

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 13TH DAY OF AUGUST 2012

PRESENT

THE HON'BLE MR.JUSTICE K.SREEDHAR RAO

AND

THE HON'BLE MR. JUSTICE B.MANOHAR

ITA.NO.1302/2006 & ITA.NO.1304/2006

ITA.NO.1302/2006

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX,
NO.55/1, SHILPASHREE,
VIDYARANYA COMPLEX,
VISWESHWARAPURAM,
MYSORE.
2. THE DEPUTY COMMISSIONER OF INCOME TAX,
CIRCLE - 2 (1),
NO.55/1, SHILPASHREE,
VIDYARANYA COMPLEX,
VISWESHWARAPURAM,
MYSORE.

...APPELLANTS

(BY SRI.E.SANMATHI, ADV)

AND:

SRI.M.NAGARAJA,
M/S.NAGEETHA COMPLEX,
DOUBLE ROAD,

SARASAWATHIPURAM,
MYSORE.

.... RESPONDENT

(BY SRI.B.S.RAGHUPRASAD, ADV)

ITA FILED U/S. 260-A OF I.T.ACT 1961 ARISING OUT OF ORDER DATED 21-04-2006 PASSED IN ITA.NO.719/BANG/2005 FOR THE ASSESSMENT YEARS 1998-99, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND TO ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, BANGALORE IN ITA.NO.719/BANG/2005 DATED 21-04-2006 AND CONFIRM THE ORDER PASSED BY THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE -2 (1), MYSORE, IN THE INTEREST OF JUSTICE AND EQUITY.

ITA NO.1304/2006

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX,
NO.55/1, SHILPASHREE,
VIDYARANYA COMPLEX,
VISWESHWARAPURAM,
MYSORE.
2. THE DEPUTY COMMISSIONER OF INCOME TAX,
CIRCLE - 2 (1),
NO.55/1, SHILPASHREE,
VIDYARANYA COMPLEX,
VISWESHWARAPURAM,
MYSORE.

...APPELLANTS

(BY SRI.E.SANMATHI, ADV)

AND:

SRI.M.NAGARAJA,
M/S.NAGEETHA COMPLEX,
DOUBLE ROAD,
SARASAWATHIPURAM,
MYSORE.

... RESPONDENT

(BY SRI.B.S.RAGHUPRASAD, ADV)

ITA FILED U/S. 260-A OF I.T.ACT 1961 ARISING OUT OF ORDER DATED 21-04-2006 PASSED IN ITA.NO.793/BANG/2005 FOR THE ASSESSMENT YEAR 1999-00, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND TO ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, BANGALORE IN ITA.NO.793/BANG/2005 DATED 21-04-2006 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE -2 (1), MYSORE, IN THE INTEREST OF JUSTICE AND EQUITY.

THESE ITA'S ARE HAVING BEEN HEARD AND RESERVED AND COMING ON FOR PRONOUNCEMENT OF JUDGEMENT THIS DAY, **B.MANOHAR J.**, DELIVERED THE FOLLOWING:

JUDGMENT

These appeals are filed by the revenue being aggrieved by the order dated 21.04.2006 passed by the Income Tax Appellate Tribunal, Bangalore Bench-B in ITA Nos.719 and 793/Bang/2005 confirming the order passed by the Commissioner of Income Tax (Appeals) (CIT (Appeals) for short) dated 21-02-2005.

2. These appeals are admitted on the following substantial questions of law:

ITA.NO.1302/2006

“Whether the Tribunal was right in holding that the reference made by the Assessing officer to the District valuation officer regarding determination of cost of construction of assessee’s complex was without jurisdiction, in view of decision of the Supreme Court, reported in 262 ITR 407 and also under the provisions of section 142(A) of the Income Tax Act, inserted by the Finance Act of 2004 with retrospective effect from 15.11.1972”

ITA NO.1304/2006

1. *Whether the Appellate Tribunal was right in holding that the reference made by the Assessing Officer to the District Valuation officer for determination of cost of construction of Nageetha Complex without jurisdiction in view of the provision of Sec.142-A of the Act which was inserted by the Finance Act, 2004 with retrospective effect from 15.11.1972 and Judgment of the Apex Court?*
2. *Whether the Tribunal was right in holding that before referring to the District Valuation officer, the books of accounts, bills vouchers, etc., was not requisitioned and the conclusion that the same was not reliable had been arrived at by the assessing Officer when in fact, on the requisition made by the Assessing*

Officer the assessee failed to produce these documents and consequently, the finding recorded by the Tribunal is perverse.?

3. The respondent-assessee is a Civil Contractor by profession. He filed return of income for the assessment years 1998-1999 and 1999-2000. A survey was conducted on 7-1-1999 and the Assessing Officer found that the assessee has constructed a commercial complex and it was completed in three years from 1998-1999 to 2000-2001. The assessee has admitted that the cost of construction of the commercial building is Rs.1,72,98,255/-. The Assessing Officer not found favored with the cost of construction given by the assessee referred the matter to the District Valuation Officer to estimate the cost of construction under Section 55-A of the Act. The District Valuation Officer assessed the cost of construction of the building at Rs.2,61,54,033/-. The Assessing Officer worked out the difference amount shown by the assessee and the estimation by the District Valuation Officer in a sum of Rs.88,55,825/-. This was spread over to three assessment years. For the assessment year 1998-1999 the difference was taken as Rs.30,20,722/- and for the

assessment year 1999-2000 at Rs.29,07,287/- which was added to the income of the assessee for the assessment years under the appeals as unexplained income invested in the cost of construction. Being aggrieved by the assessment of income made by the Assessing Officer, the assessee preferred appeals before the CIT (Appeals), Mysore in ITA Nos.1200/Mys/CIT(A)/03-04 and 1752/Mys/CIT(A)/04-05. The CIT (Appeals), Mysore dismissed the appeals. Being aggrieved by the same, the assessee preferred appeals before the Income Tax Appellate Tribunal, Bangalore, mainly contending that in view of the law laid down by the Apex Court in a decision reported in (2003)262 ITR 407 in the case of SMT.AMIYA BALA PAUL v/s COMMISSIONER OF INCOME TAX that a Valuation Officer appointed under the Wealth Tax Act can discharge the function within the statutory limits under which he was appointed. It is not open to a Valuation Officer to Act in his capacity as a Valuation Officer under the Income Tax Act. Referring the matter to the District Valuation Officer by the Assessing Officer is contrary to law. The Appellate Tribunal after

considering the matter and relying upon the judgment of the Hon'ble Supreme Court cited supra allowed the appeal and set aside the determination of market value of the building. Being aggrieved by the same, the revenue has preferred these two appeals.

4. Sri.E.I.Sanmathi, learned Advocate appearing for the appellants contended that the order passed by the Appellate Tribunal is contrary to law. The judgment relied upon by the assessee is not applicable in view of the amendment made to the Income Tax Act incorporating new Section 142-A of the Income Tax Act in Finance Act No.2/2004 w.e.f. 15-11-1972. The assessee himself admitted that he has spent sum of Rs.1,72,98,255/- for construction of the commercial complex from the assessment year 1998-1999 to 2000-2001, whereas the District Valuation Officer after inspecting the building reported the valuation of the construction of the building at Rs.2,61,54,033/-. The difference amount was brought to tax. Further the assessee has not produced any document to show as to how much expenditure he has incurred for construction of the building. In the absence of the same, the

Assessing Officer after getting the report from the District Valuation Officer has assessed value of the building. There is no infirmity in the order passed by the Assessing Authority as well as the CIT (Appeals) and sought for setting aside the order passed by the Appellate Tribunal.

5. On the other hand, Sri.B.S.Raghu Prasad, learned counsel appearing for the respondent-assessee contended that there is no infirmity or irregularity in the order passed by the Appellate Tribunal. Further, Section 55-A of the Income Tax Act deals with the capital gain for the purpose of assessing the fair market value of the capital assets in connection with the computation of the capital gain. It incorporates several provisions relating to the Valuation Officer in the Wealth Tax Act. The Valuation Officer appointed under the Wealth Tax Act can discharge his function within the statutory limits under which he was appointed. It is not open to the Valuation Officer to act in his capacity as a Valuation Officer. He also relied upon the following paragraph of the judgment reported in (2003) 262 ITR 407 (supra):

“In an assessment of the assessee to the income tax, the Assessing Officer cannot refer to the Valuation Officer the question of cost of construction of a House property built by the assessee : section 55-A of the Income Tax Act, 1961, can have no application to such a matter. The power of the Assessing Officer under Section 131(1) and 133(6) is distinct from and does not include the power to refer a matter to the Valuation Officer under section 55-A. A report of the Valuation Officer under section 55-A may be considered by the Assessing Officer as a piece of evidence if it is relevant. However, the power of inquiry granted to an Assessing Officer under Section 133(6) and 142(2) does not include power to refer the matter to the Valuation Officer for an enquiry by the latter.”

Hence, the reliance placed on the Valuation report by the Assessing Authority is contrary to law.

6. Further, the Valuation Officer relying upon the CPWD rates has taken into consideration the plinth area to value the building. Usually for valuation of the building, the DSR rates and PWD procedure will be followed. The cost of the materials was not taken into consideration. After valuation of the building, more than three years has been taken to complete the construction of the building. In the meantime, the building was leased to the tenant and tenant has put up

a partition wall and flooring, which suits to his convenience. After receipt of report from the Valuation Officer, the same was made available to the assessee and the assessee has filed detailed objections to the said report. Without getting clarification from the District Valuation Officer regarding the objections filed by the assessee, the Assessing Officer has proceeded to fix the value of the building, which is contrary to law and sought for dismissal of the appeals.

7. We have carefully considered the arguments addressed by the learned counsel for the parties and perused the orders impugned.

8. It is not in dispute that the assessee had constructed the building in question during the assessment years 1998-1999 to 2000-2001. The Assessing Officer during survey noticed the construction of building. During the enquiry, the assessee has admitted the cost of construction as Rs.1,72,98,255/-. The Assessing Officer not agreeing with the assessee referred the matter to the District Valuation Officer to estimate the cost of construction. The District

Valuation Officer estimated the value of building at Rs.2,61,54,033/-. The assessee filed objections to the estimation of the valuation of the building. The Assessing Officer addressed a letter to the District Valuation Officer to clarify the objections raised by the assessee. However, the District Valuation Officer has not submitted his reply to the objections raised. In view of that, the estimated value of the building submitted by the District Valuation Officer has been taken into consideration and called upon the assessee to pay the additional tax. The appeal filed by the assessee was dismissed by the CIT (Appeals). However, Income Tax Appellate Tribunal allowed the appeal filed by the assessee solely on the ground that the Assessing Authority cannot rely upon the Valuation Report submitted by the District Valuation Officer under Section 55-A of the Act and the valuation has been done in CPWD rates. The valuation taken by the Assessing Officer is at a higher rate compared to the DSR rates fixed by the PWD and also relied upon the judgment of the Hon'ble Supreme Court in (2003) 262 ITR 407 cited supra. However, the Tribunal has lost sight of the

amendment brought into the Income Tax Act and the new Section 142-A inserted by the Finance (No.2) Act 2004 w.e.f.

15-11-1972. Section 142-A of the Act reads as under:

- (1) *For the purposes of making an assessment or reassessment under this Act, where an estimate of the value of any investment referred to in section 69 or section 69B or the value of any bullion, jewellery or other valuable article referred to in section 69A or section 69B or fair market value of any property referred to in Sub-Section (2) of section 56 is required to be made, the Assessing Officer may require the Valuation Officer to make an estimate of such value and report the same to him.*
- (2) *The Valuation Officer to whom a reference is made under sub-Section(1) shall, for the purposes of dealing with such reference, have all the powers that he has under section 38A of the Wealth-tax Act, 1957 (27 of 1957).*
- (3) *On receipt of the report from the valuation Officer, the assessing Officer may after giving the assessee an opportunity of being heard, take into account such report in making such assessment or reassessment:*

Provided *that nothing contained in this section shall apply in respect of an assessment made on or before the 30th day of September, 2004, and where such assessment has become final and conclusive on or before that date, except in cases where a reassessment*

is required to be made in accordance with the provisions of section 153A.

9. In view of the amendment to the Income Tax Act, the Assessing Officer has got power to refer the matter to the District Valuation Officer for the purpose of valuation. Further, the Tribunal has committed an error in holding that CPWD rates adopted by the District Valuation Officer was not correct without assigning any reason to arrive at such a conclusion. Hence, the order passed by the Income Tax Appellate Tribunal cannot be sustained.

10. It is the specific case of the respondent-assessee that he had filed detailed objections to the District Valuation report. The Assessing Officer referred the objections to the District Valuation Officer. The District Valuation Officer has not given any reply with regard to the objections raised by the assessee. However, the Assessing Officer without considering the objections proceeded to assess the value of the building. The amended section 142-A(3) contemplates that on receipt of the report from the Valuation Officer, the

Assessing Officer must give the assessee an opportunity of being heard and then take into consideration such report in making such assessment or reassessment. In the instant case, on the objections filed by the assessee, though the matter was referred to the District Valuation Officer for his comments, without waiting for further comments from the District Valuation Officer, the Assessing Officer has proceeded with the matter without considering the valid objections raised by the assessee. The same was confirmed by the CIT (Appeals). However, the Appellate Authority set aside the said order without remanding the matter for reconsideration. The matter requires to be reconsidered by the Assessing Authority afresh after getting necessary clarification from District Valuation Officer with regard to value of the building constructed by the assessee. Hence, the points are answered in favour of the assessee. Accordingly, we pass the following:

ORDER

The appeals are allowed and remanded to the Assessing Authority to reconsider the matter and pass assessment order afresh in accordance with law.

Sd/-
JUDGE

Sd/-
JUDGE

mpk/-*