

**Court No. - 35**

**Case :-** INCOME TAX APPEAL No. - 382 of 2010

**Appellant :-** Commissioner Of Income Tax Central Kanpur

**Respondent :-** M/S Gopi Apartments

**Counsel for Appellant :-** S.C./A.N.Mahajan,Ashok Kumar,Gaurav Mahajan

**Counsel for Respondent :-** S.K. Garg,A. Bansal

**With**

**Case :-** INCOME TAX APPEAL No. - 148 of 2014

**Appellant :-** Commissioner Of Income Tax Central

**Respondent :-** M/S Gopi Apartments

**Counsel for Appellant :-** Ashok Kumar Sr. S.C.,Bharat Ji Agrawal,Gaurav Mahajan

**Counsel for Respondent :-** S.K.Garg

**And**

**Case :-** INCOME TAX APPEAL No. - 126 of 2014

**Appellant :-** Commissioner Of Income Taxcentral Kanpur

**Respondent :-** M/S Gopi Apartments

**Counsel for Appellant :-** Bharat Ji Agrawal,Gaurav Mahajan,S.S.C. I.T.

**Counsel for Respondent :-** S.K. Garg,Ashish Bansal

**Hon'ble Bharati Sapru,J.**

**Hon'ble Piyush Agrawal,J.**

**(Delivered by Hon'ble Piyush Agrawal, J.)**

These three Income Tax Appeals, i.e., Income Tax Appeal No. 382 of 2010, Income Tax Appeal No. 148 of 2014 and Income Tax Appeal No. 126 of 2014, have

been heard together and are being disposed of by this common order. Income Tax Appeal No. 382 of 2010 is being taken up as a leading case.

The present appeal has been preferred under section 260 (A) of the Income Tax Act, 1961 against the judgement & order dated 28.06.2010 passed by the Income Tax Appellate Tribunal, Lucknow Bench “A”, Lucknow (hereinafter referred to as, 'the Tribunal') in Income Tax Appeal No. 75(Luc.)/2010 for the Assessment Year 2007-08.

The present appeal was admitted by this Court on 27.02.2013 on the following questions of law:

- “1. Whether on the facts and circumstances of the case the Hon'ble ITAT was justified in law in quashing the assessment holding that reference to the DVO was made when no assessment proceedings was pending ignoring that notice u/s 153C for the search assessment had already been issued at the time of reference to the DVO?”*
- 2. Whether on the facts and circumstances of the case the Hon'ble ITAT was justified in law in quashing the assessment without giving any reason for the same?”*
- 3. Whether on the facts and circumstances of the case the Hon'ble ITAT was justified in relying the judgements in the case of CIT Vs. Uniya Co-operative Housing Society Ltd. (2009) 314 ITR 272 & ITO VS. Vijeta Educational Society (2009) 118 ITD 382 (ITAT, Lucknow Bench 'B') where the assessing Officer has utilized the information gathered on account of valuation report to reopen the case u/s 148 while in the instant case the pendency*

*of the assessment was already in existence on account of incriminating material collected as a result of search?*

*4. Whether on the facts and circumstances of the case the Hon'ble ITAT was justified in law in quashing the assessment even though the assessment has been framed after issue of a valid notice u/s 143(2) of the Act. Even if it was considered that reference was invalid, the Hon'ble ITAT could have only deleted the additions made on the basis of such valuation report. The assessment proceeding do not get vitiated as they are initiated by issue of notice u/s 143(2) and not by a reference to DVO u/s 142A?*

*5. Whether Hon'ble ITAT was justified in traveling beyond the scope of section 253 of the I.T. Act which prescribes orders which may be appealed against by an appellate before the Hon'ble Tribunal. A reference to valuation cell is neither an order of the Assessing Officer nor included in the orders passed by the Assessing Officer as mentioned in provisions of section 253(1)(b) of the Act?*

*6. The Hon'ble ITAT has thus, with due respect, exceeded its jurisdiction and assumed writ jurisdiction vested in the Hon'ble High Court under section 226 of the Income Tax Act. Hon'ble ITAT being a creature of the Income Tax Act is bound by the powers and limitation imposed by the Income Tax Act as prescribed in Part B of Chapter XX of the Income Tax Act dealing with appeals to the Tribunal.”*

We have heard Shri Gaurav Mahajan, learned counsel for the Revenue and Shri Ashish Bansal, learned counsel for the respondent – assessee.

The facts of the case are that on 17.10.2006, a search and seizure operation under section 132(1) of the Income Tax Act was carried out in Banarasi Group of cases, both at the residential and the business premises of the said group. Certain incriminating material was

recovered and *Panchnama* was also drawn. On 27.09.2007, a notice under section 153-C of the Income Tax Act was issued after recording requisite satisfaction, calling upon the respondent – assessee to file its returns.

The respondent – assessee is a partnership firm, which came into existence on 07.01.2005. The relevant assessment year is 2005-06. On 31.03.2008, the respondent – assessee filed its returns declaring income at Rs. 2,64,430/- for the assessment year 2007-08. The respondent – assessee made an investment in construction of multiplex at 133/9, 'O' Block, Kidwai Nagar, Kanpur and disclosed the investment of Rs. 21,03,44,598/-. The investment therein was made during three financial years, i.e., 2006-07, 2007-08 and 2008-09. The Assessing Authority, in order to ascertain the correct investment made in the construction of multiplex, referred the matter to the Departmental Valuation Officer. The Departmental Valuation Officer, by report dated 09.12.2008, determined the total

investment of Rs. 27,50,55,529/- upto the date of inspection. The Assessing Authority invited the objection from the respondent – assessee on differential value of investment shown in the construction.

After considering the report of the Departmental Valuation Officer and objection of the respondent – assessee, the Assessing Authority, by its order dated 31.12.2008, made addition of Rs. 2,50,98,612/- in the total taxable income of the respondent – assessee.

Feeling aggrieved by the aforesaid order, the respondent – assessee preferred an appeal before the Commissioner of Income Tax (Appeals), Kanpur, who vide order dated 19.01.2010, dismissed the appeal and confirmed the assessment order.

Still feeling aggrieved by the aforesaid order, the respondent – assessee preferred an appeal before the Tribunal, who by the impugned order dated 28.06.2010, has allowed the appeal of the respondent – assessee. Hence, the present appeal has been preferred by the

Revenue against the impugned order of the Tribunal.

It has been argued on behalf of the Revenue that the Tribunal has erred in allowing the appeal of the respondent – assessee on the facts as well as on law. It has been submitted that the Assessing Authority has referred the matter to the Departmental Valuation Officer and after obtaining its report, it has rightly added the undisclosed investment made in the construction multiplex and the Commissioner of Income Tax (Appeals) has rightly confirmed the assessment order, but by means of the impugned order, the Tribunal has wrongly and in an arbitrary manner deleted the same.

Rebutting the arguments advanced on behalf of the Revenue, learned counsel for the respondent – assessee has submitted that the Assessing Authority was not justified in referring the matter to the Departmental Valuation Officer, as neither assessment nor reassessment proceedings were pending before him on

the date of reference to Departmental Valuation Officer, i.e., on 27.09.2007. The returns, as prescribed under the Income Tax Act, were filed much thereafter.

In the alternative submission, learned counsel for the respondent – assessee has submitted that for referring the matter to the Departmental Valuation Officer, the account book of the assessee is required to be rejected. He has placed reliance upon the judgment of the Apex Court in ***Sargam Cinema Vs. Commissioner of Income Tax*** (2010) 328 ITR (SC) and submitted that neither the assessment proceeding was pending, nor the account book of the assessee was rejected on 27.09.2007, when the matter was referred to the Departmental Valuation Officer. It has further been argued that on the basis of search and seizure conducted on 17.10.2006 on the Banarsi Group Cases, notices dated 27.09.2007 under section 153-C of the Income Tax Act for the assessment years 2001-02 to 2006-07 were issued. The validity of the proceedings under

section 153-C of the Income Tax Act was challenged at the appellate stage for the assessment year 2005-06 and the same has been decided in favour of the respondent – assessee upto this Court in Income Tax Appeal No. 60 of 2014 (*CIT Vs. M/s Gopi Apartment*), reported in 2014 (365) ITR 411, wherein, this Court was pleased to hold that the proceedings initiated against the respondent – assessee under section 153-C of the Income Tax Act were without jurisdiction. It is further argued that the very basis for referring the matter to Departmental Valuation Officer in the case of the assessee does not survive and therefore, the present proceedings are also without jurisdiction.

We have perused the record of the case, from which it reveals that a survey was conducted on 17.10.2006 at the Banarasi Misthan Group of cases and thereafter, proceedings under section 153-C of the Income Tax Act were initiated on 27.09.2007, which was challenged by the respondent – assessee at the

appellate stage and the Commissioner of Income Tax (Appeals), by the order dated 19.01.2010, has decided the appeal in its favour, against which, the Revenue filed an appeal before the Tribunal, which was decided in favour of the respondent – assessee. Against the order of the Tribunal, the Revenue filed Income Tax Appeal No. 60 of 2014 before this Court and the same was dismissed by this Court.

The very basis for referring the matter to Departmental Valuation Officer in the disputed years, where the proceeding has been initiated under section 153-C of the Income Tax Act, has been held without jurisdiction. Once the very basis for referring the matter to the Departmental Valuation Officer has vanished, the entire proceedings cannot be held to be justified. Moreover, at the time of referring the matter to the Departmental Valuation Officer, neither returns were filed, nor the books of account maintained by the respondent – assessee were rejected, nor any assessment

or reassessment proceedings were pending.

In view of the judgement of *Sargam Cinema* (supra) and inter-parties judgement of this Court in Income Tax Appeal No. 60 of 2014, the basis for referring the matter to Departmental Valuation Officer itself vitiates and is liable to be quashed.

In view of the facts and circumstances of the case discussed above, no substantial question of law arises in the present appeal.

The present appeal lacks merits and it is hereby dismissed.

The questions of law are answered, accordingly, in favour of the respondent - assessee and against the Revenue.

**Order Date :-05.02.2019**

*Amit Mishra*