

**(2009) 07 AHC CK 0329**

**Allahabad High Court**

**Case No:** None

Commissioner of Income Tax

APPELLANT

Vs

Jeevandeep Apartments (P) Ltd.

RESPONDENT

**Date of Decision:** July 7, 2009

**Acts Referred:**

- Income Tax Act, 1961 - Section 142A, 142A(1), 147, 148, 153A

**Citation:** (2010) 325 ITR 217

**Hon'ble Judges:** S.K. Gupta, J; Prakash Krishna, J

**Bench:** Division Bench

**Final Decision:** Dismissed

### **Judgement**

1. In the memo of appeal the following question of law has been sought to be raised:

Whether on the facts and in the circumstances of the case, the hon"ble Income Tax Appellate Tribunal was justified in upholding the order of the Commissioner of Income Tax (Appeals) deleting the addition made by the Assessing Officer on account of difference between the cost of construction, estimated by the valuation officer and that disclosed by the assessee being unexplained investment u/s 69 of the Income Tax Act, by placing reliance on the judgment in the case of Amiya Bala Paul Vs. Commissioner of Income Tax, Shillong, without taking into consideration the amended provisions of Section 142A(1) of the Income Tax Act, introduced with retrospective effect?

2. Heard learned standing Counsel for the Department.

3. Relying on the provisions of Section 142A of the Act which was inserted by the Finance (No. 2) Act, 2004 with effect from November 14, 1972 the learned standing Counsel submits that the Tribunal committed an error of law in setting aside the reassessment proceedings. According to him, the Assessing Officer was fully

justified in taking recourse to the provisions u/s 147/148 of the Act on the basis of the report of the Departmental Valuation Officer.

4. We have perused the three orders passed by the authorities filed along with the memo of appeal as also the proviso of Section 142A of the Act which is as under:

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.

5. We find that in the present case the reassessment proceedings would be hit by the proviso as it also forms part of Section 142A of the Act, inserted by the Finance (No. 2) Act 2004 with effect from November 14, 1972. The proviso has been reproduced above. From the reassessment order we find that the original assessment order was passed on March 21, 2002 that is much before September 30, 2004, it had become final between the parties on the date when Section 142A was inserted by the Finance (No. 2) Act, 2004 as there is nothing on record to show to the contrary.

6. In the circumstances we find that no substantial question of law is involved. The appeal is therefore, dismissed.