

*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "SMC" KOLKATA*

Before **Shri S.S, Godara, Judicial Member**

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| <b>ITA No.1424/Kol/2018</b><br>Assessment Year:2004-05 |
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| Smt. Krishna Roy<br>Vivekananda Pally, Pirpukur<br>(West), Burdwan-713101<br>[PAN No.AGMPR 9245 A] | <u>बनाम /</u><br>V/s. | ACIT, Circle-2,<br>Aaykar Bhawan,<br>Court Compound,<br>Burdwan-713101 |
| अपीलार्थी /Appellant   | ..                    | प्रत्यर्थी /Respondent   |

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| अपीलार्थी की ओर से/By Appellant      | Shri J.M. Thard, AR               |
| प्रत्यर्थी की ओर से/By Respondent    | Shri Baijuath Singh, Addl. CIT-DR |
| सुनवाई की तारीख/Date of Hearing      | 02-01-2019                        |
| घोषणा की तारीख/Date of Pronouncement | 23-01-2019                        |

**आदेश /O R D E R**

This assessee's appeal for assessment year 2004-05, arises against the Commissioner of Income-tax (Appeals)-Burdwan's order dated 25.04.2018 passed in case No.98/CIT(A)/Asl/ACIT/Cir:2/Bwn/2010-11 involving proceedings u/s. 143(3) r.w.s 254 of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The assessee's sole substantive ground challenges the CIT(A)'s lower appellate order affirming the Assessing Officer's action making unexplained investment addition of ₹7.31 lac in construction of a building at Burdwan as follows:-

“3. *निणय/Decision:*

*All the grounds pertain to the effective issue of addition of an amount of Rs.7,31,000 on account of unexplained investment in a property constructed by the app. This is the 2<sup>nd</sup> round of litigation against the order passed by the AO pursuant to the direction of the Hon'ble ITAT to adjudicate the matter afresh in the first round. During the original assessment proceeding, the AO observed hat the appellant has constructed a new property. He therefore, referred to the DVO for valuation of the property under section 142A of the IT Act. The DVO determined the value of the property t rupees for 4.81 lakhs as against the investment declared by the pp at*

R.37.50 lakhs. In turn, the appellant produced a certificate from a registered valuer who determined the value of the property at R.37.5 lakhs. During the current assessment proceedings, the AO provided opportunities to the appellant and from the records it is observed that the assessee appeared before the AO on 13<sup>th</sup> of September 2010. But as the appellant failed to furnish any new evidence to establish her claim that investment in the property did not exceed Rs.37,50,000 as furnished by the appellant during the original assessment proceedings., the AO proceeded to add back the differential between the sum declared as investment and the value determined by the DVO as unexplained investment to the total income of the assessee. During the appellate proceedings, the appellant reiterated its submissions made before the AO and primarily contended that the DVO adopted the floor area at 128.80 m<sup>2</sup> as against the actual floor area of 118.44 m<sup>2</sup>. It is also contended that the DVO adopted the rates as per the CPWED schedule as against the cheaper rates as prescribed as per the state PWED rates chart. It is further contended that the appellant himself conducted the supervision and therefore, additional supervision charges as incorporated for determining the value of the property is unwarranted. He further submits that the reporter of the registered valuer cannot be brushed aside. Appellant's contentions were carefully analysed from all angles and given due consideration. I, observe that the DVO has adopted the PAR methodology (Plinth Area Rat) for determining the value of the property. As per this methodology, a maximum amount of 7.5% rebate can be allowed in supervision charges if the rates are taken a penalty the CPWED schedule rates. No rebate can be given if rates as prescribed in the state PWD schedule or chart is taken into consideration/. The relevant portion of GUIDELINES FOR VALUATION OF IMMOVABLE PROPERTIES, VALUATION CELL, INCOME TAX DEPARTMENT, MINISTRY OF FINANCE GOVERNMENT OF INDIA 2009 is reproduced as below-

Therefore, maximum rebate of 7.5% can be allowed when CPWED Plinth Area Rate or CPWD Schedule of Rates is adopted while estimating value of investment in construction. When State PWED Schedule or rates or any other local Schedule of Rates is adopted and on examining the analyses of rates included in this Schedule if it is found that rates do not include any such element of contractor's profit no rebate whatsoever, shall be allowed on account of self-supervision. It may, therefore, be borne in mind that maximum rebate which can be allowed on account of self-supervision is the quantum of contractor's profit incorporated in the rates included in the particular Schedule of Rates or Plinth Area Rates adopted for estimating the value of investment in construction. Quantum of rebate will also vary depending on the nature of contract. Obviously in such case it is necessary to carefully examine the contract document between the contractor and the assessee.

It is observed from the DVO report that the appellant did not produce the required vouchers at the time of inspection or at a later date. Hence, the DVO has given a specific mention that the rebate of 7.5% on account of self-supervision has not been allowed. This finds mention in page 2 of the annexure of the DVO report. Therefore, the appellant's contention that lower material cost as per the state PWD rate chart has not been taken or rebate for self-supervision has not been given is devoid of any merit. If the rates as prescribed in state PWD rate chart are taken then no allowance can be given on account of self-supervision as per the CPWD guideline. It is only when the CPWD schedule rates are taken, then such allowance is possible. In the instant case, the DVO has adopted the CPWD Schedule rates, but as the appellant

*failed to provide the necessary vouchers in support of its claim of self-supervision, the rebate was not given. It is therefore quite clear that there is no anomaly with respect to the report of the DVO and app's contention are essentially devoid of any merit. I further observe that the registered valuer has given a finding that the ground floor constitutes 118.98 m<sup>2</sup> in area. The total floor area as per the registered valuer on which the appellant relies, thus constitutes 126.04 m<sup>2</sup>. The DVO has adopted the floor area of 128.80 m<sup>2</sup> with respect to the ground floor. Thus, the appellant's contention that as against the total area of 18.44 m<sup>2</sup> the DVO has adopted 128.80 m<sup>2</sup> is factually incorrect. As both the valuer's determination of the floor area is almost similar, the appellant's contentions in this regard is also devoid of merit. Ongoing though the valuation report submitted by the registered valuer, I observe that the methodology is not clearly mentioned. It is a mixture of PAR method and itemised rate of construction approach. This is evident from the fact that instead of adopting the rates for the plinth or floor area, the valuer has gone on to estimate such rates from the itemised rates as per the PWED (WB) schedule of rates of the WCI, Bardhaman division. I therefore, do not find any merit in discrediting the valuation as made by the DVO without pointing any defect in such valuation when he has followed appropriate methodologies prescribed whereas the valuation by the registered valuer has not clearly delineated the approach adopted and is base on item rats instead of plinth area rates as per the state PWD schedule. In view of all the above, I do not find any anomaly in the assessing officer adopting the value as determined by the DVO.*

*The appellant relied on some case laws which are distinguishable on facts specific to the cases. However, the AO having made a reference to the DVO, who is a technical authority on the matter, has to give due weightage in the absence of any anomaly pointed out in such report. It is worthy to mention in the excerpts of decision rendered by the Hon'ble High Court of Gujarat in PR. COMMISSINER OFINC TAX-3... Appellant(s) Versus RAVJIBHAI NAGJIBHAI THESIA... Opponent(s) as below:*

*'Thus sub-section (1) of section 50C of the Act envisages a situation where the consideration received or accruing as a result of transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority of the State Government (hereafter referred to as the 'stamp valuation authority') for the purpose of payment of stamp duty in respect of such Hon'ble High Court-NIC Page 7 of 10 Created On Fri Jun 10 21:17:16 IST 2016 O/TAXAP/413/2016 ORDER transfer. In such a situation, the value so adopted or assessed shall for the purposes of section 48, be deemed too be the full value of the consideration received or accruing as a result of such transfer. Sub-section (2) of section 50C of the Act, however, without prejudice to the provision of sub-section (1) provides for a situation where the assessee claims before the Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of the transfer, and where the value so adopted or assessed has not been disputed in any appeal or revision or no reference has been made before any other authority, court or High Court, then in such a situation the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer. Sub-section (2) of section 50C of the Act further provides that where any such reference is made, the provisions of sub-section (2), (3) (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-section (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth Tax Act, 1957, shall, with*

necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section(1) of section 16A of that Act. At this juncture it may be apposite to refer to the provisions of section 16A of the Wealth Tax Act, 1957 to the extent they are relevant for the present purpose Sub-section (1) of section 16A of the Wealth Tax Act provides for making reference to the Valuation Officer. Sub-sections (2) to (5) of section 16A provide for the mode and manner in which the value of an asset is to be estimated. Sub-section (6) of section 16A of the Wealth Tax Act provides that on receipt of an order under sub-section (3) or sub-section (5) from the Valuation Hon'ble High Court-NIC Page 8 of 10 Created On Fri Jun 10 21:17:16 ISTD 2016 O/TAXAP/413/2016 ORDER Officer, the Assessing Officer shall, so far as valuation of the asset in question is concerned, proceed to complete the assessment in conformity with the estimate of the Valuation Officer. Accordingly, once a reference is made under section 50C of the Act to the to the Valuation Officer for valuation of the capital asset, the Assessing Officer is obliged to complete the assessment in conformity with the estimate made by the Valuation Officer pursuant to such reference made by him. In the facts of the present case, the Valuation Officer has estimated the value of the capital asset at a lower amount than the value adopted or r assessed by the stamp valuation authority. In terms of sub-section (2) of section 50C of the Act, it is such valuation which is required to be taken into consideration for the purposes of assessment. In the light of the above discussion, while not agreeing fully with the reasoning adopted by the Commissioner (Appeals), in the fact and circumstances of this case, this court is in agreement with the final conclusion arrived at by the Commissioner (Appeals) as well as by the Tribunal.'

*In the High Court of Allahabad in the case of CIT versus Indra Swarup Bhatnagar (IT APPEAL NO.97 OF 2008), their Lords have observed-*

'A reading of the sub-section shows that the Wealth-tax Officer has no option but to proceed to complete the assessment in conformity with the assessment of the Valuation Officer in so far as the valuation of the asset in question is concerned. This is also the view taken by a Division Bench of this court in M. C. Khunnah v. Union of India [1979] 118 ITR 414 (All'

'In view of the above discussions and by considering the totality of the facts and circumstances of the case, it is crystal clear that generally, when the Assessing Officer has obtained the DVO report then the same is binding. Therefore, we find no reason to interfere with the impugned order passed by the Tribunal, it is hereby upheld with the reasons mentioned therein'

*Thus, the appellant's contention in the instant case, that the DVO's report is not the last word in the matter valuation, even though appear fancied as it may seem, in the absence of any defects or anomalies therein, the same, cannot be ignored. In the present case, no such defect has been detected and therefore, the AO was bound to accept the same. in view of the discussions mentioned above, in the context of the facts and circumstances, the undersigned does not deem it fit to interfere with the order passed by the AO and the same is confirmed. Appellant's grounds, therefore, fail."*

3. I have given my thoughtful consideration to both the respective stands against an in support of the impugned unexplained investment addition in building construction. I made it clear first of all that the assessee's sole arguments during the course of hearing is that of inappropriate estimation of construction cost ignoring self-supervision and other corroborative factor. Learned Addl. CIT-DR fails to dispute the very settled proposition such an estimation of construction cost is purely a subjective issue to be adjudicated as per relevant facts and circumstances of the case. The assessee also appears to have drawn support from a registered valuer's report whereas the department has taken recourse to DVO's estimation. Faced with this peculiar backdrop of facts, I apply "thumb" rule to delete the impugned addition of ₹7.31 lac. to the extent of ₹3.31 lac and partly confirm the balance amount to the tune of ₹4 lac with a rider that same shall not be treated as a precedent in any other case. The assessee gets part relief in above terms.

4. This assessee's appeal is partly allowed.

Order pronounced in open court on 23/01/2019

Sd/-  
(S.S. Godara)  
Judicial Member

Kolkata,  
\*Dkp/Sr.PS

दिनांक:- /01/2019 कोलकाता

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

1. अपीलार्थी/Appellant-Smt.Krishna Roy Vivekananda Pally, Pirpukur(West) Burdwan-7131010
2. प्रत्यर्थी/Respondent-ACIT, Cir-2, Aaykar Bhawan, Court Compound, Bwn-713101
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
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 ।