

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC - A” BENCH : BANGALORE**

BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT

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| ITA No.711/Bang/2022 |
| Assessment Year : 2014-15 |

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| Shri. Ananthakrishna Vasudev Aithal, C/o. Krishna Kalyan Mantapa, Deshpande Nagar, Hubballi – 580 029. PAN : AFEPA 6862 R | Vs. | The ITO, Ward – 1(1), Hubballi. |
| APPELLANT | | RESPONDENT |

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| Assessee by | : | None |
| Revenue by | : | Shri. Ganesh R. Ghale, Standing Counsel |

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| Date of hearing | : | 23.11.2022 |
| Date of Pronouncement | : | 24.11.2022 |

ORDER

This is an appeal by the assessee directed against the order dated 20.06.2022 by the NFAC, Delhi relating to Assessment Year 2014-15.

2. The only issue that arises for consideration in this appeal is as to whether the Revenue authorities were justified in making an addition of Rs.5,90,900/- on the total income of the assessee.

3. The assessee is an individual engaged in the business of outdoor catering. He is proprietor of “Amruta Caterers”. He also works as a Manager at Sri Krishna Kalyan Mantap, Deshpandenagar, Hubballi.

4. There was a survey under section 133A of the Income Tax Act, 1961 (hereinafter called ‘the Act’) conducted in the business premises of the assessee on 27.02.2015. The survey was consequent to the information that the assessee purchased an immovable property at Deshpandenagar, Hubballi for Rs.90 lakhs. In the course of survey, the statement of the assessee was recorded on 27.02.2015.

In that statement, the assessee voluntarily declared a sum of Rs.25,44,400/- for Assessment Year 2014-15 in addition to his normal income. The assessee purchased land and building under sale deed dated 06.05.2013 for Rs.90 lakhs together with Smt. Sarojini Aithal. It is not in dispute that the Senior Sub-Registrar, Hubballi, registered the property with valuation as equivalent to sale consideration of Rs.90 lakhs and that valuation was as per the valuation for registration of documents as prescribed by the State Government. The declaration given by the assessee at the time of survey was a declaration that the assessee had invested over and above the sum of Rs.90 lakhs a sum of Rs.25,44,400/- in purchase of the aforesaid property.

5. On 31.03.2015, the assessee filed return of income for Assessment Year 2014-15 declaring total income of Rs.4,17,730/-. In the said return of income, the assessee did not offer to tax the sum declared by him at the time of survey. The assessee by letter dated 31.03.2015 submitted that the declaration given at the time of survey was under pressure and confusion and to buy peace. The assessee further submitted that he carefully went through all the documents and found that there was no additional investment in the purchase of the property over and above the sum of Rs.90 lakhs. The assessee also produced sale agreement dated 12.03.2013 wherein the sale consideration was reflected as Rs.90 lakhs.

6. The case of the assessee was selected for compulsory scrutiny. In the assessment proceedings, the AO referred to the Valuation Officer i.e., the District Valuation Officer (DVO) for estimating the value of the property purchased by the assessee. The DVO, vide his report dated 29.06.2016, determined the value of the cost of land and building at Rs.95,90,900/- as on 06.05.2013. The AO, based on the report of the DVO, added a sum of Rs.5,90,900/- which was over and above the sum of Rs.90 lakhs for which the assessee purchased the property. The

AO added the aforesaid sum to the total income of the assessee as unexplained income under section 69 of the Act.

