

Court No. - 39

Case :- INCOME TAX APPEAL No. - 96 of 2019

Appellant :- Principal Commissioner Of Income Tax

Respondent :- Parmarth Iron Pvt. Ltd.

Counsel for Appellant :- Manu Ghildyal

Counsel for Respondent :- Nishant Mishra

and

Case :- INCOME TAX APPEAL No. - 100 of 2019

Appellant :- Principal Commissioner Of Income Tax

Respondent :- Parmarth Iron Pvt. Ltd.

Counsel for Appellant :- Manu Ghildyal

Counsel for Respondent :- Nishant Mishra

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Donadi Ramesh,J.

1. Heard Shri Manu Ghildyal, learned counsel for the revenue and Shri Nishant Mishra, learned counsel for the assessee.

2. Present appeals have been filed by the revenue against the common order dated 21.2.2019 passed in ITA No. 1992/Del/2008 for A.Y. 2004-05 and ITA No. 2370/Del/2008 for A.Y. 2004-05. By that order, the Tribunal has allowed the assessee's appeal (ITA No. 1992/Del/2008) and dismissed the revenue's appeal (ITA No. 2370/Del/2008).

3. Both the appeals have been presented with same set of questions of law. They would cover both appeals. For ready reference, question of law proposed in I.T.A. No. 96 of 2019 are quoted below:

"1. Whether the Tribunal erred in law and fact in reversing the finding of CIT(A) with regard to non-production of books of account, which could enable the AO to examine and determine the correct cost of construction of factory building year wise, especially without reference to the material on record?"

2. *Whether the ITAT is correct in law and fact in selectively picking the observation of the AO in the assessment order to come to the conclusion that complete books of account were produced before the AO?*

3. *Whether under the facts & circumstances of the case, the ITAT is correct in holding that reference made by the AO to the DVO was not as per law?*

4. *Whether under the facts & circumstances of the case, the ITAT is correct in deleting the addition made by AO of Rs 4,01,79,659/- on the basis of valuation report, holding that reference made by the AO to the DVO was not as per law?"*

4. Having heard learned counsel for the parties and having perused the record, we find no merit in the present appeals.

5. Undisputedly, the assessee had filed its return in income for A.Y. 2004-05 supported by its audited books of accounts. Without rejecting the books of accounts, Assessing Officer proceeded to make reference under Section 142A of the Income Tax Act 1961 to the Departmental Valuation Officer (DVO in short).

6. Later, acting solely on the strength of estimation made by the DVO in his report, Assessing Officer proceeded to reject the books of accounts and make the Best Judgement Assessment wherein he relied on the estimation of investment made by the assessee, as disclosed by the DVO.

7. Undeniably, books of accounts of the assessee were not rejected on or before 5.4.2006. That consequence in law arose later after submission of the DVO report dated 14.9.2006. In **Sargam Cinema, Haldwani vs Commissioner of Income Tax, Haldwani, (2010) 328 ITR 513 (SC)**, it was observed as below:

"2. In the present case, we find that the Tribunal decided the matter rightly in favour of the assessee inasmuch as the Tribunal came to the conclusion that the assessing authority (AO) could not have referred the matter to the Departmental Valuation Officer (DVO) without books of accounts being rejected. In the present case, a categorical finding is recorded by the Tribunal that the books were never rejected. This aspect has not been considered by the High Court. In the circumstances, reliance placed on the report of the DVO was misconceived."

8. In **Commissioner of Income Tax vs Lucknow Public Educational Society, (2011) 339 ITR 588**, it was observed as below:

"18. The issue for consideration is, whether the Assessing Officer, under section 142A(1), can refer a matter to the Valuation Officer, for the purpose of making an estimate of such value. Under sub-section (3) of section 142A, it is provided that on receipt of the report of the Valuation Officer, the Assessing Officer may, after giving the assessee an opportunity of being heard, take into account such report in making such assessment or reassessment. Would the language of section 142A mean that before proceeding to call for a report of the Valuation Officer, the books of account must be rejected.

19. The judgment in Bhawani Shankar Vyas (2009) 311 ITR 8 (Uttarakhand) also came up for consideration before the Supreme Court in the case of Sargam Cinema v. CIT (2010) 328 ITR 513 (SC), wherein the Supreme Court has held that the assessing authority cannot refer the matter to the Departmental Valuation Officer without first rejecting the books of account. Once that be the law as declared by the Supreme Court, it is not possible for us to consider the contention advanced on behalf of the Revenue."

9. Thus, the issue is no longer *res-integra*. It already stands concluded by the co-ordinate bench decision of this Court. We find ourselves in perfect agreement with the same.

10. In view of the above, questions of law (as proposed) do not arise.

11. Accordingly, both the Appeals lack merit and are accordingly **dismissed**. No order as to costs.

Order Date :- 8.4.2024

Prakhar

(Donadi Ramesh, J.) (S.D. Singh, J.)