

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-PATNA 'e-COURT', KOLKATA
[Hybrid Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 259/PAT/2023 (A.Y. 2014-2015)
I.T.A. No. 260/PAT/2023 (A.Y. 2015-2016)
I.T.A. No. 261/PAT/2023 (A.Y. 2016-2017)
I.T.A. No. 262/PAT/2023 (A.Y. 2017-2018)**

***Meridian Construction India Limited,..... Appellant
305, Sukriti Apartment,
S.P. Verma Road, Patna-800001
[PAN: AAECM8976E]***

-Vs.-

***Assistant Commissioner of Income Tax,...Respondent
Circle-2, Patna,
C.R. Building (Annexe),
Birchand Patel Marg, Patna-800001, Bihar***

Appearances by:

Shri A.K. Rastogi, Advocate, appeared on behalf of the assessee

Smt. Rinku Singh, CIT, D.R., appeared on behalf of the Revenue

Date of concluding the hearing : May 15, 2024

Date of pronouncing the order : August 13, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present group of four appeals is directed at the instance of assessee against the separate orders of even date i.e. dated 19th August, 2023 passed by the Id.

Commissioner of Income Tax (Appeals), Patna-3 on the appeals of the assessee for assessment years 2014-15 to 2017-18.

2. The grounds of appeals taken by the assessee are not in consonance with Rule 8 of Income Tax Appellate Tribunal Rules. They are descriptive and argumentative in nature.

3. In brief, the common grievance of the assessee in all these three years relates to the addition made by the Id. Assessing Officer with the aid of section 69C, which has been confirmed by the Id. CIT(Appeals). Ld. Counsel for the assessee filed a common written submission for all the years, wherein disputed additions have been depicted in a tabular form. We deem it appropriate to take note of the written submission in order to appreciate the controversy, which reads as under:-

<i>Particulars</i>	<i>AY 2014-15</i>	<i>AY 2015-16</i>	<i>AY 2016-17</i>	<i>AY 2017-18</i>
<i>Undisclosed expenditure in construction of building based on the valuation report of Mr. S.P. Singh, approved valuer u/s 69C</i>	<i>9,34,61,631/-</i>	<i>4,53,94,889/-</i>	<i>4,88,71,784/-</i>	<i>2,58,12,701/-</i>
<i>Addition u/s 43CA</i>	<i>70,31,800/-</i>	<i>67,40,000/-</i>	<i>1,75,40,000/-</i>	<i>58,92,600/-</i>

4. We find the facts on all vital points are common in all these assessment years. Therefore, for the facility of reference, we are taking up the facts mainly from A.Y.

2014-15. The assessee-company at the relevant time was engaged in the business of construction and development of real estate. It has filed its original return of income in all these years, and in A.Y. 2014-15 such return was filed on 31st March, 2016 declaring total income of Rs.31,28,630/-. A survey under section 133A was carried out on the business premises of the assessee on 26.09.2018. On the basis of survey report, it was harboured by the ld. Assessing Officer that income has escaped assessment in all these four assessment years and accordingly he issued notice under section 148 of the Income Tax Act on 27.03.2019. The assessee has filed its return on the same amount, which was filed originally. In other words, it has reiterated the same return in response to the notice under section 148 of the Income Tax Act. The ld. Assessing Officer thereafter issued notice under section 143(2) of the Income Tax Act and he issued questionnaires also under section 142(1). The assessee did not respond to all those questionnaires. The ld. Assessing Officer has to resort initiation of penalty for not responding to his notice under section 271(1)(b) of the Income Tax Act.

5. The ld. Assessing Officer has ultimately taken up the assessment proceeding *ex parte* according to his best judgment provided under section 144 of the Income Tax Act. The ld. Assessing Officer has confronted the assessee

that during the course of survey, it revealed that the assessee has incurred expenditure out of books. The survey team got a Registered Valuer's Report from one Shri Surendra Prasad Singh, which was also considered by the ld. Assessing Officer as a corroborative piece of evidence along with other material found during the course of survey. Since the assessee did not participate the assessment proceeding and did not rebut those materials, the ld. Assessing Officer has made additions in each assessment years on account of unexplained expenditure incurred by the assessee. The ld. Assessing Officer has made reference to the report of the Registered Valuer called for by the Survey Team as an expert. In this way, additions have been made. Apart from the first addition made under section 69C of the Income Tax Act on account of unexplained expenditure incurred by the assessee for construction of three real estate properties, i.e. Patna One Mall, Boring Road Project and Phulwarisharif Patna Project. The assessee has sold the properties in these assessment years. The details of those properties have been tabulated in the assessment orders. The ld. Assessing Officer found that sale considerations disclosed by the assessee are lower than the valuation determined by the Stamp Duty Valuation Authorities for the purpose of charging the Stamp Duty. The ld. Assessing Officer took the value determined by the Stamp Duty Valuation Authorities as deemed sale consideration contemplated in

section 50C/43CA and determined the full sale consideration on the basis of that deemed value. The ld. Assessing Officer has accordingly made additions as depicted in the table reproduced above.

6. Dissatisfied with these additions, the assessee carried the disputes in appeal before the ld. 1st Appellate Authority. It has raised objections for taking cognizance of the Registered Valuer's Report. However, ld. CIT(Appeals) did not take up those issues as submitted by the assessee in its written submission, which has been reproduced in the impugned orders. The ld. CIT(Appeals) was of the view that since these are *ex parte* assessments, the ld. Assessing Officer has determined the taxable income according to his best judgment on the basis of material possessed by him. In the opinion of ld. CIT(Appeals), there was no specific reference to the Valuer under section 142A by the ld. Assessing Officer in the assessment proceeding, rather opinion of the Registered Valuer was called for by the Survey Team at the time of survey. Thus, this was a corroborating piece of evidence considered by the ld. Assessing Officer, who has determined the income according to the best judgment. In this way, ld. CIT(Appeals) has rejected the contention of the assessee and confirmed the additions.

7. Before us, ld. Counsel for the assessee has reiterated his submission as was made before the ld. 1st Appellate Authority. Brief note of his submission reads as under:-

“Submission

It is respectfully submitted that the reference by the A.O. u/s 142A authorizing Mr. S.P. Singh in terms of provisions of Section 142A is wholly illegal and without jurisdiction. Mr. Singh is an approved valuer appointed u/s 34AB of the Wealth Tax Act (relevant provision of section 34AB reproduced hereunder) and he has not been appointed u/s 12A of the Wealth Tax Act. The extant provisions is reproduced hereunder:

Section 34AB

“Registration of valuers.

34AB. (1) The [Chief Commissioner or Director General] shall maintain a register to be called the Register of Valuers in which shall be entered the names and addresses of persons registered under sub-section (2) as valuers.

(2) Any person who possesses the qualifications prescribed in this behalf may apply to the [Chief Commissioner or Director General] in the prescribed form for being registered as a valuer under this section:

Provided that different qualifications may be prescribed for valuers of different classes of assets.

(3) Every application under sub-section (2) shall be verified in the prescribed manner, shall be accompanied by such fees as may be prescribed and shall contain a declaration to the effect that the applicant will—

(i) make an impartial and true valuation of any asset which he may be required to value;

(ii) furnish a report of such valuation in the prescribed form;

(iii) charge fees at a rate not exceeding the rate or rates prescribed in this behalf;

(iv) not undertake valuation of any asset in which he has a direct or indirect interest.

(4) The report of valuation of any asset by a registered valuer shall be in the prescribed form and be verified in the prescribed manner. ”

Further, Mr. Singh is not a Valuation officer as defined under Clause (r) of Section 2 of Wealth Tax Act and he cannot assume powers u/s 38A of the Wealth Tax Act and consequently the whole exercise of valuation is nullity in the eyes of law.

For the sake of convenience your honour's kind attention is invited to Section 142A of Income Tax Act, Section 2(r), 12A & 38A of Wealth Tax Act, 1957 read with Rule-3A to 3C of Wealth Tax Rules, 1957 which are quoted below

“Estimation of value of assets by Valuation Officer.

142A. (1) The Assessing Officer may, for the purposes of assessment or reassessment, make a reference to a Valuation Officer to estimate the value, including fair market value, of any asset, property or investment and submit a copy of report to him.

(2) The Assessing Officer may make a reference to the Valuation Officer under sub-section (1) whether or not he is satisfied about the correctness or completeness of the accounts of the assessee.

(3) The Valuation Officer, on a reference made under sub-section (1), shall, for the purpose of estimating the value of the asset, property or investment, have all the powers that he has under section 38A of the Wealth-tax Act, 1957 (27 of 1957).

(4) The Valuation Officer shall, estimate the value of the asset, property or investment after taking into account such evidence as the assessee may produce and any other evidence in his possession gathered, after giving an opportunity of being heard to the assessee.

(5) The Valuation Officer may estimate the value of the asset, property or investment to the best of his judgment, if the assessee does not co-operate or comply with his directions.

(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).

(7) The Assessing Officer may, on receipt of the report from the Valuation Officer, and after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.

Explanation.—In this section, "Valuation Officer" has the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957). "

Wealth Tax Act

"(2) Definition

(r) "Valuation Officer" means a person appointed as a Valuation Officer under section 12A, and includes a Regional Valuation Officer, a District Valuation Officer, and an Assistant Valuation Officer;]

Appointment of Valuation Officers.

12A. (1) The Central Government may appoint as many Valuation Officers as it thinks fit.

(2) Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, a wealth-tax authority may appoint as many overseers, surveyors and assessors as may be necessary to assist the Valuation Officers in the performance of their functions].

[Powers of Valuation Officer, etc.

38A. (1) For the purposes of this Act, a Valuation Officer or any overseer, surveyor or assessor authorised by him in this behalf may, subject to any rules made in this behalf and at such reasonable times as may be prescribed,—

(a) enter any land within the limits of the area assigned to the Valuation Officer, or

(b) enter any land, building or other place belonging to or occupied by any person in connection with whose assessment a reference has been made under section 16A to the Valuation Officer, or

*(c)inspect any asset in respect of which a reference under section 16A has been made to the Valuation Officer,
and require any person in charge of, or in occupation or possession of, such land, building or other place or asset to afford him the necessary facility to survey or inspect such land, building or other place or asset or estimate its value or inspect any books of account, document or record which may be relevant for the valuation of such land, building or other place or asset and gather other particulars relating to such land, building or other place or asset:*

Provided that no Valuation Officer, overseer, surveyor or assessor shall enter any building or place referred to in clause (b), or inspect any asset referred to in clause (c) (unless with the consent of the person in charge of or in occupation or possession of, such building, place or asset) without previously giving to such person at least two days' notice in writing of his intention to do so.

(2) If a person who, under sub-section (1), is required to afford any facility to the Valuation Officer or the overseer, surveyor or assessor, either refuses or evades to afford such facility, the Valuation Officer shall have all the powers under sub-sections (1) and (2) of section 37 for enforcing compliance of the requirements made.]''

It would be evident that Mr. Singh is a person who has been appointed as Govt. Approved Valuer by Income Tax Department u/s 3 4AB and has not been appointed as Valuation Officer by Central Government as prescribed under Rule-12A of the Wealth Tax Act, 1957 and thus, the very reference u/s 142A is wholly without jurisdiction and consequently ingress of Mr. Singh in the premises for inspection and valuation by Mr. Singh is wholly unlawful and amounts to trespass. Thus, for all practical purposes the alleged report being an illegal document is fit to be discarded and no reliance can be placed.

The Hon'ble Karnataka High Court in one of the Judgments in the case of V. Selvaraj Vs. DCIT dated 19/08/2021 (copy placed at pages 8 to 15 of this submission) was seized with exactly identical issue

wherein the revenue authorities have referred the matter of valuation of stock in trade in course of survey conducted u/s 133 A to a valuer registered u/s 34AB of the Wealth Tax Act. The Hon'ble Court considering the extant provisions of Income Tax Act and Wealth Tax Act (quoted above) have been pleased to hold that:

Para 32

“In the considered opinion of this court, the assessing officer gravely erred in relying upon the valuation report submitted by a registered valuer while assessing the income of the appellant, as such a report being invalid in law. Keeping in view the statutory provision governing the field, he should have sought a valuation by the District Valuation Officer and could have relied upon his report to assess the income of the appellant. ”

Para 33

“The provision of the Wealth Tax Act and the rules applicable for the assessment year 2008-09 are governing the field and therefore, substantial question of law No. 6 has to be answered in favour of the appellant and against the responded/ revenue by deleting the addition of income, which was added based upon the valuation report of the Registered Valuer”.

It is trite law that all statutory actions must be performed only in the manner prescribed by law, and failure in that regards is fatal to the validity of those actions. Authority, if any, be had of the following Judgments:

(1999) 3 SCC 422 (SC) - Babu Verghese & Ors. vs Bar Council of Kerala & Ors.

Para-31

“It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor ((1875) 1 Ch D 426 : 45 LJ Ch 373) which was followed by Lord Roche in Nazir Ahmad V. King Emperor 2 who stated as under:-

“Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all”.

8. On the strength of the above submission, it was contended by the ld. Counsel for the assessee that section 142A authorizes the ld. Assessing Officer to make a reference to the Valuation Officer for estimating the value including the fair market value of any asset, property, investment etc. This valuation is to be determined for the purpose of assessment or re-assessment of an income. Sub-clause 3 of section 142A provides that Valuation Officer for the purpose of estimating the value would exercise the powers conferred by section 38A of the Wealth Tax Act. He further made reference to the provision of Wealth Tax Act to demonstrate, who can be the Valuation Officer under section 142A. The ld. Counsel for the assessee appraised us a distinction between the Registered Valuer contemplated under section 34AB of Wealth Tax Act, vis-à-vis the Departmental Valuation Officer appointed under section 12A of the Wealth Tax Act, vis-à-vis a Registered Valuer appointed by the Chief Commissioner in the register maintained for that purpose under section 34AB of the Income Tax Act. It was further contended that since the Act contemplates of determining the fair market value of any asset, investment, property etc. by a Valuation Officer, it means such a Valuation Officer should be Departmental Valuation Officer appointed by the Central Government under section 12A

of the Income Tax Act. In other words, this report of the Registered Valuer ought to have not been considered by the ld. Assessing Officer for making the additions.

9. With regard to second fold of grievance, it was contended that sub-clause 4 of section 43CA provides that if the 'date of sale deed' and the 'date of agreement to sale' are different dates, then, for the purpose of taking the full sale consideration equivalent to the amount on which Stamp Duty was paid, the 'date' should be considered the date on which agreement was entered by the assessee. The only condition is provided that along with the agreement, full or part payments of the consideration ought to have been through banking channel. The ld. Counsel for the assessee submitted that payments were made through banking channel and these aspects have not been looked into by both the revenue authorities. Therefore, this addition is also not sustainable.

10. On the other hand, ld. D.R. relied upon the orders of revenue authorities.

11. We have duly considered the rival contentions and gone through the record carefully. The incomes of the assessee in these years have been determined according to section 144 read with section 147 of the Income Tax

Act. Therefore, we deem it appropriate to take note of section 144 of the Income Tax Act, which reads as under:-

“144. Best judgment assessment.

(1) If any person-

(a) fails to make the return required [under sub-section (1) of section 139 and has not made a return or a revised return under sub-section (4) or sub-section (5) of that section, or]

(b) fails to comply with all the terms of a notice issued under sub-section (1) of section 142 [or fails to comply with a direction issued under sub-section (2-A) of that section, or]

(c) having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 143,

the [Assessing Officer] after taking into account all relevant material which the [Assessing Officer] [Substituted by Act 4 of 1988, Section 2, for "Income-tax Officer" (w.e.f. 1.4.1988).] has gathered, [shall, after giving the assessee an opportunity of being heard, make the assessment] [Substituted by Act 4 of 1988, Section 49, for " shall make the assessment" (w.e.f. 1.4.1989).] of the total income or loss to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment:

[Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment:

Provided further that it shall not be necessary to give such opportunity in a case where a notice under sub-section (1) of section 142 has been issued prior to the making of an assessment under this section.]

(2) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section

to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year”.

12. A perusal of this section would reveal that if any person fails to make a return required under section 139(1) or fails to comply with all the terms of a notice issued under sub-section 1 of section 142 or having made a return, fails to comply with all the terms of a notice issued under section 143(2), then, Assessing Officer is authorized to take into account all relevant material, which he has been gathered and shall after providing an opportunity of being heard to the assessee, determine the total income or losses to the best of his judgment. In other words, the section empowers the ld. Assessing Officer to determine the total taxable income of the assessee according to the best of his judgment. It is true that ld. Assessing Officer has issued notices under section 142(1) as well as under section 143(2), but the assessee did not appear. Hence, under compelling circumstances, ld. Assessing Officer has to pass the assessment according to his best judgment as contemplated in section 144, sub-section 1 of the Income Tax Act. The exercise on the basis of best of judgment would always involve element of some guess work. The ld. Assessing Officer has to collect information about the *modus operandi* of assessee's business. He has to harp upon his knowledge from the field in the line of assessee's business. In the present case, the ld. Assessing Officer

was possessing materials supplied by the survey team, which also include the report of Registered Valuer, which may not be conclusive evidence, but must be corroborative evidence in forming the belief about the total income assessable in the hands of the assessee. Had the assessee participated the proceeding and confronted the material possessed by the ld. Assessing Officer, probably vigorous of section 142A by making reference to the Departmental Valuation Officer would have been explored by the ld. Assessing Officer, but that opportunity had never come to him because there was no rebuttal to the material possessed by him on the basis of which he has to form an estimated opinion about the total taxable income of the assessee. It was for the assessee to submit complete books of account and rebut the expert's opinion possessed by the ld. Assessing Officer along with the material supplied by survey team. Therefore, to our mind, there is no illegality crept in the proceeding before the ld. Assessing Officer, which can culminate it to an end as illegal. At the most, it is an irregularity, which could have entertained by the ld. 1st Appellate Authority and such irregularity could have been eliminated by making a reference to the valuer afresh. We have taken into consideration the judgment of the Hon'ble Karnataka High Court in the case of V. Selvaraj -vs.- DCIT rendered in ITA No. 92/2018. In that case, assessment was not *ex-parte*. It was a contested assessment and, therefore, Hon'ble High Court had arrived

at a conclusion that a reference to the Departmental Valuation Officer ought to have been made before relying upon the estimated value of the stock possessed by the assessee, which was worked out on the basis of Registered Valuer's report. Taking into consideration all these aspects, we deem it appropriate to set aside the assessment orders as well as orders of Id. CIT(Appeals) on the first fold of grievance of the assessee and restore this issue to the file of Id. Assessing Officer, who will make a reference to the DVO under section 142A and re-determine the income of the assessee. The outcome of the survey team including registered valuer report be supplied to the assessee and thereafter a fresh opportunity of hearing be granted to the assessee.

13. As far as the second fold of grievance is concerned, we find that before executing the sale deed, the assessee has already entered into an agreement for sale of these properties. It has received the amount through banking channel. Therefore, Id. Assessing Officer is directed to re-examine this aspect also. He has to find out whether agreements have been executed by the assessee earlier in times for sale of these properties. The sale price was fully or partly received through banking channel, then benefit of sub-clause 4 of section 43CA is to be granted. In other words, the date of agreement is to be considered as the date of sale and on that date, the sale price is to be

compared with the Stamp Duty Valuation and if there is a difference, then fair market value of that has to be determined by making a reference to the DVO. On the basis of that final outcome, full sale consideration is to be worked out.

14. With the above directions, all the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 13.08.2024.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Rajpal Yadav)
Vice-President

Kolkata, the 13th day of August, 2024

*Copies to :(1) Meridian Construction India Limited,
305, Sukriti Apartment,
S.P. Verma Road, Patna-800001*

*(2) Assistant Commissioner of Income Tax,
Circle-2, Patna,
C.R. Building (Annexe),
Birchand Patel Marg, Patna-800001, Bihar*

*(3) Commissioner of Income Tax (Appeals),
Patna-3;*

(4) Commissioner of Income Tax- ;

(5) The Departmental Representative

*(6) Guard File
TRUE COPY*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.