

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “B” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and  
**Shri, M. Balaganesh, Accountant Member**

**ITA No.592/Kol/2017**  
Assessment Year :2009-10

M/s GDM Associates Sonamui, Ramnagar,Kalindi, Dist. Purba Medinipur-721461 <b>[PAN No.AAIFG 9805 F]</b>	<b>V/s.</b>	Income Tax Officer Ward-27(2), Haldia Talpukur, hajanchak, Purba Midnapore- 721461
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Soumitra Choudhury, Advocate
प्रत्यर्थी की ओर से/By Respondent	ShriRobin Choudhury, Addl. CIT-SR-DR
सुनवाई की तारीख/Date of Hearing	05-12-2018
घोषणा की तारीख/Date of Pronouncement	26-12-2018

**आदेश /O R D E R**

**PER M.Balaganesh Accountant Member:-**

This assessee's appeal for assessment year 2009-10 arises against the Commissioner of Income Tax (Appeals)-7, Kolkata's order dated 06.05.2016 passed in case No.601/CIT(A)-7/Wd.27(2)/14-15 involving proceedings u/s 143(3)/r.w.s. 147 of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The assessee pleads two substantive grounds in its instant appeal. Its former grievance challenges validity of the re-opening / re-assessment as upheld in the course of lower appellate proceedings. It thereafter avers that

the Assessing Officer as well as CIT(A) have erred in law as well as on facts in making estimated cost of construction addition of ₹63,08,735/- as unexplained investment.

3. We come to former legal issue first of all. There is no dispute about the Assessing Officer having completed the regular assessment in issue on 03.12.2011. Relevant assessment order to this effect reads that the assessee had filed all relevant bills, vouchers and documents for verification of its expenditures items. The Assessing Officer thereafter formed reasons to believe that assessee's income liable to be taxed had escaped assessment. There is no dispute that it was the DVO's report alleging some difference in cost of construction which set the impugned re-opening in motion. The Assessing Officer thereafter issued sec. 148 notice dated 29.08.2012 and framed the impugned re-assessment on 29.03.2014 adding the alleged difference in cost of construction amounting to ₹71,22,750/- as upheld in the course of lower appellate proceedings.

4. Learned counsel representing assessee vehemently contends during the course of hearing that the Assessing Officer has erred in law as well as on facts in re-opening the above regular assessment based on DVO's opinion. The Revenue's case on the other hand is that the said DVO's report had not come during the course of assessment and therefore, the Assessing Officer had rightly initiated re-opening proceedings as per law. We notice in this backdrop of these pleadings that hon'ble apex court's decision in *ACIT vs. Dhariya Construction Co.* (2011) 197 Taxman 202 (SC) has settled the law that a DVO's report per se is not an information for the purpose of re-opening an assessment u/s 147 r.w.s. 148 of the Act. Their lordships concluded that an Assessing Officer has to necessarily apply his mind on such an information collected finally culminating in the belief of escapement of taxable income from being assessed. No such material emerges from the case file indicating the Assessing Officer to have formed his belief on the DVO's report in issue.

We therefore draw strong support from hon'ble apex court's above stated decision to hold that the impugned re-opening in the instant case is not sustainable in the eyes of law. The same is accordingly quashed. The assessee succeeds in its former legal ground. Its latter grievance on merit is rendered infructuous.

5. This assessee's appeal is allowed.

Order pronounced in the open court 26/12/2018

Sd/-

(न्यायिक सदस्य)

(S.S.Godara)

(Judicial Member)

Kolkata,

\*Dkp, Sr.P.S

दिनांक:- 26/12/2018 कोलकाता ।

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-M/s GDM Associates, Sonamui, Ramnagar, Kalindi, Dist. Purba Medinipur-721461
2. प्रत्यर्थी/Respondent-ITO Ward-27(2) Haldia, Talpukur, Khajanchak, Purba Midnapore 721602
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता ।