

versus
AMBIENCE HOTELS & RESORTS LTD Respondent
ITA 587/2012
CIT Appellant
versus
AMBIENCE PROJECTS & INFRA PVT LTD Respondent
ITA 588/2012
CIT Appellant
versus
AMBIENCE DEVELOPERS PVT LTD Respondent
ITA 589/2012
CIT Appellant
versus
AMBIENCE PROJECTS & INFRA PVT LTD Respondent
ITA 590/2012
CIT Appellant
versus
AMBIENCE PROJECTS & INFRA PVT LTD Respondent
ITA 591/2012
CIT Appellant
versus
AMBIENCE HOTELS & RESORTS LTD Respondent
ITA 592/2012
CIT Appellant
versus
AMBIENCE PROJECTS & INFRA PVT LTD Respondent

ITA 593/2012

CIT

..... Appellant

versus

AMBIENCE DEVELOPERS PVT LTD

..... Respondent

Appearance: Mr. N.P. Sahni, Sr. Standing Counsel on behalf of CIT.

Ms. Rani Kiyala, proxy for Dr. Rakesh Gupta, Advocate for respondents.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE R.V. EASWAR

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

% The Revenue has preferred these 13 appeals which are directed against a common order made by the ITAT in respect of three group companies which are connected with M/s. Ambience Developers and Infrastructure Pvt. Ltd. The correctness of the impugned order dated 10.02.2012 in the said 13 appeals relatable to M/s Ambience Developers Pvt Ltd, M/s Ambience Projects & Infra Pvt. Ltd. and Ambience Hotels & Resorts Ltd. is sought to be questioned. The Tribunal had by the impugned common order rejected the Revenue's appeals, holding that there was no reason to interfere with the directions to delete the disallowance, originally ordered by the Assessing Officer on account of cost of construction and sought to be brought to tax under Section-69C of the Income Tax Act.

2. At the outset, it is submitted by counsel that the main order made in

the case of M/s. Ambience Developers and Infrastructure Pvt. Ltd. (ITA Nos.2376-2381/del/2011) by the ITAT had, in almost identical circumstances - where a report of the valuer had been called for under Section-142A - been rejected. In that case, variations between the cost of construction shown by the assessee and what was estimated in the valuer's report, was to the extent of 3.86%.

3. This Court notices that the facts pertaining to the present three respondents/assesseees and those pertaining to M/s. Ambience Developers and Infrastructure Pvt. Ltd., the respondent in the appeals which were decided by the Tribunal on 5.8.2011 (ITA 2376-2381/del/2011) are identical. In fact, the search took place in the premises of the group companies leading to reference under Section-142A. The Assessing Officer based his conclusions on the report of the Valuation Officer under Section-142A. The said common order of the Tribunal was challenged in appeal before this Court being ITA-195-199 and 203/2012. Those appeals were dismissed on 27.7.2012. The Court took into consideration the judgment of the Division Bench of this Court in *Commissioner of Income-tax v. Aar Pee Apartments P. Ltd.* (2009) 319 ITR 206 as well as judgment of the Supreme Court in *Sargam Cinema v. Commissioner of Income Tax* (2011) 241 CTR (SC) 179 where it was held that the Assessing Officer could not have referred the matter to the Valuation Officer without rejecting the books of accounts. In the said appeals decided by this Court in ITA-195/2012 and connected cases, i.e., *CIT v. M/s. Ambience Developers and Infrastructure Pvt. Ltd.*, the variation between the cost of construction shown by the assessee and what was assessed by the Valuation Officer was to the extent of 3.86%. The Court had concluded as follows: -

“15. It is also a matter of record that an Office Note had been made by the AO, when the assessment order was issued. That contained details of what were examined, in respect of the assessee’s books and accounts, and also adverted to an Appraisal Report, and stated that:

“as per the Appraisal Report, the bank accounts of the group companies also reveals a large number of other current and saving bank accounts, which need to be investigated. In this case, there are very few transactions which have been examined and found to be normal business transactions with other concerns, and have been explained satisfactorily. Therefore, no adverse inference is drawn.

4. As regards the disallowability of interest as per the provisions of section 36 (1)(iii) of the IT Act, the issue has been examined and no adverse inference is drawn.

5. The seized documents pertaining to this company were duly confronted vide questionnaire dated 08-9-2009 and the reply furnished thereof satisfactorily explains the transactions recorded therein which have been verified vis-à-vis books of account/Balance Sheet.”

16. In view of the above, it is evident that the valuation in this case was uncritically accepted by the AO. As can be seen from a comparison of the valuation by the assessee, with that of the DVO, the variation is 3.86 %. This is a very minor variation, having regard to the large amounts involved.

Besides, the fact that the AO did not examine the variations, with specific reference to any items of expenditure that were unreasonable, or showed wide variation, these differences can also be put down to differing perceptions, and the practice adopted by the concerned business activity.”

4. In the present case, the Tribunal has in this regard observed as follows: -

“4. Before CIT (A) both these assesseees challenged the addition of aforementioned amounts to its income in respect of each of the year firstly; on the ground that reference of valuation u/s 142A to the Departmental Valuation Officer is not in accordance with law as Section 142A does not apply on section 69C and reliance was placed mainly on the decision of Hon’ble Delhi High Court in the case of CIT vs. AAR PEE Apartments Pvt. Ltd. (2009) 319 ITR 276 (Del). Secondly, the reference to DVO was challenged on the ground that no defect has been pointed out in the books of account which are regularly maintained by the assessee and are audited. Without pointing out any defects in the books of account no addition, whatsoever, could be made on account of difference in the cost of construction shown by the assessee and estimated by DVO and for raising such contention the reliance was mainly placed on the decision of Hon’ble Supreme Court in the case of Sargam Cinema vs. CIT (2010) 328 ITR 513 (SC). Thirdly, the addition was challenged on the ground that the difference in the cost of construction and estimate made by the DVO was less than 5% (2.43% in the case of Ambience Developers Pvt. Ltd. and 3.71% in the case of Ambience Hotels and Resorts Pvt. Ltd.) To assail the addition on this basis, the assessee placed reliance on the decision of Hon’ble Madras High Court in the case of CIT vs. V.T. Rajendran (2007) 288 ITR 312.

6. At the outset, it was pointed out by the learned AR that in group cases of M/s Ambience Developers and Infrastructure Pvt. Ltd. similar additions were made in respect of assessment years 2003-04 to 2007-08 and the CIT (A) had deleted the addition. The order of the CIT (A) was challenged by the department in the Tribunal and the appeals of the department have been decided by the Tribunal vide order dated 5th August, 2011 in ITA Nos. 2376 to 2381/Del/2011. He has produced before us copy of the said order and a copy was also given to the learned DR. It was submitted by him that the facts and circumstances of the said case are in pari materia with the facts of these cases. He submitted that the difference in that case was only 3.86% which was a small percentage and, thus, he

submitted that the issues raised by the department in the present appeals are covered by the aforementioned decision of the Tribunal.

9. It has been pointed out by the learned AR that the facts and circumstances of these appeals are pari materia with the facts of aforementioned case of M/s Ambience Developers and Infrastructure Pvt. Ltd. and the learned DR could not controvert this fact, therefore, respectfully following the aforementioned decision of coordinate Bench, we found no merit in these departmental appeals and thus are dismissed.”

5. In the opinion of this Court, the facts being virtually the same and the variation in the cost of construction being in fact lower than that in the main case i.e. CIT v. *M/s. Ambience Developers and Infrastructure Pvt. Ltd.*, no fault can be found with the Tribunal’s reasoning in the orders impugned in the present appeals pertaining to the three assessees, i.e., M/s Ambience Developers Pvt Ltd, M/s Ambience Projects & Infra Pvt. Ltd. and Ambience Hotels & Resorts Ltd.

6. Consequently, following this Court’s previous judgment dated 27.07.2012 in ITA Nos.195-199 and 203/2012, the present appeals are dismissed.

S. RAVINDRA BHAT, J

R.V.EASWAR, J

OCTOBER 05, 2012

/vks/