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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
R-120.

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ITA 144/2003

R.S. BEDI

..... Appellant

Through: Dr. Rakesh Gupta with Ms. Poonam Ahuja and Mr. Rohit Kumar Gupta, Advocates.

versus

THE ASST. COMMISSIONER OF INCOME TAX-VI .. Respondent

Through: Mr. Rohit Madan, Senior Standing counsel with Mr. Akash Bajpai, Advocate.

WITH

R-121.

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ITA 145/2003

M.S. BEDI

..... Appellant

Through: Dr. Rakesh Gupta with Ms. Poonam Ahuja and Mr. Rohit Kumar Gupta, Advocates.

versus

THE ASST. COMMISSIONER OF INCOME TAX-VI .. Respondent

Through: Ms. Suruchi Aggarwal, Senior Standing counsel with Ms. Lakshmi Gurung and Mr. Radhika Gupta, Advocates.

AND

R-122.

+

ITA 146/2003

H.S. BEDI

..... Appellant

Through: Dr. Rakesh Gupta with Ms. Poonam Ahuja and Mr. Rohit Kumar Gupta, Advocates.

versus

THE ASST. COMMISSIONER OF INCOME TAX-VI .. Respondent
Through: Mr. P. Roy Choudhary with Mr. Ishant
Goswami, Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

ORDER
28.10.2015

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Dr. S. Muralidhar, J:

1. These three appeals under Section 260A of the Income Tax Act, 1961 ('Act') by Assesseees are directed against the impugned order dated 17th October 2002 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 3859/Del/98, 5179/Del/97 and 5180/Del/97 for the Assessment Year ('AY') 1994-95.

2. The three Assesseees are brothers. They purchased a farm house at Asola in Delhi and the purchase price recorded in the books of accounts was Rs.8,40,000. On 12th October 1994, a search was carried out under Section 132 of the Act in the premises of Mr. R.S. Bedi and a paper was seized which had some notings purportedly disclosing the investment made in a farm to the extent of Rs.76 lakhs. According to the Revenue when the said Assessee was confronted with the said piece of paper, he was unable to explain the details given therein. A presumption was then raised regarding ownership and correctness of the said paper.

3. In the assessment order dated 27th March 1997, the AO noted that the value per acre shown by the Assessee for the total area of the farm house of 4.73 acres was undervalued. The AO referred the matter to the Department Valuation Cell by issuing a commission under Section 131 of the Act for finding out the correct area of the farm and also for finding out the extent of the Assessee's investment in the said farm.

4. The Department Valuation Officer ('DVO') submitted a report estimating the value of the property at Rs.14,36,300 per acre for 1.63 acres purchased on 29th March 1994 and at Rs.13,03,900 per acre for 3.1 acres of land purchased on 28th February 1994. The AO then adopted the report of the DVO and applying Section 69B of the Act held that a total amount of Rs.66,47,800 was spent by the three co-owners in acquiring the farm of which only Rs.8,40,000 was recorded in the books of accounts. The unrecorded amount of Rs.58,07,000 was added, one-third each, in the hands of each of the Assessee.

5. The CIT (A) dismissed the appeals of the Assessee by the order dated 12th September 1997. The Assessee thereafter appealed to the ITAT.

6. Interestingly, before the ITAT a statement was made by the Department's Representative ('DR') that "additions to the income of the Assessee have been made under Section 69B of the IT Act not on the basis of any document, but on the basis of the report of the Department Valuation Officer after giving full opportunity to the Appellants." In fact, the DR submitted

that “had additions been made on the basis of the said document, the value taken by Department would have been 76 lacs as disclosed in the document and Rs.67,47,800” and not the amount as estimated by the DVO. It was submitted that “as the document is not the basis of the addition under Section 69B, no note of the arguments advanced by the learned AR on dump document should be taken.” In para 24 of the impugned order the ITAT held that the basis of the addition was not the said ‘dump’ document but the report of the DVO which was duly supplied to the Assessee after seeking their comments. The ITAT proceeded to hold that the Revenue had discharged the onus by confronting the Assessee with the report of the DVO and it was for the Assessee to have rebutted the said evidence. It was held that the Assessee had failed to do so and, therefore, the addition under Section 69B of the Act was justified.

7. While admitting these appeals on 2nd May 2003, the Court framed the following question of law for determination:

“Whether on the facts and in the circumstances of the case the Tribunal was correct in law in holding that the provisions of Section 69B of the Income Tax Act, 1961 were attracted in the case and in sustaining of addition and Rs.19,35,667/-, being the differential amount of unexplained investment?”

8. This Court has heard the submissions of Dr. Rakesh Gupta, learned counsel for the Assessee and Mr. Rohit Madan, learned Senior Standing counsel for the Revenue.

9. As regards the probative value of the report of a DVO, the settled legal

position appears to be that in the absence of there being material with the AO to come to a conclusion that the Assessee had paid extra consideration for the purchase of property over and above what is stated in the sale deed, an addition under Section 69B of the Act “solely on the basis of the report of the Valuation Officer” cannot be sustained. The decision of this Court in ***Commissioner of Income Tax v. Puneet Sabharwal (2011) 338 ITR 485 (Del)*** is an authority to the above legal position. Another decision which holds likewise is ***Commissioner of Income Tax v. Lahsa Construction Pvt. Ltd. (2013) 357 ITR 671 (Del)***. In other words, the report of the DVO cannot form the sole basis to sustain addition under Section 69B of the Act. It can at best corroborate the other material that the Revenue may have for sustaining such addition.

10. In the facts of the present case it is plain that the seized document, which raised the suspicion of the Revenue about a possible undisclosed investment made by the Assessee, did not form the basis for the additions. The statement made by the DR before the ITAT, which was accepted by the ITAT, makes it clear that the addition was sought to be sustained only on the basis of the report of the DVO.

11. Dr. Rakesh Gupta, learned counsel for the Assessee, drew the attention of the Court to the decision of the Supreme Court in ***Commissioner of Income Tax v. Smt. Amiya Bala Paul (2003) 262 ITR 407 (SC)*** and submitted that in terms of the said decision the very act of the AO seeking the report of the DVO by issuing a commission under Section 131 of the Act was without jurisdiction. He submitted that although following the said

decision, Section 142A of the Act was inserted with retrospective effect from 15th November 1972, on the date on which the commission was issued in the present case to the DVO under Section 131 of the Act there was no power in the AO to do so. Although, there appears to be merit in the above submission, for the purposes of the present case the Court need not examine whether the report of the DVO at all could have been called for since it has been already held that the report of the DVO could not have formed the sole basis for sustaining the additions in the hands of the Assessee under Section 69B of the Act.

12. Mr. Rohit Madan, learned Senior Standing counsel for the Revenue placed reliance on the decision of the Rajasthan High Court in ***Smt. Amar Kumari Surana v. CIT (1997) 226 ITR 344 (Raj)*** to submit that for the purposes of Section 69B of the Act the burden would shift to the Assessee once the Revenue is able to demonstrate, by way of a report of the DVO, that the value disclosed in the sale deed for the purchase of the property by way of investment was less than the market value. Reliance is also placed on the decision in ***Commissioner of Income-tax v. Narinder Kr. Budhiraja [2015] 56 taxmann.com 315(Delhi)***.

13. Having examined both the above decisions, the Court finds that in both instances the report of the DVO was not the sole basis for sustaining the addition. There was other material available with the Revenue to show that the investment made was not disclosed in the books of accounts. The report of the DVO in both cases was only a corroborative piece of evidence. In the present case, admittedly, the report of the DVO forms the sole basis for the

additions made by the AO.

14. For the reasons discussed hereinabove, the Court finds that the additions made in the hands of the Assessees, are in the facts and circumstances of the case, unsustainable in law. The question is answered in the negative i.e. in favour of the Assessees and against the Revenue.

15. The impugned order dated 17th October 2002 of the ITAT and the corresponding orders of the AO and the CIT (A) are set aside. The appeals are allowed but in the circumstances with no order as to costs.

S. MURALIDHAR, J

VIBHU BAKHRU, J

OCTOBER 28, 2015

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