

Reserved

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**  
**Income Tax Appeal No. 9 of 2009**

Commissioner of Income Tax, Dehradun  
& another .....Appellants.

Versus

M/s Sachin Hotels (P) Ltd.  
108, B.T. Ganj, Roorkee .....Respondent.

Mr. Arvind Vashisth, Advocate for the appellants.  
Mr. D. Barthwal, Advocate for the respondent.

Coram: **Hon'ble J.S. Khehar, C.J.**  
**Hon'ble Sudhanshu Dhulia, J.**

**Sudhanshu Dhulia, J.**

The present Income Tax Appeal has been filed by the Revenue under Section 260A of the Income-tax Act, 1961 (from hereinafter referred to as the "Act") with a substantial question of law formulated as follows :-

"Whether the Hon'ble ITAT, New Delhi has erred in law in holding that action U/S 148 cannot be taken on the basis of DVO's report, as the ratio of judgment of the Hon'ble Madras High Courts in the case of CIT Vs. Rajendran reported in 288 ITR 312 (Mad) does not apply to the facts of the case?"

The brief facts of the case are as follows :

The Assessee, namely, M/s Sachin Hotels (P) Ltd. started construction of a hotel somewhere in July 1997 i.e. in the financial year 1997-98, relevant to the Assessing Year 1998-99. The hotel which was being built opposite the Railway Station at Haridwar, was completed in September, 2001. The Company filed its return for the Financial Year 2001-02 only. It had maintained books of accounts since its inception and the cost of construction was declared each Financial Year-wise.

For the Assessment Year 2001-2002, the Assessing Officer in order to find the actual investment made by the Assessee Company, referred the matter to the District Valuation Officer (from hereinafter referred to as the "DVO"), Delhi on 13.6.2002 under Section 131 (1) (d) of the Act read with Section 142 A of the Act. Since there was a substantial difference in the value of construction declared by the Assessee in its books of account and the cost of construction as estimated by the DVO, the Assessing Officer took action under Section 148 of the Act for reassessment for the Assessment Years 1998-99, 1999-2000, 2000-2001 as well as 2002-2003 after taking into account the objection raised by the Assessee regarding the cost of construction.

The Assessee did not accept the order of the Assessing Officer and consequently filed an Appeal against the order of the Assessing Officer before the Commissioner of Income Tax (Appeals)-1, Dehradun. The Commissioner of Income Tax (Appeals)-1 allowed the Appeal of the Assessee both on the legal as well as on the factual grounds and the liability of the Assessee was considerably reduced by the Commissioner of Income Tax (Appeals)-1 in its order dated 28.11.2005. Both the Assessee as well as the Revenue filed their appeals before the Income Tax Appellate Tribunal (from hereinafter referred to as the "ITAT"). Before the Tribunal the Appeal of the Revenue was dismissed by the ITAT, whereas the Appeal of the Assessee was allowed. Consequently, the present Appeal has been filed under Section 260 A of the Act by the Revenue. Substantial question of law has already been referred above. The present Appeal relates to the Assessment Year 1998-99.

The undisputed factual position in the present case is that the Assessee has maintained the books of account for the relevant Assessment Year. These books of account have been accepted and, therefore, question would be as to whether even after accepting the books of account submitted by the Assessee, can the Assessment Officer pass an order of re-assessment solely on the basis of the report

of the DVO. This Court in another Income Tax Appeal, namely, **Commissioner of Income-Tax and another v. Bhawani Shankar Vyas (and other connected appeals)** reported in **2009-(311)-ITR-0008-UTT** while deciding an issue slightly different to the present one (though related in the present case), had held that the Assessing Officer has powers to call for the report of the DVO under Section 131 (1) (d) read with Section 142 A of the Act without even rejecting the books of account. But in the present case, the issue is not as to whether the Assessing Officer has powers to call for the report of the DVO without rejecting books of account. This issue has been settled as far as this Court is concerned where it has been held that the Assessing Officer has got powers to call for a report of the DVO without first rejecting the books of account of the Assessee. The present question is on a further action which comes after calling for the report of the DVO which is whether Assessment Officer can pass his re-assessment order purely on the basis of the DVO's report. Answer to this would be clearly in negative. It is the considered opinion of this Court that while the Assessing Officer has got full powers to call for a DVO report without first rejecting the books of account, but having called for a report of DVO he cannot pass his re-assessment order purely on the basis of the DVO's report. In the present case, however, the facts are also slightly different, inasmuch as, the Assessing Officer had called for the DVO's report after accepting the books of account. Therefore, factually also the present situation is somewhat different. Be that as it may, having called for a report of the DVO, the Assessing Officer cannot pass a reassessment order purely on the basis of the DVO's report. This is because at the end of the day, the report of a DVO is only an opinion. Undoubtedly, it is an opinion by an "expert", but it must be collaborated with some other document in order to justify the re-assessment order. It is for this reason that the Division Bench of Madras High Court in **Commissioner of Income Tax v. V.T. Rajendran [2007] 288 ITR 312 (Mad)** has held that purely on the basis of DVO's report re-

assessment order cannot be passed. This Court is in full agreement with the law cited by the Assessee in **Commissioner of Income Tax v. V.T. Rajendran [2007] 288 ITR 312 (Mad)** and holds that reassessment order cannot be passed purely on the basis of DVO's report. In our view, in the present case the DVO's report was called after accepting the books of account submitted by the Assessee. Not only the Assessing Officer has accepted the books of account but thereafter the reassessment order has been passed purely on the basis of DVO's report, which in our view is not proper. In our view, having accepted the books of account it did not lie with the Assessing Officer to call for a report from the DVO. Therefore, this Court finds no merit in the contention advanced by the appellants i.e. the Revenue. This Court also finds no anomaly in the order of the Tribunal dated 31.7.2008, which is hereby upheld. The present Income Tax Appeal is liable to be dismissed and is hereby dismissed.

No order as to costs.

(Sudhanshu Dhulia, J.)

(J.S. Khehar, C.J.)

26.07.2010

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