* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA No.758 of 2005**

% *Decision Delivered On:03rd December, 2010.*

THE COMMISSIONER OF INCOME TAX
DELHI – XI, NEW DELHI . . . Appellant

through : Mr. Abhishek Maratha, Sr. Standing Counsel.

VERSUS

SHRI PUNEET SABHARWAL
2/6080, DEV NAGAR,
NEW DELHI . . .Respondent

through: Mr. O.S. Bajpai, Sr. Advocate with Mr. B.K. Singh, Advocate

CORAM :-
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. *(ORAL)*

1. This appeal was admitted on the following two questions of law:-

> "1. Whether the Assessing Officer was right in referring the question of fair market value of the property sold by the assessee, to the District Valuation Officer in terms of Section 55A of the Income Tax Act, 1961 ('Act')? alternatively, was the Assessing Officer in terms of Section 48 read with Section 45 (5) of the Act bound to accept the value stated in the registered sale deed?.
>
> 2. 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 in fact received extra consideration over and above the declared value of the sale?"

2. The facts leading to the framing of the aforesaid questions, in brief, are as follows.

3. The respondent assessee, who is an individual, had filed his return of income for the assessment year 1997-98 declaring income of ₹ 8,13,910/-. The Assessing Officer, during the assessment proceedings took a note of the fact that during the previous year the assessee had purchased three properties, particulars of which are as under:-

1. A-54, New Friends Colony, New Delhi
2. Plot No. 417, Block A-1, Sushant Lok, Phase II, Gurgaon
3. Flat 5-A, Ground Floor, Taimoor Nagar, New Delhi.

4. The Assessing Officer was of the view that cost of acquisition of the aforesaid property as shown in the sale deed was much lower than the fair market value of these properties. Because of this doubt in the mind of the Assessing Officer, he referred the matter to the Valuation Cell of the Department for determining the cost of aforesaid properties on the date of acquisition. The District Valuation Officer (DVO) submitted his report as per which the value was higher by an amount of ₹ 12,54,206/- in respect of the aforesaid three properties. After following the requisite procedure laid down under the Act for issuance of show cause notice etc., the Assessing Officer made the additions in the income of the assessee while passing the assessment order by the aforesaid amount of ₹ 12.54 lacs. The assessee, not being satisfied with the aforesaid order preferred an appeal before the CIT (A). After

considering the matter at length, the CIT (A) allowed the appeal and deleted the addition on the ground that apart from the said report of the DVO, there was no evidence on record that some extra consideration was paid by the assessee for acquiring the property over and above the consideration stated in the sale deeds. The CIT (A) in support of this conclusion relied upon the judgment of the Apex Court in the case of ***K.P. Verghese*** Vs. ***ITO,*** 131 ITR 597. He was also of the view that the condition precedent for invoking the provisions of Section 69B of the Act was not fulfilled.

5. The aforesaid decision of the CIT (A) is upheld by the Tribunal reiterating the position of law in the following manner:-

> "Aggrieved by the order of the CIT (A), the Revenue is in appeal before us. We have considered the rival submissions. The learned DR relied on the order of the AO and learned Counsel for the assessee placed reliance on the order of the CIT (A). After considering the rival submissions, we are of the view that the order of the CIT (A) does not call for any interferences as rightly held by the CIT (A). There was no material on record to show that the assessee in fact invested much more than what was claimed by him as the actual cost of acquisition. In such circumstances the principle laid down by the Hon'ble Supreme Court in the case of K.P. Varghese (supra0 will squarely apply. An addition under Section 69B cannot be made unless it is established that the assessee has made investments which is in excess of the amount recorded in the books of accounts. There is no evidence to show such excess investments having been made by the assessee. In such circumstances the condition precedent for applicability of section 69B was not fulfilled. In view of the above, order of the CIT (A) is confirmed and the appeal filed by the Revenue is dismissed."

6. Coming with the statement of facts narrated above, further we proceed to answer the questions on which the appeal was admitted.

7. Coming to the first question, it does not arise for consideration. As per the question formulated, the property was sold by the assessee whereas, in the instant case, the properties in question were purchased by the assessee and were not sold by him. Even if we treat the same as typographical mistake, we are of the view that it would not be necessary to decide this question in view of the answer that we propose to give to question no.2.

8. As far as the question no.2 is concerned, as already indicated above, the Assessing Officer solely relied upon the report of the DVO. Apart from this, there was admittedly no evidence or material in his possession to come to the conclusion that the assessee had paid extra consideration over and above what was stated in the sale deed. This very issue has come up for consideration before this Court repeatedly and after following the judgment of the Supreme Court in the case of K.P. Varghese (supra), the aforesaid proposition of law is reiterated time and again. For our benefit, we may refer to the latest judgment of this Court in the case of ***CIT*** *Vs.* ***Smt. Suraj Devi*** 328 ITR 604, wherein this Court had held that the primary burden of proof to prove understatement or concealment of income is on the Revenue and it is only when such burden is discharged that it would be permissible to reply upon the valuation given by the DVO. It was also held that the opinion of the Valuation Officer, *per se,* was not an information and could not be relied upon without the books of accounts being rejected which had not been done in that case.

9. The aforesaid principle of law has been reaffirmed in ***CIT*** *Vs.* ***Naveen Gera***, 328 ITR 516 stating that opinion of the District Valuation Officer *per se* was not sufficient and other corroborated evidence is required. Mr. Maratha, learned counsel appearing for the Revenue submitted that the judgment of the Supreme Court in ***K.P. Varghese*** *(supra)* has been explained by the Rajasthan High Court in the case of ***Smt. Amar Kumari Surana*** *Vs.* ***Commissioner of Income Tax,*** 226 ITR 344.

10. Having regard to the consistent views taken by this Court in the aforesaid and other judgments which bind us, we decide the question of law no.2 in favour of the assessee and against the Revenue, as a consequence, this appeal is dismissed.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

DECEMBER 03, 2010
SKB