

**IN THE INCOME TAX APPELLATE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD**

**BEFORE SH. UDAYAN DAS GUPTA, JUDICIAL MEMBER  
AND  
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.114/Alld/2023  
A.Y. 2017-18

Om Prakash Singh, 147A/2, Tagore Town, J.L.N. Road, Allahabad, U.P.	vs.	Assistant Commissioner of Income Tax, Central Circle, Allahabad, U.P.
<b>PAN:AIIPP0574G</b>		
(Appellant)		(Respondent)

Assessee by:	Sh. Ashish Bansal, Adv
Revenue by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	01.10.2024
Date of pronouncement:	27.12.2024

**ORDER**

**PER NIKHIL CHOUDHARY, A.M.:**

This is an appeal against the order of the Id. CIT(A)-, Lucknow-3, dated 11.07.2023 passed under section 250 of the Income Tax Act, 1961. The grounds of appeal preferred are as under:-

*"1. BECAUSE proceeding under section 147 of the Act by issuance of notice dated 30.03.2021 under section 148 on the basis of D.V.O. report his only erroneous and bad, assessment order dated 23.03.2022 passed in consequence of said proceeding is wholly without jurisdiction, accordingly, the entire proceeding in consequence of notice dated 30.03.2021 are vitiated and not maintainable.*

*WITHOUT PREJUDICE TO THE AFORESAID*

*2. BECAUSE the addition of Rs.9,26,796/- made by the Id. Assessing Officer on account of alleged difference in the valuation of Office Building between the value appearing in the audited books of account as compared to the valuation made by the D.V.O., as also confirm by the Id. CIT(A), is wholly erroneous as the report of the valuation officer is an estimate and the same*

*cannot at all be treated as a basis of addition moreover where the difference between the two values is less than 10%. 3.*

*3. BECAUSE otherwise also the rate adopted by the Valuation Officer is as per CPWD rate instead of SPWD rates, the difference so worked out is not maintainable on this ground too.*

*4. BECAUSE entire expenditure incurred towards Office Building are recorded in the regular books of account and other records which are audited and accepted too by the authorities below, no adverse material having been found at the time of survey proceedings, to support the higher valuation of Office Building by the DVO, merely on the basis of estimate, addition for the alleged difference could not be sustained.*

*5. BECAUSE the case laws relied upon by the appellant are fully applicable and supports the case of the appellant while the case laws relied upon by the ld. CIT(A) are based on different facts and are not applicable in the present case.*

*6. BECAUSE the order appealed against, is contrary to facts, law and principles of natural justice.”*

2. The facts of the case are that a Survey operation under section 133A was carried out at M/s Aarav Neuro Clinic and M/s Aarav Pathology on 11.09.2018. Subsequent to the Survey, an assessment was completed under section 143(3) of the Act on 7.12.2019. Subsequently proceedings under section 147 of the Income Tax Act were initiated with the issue of a notice under section 148 dated 30.03.2001. Prior to the assessment proceedings, the ld. AO observed that the assessee had made an investment in the construction of a building at 147-A/2, Jawahar Lal Nehru Road, Tagore Town, Allahabad and on 29.01.2001, he made a reference to the Valuation Officer to estimate the value of the investment made in construction of the said hospital building. Upon receipt of the DVO's report dated 16.03.2021, he formed reason to believe, on the basis of the estimated cost of construction determined by the Valuation Officer, that a sum of Rs.9,26,796/- had escaped assessment on this account in the concerned assessment year. He

accordingly issued a notice under section 148 to assess escaped income to tax. The assessee did not file a return in response to the notice under section 148 or the subsequent notices under section 142(1). He submitted that the variation was less than 10%, and in view of the fact that the difference of Rs.9,26,796/- shown for the year was only 1.71% of the overall asset, the valuer's report could not be considered as a sole reason for making addition of unexplained investment in land and building. However, the ld. AO held that the percentage of difference which stood at 7.71% was on the higher side and therefore, he added back the difference in investment of Rs.9,26,796/- as unexplained investment in hospital and building under section 69 of the Act and brought it to tax under section 115BBE. The assessee went in appeal before the ld. CIT(A). It was submitted that while the figure disclosed by the assessee was the actual expenditure incurred, the DDO had only estimated his value based upon some assumptions and therefore, there was bound to be some difference between the estimated value and the expenditure actually incurred. It was submitted that the difference in valuation was approximately 7.17% which is within the acceptable limit of 10%. It was further submitted that the Courts have held that if the deviation is within 10%, then no addition can be made by the ld. AO. For the same, he placed reliance on the decision of the ITAT, Delhi in the case of **Geetika Sachdev vs. Income Tax Officer, Ward-3(2), Saharanpur** and **ACIT vs. Harpreet Hotels (Pvt.) Ltd.**, He also relied on **Income Tax Officer vs. Kaaddu Jaygyhosh Appasaheb**. It was further submitted that charging the same to tax in the manner provided under section 115BBE were incorrect and needed to be deleted. Thereafter, the ld. CIT(A) placed reliance on the following decisions to hold that the valuation made by the DVO was a reasonable ground to make an addition.

i. Krishan Kumar Jhamb vs. Income tax Officer, [2009] 179 Taxman 141 (Punjab & Haryana).

- ii. S. Ramesh vs. DCIT [2022] 144 taxman.com 151 (Chennai-Trib).
- iii. Avantha Realty Ltd. vs. ACIT [2022] 139 taxmann.com 127 (Delhi).
- iv. Anil Murlidhar Deshmukh vs. ITO [2019] 101 taxman.com 93 (Pune-Trib).
- v. CIT vs. Narinder Kr. Budhiraja [2015] 56 taxmann.com 315 (Delhi).
- vi. Sri Pattabharam vs. Income-tax Officer, Kakinada [2014] 45 taxmann.com 141.
- vii. CWT vs. Dr. H. Rahman, [1991] 55 taxman 408 (Allahabad).

Therefore, on the basis of the aforesaid judgments, the Id. CIT(A) dismissed the appeal of the assessee.

3. The assessee is aggrieved with the said dismissal of his appeal and is before us. Shri. Ashish Bansal, Advocate (hereinafter referred to as the 'Id. AR') represented the assessee and submitted that it was well established and accepted principle that a mere valuation report was not sufficient to conclude that the assessee had either concealed or has some unexplained investment. The difference in the Valuation report and the factual information has to be brought out with incriminating material, exhibiting the unexplained investment and merely on the basis of DVO's report, an addition could not be arbitrarily made. It was further submitted that in this case, the reference to the valuation officer under section 142A was in itself bad in law and furthermore that the case could not be reopened only on the basis of the valuation report, because the valuation report was only an estimate and not proof of any income escaping assessment. Furthermore, it was submitted that the difference in value between what the valuation officer has estimated and what was shown in the books of the assessee being only 7.17%, the difference was liable to be ignored and the addition deleted on this account. Accordingly, it was prayed that the addition may be deleted as being illegal and not maintainable.

4. On the other hand, Shri. A.K. Singh, Id. Sr. DR (hereinafter referred to as the 'Id. Sr. DR') submitted that the following the introduction of section 142A, the reopening of an assessment on the basis of the DVO's report was justified. Reliance was placed on the decision of the Hon'ble Allahabad High Court in the case of CIT-2, Lucknow vs. Sangam Builders (2013) 40 taxman.com 450 (Allahabad) wherein the Hon'ble High Court had held that the ratio laid down by the Hon'ble Supreme Court in the case of Smt. Amiya Bala Paul vs. CIT [2003] 262 ITR 407 (SC) had been nullified by the insertion of section 142A and therefore, additions could be made on the basis of reference made to the DVO. Reliance was also placed on the decision of Hon'ble Allahabad High Court in the case of Sundar Carpet Industries vs. ITO [210] 324 ITR 417 (Allahabad) wherein it had been held that the DVO's report constituted material for entertaining a belief of escaped income in the years under consideration and therefore, the re-assessment was justified. Similarly, the Id. DR drew our attention to the decision of the Hon'ble Delhi High Court in the case of Bawa Abhai Singh vs. DCIT [2001] 253 ITR 183 (Delhi) wherein the writ petition of the assessee against the reopening of the assessment on the basis of the DVO's report was rejected. The following case laws were also relied upon.

i. CIT vs. Achamma Chacko [2010] 326 ITR 258 (Kerala)

ii. Vippy Processors Pvt. Ltd., vs. CIT [2001] 249 ITR 7 (M.P.)

The Id. DR also submitted that a paper book containing judgments supporting the proposition that only those original assessments which were completed and became final and conclusive on or before 30.09.2004, were excluded from the ambit of section 142A and that sufficiency or adequacy of reasons recorded under section 148 or the correctness of material before the Id. AO could not be considered in appeal. Thus, the Id. DR argued that in view of the change in the law owing to the insertion of section 142A, ground no. 1 of the assessee's grounds of

appeal was not maintainable. With regard to the submissions of the ld. AR on the merits of the case, the ld. DR argued that the perusal of the valuation report would demonstrate that the assessee had not furnished labour payment bills and vouchers, structural drawings of the building and valuer's report before the Valuation Officer and therefore, in the absence of documents to substantiate the year wise expenditure in the construction of building, the accounts could not be relied upon and it was the estimated done by the Valuation Officer which has to be taken.

5. We have duly considered the facts and circumstances of the case. With regard to the legal ground taken by the ld. AR regarding the initiation of proceedings on the basis of the DVO's report, we observe that the ld. DR has brought judicial precedence on record to demonstrate that the DVO's report would constitute information to give the jurisdiction to the ld. AO to issue notice under section 148. The Hon'ble Delhi High Court in the case of Bawa Abhai Singh vs. DCIT (supra) has held that it cannot be said that the report of the Valuation Officer containing his conclusions about the valuation cannot constitute information or has to be excluded for consideration, if after considering the valuation, the ld. AO had come to the conclusion that the assessee had understated his income (capital gains in that particular case). Therefore, it has held that there is no substance in the plea that the ld. AO could not have taken the valuation report into account. The Hon'ble Court held that what was necessary to be adjudicated, was about the existence of relevant material which formed foundation of a belief and constituted reasons for entertaining a belief about the escapement of an income. Relying upon the earlier decision of the Court in the case of L.R. Gupta vs. Union of India [1992] 194 ITR 32, the Hon'ble Court observed that information must be something more than rumor or gossip or hunch. There must be some material which could be regarded as information, on the basis of which the ld. AO can have reason to believe that action under section 147 is called for. Only if the information or reason has no nexus with

the belief or there was no material or tangible information for forming of requisite belief, could a Court interfere, otherwise not. The Hon'ble Court also held that information meant the communication or reception of knowledge or intelligence, which included knowledge obtained from investigation, study or insurrection. Details available in papers filed before the Id. AO do not by its mere presence or availability become an item of information, but is transmitted into an item of information if and when its existence is realized and its implications are recognized. Therefore, the Hon'ble High Court upheld the decision to initiate proceedings under section 147 in that particular case. Following the ratio of the Hon'ble Delhi High Court, it is held that the valuation report of the Valuation Officer that has been prepared after an inspection and study of the matter, is a relevant piece of material that can constitute information and lead to a reason to believe of escapement of income, when its implications are analysed by the Id. AO with reference to the other information available before him. Accordingly, ground no. 1 of the assessee is without merit and is, therefore dismissed.

6. With regard to the issue on merits, it is observed that as per the valuation report, the total estimated cost of construction is Rs.5,41,36,100/- against the total investment of Rs.5,05,12,596/- disclosed in the returns. Thus, the variation in the value disclosed by the assessee in his returns and the value estimated by the Valuation Officer is 7.1%. We are in concurrence with the view that there would always be some difference in the estimate determined by the Valuation Officer and the actual expense recorded, because the valuation is based on a given set of parameters while the actuals are based on many variable factors. It is only if there is a large difference in the estimation of construction by the Valuation Officer and the actual cost displayed, that it can be said that the cost of construction has been suppressed. Where the cost of construction as disclosed in the returns varies marginally from that estimated by the Valuation Officer, it cannot be said that there

has been undisclosed investment in the construction of that building merely because of this difference. It is observed that amendments have been brought into sections 50C and section 55A (through Rule 111AA) of the Income Tax Act, 1961 indicating a tolerance margin of 10% and 15% respectively between the fair market value as shown by the assessee and as determined by the Valuation Officer. While there is no explicit mention of such tolerance limit within the provisions of section 142A, the principles laid down in the Act, in respect to section 50C and section 55A have been recognized in various judicial pronouncements. The Id. AR has placed reliance on two such case laws i.e. ACIT vs. Harpreet Hotels (P.) Ltd. vide ITA Nos.1156-1160/Pn/2000 and Geetika Sachdev vs. ITO, Ward-3(2), Saharanpur in ITA No.6638/Del/2018. After considering the fact that the variation between the value of the property and cost of construction shown by the assessee in his accounts and that estimated by the Valuation Officer is less than 10% both in absolute terms and in terms of the amount stated to be invested and determined to be invested during the year (Rs.1,29,19,804/- viz. a viz. Rs.1,38,46,600/-), we are of the view that the Id. AO is not justified in concluding that there was unexplained investment only on account of the estimate determined by the Valuation Officer. We also observe that the valuation report of the Valuation Officer is contradictory in the sense that, while in Column 3.2 of his report he has recorded that the assessee has not furnished the valuer's report, in Column 9.1, he has given comments on the valuer's report and why it could not be relied upon. Be that as it may, since the Valuation Officer has himself recorded the fact that the assessee was showing cost of building more than that of the approved valuer, that report is not relevant to the facts of the assessee's case. Therefore, in consideration of the minor variation in the cost of construction disclosed by the assessee and that determined by the Valuation Officer, we are of the opinion that the same is within the tolerance range and accordingly no conclusion of unexplained investment could be arrived at on that

basis. The addition made in this regard of Rs.9,26,796/- is accordingly deleted. Ground Nos. 3 to 5 are allowed. Ground No. 6 does not require adjudication.

7. In the result, the appeal is partly allowed.

Orders pronounced on 27.12.2024 at Allahabad U.P.

**Sd/-**  
**[UDAYAN DAS GUPTA]**  
**JUDICIAL MEMBER**

**Sd/-**  
**[NIKHIL CHOUDHARY]**  
**ACCOUNTANT MEMBER**

DATED: 27/12/2024

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Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

By order  
Sr. P.S.