

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF JUNE 2016

PRESENT

THE HON'BLE MR.JUSTICE JAYANT PATEL

AND

THE HON'BLE MR.JUSTICE B.SREENIVASE GOWDA

ITA NO.460/2010

BETWEEN:

SRI. S. S. JYOTHI PRAKASH,
S/O. SRI. S. SHIVANNA,
AGED ABOUT 52 YEARS,
PROP: SHIVALNGA SWAMY,
TRANSPORT, SAVARKAR NAGAR,
SHIMOGA.

... APPELLANT

(By SRI. S. PARTHASARATHI, ADV.)

AND:

THE ADDL. COMMISSIONER
OF INCOME-TAX,
SHIMOGA RANGE,
SHIMOGA.

... RESPONDENT

(By SRI. K. V. ARAVIND, ADV.)

THIS ITA IS FILED U/S.260-A OF I.T.ACT, 1961
ARISING OUT OF ORDER DATED 10-08-2010 PASSED IN
ITA NO.534/BANG/2010, FOR THE ASSESSMENT YEAR

2006-07, PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO: (I). FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, (II). ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, BANGALORE IN ITA NO.534/BANG/2010, DATED 10-08-2010, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS ITA COMING ON FOR HEARING THIS DAY, **JAYANT PATEL J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

The present appeal has been admitted on the following substantial question of law:-

“Whether the finding of the Tribunal that the valuation made by the District Registrar/Appellate Authority is more effective and realistic without assigning any reasons is perverse, arbitrary and unsustainable?”

2. In order to appreciate the controversy and then to address the question, we need to refer certain factual aspects.

3. The appellant is an individual mainly engaged in the transport business and running

proprietary concern on the name and style of “Shri. Shivalinga Transport” at Shimoga. He was also receiving remuneration in the capacity as partner and the interest of his capital was also received from the firm wherein he was partner. The appellant filed return of income for the assessment year 2006-07 declaring his total income at Rs.18,11,187/-. The return was thereafter taken in scrutiny and Assessing Officer made an addition of Rs.51,69,458/- under Section 69 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) as unexplained investment in a residential house at Shimoga. The addition was made with regard to purchase of residential house for a consideration of Rs.66,56,142/- which included the stamp duty payment. The value of the property by the Assessing Officer was taken at Rs.90,51,000/- as against actual consideration reflected in the sale deed at Rs.60,07,377/-. It appears that after document was

presented for registration, the objection was raised by the stamp department for the deficit stamp duty. As per the value fixed for the purpose of stamp duty, the assessee paid difference of the stamp duty on the basis of the valuation made for the stamp duty. The same was one of the aspects considered by the Assessing Officer and then the matter was referred to the valuer for the purpose of valuation and consequently the difference of Rs.51,69,458/- was added by applying the provisions of Section 69 of the Act. Assessing Officer also made addition towards cash credit by applying the provisions of Section 68 of the Act and the total income was determined at Rs.92,16,520/-.

4. The assessee being aggrieved by the said assessment, filed an appeal before the CIT (Appeals), Hubli. In the said appeal, CIT (Appeals) confirmed the additions towards cash credit and with regard to

addition made under Section 69 of the Act, he gave partial relief of Rs.6,09,119/-.

5. The matter was further carried by the appellant before the Tribunal. The Tribunal vide order dated 10.08.2010 upheld the addition under Section 68 of the Act and with regard to the addition under Section 69 of the Act, the Tribunal found that the property in question was valued by the Departmental valuer, approved valuer of the assessee and also District Registrar/Appellate Authority for the stamp duty purpose and hence the Tribunal decided the value of the property at the value which was determined by the District Registrar/Appellate Authority for stamp duty purpose and dismissed the appeal on the said ground and determined the value of the land at Rs.79,61,525/- and of the building at Rs.21,60,000/-. Therefore, the Tribunal directed the assessing authority to re-compute the capital gain on the basis of the valuation decided by

the District Registrar, Shimoga in the proceedings dated 18.05.2006. Under such circumstances, the appellant/assessee has preferred the present appeal.

6. We have heard Sri. S. Parthasarathi, learned counsel appearing for the appellant/assessee and Sri. K.V. Aravind learned counsel appearing for respondent/revenue.

7. It is true that at the time of the admission of the appeal, the appeal has been admitted on the question limited to the finding of the Tribunal on the basis of the valuation made by the District Registrar/Appellate Authority. As the appeal has been admitted on one question pertaining to the finding of the Tribunal on the basis of the valuation made by the District Registrar/appellate authority, we need to address ourselves to that question only.

8. We may record that the Assessing Officer after considering the matter has concluded as under:-

“The facts of the cases relied upon by the assessee in this letter are not similar to the facts of present case. Moreover, the Valuation Officer has given the basis of estimating the cost of land in that area and the cost of building after allowing depreciation. Hence, it is not guess work or estimate as relied upon by the assessee. It is based on the rate of the property sold during the relevant time in that area which was collected from the office of the Sub-registrar, Shimoga. Since the unexplained investment on the basis of value determined by the stamp duty authority is less than the value determined by the Departmental Valuation Officer, the addition under this head u/s. 69 of the Income-tax Act, 1961 is done considering the difference between the value determined by the Departmental Valuation Officer and the value shown by the assessee in the return of income filed i.e.,

Rs.51,69,458/- (Rs.1,18,25,600/- - Rs.66,56,142/-). The amount of Rs.51,69,458/- is added to the total income of the assessee u/s. 69 of the Income-tax Act, 1961.”

9. The Commissioner (Appeals) while considering the said aspect observed at para 8.2 as under:-

“8.2 I have carefully considered the submissions of the appellant and judicial decisions relied upon and the material facts emanating from the order of the AO and the remand report on this issue. In this case a remand report was called for from the AO. The AO after giving opportunity of being heard to the appellant has submitted his remand report on 26.05.09. The AO states in the remand report that the cost of the land purchased by the appellant is determined at Rs.97,98,771/- and the cost of old building is determined at Rs.20,26,793/- by the DVO. The AO further states that the cost of land

has been calculated by the Valuation Officer on the basis of the sale instances collected by him from sub-Registrar, Shimoga. The AO has also stated that property is located in the heart of the city and one of the land mark owned by one of the family members of re-known actress namely Mrs.Mumtaz. The AO in the course of remand proceedings provided the appellant an opportunity to explain the discrepancy in the value shown by the DVO, if any. But, as per the AO the appellant could not point out any infirmity or defect in the valuation report of the DVO. Since, the value of the land has been determined on the basis of instances of actual sale transactions in the office of 'Sub-Registrar, Shimoga, therefore, I decline to interfere with the valuation of the land determined at Rs.97,98,771/- by the DVO. However, coming to the valuation of the building it is seen from the submissions of dated 18.08.2009 of the appellant wherein in the last para, the appellant has pointed out certain deficiencies in the valuation of the building arriving at the excessive cost of

Rs.6,09,119/- . On careful examination of the facts, it appears that the deficiencies pointed out by the appellant in the valuation of the DVO as regards the valuation of building appears to be genuine therefore this sum of Rs.6,09,119/- attributable to excessive valuation is required to be reduced from total valuation of the building of Rs.20,26,793/. As a result the appellant gets a relief of Rs.6,09,119/- out of the total valuation of the property determined at Rs.1,18,25,600/-. In the result, the valuation report of the DVO is confirmed to the extent of Rs.1,12,16,481/- (11825600-609119). The AO is directed to adopt the valuation of the property at Rs.1,12,16,481/- as against Rs.1,18,25,600/- determined by the DVO.”

10. The Tribunal in the further appeal at para Nos. 12 and 13 has observed as under:-

“12. The unexplained investment was pertaining to the land as well as a building thereon. The departmental valuation officer

has adopted a valuation of Rs.97,98,771/- for land and Rs.20,26,793/- for the building. The assessee's registered valuer has valued the building at Rs.18,53,113/- and that of the land at Rs.51,40,964/-, total of Rs.69,94,000/-. The valuation of the property was also considered by the District Registrar/the appellate authority. When the matter of under valuation of the property was initiated against the assessee, the District Registrar/the appellate authority has determined the value of the land at Rs.79,61,525/- and that of the building at Rs.21,60,000/-.

13. On going through the three sets of valuation reports available with us, we find that more effective and realistic valuation was that of the District Registrar, Shimoga. So, we direct the assessing authority to re-compute the capital gains on the basis of the valuation decided by the District Registrar, Shimoga through his proceedings dated 18.05.2006."

11. The principal contention raised by the learned counsel for the appellant-assessee was that while invoking power under Section 69 of the Income Tax Act, the initial burden would be upon the revenue to prove that unexplained investment has been made by the assessee. It is only after the initial burden is discharged by the revenue, the assessee may be required to rebut the same. In the present case, as per the learned counsel for the assessee, there was no independent material or primary evidence to show unexplained income. In his submission, merely because the assessee opted for additional stamp duty on the basis of the valuation made by the District Registrar/appellate authority, such cannot be a ground for treating the difference of the value in the sale deed and the valuation made by the stamp duty authority as unexplained income. Even if subsequently the Departmental valuer has valued the property at a

different value, in his submission Section 69 of the Act could not be invoked by the revenue in the absence of any primary or independent material for the consideration received or paid then so stated in the registered sale deed. As per him, all the lower authorities including the Tribunal have lost sight of the aforesaid aspects and hence the order for addition may be quashed.

12. Whereas, learned counsel for the respondent-revenue contended that valuation made by the authority under the Stamp Act which is so accepted by the assessee for the purpose of payment of stamp duty can be considered as a basis for invoking Section 69 of the Act. In his submission, there is indirect admission on the part of the assessee when the additional stamp duty is paid on the premise that the value of the property for the purpose of stamp duty is correct. He submitted that thereafter in the present case

the matter was also referred to the Departmental valuer who has assessed the value of Rs.97,98,771/- net value of the land and of Rs.20,26,797/- being value of the property. Even the assessee had submitted the valuation report wherein the property was valued at Rs.69,94,000/-. As against the same, the District Registrar, for the purpose of stamp duty, had valued land at Rs.79,61,525/- and for the building Rs.21,60,000/-. Under these circumstances, as per the learned counsel for the revenue if the Tribunal has exercised the discretion and has gone by the valuation made by the District Registrar for the purpose of said difference which is so accepted by the assessee, the difference in the said valuation and the consideration recorded in the sale deed can be said as unexplained investment and when the assessee has failed to discharge the burden of sufficient explanation, the same can be added to the income for the purpose of taxation.

He submitted that it cannot be said that the Tribunal has committed any error which may call for interference by this Court.

13. Before we consider further case, it would be appropriate to refer to certain case-laws having direct bearing on the invoking of the power under Section 69 of the Act. The High Court of Delhi in case of ***Commissioner of Income Tax vs Puneet Sabharwal*** 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 and 9, it was observed thus:-

“8. As far as question No.2 is concerned, as already indicated above, the

Assessing Officer 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 v. 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 an information and could not

be relied upon without the books of account being rejected which had not been done in that case.

9. *The aforesaid principle of law has been reaffirmed in CIT v. Naveen Gera (2010) 328 ITR 516 (Delhi) stating that the 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 (1981) 131 ITR 597 (SC) has been explained by the Rajasthan High Court in the case of Smt. Amar Kumari Surana v. CIT (1997) 226 ITR 344 (Raj)."*

14. The aforesaid shows that the primary burden to prove the understatement or concealment of the income by way of unexplained investment is on the revenue and it is only when such burden is discharged, it would be permissible to rely upon the valuation given by the District Valuation Officer. Further, it was also

held that if there was no evidence or material in possession to come to the conclusion that the assessee had paid extra consideration over and above what was stated in the sale deed, the District Valuation Officer's report cannot be a sole basis for assessment of the income. It was further held that opinion of the District Valuation Officer per se was not sufficient and the other corroborative evidence was required.

15. We may also refer to the subsequent decision of the High Court of Delhi in case of ***Commissioner of Income Tax vs Sadhna Gupta*** reported in ***(2013) 352 ITR 0595***, wherein once again similar question came up for consideration to examine as to whether the Tribunal committed an error in not relying upon the District Valuation Officer's Report under Section 142A and thereby deleting addition of the income based on the said report. The High Court of

Delhi after considering the aforesaid question, observed at para Nos. 4 and 5 as under:-

*“4. Only point to be considered is whether the valuation rendered by the DVO is to be taken into account or not. It has been argued by the learned counsel for the revenue that the assessing officer was justified in referring the matter to the DVO for an opinion with regard to the fair market value of the property and once that opinion has been rendered, the same has to be taken into account and if that were to be so, the addition of Rs.2,81,83,000/- would be fully justified. Consequently, it was submitted by the learned counsel for the revenue that the Tribunal had erred in deleting the addition. On the other hand the learned counsel for the respondent referred to a Division Bench decision of this Court in the case of **CIT v. Shri Puneet Sabharwal: (2011) 338 ITR 485**. In that decision a specific question had been raised as to 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 received extra consideration over and above the declared value of the same. That question was answered by this Court in favour of the assessee and against the revenue. The Division Bench in the case of **Shri Puneet Sabharwal** (supra) had also placed reliance on the decision of Supreme Court in **K.P. VARGHESE** (supra) as also on another decision of a Division Bench of this Court in **CIT v.Smt. Suraj Devi: (2010) 328 ITR 604 (Delhi)** wherein this Court held that the primary burden of proof with regard to concealment of income was on the revenue and it was only when the said burden was discharged that reliance could be placed on the valuation report of the DVO. There are several other decisions of this Court in the same vein. One such case being the case of **CIT v. Vinod Singhal:** (ITANo.482/2010 decided on 05.05.2010) where, again, reliance was placed on the very same decision of the Supreme Court in

K.P.Varghese (supra) and also on a decision of this Court in **CIT v. Smt. Shakuntala Devi: (2009) 316 itr 46**. It was observed that there must be a finding that the assessee had received an amount over and above the consideration stated in the sale deed and for this the primary burden was cast on the revenue. It is only when this burden is discharged by the revenue that it would be permissible to rely upon the value as given in the valuation report of the DVO.

5. The law seems to be well settled 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 DVO cannot form the basis of any addition on the part of the revenue. In the present case there is no evidence other than the report of the DVO and, therefore, the same cannot be relied upon for making an addition. In these circumstances, the question which has been framed is decided in favour of the assessee

and against the revenue. The appeal is dismissed.”

16. The aforesaid shows that it was observed that the law is well settled 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 DVO cannot form basis of any addition on the part of the revenue. Since in the said case there was no evidence other than the report of DVO, it could not be relied upon for making addition. The question was decided in favour of the assessee against revenue and the appeal of the revenue was dismissed.

17. We need not burden our judgment with other case-laws, since in our view the aforesaid two decisions of the High Court of Delhi throws light on the settled legal position for the purpose invoking power under Section 69 of the Act.

18. Examining the matter further on facts, in the present case, it appears that it is not a case of the revenue that there was any independent or corroborative material for consideration paid or received in addition to than mentioned in the sale deed. The basis of the addition is only valuation report of the District Registrar under the Stamp Act and the Departmental valuer. As such, there is no independent material which had come on record for such purpose. The payment of additional stamp duty may be on the basis of the valuation of the valuer of the stamp Act authority but same *ipso facto* cannot be said to be a valid ground to initiate the proceedings under Section 69 of the Act or to invoke power under Section 69 of the Act on the premise that additional consideration was paid or received. Further, if such could not be the basis, subsequent valuation report would also not a ground. In the absence of any independent material,

the report of the valuer could not be the basis for making addition. Under such circumstances, we find that the addition made by the Assessing Officer and further modified by the CIT (Appeal) as well as by the Tribunal cannot be sustained.

19. Hence, the question is answered in favour of the assessee against the revenue. Consequently, the addition made on the premise of unexplained investment pertaining to the land as well as building thereon shall also stand set aside.

The appeal is allowed accordingly.

**SD/-
JUDGE**

**SD/-
JUDGE**

PMR/-