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**(2010) 07 P&H CK 0252**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** IT Ref. No. 48 of 1994

Commissioner of Income Tax

APPELLANT

Vs

Nabha Solvex (P) Ltd.

RESPONDENT

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**Date of Decision:** July 7, 2010

**Acts Referred:**

- Income Tax Act, 1961 - Section 142A , 153A, 260A, 55A, 69

**Citation:** (2010) 235 CTR 293

**Hon'ble Judges:** Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

**Bench:** Division Bench

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### **Judgement**

Adarsh Kumar Goel, J.

The Income Tax Appellate Tribunal, Chandigarh Bench (in short "the Tribunal") has referred for opinion of this Court the following questions of law arising out of its order dt. 26th April, 1993 in ITA No. 828/Chd/1988 relating to the asst. yr. 1984-85:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the order of the first appellate authority deleting the addition of Rs. 4,36,780 made as income from undisclosed sources on account of difference between the cost of construction declared by the Assessee and that estimated by the DVO ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the order of the first appellate authority deleting the disallowance of interest attributable to borrowed money utilized for purchase of machinery which was not put to use during the year under consideration ?

2. Learned Counsel for the Revenue fairly states that question No. 2 is covered against the Revenue in view of the judgment of the Hon'ble Supreme Court in [Deputy Commissioner of Income Tax, Ahmedabad Vs. Core Health Care Ltd.](#), . Accordingly, we answer the said question in favour of the Assessee and against the

Revenue.

3. We have heard the learned Counsel for the parties on question No. 1.

4. Briefly the facts may be noticed. The Assessee is a private limited company and filed return on 30th Oct., 1984 for asst. yr. 1984-85 declaring an income of Rs. 1,04,490. The Assessee raised certain construction in the factory building and the AO referred the matter to the valuation cell. The Departmental Valuation Officer (in short "the DVO") estimated the cost of construction at Rs. 8,89,540. The Assessee also got the services of a registered valuer who estimated the cost at Rs. 4,56,900 but the AO adopted the valuation made by the DVO. On that basis, addition of Rs. 4,36,780 to the income was made. On appeal, the CIT(A) deleted the addition made at Rs. 4,36,780. The CIT(A) held that since the construction of unit No. 2 was not complete in the previous year relevant to asst. yr. 1984-85, the valuation by the DVO was premature. On further appeal by the Revenue, the Tribunal affirmed the order of CIT(A) and held that the AO was not justified in referring the case to the DVO as the building was still under construction. Hence, the present reference by the Revenue.

5. The Tribunal while adjudicating the matter against the Revenue recorded that there was no justification for the AO to refer the case of the Assessee to the valuation cell as the building was still under construction. It was also recorded that the construction of two units of the factory building was mixed up and separate details were not available. The Tribunal had relied upon the decision of Madras High Court in [Commissioner Of Wealth-Tax Vs. S. Venugopala Konar And Others.](#), to delete the addition.

6. Learned Counsel for the Revenue submitted that even incomplete construction had the valuation and, therefore, the Tribunal was not justified in holding that in case of incomplete construction, the reference to DVO was premature and that the judgment of Madras High Court in S. Venugopala Konar's case (supra) was distinguishable as the issue considered therein was different. Learned Counsel for the Revenue has sought to draw support from the insertion of Section 142A in the Act w.e.f. 15th Nov., 1972.

7. On the other hand, learned Counsel for the Assessee submitted that the case related to the asst. yr. 1984-85 during which period there was no specific provision on the basis of which reference could be made to the DVO. According to him, the reference made by the AO to the DVO could be said to one u/s 55A of the IT Act, 1961 (in short "the Act"). According to the learned Counsel, as there was no provision on the basis of which reference could be made to the DVO, the said reference was bad in view of the decision of the apex Court in [Amiya Bala Paul Vs. Commissioner of Income Tax, Shillong](#). Learned Counsel further submitted that even if reliance is placed on Section 142A of the Act which has been inserted by Finance (No. 2) Act, 2004 w.e.f. 15th Nov., 1972, the assessments which stood

completed on or before 30th Sept., 2004 and where such assessment had become final and conclusive on or before that date, valuation in those cases could not be referred to DVO in view of the proviso. In support of his submissions, learned Counsel has placed reliance on the judgment of this Court in [Commissioner of Income Tax Vs. Krishan Lal Dua,](#), Delhi High Court in [Commissioner of Income Tax Vs. Sudhish Kumar,](#), Calcutta High Court in [Income Tax Officer and Others Vs. Kajaria Investment and Properties P. Ltd.,](#) and Allahabad High Court in CIT v. Smt. Shashi Agarwal (2007) 210 CTR (All) 205. Learned Counsel further submitted that even if the judgment of Madras High Court in S. Venugopala Konar's case (supra) was not applicable, yet there was no material before the AO to reject the valuation declared by the Assessee by appointing registered valuer.

8. We have given our thoughtful consideration to the respective submissions made by the learned Counsel for the parties.

9. It would be advantageous to refer to Section 142A of the Act as inserted by Finance (No. 2) Act, 2004 w.e.f. 15th Nov., 1972 which reads thus:

142A. Estimate by Valuation Officer in certain cases.-(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 is required to be made, the AO 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 u/s 38A of the WT Act, 1957 (27 of 1957).

(3) On receipt of the report from the Valuation Officer, the AO 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.

10. A plain reading of Sub-section (1) makes it clear that for making an assessment or reassessment under the Act, an estimate is required to be made in respect 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 is required to be made, the AO may refer the matter to the Valuation Officer for estimating the said value and reporting the matter to him. Sub-section (2) stipulates that the Valuation Officer to whom the reference is made under Sub-section (1)

shall, have all the powers similar to Section 38A of the WT Act, 1957 while dealing with such reference. According to Sub-section (3), the AO on receipt of report from the Valuation Officer may take the same into consideration while making assessment or reassessment after providing an opportunity of being heard to the Assessee. However, a proviso has been added, according to which this section shall not apply in respect of an assessment made on or before 30th Sept., 2004 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. The amendment is inserted retrospectively from 15th Nov., 1972.

11. The question regarding the applicability of Section 142A of the Act was subject matter of consideration before this Court in Krishan Lal Dua's case (supra) wherein the assessment had become final on 31st March, 1995 and the same was not liable to reassessment u/s 153A of the Act, it was held that Section 142A of the Act would not be applicable as the proviso was attracted. The Allahabad High Court in Smt. Shashi Agarwal's case (supra) had held that where the Tribunal had passed the order before the cut-off date prescribed under the proviso to Section 142A of the Act and the appeal u/s 260A of the Act being maintainable before the High Court only on substantial question of law, therefore, it could not be said to be continuation of the assessment proceedings within the meaning of proviso to Section 142A of the Act. The AO, thus, had no power to refer the matter to the DVO. Similar view has been taken by Delhi and Calcutta High Courts.

12. In view of the above, we hold that Section 142A of the Act is not attracted to the facts of the present case and, thus, no reliance can be placed upon that. Once that is so, then as laid down by the apex Court in Smt. Amiya Bala Paul's case (supra), the reference made by the AO to the DVO was not justified. Consequently, the addition sought to be made on the basis of report of the DVO cannot legally be done.

13. Accordingly, question No. 1 referred to above is also answered against the Revenue and in favour of the Assessee.