

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G', NEW DELHI**

**Before Sh. Bhavnesh Saini, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**(E-Court Module)**

**ITA No. 4223/Del/2019 : Asstt. Year : 2009-10**

Teen Murti Products Pvt. Ltd., C/o Raj Kumar & Associates, CA, L-7A (LGF), South Extension, Part-II, New Delhi	Vs	ACIT, Central Circle, Ghaziabad
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AABCT3359B</b>		

**Assessee by : Sh. Raj Kumar, CA**

**Revenue by : Sh. H.K. Choudhary, CIT DR**

**Date of Hearing: 30.09.2020**

**Date of Pronouncement: 12.10.2020**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-27, New Delhi dated 07.03.2019.

2. Following grounds have been raised by the assessee:

*"1. That under the facts and circumstances, reference to DVO for estimating the cost of repair and renovation of building is absolutely illegal and un-called for in law as well as on merits.*

*1.1 That in the absence of any incriminating material found as a result of search, the issue of investment in building is beyond the jurisdiction of Asstt. U/s. 153 A and consequently the reference to valuation cell is also un-called for.*

*1.2 That without prejudice, the valuation made by the DVO at Rs.37,50,585/- against declared in books at Rs.34,43,318/- thereby in excess by Rs.3,07,267/- is absolutely unsustainable in law as well as on merits.*

*1.3 That the Ld. AO again erred in law as well as on merits in making addition of Rs.3,07,267/- U/s. 69 B for alleged un - explained expenditure in renovation and repair of building out of total difference of Rs. 17,46,560/- for A.Y.07-08, 08-09 & 09-10 collectively. No addition at all should have been made.*

*1.4 That without prejudice, the nominal difference of 7.5% between the valuation as per DVO report and as declared by the assessee and since the DVO report is simply based on human estimations, therefore in the absence of any material found showing unaccounted investment in construction / renovation, the DVO report should not be acted upon and addition of Rs.3,07,267/- should not be made."*

3. A search & seizure operation was conducted on 09.10.2009 u/s 132 of the Income Tax Act, 1961 in the premises of M/s Mankind Pharma Ltd. and its associated companies, residential premises of the Directors and their relatives were also covered.

4. During the course of assessment proceedings u/s 153A, the AO observed that the assessee has made investment in the building in the years under consideration. Accordingly, the AO has referred the matter to DVO vide letter dated 17.10.2011. The report of DVO dated 21.12.2011 made an estimate of investment at Rs.2,49,06,552/- as against Rs.2,31,59,992/- in the books of the assessee in different assessment years as under:

A.Y.	Value as per valuation report of DVO	Value as per books	Difference	Percentage
(1)	(2)	(3)	(4)	
2007-08	67,61,858/-	62,07,891/-	5,53,967/-	8.92%
2008-09	1,43,94,109/-	1,35,08,783/-	8,85,326/-	6.55%
2009-10	37,50,585/-	34,43,318/-	3,07,267/-	8.92%
<b>Total</b>	<b>2,49,06,552/-</b>	<b>2,31,59,992/-</b>	<b>17,46,560/-</b>	<b>7.54%</b>

5. Accordingly, the AO after giving reasonable opportunity to the assessee, added the difference of amounts mentioned in col. 4 above in respective assessment years. The addition made for A.Y. 2009-10 is at Rs.3,07,267/-.

6. The Id. CIT (A) confirmed the addition made by the AO. While holding so, the Id. CIT (A) observed as under:

*"5.3 The appellant has further taken the plea that the difference in valuation is very small and even section 55A(b) allows reference to DVO only if in the opinion of AO difference is more than 15%. He contended that the difference here is only 7.5% and should be ignored. It is observed that section 55A(b) gives another parameter of absolute difference of Rs.25,000,-/- also. In the present facts of the case the difference in investment is much more than this amount. Therefore, this plea of the appellant is also rejected."*

7. Heard the arguments of both the parties and perused the material available on record.

1. The Co-ordinate Bench of ITAT Delhi in the case of Alok Swaroop in ITA No. 2191/Del/2015 held that the difference upto 10% with regard to DVO report can be ignored.
2. The Hon'ble High Court of Jammu & Kashmir in the case of Honest Group of Hotels Pvt. Ltd. Vs CIT (177 CTR 232)

held that 10% of the difference of the value estimated by the DVO is liable to be ignored.

3. The Hon'ble High Court of Rajasthan in the case of CIT Vs Pratap Singh, Amro Singh, Rajendra Singh 200 ITR 788 held that 10% difference in the valuation being an issue of estimation, can be ignored.

4. Section 55A(b) reads as under:

*"Section 55A. With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter, the Assessing Officer may refer the valuation of capital asset to a Valuation Officer-*

*(a).....*

*(b) ....., if the Assessing Officer is of opinion-*

*(i) that the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than such percentage\* of the value of the asset as so claimed or by more than such amount as may be prescribed in this behalf."*

\*The prescribed percentage of value of asset referred to in Section 55A(b)(i) is 15% amount referred to in Section 55A(b)(i).

5. Conditions of reference to Valuation Officer as per Rule 111AA reads :

*"Rule 111AA: The percentage of the value of the asset and the amount referred to in sub-clause (i) of clause (b) of Section 55A shall, respectively, be 15% and Rs.25,000/-."*

8. Thus, from a straight reading of the provisions of the Act u/s 55A(b)(i), Rule 111AA, orders of the ITAT, judgments of the Hon'ble High Courts and keeping in view the fact that the estimation made by the DVO differs only 8.92% with that of the fair market value, which is less than 15% prescribed by the provisions of the Act and the less than 10% as held by the various judicial forums, we hereby direct that the addition made by the AO be obliterated.

9. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 12/10/2020.

Sd/-

**(Bhavnesb Saini)**  
**Judicial Member**

**Dated: 12/10/2020**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**