

**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. Nos. 264 & 265/Asr/2023**  
Assessment Years: 2014-15 & 2019-20

M/s Golden Tulip Hospitality  
Pvt. Ltd., Hyderpora Bye Pass  
Srinagar 190014

[PAN: AAFCG2464Q]

**(Appellant)**

Vs. ACIT, Central Circle  
Srinagar

**(Respondent)**

Appellant by	:	Sh. Rohit Kapoor, CA & V.S. Aggarwal, ITP
Respondent by	:	Sh. Ravinder Mittal, Sr. DR
Date of Hearing	:	31.10.2023
Date of Pronouncement	:	10.11.2023

**ORDER**

**Per Dr. M. L. Meena, AM:**

Both the captioned appeals have been filed by the assessee against the separate orders of the Id. Commissioner of Income Tax (Appeals)-5, Ludhiana even dated 11.05.2022 in respect of Assessment Years: 2014-15 & 2019-20.

2. The assessee has raised the following grounds of appeal in ITA No. 264/Asr/2023:

- “1. *On the facts and circumstances of the case, the Ld. CIT(A) vide order u/s 250(6) dated 11.05.2022 has erred in confirming the addition to the tune of Rs. 2173975/- made u/s 69A by the learned AO on account of amount of expenditure incurred towards hotel expenditure.*
2. *That the Ld. CIT(A) has erred in confirming the addition of Rs. 2173975/- in respect of valuation difference of hotel building relied upon by the CIT(A) for the AY 2014-15 by taking into consideration the book value at Rs. 20455325/- as against Rs. 22629300/- estimated by the valuation cell.*
3. *That the Ld. CIT(A) has erred in not appreciating the fact that the overall difference in the valuation report for all the years taken together is less than 10% and cannot be taken as a base for making the addition as the valuation report is just an estimate and cannot be taken into consideration for making the addition.*
4. *That the Ld. CIT(A) has erred in adopting the value estimated by the DVO ignoring the fact that the same has been made by taking into consideration CPWD rates instead of PWD rates.*
5. *That the Ld. CIT(A) has erred in not appreciating the fact that the difference in valuation has been calculated without taking into consideration amount paid by Abdul Majid Sheikh on behalf of the assessee to M/s Bacha Construction Co. against which reopening has been directed u/s 150 of the Income Tax 1961.*
6. *That the Ld. CIT(A) has erred in rejecting the objections of the assessee in summary manner ignoring the binding decision of Hon'ble Supreme Court in the case of Sunita Mann Singh as reported in 393 ITR 121.*
7. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is heard and disposed off.”*

**3. Grounds of appeal in ITA No. 265/Asr/2023:**

- “1. *On the facts and circumstances of the case, the Ld. CIT(A) vide order u/s 250(6) dated 11.05.2022 has erred in confirming the addition to the tune of Rs. 898783/- made u/s 69A by the learned AO on account of amount of expenditure incurred towards hotel expenditure.*
2. *That the Ld. CIT(A) has erred in confirming the addition of Rs. 898783/- in respect of valuation difference of hotel building relied upon by the CIT(A) for the AY 2014-15 by taking into consideration the book value at Rs. 6256290/- as against Rs. 6921200/- estimated by the valuation cell.*
3. *That the Ld. CIT(A) has erred in not appreciating the fact that the overall difference in the valuation report for all the years taken together is less than 10% and cannot be taken as a base for making the addition as the valuation report is just an estimate and cannot be taken into consideration for making the addition.*
4. *That the Ld. CIT(A) has erred in adopting the value estimated by the DVO ignoring the fact that the same has been made by taking into consideration CPWD rates instead of PWD rates.*
5. *That the Ld. CIT(A) has erred in not appreciating the fact that the difference in valuation has been calculated without taking into consideration amount paid by Abdul Majid Sheikh on behalf of the assessee to M/s Bacha Construction Co. against which reopening has been directed u/s 150 of the Income Tax 1961.*
6. *That the Ld. CIT(A) has erred in rejecting the objections of the assessee in summary manner ignoring the binding decision of Hon'ble Supreme Court in the case of Sunita Mann Singh as reported in 393 ITR 121.*
7. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is heard and disposed off.”*

4. The assessee has raised common issues on identical facts in both the appeals and hence these two appeals are heard together and adjudicated simultaneously for the sake of convenience. ITA No. 264/Asr/2023 is taken as a lead case for the discussion of the issues involved in the said appeals.

5. The appellant filed an application for a delay condonation of 431 days in filing the appeals on account of exceptional circumstances in view of medical history of the director of the appellant company. In the appellant case the income tax matters were looked after by the director who was admitted in AAIMs hospital New Delhi for endovascular surgery. Following honourable apex court judgment on condonation of delay in filing the appeal on account of exceptional circumstances citation [1956] 29 ITR 607; the said delay is condoned, and appeal is admitted for hearing on merits of the case.

6. Briefly the facts are that the assessee the assessee was engaged in construction activity. The AO stated that that the payments which are received through banking channel only relates to it and the payments made in cash by Sh. Abdul Majeed Sheikh to various parties including one of the directors, does not relate to it, have no justification and does not hold good

because M/s. Baccha Infrastructure had confirmed in its reply that the payments were received from M/s. Abdul Majeed Sheikh in connection with construction on the site of the assessee company and this fact has been admitted by the assessee company but it was not sure of quantum of payment made by Sh. Abdul Majeed Sheikh to M/s Baccha Infrastructure. Further, Sh. Muzaffar Ahmad Dar had also admitted that the documents and the transactions mentioned therein, relates to the assessee company, except one entry of Rs. 50,000/-. Further payment of Rs. 13 lacs mentioned in the document on different dates received by the assessee in its bank through Sh. Hakim Mohammad Ashraf was shown as unsecured loan in its books which had been admitted by the assessee in his reply dated 31.03.2021 which also proves the genuineness of the documents and confirms the transactions mentioned therein. As per the AO, in view of the above, the assessee had failed to justify its contention that the transactions mentioned in the documents does not pertain to it and it has also failed to explain the nature of the receipts as discussed in the documents, which are payments made by Sh. Abdul Majeed Sheikh on behalf of the assessee, properly signed by one of the director Sh. Muzaffar Ahmad Dar. As per the AO, since the assessee has not fully disclosed the above-mentioned transactions/receipts in its books of accounts, the same were treated as

unrecorded/unaccounted and therefore, the difference of Rs. 1,18,82,100/- (i.e. Rs. 1,32,32,100 minus Rs. 13,00,000/- recorded as unsecured loan and Rs. 50,000/- not related to the assessee) was added to the income of the assessee as undisclosed income to be taxed u/s 115BBE.

7. The assessee being aggrieved with the assessment order went in appeal before the Ld. CIT appeal who has granted part relief to the assessee by observing as under:

The facts of the case, the basis of addition made by the A.O. and the arguments of the AR during the appellate proceedings have been considered. The AR has submitted that the assessee is a Private Limited Company incorporated on 03.07.2013 and Sh. Abdul Majeed Sheikh Prop. M/s. Sheikh Suppliers & Contractors (husband of one of the Director of the assessee company) spent some money on construction of hotel in Financial Year 2013-14 and has admitted that he paid the disputed money which as per the AR was confirmed by M/s. Bacha Infrastructure & Construction also. The AR further contended that the addition has been made purely on the basis of slip given by Mr. Abdul Majeed Sheikh and there is no substantive evidence with the AO to justify this addition. As per the AR, out of total amount of Rs.1,18,82,100/- a sum of Rs. 1,07,12,100/- was paid prior to incorporation of the company, which is legal and separate identity different from directors. The AR argued that the AO did not reject the books of accounts and Mr. Abdul Majeed Sheikh had stated different things at different times and has claimed that as per the ledger accounts the amount due from M/s. Golden Tulip Hospitality Pvt. Ltd. was Rs. 3,88,27,500/- during financial year 2013-14 whereas as per the slip the amount due from the company is Rs. 1,32,32,100/-. As per the AR, the expenditure was made in cash and not recorded in the books because no payment was made by the assessee as accepted by M/s. Bacha Infrastructure also. The AR also refers to the reference made to the DVO and report given by him estimating the cost of construction at Rs. 2,26,29,300/- as on 31.02.2014 as against the value shown in the books of accounts at Rs. 2,04,55,325/- and argued that if AO's version was accepted then why this difference was not added by the AO as pointed out by the DVO. The AR

also refers to the statement of Sh. Muzaffar Ahmad Dar recorded in Hindi, and claimed that he was not knowing Hindi well. As per the AR, on accounting treatment also, the addition is not sustainable because it will increase the 'building WIP' on asset side and 'unsecured loan' on liability side of the balance sheet and further argued that the loose papers was found at someone else file and cannot made basis for addition. On legal & technical ground, the AR submitted that the addition cannot be made either u/s 69A or section 69B of the Income Tax Act, 1961 and argued that the same be deleted. The AR has filed the copies of the submissions filed before the AO at the time of assessment, wherein it was stated that the suit was filed by Mrs. Atiqa Bhano and her husband Mr. Abdul Majeed Sheikh on 05.12.2018 stating that Rs. 5,71,80,100/- was spent by him in the construction of the company which was rejected on account of non-attendance and it was further mentioned that other cases were also filed. It was however accepted by the assessee before the AO that *Mr. Abdul Majeed Sheikh has, invented some amount in the company and the same is still shown as unsecured loan in the books of accounts of the company.* It was also stated that the assessee was not denying this fact but it was a harsh truth that Mr. Abdul Majeed Sheikh masterminded all story and put the assessee in the middle of this and ran away leaving no other option but to remove his wife from the company. It was also stated that *we acknowledge these facts that we have to repay to him when our financial position will be stable.* Regarding payment to *M/s. Bachha Construction for construction of hotel we wish to submit to your honor that initially contract to construction this hotel was given to M/s. Bachha Construction (Mr. Irfan Bachha) and they did some work too but no payment was done by company to them.* From the above, it is clear that M/s. Bachha Constructions carried out some construction for the company and the payment for the same was made by Mr. Abdul Majeed Sheikh. The fact mentioned by the AO in the assessment order is that Sh. Muzaffar Ahmad Dar and his three brothers had a piece of land and wanting to enter Hospitality business and approached Mr. Abdul Majeed Sheikh. On verbal agreements Mr. Abdul Majeed Sheikh starting incurring expenses on behalf of the assessee company and drafted the document describing all expense date-wise with some mistake in the year which was rectified simultaneously, this position has been accepted by Sh. Muzaffar Ahmad Dar during his statement recorded on 17.04.2021 and he confirmed that the expenses are related to the assessee company and further stated that he along with his three brothers wanted to enter into partnership agreement with Mr. Abdul Majeed Sheikh, however they opted for incorporation of the company and the same was incorporated on 02.07.2013 under the name of M/s. Golden Tulip

Hospitality Pvt. Ltd. which is also confirmed from the first entry of Rs. 2.50 lacs mentioned in the said document.

The AO made the addition on the basis of a document which was duly confronted to the assessee and the genuineness of the transactions were also verified through notice issued u/s 133(6) to M/s. Bacha Infrastructure Pvt. Ltd. who confirmed that they were awarded work for construction of guest house/hotel in the name of Golden Tulip Hospitality Pvt. Ltd. for an amount of Rs. 9 core but work to the tune of Rs. 93 lacs only have been carried out and the payment of this amount of Rs. 93 lacs was made by Mr. Abdul Majeed Sheikh. The document was also confronted to Sh. Muzaffar Ahmad Dar one of the director whose statement was recorded under oath u/s 131 where he clarified the issues and confirmed the payments and genuineness of the documents. These transactions were not recorded in the books of company although relates to the construction of Hotel building of the assessee company. The AO has point-wise discussed reply on the objections raised by the assessee and mentioned the actual facts of the case in the assessment order and also enumerated the reasons why the contention of the assessee were not acceptable. It is established that the document in question has transaction related to the assessee, these are payments for construction and other payments and that the transactions were genuine but not recorded in the books of assessee. However, out of all the transactions only the transactions in respect of the construction activity can be said to have a relation with the assessee company and the income assessable in the hands of the company will be to the extent of value of building not recorded in the books of accounts. The AR has filed a copy of the valuation report submitted by the DVO determining the cost of construction in different years which is reproduced below:

Financial Year	Cost of Construction (Rs.)	
	Declared by the Assessee	Estimated by Valuation Cell
2013-2014	20455325.00	22629300.00
2014-2015	6256290.00	6921200.00
2015-2016	5232452.00	5788600.00
2016-2017	5041674.00	5577500.00
2017-2018	7073549.00	7825300.00
2018-2019	8456217.00	9355000.00
Total	<b>52515507.00</b>	<b>58096900.00</b>

