

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.5761/Del/2015
Assessment Year : 2012-13

Deputy Commissioner of
Income Tax,
Circle-16(1),
New Delhi.

(Appellant)

Vs. M/s Mahesh Edible Oil Industries
Limited,
3/14, Jangpura-B,
New Delhi – 110 014.
PAN : AACCM7102J.
(Respondent)

Appellant by : Shri N.K. Bansal, Senior DR.
Respondent by : Shri Rakesh Jain and
Shri Deepak Tayal, CAs.

Date of hearing : 16.04.2019
Date of pronouncement : 22.04.2019

ORDER

PER G.D. AGRAWAL, VICE PRESIDENT :-

This appeal by the Revenue for the assessment year 2012-13 is directed against the order of learned CIT(A)-6, New Delhi dated 29th July, 2015.

2. In this appeal, the Revenue has raised following grounds :-

“1. Whether on the facts and circumstances of the case and in law, the Id.CIT(A) is justified to hold that estimation of value of assets by the Valuation Officer can be made only after rejection of books of accounts even when the provisions of section 142A of the Act do not stipulate any such condition?”

2. Whether on the facts and circumstances of the case and in law, the Id.CIT(A) has erred in deleting the addition of Rs.85,82,093/- made by the AO u/s 69B on account of difference in valuation of cost of construction of factory by

the DVO and the assessee without appreciating the detailed given by the AO in the assessment order?

3. Whether on the facts and circumstances of the case and in law, the Id.CIT(A) has erred in holding that valuation of building should be made at the local PWD rate without appreciating the fact that the PAR Method of CPWD (approved by the CBDT) after applying cost index of Kota station has been used by the DVO while arriving at the estimated cost of construction?"

3. We have heard the arguments of both the sides and perused the material placed before us. We find that the ITAT has considered identical issue in the two preceding years i.e., assessment year 2009-10 and 2010-11. The addition is made for the unexplained investment in the construction of factory on the basis of estimation of cost of construction by the DVO. Since the construction is spread over four years, the proportionate additions have been made in the four years beginning from assessment year 2009-10 to 2012-13. The addition made by the Assessing Officer is deleted by the ITAT in the order for assessment year 2009-10 and 2010-11 vide ITA No.547 & 548/Del/2014 with the following finding :-

"9. We have heard the rival parties and have gone through the material placed on record. We find that while considering the DVO report for estimating the amount of investment in factory, the Assessing Officer did not reject books of account neither he found any mistake in the books of account. He simply referred the matter to DVO for obtaining his estimate in construction of factory building and added the difference between the report of DVO and investment declared by the assessee. The Hon'ble Supreme Court of India in the case of Sargam Cinema Vs. CIT (2010) SC 328 ITR 513 has held as under :

"In the present case, we find that the Tribunal decided the matter rightly in favour of the assessee inasmuch as the Tribunal came to the conclusion that the assessing authority could not have referred the matter to the Departmental Valuation Officer (DVO) without the books of account being rejected in the present case, a categorical finding is recorded by the Tribunal that the books were never rejected. This aspect has not been considered by

the High Court. In the circumstances, reliance placed on the report of the DVO was misconceived."

In the present cases, admittedly books of accounts has not been rejected as the Assessing Officer did not find any infirmity therefore the decision of Hon'ble Supreme Court cited above is duly applicable.

We further find that the difference between the estimation made by DVO and that declared by assessee was about 19%. It is an undisputed fact that DVO had applied CPWD rates whereas the factory of the assessee was situated in Kota and was not situated in Delhi. The Hon'ble Rajasthan High Court in the case of CIT Vs. Dinesh Talwar 265 ITR 344 has held that the value of construction is a question of fact and that depends on the material, place, location and quality of construction. The Hon'ble Court had held that a deduction of 20% from the CPWD rates will make the rates comparable to local PWD rates. The Id.CIT(A) has passed decision in favour of assessee on merits also wherein he has held that CPWD rates are not comparable with PWD rates. The Id.CIT(A) has passed a reasoned and speaking order and we do not find any infirmity in it and therefore in view of the above, the appeals filed by Revenue are dismissed."

4. Since the issue is identical in the year under consideration as the addition is in respect of cost of construction of the same property which is already considered by the ITAT, the above decision would be squarely applicable. We, therefore, respectfully following the same, hold that the learned CIT(A) was justified in deleting the addition made by the Assessing Officer in this regard. Accordingly, the Revenue's appeal is dismissed.
5. In the result, the appeal of the Revenue is dismissed.
Decision pronounced in the open Court on 22.04.2019.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT

VK.

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1. Appellant : Deputy Commissioner of Income Tax,
Circle-16(1), New Delhi.
2. Respondent : M/s Mahesh Edible Oil Industries Limited,
3/14, Jangpura-B, New Delhi – 110 014.
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar