

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH 'B' NEW DELHI**

**BEFORE : SHRI H.S. SIDHU, JUDICIAL MEMBER &  
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**ITA No. 507/Del./2012  
Asstt. Years : 2008-09**

A.C.I.T., Central Circle-22, vs. Express Earth Movers & Equipments Pvt. Ltd.  
New Delhi. 2A, Avenue Cassia, Westend Greens, Rajokari,  
New Delhi [PAN : AAACE 9926 C]

**ITA No. 402/Del./2012  
Asstt. Year : 2008-09**

Express Earth Movers & Equipments Pvt. Ltd. vs. A.C.I.T., Central Circle-22,  
2A, Avenue Cassia, Westend Greens, Rajokari, New Delhi.  
Westend Greens, Rajokari, New Delhi.

(Appellant)

(Respondent)

Revenue by : Md. Mohsin Alam, CIT/DR  
Assessee by : Sh. Salil Kapoor, Advocate

Date of hearing : 09.09.2015  
Date of pronouncement : 30.09.2015

**ORDER**

Per L.P. Sahu, Accountant Member:

These are cross appeals filed by the Revenue and the assessee against the order dated 18.11.2011 of ld. CIT(A)-III, Delhi for the assessment year 2008-09 on the following grounds :

Ground raised by Revenue :

*“1. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in restricting the addition to Rs.11,78,000/- out of*

*total addition of Rs.1,13,50,000/- made by the Assessing Officer on account of unaccounted income from sale of property.”*

Ground raised by the Assessee :

*“1. That the Learned CIT(A) erred in law and as well as on facts in dismissing the appeal as per Ground of Appeal No. 1 and by upholding addition of Rs.11,78,000/- to the income of the appellant, on account of ‘unaccounted Income’ on sale of property no. C-217, Mayapuri Industrial Area, Phase-II, New Delhi, on the basis of sale price of property no. C-218, Mayapuri Industrial Area, Phase-II, New Delhi.”*

2. The brief facts of the case are that the assessee is a company and a search and seizure action 132 of the IT Act was initiated on the assessee group on 06.11.2008 and a search warrant was also issued and executed in the name of the assessee. The original return of income u/s. 139 of the Act was filed by the assessee on 20.12.2008 at Rs. Nil. Thereafter the case of the assessee was centralized in Central Circle-22, New Delhi and notice u/s. 153A of the Income Tax Act was issued on 08.07.2009 in pursuance to which the assessee filed the return of income on 04.08.2009 at the original income. The assessee company has been formed to carry on business of providing on hire/lease heavy earthmovers equipments & construction of machinery, plants, equipments, accessories etc. for the purpose of construction. The Assessing Officer completed the assessment u/s. 143A/143(3) of the Act on 24.12.2010 in the case of assessee at an income of Rs.1,13,50,000/-. The assessee, aggrieved by the assessment order dated 24.12.2010, filed appeal before the learned first appellate authority who vide impugned order dated 18.11.2011 partly allowed the appeal of the assessee, thereby restricting the addition of Rs.11,78,000/- as against Rs.1,13,50,000/- made by the Assessing Officer. Now, the Revenue has filed ITA No. 507/Del./2012 against the addition deleted by the ld. First appellate authority and the assessee has

filed the appeal No. 402/Del/2012 against the addition upheld by the Id. First appellate authority of Rs.11,78,000/- on account of unaccounted income on the sale of property in dispute.

3. At the time of hearing, the Id. Counsel for the assessee stated that the issue involved in these appeals is decided in favour of the assessee by the ITAT Delhi Bench -BØ in ITA Nos. 505 & 506/Del./2012 for the assessment years 2004-05 and 2005-06 in the case of assessee, i.e., ACIT, CC-22 New Delhi vs. Express Earth Movers & Equipment Pvt. Ltd. on 29<sup>th</sup> June, 2015. He requested that in view of the order dated 29.06.2015 passed in assessee's own case, the appeal filed by the Revenue may be dismissed and the assessee's appeal may be allowed. The learned DR on the other hand relied upon the order of the Assessing Officer.

4. We have heard both parties, perused the material available on record along with the orders of the revenue authorities and the order passed by ITAT -BØ Bench, New Delhi in the assessee's own case (supra) and we are of the considered view that the ITAT has already adjudicated the issue in dispute and decided the same in favour of the assessee on 29.05.2015 in assessee's own case for A.Y. 2005-06(supra). For the sake of convenience, relevant portion of the order of ITAT is reproduced as under :

“9. ITA 506/Del/2012 (AY: 2005-06):-

*For the A.Y. 2005-06 an addition u/s 68 amounts to Rs.2,87,00,000/- has been made based on property valuation done by a Bank empanelled valuer, of property which was purchased by the assessee, in Plot no.217, Block C, Rewari Line Industrial Area, Phase II, New Delhi 110 064. The sale deed of the transaction discloses that the property was purchased for Rs.45 lakhs on 31.8.2004. The property was valued by an approved Panel Valuer of Punjab National Bank on 1.9.2006 i.e. two years after the transaction of purchase, for Rs.4,86,00,000/- and the net realisable value was fixed at Rs.4,15,00,000/-. The A.O. reduced 20% from the said value of*

*Rs.4,15,00,000/- @ 10% per year and arrived at net realisable value as on 31.8.2004 at Rs.3,32,00,000/- and considered this figure as the purchase consideration paid.*

*9.1. As the assessee had purchased the said property for the total consideration of Rs.45 lakhs, the difference between Rs.3,32,00,000 and Rs.45,00,000/- is taxed as unaccounted income u/s 68 of the Act during the year. The amount so taxed is Rs.2,87,00,000/-. ITA Nos. 505 & 506/Del/2012 AY: 2004-05 and 2005-06 Express Earth Movers & Equipment Pvt.Ltd.*

*9.2. The First Appellate Authority deleted the addition on the ground that: (a) no incriminating documents or material was found to prove that the assessee has made unaccounted investment in the purchase of the property at Plot no.217, Block C, Rewari Line Industrial Area, Phase II, New Delhi 110 064. (b) On reference to the D.V.O. u/s 142A of the Act by the Assessing Officer, the value of such property was determined at Rs.46,96,000 and whereas the assessee has paid purchase consideration of only Rs.45 lakhs. (c) There is nothing irregular or illegal on the part of the AO for making reference to the DVO for valuation of the property. (d) The valuation report given by the valuer of Punjab National Bank, at a much later point of time, cannot be taken as the cost of investment by the assessee. (e) The A.O. is not correct in completely ignoring the DVO's valuation report. The burden is on the Revenue to prove that the income sought to be taxed is within the taxing provisions. (f) The addition made u/s 68 of the Act, based on an estimate, in the proceedings u/s 153A, otherwise than through the mechanism provided u/s 142A, is bad in law. He deleted the addition.*

*9.3. Aggrieved the Revenue is before us.*

*10. After hearing rival contentions we are of the considered opinion that the order of the First Appellate Authority has to be upheld for the reason that S.68 cannot be invoked under the facts and circumstances of the case. A hypothetical and imaginary addition has been made by the A.O.*

*The departmental Valuation Officer has on reference made u/s 142A of the Act valued the property at Rs.46.96 lakhs, which is marginally higher than the purchase consideration of Rs.45 lakhs disclosed by the assessee. The difference is negligible. Taking evaluation report value, arrived at 2 years after the date of transaction and then arbitrarily modified the value and thereafter treating this amount as sale.*

*Under the circumstances no addition can be sustained on the ground that banker's valuer, after two years after the date of transaction, valued the property at a particular amount when no material is found in support of the AO's conclusion that the assessee had made unaccounted investments in purchase price. The AO can not ignore the DVO's report. The addition has been made on conjectures and surmises and without any basis. Hence the First Appellate Authority has rightly deleted the said addition.*

*In coming to this conclusion we draw strength from the following judgements of the Jurisdictional High Court.*

*(1) CIT vs. Aerens Infrastructure & Technology Ltd. (2011) reported in 16 Taxmann.com 400 (Delhi) where it is held as follows. "Section 142A of the Income Tax Act, 1961 – Assessment – Estimate by Valuation Officer. Assessee purchased a property for certain consideration. Since valuation was found to be on lower side, A.O. made reference to DVO u/s 142A and made addition of amount of difference between valuation made by DVO and value declared by assessee. On appeal, CIT(A) gave partial relief to assessee. On second appeal, Tribunal deleted addition made by AO holding that reference made by AO invoking provisions of S.142A was without jurisdiction inasmuch as AO had not first recorded that there was an excess expenditure incurred by assessee in acquiring articles. Whether, on the facts, finding recorded by Tribunal was correct. Held, Yes."*

*(2) CIT vs. Anil Arora (ITA 340/2015) judgement dt. 22.5.2015 (Del) wherein it is held as follows.*

*"Having heard the Ld.Counsel for the Revenue, we find the contentions argued in the appeal to be wholly misplaced. It is fairly conceded (at bar) by the Counsel for the Revenue that the reference to DVO for estimation of the market value of the property in Punjabi Bagh was not based on any material discovered or seized during the search operations. The Counsel, however, referred to the case of another property in District Baddi (Himachal Pradesh), in respect of which documentary evidence indicated unaccounted consideration paid by the assessee, referred to by the A.O. in para 4.3 of his order. At the same time, Ld. Counsel also conceded that no addition to the tax liability of the assessee on account of the said other property has*

*been made. There is no nexus between the property in Baddi (Himachal Pradesh) and the property in Punjabi Bagh (West). There is undoubtedly no material available to even remotely reflect that consideration over and above what was shown to be paid in the registered sale deed of the West Punjabi Bagh property was made over to the seller. In these circumstances, it was not fair in the first place to refer the said property for estimation of its market value by DVO.”*

*11. In the result Revenue’s appeal for the A.Y. 2005-06 is dismissed.”*

5. After going through the aforesaid order passed by ITAT –Bø Bench, in which Judicial Member is the party, we are of the considered view that the issue in dispute has already been decided in favour of the assessee. Respectfully following the same, the appeal filed by the Revenue is liable to be dismissed and that of the assessee deserves to be allowed.

6. In the result, the appeal of the Revenue is dismissed and the appeal filed by the assessee is allowed.

Order pronounced in the open court on 30.09.2015.

Sd/-  
**(H.S. SIDHU)**  
Judicial Member

Sd/-  
**(L.P. SAHU)**  
Accountant Member

Dated :30.09.2015

\*aks/-

Copy of order forwarded to:

(1) The appellant	(2) The respondent
(3) Commissioner	(4) CIT(A)
(5) Departmental Representative	(6) Guard File

By order

Assistant. Registrar  
Income Tax Appellate Tribunal  
Delhi Benches, New Delhi