
(2013) 01 DEL CK 0150

In the Delhi High Court

Case No : ITA 42 of 2013

Commissioner of Income Tax

APPELLANT

Vs

Abhinav Kumar Mittal

RESPONDENT

Date of Decision : 23-01-2013

Acts Referred:

Citation : (2013) 2 AD 297 : (2013) 3 ILR Delhi 2121 : (2013) 351 ITR 20

Hon'ble Judges : R.V. Easwar, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Sanjeev Rajpal, for the Appellant;

Judgement

Badar Durrez Ahmed, J.—This appeal has been filed by the revenue against the order dated 29.06.2012 passed by the Income Tax Appellate Tribunal in ITA 4460/Del/2010 pertaining to the assessment year 2006-07. The facts are that the respondent/assessee had filed a return declaring an income of Rs. 39,90,410/- on 18.07.2006. Subsequently, a search was conducted u/s 132 of the Income Tax Act, 1961 (hereinafter referred to as "the said Act") on 26.04.2007 as also a survey operation u/s 133A in the premises of A.K. Capital Services Limited and its group companies as also in the premises of the Directors of those companies and their relatives. Thereafter, a notice u/s 153C of the said Act was issued on 07.10.2009. A response was issued by the assessee by their letter dated 13.10.2009 and the return already filed on 18.07.2006 was requested to be treated as the return in response to the said notice u/s 153C.

2. The Assessing Officer, in the course of the assessment proceedings, considered the valuation of three properties which had been purchased by the assessee in the relevant year. The three properties included two office premises at Ahmedabad and one commercial property at Kolkata. The Assessing Officer referred the question of valuation of the said properties to the District Valuation Officer (DVO). The DVO submitted his report on 14.12.2009 in respect of the Ahmedabad properties and on 24.12.2009 in respect on the Kolkata property. As per the said report, the DVO has valued the said properties as under:-

3. The difference in the values, as declared by the assessee and as opined by the DVO, amounted to Rs. 50,21,900/- in respect of the properties at Ahmedabad and an amount of Rs. 9,57,038/- was the difference in respect of the Kolkata property. These additions were made by the Assessing Officer u/s 69 of the said Act.

4. Being aggrieved by the said additions, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who deleted the additions. The Income Tax Appellate Tribunal confirmed the said deletion. The issue that is sought to be raised here is that the deletion was not in accordance with law. However, we find that the Income Tax Appellate Tribunal as well as the Commissioner of Income Tax (Appeals) had concluded, on facts, that there was no material found during the search to justify the reference to the DVO for his valuation of the said properties. The Tribunal held that there must be some material to show that the investment made by the assessee was outside the books. This, according to the Tribunal, was a condition precedent for making a reference to the DVO. The Tribunal also held that, in any event, the DVO's report was based on incomparable sales and, therefore, could not be relied upon. The Tribunal also held that the burden was on the revenue to show that the real investment in the said properties was greater than the apparent investment, as disclosed by the respondent/assessee. The Tribunal held, on facts, that the said burden had not been discharged by the revenue. Consequently, the Tribunal held in favour of the assessee and against the revenue and found that the reference to the DVO itself was not in accordance with law.

5. We have no reason to differ from the view taken by the Tribunal, particularly, as no material was found in the search and seizure operations, which would justify the Assessing Officer's action in referring the matter to the DVO for his opinion on valuation of the said properties. If that be the case, then the valuation arrived at by the DVO would be of no consequence. In any event, the Tribunal has also, on facts, held that the DVO's valuation was based on incomparable sales, which is not permissible in law. For these reasons, no question of law arises for our consideration. The appeal is dismissed. There shall be no order as to costs.