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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 06.03.2013

+ **ITA 434/2012**

CIT

..... Appellant

versus

SADHNA GUPTA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Sanjeev Rajpal, Sr. Standing Counsel.
For the Respondent : Mr Piyush Kaushik, Advocate.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE R.V.EASWAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This appeal has been filed by the revenue under section 260A of the Income Tax Act, 1961 (hereinafter referred to as the said Act) being aggrieved by the order dated 30.11.2011 passed by the Income Tax Appellate Tribunal in ITA No.5266(Del)/2010 relating to assessment year 2007-08. It appears that this appeal had been admitted for hearing by an order passed by this Court on 30.07.2012. However, learned counsel for the parties pointed out that there is some

typographical error in the question of law which has been framed.

Consequently, we reframe the substantial question of law as under: -

“Whether the Tribunal fell in error in not placing reliance on the district valuation officer’s report under section 142A and thereby deleting the addition of ₹2,81,83,000/- made by the assessing officer under section 69B of the Income Tax Act, 1961?”

2. We have heard learned counsel for the parties. The facts are that the assessing officer made an addition of ₹2,81,83,000/- under section 69B of the said Act on the basis of a valuation report which he received from the District Valuation Officer (DVO). This was in respect of purchase of a property by the respondent/ assessee at 2-B, Goela Lane, Under Hill Road, Civil Lines, Delhi. The assessee had disclosed that the said property had been purchased through two sale deeds dated 03.05.2006 for a total sum of ₹59,50,000/-. The purchase consideration as per the sale deeds signified a rate of ₹8,500/- per sq. yd., which appeared to be low to the assessing officer and, therefore, he referred the matter of valuation to the DVO. The DVO submitted his report and indicated that in his opinion the total fair market value ought to be ₹3,41,33,000/- as against the declared value of

₹59,50,000/-. The difference of ₹2,81,83,000/- was added by the assessing officer by invoking the provisions of Section 69B of the said Act.

3. Being aggrieved by the said addition the respondent assessee preferred an appeal before the CIT (Appeals) who deleted the said addition after referring to the decision **K.P. Varghese v. ITO: (1981) 131 ITR 597 (SC)**. The Commissioner of Income Tax (Appeals) held that the addition had been made on the basis of the valuation report without there being any other material to indicate that any extra consideration had passed in respect of the said purchase of property. Thereafter, the revenue, being aggrieved by the order passed by the CIT (Appeals), preferred an appeal before the Tribunal which has been dismissed by the Tribunal by confirming the deletion made by the CIT (Appeals). The revenue is in appeal before us.

4. The only point to be considered is whether the valuation rendered by the DVO is to be taken into account or not. It has been argued by the learned counsel for the revenue that the assessing officer was justified in referring the matter to the DVO for an opinion with regard to the fair market value of the property and once that opinion

has been rendered, the same has to be taken into account and if that were to be so, the addition of ₹2,81,83,000/- would be fully justified. Consequently, it was submitted by the learned counsel for the revenue that the Tribunal had erred in deleting the addition. On the other hand the learned counsel for the respondent referred to a Division Bench decision of this Court in the case of **CIT v. Shri Puneet Sabharwal: (2011) 338 ITR 485**. In that decision a specific question had been raised as to whether the Income Tax Appellate Tribunal was right in holding that notwithstanding the report of the DVO the revenue had to prove that the assessee had received extra consideration over and above the declared value of the same. That question was answered by this Court in favour of the assessee and against the revenue. The Division Bench in the case of ***Shri Puneet Sabharwal*** (supra) had also placed reliance on the decision of Supreme Court in ***K.P. Varghese*** (supra) as also on another decision of a Division Bench of this Court in **CIT v. Smt. Suraj Devi: (2010) 328 ITR 604 (Delhi)** wherein this Court held that the primary burden of proof with regard to concealment of income was on the revenue and it was only when the said burden was discharged that reliance could be placed on the valuation report of

the DVO. There are several other decisions of this Court in the same vein. One such case being the case of **CIT v. Vinod Singhal**: (ITA No.482/2010 decided on 05.05.2010) where, again, reliance was placed on the very same decision of the Supreme Court in **K. P. Varghese** (supra) and also on a decision of this Court in **CIT v. Smt. Shakuntala Devi**: (2009) 316 ITR 46. It was observed that there must be a finding that the assessee had received an amount over and above the consideration stated in the sale deed and for this the primary burden was cast on the revenue. It is only when this burden is discharged by the revenue that it would be permissible to rely upon the value as given in the valuation report of the DVO.

5. The law seems to be well settled that unless and until there is some other evidence to indicate that extra consideration had flowed in the transaction of purchase of property, the report of the DVO cannot form the basis of any addition on the part of the revenue. In the present case there is no evidence other than the report of the DVO and, therefore, the same cannot be relied upon for making an addition. In these circumstances, the question which has been framed is decided in

favour of the assessee and against the revenue. The appeal is dismissed.

BADAR DURREZ AHMED, J

R.V.EASWAR, J

MARCH 06, 2013

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