

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B', NEW DELHI**

**BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 1967/Del/2009
Assessment Year: 2005-06

DCIT, Faridabad	Vs.	M/s. Eco Auto Components Ltd., Plot No. 20, Sector-6, Faridabad
PAN : AAACE3659C		
(Appellant)		(Respondent)

Appellant by	Ms. Ashima Neb, Sr. DR
Respondent by	Ms. Rano Jain, Adv. & Sh. Ashish Goel, CA

Date of hearing	09.01.2018
Date of pronouncement	18.01.2018

ORDER

PER O.P. KANT, A.M.:

The present appeal has been recalled by the Tribunal vide order dated 28/12/2016 passed in Miscellaneous Application No. 69/Del/2016, which was filed by the Revenue seeking recall of ground No. 1 of the appeal, which was not adjudicated by the Tribunal. The relevant finding of the Tribunal is reproduced as under:

"4. Perusal of the findings returned by the Bench, as reproduced above, when examined in the light of ground no. 1 raised by the revenue in its appeal, it is apparently clear that due to mistake apparent on record, the issue as to whether reference was made u/s 142A of the Act and no u/s 55A of the Act remained unadjudicated upon and as such, is liable to be rectified. So, we are of the considered view that the impugned order is liable to be recalled to be listed for fresh hearing after

providing an opportunity of being heard to the parties to the appeal. Consequently, the misc. application stands disposed off. Registry is directed to fix the appeal.”

2. Thus, in the present appeal only ground for adjudication before us is ground No. 1, which reads as under:

“1. On the facts and in the circumstances of the case, the findings recorded by the Ld. CIT(A) in Para 7 & 8 of his order are perverse and contrary to the facts available on record, in as much as the Assessing Officer had made reference to Valuation Officer for determination of investment in immovable property u/s 142A of the Income Tax Act, 1961 vide letter F.No. Addl.CIT/R-I/FBD/Valuation/07-08/1478 dated 04.12.2007 (copy of reference enclosed as Annexure-A) and not u/s 55A of the Income Tax Act, 1961, which is an obfuscation of the true facts.”

3. Supporting the ground, the Ld. (DR) submitted that valuation of the property was referred under section 142A of the Income-tax Act, 1961 (in short ~~the Act~~) and not under section 55A of the Act as noted by the Ld. CIT(A). She referred to page No.42 of the paper book filed by the assessee consisting of pages 1 to 195, which is a copy of the valuation report given by the District Valuation Officer, Income Tax Department, Chandigarh and submitted that in point No.1.4, the section under which valuation report required is clearly mentioned as section 142A of the Act.

4. Ld. counsel, on the other hand, argued that in terms of section 142A reference could be made in the context of section 69, 69A and 69B of the Act, which deals with the unaccounted assets not recorded in books of accounts, un-recorded investments and investment recorded at lower value respectively and the section does not provide for referring to the DVO for the purpose of computation of capital gain. In support of the contention that no reference under section 142A of the Act could be made in such circumstances, the Ld. counsel relied on the decision of

the Tribunal, Jodhpur bench in the case of Smt. Shakuntala Devi Gehlot Vs. ITO (2008) 304 ITR 354. The Ld. counsel also relied on following two decisions:

“10. The Bombay High Court in the case of Rallis India Ltd. Vs. CIT [2015], 374 ITR (Bom.) 462, has held as under:

“14 Thus, the CIT(A) can make further enquiries into FMV as on 1st April, 1981 in view of the Assessing Officer failing to make such enquiry under Section 55A of the Act while passing the Assessment Order. The only other provision to make a reference to a Valuation Officer is Section 142A of the Act introduced by Finance (No. 2) Act 2004 with retrospective effect 15th November, 1972. Section 142A of the Act deals with determination of the FMV of investments referred to in Section 69 or 69B of the Act or to the value of bullion, jewellery or other valuable articles referred to Section 69A or 69B of the Act or in respect of FMV of any property referred to in Section 56(2) of the Act. In this case, the reference which had to be made by Assessing Officer to the DVO is under Chapter IV - part (E) of the Act while the reference which is to be made under Section 142A of the Act is in respect of Chapter IV - part (F) and Chapter VI of the Act. Therefore, Section 142A of the Act would have no application to the present facts.”

11. The Ahmedabad Bench of the Tribunal in the case of ITO v. Chandrakant R. Patel & Ors [2011] 11 ITR 317 (Ahd.), which reads as under:

“14. In this regard, we have also examined the provisions of section 142A of the I.T. Act titled as "Estimate by Valuation Officer in certain cases". This section prescribes that for the purpose for making an assessment where an Estimate of the value of any investment referred to in sections 69, 69B, 69A is required to be made the AO may require the Valuation Officer to make an estimate of such value and report the same to AO. Therefore, the area of operation and the scope of section 142A is limited in its span i.e. only to determine the value of investment in respect of certain assets, such as, bullion, jewellery, valuable articles etc. In this section as well there is no power vest with AO to seek the help of Valuation Officer in respect of determination of capital gain prescribed under section 48 of the Act.

14.1 It is very interesting, as also important, to note that with effect from 1-7-2010 a clause has been inserted by the Finance Act, 2010 which says, quote, "of fair market value of any property referred to in sub-section (2) of section 56", unquote. By the insertion of this clause, the scope of valuation under section 142A has been enlarged by including the property referred in section 56(2) to determine its fair market value

section 56(2) is in respect of certain assets, the income from which is subject to tax under section 56 i.e. under the head "Income from other sources". The fair market value of the properties which generate dividend income, interest income, hiring income, etc. can now be determined by the DVO. To remove any doubt vide an Explanation annexed to section 56(2), "fair market value" is defined that the value is to be determined in respect of the properties in accordance with the method as prescribed under Rule 11U and 11UA of the I.T. Rules, 1962. Rule 11UA is in respect of determination of fair market value for the purposes of section 56 of the property, such as, valuation of jewellery, valuation of archaeological collection, drawings, paintings, valuation of shares and securities, fair market value of unquoted equity shares and securities etc. Therefore, the area operation of section 142A is limited in its range and confined to the provisions of section 69, etc. and section 56(2) of I.T. Act. A conclusion therefore can be drawn and it is significant to mention that while inserting a clause of valuation for the properties prescribed under section 56(2), the legislature had in its wisdom thought it proper not to include any other kind of property within the scope of valuation as per section 142A of the Act. Hence, again a conclusion can be drawn that even the provisions of section 142A of the Act, do not subscribe to substitute the full value of consideration for the purpose of capital gain under section 48 of the Act."

5. We have heard the rival submission and perused the relevant material on record. In the ground before us, the only issue is related to verification of the fact, whether the reference to the Valuation Officer was made under section 142A or under section 55A of the Act. The learned CIT-(A) in para-7 of the impugned order dated 09/03/2009 given the finding that the reference under section 55A of the Act was totally incorrect on the facts and circumstances of the case. The relevant finding of the learned CIT-(A) is reproduced as under:

".....Therefore, there is no necessity to refer these assets to the Valuation Cell of the Department, and rather the A.O. has also not given any reasons for the said reference under Clause (b)(ii) of section 55A in his order, that it was necessary to do so. The nature of the asset is land and building whose book value have been taken over the years. Therefore clause –(b)(ii) is also not applicable. Hence, the reference u/s 55A in totality was incorrect on the facts and circumstances of the case, after analyzing the primary requirements as laid down

in clauses (a) and (b) of Section 55A which are inapplicable in the instant case.”

6. The Revenue in its grounds has asserted that reference to the Valuation Officer was made u/s 142A of the Act as noted in the letter of reference dated 04.12.2007 sent by the Assessing Officer to the Valuation Officer. On perusal of page 42 of the paper book of the assessee, which is a copy of the valuation report of the valuation officer, it is evident that valuation was referred under section 142A of the Act and not under section 55A of the Act. Thus, we hold accordingly.

7. As far as the other arguments of the Ld. counsel of the assessee that reference of valuation for the purpose of capital gain was not tenable under section 142A of the Act are concerned, we are of the opinion that issue before us in ground No. 1 of the appeal, is limited to the extent of verification of the fact, whether the reference was under section 142A or under section 55A of the Act and, therefore, we are not adjudicating on arguments forwarded by the Ld. counsel of the assessee at this stage. Accordingly, the ground No. 1 of the appeal is allowed.

8. In the result, appeal of the Revenue is allowed.

The decision is pronounced in the open court on 18th Jan., 2018.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 18th January, 2018.

RK/-(D.T.D)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi