

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 528/JP/2019  
निर्धारण वर्ष/Assessment Years : 2013-14

M/s Soma Block Prints Pvt. Ltd., 2B, Girnar Colony, Extension Khatipura, Jaipur.	बनाम Vs.	The ITO, Ward-3(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCS4392Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)  
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 11/06/2021  
उदघोषणा की तारीख / Date of Pronouncement : 15/06/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-1, Jaipur dated 12.03.2019 for the assessment year 2013-14 wherein the assessee has taken the following grounds of appeal:-

- "1. The Ld. CIT(A) has erred on fact and in law in upholding the action of AO in making reference to DVO u/s 142A of the Act even when the assessee has filed complete details of the expenditure incurred on construction in which no defect was found nor the books of accounts were rejected.*
- 2. The Ld. CIT(A) has erred on fact and in law in confirming the addition of Rs.52,12,917/- on account of alleged undisclosed investment in construction of factory building on the basis of*

*report of DVO without dealing with the various contentions of the assessee.*

*3. The Ld. CIT(A) has erred on fact and in law confirming the disallowance of Rs. 13,775/- u/s 14A read with Rule 8B."*

2. During the course of hearing, the Id AR submitted that the assessee-company is engaged in manufacture of readymade garments and madeups. It started construction of 2<sup>nd</sup>& 3<sup>rd</sup> floor of its factory building situated at SPL -115, Opp. RIICO Water Works Office, Bindayaka Industrial Area, Jaipur in AY 2012-13 which was completed in AY 2013-14. The construction costs incurred is tabulated as under:-

<b>S. No.</b>	<b>Assessment Year</b>	<b>Amount</b>
1.	2012-13	Rs. 48,28,551/-
2.	2013-14	Rs. 33,41,313/-
<b>Total construction cost</b>		<b>Rs. 81,69,864/-</b>

3. It was submitted that during the course of assessment proceedings for AY 2012-13, assessee vide letter dt. 02.12.2014 and 21.01.2015 filed detailed account with full particulars of expenses incurred on expenses and copy of bills & vouchers in respect of the construction. However, the AO made reference u/s 142A to the DVO vide letter dated 09.02.2015 on the ground that assessee has not furnished the valuation report and complete bills and vouchers for verification of investment made in the construction. The report from DVO was not received before 31.03.2015 and therefore, AO completed the assessment for AY 2012-13 with the observation that as and when the valuation report is received, effect shall be given u/s 155 of the Act.

4. It was submitted that in course of assessment proceedings for AY 2013-14, the valuation report dated 21.07.2015 from DVO was received estimating the cost of construction of factory building at Rs.2,09,16,000/- bifurcating it as pertaining to AY 2012-13 at Rs.1,23,61,769/- and AY 2013-14 at Rs.85,54,231/- as against Rs.48,28,551/- and Rs.33,41,313/- respectively declared by the assessee.

5. It was submitted that in course of assessment proceedings for AY 2013-14, assessee claimed that it has maintained complete bills, vouchers and supporting expenses in respect of construction of the factory building but still the AO in AY 2012-13 by making incorrect observation has made a reference to the DVO u/s 142A of the Act. Even before the DVO assessee vide letter dt. 02.06.2015 submitted bills, vouchers, copy of labour contract, ledger account of construction, etc. This is also accepted by DVO in his report. Still the DVO instead of pointing put deficiency in the actual expenditure incurred by the assessee estimated the cost of construction by applying CPWD rates by ignoring the local PWD rates. The assessee in course of assessment proceedings submitted the report of registered valuer M/s V.G. Architects and Engineers dated 28.11.2015 who estimated the cost of construction by applying PWD rates at Rs.1,10,53,509/-. However, it is explained that since assessee has maintained complete record of construction along with bills & vouchers, the actual cost recorded in the books is correct and therefore, reference made u/s 142A is not valid.

6. It was further submitted that the AO held that U/s 142A(2) AO may make reference to DVO whether or not he is satisfied about the correctness or completeness of the accounts of the assessee. Even there is a difference of Rs.28,83,645/- in the cost of construction determined by the registered valuer and that recorded in the books of accounts. There is no provision in the Income Tax Act that cost of construction should be determined by applying Rajasthan PWD rates. No discrepancy in report and rates adopted by the DVO is brought on record. He therefore, made an addition u/s 69B for difference between the cost of construction determined by DVO and that recorded in books of Rs.52,12,917 in AY 2013-14 and of Rs.75,33,218/- in AY 2012-13 by passing an order u/s 154 of the Act against which appeal is pending before the Ld. CIT(A).

