

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “G” BENCH: NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER &
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.7127/Del/2018
[Assessment Year : 2008-09]**

ACIT, Central Circle-15, New Delhi.	vs	S.S. Horticulture Pvt.Ltd., A-35, Brij Green Farms, Chattarpur, Mandir Road, Village-Satbari, New Delhi-110030. PAN-AAJCS0136R
APPELLANT		RESPONDENT
Appellant by		Shri H.K.Chaudhary, CIT DR
Respondent by		S/Shri Salil Aggarwal, Sr. Advocate & Shailesh Gupta, Advocate
Date of Hearing		25.04.2022
Date of Pronouncement		14.07.2022

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the Revenue for the assessment year 2008-09 is directed against the order of Ld. CIT(A)-XXVI, New Delhi dated 28.08.2018.

2. The Revenue has raised following grounds of appeal:-

1. *“The Ld.CIT(A) has erred on facts, merits and in law by quashing the assessment framed u/s 153C of the IT Act, 1961*
2. *That the Ld. CIT(A) has erred on facts and in law in quashing the assessments framed u/s 153C on the ground that no incriminating material was seized without appreciating the facts that valuation reports has been seized from the premises and which constituted incriminating material and on that basis the AO had made additions.*
3. *That the Ld. CIT(A) has erred in law and facts in stating that the valuation reports was dated 16.12.2006 and pertained to A.Y. 2007-08 but ignored the fact that for, valuation it is not the date of valuation but the basis and the valuation perse is important and as the property was*

sold in F.Y. 2007-08 (relevant to A.Y. 2008-09) accordingly, the valuation reports constituted the incriminating material and the AO has rightly framed assessment based on the same.

4. *The Ld. CIT(A) has erred on facts and in law in quashing the assessment framed u/s 153C of the IT Act and the ground that no incriminating material was found without appreciating the fact that the provisions of u/s 153A and 153C does not confine the assessments to be based only on incriminating material.*
5. *The Ld.CIT(A) has erred on facts and in law by not accepting the valuation report dated 16/12/2006 by stating that the property sold on 18/03/2008 and the valuation report is dated 16/12/2006, so it does not pertain to A.Y. 2008-09.*
6. *The Ld.CIT(A) has erred in law and on facts by deleting the addition of Rs. 15,24,52,659/- on account of capital gain on sale of property.*
7. *The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.”*

FACTS OF THE CASE

3. Facts giving rise to the present appeal are that in this case, original return of income was filed through e-mode on 29.07.2011 declaring income of Rs.2,29,64,430/-. The same was processed u/s 143(1) of the Income tax Act, 1961 (“the Act”). Subsequently, action u/s 132 of the Act was conducted in Tinna Group of cases on 11.11.2010 and various books of account and documents etc. including the documents belonging to the assessee, were found and seized. The Assessing Officer (“AO”) recorded the satisfaction and issued notice u/s 153C/153A of the Act calling upon the assessee to file return of income within 15 days of the service of the aforesaid notice. In response thereto, the assessee filed a letter on 05.02.2013 stated that the income tax return already filed on 12.01.2011 may be treated to have been filed in response to the notice u/s

