

IN THE INCOME TAX APPELLATE TRIBUNAL
“DB” BENCH, JABALPUR
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
ITA No. 37 & 38/JAB/2020
(A.Y: 2016-17 & 2017-18)

DCIT, Central Circle, 291, Ramnath Bldg, Napier Town, Jablapur-482001, MadhyaPradesh.	Vs.	Vijan Hotel Pvt Ltd, Khasra No114/2 and Part of 107, Mandla Road, Tilhari Jabalpur-482001. MadhyaPradesh.
PAN/GIR No. : ABZPN0126C		
Appellant	..	Respondent

C.O No.02 & 03/JAB/2021
(A.Y: 2016-17 & 2017-18)

Vijan Hotel Pvt Ltd, khasra No114/2 and Part of 107, Mandla Road, Tilhari Jabalpur-482001. MadhyaPradesh	Vs.	DCIT, Central Circle, 291, Ramnath Bldg, Napier Town, Jablapur-482001, MadhyaPradesh.
PAN/GIR No. : ABZPN0126C		
Appellant	..	Respondent

Appellant/Respondentby	Shri, Saad Kidwai. CIT DR
Respondent/Appellantby	Shri.Dhiraj Ghai. FCA. AR

Date of Hearing	21.09.2023
Date of Pronouncement	16.10.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

These appeals are filed by the revenue and the cross objections by the assessee against the common order of Commissioner of Income Tax (Appeals)(CIT(A))-3,Bhopal passed (i) u/s 147 r.w.s 143(3) and U/sec250 of the Act for the A.Y 2016-17 and (II) u/sec 143(3) and U/sec 250 of the Act for the Act for the A.Y 2017-18.

2. Since the issues involved in these appeals and cross objections are common and identical, hence are clubbed, heard and a consolidated order is passed.For the sake of convenience, we shall take up the revenue appeal in ITA No.37/JAB/2020 & CO. 02/JAB/2021 for the A.Y 2016-17 as a lead case and facts narrated. The revenue has raised the following grounds of appeal.

“On the facts and in the circumstances of the case, the ldCIT(A) erred in deleting the addition of Rs.3,37,92,626/- made by the Assessing Officer on the basis of report of DVO, ignoring that the report of the DVO is based on DPAR 2012 approved by DG, CPWD, Nirman Bhawan, New Delhi in conformity with CBDT instruction no. 1671”

3. The brief facts of the case are that, the assessee company is engaged in the Hotel Business. The assessee has filed the return of income for the A.Y 2016-17 on 14.10.2016 disclosing a total income of Rs. Nil and the

return of income was processed u/sec143(1) of the Act. Subsequently the Assessing Officer (A.O) reopened the assessment after recording the reasons and issued notice u/s 148 of the Act. There was a search and survey operations conducted on 17.11.2015 in the case of Shri Sandeep Vijan, who is one of the director of M/s Vijan Hotel Pvt Ltd (the assessee) and is holding 80% of the shares in the company. The assessee has constructed hotel building at Tilahari with large investment of funds. Whereas during the post search proceedings, the matter was referred to DVO Bhopal to determine the cost of investments in the Hotel Building. Whereas the DVO has determined the cost of construction of building year wise vide his valuation report dated 02.08.2016 as under:

Financial Year	Declared by assessee (Rs)	Assessed by Valuation Cell (Rs,)	Difference (Rs.)
2013-14	1,57,30,254	2,19,21,428	61,91,174
2014-15	3,65,02,138	5,07,41,489	1,42,39,351
2015-16	11,74,86,075	15,12,78,701	3,37,92,626
2016-17	7,88,16,614	9,73,51,382	1,85,34,768
Total	24,85,35,081	32,12,93,000	

4, The AO on perusal of the facts and DVO information found that in the F.Y 2015-16, there is a difference of investment disclosed as per the assessee and the valuation

report is Rs.3,37,92,626/-. In response to the notice u/s 148 of the Act, the assessee has filed the return of income on 26.04.2019 disclosing a total income of Rs. Nil, subsequently the notice u/sec 143(2) and 142(1) of the Act are issued. The assessee has filed a letter dated 30.04.2019 requesting for the supply of the reasons for reopening of the assessee and the same were provided to the assessee on 13.05.2019. The assessee has filed the objections on the reopening of the assessment and was rejected and the A,O has disposed off vide order dated 22.08.2019. The assessee has filed an application u/sec 144A of the Act before the Additional CIT Bhopal, whereas the issues raised by the assessee have not been found sustainable and order U/sec144A of the Act was passed 18.12.2019. Subsequently the AO has issued a show notice u/s 142(3) of the Act dated 18.12.2019 to explain the difference of investment of Rs. 3,37,92,629/- in respect of the hotel property on comparing to the actual cost disclosed by the assessee and valuation value of the DVO. The assessee has filed the reply on 20.12.2019 in exercise of the powers u/s 131(1) and U/sec132 (i) to (vi) of the Act dealt at Para 11 of the assessment order. Whereas the AO

has not accepted the submissions of the assessee and has dealt as under:

“Considering the facts in the case of the assessee to assess actual value of investment the ADIT has used provision of section 131(1)(d) of the Act which is duly supported by the Income Tax Law.

(ii) Further, the assessee contested that the assessee company has got prepared valuation of Government Approve Valuer M/s R.R. Consultant. On comparison of these two valuation reports i.e. valuation by D.V.O. vis-à-vis cost of investment declared by the assessee in its books of accounts/ valuer report of R.R. Consultant following picture emerges:-

A.Y	Declared by assessee in books of accounts(Rs,)	As per valuation report of department valuer(Rs,)	As per valuation report of RR consultant	Difference
2016-17	11,74,86,075	15,12,78,701	Not Given	3,37,92,626
Total	11,74,86,075	15,12,78,701	Not Given	3,37,92,626

Head wise amount for major items are as under:

S.No.	Head of expenses	Amount incurred in A.Y 2016-17
1	Bricks	1922723
2	Labour	23152300
3	Sand	3132024
4	Cement	7921403
5	Metal / Gitti	1603262
6	Iron	14089255

From the above chart it is clear that their exist difference among valuation done by department valuer and books of

accounts/Government approve valuer. The same is enumerated as under:-

<i>Particular</i>	<i>Valuation by department valuar</i>	<i>Valuation by Govt approve value</i>	<i>Remark</i>
<i>A.Y 2016-17</i>	<i>15,12,78,701</i>	<i>Not given</i>	<i>That Govt Approved valuer has given one complete report</i>

5. Whereas the AO found that the contentions of the assessee are not valid and the RR construction has valued the cost of investments, which are even lesser than the value disclosed by the assessee, which indicate that the valuation is not factual and the assessee itself has declared higher rate of construction, cost of investments in comparison to the value of investments valued. Therefore the AO has relied on the judicial decisions that the valuation cannot be lesser than the value adopted by the assessee. The assessee has furnished the copy of valuation report of RR construction estimating the cost of construction at Rs. 23,06,25,537/- in total for the three years and whereas the cost of investment in F.Y 2016-17 was not be determined. Finally the AO considering the facts and submissions and method adopted has dealt at page 6 Para (iii) to (vi) of the order as under:

ii). *At the time of valuation the building was in numerous units and that were under construction. The DVO in his report has also reasoned that in these circumstances the valuation based on DPAR-2012 is common and approved method*

(iv)*Further, the DVO has adopted average rate which is used for each of the years under valued i.e. F.Y. 2013-14 to 2016-17. The DVO has adopted cost of index considering the period of investment @ 102.23% above DPAR 2012 as base 100 to arrive at average cost of construction.*

(v). *Considering the above facts and in the circumstances I am in the view that the valuation made by District Valuation Officer, Bhopal is correct. The District Valuation Officer, Bhopal, adopted Standard DPAR 2012 approved by DG, CPWD, Nirman Bhavan, New Delhi in conformity with CBDT instruction no. 1671, with due adjustment of & cost index of the place of property have also been adopted for working out cost of construction of Multi storied residential building. Market rates of Jabalpur are adopted for extra items. Cost of extra item executed and not covered under DPAR 2012 are added as per their prevalent markets and if inferior items or items not executed deductions are to be made either in the abstract of cost or in the plinth area rates.*

(vi). *The assessee in reply dated 20.12.2019 pleaded that the Ld. CIT(A), has deleted the addition in the case of the assessee for the A.Y. 2015-16. It is informed that order of Ld. CIT(A) has not been accepted on merits by the department. However no further appeal has been made in the case of the assessee merely because below the tax effect as specified by the Board from time to time.*

Keeping in view of the above, considering the facts and the circumstances, difference of cost i.e. Rs. 3,37,92,626/- is treated as investment not fully disclosed u/s 69B of the Income Tax Act in the books of account of the assessee and therefore added back to the total income of the assessee for A.Y2016-17.

While making this addition I rely on the judgement of Hon'ble Punjab and Hariyana High court in the case of CWT vs. Vardhaman Poly tax Ltd. (P&H) 28 DTR 275,332 ITR 81 in which it is held " that the opportunities given by the DVO to the assessee is sufficient and the valuation done by the DVO can be effected".

Hence, the amount of Rs. 3,37,92,626/-is added back to the total income of the assessee in A.Y2016-17. (Addition of Rs. 3,37,92,626)

6. Finally the AO has assessed the total income of Rs. 3,37,92,630/- and passed the order u/s 143(3) r.w.s 147 of the Act dated 23.12.2019.

7. Aggrieved by the order U/sec 143(3) r.w.s 147 of the Act, the assessee has filed an appeal with the CIT(A) challenging the action of the Assessing officer. In the appellate proceedings, the assessee has filed the voluminous detailed common submissions substantiating the claim referred at Page10 to 32 of the order. Whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee and findings of the AO and dealt extensively on the facts, provisions of the Act, and judicial decisions and

directed the Assessing officer to delete the addition and partly allowed the appeal. Aggrieved by the CIT(A) order, the revenue has filed an appeal before the Honble Tribunal.

8. At the time of hearing, the Ld.DR submitted that the CIT(A) has erred in directing the Assessing officer to delete the addition being the difference in DVO valuation report and actual value disclosed by the assessee in the books of accounts. The CIT(A) has erred in overlooking the facts that the DVO report is based on DPAR 2012 approved by DG CPWD New Delhi and CBDT instructions no 1671 and the Ld.DR relied on the order of the Assessing officer and prayed for allowing the revenue appeal.

9. Per Contra, the Ld. AR has submitted that the AO has not followed the due process of the provisions of Act in valuation of the hotel building property. Whereas the CIT(A) has considered the facts, provisions of the Act, and judicial decisions and directed the Assessing officer to delete the addition. Further the CIT(A) in the A.Y 2015-16 has deleted the similar addition of difference in valuation of the hotel building. The Ld. AR has made elaborate submissions on the law and facts and supported the order of the CIT(A) and substantiated the submissions relying on the judicial

decisions and the factual paper book and prayed for dismissal of the revenue appeal.

10. We have heard the rival submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld. DR that the CIT(A) has erred in deleting the addition made by the AO being the difference in DVO valuation report and actual value disclosed by the assessee in the books of accounts and the CIT(A) has ignored the facts that the DVO report is based on DPAR 2012 approved by DG CPWD New Delhi and CBDT instructions no 1671. The Ld.AR submitted that the CIT(A) has rightly considered the provisions and procedures and issued the directions to the Assessing officer relying on the judicial decisions to delete the addition. Further the CIT(A) has considered the factual aspects, written submissions and valuation report and took a prudent view. At this juncture, we considered it appropriate to refer to the observations of the CIT (A) in granting the relief dealt at Page 45 Para 4.1.7 of the order read as under:

“4.1.7 Considering the aforesaid fact and circumstances of the matter and the law as interpreted by several High Courts and the Hon’ble Supreme Court:

the findings on this issue in respect of peculiar facts of this case are as below;

i) Admittedly, the appellant maintained its regular books of accounts supported by bills/vouchers and other records which were subjected to Audit The AO has neither pointed out any defect in books nor brought any positive material on record to establish alleged unaccounted investment in different projects of appellant Most importantly, AO has not even rejected the books of accounts even after receipt of valuation report In view of these facts, valuation report obtained from DVO cannot form a foundation ipso facto for making addition towards alleged suppression of cost of investment. Neither DVO nor AO has pointed out that certain expenditure on certain items/construction was incurred which was not recorded in the books maintained by the assessee. Hence, additions made by AO is not sustainable in law being based merely on valuation report received from DVO.

ii) The A.O. has not mentioned any reason in the assessment order or in the reference to the valuation, that he had any incriminating material which led to form his belief that the appellant had under stated the cost of construction referred for valuation. It is very relevant to understand that the appellant was subjected to search and seizure action u/s 132 of the Act which apparently did not yield to seizure of any incriminating papers/documents suggesting unaccounted investment in the different projects of appellant. Lack of any incriminating material/evidence regarding under reporting of cost of construction being pointed out by the A.O., in spite of search and seizure action addition simply made on the basis of DVO's report is even more unjustified and unwarranted.

iii) During assessment proceedings, appellant raised several objections with regards to methodology adopted by DVO as well as valuation aspect, but AO has totally failed to consider

the same. He has mechanically adopted the estimate of value of construction provided by DVO One should not lose sight of the fact that at the end of the day, cost derived by DVO in his report is nothing but an estimate' which is bound of have some amount of estimation, guess work & opinion involved and estimate cannot be exact 'After all it is an estimate done by an expert and it is a popular maxim to err is human'. It is evident from the very fact that, appellant has raised various discrepancies in the DVO's report However, A.O did not find it appropriate to invite counter comments of DVO on objections raised by the assessee. Although, it is a settled legal position that valuation report submitted by DVO is not binding upon AO, but in the present case AO has adopted and used the valuation report as if it is binding on him Appellant has pointed out several glaring mistakes and omissions in valuation report, on which AO has maintained a conspicuous silence which is unbecoming of a quasi-judicial authority.

iv) It is important to note that DVO has prepared his report based on DPAR- 2012 after applying cost index on above DPAR as base 100. Interestingly, DVO has applied same rate for cost of construction of the hotel building even though the investment is spread over many years. As per appellant, DVO should have adopted MPPWD rates after making certain adjustment for the construction done by the assessee in different assessment years. Hon'ble Allahabad High Court in the case of CIT v/s Raj Kumar 182 ITR 436 (All) has held that value of property under PWD rates is much lower than the cost of value of property as per CPWD rates. Similarly, in the case of CIT v/s Prem kumara Murdiya 296 ITR 508 (Raj) wherein hon'ble court refused to interfere in the order of ITAT holding that appropriate to be taken into consideration would be PWD rates and holding difference between CPWD rates and PWD rates at 20-25%. Similar views have been expressed in the case of ITO v/s Nilesh Maheshwari (2011) 53 DTR 43 (ITAT Jaipur) In view of

this, a difference of 20-25% between cost shown in books and estimated by DVO falls within 'tolerance band' as held by various courts. Appellant has also argued about savings in cost of construction for other reasons as well i.e. self-supervision, consultancy charges etc. however, AO failed to allow any benefit to the assessee on any of the count which is not justified.

v) I am of the view that as a consequence of such under reporting, the AO is required to reject the books of accounts of the assessee. In the case of the appellant the AO has neither rejected the books of accounts before making a reference to DVO for valuation of property nor he did after receipt of valuation report from DVO. Apart from the case laws referred above, it is pertinent to refer to the decision of ITO v/s Dreamland enterprises 80 Taxman 143 (ITAT Abd) wherein it was held that when the cost of construction declared by the assessee was supported by regular books of accounts and vouchers, correctness of which was not disturbed by the AO or DVO by bringing any specific material on record, the CIT(A) was fully justified in holding that no addition could be validly made on account of any understatement of cost of construction merely because of difference as estimated by the DVO. Hence, on this count, I am of the view that addition made merely on the basis of DVO's report is not sustainable.

vi) The valuation report of DVO is not binding on the AO because it is merely an opinion of an expert. In the context of the controversy in issue, it may also be germane to notice the expression used by legislature i.e. "estimate". Thus, resort can be made to the said provision by the AO for the purpose of "estimating" the value of any investment, bullion, jewellery or any valuable article etc. However, this is settled legal position that addition cannot be made solely on the basis of valuation

report which is only give an estimate as held by various High Courts, discussed earlier.

vii) It is apparent from record that assessing officer has not brought any material on record to establish that the assessee had made any unaccounted investment in construction of the hotel building in question and that books of accounts do not reflect the correct cost of construction. It is evident that only reason for making the addition u/s 69B of the Act is that there is a difference in the cost of construction as estimated by the valuation officer and as shown by the assessee in its books of accounts.

viii) The appellant has also produced the copy of construction account for the period under consideration and relevant bills and vouchers for verification which was duly complied by the assessee.

4.1.8 It is interesting to note that valuation of the property under consideration was done by the DVO after applying cost index on the basis of DPAR- 2012 (as base 100). It is settled law that DPAR rates adopted by DVO are higher than PWD rates. Hon'ble High Court of Rajasthan in the case of CIT v/s Prem Kumari Murdiya 296 ITR 344 (Raj) refused to interfere in the order of ITAT holding that appropriate rate to be taken into consideration would be PWD rates and holding difference between CPWD rates and PWD rates at 20-25%. Similarly, in the case of ITO v/s Nilesh Maheshwari (2011) 53 DTR 43 (ITAT Jaipur) held after relying on the decision of Tek Chand v/s ITO 51 TTJ (JPR) 607 that there is variation in local PWD rates and CPWD rate by margin of 20-25%. It has been held in the case of CIT v/s lahsa Construction (P) Ltd (2013) 357 ITR 671 (Delhi) that no addition can be made solely on the basis of valuation report of DVO. Ld AR also placed reliance on the decision of CIT v/s VS Pratap Singh Amro Singh (1993) 200 ITR 788 (Raj) that

. CIT(A)-3/BPL/IT-10703, 10704 & 10709/2019-20 A.Y. 2014-15, 2016-17 & 2017-18 addition to income could not be made on the basis of the report of the Valuation Officer.

4.1.9 In view of the above discussion, the comparative picture of investment shown by the assessee and that estimated by the DVO after allowing margin of 30% (25% for difference in CPWD and PWD rates and 5% for self supervision) comes out as under:-

Hotel Vijan Mahal, Jabalpur:-

A.Y	Amount declared by assessee	Value as per DVO report	70% of valuation done by DVO	Difference
2014-15	15730254	21921428	15344999	Nil
2016-17	117486075	151278701	105895091	Nil
2017-18	78816614	97351382	68145967	Nil

Since, the assessee has already shown more than 70% of that estimated by DVO, therefore, I do not find any merit in the addition of Rs. 61,91,174/- in AY 2014-15, Rs. 3,37,92,626/- in AY 2016-17 and Rs.1,85,34,768/- in AY 2017-18 merely made on the basis of Valuation Report which is nothing but an estimate of valuation of 'cost of investment' and DVO'S report cannot be taken as a conclusive proof of undisclosed investment made in the project of the appellant firm. Thus, addition made by the AO amounting to Rs. 61,91,174/- in AY 2014-15, Rs. 3,37,92,626/- in AY 2016-17 and Rs.1,85,34,768/- in AY 2017-18 are Deleted. Therefore, appeal on these grounds is Allowed”

11. Whereas the Ld.AR has substantiated the submissions supporting the valuation of hotel property disclosed by the assessee with the written submissions filed on various

dates which were considered by the CIT(A).The Ld.AR emphasized that the CIT(A) has considered the facts in the common order with respect to the A.Y 2016-17 at Page 10 Para 2.2 and detailed written submissions with the supporting evidences substantiating the claim of the assessee at Para 3 of the order. Whereas the CIT(A) has dealt on the factual aspects, legality of DVO valuation, amendments and judicial decisions . Further the grounds of appeal which are common for the earlier year and subsequent year considered at Para 4.1 of the order. The Ld.AR of the assessee has filed the copy of Ledger Account building materials & services i.e. bricks, labour, sand, cement, metal and Iron & steel utilized in the construction of the hotel building during F.Y.2015-16.The assessee's books of account are Audited under the provisions of the Companies Act 2013 and the assessee has maintained the books of Account specified as per the Act and also bills, and vouchers maintained substantiating the actual cost of construction of the hotel building. The A.O has not doubted the nature and genuineness of the expenditure capitalized under the Hotel Building. The A.O. has relied on the valuation report of the D.V.O though the assessee has substantiated the disclosure of investments in the Hotel

Building from F.Y 2013-14 to F.Y 2016-17 at Rs.24,85,35,081/- and DVO valuation assessed at Rs.32,12,93,000/-. Whereas in the F.Y 2015-16, there exist the difference in valuation of Rs.3,37,92,626/- and addition was made by the A.O and order U/sec143(3) r.w.s 147 of the Act was passed. On appeal, the CIT(A) has considered the provisions and procedures and issued the directions to the Assessing officer relying on the judicial decisions to delete the addition. Further it was brought to the Knowledge that, that in the A.Y 2015-16 (F.Y2014-15 referred in the present assessement order at page 2 Para 3(Char) there exist the difference in valuation of Rs.1,42,39,351/-. On separate appeal for A.Y 2015-16 filed by the assessee with the CIT(A), the appellate authority has considered the similar grounds of appeal of the present asseement year, same DVO valuation report relied by the Asseeing officer and the submissions of the assessee and the CIT(A) has deleted the addition of difference in valuation of the hotel building and granted the relief to the assessee, which is not disputed by the revenue authorities. The CIT(A) has considered the factual aspects, submissions, relied on the judicial decisions, DVO report and ADIT report and has passed a conclusive and reasoned

order. The Ld. DR could not controvert the findings of the CIT(A) with any new cogent evidences or information to take different view and we do not find any infirmity in the order of the CIT(A). Accordingly, we do not inclined to interfere with the order of the Ld.CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

12. In the result, the appeal filed by the revenue is dismissed.

CO.02/JAB/2021 (A.Y 2016-17)(Assessee)

13. The appeal filed by the revenue is dismissed as discussed in the above paragraphs and consequently, the assessee's cross objections becomes infructuous and is dismissed.

14. In the result, the appeal filed by the Revenue and Cross objections filed by the Assessee are dismissed

ITA No.38/JAB/2020 & CO.03/JAB/2021(A.Y 2017-18)

15. As the facts and circumstances in this revenue appeal and cross objections of the assessee are identical to ITA No 37/JAB/2020 & CO.02/JAB/2021 for the A.Y 2016-17 (except variance in figures) and the decision rendered in paragraphs 10 to 14 as discussed above would apply

mutatis mutandis for this appeal and cross objections. Accordingly, the grounds of appeals of the revenue and the Cross objections of the Assessee are dismissed.

16. In the result, the appeals filed by the revenue and cross objections filed by the assessee are dismissed.

Order pronounced Under Rule 34(4) of the Income Tax Appellate Tribunal Rules 1963.

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai Dated 16.10.2023

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Jabalpur
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आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

(Asst. Registrar)
ITAT, Jabalpur