7. It was submitted that the before the Ld. CIT(A), assessee filed written submission as reproduced at Pg 4-12 of the appellate order challenging the reference made U/s 142A to the DVO as also the various discrepancies in the valuation report prepared by him. The Ld. CIT(A), however, after quoting the assessment order at Pg 13-19 of the order, without controverting the various objections raised by the assessee held that when the valuation report submitted by the assessee shows the cost of construction at Rs.1,10,53,509/- as against Rs.81,69,864/- declared by the assessee in the two years there is basis to doubt that assessee has shown actual investment in the factory building. The DVO is an expert and his report cannot be doubted in the absence of any specific defects. Hence, reference made to DVO u/s 142A and the addition made is as per law. Accordingly, addition made

by the AO is sustained and against the said findings, the assessee is in appeal before us.

8. Now, coming to grounds of appeal, the Id AR submitted that the assessee doesn't wish to press ground no. 1. Hence, the same is dismissed as not pressed.

9. Regarding ground no. 2, where the assessee has challenged the report of the DVO, it was submitted that the report of DVO is incorrect and faulty. He has estimated the cost of construction by applying CPWD rates. The Hon'ble Supreme Court and the jurisdictional High Court has held that in valuation of the property, the local PWD rates should be applied and not the CPWD rates and reliance was placed on the following decisions:-

- CIT vs. SunitaMansingha (2017) 393 ITR 0121 (SC)
- CIT vs. Smt. Prem Kumar Murdia 296 ITR 508 (Raj)

10. It was further submitted that even the Plinth Area Rate determined by the DVO is incorrect in as much as he has made addition of 11% for services on account of water, sanitary and electrical installation to the basic Plinth Area Rates without first deducting 25% on account of hall type construction and joinery work. Further, assessee has specifically pointed out that the entire electrical fitting has been made by the assessee's own electricians who are its employees still 7% has been added for internal electrical installations. The assessee has therefore, obtained the report of registered valuer. The Registered Valuer on the basis of PWD rates has estimated cost of construction at

Rs.1,10,53,509/-. This cost determined by registered valuer is also higher than the actual cost of construction incurred by the assessee as he has added higher percentage on account of water, sanitary and electrical installation and not allowed deduction on account of the joinery work vis-à-vis the percentage added/allowed by DVO. If the additions/deductions as considered by the DVO is applied to the cost estimated by the Registered Valuer, the adjusted cost as per the Registered Valuer would be Rs. 89,39,855/- as against actual cost of Rs. 81,69,864/- incurred by the assessee and the same would be almost same as recorded in the books of accounts. This difference is less than 10% which is on account of estimation. The Hon'ble Patna High Court in case of Bimla Singh vs. CIT 308 ITR 71 has held that the difference between the cost of construction declared by the assessee and that estimated by the valuer being less than 15%, the same is to be ignored. In any case, when the assessee has maintained day to day complete records of construction expenses and no discrepancy therein is pointed out by the DVO or the AO and no evidence of any payment outside books of accounts is found by the AO, addition solely on the basis of the report of the valuers' u/s 69B is unwarranted, unjustified and not as per law.

11. It was further submitted that the Ld. CIT(A) has not controverted any of the contentions raised by the assessee before him also. He is swayed by the report of registered valuer determining the cost of construction at Rs.1,10,53,508/- as against Rs.81,69,864/- declared by the assessee ignoring the reasons given by the assessee for such variation. The Ld. CIT(A) has not denied the fact that assessee has

maintained correct and complete record of the construction expenses incurred by it. The various other objections as submitted before him as to the variation between the actual cost and the cost determined by DVO vis-à-vis the cost determined by registered valuer is not at all considered by him. Hence, the order of Ld. CIT(A) confirming the addition made by AO is wholly unjustified. In view of above, addition made by AO and confirmed by Ld. CIT(A) be directed to be deleted.

12. Per contra, the Id. DR/CIT relied on the finding of the lower authorities and our reference was drawn to the findings of the Assessing Officer which are contained at para 3 of the assessment order which reads as under:-

*"3. Valuation of Investment made:-*

*During the course of assessment proceedings for A.Y. 2012-13, it was noted that assessee company has made addition of Rs.48,28,521/- in office / factory building at Bindayaka, Jaipur. The assessee was required to furnish valuation report alongwith complete bills and vouchers of expenses for verification of investment made. Since assessee could not produce the required details / documents hence a reference u/s 142A of the IT Act, 1961 was made to the Departmental Valuation Officer vide this office letter dated 09.02.2015 to determine the investment made in construction/addition in the factory building so as to verify the correctness of amount of construction declared by the assessee company. The Valuation Officer vide his office letter No. 86 dated 21.07.2015 has intimated that value in investment in factory building was estimated at Rs. 1,23,61,769/- as against 48,28,551/- as declared by the assessee for A.Y. 2012-13 and Rs.85,54,231/- as against 33,41,313 declared by the assessee for*

*A.Y. 2013-14. Accordingly vide order sheet entry dated 19-02-2016, assessee was asked to explain why the difference of Rs.52,12,917/- arising out of the valuation as determined by the valuation officer should not be assessed as additional income of the assessee. In response, the A/R of the assessee stated.*

*The contentions of the assessee are not acceptable. The assessee, relying upon the judgment of ITAT Ahmedabad (IT(SS)A No. 65/Ahd/2009 AY 2004005 ACIT vs Shri Jayantilal T. Jariwala, order dtd 28.10.2015) argued that addition on the basis of DVO cannot be made as no incriminating material was found. As per the provisions of section 142A(2) the AO may make a reference to the Valuation Officer under sub-section (1) whether or not he is satisfied about the correctness or completeness of the accounts of the assessee. Therefore it is clear that even if AO is completely satisfied with the correctness of the accounts of the assessee he can refer the case to Valuation Officer for determining value of the property constructed.*

*Without prejudice to the above, the claim of the assessee that the no incrementing material was found by AO is also not correct. In his reply, the assessee stated to have obtained valuation report from approved valuer M/s V.G. Architects 86 Engineers, who determined that construction cost for the period from 2011 to 2013 comes to Rs. 1,10,53,509. The above valuer was appointed by assessee itself. It is interesting to note the that valuer appointed by assessee determined the value of construction cost at Rs. 1,10,53,509 whereas assessee has shown it at Rs. 81,69,864/(48,28,551 in F.Y 2011-12 and 33,41,313 in F.Y 2012-13). Thus the report of the valuer appointed by assessee also proved that the investment was under-valued at least by Rs. 28,83,645/-. Therefore it cannot be accepted that there is no basis to make addition except the report of the DVO.*

*Another contention of the assessee is that valuation officer has wrongly adopted the CPWD plinth area rates instead of the Rajasthan PWD Building and roads rates to determine the value of the construction. The argument of the assessee does not hold water as the valuation was done in conformity with CBDT instruction no. 1671 dated 06.12.1985 and 319/6/92-WT dated 13.12.1998. The claim of the assessee that Rajasthan PWD Building and roads are applicable to assessee is simply misleading as there is no provision in Income-tax Act indicating the same. Further even as per the method suggested by the assessee there was under-valued by assessee to the extent. Rs. 28,83,645/-. It is also important to note that assessee did not bring out any discrepancy in the valuation reports and rates etc adopted by the DVO. It simply contended to follow another method of valuation which means that assessee is very much in agreement with respect to area of construction, rate per sq. meter etc as determined by DVO. As already discussed above method of valuation, was adopted as for the guidelines of CBDT. Hence the objections of the assessee are rejected. As per the provisions of section 69B where in any financial year assessee has made investments and the amount invested exceeds the amount recorded in the books of accounts, the excess amount is deemed to be the income of the assessee. There is a difference in the value of investment amounting to Rs.52,12,917/- as determined by valuation report dated 21.07.2015 (Rs. 85,54,230/-) and as declared by the assessee (Rs.33,41,313/-). Therefore the assessee has not recorded the entire value of investment made as the valuation done by valuation officer exceeds the amount recorded by the assessee by Rs.52,12,917/-. Further assessee challenged the valuation report only on the ground of method of valuation which is not tenable as the method was followed as recommended by the Board Instruction. Assessee did not challenge the valuation on grounds of area,*

*constructed area, rates applicable etc. Therefore explanation offered by the assessee is not satisfactory and the amount of Rs.52,12,917/- is added to the total income of the assessee under section 69B."*

