Controversies

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Whether AO is entitled to make addition u/s. 69 of the Act as unexplained investment on the basis of value taken for the purpose of Stamp Duty.

Issue:-

Mr. A purchased Land & Building for a sum of Rs. 50 Lacs as per the value stated in the sale deed. Whereas he paid Stamp Duty of the said transaction of purchase of Land & Building Rs. 10 Lacs based on the valuation of the said property made by stamp authority at Rs. 70 Lacs.The AO intends to tax amount of difference between the valuation made by stamp authority and consideration as per sale deed of Rs. 20Lacs as unexplained investment u/s. 69 of the Act.

Proposition:-

It is submitted that Section 69 by itself does not entitle the AO to make addition without any cogent evidence with him that the assesse has incurred additional cost of investment.

View against the proposition:-

Let us refer to section 69 of the Act which reads as under:

Section 69:-

"Where in the financial year immediately preceding the assessment year the assesse has made investment which is not recorded in the books of account. If any, maintained by him for any source of income, and the assesse offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the "(Assessing) Officer, satisfactory, the value of the investments may be deemed to be the income of the assesse of such financial year."

The valuation made by the authority under the Stamp Act which is so accepted by the assesse for the purpose of payment of Stamp Duty can be considered as a basis for invoking section 69 of the Act. There is indirect admission on the part of assessee when the additional stamp duty is paid on the premise that the value of the property for the stamp duty is correct and so the difference in the consideration as per the sale deed and the value as per the stamp authority can be taken as unexplained investment taxable u/s. 69 of the Act.

In the case of Smt. Amar KumariSurana Vs. CIT the Rajasthan High court reported in 226 ITR 344 it was held that the consistent finding of the Income Tax Officer, the Appellate Assistant Commissioner and the Tribunal was that the assessee had not shown the correct value of the property in her account books, and thereby, had concealed the investment made for purchase of the plot of land. Although merely on the basis of the valuation report and the fair market value no addition can be made, after obtaining the valuation report of the plot of land, notice had been given to the assessee to show cause as to why the value of the plot of land in question should not be taken as per the valuation report and on the basis of comparable cases. The assessee had not given any reason as to why the property had been sold to the assesse for roughly half the prevalent market rate. In the absence of that the only inference that could be drawn was that the assessee had, in fact, concealed the actual consideration paid to the seller. The addition made u/s. 69B was justified.

View in favour of the proposition:-

The Delhi High court in the case of the *CIT Vs. Sadhna Gupta reported in (2013) 352 ITR 595 (Delhi)* held 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 District Valuation Officer cannot form the basis of any addition on the part of the Revenue.

Again the Delhi High Court in the case of the *CIT Vs. Naveen Gera reported in (2010) 328 ITR 516 (Delhi)* dismissing appeal, held that the addition was not sustainable because the seized material containing the sale deeds of the properties which had been relied upon to make reference to the District Valuation Officer, had already been declared by the assesse under the Voluntary Disclosure of income scheme, 1997. In the absence of any incriminating evidence that anything had been paid over and above the stated amount, the primary burden of proof was on the department to show that there had been an under-statement or concealment of income. Only when such burden had been discharged, would it be permissible to rely upon the valuation given by the District Valuation Officer.

In the case of *CIT Vs. Smt. Suraj Devi reported in (2010) 328 ITR 604 (Delhi)*it was held dismissing the appeal, 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 rely upon the valuation given by the Valuation Officer. In any event, the opinion of the Valuation Officer, per se, was not information and could not be relied upon without the books of account being rejected which had not been done in the present case. Moreover, no evidence much less incriminating evidence was found as a result of the search to suggest that the assesse had made any payment over and above the consideration mentioned in the registered purchase deed. No adjustment on account of sale consideration had been made in the case of the seller. Consequently, no substantial question of law arose.

Before we consider further case, it would be appropriate to refer to case law having direct bearing on the invoking of the power u/s. 69 of the Act. The High Court of Delhi in case of *Commissioner of Income tax vsPuneetSabharwal reported in (2011) 338 ITR 485,* had an occasion to examine the question as to whether the Appellate Tribunal was right in holding that notwithstanding the report of the District Valuation Officer, the Revenue had to prove that the assessee had in fact received extra consideration over and above the declared value of the sale in the sale deed. While answering the said question at para Nos. 8, it was observed thus:-

"As far as question No. 2 is concerned, as already indicated above, the AO solely relied upon the report of the District Valuation Officer, 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 (1981) 131 ITR 597 (SC)*, 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 (2010) 328 ITR 604 (Delhi)*, 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 rely upon the valuation given by the district Valuation Officer. It was also held that the opinion of the Valuation Officer per se was not information and could not be relied upon without the books of account being rejected which had not been done in that case."

Summation:-

The Supreme Court in the case of *K.P. Verhese Vs. The Income Tax Officer reported in 131 ITR 597* it was observed that that we must therefore hold that sub-section (2) of sec. 52 can be invoked only where the consideration for the transfer has been understated by the assesse or in other words, the consideration actually received by the assesse is more than what is declared or disclosed by him and

the burden of proving such under-statement or concealment is on the Revenue. This burden may be discharged by the Revenue by establishing facts and circumstances from which a reasonable inference can be drawn that the assesse has not correctly declared or disclosed the consideration received by him and there is understatement of concealment of the consideration in respect of the transfer. Sub-section (2) has no application in case of an honest and bona-fide transaction where the consideration received by the assessee has been correctly declared or disclosed by him, and there is no concealment or suppression of the consideration. We find that in the present case, it was not be contention of the Revenue that the property was sold by the assessee to his daughter-in-law and five of his children for a consideration which was more than the sum of Rs. 16,500/- shown to be the consideration for the property in the Instrument of Transfer and there was understatement or concealment of the consideration in respect of the transfer. It was common ground between the parties and that was finding of fact reached by the Income-Tax Authorities, that the transfer of the property by the assessee was a perfectly, honest and bona-fide transaction where the full value of the consideration received by the assessee was correctly disclosed at the figure of Rs. 16,500/-. Therefore, on the construction placed by us, subsection (2) had no application to the present case and the Income Tax officer could have no reason to believe that any part of the income of the assessee had escaped assessment so as to justify the issue of a notice u/s. 148. The order of re-assessment made by the Income-Tax Officer pursuant to the notice issued u/s. 148 was accordingly without jurisdiction and the majority judges of the full bench were in error in refusing to quash it.

The Delhi High Court in the case of *CIT Vs. Shakunatala Devi 316 ITR 46 (Delhi)* it has been observed that it may be relevant to note that a Division Bench of this court, comprising Dr. ArijitPasayat and D. K. Jain JJ., as their Lordships then were, reiterated that there must be a finding of the Revenue that the assessee had received amounts over and above the consideration stated in the sale deeds, following *Varghese (1981) 131 ITR 597 (SC). Varghese (1981) 131 ITR 597 (SC)*had also been followed and applied by the Supreme Court in *CIT vs. Godavari Corporation Ltd. (1993) 200 ITR 567*. The Division Bench of this court in *CIT Vs. Ashok Khetrapal (2007) 294 ITR 143* referredto the report of a Valuation Officer in the absence of any incriminating documents found in the course of a search. The decision in *CIT Vs. Manoj Jain (2006) 287 ITR 285 (Delhi*) is also to the same effect. In *CIT Vs. Shivakami Co. Pvt. Ltd. (1986) 159 ITR 71 (SC)* their Lordships have once again reiterated that the onus whether the assessee had received more consideration than what was stated in the documents of transfer rested on the Revenue and in the absence of that burden being discharged it would be legally impermissible to make any inferences against the assessee.

Finally I would like to refer to the decision of their lordships of Karnataka High Court Shri S.S. JyothiPrakash vs. ACIT ITA No. 460/2010 Date: 07/06/16 whereinit was held as under:

"Assessee purchased land & building appurtenant thereto and paid stamp duty on the basis of valuation made by stamp duty authority – AO made addition u/s. 69 towards unexplained investment on the basis of valuation report- CIT(A) gave partial relief – Tribunal adopted value taken by DVO for the purpose of stamp duty – Hon'ble High Court held that there is no independent material for making addition u/s. 69 except the valuation report-Additional stamp duty paid for stamp duty purpose *ipso facto* cannot give powers to invoke S.69 – In absence of any independent evidence, valuation report could not be taken as a base for making addition u/s. 69."

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