7. Aggrieved by the order of the AO, assessee preferred appeal before the CIT(A) (NFAC). Before the NFAC, the assessee contended that the conditions to be fulfilled for invoking Section 69 are not at all evident in this case. Firstly, the assessee should have made an investment, which are not recorded in the books if any maintained. The assessee has made an investment of his share in Rs. 90 lakhs and the same is recorded in the statement of affairs submitted to the Assessing Officer. The assessee had invested Rs. 47,67,308/- out of Rs 90 lakhs and he had explained the sources for the said Investment to the satisfaction of the Assessing Officer. The house was a ready built house, purchased no understatement of the sale consideration arose and the Sub Registrar also did not record any understatement of the value so far. Therefore, the valuation given by the valuation Officer shall not be considered at all. It was submitted that when house is purchased such transaction does not warrant reference to a Valuation Officer for valuation under Section 142A of the IT Act, 1961. It was contended that under sub section 1 of Section 142A of the Income Tax Act, 1961 (Act) introduced by Finance Act of 2004, subsequent to the Supreme Court Judgement in Amiya Bala Pal case, the Assessing Officer may refer to the Valuation Officer to make an estimate of the value of an investment referred to in Section 69A and 69B of the income Tax Act. **It is to be understood that Investment referred to in this Section pertains to the Investment made by the assessee in the construction of the property and not the investment made in the purchase of the property.** It was thus contended that the provisions of valuation of an immovable property contained in Section 142A of the

Income Tax Act, 1961 do not apply to a house purchased. Therefore, the addition of Rs. 590,900/- made based on Valuation Report dated 29/06/2015 is not as per the provisions of Income Tax Act, 1961 and the same has to be deleted. It was contended that the AO has wrongly invoked the provisions of Section 142A of the Act even though the same are inapplicable to the appellant and brought to income tax Rs. 5,90,900/- under Section 69 as unexplained investment to the declared income on the basis of valuation report. The assessment done by adding Rs. 5,90,900/- u/s. 69 of the Act on the basis of valuation report is void ab initio since it has no valid legal ground and against the provisions of the Income Tax Act, 1961.

8. The NFAC, however, did not address the issue as to whether reference could be made under section 142A of the Act in the facts and circumstances of the case but went to hold that the DVO's report can be relied upon by the AO for making addition. The NFAC referred to the decision of the Hon'ble Supreme Court in the case of *Amia Vs. CIT, Shillong*, Appeal (civil) 4657 of 2000 dated 07/07/2003. In that case, the question was whether for making addition under section 69 of the Act on account of unexplained investment in construction, provisions of section 55A of the Act could be invoked. After referring to the above decision, the NFAC has observed as follows:

“Thus, it is seen that the provisions of Section 142A of the Income Tax Act, 1961 does apply in the instant case of the appellant and the assesment order of the assessing officer dated 22.12.16 is hence upheld.

In view of the above, these grounds of appeal are, accordingly, dismissed and the addition made by the Ld. AO on this account is, hereby, confirmed.”

9. It is thus clear from the order of the NFAC that there is no proper application of the mind. Nevertheless, I am of the view that the Assessing Officer has made the addition u/s 69 of the Act. This section, in turn, provides that :
'Where in the financial year immediately preceding the assessment year the

assessee has nude investments which are not recorded in the books of account, it' any, maintained by him for any source of Income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.' A careful perusal of the provision divulges that in order to invoke this provision, it is sine qua non that the assessee must have made investments which are not recorded in the books of account. The factum of the assessee having made investment should be first proved by the AO, only then the burden shifts on the assessee to prove the source of investment. Such investment outside the books of account must be positively proved by the AO and not only inferred from the attending facts. If such an investment outside the books is not proved, the assessee cannot be called upon to prove the source of such a hypothetical investment. Adverting to the facts of the instant case, we find that apart from relying on the DVO's report, the AO has not brought anything on record or any other material to indicate that the assessee did make investment in purchase of property over and above that declared in the books of account.

10. I am therefore of the view that the addition made by the OA and confirmed by the NFAC is unsustainable. I am also of the view that the provisions of section 142A of the Act are applicable only when the assessee has made investment in construction. In the present case, the assessee purchased a ready built house and therefore the provisions of section 142A of the Act are not attracted to the facts and circumstances of the present case. Hence, I am of the view that the reference to the DVO by the AO was not valid and consequently, the addition made by the AO on the report of the DVO cannot be sustained. The same is directed to be deleted and the appeal of the Assessee is allowed.

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

Pronounced in the open court on the date mentioned on the caption page.

**Sd/-
(N. V. VASUDEVAN)
Vice President**

Bangalore,
Dated: 24.11.2022.
/NS/*
Copy to:

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.