

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.1709/Del./2018
Assessment Year 2008-2009

Dr. Mamta Dinesh, W/o. Dr. Dinesh Kumar, C/o. Gyan Hospital, Panni Nagar, Bulandshahr – 203001.PAN AJPPD5678M	vs.	The Dy. CIT, Circle 3(1), Income Tax Office, Teacher's Colony, Bulandshahr – 203 001.
(Appellant)		(Respondent)

For Assessee :	Shri Somil Aggarwal, Shri Deepesh Garg, Advocates Shri Saurabh Goyal, C.A.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	04.12.2018
Date of Pronouncement :	10.12.2018

ORDER

This appeal by Assessee has been directed against the Order of the Ld. CIT(A), Aligarh, Dated 30.11.2017, for the A.Y. 2008-2009.

2. Briefly the facts of the case are that assessee filed return of income on 31.03.2009 declared total income of Rs.2,47,950/-. In this case, during the course of assessment

proceeding for the A.Y. 2009-10, it was found that assessee has constructed a building. The assessee has declared investment in a sum of Rs.17,43,000/- in assessment year under appeal. To ascertain the actual cost of the construction, this case was referred to Valuation Officer vide letter dated 29.11.2011. As per Valuation Report, the cost of construction as per column 9.0 of valuation report was estimated at Rs.25,71,963/-. Therefore the difference between value as per valuation officer report and the value as declared by the assessee was Rs.8,28,663/-. In view of these facts, the Assessing Officer recorded reasons for initiating proceedings U/s 147 of the Income-tax, Act, 1961. The assessee in compliance to the notice U/s 148 of the I.T. Act, submitted that return originally filed may be treated as return filed in response to notice u/s 148 of the I.T. Act. The A.O. in view of the above difference in the cost as reported by the Valuation Officer and the assessee treated Rs.8,28,663/- as unexplained investment under section 69 of the I.T. Act and made addition

in re-assessment order under section 143(3) r.w.s. 147/148 of the I.T. Act. The Ld. CIT(A) gave part relief to the assessee.

3. The assessee in the grounds of appeal, challenged the reopening of the assessment under section 147 of the I.T. Act and addition on merit. Learned Counsel for the Assessee referred to the reasons recorded for reopening of the assessment, copy of which is filed at page-4 of the paper book which reads as under :

*“Dr.Mamta Dinesh
Near Panni Ji Sugar Mills,
Bulandshahr
PAN-AJPPD5678M, A.Y. 2008-09
Reason for issue of notice u/s 148*

In the case during the course of assessment proceeding for the A.Y. 2009-10, it was found that assessee has constructed a building. The assessee has declared investment in A.Y. 2008-09 of Rs.17,43,000/-. To ascertain the actual cost of the construction, this case was referred to Valuation Officer vide letter No. Gyan/ACIT-Cir-BSR/2011-12/575 dated 29/11/2011. The Valuation

Report was received from Valuation Officer Meerut vide letter F.No.VO/MRT/IT-01/2011-12/59 dated 11.09.2012 As per the valuation report the cost of construction as per column 9.0 of valuation report was estimated at Rs.25,71,963/-. Therefore the difference between valuation officer report and the value as declared by the assessee was Rs.8,28,663/-.

In view of the aforesaid facts of the case I have reason to believe that income of Rs.8,28,663/- chargeable to tax has escaped assessment. Accordingly, to assess the escaped income of Rs.8,28,663/- a notice u/s 148 read with section 147 is being hereby issued.

*Sd/- L.P. Singh
Assistant Commissioner of Income Tax,
Circle, Bulandshahr.”*

4.1. Learned Counsel for the Assessee submitted that the issue is covered in favour of assessee by the Judgment of Hon'ble Supreme Court in the case of ACIT vs. Dhariya Construction Co. (2010) 328 ITR 515 (SC) in which it was held

that “*Opinion of the DVO per se is not sufficient information for the purposes of reopening of the assessment under section 147 of the I.T. Act.*” He has also relied upon Judgment of Hon’ble Calcutta High Court in the case of ITO vs. Santosh Kumar Dalmia (1994) 208 ITR 337 (Cal.) in which it was held as under :

“There being no material on record to show prima facie that assessee understated the sale consideration, assessment cannot be reopened on the basis of higher valuation attributed by Valuation Officer.”

4.2. He has also relied upon the decision of Hon’ble Gujarat High Court in the case of Akshar Infrastructure P. Ltd., vs. ITO (2017) 393 ITR 658 (Guj.) in which it was held as under :

“Once having failed before CIT(A) to enhance unexplained investment, which was relying upon DVO's report, thereafter it was not open for AO to reopen assessment u/s 148 on very ground i.e., relying upon DVO's report.”

4.3. Learned Counsel for the Assessee also relied upon decision of Hon'ble Madras High Court in the case of CIT vs. P. Nithilan (2018) 403 ITR 154 (Mad.) in which it was held as under :

“Report given by Departmental valuer was only an estimate and based on such estimation, there could not be any reopening and if same was permitted, it would amount to a clear case of change of opinion.”

4.4. Learned Counsel for the Assessee also relied upon Judgment of Hon'ble Rajasthan High Court in the case of CIT vs. Smt. Meena Devi Mansighka (2008) 303 ITR 351 (Raj.) in which it was held as under :

“Mere DVO's report cannot constitute reason to believe that income has escaped assessment for the purpose of initiating reassessment and, therefore, Tribunal was justified in holding that the reassessment proceedings initiated on the basis of DVO's report were invalid ab initio, more so when it

has found that the DVO's report suffers from various defects and mistakes.”

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

6. Considering the facts of the case, I am of the view that reopening of the assessment is bad in law. The A.O. merely on the basis of the report of Valuation Officer recorded reasons for reopening of the assessment which is reproduced above. The Valuation Report was based on mere estimate and as such the same per se is not sufficient information for the purpose of reopening of the assessment under section 147 of the I.T. Act, 1961. The issue is covered by the above Judgments relied upon by the Learned Counsel for the Assessee. Following the same, I set aside the Orders of the authorities below and quash the reopening of the assessment in the matter. Resultantly, all additions stands deleted.

7. In the result, appeal of Assessee is allowed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 10th December, 2018

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.