13. Further, our reference was drawn to the findings of the Id. CIT(A) which read as under:-

*"(ii) During the appellate proceedings, it was contended by the appellant that the AO has not recorded the findings that the investment shown in the books of accounts is under reported. This issue has been dealt by the AO in the assessment order itself. The AO has clearly mentioned that the appellant has declared value of investment at Rs. 81,69,864/- spread over two years, while the valuation report submitted by the appellant shows cost of construction at Rs. 1,10,53,509/-, thus, there is basis to doubt that the appellant has shown actual investment in factory building. The appellant is relying on number of judgments but they are differentiated on facts as none of them is dealing with the difference in cost of investment recorded in books of accounts and valuation report submitted by the appellant. Had there been complete disclosure of investment in the books of accounts then the valuer appointed by the appellant would not have reached to different figure. The DVO is an expert person who knows his subject well and his report cannot be doubted in absence of any specific defects. Thus it is seen that the AO has made reference to DVO under correct provisions of the Act and has also made addition as per law. Therefore, no interference is called and the addition made by the AO is sustained."*

14. We have heard the rival contentions and perused the material available on record. Regarding adoption of PWD rates as against CPWD

rates, we agree with the contention advanced by the Id AR that where the factory building is situated within the jurisdiction of state PWD, State PWD rates should be applied for estimation of cost of construction of the factory building and not CPWD rates. The same is the consistent position taken by this Bench and other Jaipur Benches following the decision of Hon'ble Supreme Court in the case of CIT Vs. Sunita Mansingha (supra). Further, it is noted that the assessee during the course of assessment proceedings has raised similar objections regarding adoption of CPWD rates and submitted a report of registered valuer M/s V.G. Architects and Engineers dated 28.11.2015 who have estimated the cost of construction by applying PWD rates at Rs.1,10,53,509/- as against Rs 2,09,16,010/- determined by the DVO. Therefore, we direct the AO to adopt the value of Rs.1,10,53,509/- as determined by the registered valuer as relevant for the year under consideration.

15. Further, we are not inclined to interfere with the report of the registered valuer as regard various adjustments made by him to the plinth area rate where the Id AR has contended that the adjustments should be made as per report of the DVO for the reason that firstly, no such contentions have been raised before the lower authorities and the same have been raised for the first time before us, no reason has been specified as to why such contentions should be accepted at this stage and more importantly, as to how the adjustments so made is not in accordance with accepted valuation methodology as relevant in the facts of the present case. Secondly, we find that registered valuer is an expert in the field of valuation as is the case with DVO and unless, there

is some fundamental flaw in their valuation methodology adopted by them as we have noted above in terms of PWD rates vis-à-vis CPWD rates, we need to be cautious enough in disturbing such valuation and that too, without confronting and providing an opportunity to them to rebut such alternate basis for adjustment. Thirdly, the assessee has itself appointed the registered valuer who has given an independent opinion on the valuation of the property and therefore, the assessee cannot plead now that he will follow the report of registered valuer in part and like to follow the report of the DVO in part and thus, seek to have best of both worlds which suits its interest. The report of the registered valuer has to be considered in its entirety and therefore, we direct the AO to follow the report of the registered valuer who has estimated the cost of construction by applying PWD rates at Rs.1,10,53,509/-, and determine proportionate value of investment as relevant for the year under consideration as the construction has been spread over two years and to this limited extent, the matter is remanded to the file of AO. In the result, the ground of appeal is partly allowed.

16. In ground no. 3, the assessee has challenged the disallowance of Rs. 13,775/- U/s 14A read with Rule 8D.

17. In this regard, the Id AR submitted that the AO on perusal of the balance sheet observed that the assessee has shown investments in shares of SBBJ of Rs.51,000/-, in HDFC Mutual Fund of Rs.81 lakhs and in property of Rs.1,33,64,641/- aggregating to Rs.2,15,15,941/- (correct amount of investment in HDFC Mutual Fund is Rs.93 lakhs and that in

property of Rs.1,81,36,020/- aggregating to Rs.2,74,87,320/-). During the year under consideration, the assessee invested Rs.12 lakhs in HDFC Mutual Fund while the rest of the investments were made in earlier years. He further noted that the assessee has not shown any income from the investments and has claimed interest expense of Rs.49,79,395/-. The assessee vide letter dated 16.03.2016 submitted that the investment made in HDFC Mutual Fund was made out of the proprietors' fund i.e., share capital and reserves & surplus totalling to Rs.5,62,44,279/- and it has not incurred any expenditure for earning the exempt income. The AO, however, rejected the contention of assessee and made disallowance u/s 14A r.w.r. 8D(ii) at Rs.12,02,958/-. The Ld. CIT(A) held that assessee has earned dividend income of Rs.13,775/- only and therefore, in view of the various decisions referred at Pg 24 & 25 of his order, he restricted the disallowance to the extent of exempt income of Rs.13,775/-.

