

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.71/Bang/2022 : Asst.Year 2011-2012

ITA No.72/Bang/2022 : Asst.Year 2012-2013

ITA No.73/Bang/2022 : Asst.Year 2013-2014

M/s.Puttur City Hospital Pvt.Ltd. 1 Madhava Bagh, APMC Road Puttur – 574 201. PAN : AAACP7580P.	v.	The Income Tax Officer Ward 1 Puttur.
(Appellant)		(Respondent)

Appellant by : Sri.V.Srinivasan, Advocate
Respondent by : Sri.Narayana K.R., Addl.CIT -DR

Date of Hearing : 10.06.2022	Date of Pronouncement : 13.06.2022
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ORDER

Per Bench :

These appeals at the instance of the assessee are directed against three separate orders of the CIT(A), all dated 08.12.2021. The relevant assessment years are 2011-2012 to 2013-2014. Common issues are raised in these appeals, hence, they were heard together and are being disposed of by this consolidated order. Identical grounds are raised for assessment years 2011-2012 and 2012-2013. We shall first adjudicate assessment years 2011-2012 and 2012-2013.

ITA No.71 & 72/Bang/2022 (A.Ys 2011-12 & 2012-13)

2. The grounds raised read as follows:-

“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of

evidence, probabilities, facts and circumstances of the case.

2. The learned Commissioner of Income tax [Appeals] of the National Faceless Appeal Centre [CIT[A] for short] is not justified in sustaining the addition of Rs. 27,48,608/- as the proportionate alleged unexplained investment in construction of the hospital building for the year under appeal relying upon the valuation report of the DVO dated 27/11/2014 under the facts and in the circumstances of the appellant's case.

2.1 The learned CIT[A] ought to have appreciated that the appellant had maintained proper books of accounts along with bills and vouchers in support of the investment in the cost of construction of the hospital building in the ordinary course of business, which were filed before various government authority and banker-s and with the I.T.O from time to time and therefore, the addition made based on the report of the DVO without rejection of the books of accounts maintained by the appellant was bad in law and the same is liable to be deleted.

2.2 The learned CIT[A] further erred in failing to appreciate that the impugned addition was made by relying on the report of the DVO, who had not given any opportunity to the appellant to file objections for the proposed value assessed by him and thus, there was a violation of the principles of natural justice in relying upon the report of the DVO for making the impugned addition.

2.3 The learned CIT[A] ought to have appreciated that the plinth area rates method of valuation adopted by the learned DVO was opposed to law and facts of the appellant's case in as much as the appellant has maintained bills and vouchers that were impounded at the time of survey and the same were also produced before the learned DVO and therefore, the adoption of the plinth area method of valuation is untenable and the impugned addition made on this basis deserves to be vacated.

2.4 The learned CIT[A] further erred in failing to appreciate that the impugned addition of Rs. 27,48,607/- was spread equally over the years of construction without any basis or rationale and therefore, the addition made being opposed to facts and circumstances of the appellant's case ought to have been deleted.

3. Without prejudice to the above, the learned CIT[A] failed to appreciate that the cost of construction estimated by the learned DVO was highly excessive as he had adopted plinth

area rates of CPWD instead of adopting local rates considering that the hospital building was constructed in Puttur, which is a small town in the mofussil area and therefore, the adoption of the higher CPWD rates was unwarranted and unjustified.

4. Without prejudice to the above, the learned CIT[A] ought to have appreciated that the rebate for self supervision of the construction of 4% allowed by the DVO was very paltry and the same deserves to be increased substantially.

5. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

3. The brief facts of the case are as follows:

The assessee is a private limited company and had set up a new hospital. A survey u/s 133A of the I.T.Act was conducted in the premises of the assessee on 11.07.2013. During the course of survey proceedings, a copy of the valuation report was found and impounded, wherein the investment in the said hospital building as on 02.03.2021 was at Rs.5,13,84,900. However, as per the balance sheet of the assessee for the year ending 31.03.2011 the investment in the building shown at Rs.3,18,25,554. A statement was recorded from the MD of the assessee-company during the course of survey. In answer to question No.9 of the said statement, the MD admitted that there may be some differences in the value of the building and to account for any such differences and any other differences in the account, he offered an additional income of Rs.50 lakh in the hands of the assessee for the assessment year 2012-2013. However, in the sworn statement recorded u/s 131(1) of the I.T.Act on

24.07.2013, the MD of the assessee-company reviewed his declaration and offered an additional income of Rs.50 lakh for assessment year 2013-2014 instead of assessment year 2012-2013, as admitted earlier during the course of survey. Considering the difference in value of building found between the valuation report and the balance sheet and the admission of additional income by the MD, the matter was referred to the Departmental Valuation Cell. The District Valuation Officer had furnished his report on 27.11.2014, as per which the cost of construction has been valued at Rs.6,21,68,000. As per the balance sheet as on 31.03.2014, the cost of investment in building was accounted by the assessee at Rs.4,61,73,569. Hence, the difference in investment of Rs.1,59,94,431 was added by the A.O. after reducing the offer of MD of Rs.50 lakh for the assessment year 2013-2014 between the assessment years 2009-2010 and 2012-2013 in equal proportion (i.e. $\text{Rs.}1,09,94,431 / 4 = 27,48,607$).

4. Aggrieved by the order of assessment, the assessee filed appeals before the first appellate authority. The CIT(A) confirmed the view of the Assessing Officer.

5. Aggrieved by the order of the CIT(A), the assessee has filed these appeals before the Tribunal. The assessee has filed common paper book for all three appeals. The paper book comprises of 273 pages enclosing therein the computation of total income for the assessment year, various valuation reports submitted by the assessee, valuation report of the DVO, the written submissions filed before the various authorities, etc. The learned AR raised a preliminary

contention that the A.O. has erred in referring the matter to the DVO without rejecting the books of account maintained by the assessee. It was submitted that prior to 01.10.2014 reference to the DVO without rejecting the books of account is bad in law and any addition made on the basis of DVO report cannot be sustained. In this context, the learned AR relied on the Hon'ble Apex Court judgment in the case of Sargam Cinema v. CIT reported in 328 ITR 513 (SC) and the order of Bangalore Bench of the Tribunal in the case of M/s.Shetty Constructions v. ACIT in ITA No.286/Bang/2019 (order dated 12.02.2020). As regards the issue on merits, the learned AR assailed valuation done by the DVO as highly excessive.

6. The learned Departmental Representative supported the orders of the Income Tax Authorities.

7. We have heard rival submissions and perused the material on record. On a query from the Bench, it was informed that for assessment years 2009-2010 and 2010-2011, the matter is still pending adjudication before the first appellate authority. Before we proceed to dispose of the appeal on merits, we are of the view that it would be appropriate to decide ground 2.1 raised by the assessee before us, as a preliminary issue. The contention raised in ground 2.1 is that the A.O. has erred in referring the matter to the DVO without rejecting the books of account of the assessee and the additions made on the basis of the DVO report cannot be sustained. In the instant case, admittedly, reference was made by the A.O. to the DVO on 18.11.2013. Further, the books of account of the assessee was not rejected

prior to the reference to the DVO. In such a scenario, it was held by various judicial pronouncements that reference to the DVO is bad in law and any addition made on the basis of such report cannot be sustained. The Bangalore Bench of the Tribunal in the case of M/s.Shetty Constructions v. ACIT (supra) after considering various amendments to section 142A of the I.T.Act and judicial pronouncements on the issue [especially Hon'ble Apex Court judgment in the case of Sargam Cinema v. CIT (supra)] held that rejection of books of account is a precondition for making reference to the DVO (reference made prior to 01.10.2014). The relevant finding of the Bangalore Bench of the Tribunal in the case of M/s.Shetty Constructions v. ACIT (supra), reads as follow:-

“17. We have given careful consideration to the rival submissions insofar as it relates to ground no.2 raised by the assessee in its appeal. As far as ground no.2 raised by the assessee is concerned, the admitted factual position is that the properties in question were not stock in trade of the business of the assessee. The findings of the AO in the order of assessment dated 31-03-2016 have not been contradicted by the assessee. Therefore, the reference to DVO u/s 142A of the Act has to be tested on the basis of provisions of section 69 to sec.69B of the Act. The first aspect that we notice was the assessee has produced books of accounts before the AO and the AO has not found any defects whatsoever in the books of accounts produced by the assessee. The question is whether the AO can proceed to make a reference to DVO without finding defects in the books of accounts maintained by the assessee wherein the cost of construction has been recorded by the assessee. This aspect has been examined in the case of Sargam Cinema (supra) and the law on this aspect is that Section 142A of the Income-tax Act, 1961 inserted by the Finance Act, 2004, with effect from November 15, 1972 enables the Assessing Officers to make a reference to Valuation Officer for the purpose of making assessment or reassessment under the Act. For quite sometime, the legal basis of a reference to Valuation Officer of the Department to determine cost of construction of buildings was the subject-matter of controversy before various Courts, some courts deciding in favour and some against the revenue, till the issue was decided by the Apex Court in the case of Smt. Amiya Bala Paul v. CIT [2003] 262 ITR 407 (SC). The legal basis of such references under sections 55A, 142(1), 131 and 133(6) was held as infirm in the said judgment. However, the law has been amended by the Finance Act No. 2, 2004 inserting section 142A with effect from November 15, 1972 enabling the Assessing Officers to make reference to Valuation

Officer for the purposes of making an assessment or reassessment under the Act.

18. Sec.142A inserted by the Finance (No. 2) Act, 2004, w.r.e.f. 15-11-1972 and as amended by the Finance Act, 2010, w.e.f. 1-7-2010, read as under :

‘142A. Estimate by Valuation Officer in certain cases.—

(1) For the purposes of making an assessment or reassessment under this Act, where an estimate of the value of any investment referred to in section 69 or section 69B or the value of any bullion, jewellery or other valuable article referred to in section 69A or section 69B or fair market value of any property referred to in sub-section (2) of section 56 is required to be made, the Assessing Officer may require the Valuation Officer to make an estimate of such value and report the same to him.

(2) The Valuation Officer to whom a reference is made under sub-section (1) shall, for the purposes of dealing with such reference, have all the powers that he has under section 38A of the Wealth-tax Act, 1957 (27 of 1957).

(3) On receipt of the report from the Valuation Officer, the Assessing Officer may, after giving the assessee an opportunity of being heard, take into account such report in making such assessment or reassessment:

Provided that nothing contained in this section shall apply in respect of an assessment made on or before the 30th day of September, 2004, and where such assessment has become final and conclusive on or before that date, except in cases where a reassessment is required to be made in accordance with the provisions of section 153A.

Explanation.—In this section, "Valuation Officer" has the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957)."

19. In Circular No.5 of 2005 dated 15.7.2005 issued by the CBDT, the insertion of the aforesaid section has been explained thus:

“Clarificatory amendments regarding estimates by Valuation Officer in certain cases

The existing provisions of section 131 provide that the Assessing Officer shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit. One such power which has been provided in clause (d) of sub-section (1) of section 131, is the power to issue commissions. Section 75 of CPC and order XXVI of the Schedule thereto lays down the power of

"issuing commission", which inter alia, empowers the Court to make a local investigation and also "to hold a scientific, technical and expert investigation". Using this power, the Assessing Officer has been making a reference to the Valuation Officer for estimating the cost of construction of properties.

The scope of power vested in an Assessing Officer under section 131 to make a reference to the Valuation Officer for estimating the cost of construction of properties has been a subject-matter of litigation.

A new section 142A has been inserted by the Finance (No. 2) Act, 2004 to specifically provide that an Assessing Officer has the power to make a reference to the Valuation Officer for estimating the value of investment, expenditure, etc. This section has been inserted with retrospective effect from 15th November, 1972 to save the cases where such references have been made in the past and are still pending in litigation at one stage or the other.