153C of the Act. Thereafter, the AO proceeded to make assessment by issuing notice under sections 143(2) and 142(1) of the Act. It is observed by the AO that the assessee is engaged in the business of real estate activities. During the course of the year under consideration, the assessee company, M/s S.S. Horticulture sold its land and building admeasuring 2.583 acres on 22.12.2007 to Shri Rachpal Singh, Shri Daljit Singh and Shri Harinder Singh for a sale consideration of Rs.4 crore as per Sale Deed. During the course of search, two valuation reports, one in respect of this property and the other in respect of other property belonging to M/s Space Age Technical Services Pvt.Ltd. which were prepared by Shri Ashok Raichand, approved valuer, were found and seized from the Sekhris premises at Brij Green Farms, Village Satbari, Chhatarpur, New Delhi as per Annexure A-20, Pages 53 to 87. One of these valuation reports related to properties owned by M/s S.S. Horticulture Pvt.Ltd. The approved valuer, in his valuation report, assessed the fair market value of the above property at Rs.16.29 crores in respect of the said property. It was further observed by the AO that the sale consideration of the property has been disclosed by the assessee company at Rs.1.6 crore (approx.) per acre. The AO was of the view that looking to the valuation report the sale consideration was highly under valued. Therefore, the AO after considering the material available on record and submissions of the assessee proceeded to frame assessment thereby, he made addition of Rs.15,24,62,639/- on account of capital gain and thus, assessed income of the assessee at Rs.17,5,17,089/-. The assessee carried the matter in appeal before Ld.CIT(A), who after considering the submissions quashed the assessment order on the basis that there was no incriminating material pertaining to the assessment year under appeal. He also deleted the additions on merit as made by the AO.

4. Aggrieved against this action, the Revenue is in appeal before this Tribunal.
5. Ground Nos. 1 to 5 raised by the Revenue have been assailing the action of Ld.CIT(A) against the quashing of the assessment order on legal grounds.
6. Ld.CIT DR vehemently supported the assessment order and submitted that Ld.CIT(A) grossly erred in quashing the assessment order purely on the basis that there was no incriminating material pertaining to the assessment year under consideration. He submitted that there is no dispute with regard to the fact at the time of search a Valuation report of the property in question was found at the premises of the assessee. As per Valuation Report dated 16.12.2006, the fair market value of the property was assessed at Rs.16.29 crores. In the Sale Deed dated 18.03.2008, the value disclosed was at Rs.4 crores. Therefore, the AO after examining the two documents found that there was huge difference of value as disclosed by the assessee and assessed by the approved valuer. He further submitted that it is not the case where no document was found. In this case, there was a Valuation report unearthed during the course of search which stated the correct fair market value of the property. He submitted that therefore, the AO was justified in making addition on the basis of such report. He submitted that under these facts, Ld.CIT(A) grossly erred in holding that the action of the AO was arbitrary. He submitted that this report related to the property which was sold during the year under consideration. Therefore, it cannot be construed that the valuation is assessed in the Report, cannot be applied or is not a fair market value of the property.
7. On the contrary, Ld. Counsel for the assessee opposed these submissions of Ld.CIT DR and submitted that the AO was not justified in framing the assessment

u/s 153C of the Act. He contended that law is well-settled that for exercising jurisdiction u/s 153C of the Act, there has to be some incriminating material and such material should be pertained to the assessment year under consideration. He contended that there is no dispute with regard to the fact that the assessment has been framed on the basis of Valuation report found during the course of search that disclosed the fair market value of the property at higher value than that was disclosed in the Sale Deed. He submitted that firstly, the report is anti-dated that could not have been treated as the Valuation report related to the assessment year under consideration. The reason for higher valuation as in the normal course for obtaining higher housing bank loan, the AO was required to consider and bring on record contemporaneous evidence with regard to fair market value of the property. The AO himself referred the issue of valuation to the Department Valuation Officer (“DVO”) and the value as assessed by the DVO is lower than the sale consideration as disclosed in the Sale Deed. Hence, there was no occasion or the reason for adopting the value as stated in a document, firstly, which do not pertain to the assessment year under appeal and secondly, that was not supported by any comparative instances of sale. He contended in the normal course of business, the real estate sector is very volatile. Hence, valuation of the property at one point of time shores high and at other day, it falls very low. In support of his contention that there was no incriminating material pertaining to the year under assessment, the Ld. Counsel for the assessee relied upon various case laws. He submitted that there is no material supporting the valuation report as relied by the AO. Therefore, the Ld.CIT(A) has rightly deleted the addition.

