

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एस.एम.सी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCHES, "SMC" CHANDIGARH**

श्री एन.के.सैनी, उपाध्यक्ष

BEFORE: SHRI. N.K.SAINI, VICE PRESIDENT

आयकर अपील सं./ ITA No.829/Chd/2019

निर्धारण वर्ष / Assessment Year : 2012-13

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| M/s Hotel Ajuba Residency Near Bhakra Canal, Sangrur Road Patiala, Punjab | बनाम | The DCIT, Circle Patiala, Punjab |
| स्थायी लेखा सं./PAN NO: AAFH3925A | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate

राजस्व की ओर से/ Revenue by : Shri Arvind Sudershan, JCIT

सुनवाई की तारीख/Date of Hearing : 27/01/2020

उद्घोषणा की तारीख/Date of Pronouncement : 27/01/2020

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal by the Assessee against the order dt. 15/03/2019 of Ld. CIT(A), Patiala.

2. Following grounds have been raised in this appeal:

1. That the Ld.CIT (A) has erred in confirming the action of the Assessing Officer with regard to reopening of the case u/s 148.

2. That the confirmation of reopening of case by the CIT(A) is against the judgment of Hon'ble Supreme Court in the case of Dharia Construction Co. reported in 328 ITR 515 and others and the finding of the CIT(A) that it was a case of undisclosed investment and, therefore, the reopening is valid, is not a correct finding, since the reopening was only on account of valuation report of DVO and, as such, the reopening was bad in law in view of the binding Judgment of Hon'ble Supreme Court.

3. Notwithstanding the above said ground of appeal, the Valuation report as relied upon by the Assessing Officer is invalid and nonest report in view of the provisions of section 142A(6) of the Act since the report from the Valuation Officer was received much beyond the period of six months as prescribed under Section 142A(6) of the Act.

4. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.

3. The main grievance of the assessee in this appeal relates to the jurisdiction of the A.O. in reopening the assessment by issuing the notice under section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'Act') on the basis of valuation report of D.V.O.

4. Facts of the case in brief are that the assessee filed the return of income on 28/09/2012 declaring NIL income which was processed under section 143(1) of the Act. Thereafter, a survey under section 133A of the Act was carried out at the business premises of the assessee firm on 21/10/2013 and the assessee surrendered an additional amount of Rs. 3 Crores on account of unexplained investment in a Hotel Building. The A.O. referred the matter to the Valuation Officer for determination of the cost of construction who determined the value at Rs. 96,92,800/- whereas the assessee had admitted the investment, for the year under consideration at Rs. 58,91,761/-. Thus, there was difference of Rs. 38,01,039/-. The A.O. on the basis of the said difference as determined by the District Valuation Officer (DVO) issued the notice under section 148 r.w.s 147 of the Act. The Assessee objected the initiation of the proceedings under section 147 of the Act. The A.O. did not find merit in the submissions of the assessee by observing that the proceedings within the meaning of Section 147 of the Act had correctly been initiated as the A.O. on the basis of information available was under bonafide belief that the income chargeable to tax has escaped assessment. The A.O. framed the assessment at an income of Rs. 47,71,040/-.

5. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and challenged the addition made by the A.O. The Assessee also furnished additional evidence under Rule 46 of the Income Tax Rules 1962 and submitted that the only information available to the A.O. was the valuation report on the basis of which the A.O. treated the amount in question as escaped income. It was also stated that the DVO report was merely an opinion and did not tantamount to information. The Ld. CIT(A) after considering the submissions of the assessee observed that Valuation Report gave an idea to the A.O. with regard to the extent / quantum of the unexplained investment. He therefore did not find merit in the submissions of the assessee.

6. Now the assessee is in appeal.

7. Ld. Counsel for the assessee drew my attention towards the reasons for reopening recorded by the A.O. dt. 11/01/2017, copy of which is placed on record and submitted that the A.O. had the reasons to belief only on the basis of the DVO Report for the income escaped assessment but he did not apply his own mind to

determine the escaped income, therefore reopening of the assessment by the A.O. was not valid. The reliance was placed on the following case laws:

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| 1. | Bhola Nath Majumdar V/s Income Tax Officer 221ITR 608 (GAU) |
| 2. | Commissioner of Income Tax V/s V T Rajendran 288 ITR 312 (MAD) |
| 3. | Assistant Commissioner of Income Tax V/s Dhariya Construction Company 328 ITR 515 (SC) |
| 4. | Commissioner of Income Tax V/s Chohan Resorts 359 ITR 394 (P&H) |
| 5. | Sargam Cinema V/s Commissioner of Income Tax 328 ITR 513 (SC) |
| 6. | Darshan Buildcon V/s Income Tax Officer 416ITR66(GUJ) |

8. In his rival submissions the Ld. Sr. DR strongly supported the orders of the authorities below and further submitted that since there was the difference between valuation determined by the DVO and as disclosed by the assessee, so there was the escapement of the income to the extent of the difference in the valuation determined by the DVO and declared by the assessee, as such the reopening under section 147 r.w.s 148 was justified.

9. I have considered the submissions of both the parties and perused the material available on the record. To resolve the present controversy it is relevant to discuss the reason recorded by the A.O. for reopening the case under section 147 r.w.s 148 of the Act which read as under:

"A survey u/s 133A of the I.T.Act, 1961 was conducted on the business premises of the assessee on 21.10.2013 and the assessee has surrendered amount of Rs. 3 crores on account of unexplained investment of building of Hotel Ajuba Residency. During the course of assessment proceedings in the case of the assessee for the A.Y. 2014-15, the matter regarding, valuation of building of the Hotel was referred to the Valuation Officer of the Department for determination of cost of construction of the said property. As per the valuation report submitted by the District Valuation Officer, Chandigarh, the cost of construction for the above said property during the F.Y. 2011-12 (relevant to the A.Y. 2012-13) was valued at Rs. 96,92,800/- whereas the assessee has declared cost of construction of the property during this period at Rs. 58,91,761/-. Thus, the cost of construction determined by the District Valuation Officer, Chandigarh is higher than the value declared by the assessee by an amount of Rs. 38,01,039/- during the year under consideration. Thus, the assessee has invested in the construction of the hotel building amounting to Rs. 38,01,039/- from its unexplained/ unaccounted sources.

Therefore, I have reason to believe that income of the assessee chargeable to tax has escaped assessment on account of undervaluation of cost of construction of the property by the assessee by an amount of Rs. 38,01,039/- from unexplained / unaccounted sources during the F.Y. 2011-12 (relevant to the A.Y. 2012-13) within meaning of Sec 147 of the I.T. Act, 1961."

From the aforesaid reasons, it is clear that the A.O. on the basis of the DVO report reopened the assessment under section 147 r.w.s 148 of the Act.

9.1 On a similar issue the Hon'ble Supreme Court in the case of ACIT Vs. Dhariya Construction Co. reported at [2010] 328 ITR 515 (supra) held as under:

" The opinion given by the District Valuation Officer is not per se information for the purpose of reopening an assessment under section 147 of the Income Tax Act, 1961."

10. In the present case also the A.O. reopened the assessment on the basis of the opinion given by the DVO therefore by respectfully following the ratio laid down by the Hon'ble Supreme Court in the aforesaid referred to case, I am of the view that the reopening of the present case was not valid. Accordingly the same is quashed.

11. In the result, appeal of the assessee is allowed.

(Order pronounced in the open Court on 27/01/2020)

Sd/-
एन.के.सैनी,
(N.K. SAINI)
उपाध्यक्ष / VICE PRESIDENT

AG

Date: 27/01/2020

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File