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

\+ **ITA 30/2019**

PR.COMMISSIONER OF INCOME TAX-15 ..... Appellant
Through: Ms.Lakshmi Gurung, Senior Standing Counsel , Mr.Tushar Gupta, Junior Standing Counsel and Mr.Siddharth Gupta, Advocate.

versus

M/S MODERN LACE HOUSE ..... Respondent
Through: None.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER

% **06.08.2019**

C.M.No.1736/2019 (Delay)

1. For the reasons stated therein, the delay in re-filing the appeal is condoned. The application is disposed of.

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2. The Revenue is in appeal against the order dated 28th May, 2018 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No. 1032/Del/2015 for the Assessment Year (AY) 2011-12.

3. The question of law sought to be urged by the Revenue is whether the Commissioner of Income Tax (Appeal) [CIT (A)] and ITAT erred in

deleting an addition of Rs. 4,58,68,000/- made by the Assessing Officer (AO), based on the value adopted by the Stamp Duty Officer in terms of Section 50 C of the Income Tax Act, 1961 ('Act')?

4. The facts in brief are that the Assesse, engaged in the business of knitted fabric and export of garments, filed a return for the AY 2011-12, declaring a loss of Rs. 11,44,200/-. Besides the above, the Assessee carried forward Rs.2,35,72,000/- as long term Capital Loss on sale of factory land. The factory was claimed to have been sold by the Assessee for Rs.10.25 crore, whereas the property was valued at Rs.14,83,68,000/- for stamp duty purposes. Before the AO, the Assessee requested the matter to be referred to the District Valuation Officer (DVO) for ascertaining its Fair Market Value. This request was made on 20th February 2014, whereas according to the AO, the assessment would be barred by limitation on 31st March, 2014. On the ground that there was no likelihood of the valuation report being received before the above date, the AO proceeded to pass the assessment order on 20th February, 2014 itself.

5. In the appeal filed by the Assessee, the CIT (A) noted that the AO had not complied with Section 50 C(2) read with 50 C(3) of the Act. Where a reference had been made to the DVO, the AO was duty-bound to wait for the report before finalizing the assessment. Relying on the decision of the Madras High Court in ***N. Meenakshi v. ACIT [2010] 326 ITR 229 (Madras)***, the CIT (A) deleted the additions.

6. The Revenue's appeal was dismissed by the ITAT by the impugned order, by referring to the decisions of its coordinate benches, as well as the aforementioned decision of the Madras High Court.

7. Learned counsel for the Revenue sought to urge that the Assessee sought a reference to the DVO only at the last minute and that the AO is justified in declining to accept the request and in proceeding to finalize the assessment.

8. The CIT(A) in the order dated 1st October, 2014 held that under Section 50 (C)(3) of the Act, the value adopted for payment of stamp duty can be adopted as sale consideration only if the fair market value determined by DVO is less than the value adopted for stamp duty purposes. In the present case since a report had not been obtained by making a reference to the DVO, the addition made by the AO was held not to be in accordance with the Act.

9. This appears to be the consistent view taken by the ITAT in several cases, which have been referred to by the CIT (A) in the aforementioned order. The Court fails to appreciate how an AO can avoid making a reference to the DVO, when it is made more than one month earlier than the final date of completion of the assessment. It is not for the AO to presume that the valuation report would not be received in time. The mandatory language of Section 50 C does not allow the AO to avoid making a reference thereunder and in surmising that the valuation report would not be received before the time limit for completion of assessment. That per se would not justify proceeding with making an addition when there was a specific request for reference of the matter to the DVO.

10. The view taken by the CIT (A) and the ITAT in the facts and circumstances of the case cannot be said to be perverse. No substantial question of law arises. The appeal and the pending application are, therefore, dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 06, 2019
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