

AO couldn't presume understatement of income merely on basis of report of DVO; HC quashed reassessment

Summary – The High Court of Delhi in a recent case of Mahashay Chunnilal, (the Assessee) held that opinion of DVO is per se not an information for purpose of reopening of an assessment.

Facts

- A search was carried out at assessee's premises in the course of which it was found that assessee had made investment in construction of a school building.
- On the basis of documents seized and certain information sought from assessee, the Assessing Officer completed the assessment.
- Subsequently, the Assessing Officer referred the matter to the DVO in order to ascertain amount invested in construction of school building.
- On the basis of report of DVO, the Assessing Officer initiated reassessment proceedings taking a view that assessee had understated value of investment in construction of school building.
- The assessee filed instant writ petition challenging validity of reassessment proceedings taking a plea that it had duly disclosed all material facts necessary for making the assessment and, thus, impugned reassessment proceedings were initiated on the basis of mere change of opinion which was impermissible in law.

Held

- The Assessing Officer at the time of original assessment was fully conscious and aware of the construction undertaken, the extent of construction and the expenditure declared/claimed. In case of doubt, he should have obtained valuation report before the assessment order was passed. He did not obtain the valuation report and completed the assessment, without making any addition on the said ground. The valuation report was received subsequently and became the sole ground for reopening of assessment.
- Further, in the present case, the valuation report is per se tentative and vague. The valuation report of said nature requires some statement or an averment by the Assessing Officer as to what was the basis and why he should proceed on the valuation report, its contents and why he should rely on the same while recording reasons to believe. This in the present case is lacking and absent.
- The contention of the revenue that the report submitted by the District Valuation Officer was material on the basis of which the reopening proceedings could be initiated in the facts of the present case is not sustainable.
- It is well settled that the Assessing Officer has to apply his mind to any information in form of the valuation report and must form a belief thereon that there is escapement of income. The opinion of the DVO is per se not an information for the purpose of reopening of an assessment. The Assessing

Officer has to apply his mind to the report of the DVO and only if on application of mind, if he forms a belief that there is escapement of income, he can seek to reopen the assessment.

- For the report of the Valuation Officer to become a basis for the reopening, the Assessing Officer should have applied his mind to the report of the Valuation Officer. The Assessing officer has clearly not applied his mind to the report of the Valuation Officer.
- In view of the above, it is held that the Assessing Officer has merely intended to revisit the concluded assessment and it is a clear case of change of opinion which is not permissible in law. The Impugned order is hereby set aside and the proceedings initiated pursuant to the impugned notice are hereby quashed. The writ petition is allowed