(2006) 11 GUJ CK 0101

In the Gujarat High Court

Commissioner of Income Tax APPELLANT

Vs

Star Builders RESPONDENT

Date of Decision : 13-11-2006

Acts Referred:
Income Tax Act, 1961 — Section 69A, 69A

Citation : (2006) 11 GUJ CK 0101

Hon'ble Judges : Y.R. Meena, Acting C.J.;A.S. Dave, J

Bench : Division Bench

Judgement

1. The following questions are referred for the opinion of this Court.

(1) Whether the Appellate Tribunal is right in law and on facts in deleting the addition made u/s 69A of the Income Tax Act, 1961, in respect of unexplained investment in construction ?

(2) Whether the Appellate Tribunal is right in law and on facts in deleting the addition in respect of the estimated profit on unexplained investment ?

2. Heard Shri M. R. Bhatt, learned Counsel for the revenue.

3. The basic issue involved in the reference is whether there can be any 3 addition on account of the valuation report of the DVO that the assessee has invested unexplained income.

4. Assuming but not accepting that some unexplained income has been 4 invested in the construction, the fact remains that the business of the assessee is construction. If we add on account of unexplained income in the investment, that will give rise to the cost of the construction and the result will remain the same i.e. "zero". Even otherwise also, this addition has been made on the basis of the Valuation Officer''s report. Their Lordships have considered the issue "whether reference can be made to any Valuation Officer to find out the cost". Their Lordships have taken the view in the case of Amiya Bala Paul Vs. Commissioner of Income Tax, Shillong, that reference can be made to the Valuation Officer for

the purpose of Sections 55(A), 131, 133(6), 142(2) and not for the purpose of finding out the cost.

5. In view of these admitted facts, we answer the question in the affirmative, i.e., in favour of the assessee and against the revenue.

6. Reference stands disposed of accordingly.