Sub-section (1) of the new section provides that where an estimate of the value of any investment referred to in section 69 or section 69B or the value of any bullion, jewellery or other valuable article referred to in section 69A or section 69B is required to be made for the purposes of making any assessment or re-assessment, the Assessing Officer may require the Valuation Officer to make an estimate of the same and report to the Assessing Officer.

Sub-section (2) of the new section provides that the Valuation Officer to whom such a reference is made under sub-section (1) shall, for the purpose of dealing with such reference, have all the powers that he has under section 38A of the Wealth-tax Act, 1957.

Sub-section (3) of the new section provides that on receipt of the report from the Valuation Officer, the Assessing Officer may after giving the assessee an opportunity of being heard, take into account such report in making such assessment or re-assessment.

It has been provided in the proviso to the new section that the provisions of the same shall not apply in respect of an assessment made on or before the 30th day of September, 2004 and where such assessment has become final and conclusive on or before that date, except in cases where a reassessment is required to be made in accordance with the provisions of section 153A.

This amendment takes effect retrospectively from 15th November, 1972.”

20. *The Finance Act, 2010 inserted the words “or fair market value of any property referred to in sub-section (2) of section 56 is required to be made”. This amendment is insignificant as far as the present appeal is concerned.*

21. It has been held by the Hon'ble Supreme Court in the case of *Sargam Cinemas Vs. CIT 262 ITR 513 (SC)* that rejection of books of accounts is a pre-condition for making a reference to DVO. Therefore in cases where this requirement was not satisfied, the addition made on account of unexplained investments in construction was being deleted. It is only with a view to remove such hurdle that Sec.142A of the Act was substituted by inserting a new Sec.142A by the Finance (No.2) Act, 2014, which no longer requires rejection of books of accounts of an Assessee to make a reference to the DVO.

22. By the Finance (No.2) Act, 2014 substituted the existing Sec.142A by inserting a new Sec.142A of the Act with effect from 1.10.2014, which reads thus:

“Estimation of value of assets by Valuation Officer.

142A. (1) The Assessing Officer may, for the purposes of assessment or reassessment, make a reference to a Valuation Officer to estimate the value, including fair market value, of any asset, property or investment and submit a copy of report to him.

(2) The Assessing Officer 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.

(3) The Valuation Officer, on a reference made under sub-section (1), shall, for the purpose of estimating the value of the asset, property or investment, have all the powers that he has under section 38A of the Wealth-tax Act, 1957 (27 of 1957).

(4) The Valuation Officer shall, estimate the value of the asset, property or investment after taking into account such evidence as the assessee may produce and any other evidence in his possession gathered, after giving an opportunity of being heard to the assessee.

(5) The Valuation Officer may estimate the value of the asset, property or investment to the best of his judgment, if the assessee does not cooperate or comply with his directions.

(6) The Valuation Officer shall send a copy of the report of the estimate made under sub-section (4) or sub-section (5), as the case may be, to the Assessing Officer and the assessee, within a period of six months from the end of the month in which a reference is made under sub-section (1).

(7) The Assessing Officer may, on receipt of the report from the Valuation Officer, and after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.

Explanation.—In this section, "Valuation Officer" has the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).”

23. In Circular No.1 of 2015 dated 21.1.2015 issued by the CBDT, the reasons for substitution of new Sec.142A in place of the earlier Sec.142A of the Act has been explained thus:

“43. Estimate of value of assets by Valuation Officer and time limit for completion of assessments where reference made

43.1 The provisions contained in section 142A of the Income-tax Act, before its amendment by the Act, provided that the Assessing Officer may, for the purpose of making an assessment or reassessment, require the Valuation Officer to make an estimate of the value of any investment, any bullion, jewellery or fair market value of any property. On receipt of the report of the Valuation Officer, the Assessing Officer may after giving the assessee an opportunity of being heard take into account such report for the purposes of assessment or reassessment.

43.2 Section 142A of the Income-tax Act does not envisage rejection of books of account as a pre-condition for reference to the Valuation Officer for estimation of the value of any investment or property. Further, the said section 142A does not provide for any time limit for furnishing of the report by the Valuation Officer.

43.3 Accordingly, section 142A has been substituted so as to provide that the Assessing Officer may, for the purposes of assessment or reassessment, require the assistance of a Valuation Officer to estimate the value, including fair market value, of any asset, property or investment and submit the report to him. The Assessing Officer may make a reference to the Valuation Officer whether or not he is satisfied about the correctness or completeness of the accounts of the assessee. The Valuation Officer, shall, for the purpose of estimating the value of the asset, property or investment, have all the powers of section 38A of the Wealth-tax Act, 1957. The Valuation Officer is required to estimate the value of the asset, property or investment after taking into account the evidence produced by the assessee and any other evidence in his possession or gathered, after giving an opportunity of being heard to the assessee. If the assessee does not co-operate or comply with the directions of the Valuation Officer he may, estimate the value of the asset, property or investment to the best of his judgment.

43.4 It has also been provided that the Valuation Officer shall send a copy of his estimate to the Assessing Officer and the assessee within a period of six months from the end of the month in which the reference is made. On receipt of the report from the Valuation Officer, the Assessing Officer may, after giving the assessee an opportunity of being heard, take into account such report in

making the assessment or reassessment.

43.5 Sections 153 and 153B of the Income-tax Act have also been amended to provide that the time period beginning with the date on which the reference is made to the Valuation Officer and ending with the date on which his report is received by the Assessing Officer shall be excluded from the time limit provided under the aforesaid section for completion of assessment or reassessment.

43.6 Applicability:- These amendments take effect from 1st October, 2014.”

24. It can be seen from the aforesaid history of Sec.142A, that the original provisions were introduced for the purpose of enabling to specifically provide that an Assessing Officer has the power to make a reference to the Valuation Officer for estimating the value of investment, expenditure, etc. The power was given to make a reference to the Valuation Officer purpose for the purposes of making an assessment or reassessment under this Act, (i) where an estimate of the value of any investment referred to in section 69 or section 69B or (ii) the value of any bullion, jewellery or other valuable article referred to in section 69A or section 69B or (iii) fair market value of any property referred to in sub-section (2) of section 56 is required to be made. Because the law was retrospective in its operation, the legislature wanted to safeguard concluded assessments being reopened and therefore by proviso to Sec.142A(3) of the Act, it was Provided that nothing contained in section 142A shall apply in respect of an assessment made on or before the 30th day of September, 2004, and where such assessment has become final and conclusive on or before that date. The requirement that finding that the books of accounts maintained by the Assessee is not correct and the value estimated by the AO varies substantially from what is recorded in the books of accounts is required to be satisfied before making a reference to DVO. It has been held by the Hon'ble Supreme Court in the case of Sargam Cinemas Vs. CIT 262 ITR 513 (SC) that rejection of books of accounts is a pre-condition for making a reference to DVO. Therefore in cases where this requirement was not satisfied, the addition made on account of unexplained investments in construction was being deleted. It is only with a view to remove such hurdle that Sec.142A of the Act was substituted by inserting a new Sec.142A by the Finance (No.2) Act, 2014, which no longer requires rejection of books of accounts of an Assessee to make a reference to the DVO. When the new Sec.142A was inserted by the Finance (No.2) Act, 2014, the proviso to Sec.142A(3) did not exist as it no longer served any purpose. The legislature was conscious of the fact that the substitution of Sec.142A by the Finance (No.2) Act, 2014 was made only for the purpose of overruling the legal position as interpreted by various High Courts and Supreme Court in the case of Sargam Cinemas (supra). The legislature did not make the law retrospective in operation nor were pending proceedings saved as was done when Sec.142A was inserted by the Finance (No.2) Act, 2004 w.r.e.f. from 15.11.1972. It cannot also be said that Sec.142A as inserted by the Finance Act, 2014 has retrospective effect. Therefore, We are of the view that the reference to DVO in the present case is invalid

because as held by the Hon'ble Supreme Court in the case of Sargam Cinemas Vs. CIT 262 ITR 513 (SC) rejection of books of accounts is a pre-condition for making a reference to DVO and there was admittedly no such rejection of books of accounts.

25. It is clear from the aforesaid exposition of law on the issue that the reference to DVO in the present case is illegal and any addition made on the basis of such report cannot be sustained. The addition made by the AO is therefore, liable to be deleted on the short ground. In view of the conclusion on ground no.2 we do not wish to go into other grounds of appeal and the additional grounds of appeal before us.”

7.1 In the instant case, as mentioned earlier, reference to the DVO was made by the A.O. much prior to 01.10.2014 and without rejecting the books of account of the assessee. Therefore, in view of the Co-ordinate Bench order in the case of M/s.Shetty Constructions v. ACIT (supra), we hold that reference to the DVO in the present case is illegal, hence, additions based on the DVO report are deleted. Since we have deleted the addition on the basis of preliminary issue (ground 2.1), the other grounds on merits / demerits of the DVO report is not adjudicated. It is ordered accordingly.

ITA No.73/Bang/2022 (Asst.Year 2013-2014)

8. The grounds raised read as follows:-

“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned Commissioner of Income tax [Appeals] of the National Faceless Appeal Centre [CIT[A] for short] ought to have appreciated that the statement recorded u/s 131[1] of the Act dated 24/07/2013 from Mr. Bhaskar, Managing Director, at the time of survey was erroneous and same could not form the basis for making the impugned addition of Rs. 50,00,000/- under the facts and in the circumstances of the appellant's case.

3. Without prejudice to the above, the learned CIT[A] is not justified in sustaining the addition of Rs. 50,00,000/- as the alleged unexplained investment in construction of the hospital

building for the year under appeal relying upon the valuation report of the DVO dated 27/11/2014 under the facts and in the circumstances of the appellant's case.

3.1 The learned CIT[A] ought to have appreciated that the appellant had maintained proper books of accounts along with bills and vouchers in support of the investment in the cost of construction of the hospital building in the ordinary course of business, which were filed before various government authority and bankers and with the I.T.O from time to time and therefore, the addition made based on the report of the DVO without rejection of the books of accounts maintained by the appellant was bad in law and the same is liable to be deleted.

3.2 The learned CIT[A] further erred in failing to appreciate that the impugned addition was made by relying on the report of the DVO, who had not given any opportunity to the appellant to file objections for the proposed value assessed by him and thus, there was a violation of the principles of natural Justice in relying upon the report of the DVO for making the impugned addition.

3.3 The learned CIT[A] ought to have appreciated that the plinth area rates method of valuation adopted by the learned DVO was opposed to law and facts of the appellant's case in as much as the appellant has maintained bills and vouchers that were impounded at the time of survey and the same were also produced before the learned DVO and therefore, the adoption of the plinth area method of valuation is untenable and the impugned addition made on this basis deserves to be vacated.

4. Without prejudice to the above, the learned CIT[A] failed to appreciate that the cost of construction estimated by the learned DVO was highly excessive as he had adopted plinth area rates of CPWD instead of adopting local rates considering that the hospital building was constructed in Puttur, which is a small town in the mofussil area and therefore, the adoption of the higher CPWD rates was unwarranted and unjustified.

5. Without prejudice to the above, the learned CIT[A] ought to have appreciated that the rebate for self supervision of the construction of 4% allowed by the DVO was very paltry and the same deserves to be increased substantially.

6. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the

appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

9. The facts are identical for assessment years 2011-2012 and 2012-2013 (refer para 3 above), hence, is not reiterating in this appeal. In this appeal, the assessee challenges the addition of Rs.50 lakh, which was offered by the MD of the assessee-company during the course of survey to make good for any difference in the valuation of the building.

10. We have heard rival submissions and perused the material on record. The statement recorded from the MD during the course of survey in answer to question No.9, the MD of the assessee-company had offered Rs.50 lakh as additional income on account of difference in value between the books of account of the assessee and the actual cost. The relevant question and answer read as follows:-

“Q9. As per details given by you in the answer to Q No.6 the cost of construction of the building measuring 45300 sq.ft. works out to Rs.4,335,56,000/-. But as per the copy of your latest balance sheet for F.Y.2012-13 impounded vide page No.17 of PCH/1/22 the cost of building has been shown at Rs.3,54,46,685/-. It is also seen from the valuation report of the approved valuer Shri.Prasanna N. Bhat, that the building has been valued at Rs.5,13,84,900/- as on 2.3.2011. How do you account for the difference in value of the building?”

A9. I wish to submit that I do not have much knowledge regarding the cost of construction and the rate mentioned by me is only an approximate rate as per my knowledge. Further, the figure mentioned in the Balance Sheet of FY 2012-13 is not a final figure as the accounts are yet to be audited. Moreover the figures quoted by the Valuer in his report are for the purpose of availing Bank loan and not actual figures. However, I agree that there may be some difference in the value of the building. Hence, to account for this difference and all other differences in the accounts, and to buy peace with the department, I offer to declare an additional income of

Rs.50,00,000/- (Rupees Fifty Lakh only) in the hands of the company for the Asst.Year 2012-13 (previous year 2011-12)."

10.1 Later, the statement u/s 131(1) of the I.T.Act on 24.07.2013, the MD reviewed his declaration and offered the additional income of Rs.50 lakh for the assessment year 2013-2014 instead of assessment year 2012-2013, as admitted earlier during the course of survey. The relevant question and answer to the same reads as follows:-

"Q2. During the course of survey u/s 133A carried out at M/s.Purtur City Hospital Pvt. Ltd., Puttur, a statement was recorded from you as Managing Director of the company. In the said statement you have declared an additional income of Rs.50,00,000/- in respect of the company for the Asst.Year 2012-13. Whether you have paid any tax towards the additional income declared and when will you be filing your revised return?"

Ans: Yes, on the date of survey I had declared additional income of Rs.50:00 lakhs for Asst.Year 2012-13. But, subsequently I had a meeting with the board of directors of the company and the directors have suggested to review the declaration on the basis of payments made for construction. Actually the major payments towards the construction and interior work of 4th and 5th floor have been made during the Financial Year 2012-13 after availing loan of Rs.1.45 crores from S.B.I., Putter. Hence the additional income of Rs.50:00 lakhs declared during the course of survey will be offered to tax for the Assessment Year 2013-14 (in respect of Financial Year 2012-13) for which the accounts are yet to be finalized. I undertake to file the return within the due date."

10.2 The return of income was filed on 28.09.2013, wherein the assessee did not disclose Rs.50 lakh thereby retracting the declaration of the MD of the assessee-company. As mentioned earlier in the preceding paragraphs, the matter was referred to the DVO and the value of hospital building as per the DVO's report was determined at Rs.6,21,68,000 instead of Rs.4,61,73,596 as per the books of account of the assessee as on 31.03.2014. Therefore, there is a difference of

Rs.1,59,94,431. The addition based on the DVO's report was deleted by us only on the preliminary objection, namely, that the books of account of the assessee was not rejected prior to the reference to the DVO. The rejection of the DVO's report on preliminary objection does not mean the value found therein is totally incorrect. This fact is reinforced by the MD in the sworn statement recorded on two different dates (i.e., on the date of survey on 11.07.2013 and u/s 131(1) of the I.T.Act on 24.07.2013), wherein he admitted that there may be some difference in the expenditure incurred in the building with the cost recorded in the books of account and also readily agreed to offer additional income of Rs.50 lakh in the hands of the assessee-company. Therefore, based on the declaration of the MD on two different dates, we confirm the addition of Rs.50 lakh for this assessment year. Moreover, we find that inspite of the addition of Rs.50 lakh, there is no tax liability for the assessment year 2013-2014. The other grounds on merits / demerits on the basis of valuation report is not adjudicated.

11. In the result, (i) ITA No.71/Bang/2022 and ITA No.72/Bang/2022 are allowed and (ii) ITA No.73/Bang/2022 is dismissed.

Order pronounced on this 13th day of June, 2022.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 13th June, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-2, Panaji.
4. The Pr.CIT(Central), Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore