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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 419/2014 & C.M.No.25141/2015

EKTA SONI ..... Petitioner

Through: Mr.K.R.Manjani, Advocate

versus

INCOME TAX OFFICER ..... Respondent

Through: Mr.Dileep Shivpuri, Sr.Standing Counsel, Mr.Sanjay Kumar, Jr.Standing Counsel and Mr.Vikrant Maheshwari, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

<u>O R D E R</u>

% **27.09.2016**

The petitioner is aggrieved by an order of the Income Tax Appellate Tribunal (ITAT) rejecting her application under Section 254 (2) of the Income Tax Act. The brief facts are that the petitioner had filed returns for AY 2006- 07 declaring Rs.1,42,830/- from hotel business and other business activities. The AO in the course of assessment noticed that she had purchased seven plots and suspected their under valuation. The matter was referred to the District Valuation Officer (DVO) under Section 142A of the Act. Based upon the report of the DVO, the AO added Rs.73,45,540/-. The petitioner's appeals to the CIT (A) and the ITAT were of no avail. She, therefore sought rectification under Section 254 (2), contending that the approach of the revenue was incorrect because without rejection of books of accounts, the DVO's report could not have been the sole basis of the additions. This contention too was rejected by the ITAT.

Learned counsel relies upon the test of Section 142A and contends that insertion of sub-section (2) was with effect from 01.10.2014 and that since the assessment years in the present case was 2006-2007, the question of accepting the DVO's report without first rejection of the accounts do not arise. Learned counsel also relies upon the judgment of the Supreme Court in ***Sargam Cinema vs. CIT*** **(2011) 241 CTR (SC) 179** as well as Division Bench judgment of this court in ***CIT vs. Ambience Developers & Infrastructure Pvt.Ltd.*** **(2012) 210 Taxman 187 (Delhi)**. Counsel for revenue submitted that there was no error in the ITAT's approach which required correction under Section 254 (2) and consequently, the impugned order should not be interfered with.

It can be gathered from the above factual narrative that the assessee's basic grievance was that on the one hand, the AO accepted the books of accounts as they stood and in the same breath, accepted the DVO's report, which based upon his study of the materials concluded that the properties were not properly valued and that on account of under reporting, income escaped assessment. The decision in ***Sargam Cinema's*** case (*supra*) is forthright in that the assessing authority cannot refer the matter to a DVO without rejecting books of accounts. To the same effect is the Division Bench ruling in ***Ambience Hotels and Resorts Ltd.***'s case (*supra*). Furthermore, this court notices that sub section (2) which in effect states with effect from 01.10.2014 that rejection of books of accounts is not a pre-condition for the acceptance of the DVO's report did not exist in the statute book at the time of the completion of the assessment in this case.

For these reasons, the petition has to succeed. The impugned order as well as the orders of the lower authorities are set aside.

The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

SEPTEMBER 27, 2016
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