document, i.e., valuation report and, therefore, the AO referred the property in question to the Departmental Valuation Officer u/s 142A to ascertain the alleged unexplained investment of the assessee in the said property. Thus, the addition in dispute on account of alleged unexplained investment in the aforesaid property was made by the Assessing Officer on the basis of the valuation report of the DVO, obtained by way of reference u/s 142A of the Act.
9. It is not disputed that a readymade building was purchased by the assessee; that no evidence was found during the course of search action conducted at the residential premises of the assessee

and other family members warranting such assessment proceedings in the case of assessee; that the assessee had purchased a constructed residential house, as detailed in the purchase deed; that no construction was carried out after the purchase of the property on 16.09.2007; and that no evidence that after the purchase of the property on 16.09.2007 either any investment was made by the assessee or investment is found recorded in its books of accounts, either during the course of search of the assessee's residence and business premises, or thereafter during the course of assessment proceedings or even in the DVO's enquiry proceedings.

9.1 In the case of 'CIT Vs Abhinav Kumar Mittal' (2013) 30 taxmann.com 357 (Delhi)(Supra), it was held that

*“.....referred question of valuation of properties to DVO. On receipt of valuation report, Assessing Officer took into account difference in values as declared by assessee and as determined by DVO and added same to income of assessee as unexplained investments under section 69. The Appellate authorities deleted impugned addition made by Assessing Officer as no material was found in search and seizure operations to justify reference to DVO and the DVO's valuation was based on incomparable sales. Whether valuation arrived at by DVO was of no consequence Held, yes. Whether, therefore, appellate authorities were justified in deleting impugned addition made by Assessing Officer Held, yes [Para 6]”*

10. Similarly, in the case of 'CIT Vs Nishi Mehra', reported as (2015) 56 taxman.com 89 (Del)(Supra) it was held that no addition can be made merely only on the basis of DVO's Report in the absence of any corroborative evidence. (APB, 86-89). No decision to the contrary has been cited before us.

11. In view of the above, we hold that the AO could not tax the said amounts merely based upon the DVO's report in the absence of any corroborative material to point out under-valuation of the property in question. Therefore, we accept the grievance of the assessee as justified. Accordingly, the impugned orders of the Id CIT(A) are reversed and the additions are hereby deleted, for all the Assessment Years, i.e., from A.Y. 2007-08 to 2013-14. Nothing, else remains to be adjudicated.

12. In the result, all the appeals of the assessee are allowed.

**Order pronounced, in the open Court on 29/09/2017.**

**Sd/-  
(A.D. Jain)  
Judicial member**

**Sd/-  
(Dr. Mitha Lal Meena)  
Accountant Member**

Dated:..29.09.2017  
Aks/-DOC

*Copy of order forwarded to:*

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|-----|------------------------------------|-----|-----------------------|
| (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  
Agra Bench, Agra*