

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : F : NEW DELHI

BEFORE SHRI R.S. SYAL, AM & MS SUCHITRA KAMBLE, JM

ITA No.1729/Del/2012
Assessment Year : 2006-07

DCIT,
Central Circle-08,
New Delhi.

Vs. Rajiv Chaurasia,
575, 1st Floor, Double Storey Flat,
New Rajendra Nagar,
New Delhi – 110 060.
PAN: AFVPC0105J

CO No.242/Del/2012
(ITA No.1729/Del/2012)
Assessment Year : 2006-07

Rajiv Chaurasia,
575, 1st Floor, Double
Storey Flat,
New Rajendra Nagar,
New Delhi – 110 060.
PAN: AFVPC0105J

Vs. DCIT,
Central Circle-08,
New Delhi.

(Appellant)

(Respondent)

Assessee By : Shri R.S. Singhvi, CA
Department By : Smt. Nandita Kanchan, CIT, DR

Date of Hearing : 06.10.2015
Date of Pronouncement : 07.10.2015

ORDER

PER R.S. SYAL, AM:

This appeal by the Revenue and the Cross Objection by the assessee arise out of the order passed by the CIT(A) on 2.2.2012 in relation to the assessment year 2006-07.

2. The only ground raised by the Revenue in this appeal is against the deletion of addition of Rs.5,59,66,000/- made by the AO u/s 69B of the Income-tax Act, 1961 (hereinafter also called 'the Act') on the basis of the valuation report of the District Valuation Officer (DVO).

3. Succinctly, the facts of the case are that the assessee belongs to Chaurasia group. A search and seizure operation u/s 132 of the Act was conducted at the business/residential premises of the assessee on 29.4.2008. A notice u/s 153C read with section 153A was issued. During the course of assessment proceedings, the assessee was called upon to furnish details of all immoveable properties purchased/sold during the year. Vide letter dated 22.11.2010, the assessee submitted

that he acquired ownership rights in the commercial property No. 210, Okhla, Phase III, New Delhi for a sum of Rs.3,50,00,000/- and incurred expenses on stamp duty and other expenses, bringing the total cost of such property at Rs.3,76,75,000/-. The AO made a reference to the Departmental Valuation Officer (DVO) for determining the fair market value of this property. The DVO assessed the value at Rs.8,99,66,000/- as against the declared cost price at Rs.3,50,00,000/-. On being called upon to explain the difference between the two, the assessee submitted that the estimate of fair market value of the property by the DVO was not proper. Unconvinced with the assessee's submissions, the AO made addition of Rs.5,49,66,000/- (Rs.8,99,66,000 minus Rs.3,50,00,000/-). The Id. CIT(A) deleted the addition.

4. We have heard the rival submissions and perused the relevant material on record. There is no dispute on the fact that the property purchased by the assessee for a sum of Rs.3.50 crore along with other expenses incurred was properly reflected by the assessee in his books of account. The only dispute is on an addition of Rs.5,49,66,000/-, being

the difference between the fair market value of the property as determined by the DVO and the purchase cost as per Agreement to sell. It is important to mention that apart from the Departmental Valuation Officer's report, there is no other material to indicate that the assessee had, in fact, invested more amount than the declared consideration despite there being a search action carried out against the assessee. Here is a case in which the assessee claimed to have purchased the property for a sum of Rs.3.50 crore and the AO has made addition of Rs.5,59,66,000/- lac simply on the basis of difference between the DVO's report and apparent sale consideration. No attempt has been made for verifying the price from the seller of the property. In other words, there is no positive material evidencing the making of actual investment by the assessee over and above Rs.3.50 crore. Under such circumstances, there can be no point in making any addition towards unexplained investment u/s 69B of the Act. It is relevant to mention that the legislature has carried out amendment by the Finance Act, 2013 w.e.f. 1.4.2014 by substituting section 56(2)(vii)(b) providing that where

an individual or HUF receives any immovable property, *inter alia*, for a consideration which is less than the stamp duty value of the property by an amount exceeding Rs.50,000/-, the stamp duty value of such property as exceeded such consideration shall be taxed as 'Income from other sources.' The legislature has brought in section 56(2)(vii)(b) with the sole intention of bringing under-hand payment of sale consideration of immovable property to tax. This provision has been enshrined w.e.f. the A.Y. 2014-15 and is not applicable retrospectively to the A.Y. 2006-07 under consideration. Since this provision is prospective and there is no other authentic evidence of the assessee having actually made any investment over and above the declared sale consideration, we are of the considered opinion that the Id. CIT(A) was justified in deleting the addition to the extent of Rs.5,59,66,000/-. Similar view has been taken by the Delhi Bench of the Tribunal in the case of *Gagan Khosla* vide its order dated 31.7.2015 in ITA No.208/Del/2012. We, therefore, countenance the action of the Id. CIT(A) in deleting this addition.

5. The ld. AR did not press his Cross Objection. The same is, therefore, dismissed.

6. In the result, both the appeal and the CO stand dismissed.

The order pronounced in the open court on 07.10.2015.

Sd/-

[SUCHITRA KAMBLE]
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]
ACCOUNTANT MEMBER

Dated, 07th October, 2015.

dk

Copy forwarded to:

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

AR, ITAT, NEW DELHI.