

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

I.T.A. No. 94 of 2010

Date of Decision: May 19, 2010

Commissioner of Income Tax, Faridabad

...Appellant

Versus

Smt. Vimal Chawla Charitable Trust, Faridabad

...Respondent

**CORAM: HON'BLE MR. JUSTICE M.M. KUMAR**

**HON'BLE MR. JUSTICE JITENDRA CHAUHAN**

Present: Ms. Urvashi Dhugga, Advocate,  
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

**M.M. KUMAR, J.**

This is an appeal filed by the revenue under Section 260A of the Income-tax Act, 1961 (for brevity, 'the Act'), challenging order dated 17.7.2009, passed by the Income Tax Appellate Tribunal, Delhi Bench 'I', New Delhi (for brevity, 'the Tribunal'), in ITA No. 2841/Del/2008, in respect of assessment year 2005-06. The Tribunal has upheld the view taken by the CIT(A) in his order dated 26.6.2008. The revenue has thus challenged the concurrent findings by urging that the following substantive questions of law would arise for determination of this Court:-

- “(I) Whether, on the facts and in the circumstances of the case, the Ld. ITAT was right in law in upholding the order of the Ld. CIT(A) in entertaining the additional evidence as per Rule 46A of Income Tax Rules even though despite numerous opportunities provided to produce the evidence in support of its claim and inspite of this, the assessee had failed to do so?
- (II) Whether, on the facts and in the circumstances of the case, the Ld. ITAT was right in law in upholding the order of the Ld. CIT(A) in deleting the addition of Rs. 5,55,751/- made by the Assessing Officer on account of unexplained expenditure u/s 69C of the Income Tax Act, 1961 especially when the assessee had failed to explain the reason in respect of difference shown by assessee and estimated by the Valuation Officer?
- (III) Whether, on the facts and in the circumstances of the case, the Ld. ITAT was right in law in upholding the order of the Ld. CIT(A) in deleting the addition of Rs. 15,00,000/- made by the Assessing Officer on account of income from undisclosed sources u/s 68 of the Income Tax Act, 1961 especially when the assessee had failed to discharge the onus cast upon it to prove the genuineness of the donors?”

2. All the aforementioned three questions were raised before the Tribunal. In so far as question No. 2 relating to deletion of Rs. 5,55,751/- is concerned, the Tribunal has taken the view that the opinion of the CIT(A) was based on sound principle because the difference between the two valuations is less than 10%. The Tribunal followed the earlier decisions of various other Benches including the decision of the Chandigarh Bench in the cases of Amir Chand v. ACIT, 124 Taxman 162 (Chd); and ACIT v. Shivalic Loha Mills Pvt. Ltd., 123 Taxman 276 (Chd). It has been held in both the decisions that where the difference in the cost of construction estimated by the DVO and the one proffered by the assessee is less than 10% then such a difference has to be ignored for the purpose of making addition to the income of the assessee. The Tribunal has also referred the judgment rendered in the case of Honest Group of Hotels (P) Ltd. V. CIT, 123 Taxman 464 (J&K); and ITO v. JMP Enterprises, 18 TLR 277 (Amritsar).

3. At the hearing we asked Ms. Urvashi Dhugga, learned counsel for the revenue to apprise us about the status of the aforesaid judgments of the Tribunal. It appears that the revenue has not filed any appeal against those judgments. Ms. Dhugga has not been able to point out that the revenue has filed any appeal against the orders passed by the Chandigarh Bench or Amritsar Bench. If the aforesaid orders have been accepted by the revenue then the principle of consistency would be applicable, as have been laid down by Hon'ble the Surpeme Court in the cases of **Radhasoami Satsang v. CIT**, [1992] 193 ITR 321 (SC); **Berger Paints India Ltd. v. CIT**, [2004]

**266 ITR 99; CIT v. J.K. Charitable Trust, (2009) I SCC 196; and C.K. Gangadharan v. CIT, (2008) 8 SCC 739.**

4. As far as the question concerning adducing of additional evidence is concerned, the Tribunal has held that there is no bar or error in the order of the CIT (A) because the additional evidence was duly put to the Assessing Officer before entertaining the same. It is appropriate to mention that the additional evidence was adduced showing the amount donated by the donors and their confirmation. The donors had disclosed their Permanent Account Numbers, copies of the Income-tax Returns and Balance Sheets. The donations were made by way of Account Payee Cheques. It was in the aforesaid background that the additional evidence of impeccable character was permitted to be adduced. The version of the Assessing Officer that it was assessee's own money which was routed through various donors has been found to be conjectural. As a consequence of the additional evidence, the resultant additions of Rs. 15,00,000/- were deleted.

5. Having heard learned counsel for the revenue on the aforesaid question Nos. 1 and 2, we are of the considered view that no exception is provided to entertain the appeal because once additional evidence of impeccable character has been lawfully entertained by the CIT(A) by confronting it to the Assessing Officer and the donors have come forward by confirming the donations by disclosing their Permanent Account Numbers and balance sheets etc. then doubts entertained by the Assessing Officer with regard to donations are rendered merely conjectures. If there was any suspicion then the

Assessing Officer could have opened the assessment of the donors and not that of the assessee-respondent.

6. For the reasons aforementioned, we find that no question of law much less a substantive question of law within the meaning of Section 206A of the Act would arise warranting admission of the instant appeal. The appeal is wholly without merit and the same is accordingly dismissed.

**(M.M. KUMAR)**  
**JUDGE**

**May 19, 2010**  
Pkapoor

**(JITENDRA CHAUHAN)**  
**JUDGE**