

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,  
NEW DELHI (THROUGH VIDEO CONFERENCING]

BEFORE SHRI AAKASH DEEP JAIN, VICE PRESIDENT  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER.

ITA No. 4115/DEL/2018 [A.Y 2006-07]

ITA No. 4116/DEL/2018 [A.Y 2007-08]

M/s Brahmaputra Infrastructure Ltd  
A-7, Mahipalpur, NH - 8  
Mahipalpur Crossing, Mahipalpur  
New Delhi

Vs. The Dy. C.I.T.  
Circle - 15  
New Delhi.

PAN: AAACB 8918 K

(Applicant)

(Respondent)

Assessee By : Shri Gautam Jain, Adv  
Shri Lalit Mohan, CA

Department By : Shri Ishtiyaque Ahmed, CIT- DR

Date of Hearing : 15.03.2022

Date of Pronouncement : 15.03.2022

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

These two separate appeals by the assessee are preferred against two separate orders of the CIT[A] - 35, New dated 27.03.2018 and

05.04.2018 pertaining to Assessment Years 2006-07 and 2007-08 respectively.

2. The common grievance in both the appeals relates to the addition made on the basis of Departmental Valuation Officer's [DVO] report by holding that there was a difference between the value shown by the assessee in the books of account and value estimated by the DVO of the property Spanish Garden.

3. Briefly stated, the facts of the case are that during the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee is owner of Spanish Garden RGB Road, Guwahati Road, Guwahati, Assam. The Assessing Officer found that the assessee has declared cost of construction/investment in the said property.

4. The matter was referred to the DVO, Kolkatta and after receiving the report of the DVO, the Assessing Officer found that there was a difference in the value shown by the assessee and by the DVO and adopting the value estimated by the DVO, the Assessing Officer made an

addition of Rs. 1,66,439/- in Assessment Year 2006-07 and Rs. 37,61,578/- in Assessment Year 2007-08.

5. Additions were challenged before the ld. CIT(A) but without any success.

6. Before us, the ld. counsel for the assessee vehemently stated that once the investments have been properly recorded in the books of account by the assessee, then without discarding/rejecting the books, the Assessing Officer should not have referred the matter to the DVO and should not have made any addition. Strong reliance was placed on the decision of the Hon'ble Supreme Court in the case of Sargam Cinema 328 ITR 513.

7. Per contra, the ld. DR strongly supported the findings of the Assessing Officer/ld. CIT(A).

8. We have carefully considered the orders of the authorities below. Basis of the addition can be understood from the following chart:

Financial Year	Declared cost of construction/investment in rupees	Financial year-wise estimated cost of construction/investment in rupees	Difference
2005-06	33,67,020	35,33,459	1,66,439
2006-07	7,60,95,749	7,98,57,327	37,61,578
2007-08	6,15,69,647	6,46,13,169	30,43,522
2008-09	12,47,29,721	13,08,95,383	61,65,662
2009-10	24,89,75,708	26,12,83,119	1,23,07,411
2010-11	12,09,71,650	12,69,51,543	59,79,893
Total	63,57,09,495	66,71,34,000	3,14,24,505

9. A perusal of the above chart clearly shows that the only reason for making the impugned addition is the difference between the investment shown in the books and the valuation done by the DVO. In our considered opinion, once the assessee is maintaining regular books of account and in the course of its business the assessee has recorded the transactions in its books of account, then, without finding/pointing out any defect in the books of account and without holding that the books of account are

rejected, then the Assessing Officer cannot proceed to make addition on the basis of DVO's report.

10. The Hon'ble Supreme Court in the case of Sargam Cinema [supra], has held that the assessing authority could not refer the matter to the DVO in a case where there was no categorical finding recorded by the Tribunal, then the books of account were never rejected. The relevant findings read as under:

"4. 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.

5. For the above reasons, the impugned judgment of the High Court is set aside and the order passed by the Tribunal stands restored to the file. Accordingly, the Assessee succeeds."

11. In light of the aforesaid decision of the Hon'ble Supreme Court [supra], we find that in the appeals under consideration also the books of account have not been rejected. Therefore, the ratio laid down by the Hon'ble Apex Court squarely applies on the case in hand. Respectfully following the same, both the appeals of the assessee are allowed.

12. In the result, the appeals of the assessee in ITA Nos. 4115 & 4116/DEL/2018 are allowed.

The order is pronounced in the open court on 15.03.2022.

Sd/-

**[AAKASH DEEP JAIN]**  
JUDICIAL MEMBER

Sd/-

**[N.K. BILLAIYA]**  
ACCOUNTANT MEMBER

Dated: 15<sup>th</sup> March, 2022.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

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