The AR has also argued that the effect, if any, in the hands of the assessee is the difference between the cost of construction estimated by the DVO as on 31.03.2014 at Rs. 2,26,29,300/- and the cost declared by the assessee in its books of accounts at Rs. 2,04,55,325/-. This argument of the AR has merit. There is no payment recorded in the impugned document (referred by the AO) which was made by the assessee company but not recorded in its books of accounts and which can qualify as unaccounted/unrecorded payments made by the assessee company. In fact, all the payments as mentioned in the impugned documents were made by Sh. Abdul Majeed Sheikh Prop. M/s. Sheikh Suppliers. The assessee has only gained collateral benefit in the shape of construction of building for which no payment was made by it and the amount of such benefit will be the excess value of construction of the building over and above the value as recorded in its books of accounts for the Financial Year 2013-14. Therefore, the addition in the hands of the assessee is restricted to the difference in the cost estimated by the DVO for the Financial Year 2013-14 at Rs. 2,26,29,300 and the cost declared by the assessee in its books at Rs. 2,04,55,325 for Financial Year 2013-14, which comes to Rs. 21,73,975/-. Hence, the addition to the extent of Rs. 21,73,975/- is sustained and the appellant gets relief of the balance amount.

8. The learned council for the assessee has submitted that the Ld. CIT(A) has erred in not appreciating the fact that the overall difference in the valuation report for all the years taken together is less than 10% and cannot be taken as a base for making the addition as the valuation report is just an estimate and cannot be taken into consideration for making the addition; that he has erred in adopting the value estimated by the DVO ignoring the fact that the same has been made by taking into consideration CPWD rates instead of PWD rates; that the Ld. CIT(A) has erred in not appreciating the fact that the difference in valuation has been calculated

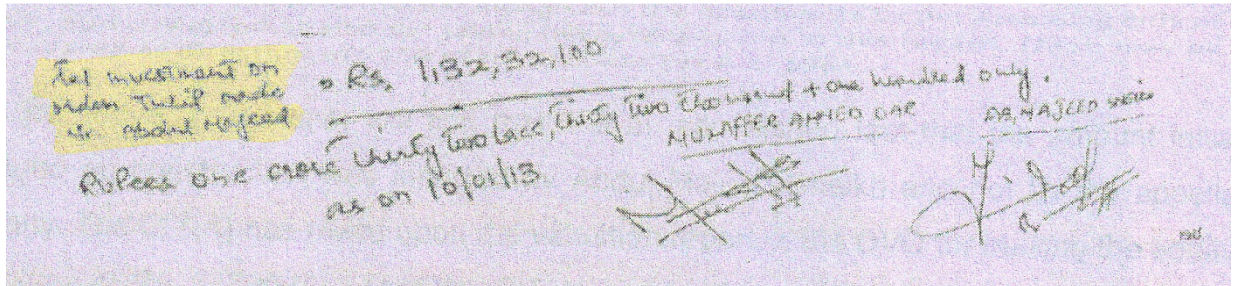
without taking into consideration amount paid by Abdul Majid Sheikh on behalf of the assessee to M/s Bacha Construction Co. against which reopening has been directed u/s 150 of the Income Tax 1961 and that he has erred in rejecting the objections of the assessee in summary manner ignoring the binding decision of Hon'ble Supreme Court in the case of Sunita Mann Singh as reported in 393 ITR 121. In support, he filed a brief synopsis which reads as under:

- “1. *That the appellant M/s Golden Tulip Hospitality Private Limited having PAN AAFCG2664Q is a private limited company which was incorporated on 03.07.2013. The assessee company was incorporated with the object of carrying out business of hospitality, hotel, motel, restaurant, banquet hall, marriage halls and kitty party hall.*
3. *That a search and seizure operation u/s 132 was carried out at the premises of **Sh. Mohammad Nayeem Khan** and the related parties who are the directors of the appellant company i.e. **Sh. Nasir Ahmad Dar, Sh. Muzaffar Ahmad Dar and Sh. Ishtiaq Ahmad Dar** on 27.02.2019. During the course of search at the premises of the directors of the appellant company, certain documents related to the appellant company were found and seized. The major documents are of annexure A-4 page 139 and 140. That the loose papers are payment details made by the appellant company to term loan of M/s Sheikh Suppliers Contractors related to AY 2015-16. Please refer page no 21 of the PB.*
6. *The whole case has been culminated on the basis of a document reproduced by the AO [Refer page no 23 of the PB], The Ld. AO at para 4 of the order has admitted the fact that the payment was made to various parties by Abdul Majid Sheikh on behalf of the appellant company. Thereafter, the appellant was issued show cause notice on 30.03.2021 requiring to show cause as to why the said amount of Rs. 13232100/- shall not be treated as undisclosed income by treating the same as unexplained money u/s 69A of the income tax act 1961. In response to the show cause notice dated 30.03.2021, the appellant filed a response on 31.03.2021.*

11. The Ld. AO has made addition of Rs. 11882100/- which was later on restricted to Rs. 2173975/- by the CIT(A) by relying upon the DVO report dated 12.08.2021. The appellant explained before the AO that the addition of Rs. 11882100/- is uncalled for due to the following reasons: -

a) There was no substantial evidence available with the AO evidencing the fact that the amount of expense was incurred by the appellant company. That the Ld AO ignored the information passed on to the office that expense was incurred by Abdul Majid Sheikh. [Refer para no 4 on page no 22-25 of the PB]

b) The Ld. AO has even failed to appreciate that the seized document itself refers that the expense was made by Abdul Majeed Sheikh. **Refer page 23 of PB.** The relevant snapshot is reproduced as under: -



c) That Sh. Abdul Majeed Sheikh has filed a case in Srinagar Court and had claimed a sum of Rs. 57180100/- receivable against the appellant. **Refer page 26 of the paper book relevant para no.3**

d) During the assessment proceedings, the Ld. AO confronted with the ledger account in which total amount due from the appellant was to the tune of Rs. 38827500/-. **Refer page 26 of the paper book relevant para no.3**

e) During the assessment proceedings, notice u/s 133(6) was issued to M/s Bachcha Construction and he has acknowledged that the amount was received from M/s Sheikh Suppliers prop. Abdul Majeed Sheikh and that none of the payments was received from the appellant company Refer Page no 27-28 of the PB. **[Refer para no.4.1.1 of assessment order placed at page no 27 and 28 of paper book]**

12. That on the basis of submissions, the Ld. CIT(A) has directed the AO u/s 150 to open the case of Sh. Abdul Majeed Sheikh and the same are placed at

page no 18 of the order of the CIT(A) [Relevant page no 18 of the PB], The relevant findings of the CIT(A) are reproduced for your ready reference: -

**Before concluding, it is also relevant to mention that at para 4 of the assessment order, the AO has mentioned that as per the information/documents available with the office, Sh. Abdul Majeed Sheikh had made payments of Rs. 1,32,32,100/- to various parties on behalf of the assessee company on different dates and the documents were duly signed by Sh. Muzaffar Ahmad Dar and Sh. Abdul Majeed Sheikh. A snapshot of the document is reproduced in the assessment order. The genuineness of the transactions were verified through notice u/s 133(6) issued to M/s. Bacha Infrastructure Pvt. Ltd. who confirmed receipt of payment of Rs. 93 lacs made to it by Sh. Abdul Majeed Sheikh Prop. M/s. Sheikh Supplier & Contractors. However, it is not clear as to the source of funds of Rs. 93 lacs in the hands of Sh. Abdul Majeed Sheikh i.e. whether these were out of accounted or unaccounted source of Income of Sh. Abdul Majeed Sheikh. The AO is directed to take necessary action or pass on the information along with the documents to the Assessing Officer of Sh. Abdul Majeed Sheikh for taking necessary action in this regard. These may be considered as direction u/s 150 of the income Tax Act, 1961.**

From the above, your Honor will find that it is an established fact that the amount initially expended on construction was incurred by Abdul Majeed Sheikh and not by the appellant company. The CIT(A) has relied upon the valuation report of the DVO for making the addition to the tune of Rs. 2173975/-. That the CIT(A) has produced the valuation report at page no 40-48 of the PB from which your Honor will find that the addition has been made by taking into consideration value determined by the DVO at Rs. 22629300/- and book value Rs.20455325/-. Please refer page no. 17 of paper book.

13. The legal question which arises is that whether the addition made by the CIT(A) on the basis of valuation report can be sustained or not particularly considering the fact that the DVO report relied upon by the CIT(A) is barred by limitation by taking into consideration 142A(6). The relevant provisions are reproduced for your ready reference: -

*142A (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).*

Particulars	Date	
Date of reference	29.12.2020 vide letter dated ITBA/AST/S/77/2021/1029316164	Page no 40
DVO valuation report	12.08.2021	Page no 40-48
Date of assessment order	12.04.2021	Page no 20-39

*From the above factual matrix, your Honor will find that the valuation report relied upon by the CIT(A) was barred by limitation and as such, no cognizance is required on the said report. In this regard, reliance is being placed upon the following case laws: -*

*a) [2021] 126 taxmann.com 158 (Kolkata - Trib.) IN THE ITAT KOLKATA BENCH 'A' Assistant Commissioner of Income Tax, Central Circle-1 (3), Kolkata v. Narula Educational Trust*

*In the aforesaid facts and circumstances, it is held that the DDIT (inv.) could not have referred the question of cost of construction/valuation of the assessee's building to the Valuation Officer in the year 2014; and thereafter, since the DVO did not present the valuation report after Assessing Officer has referred the valuation vide letter dated 22-1-2016 as well as the Commissioner (Appeals) within six months from the end of the month of the reference, the Commissioner (Appeals) rightly held that DVO was bound by law [section 142A(6)] to have submitted the valuation report within the statutory time limit. The assessee is an educational institution and its accounts are duly audited. Neither the search party nor the Assessing Officer could point out any mistake in the correctness or completeness of the books of account presented by the assessee before the authorities. The search party pursuant to search under section 132 did not even visited the educational institution which fact is evident from the perusal of panchnama which shows that the search team has only searched the administrative office and not at the campus of educational institution which is kilometers away from searched premises So, from the perusal of panchnama and the assessment orders, it is found that the reference made by DDIT (Inv.) for valuation of the properties on 1-4-2014 was without any incriminating materials which were unearthed during search [oral or documentary which could have suggested that the assessee has shown less investment in its books for building construction] consequently DDIT(Inv.) erred in making reference to DVO and when admittedly DDIT(Inv) did not enjoy the power to do so. **In the aforesaid facts and circumstances the Commissioner (Appeals) makes the finding that the failure of the DVO to submit valuation report within six months of making of valid reference, the DVO's initial valuation report dated 18-12-2014 could not***

**have been relied upon to make additions cannot be faulted. Further the Commissioner of Appeals) observation in the letter wherein he has observed that DVO did not give opportunity to assessee before preparation/submission of DVO report dated 18-12-2014 (initial DVO report), so this DVO report is fragile for violation of natural justice and resultantly bad in law and could not have been the sole basis for addition. Consequently, when the initial valuation report of the DVO dated 18-12-2014 is kept aside for the legal infirmities discussed (supra), there is no other evidence to support the addition, so the addition made by the Assessing Officer in all the assessment years from Assessment year 2008-09 to Assessment year 2013-14 has to be deleted and Commissioner (Appeal)'s action cannot be faulted and the same is confirmed the reasons given supra, [Para 22]**

**f) 2023 (8) TMI 431 - ITAT DELHI KAY JAY PROJECTS PVT. LTD. VERSUS DCIT, CENTRAL CIRCLE, NOIDA**

**Assessment u/s 153A - Addition towards the cost of construction of the building - Reference made to Id. DVO u/s 142A - HELD THAT:-** Admittedly, no incriminating material has been found during the course of search qua this addition towards cost of construction. This fact is evident from the perusal of the orders of the lower authorities.

**Sole basis of the addition is only the valuation report furnished by the DVO which has been obtained by the Id. AO during the course of search assessment proceedings** Then, the said report cannot constitute incriminating material found during the course of search. Hence, we have no hesitation to hold that no addition could be made by placing reliance on the said valuation report while framing the assessment u/s 153A of the Act in the hands of the assessee. This issue is now well settled by the recent decision of *Sargam Cinema vs. [2009 (10) TMI 569 - SC ORDER]* and in the case of *CIT vs. Nirmal Kumar Aggarwal [2018 (10) TMI 2002 - SC ORDER]* as referred to supra in the contentions of the Id. AR.

**We find that the provisions of section 142A(6) of the Act categorically state that the valuation report has to be furnished by the Id. DVO within six months from the end of the month in which reference is made by the Id. AO. Admittedly, the valuation report is dated 28.10.2016 which is beyond the prescribed time of 30.09.2016. Hence, it is clearly evident that the said valuation report of Id. DVO is barred by limitation and, hence, cannot be relied upon by any party in the eyes of law. Consequentially no addition per se can be made by the Revenue by placing reliance on an invalid valuation report.- Decided in favour of assessee.**

14. Furthermore, even the valuation report considered by the CIT(A) cannot be relied upon as the DVO report has been made on the basis of CPWD rated instead of

PWD rates. Refer page no.43 of paper book relevant para 8.3 In this regard, reliance is being placed upon the binding judgment of Hon'ble Supreme Court in the case of Sunita Mansingha as reported in 393 ITR 121, wherein, it has been held that for the purpose of valuating the property, the local rate should be applied and not CPWD rates and normally, there is difference of about 25% with respect to rate of CPWD and PWD rates. 15. Therefore, the addition has been made without providing the benefit of rate difference between CPWD and PWD rate.

17. It has been held by various courts and tribunals that the valuation should be made by adopting PWD rates and not by CPWD rates. Moreover, the same issue has been admitted by your goodself in the case of group concern M/s Sheetal Industries in which, the addition made by the AO has been dismissed on account of the said issue. In this regard, reliance is being placed upon the following case laws: -

**a) Sunita Mansingha as reported in 393 ITR 121**

“Assessment-Estimate by valuation officer in certain cases. Validity of Reference-Applicability of Rates-Tribunal held that reference to Departmental Valuation Officer in question was not valid, but it also held that it was settled principle of law that in place of Central Public Works Department rates local Public Works Department' rates were to be applied and adopted to determine cost of construction-Held' it was settled principle of law that in place of Central Public Works Department rates local Public Works Department rates were to be applied and adopted to determine cost of construction-In view of fact that Section 142A was inserted by, Finance (No.2) Act. 2014 (23 of 2004) and subsequently again substituted by Finance Act, 2010 (14 of 2010) and Finance (No.2) (225 of 2014) as proviso to sub-section (3) of Section 142A as it existed-during relevant period, reference to Departmental Valuation Officer could be made because assessment in present case had not become final and conclusive because appeal preferred by Revenue under section 260A was pending before Rajasthan High Court-**However, in view of finding recorded by Tribunal that local Public Works Department rates were to be applied and adopted in place of Central Public Works Department rates. High Court did not find any good ground to interfere in impugned judgment on this issue on merits-Revenue's Appeal dismissed.**”

b) **[2013] 35 taxmann.com 179 (Madras) HIGH COURT OF MADRAS Commissioner of Income-tax, Coimbatore v. K. Jayakumar**

*Section 69 of the Income-tax Act, 1961 - Unexplained investments [Immovable properties] - Assessment year 1998-99 - **Assessee constructed a shopping cum residential complex - Assessing Officer on basis of valuation done by DVO, adopted CPWD rates and completed assessment, thereby making addition - Whether on considering geographical location, availability of work force and cost of materials, it is not proper to blindly go by CPWD rates for purpose of arriving at cost of construction unless there are similarities in rates of CPWD and State PWD - Held, yes** - Whether, where DVO adopted CPWD rates for arriving at cost of construction of assessee's property and there was a substantial difference between CPWD rates and State PWD rates, matter was to be remitted back to Assessing Officer for working out cost of construction by taking State PWD rates - Held, yes [Para 4] [Matter remanded]*

**c) [2014] 50 taxmann.com 206 (Punjab & Haryana) HIGH COURT OF PUNJAB AND HARYANA Commissioner of Income-tax -1. Amritsar.v.Rajesh Mahajan**

*Section 69 of the Income-tax Act, 1961 - Unexplained investment (Cost of construction) - Assessment year 2008-09 - Assessing Officer made addition on difference between cost of construction of hotel building determined by DVO and as declared by assessee in his books of account - However, Tribunal found that assessee furnished valuation report from an approved valuer, whereas, **DVO valued construction at CPWD rates which were 30 per cent higher than market rate - Further, it was found that only 7.5 per cent of total valuation was allowed by DVO for personal supervision as against 15 per cent permissible under law and benefit of valuation of raw structure existing at site had not been allowed by DVO** - Findings recorded by Tribunal were not found to be illegal or perverse - Whether no addition was to be made - Held, yes [Para 8][In favour of assessee]*

9. Per Contra, the Ld. DR relied on the impugned order. He failed to rebut the contentions raised by the appellant council that the DVO report forming sole basis was time barred and the benefit of difference in

valuation was denied to the appellant as per settled law. However, he has filed a brief note which is extracted as under:

- “1. *The issue in question in both the appeals pertains to addition made to the income of the assessee on account of difference in cost of construction of Hospital declared by the assessee and that determined by the DVO. During the course of hearing, the Ld.AR for the appellant claimed that the difference between the value declared by the assessee and determined by the DVO is less than 10%. He made the calculations by taking the value determined by the DVO as base. This is not in order. The amount shown by the assessee is the base and the percentage is to be computed on this. The chart submitted by the Ld. AR on page 12 of his broad submissions in appeal no. 261/ASR/2023, as it pertains to the two assessment years under consideration, should be as below:*

<i>FY</i>	<i>Declared by the assessee</i>	<i>Adopted by the DVO</i>	<i>Difference</i>	<i>Percentage difference</i>
	<i>A</i>	<i>B</i>	<i>C=B-A</i>	<i>D=C/A %</i>
<i>2013-14</i>	<i>2,04,55,325</i>	<i>2,26,29,300</i>	<i>21,73,975</i>	<b>10.63</b>
<i>2018-19</i>	<i>84,56,217</i>	<i>93,55,000</i>	<i>8,98,783</i>	<b>10.63</b>

*In view of the above this contention and ground of the assessee does not hold good and deserves to be rejected.*

2. *Further the Ld. AR claimed that the discount/rebate on account of self supervision, allowed by the DVO @ 3.50% was too low as compared to much higher ratio allowed by various judicial authorities. In this regard it is submitted that the ratio of this allowance may vary from case to case on the basis of facts of the case. In the instant case, the construction has been supervised by third parties which includes an individual-Mr. Abdul Majid Sheikh and a contractor/builder named M/s Bachcha Construction. In these circumstances there was no or negligible element of self supervision. Hence there is no case to allow any discount /rebate on this account.*

*It is prayed that these submissions may kindly be placed on record and considered while deciding these appeals.*

10. We have heard the rival contentions, perused the material on record, written submissions, and the impugned order. Admittedly, the sole basis of the addition is only the valuation report furnished by the DVO which has been obtained by the Id. AO during the course of search assessment proceedings. As per the provisions of section 142A (6) of the Act, it is apparently clear that the valuation report has to be furnished by the Id. DVO within six months from the end of the month in which reference is made by the Id. AO. This issue is now well settled by the Hon'ble Apex Court decision in case of Sargam Cinema vs. [2009 (10) TMI 569 - SC ORDER] and in the case of CIT vs. Nirmal Kumar Aggarwal [2018 (10) TMI 2002 - SC ORDER]. Admittedly, in the present case, the valuation report is dated 28.10.2016 which is beyond the prescribed time of 30.09.2016. Hence, it is evident that the said valuation report of Id. DVO is barred by limitation and, hence, cannot be relied upon by either party in the eyes of law. Consequentially, in our view, no addition per se can be made by the Revenue by placing reliance on an invalid valuation report.

11. The Ld. Counsel has taken alternative plea that the valuation report considered by the CIT(A) cannot be relied upon as the DVO report which has been made on the basis of CPWD rates instead of PWD rates (APB,

Pg. 43 para 8.3). The Ld. Counsel in this regard, placed reliance upon the binding judgment of Hon'ble Supreme Court in the case of Sunita Mansingha as reported in 393 ITR 121, wherein, it has been held that for the purpose of valuating the property, the local rate should be applied and not CPWD rates and normally, there is difference of about 25% with respect to rate of CPWD and PWD rates. Thus, the addition has been made without providing the benefit of rate difference between CPWD and PWD rate.

12. Considering the factual matrix of the case and judicial pronouncements, we hold that the order passed by the Ld. CIT(A) is infirm and perverse to the facts on record in confirming the addition based on invalid report of DVO and further without allowing benefit of the difference in the value as per law. Accordingly, the addition of Rs. 21,73,975/- sustained by the Ld. CIT (A) is bad in Law and as such, same is deleted.

13. The facts and issue in ITA No. 265/Asr/2023 are exactly identical to facts and issue in ITA No. 264/Asr/2023. Therefore, our observation and finding given in ITA No. 264/Asr/2023 shall be applicable to the case in ITA No. 265/Asr/2023 in mutatis mutandis, ordered accordingly.

14. In the result, both the appeals of the assessee are allowed.

*Order pronounced in the open court on 10.11.2023*

**Sd/-**  
**(Anikesh Banerjee)**  
**Judicial Member**

*\*GP/Sr.PS\**

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T.

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

True Copy

By Order