

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR
BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 102/Asr/2023
Assessment Year: 2018-19

M/s Excellent Concerns, Dreamland Park Road Kathua (J&K)-184101	Vs.	The Dy. CIT Central Circle, Jammu
PAN: AADFE3500A		
APPELLANT		RESPONDENT

Assessee by : Shri Joginder Singh, CA
Revenue by : Shri Pardeep Kumar, Sr. DR

Date of Hearing : 15/06/2023
Date of Pronouncement : 21/06/2023

ORDER

Per Dr. M. L. Meena, AM:

This appeal is filed by the Assessee against the order of the Ld. CIT(A)-5, Ludhiana dated 10/02/2023 for the Assessment Year 2018-19.

2. In the present appeal Assessee has raised the following grounds:

1. That the Learned Commissioner of Income tax, (Appeals)-5, Ludhiana passed order Under section 250(6) of the Income tax Act, 1961 merely on assumptions, without appreciating the factual, legal and statutory position of the Law and facts of the case.

2. (a) That on the facts and circumstances of the case, the Ld. CIT(A) has erred in confirming the addition made by the Ld. AO in respect of difference in Valuation of construction as worked out by the assessee and as estimated by the DVO amounting to Rs.7,37,200/-without appreciating the facts as brought on

record by the assessee.

(b) That on the facts and circumstances of the case, the Ld. CIT(A) has erred by not disposing of the objections raised by the assessee on the Valuation Report of the DVO. The Ld. CIT(A) ought to have sent the assessee's valuation report of the approved Valuer by Ministry of Finance along with the objections to the DVO for his comments being technical person instead of rejecting the same in summary manner without having technical qualification.

3. The appellant craves leave to add, amend, alter or otherwise raise any other ground of appeal.

Assessee has also raised the following grounds of appeal:

1. On the facts and in the circumstances of the case, that the DVO did not have jurisdiction over the case of the assessee, hence the valuation report and the consequential assessment order passed by the Ld.AO and subsequently confirmed by the Ld. CIT(A) is bad in law and the same may be quashed.
2. On the facts and in the circumstances of the case, that the DVO did not have jurisdiction over the case of the assessee due to the fact that as per section 142A (3) of the Income tax Act, 1961 that the Valuation Officer for the purpose of estimating the value of asset, have all powers that he has under section 38A of the Wealth tax Act, 1957. Since Wealth tax has been abolished w.e.f. 01.04.2015 and there are no powers vested with Valuation Officer under Income tax Act, accordingly the Valuation Report and consequential assessment order passed by the Ld. AO and confirmed by the Ld. CIT(A) Ludhiana is void abinitio, illegal and bad in law, hence the same may be quashed.
3. Brief facts as per record are that the assessee is a partnership firm and is having income from running of private coaching classes and also having rental income during the year under consideration. For the relevant assessment year 2018-19, the assessee had e-filed its return of income under acknowledgement No.39961533030301218 dated 30.12.2018

declaring total income of Rs.5,35,050/-. Survey u/s 133A of the Income tax Act, 1961 was conducted on 21.08.2017 and the case was selected for compulsory scrutiny. The Ld. AO referred the valuation of property/construction u/s 142A of the Act to the Valuation Cell of the Income tax Department and the valuation officer had filed the report before the Ld. AO on 24.05.2021. On the basis of said valuation report, the difference in valuation of cost of construction as reported by the assessee and the estimate made by the DVO amounting to Rs.7,37,200/- was charged to tax under section 69B of the Income tax Act, 1961 and thus the income was assessed at Rs.12,72,250/- as against the returned income of Rs.5,35,050/-.

4. Aggrieved with the said addition, the assessee filed an appeal before the Ld. CIT(A)-5, Ludhiana who vide his order dated 10.02.2023 passed in appeal No.10321/2017- 18/IT/CIT(A)-5/Ldh/2021-22, dismissed the appeal of the assessee by observing that-

From the comparison of the above two reports, following discrepancies can be noticed in the report of valuation submitted by the assessee:

I. The DVO has applied floor-wise rates to the cost of construction but the report submitted by the assessee has applied average rate to the whole construction (Sr. No. 1 of table above).

II. *The difference in value of property calculated in report of the DVO and the report of valuation submitted by the assessee is approximately 5%.*

III. *The report of valuation submitted by the assessee has included a number of items valuing to the extent of Rs. 60,00,000/- which have been deducted from the valuation done by the DVO to arrive at a final valuation of Rs. 1.02 crores.*

IV. *The valuer of the assessee has given no reasoning as to why the cost should be reduced on account of flooring, paints done, external finishing work, false-ceiling, big hall rooms etc.*

V. *Also, there is no finding in the report of the private valuer as to why the contention that a benefit of Rs. 12 lacs should be given for the direct labour employed be accepted in absence of any supporting documentary evidence.*

VI. *So, the difference in the valuation report submitted by the assessee from the report of the DVO can be ascribed to the fact that the assessee has claimed deductions on account of various items mentioned at Serial No. a to h above for which no supporting claim has been filed.*

VII. *It is apparent from above discussion that the valuation report submitted by the assessee has not claimed any benefit on account of PWD Rates but only on account of excess deductions claimed as mentioned above.*

From the forgoing discussion, it is clear that the difference in cost as calculated by the Valuer of the assessee is because of the above reasons. The DVO has calculated the cost of the property as per the prescribed norms. The AR during the course of appellate proceedings has not been able to justify as to why the report of the DVO should not be taken into consideration and the basis for considering the report of DVO to be incorrect. Just furnishing a secondary report in which modifications have been done with respect to extra deductions claimed will not suffice as an evidence to nullify the report of the DVO. In fact, the basic cost of construction of property as reported by the DVO and as reported by the valuer of the assessee (Sr. No. 2 of the table above) is almost similar with a difference of approximately 5%. The valuer of the assessee has brought extra difference in the value of construction only through the claim of various deductions mentioned at serial no. a to h above. Nowhere the assessee has supported its contention in the grounds of appeal

with any supporting evidence regarding the difference in rates of valuation to be based upon PWD vs. CPWD rates.

Hence, the valuation report submitted by the assessee cannot be relied upon because no reasons for the divergences as pointed out above have been given by the assessee in his submissions. Also, the assessee has not pointed out any defect in the valuation report of the DVO. In above circumstances, the valuation rates adopted by the AO on the basis of report of the DVO, are held to be correct.

The AR has contended that the PWD rates should have been applied by the DVO instead of CPWD rates. The AR in his support has submitted the report of valuation done by the private valuer. The valuation difference in the said report is only on account of extra deductions claimed by the private valuer rather than any major difference in the rates of CPWD vs. PWD. Hence, this ground of appellant cannot be accepted as the valuation report submitted by the assessee shows a value of Rs. 1,53,10,218/- against the value of Rs. 1,60,99,000/- calculated by the DVO. The assessee has reached the final valuation of the property after claiming extra deductions to the extent of Rs. 60,00,000/- as discussed above.

The AR has further claimed that the benefit of personal supervision should have been given to the assessee. In above regard, reference is drawn to para 9.2 of the report of the DVO wherein, the DVO has held as under:

“Assessee in his letter dated 10.03.2021 stating that the work was executed by the assessee and their family members directed under their own supervision but no supporting documents, bills, vouchers were submitted by the assessee in support of this. Therefore, this fact has not been considered in the report”

In the report submitted by the private valuer of the assessee, a benefit of Rs. 12,07,425/- has been taken on account of direct labour employed but no supporting evidence for the same has been annexed by the private valuer in his report under consideration. In view of above discussion, it is apparent that the DVO recorded a clear finding of the absence of any personal supervision during the construction and the private valuer also could not place forth any supporting document for claiming deduction of Rs. 12,07,425/- on this count. Hence, the appeal of the assessee on this ground is not tenable.

Finally, the AR has submitted that the benefit of 10% in valuation should have been allowed as per various judicial pronouncements. It is important to emphasize here that the benefit of 10% is not a statutory benefit but is given only when the evidence of personal supervision in the construction of the property is available. As the said issue has already been discussed in the earlier paras that there is no evidence to the effect that there was personal supervision involved during the construction of property, the said benefit cannot be allowed.”

5. Being aggrieved with the order of the CIT(A), the present appeal is being filed against the said order before us.

6. The Ld. Counsel while reiterating the submission made before the authorities below, contended that the CIT(A) passed order Under section 250(6) of the Income tax Act, 1961 merely based on assumptions, without appreciating the facts of the case and, legal and statutory position of the Law. He argued that the Ld. CIT(A) has erred in confirming the addition made by the Ld. AO in respect of difference in Valuation of construction as computed by the assessee and as estimated by the DVO amounting to Rs.7,37,200/- without appreciating the facts, brought on record by the assessee that the Ld. CIT(A) has erred by not disposing of the objections raised by the assessee on the Valuation Report of the DVO. The Ld. CIT(A) ought to have sent the assessee's valuation report of the approved Valuer by Ministry of Finance along with the objections to the DVO for his

comments being technical person instead of rejecting the same in summary manner without having technical qualification.

7. Per contra, the Ld DR although supported the impugned order, however, he failed to rebut the contention of the counsel.

8. We have heard the rival contentions, perused the material on record, impugned order, written submission and case law cited. Admittedly, Addition was made of the difference in valuation of cost of construction as reported by the assessee and the estimate made by the DVO amounting to Rs.7,37,200/- and which was charged to tax under section 69B of the Income tax Act, 1961.

9. The counsel has taken objection that the DVO did not have jurisdiction over the case of the assessee, and hence the valuation report and the consequential assessment order passed by the Ld. AO and subsequently confirmed by the Ld. CIT(A) is bad in law and the same may be quashed. He contended that as per section 142A (3) of the Income tax Act, 1961, the Valuation Officer had powers for the purpose of estimating the value of asset, have all powers that he has under section 38A of the Wealth tax Act, 1957. Since Wealth tax has been abolished w.e.f.

01.04.2015 and there are no powers vested with Valuation Officer under Income tax Act, accordingly the Valuation Report and consequential assessment order passed by the Ld. AO and confirmed by the Ld. CIT(A) Ludhiana is void abinitio, illegal and bad in law, hence the same may be quashed. The contention of the Ld. AR has no merits in challenging the powers of the AO u/s 55A of the Act to make reference to DVO to determine value of the construction of property, based on CPWD rates. Meaning thereby, where value of construction was higher than that claimed by assessee, Assessing Officer could issue commission under section 131(1)(d) to DVO to ascertain fair market value under section 55A of the Act. Our view gets support by the judgement of Hon'ble HIGH COURT OF PUNJAB AND HARYANA delivered in the case of "Krishan Kumar Jhamb vs. Income-tax Officer", [2009] 179 Taxman 141 (Punjab & Haryana) where it was observed that where valuation report of approved valuer submitted by assessee suffered from grave infirmity inasmuch as it did not take into account a number of items used by assessee for construction of property, revenue was correct in adopting value determined by DVO based on CPWD rates. The decision cited by the Ld. AR are distinguishable on peculiar facts of the present case.

10. Respectfully, following the Hon'ble Jurisdictional HIGH COURT OF PUNJAB AND HARYANA in the case of "Krishan Kumar Jhamb vs. Income-tax Officer", (Supra) the objection of the appellant to the DVO report is held to be devoid of merits and as such, rejected.

11. That the Ld. CIT(A) has not disposed of the objections raised by the assessee on the Valuation Report of the DVO without appreciating the facts, brought on record by the assessee and confirmed the addition made by the Ld. AO in respect of difference in Valuation of construction as computed by the assessee and as estimated by the DVO amounting to Rs.7,37,200/- without appreciating the facts of the case. In our view, the Ld. CIT(A) ought to have addressed appellant's objections and should have sent the assessee's valuation report of the approved Valuer by Ministry of Finance along with the objections to the DVO for his comments being technical person instead of rejecting the same in summary manner without having technical qualification and granting opportunity of being heard by way of taking rebuttal of the assesses on record.

12. The Hon'ble SUPREME COURT OF INDIA in the case of Assistant Commissioner of Income-tax vs. Balmiki Prasad Singh [2018] 99

taxmann.com 204 (SC) observed as under:

7. It is a cardinal principle of law that if relevant materials and objections are produced before a quasi judicial authority, the quasi judicial authority is duty bound, under law to advert to consider the same, discuss them and then reject it by recording reasons. In the said cases, this principle has not been followed. This principle can be made out if we go through the judgment rendered by the Hon'ble Supreme Court way back in the year 1985 in the case of Anil Kumar v. Presiding Officer, AIR 1985 SC 1121, wherein it has been held by the Hon'ble Supreme Court that if relevant documents or material pointed out by a delinquent employee in defence of the charges levelled against him in a departmental enquiry are not adverted to by the enquiry officer, they are not discussed and the enquiry officer records a finding without taking note of the documents and the submissions, the finding of the enquiry officer is perverse based on his ipse dixit and in violation to the principles of natural justice.

8. Based on the aforesaid principle, in these cases also, we find that the Assessing Officer has proceeded to pass the assessment orders on the basis of legal principle, but while doing so, has not discussed the show cause filed by the petitioners and the relevant documents which they had brought on record in their defence, including the valuation report.

13. In the present case the Ld. CIT(A) has not addressed the objections raised by the assessee on the Valuation Report of the DVO with the support of documentary evidences brought on record by the assessee and without adjudicating on the merits of the case, the CIT(A) has proceeded to pass the order on the basis of legal principle, but while doing so, has not discussed the objections filed by the appellant and the relevant documents which they had brought on record in their defence, including the valuation report. That's being the position, we see no reason to reject the claim made

by the petitioners, on the contrary, we are satisfied that the order passed is in gross violation of the principles of natural justice. Under the circumstances, we consider it deem fit to remand the matter back to the file of the CIT(A) to adjudicate the issue of determination of value of investment in construction afresh after considering the submissions of the appellant assessee and all other relevant documents that he may propose to file before the CIT(A) and on the same being filed, the CIT(A) shall proceed to decide the question in accordance with law at an earlier date. No doubt, the assessee shall cooperate in the fresh proceedings before the CIT(A). Thus, the matter is restored to the Ld. CIT(A) for adjudication as per law.

14. In the result, the appeal is allowed for statistical purpose.

Order pronounced in the open court on 21/06/2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

*A.G/Doc**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order