18. In the above factual background, the Id. AR submitted that from the balance sheet, it can be noted that the assessee had share capital and reserves & surplus of Rs.1,94,06,250/- & Rs.3,68,38,029/- respectively, aggregating to Rs.5,62,44,279/-. The assessee has invested only Rs.12 lakhs during the year under consideration. Even the cash profit for the year at Rs.39,38,576/- (17,57,466 + 21,81,110) is more than the investment of Rs.12 lakhs made during the year. The remaining investments aggregating to Rs.2,74,87,320/- was made in earlier years out of own funds which is 2.05 times of the amount of investment. The investment in properties at Rs.1,81,36,020/- is for business use and not an investment yielding exempt income. Thus, the

investment which may yield exempt income is only of Rs.93,51,300/- and not Rs.2,15,15,941/- (correct amount is Rs.2,74,87,320/-) as taken by the AO. Further, no nexus is established by the AO that borrowed funds has been utilised for making the investment. Hence, no disallowance u/s 14A r.w.r. 8D is required.

19. It was further submitted that the assessee holds only two investments. One is investment in equity shares of SBBJ for Rs.51,300/- and second is investment in HDFC Tax Saver Mutual Fund. The dividend of Rs.13,775/- is received on shares of SBBJ. The assessee has not incurred any expenditure for earning the exempt income as the dividend is directly credited to the bank account of the assessee. Hence, the disallowance of Rs.13,775/- confirmed by Ld. CIT(A) is unjustified. In support, reliance was placed on the following cases:-

- Godrej & Boyce Manufacturing Company Ltd. Vs. DCIT &Anr. (2017) 394 ITR 449 (SC)
- Vijay Solvex Ltd. Vs. ACIT (DBITA No.325/2017 & 326/2017 order dt.09.01.2018) (Raj.) (HC)-
- CIT Vs. Taikisha Engineering India Ltd. (2015) 370 ITR 338 (Del.) (HC)

In view of above, disallowance of Rs.13,775/- confirmed by Ld. CIT(A) be directed to be deleted.

20. Per contra, the Id. DR has relied on the findings of the lower authorities and submitted that the assessee has failed to establish that

borrowed funds are not used in making the investment during the year in respect of HDFC funds and our reference was drawn to the findings of the AO. It was further submitted that the Id CIT(A) has already restricted the disallowance to Rs 13,775/- and no further relief may be provided to the assessee.

21. We have heard the rival contentions and perused the material available on record. It is noted that an amount of Rs 12 lacs has been invested during the year in HDFC Mutual Funds which can yield exempt income, however, no exempt income was earned and claimed exempt during the year. Further, we find that it is a case of mixed funds where the assessee's own funds by way of cash profits are sufficient to make the investment. Besides, the assessee holds shares in SBBJ and the investment in SBBJ shares have been made in earlier years and not in the year under consideration. During the year under consideration, the assessee has earned dividend income of Rs 13,775/- which has been claimed exempt and at the same time, it has been contended that no expenditure has been incurred in relation to earning of such dividend income and thus, no disallowance is called for. Where there is no actual expenditure incurred by the assessee by way of interest and other expenses during the year under consideration, no disallowance could be made under section 14A of the Act. In such circumstances, even the findings of the Id CIT(A) restricting the disallowance to the extent of dividend income is not justified and in any case, disallowance cannot swallow the entire dividend income even as per the decisions cited by the Id CIT(A) in his order. In view of the same, addition so sustained is hereby directed to be deleted and the ground of appeal is allowed.

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

Order pronounced in the open Court on /06/2021.

( संदीप गोसाई )  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- /06/2021.

\*Santosh

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

1. अपीलार्थी / The Appellant- M/s Soma Block Prints Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-3(1), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 528/JP/2019 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar