**(2005) 11 DEL CK 0078**

**In the Delhi High Court**

**Case No :** IT Appeal No. 778 of 2004

Commissioner of Income Tax — APPELLANT

Vs

Manoj Jain — RESPONDENT

**Date of Decision :** 16-11-2005

**Acts Referred:**
Income Tax Act, 1961 — Section 132(1)

**Citation :** (2006) 200 CTR 327 : (2006) 287 ITR 285 : (2007) 163 TAXMAN 223

**Hon'ble Judges :** T.S. Thakur, J;B.N. Chaturvedi, J

**Bench :** Division Bench

**Advocate :** Premlata Bansal and Vishnu Sharma, for the Appellant; P.C. Jain, Pankaj Jain and Anil Jain, for the Respondent

**Final Decision :** Dismissed

## Judgement

1. The Tribunal has recorded a clear finding of fact that the search on the premises of the assessed did not lead to the seizure of any incriminating evidence to suggest that any income had not been disclosed or would not have been disclosed for tax purpose under the IT Act, 1961. It has, on that finding, held that the AO was not justified in making additions on the basis of the report of the valuation officer in regard to two of the properties purchased by the assessed. The reasoning of the Tribunal''s order proceeds thus :

As a result of the search on the assessed, no evidence was found which may represent wholly or partly income or property which has not been or would not have been disclosed for the purpose of IT Act. The AO merely for the reason to suspect that the consideration was understated resorted to an estimation of value in respect of two properties by the DVO i.e., in respect of property No. 188/ B-14, Sector 8, Rohini, and property No. 45/F-2, Sector 7, Rohini. The values estimated by the DVO have been taken as the basis for working out the undisclosed income of the block period. Chapter XIV-B which contained a special procedure for assessment of search cases is a self-contained code and no addition can be made on the basis of DVO''s report when no evidence has been found during the course of search to establish that the assessed has paid more than the disclosed consideration in purchase of the properties or construction thereof or that it has received sale consideration more than disclosed in the regular accounts maintained by him or return of income filed in the regular course of business.

In view of the facts and legal positions as aforesaid, there was no justification in the action of the AO in treating the undisclosed investment or profit in respect of the above two properties as well as the rest of the two properties bearing Nos. 13D/10 Sector 8, Rohini, and 10D/12, Sector 8, Rohini, whose valuation has been done by the AO himself and treating the same as part of the peak for working out undisclosed income of the block period. The AO himself is not an expert; the valuation of the property was a technical matter. The AO is not entitled to make statements on technical matters for which there is no material on record, particularly when no evidence was found as a result of action u/s 132(1) on the assessed regarding undisclosed income in respect of all the properties under consideration. Such a view stands fortified by the decision of the apex Court in M/s. Saraswati Industrial Syndicate Ltd. Vs. The Commissioner of Income Tax, Haryana, Rohtak, .

2. The above is in tune with the decision of this Court in Commissioner of Income Tax, Delhi-II Vs. Ravi Kant Jain, and CIT v. Sudhish Kumar.

3. No substantial question of law arises for our consideration. The appeal fails and is hereby dismissed.