8. In rejoinder, Ld.CIT DR submitted that the case law as relied by the Ld. Counsel for the assessee is distinguishable on facts of the present case hence, do not help the assessee. He contended that in the present case there is incriminating document in the form of the valuation report hence, the action of AO is justified.

9. We have heard the contentions of the Ld. Authorized representatives of the parties and perused the material available on record and gone through the orders of the authorities below. The objections of the assessee regarding assessment u/s 153C of the Act are that the assessment is not based upon any incriminating material recovered during the course of search. Further, the AO has not brought any material in support of his allegation regarding higher fair market value of the property. It is stated that both Stamp Valuation Authority as well as the DVO have assessed the fair market value of the property much lower than the value as disclosed in the Sale Deed. Moreover, the Valuation Report pertained to a date much prior to registration of Sale Deed. The AO has not brought any material in support except the Valuation report. The Valuation Report is merely an opinion. It cannot be equated with a document as envisaged u/s 153C(b) of the Act. We have given our thoughtful consideration the facts of the present case. We find that Ld.CIT(A) has decided the issue by observing as under:-

“The appellant challenged the assumption of jurisdiction u/s 153C of the Income Tax Act by the AO on the ground that the assessment has been reopened u/s 153C of the Income Tax Act by drawing satisfaction note and the documents being list of share holding as on 31/03/2010 and details of land holding forming part of satisfaction recorded for reopening of assessment u/s 153C of the Income Tax Act are not incriminating document. It has been submitted that during the course of search no incriminating documents

pertaining to A Y 2008-09 was found during the course of search. However for assumption of jurisdiction u/s 153C of the Income Tax Act documents seized must be incriminating and must relate to each of the AYs whose assessments are sought to be reopened. The appellant relied on the decision of Apex court on Commissioner of Income Tax-III, Pune v. Sinhgad Technical Education Society.

I have gone through the satisfaction note and found that no document pertaining to A Y 2008- 09 has been found during the course of search. The valuation report on the basis of which addition have been made is dated 16/12/2006 and as such pertains to AY 2007-08. Therefore no incriminating material relating to AY 2008-09 has been found during the course of search.

As such the assessment framed u/s 153C is quashed and addition made is therefore deleted.”

10. Ld.CIT(A) quashed the assessment on the basis that the assessment was not framed on the basis of any incriminating material and the valuation report as relied by the AO, did not pertain to the relevant Assessment Year. The law is well settled that for initiation of proceedings u/s 153C of the Act, there has to be some incriminating material related to the assessment year under consideration. In the present case, it is not the case where no material was available with the AO. During the course of search, a valuation report was found at the premises of third party wherein the fair market value of the property was assessed at higher value than what was disclosed by the assessee. Hence, there was a reasonable cause for the AO to initiate proceedings u/s 153C of the Act. The assessee stated that adopting of a higher fair market value by the approved valuer was for obtaining a loan from the bank. Moreover, the Stamp Valuation Authority and the DVO assessed fair market value much lower than what assessee has disclosed in the Sale Deed. The AO has not brought on record any other material suggesting that the valuation adopted by the Stamp Valuation Authority or the DVO was not

correct. The AO has also not brought any other comparative sale instances of similarly situated property to rebut the claim of the assessee. Therefore, there is no material to accept the valuation report by the approved valuer which was obtained much prior to the assessment year under consideration for sustaining the addition. So far the decision of Ld.CIT(A) for deleting the addition is justified as the AO has not brought any evidence supporting the valuation report. We do not see any reason to disturb the conclusion drawn by the Ld.CIT(A) regarding merit of the case. However, we are of the considered view that the AO was justified for initiation the proceedings u/s 153C of the Act when he was in possession of certain valuation report related to the property which was sold during the year under consideration. The appeal of the Revenue is partly allowed.

11. In the result, the appeal of the Revenue is partly allowed.

Order pronounced in the open Court on 14th July, 2022.

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI