

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR
श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA No. 01/JP/2017
निर्धारण वर्ष / Assessment Year : 2008-09

Tirupati Cottage, N.H. 8, village Sangtera, Kotputli- 303108	बनाम Vs.	Income Tax Officer, Ward-Behror, Behror- 301701, distt- Alwar.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAFT 9922 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No. 179/JP/2017
निर्धारण वर्ष / Assessment Year : 2008-09

Income Tax Officer, Ward-Behror, Behror- 301701, distt- Alwar.	बनाम Vs.	M/s Tirupati Cottage, N.H. 8, village Sangtera, Kotputli- 303108
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAFT 9922 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No. 495/JP/2017
निर्धारण वर्ष / Assessment Year : 2009-10

Tirupati Cottage, N.H. 8, village Sangtera, Kotputli- 303108	बनाम Vs.	Income Tax Officer, Ward-Behror, Behror- 301701, distt- Alwar.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAFT 9922 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No. 614/JP/2017
निर्धारण वर्ष / Assessment Year : 2009-10

Income Tax Officer, Ward-Behror, Behror- 301701, distt- Alwar.	बनाम Vs.	M/s Tirupati Cottage, N.H. 8, village Sangtera, Kotputli- 303108
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAFT 9922 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No. 496/JP/2017
निर्धारण वर्ष/ Assessment Year : 2010-11

Tirupati Cottage, N.H. 8, village Sangtera, Kotputli- 303108	बनाम Vs.	Income Tax Officer, Ward-Behror, Behror- 301701, distt- Alwar.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAFT 9922 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No. 615/JP/2017
निर्धारण वर्ष/ Assessment Year : 2010-11

Income Tax Officer, Ward-Behror, Behror- 301701, distt- Alwar.	बनाम Vs.	M/s Tirupati Cottage, N.H. 8, village Sangtera, Kotputli- 303108
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAFT 9922 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No. 497/JP/2017
निर्धारण वर्ष/ Assessment Year : 2011-12

Tirupati Cottage, N.H. 8, village Sangtera, Kotputli- 303108	बनाम Vs.	Income Tax Officer, Ward-Behror, Behror- 301701, distt- Alwar.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAFT 9922 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No. 616/JP/2017
निर्धारण वर्ष/ Assessment Year : 2011-12

Income Tax Officer, Ward-Behror, Behror- 301701, distt- Alwar.	बनाम Vs.	M/s Tirupati Cottage, N.H. 8, village Sangtera, Kotputli- 303108
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAFT 9922 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No. 711/JP/2017
निर्धारण वर्ष/ Assessment Year : 2012-13

Tirupati Cottage, N.H. 8, village Sangtera, Kotputli- 303108	बनाम Vs.	Income Tax Officer, Ward-Behror, Behror- 301701, distt- Alwar.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAFT 9922 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mahendra Gargieya(Adv)&
Shri Hemang Gargieya (Adv)
राजस्व की ओर से / Revenue by : Shri Rajendra Jha (JCIT)

सुनवाई की तारीख / Date of Hearing : 07/08/2018
उदघोषणा की तारीख / Date of Pronouncement : 21/08/2018

आदेश / ORDER

PER: BENCH

These are four set of cross appeals by the assessee and the revenue for the A.Ys. 2008-09 to 2011-12 and an appeal by the assessee for the A.Y. 2012-13 directed against the respective orders of the Id. CIT(A), Alwar dated 18/12/2016, 11/05/2017 and 23/08/2017 respectively.

2. All the appeals are being hearing together and for the sake of convenience, a common order is being passed.
3. Grounds raised by the assessee as well as the revenue in cross appeals for the A.Y. 2008-09 to 2011-12 are common, thus, the grounds raised in the cross appeals for the A.Y. 2009-10 are reproduced as under:

Ground of assessee's appeal:

- "1. The A.O. has erred in initiating the reassessment proceedings U/s 147 & 148 and CIT(A) has erred in confirming the action of A.O.
2. The A.O. has erred in making addition of Rs. 1,68,10,437/- on account of difference in valuation of investment and CIT(A) has erred in restricting the said addition up to Rs. 10,00,000/- out of total addition of Rs. 1,68,10,437/-."

Ground of revenue's appeal:

- "1. That the Id. CIT(A), Alwar has erred on the facts and circumstances of the case in restricting the addition of Rs.

1,68,10,437/- to Rs. 10,00,000/- which was made by the A.O. on account of undisclosed investment in construction of hotel on the basis of DVO's report."

4. The assessee is a firm deriving income from hotel and restaurants in the name and style of M/s Tirupati Cottage. In the reassessment completed by the Assessing Officer U/s 143(3) read with Section 147 of the Income Tax Act, 1961 (in short the Act), the Assessing Officer made addition on account of cost of construction/investment on the basis of valuation determined by the DVO estimating the cost of construction of hotel building.

5. The assessee challenged the addition made by the Assessing Officer before the Id. CIT(A) and also challenged the validity of reopening of the assessment. The Id. CIT(A) while passing the impugned orders has accepted the claim of the assessee that estimation cost of construction should be determined by applying State PWD rates as against CPWD rates applied by the DVO. Thus, the Id CIT(A) has granted substantial relief to the assessee and restricted the addition made by the Assessing Officer. Thus, both the assessee and the revenue have challenged the orders of the Id. CIT(A) on the issue of cost of construction determined by the DVO which is restricted by the Id. CIT(A) by applying the PWD rates. The assessee has also raised ground of validity of reopening in the A.Y. 2009-10 to 2011-12 but not raised such issue in the A.Y. 2008-09.

6. We have heard the Id AR as well as the DR and considered the relevant material on record. The Id AR of the assessee has relied upon the various decisions on the point of applicability of State PWD rates for determination of cost of construction in respect of a building falling in the jurisdiction of State PWD. He has relied upon the following decisions:

- (i) Gopal Kumar Deewan Vs. ITO, ITA No. 498& 499, 617 & 618, 02, 178/JP/2017.
- (ii) CIT Vs. Sunita Mansingha (2017) 295 CTR 0590 (SC)
- (iii) M/s Ganpati Plaza Vs. ITO in ITA No. 466 & 467/JP/2016 vide order dated 16/2/2018.

7. On the other hand, the Id DR has submitted that the DVO has determined the cost of construction by considering all the relevant facts as well as evidence. Further the assessee has not maintained separate books of account for the cost of construction of the hotel building in question and therefore, the DVO has estimated the cost of construction based on CPWD rates which is justified. He has relied upon the order of the Assessing Officer.

8. Having considered the rival submissions as well as the relevant material on the record at the outset we note that the assessee has declared cost of investment for the A.Y. 2008-09 to 2011-12, which is about 1.11 crores to 1.75 crores year wise. This cost of investment declared by the assessee was not accepted by the Assessing Officer for

want of necessary record and evidence and further the assessee has not maintained proper accounts of expenditure. Accordingly, the Assessing Officer referred the issue of estimation of cost of construction to the DVO. After receiving the valuation determined by the DVO in its report, the Assessing Officer made addition of differential amount on account of cost of construction. The said addition made by the Assessing Officer was challenged before the Id. CIT(A) by the assessee and contended that the DVO while determining the cost of construction has applied CPWD rates instead of State PWD rates. The Id. CIT(A) has accepted the contention of the assessee that the CPWD rates are applicable in respect of building in question as against CPWD rates applied by the DVO. The year wise cost of investment declared by the assessee, the cost of construction determined by the DVO and addition made by the Assessing Officer which was restricted by the Id. CIT(A) are as under:

A.Y.	Cost of investment declared by assessee	Estimated by DVO	Difference	Addition sustained by CIT(A)
2008-09	1,11,61,321/-	2,28,65,791/-	1,17,04,470/-	7,00,000/-
2009-10	1,60,30,344/-	3,28,40,781/-	1,68,10,437/-	10,00,000/-
2010-11	1,75,11,795/-	3,58,75,775/-	1,83,63,980/-	11,00,000/-
2011-12	1,08,43,040/-	2,22,13,740/-	1,13,70,700/-	6,00,000/-

Thus, the Id. CIT(A) has granted substantial relief on this issue and held that State PWD rates are application for determination of cost of construction as against CPWD rates applied by the DVO. We further note that an identical issue has been considered by the Coordinate Bench of

this Tribunal in the case of Gopal Kumar Deewan Vs. ITO (supra). In para 12 of the order, the Coordinate Bench has held as under:

"12. We have heard the rival contentions of both the parties and perused the material available on the record. We have also considered the case laws relied upon by the Id AR. After hearing both the sides we find that the Id. CIT(A) has rightly held that the State PWD rates have to be applied to the plinth area of construction of each floor. The Id. CIT(A) has also held that the assessee has shown cost of construction in the books of account, which is almost adhere to the valuation done as per the State PWD rates. However, he has sustained the ad hoc disallowance of Rs. 4.00 lacs for the A.Y. 2011-12 and 2013-14 and Rs. 8.00 lacs for the A.Y. 2012-13 for the reason that complete set of bills and vouchers for the material purchased for construction of hotel were not available. In our view, once he has given finding that the State PWD rate has to be applied to estimate the cost of construction and he has also given a finding that cost of construction in the books of account almost adhere to the valuation done as per State PWD rate then there is no justification in sustaining such ad hoc disallowances. Once the estimate has been made on the State PWD rates then in absence of complete set of bills and vouchers for the material, no such disallowance is justified. Hence, we direct to delete the same. In the result, ground No. 2 of all these three appeals are allowed and ground raised by the revenue in these years is dismissed."

We note that the Coordinate Bench of this Tribunal while deciding this issue has followed the decision of Hon'ble Supreme Court in the case of CIT Vs. Sunita Mansingha (supra) as well as various other decisions including the decision of Hon'ble Jurisdictional High Court in the case of CIT Vs. Hotel Joshi (242 ITR 478). In absence of any contrary precedent brought to our notice, we follow the earlier decision of this Tribunal and

hold that the Id. CIT(A) has rightly applied State PWD rates for estimation of cost of construction of hotel building, which is situated in the jurisdiction of the State PWD. Accordingly, to that extent, the order of the Id. CIT(A) is upheld. However, the Id. CIT(A) has sustained the additions of lump sum amount varying from Rs. 6.00 lacs to Rs. 11.00 lacs for each year on ad hoc basis. It is pertinent to note that once the cost of construction is estimated on the basis of valuation determined by applying PWD rates then making an ad hoc addition for want of bills and vouchers is not justified and called for. The assessee has also filed cross appeals and raised this issue regarding the addition sustained by the Id. CIT(A). Though the cost of construction has to be determined by applying the State PWD rates, however, it is not clear from the valuation report of the assessee that the same is prepared by applying the State PWD rates. Therefore, only for limited purpose and determining the cost of construction by applying State PWD rates and then compared the same with the cost of construction claimed by the assessee, we remit this issue to the record of the Assessing Officer. In case where the cost of construction arrived by applying the State PWD rates is more than the cost of construction claimed by the assessee, an addition can be made. Hence the Assessing Officer has to do the necessary exercise after giving an opportunity of hearing to the assessee.

9. As regards the assessee's ground challenging the reopening of the assessment, we note that the Coordinate Bench of this Tribunal in the case of Gopal Kumar Deewan Vs. ITO (supra) has also considered this issue in para 8 as under:

"8. We have heard both the sides on this issue and perused the material available on the record. We have also considered the case laws relied upon by the ld. AR of the assessee. In this case, the assessee was engaged in the business of running hotel and restaurants. During the assessment proceedings, for the A.Y. 2012-13, the Assessing Officer observed that the assessee has shown amount of Rs. 1,66,58,798/- under the head new building work in progress in the schedule of fixed asset in its balance sheet. The Assessing Officer asked to furnish the head wise details of cost of construction incurred on the hotel building alongwith supporting bills and vouchers failing which the Assessing Officer made a reference U/s 142A of the Act to the DVO of I.T. department, Jaipur on 17/11/2014 and the DVO report was received back in his office on 03/3/2015. The DVO has estimated the cost of investment as under:

F.Y.	Cost of investment declared by the assessee	Estimated by the DVO	Difference
2010-11	3785819	7711916	3926097
2011-12	11865730	24171129	12305399
2012-13	5351136	14974659	9623523
2013-14	5044489	10276302	5231613
2014-15	5584435	11375794	5791359

The Assessing Officer after giving opportunity to the assessee made addition of Rs. 1,23,05,399/- and finalized the order U/s 143(3) of the Act on 25/3/2015. Thereafter he has issued notices U/s 148 of the Act for the A.Y. 2011-12 and 2013-14 on 09/6/2015. Thus, the Assessing Officer has applied his mind on the valuation report and has made basis for making assessment for the A.Y. 2012-13. Thereafter, the reasons has been recorded and issued notice U/s 148 of the Act. In such a situation, the

ratio laid down in the case laws relied upon by the Id AR does not apply to the assessee's case as in these cases the reopening was based only on the basis of valuation report and nothing else. Hence, this ground of assessee's appeal for the A.Y. 2011-12 and 2013-14 has no merit and the same stand dismissed."

The facts and circumstances in the case of Gopal Kumar Deewan Vs. Ito (supra) as well as in the case of assessee are identical on the basis of which the Assessing Officer has reopened the assessment for the A.Ys. 2009-10 to 2011-12. We further note that the reopening is not merely based on the report of the DVO but prior to the notice issued U/s 148 of the Act, the assessment for the A.Y. 2012-13 was passed U/s 143(3) wherein the Assessing Officer conducted inquiry on the issue. Therefore, the assessment for the A.Y. 2009-10 to 2011-12 were reopened on the basis of the findings of the Assessing Officer in the assessment for the A.Y. 2012-13. Accordingly, following the earlier order of this Tribunal, we do not find any merit or substance in the ground raised by the assessee against the reopening of the assessment. Hence, the cross appeals filed by the assessee as well as the revenue for the A.Y. 2008-09 to 2011-12 are partly allowed.

10. In the appeal for the A.Y. 2012-13, the assessee has raised following grounds of appeal:

- "1. *The A.O. has erred in making trading addition of Rs. 1,00,000/- and the CIT(A) has erred in confirming the same.*

2. *The A.O. has erred in making addition of Rs. 22,36,684/- on account of difference in valuation of investment in building and CIT(A) has erred in restricting the said addition up to Rs. 1,50,000/- out of total addition of Rs. 22,36,684/-."*

11. At the time of hearing, the Id AR of the assessee had stated at bar that the assessee does not press ground No. 1 of the appeal, the same may be dismissed as not pressed.

12. The Id. DR has raised no objection if the ground No. 1 of the assessee's appeal is dismissed as not pressed. Accordingly, ground No. 1 of the assessee's appeal is dismissed being not pressed.

13. Ground No. 2 of the assessee's appeal is regarding the addition made by the Assessing Officer on account of difference in the valuation of investment in building based on DVO's report which was restricted by the Id. CIT(A) to Rs. 1.50 lacs. The revenue has not challenged the order of Id. CIT(A) because of low tax effect and the assessee has challenged the ad hoc disallowance sustained by the Id. CIT(A). In view of our finding on this issue for the A.Y. 2008-09 to 2011-12, this ground of assessee's appeal stands allowed for statistical purposes.

14. In the result, appeals of the assessee for the A.Y. 2008-09 to 2012-13 are partly allowed and the appeals of the revenue for the A.Y. 2008-09 to 2011-12 are also partly allowed.

Order pronounced in the open court on 21/08/2018.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 21st August, 2018.

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Tirupati Cottage, Kotputli.
2. प्रत्यर्थी / The Respondent- The ITO, Ward-Behror, Behror.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 01,495,496, 497 & 711/JP/2017 & 179, 614, 615 & 616/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar