

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 04.03.2026

Pronounced on: 12.03.2026

CORAM

**THE HONOURABLE DR JUSTICE G.JAYACHANDRAN
AND
THE HONOURABLE MR.JUSTICE SHAMIM AHMED**

T.C.A.No.201 of 2013

M.Ravindran,
29/7, Mariamman Koil Street,
Villupuram.
PAN: AAFPR2113P

... Appellant

Vs.

The Income Tax Officer,
Ward I (1),
Villupuram.

... Respondent

Prayer: Tax Case Appeal has been filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, dated 15.01.2013 in ITA.No.2075/MDS/2012 for the Assessment Year 2007-2008.

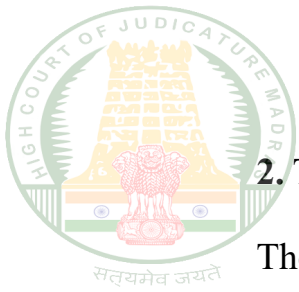
For Appellant: Ms.Madhumitha Kesavan and
Mrs.Sudha Kesavan

For Respondent: Mr.S.Sathiyarayanan,
Senior Standing Counsel

J U D G M E N T

Dr.G.Jayachandran, J.

The Tax Case Appeal is filed by the assessee, being aggrieved by the order passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, in I.T.A.No.2075/MDS/2012 dated 15.01.2013.



2. The brief facts leading to the appeal are as below:

The appellant/assessee is an individual assessed to tax on his income through property and rent for the Assessment Year 2007-2008. He admitting a total income of Rs.1,10,880/- and filed the income tax returns on 16.05.2007. The return was processed under Section 143(1) of the Income Tax Act, converted into scrutiny noticing escapement of income in the form of investment in the building construction.

3. On scrutiny, it was revealed that for the Assessment Year 2008-2009, the balance sheet of the assessee disclosed an investment in the building construction at Ravindra Residency (Ravindra Arcade), Trichy Main Road, Villupuram, to the tune of Rs.17,80,200/-. Presuming that the investment in the building construction was made during the Financial Year 2007-2008, relevant to the Assessment Year 2008-2009. A notice was issued under Section 143(2) on 29.09.2009.

4. In order to ascertain the actual cost of investment, request was made to the District Valuation Officer, Chennai, on 17.06.2010. On receipt of his valuation report, enquiry was proceeded. In the course of enquiry, the assessee had contended that the investment in the building construction was during the Financial Year 2006-2007 and it is relevant to the Assessment Year 2007-2008.



As a result of the said disclosure by the assessee, the assessment for the Assessment Year 2007-2009 was reopened under Section 147 and a notice was issued to the assessee.

5. In response to the notice, the Book of accounts, Bills/Vouchers and other details to substantiate the claims deductions and exemptions etc., was produced by the assessee. However, rejecting the books of accounts and other documents being contrary to the construction agreement for Rs.17,80,200/- with M/s.INDO Designers on 21.05.2006. Thereafter, the District Valuation Officer was sought for valuation of the building which owned by the individual appellant as well as the HUF. The District Valuation Officer estimated the value of the property at Rs.1,27,67,021/-. Since the building was constructed upon the land owned by both the individual and the HUF, the valuation is in respect of ground floor and basement portions of the construction. After segregating, the entitlement of the individual and the HUF, the District Valuation Officer estimated the value of construction of the building portion of the individual/appellant at Rs.41,71,518/-. Whereas, in the balance sheet furnished by the assessee, the costs of construction was shown as Rs.17,80,200/-. Thus, the difference of Rs.23,91,318/- was found as escaped income.



6. After considering the materials submitted by the assessee, the Assessing Officer found an unexplained investment of Rs.23,91,318/- in the building construction for the Assessment Year 2007-2008, after adding to the total income of the assessee and fixed a sum of Rs.12,18,652/- as total tax payable.

7. Being aggrieved by the notice of demand for a sum of Rs.12,18,652/- issued based on the assessment order, the appellant/assessee filed appeal before the Commissioner of Income Tax. The Commissioner of Income Tax, partly allowed the appeal, with the following observations:

“The above submissions of the assessee have been considered carefully. As stated by the assessee, the property constructed by the assessee was in rural place. The DVO in his valuation report adopted the CPWD rates while arriving at the estimated cost of construction at Rs.41,71,518/-. The Honourable High Court of Madras in the case of CIT Vs. Smt.V.Gajalakshmi (2011)(11 Taxmann.com 173)(Mad) held that State PWD rates are to be applied. Similar decisions were also rendered by Rajasthan High Court in the case of CIT Vs. Dinesh Talwar (265 ITR 344) (Raj). wherein it was held that State PWD rates are to be adopted while valuing the property. Reliance is further placed on the decisions of Delhi High Court in the case of CIT Vs. Bajrang Lal Bhansal (12 Taxmann.com 88)(Del), Chennai Bench of ITAT in the case



of ITA.No.262/Mds/2006 dated 30.11.2006 and 2271/Mds/2006 dated 16.11.2007.

In view of the above decisions, the Assessing Officer is not justified in adopting the cost of construction at Rs,41,71,518/-, based on the DVO's report which was based on the CPWD rates. Therefore, the Assessing Officer is required to adopt the state PWD rates for the purpose of valuation while determining the unaccounted investment in construction of property.

Therefore, the Assessing Officer is directed to estimate the cost of construction of the building by adopting the State PWD rates as against the CPWD rates adopted by the DVO in his valuation report."

8. Aggrieved by the order of the Commissioner of Income Tax, dated 23.07.2012, the assessee preferred an appeal before the Income Tax Appellate Tribunal on the following grounds:

"1. The Commissioner of Income Tax Appeals has erred in not considering the appellants grounds that the Assessing officer has no right to refer the matter to the DVO when the construction has been carried out by entering in to an agreement with a builder.

2. The Commissioner of Income Tax Appeals has failed to appreciate that the Assessing officer has neither rejected the books nor questioned the genuineness of the written agreement by making any, enquiry with the party to the contract.



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3. The Commissioner of Income Tax Appeals has not considered the difference in area of construction as per the valuation report and the contract agreement

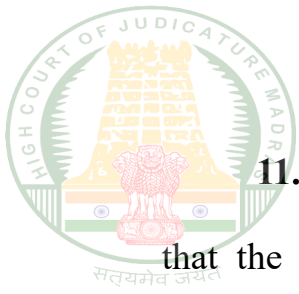
4. For the foregoing grounds and for the grounds that may be raised at the time of hearing the appellant humbly prays that the entire addition may be deleted and thus render justice.”

9. After hearing both sides and scrutinizing the records, the Tribunal dismissed the appeal preferred by the assessee and confirmed the order of the Commissioner of Income Tax (Appeals)-XII. Aggrieved by the same, the present appeal has been filed before this Court invoking Section 260A of Income Tax Act, 1961.

10. At the time of admission, the following substantial question of law was framed by this Court for consideration:

“1. Whether on the facts and circumstances of the case, the Appellate Tribunal was right in not following the decision of the Supreme Court in the case of SARGAM CINEMA Vs. CIT reported in 328 ITR 513 that without rejecting the book of accounts the assessing officer cannot refer the matter to the District Valuation Officer?

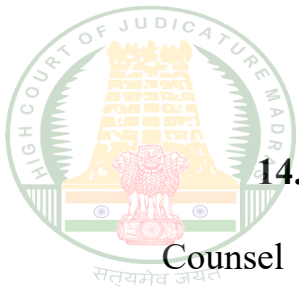
2. Whether on the facts and circumstances of the case, the Appellate Tribunal was right in dismissing the appeal on the appellant by not appreciating the fact that the Commissioner of Income Tax (Appeals) has not adjudicated the ground no.4 which was specifically raised before the Commissioner of Income Tax (Appeals)?”



11. The Learned Counsel appearing for the appellant assessee submitted that the Tribunal had grossly erred in holding the appeal in favour of the Department, ignoring the dictum laid down by the Hon'ble Supreme Court in ***Sargam Cinema, Haldwani vs. Commissioner of Income Tax, Haldwani*** reported in (2010) 15 SCC 546(1).

12. The prime contention of the appellant is that before referring to the District Valuation Officer, the Assessing Officer and the Appellate Authorities ought to have first rejected the books of accounts submitted by the assessee. Without rejecting the books of accounts, the opinion of the Departmental Valuation Officer cannot be resorted to.

13. To buttress the above submission, in addition to the judgment of the Hon'ble Supreme Court in ***Sargam Cinema, Haldwani vs. Commissioner of Income Tax, Haldwani*** reported in (2010) 15 SCC 546(1), relied upon the judgment of the Hon'ble Supreme Court in ***Assistant Commissioner of Income Tax, Gujarat vs. Dhariya Construction Company*** reported in (2010) 15 SCC 251 as well as the judgment of the Division Bench of this Court in ***Commissioner of Income Tax vs. A.L.Homes*** reported in (2018) 401 ITR 285.



14. For better appreciation of the arguments placed by the Learned Counsel for the appellant, the judgments referred and relied by the Learned Counsel for the appellant is extracted below.

(i) ***Sargam Cinema, Haldwani vs. Commissioner of Income Tax, Haldwani*** reported in ***(2010) 15 SCC 546(1)***, wherein it was held that:

“1. Delay condoned. Leave granted. By consent, matter is taken up for final hearing.

2. In the present case, we find that the Tribunal decided the matter rightly in favour of the assessee inasmuch as the Tribunal came to the conclusion that the assessing authority (AO) could not have referred the matter to the Departmental Valuation Officer (DVO) without books of accounts being rejected. In the present case, a categorical finding is recorded by the Tribunal that the books were never rejected. This aspect has not been considered by the High Court. In the circumstances, reliance placed on the report of the DVO was misconceived.

3. For the above reasons, the impugned judgment of the High Court is set aside and the order passed by the Tribunal stands restored to the file. Accordingly, the assessee succeeds.



4. *The civil appeal is allowed. No order as to costs.*”

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(ii) ***Assistant Commissioner of Income Tax, Gujarat vs. Dhariya***

Construction Company, reported in (2010) 15 SCC 251, wherein it was held that:

“1. Having examined the record, we find that in this case, the Department sought reopening of the assessment based on the opinion given by the District Valuation Officer (DVO).

2. Opinion of the DVO per se is not an information for the purposes of reopening assessment under Section 147 of the Income Tax Act, 1961. The AO has to apply his mind to the information, if any, collected and must form a belief thereon.

3. In the circumstances, there is no merit in the civil appeal. The Department was not entitled to reopen the assessment.

4. The civil appeal is, accordingly, dismissed. No order as to costs.”

(iii) ***Commissioner of Income Tax vs. A.L.Homes***, reported in (2018) 401

ITR 285, wherein it was held that:

“10. The question of whether cost of construction can be referred to the District Valuation Officer for estimation without first rejecting the books of account



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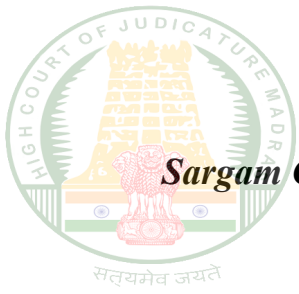


maintained by the respondent-assessee has been answered in favour of the assessee by the Supreme Court in Sargam Cinema v. CIT reported in (2010) 328 ITR 513 (SC).

.....

12. However, the judgment of the Supreme Court in Sargam Cinema (supra) clearly lays down the law. The judgment in Sargam Cinema (supra) may be short, as argued. However, the binding value of a judgment as a precedent does not depend on its length. The Supreme Court clearly held that "the Tribunal decided the matter rightly in favour of the assessee inasmuch as the Tribunal came to the conclusion that the assessing authority could not have referred the matter to the Departmental Valuation Officer (DVO) without the books of account being rejected. In the present case, a categorical finding is recorded by the Tribunal that the books were never rejected. This aspect has not been considered by the High Court. In the circumstances, reliance placed on the report of the DVO was misconceived". The judgment of the High Court was set aside on that ground."

15. In the three judgments cited above, the points emphasis is that the Assessing Officer cannot refer the matter to the District Valuation Officer without rejecting the books of accounts. Taking advantage of the fact that the Assessing Officer has not expressly stated in the assessment order that the books of accounts were rejected, argument is placed by the Learned Counsel for the appellant as if the Tribunal has failed to follow the dictum laid down in



Sargam Cinema case cited supra.

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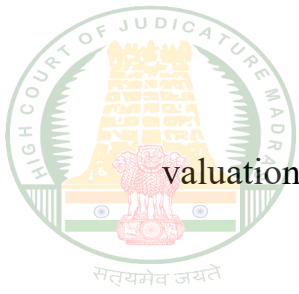
16. The two judgments of the Hon'ble Supreme Court cited above, in short only speak about the dictum but not the facts. The judgment of this Court in *Commissioner of Income Tax vs. A.L.Homes*, provides us sufficient facts to understand the dictum to be followed in case of relying on the opinion of the District Valuation Officer.

17. While examining the assessment order in the present case, we find that the Assessing Officer has restored to District Valuation Officer only after inconsistent plea taken by the assessee, regarding the investment made on the building construction and the costs of investment while filing the returns by the assessee on 16.05.2007 for the Assessment Year 2007-2008, he had declared a total income of Rs.1,10,880/-, only. After converting the case into scrutiny case and issuance of notice under Section 148 read with Section 147, noticing escapement of income in the form of investment in the building construction, balance sheet for the Assessment Year 2008-2009, the assessee had disclosed the investment of Rs.17,80,200/-. Based on the inconsistency in the books of accounts and recording the same, the Assessing Officer has proceeded further sought for the District Valuation Officer's report on 27.09.2010 splitting up the income of individual and his HUF. District Valuation Officer has valued the



property at Rs.1,27,67,021/- by splitting the shares of the individual/assessee and the HUF. The value of the construction been ascertained as Rs.41,71,518/-, out of which the earlier disclosure of Rs.17,80,200/- was deducted and the escaped income fixed as Rs.23,91,318/-. It is not the case of proceeding with the opinion of the District Valuation Officer without rejecting the books of accounts. The discussion in the assessment order would clearly show that the books of accounts produced by the assessee been rejected and only thereafter, the opinion of the District Valuation Officer been sought for. In express term, the assessment order deals about the books of account produced by the assessee been considered and rejected pointing out the discrepancies. When no other document produced before the Assessing Officer, we hold whatever is pleaded in the appeal, appears to be an afterthought to impress on the Court that Books of Accounts not rejected before seeking District Valuation Officer report.

18. The Commissioner of Income Tax who heard the First Appeal, had not noticed any violation of procedure on the part of the Assessing Officer resorting to the District Valuation Officer's opinion. According to the Commissioner the valuation ought to have been based on the State Public Works Department rates and not based on the Central Public Works Department rates. In other words, the Commissioner of Income Tax (Appeal) faulted the method of valuation by the District Valuation Officer but not the procedure seeking



valuation by District Valuation Officer.

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19. Further, on appeal to the Tribunal, after due consideration to the grounds of appeal, the Tribunal had dismissed the appeal preferred by the assessee with the following observations:

“8. We have heard both parties and also gone through the order of the Assessing Officer as well as CIT(A) and short paper book filed by the assessee. The facts are not In dispute. Since the Assessing Officer had referred the matter to DVO to ascertain the cost of construction of the building, who later on estimated it by following CPWD rates which in turn have been modified by the CIT(A) to the extent that the Assessing Officer has been directed to adopt the State PWD rates. The contention of the assessee is that the Assessing Officer has wrongly made reference to the DVO and his arguments in this regard have been considered by the CIT(A). After considering the arguments in detail, we are of the view that in the paper book, the assessee has not enclosed his ground of appeal raised before the CIT(A). In the absence of Form 35 which was filed before the CIT(A) containing assessee’s grievances, we are unable to accept assessee’s submissions. Similarly, even in arguments raised before the CIT(A), the assessee’s contention was that the DVO had wrongly relied upon the CPWD rates so as to determine the cost of construction instead of State PWD rates. The said plea of the assessee stands accepted.

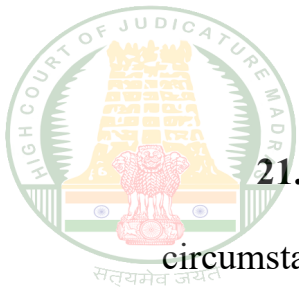


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Therefore, we are of the view that the assessee has failed to support its contention by way of any material on record its submissions that the said plea was raised before CIT(A). Even if it is presumed that the assessee has raised the plea before the CIT(A), still it does not help the cause of the assessee as the Assessing Officer has no other option except to refer the matter to DVO so as to ascertain the cost of construction. Hence the plea of the assessee that the Assessing Officer could not have referred the matter to DVO does not warrant acceptance. Therefore, in the instant case, we see no reason to interfere with the well reasoned findings of the CIT(A).”

20. On applying the dictum laid down by the Hon’ble Supreme Court in ***Sargam Cinema, Haldwani vs. Commissioner of Income Tax, Haldwani***, which has held that, without rejecting the books of accounts presented by the Assessee, the Department should not be restored to the opinion of District Valuation Officer. We find in the facts of the case in hand the Assessing Officer has in fact considered whatever books of accounts produced by the assessee and rejected it, recording the apparent contradictions in the returns filed by the assessee and the building contract agreement. Only thereafter, the Assessing Officer has resorted to get the opinion of the District Valuation Officer.

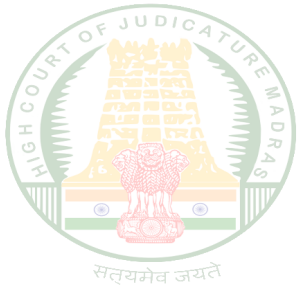


21. In view of the above discussion, we hold that, based on the facts and circumstances, it is incorrect to plead that the Assessing Officer has failed to reject the books of accounts produced by the assessee before resorting to get the District Valuation Officer's report. The records and evidence clearly establishes that the books of accounts produced by the assessee were considered and rejected. Only thereafter, the Assessing Officer has resorted to get the District Valuation Officer's report splitting the value of the building between the individual and HUF. Based on the District Valuation Officer report, substantial portion of investment been suppressed and that portion of income been deemed to be escaped income of the assessee.

22. As a result, we hold that the Tax Appeal deserves to be dismissed. Accordingly, the Tax Case Appeal is dismissed. There shall be no order as to costs.

(G.JAYACHANDRAN, J.) (SHAMIM AHMED, J.)
12-03-2026

Internet :Yes.
Neutral Citation :Yes.
Index :Yes/No.
To,
The Income Tax Officer,
Ward 1 (1),
Villupuram.



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T.C.A.No.201 of 2



Dr.G.JAYACHANDRAN, J.
AND
SHAMIM AHMED, J.
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Pre-delivery Judgment made in
T.C.A.No.201 of 2013

12.03.2026