

**IN THE HIGH COURT FOR THE STATE OF TELANGANA AT  
HYDERABAD**

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**ITTA.No.47 of 2013**

Between:

The Commissioner of Income Tax-IV

.... Appellant

And

Legend Estates Pvt. Ltd.

...Respondent

DATE OF JUDGMENT PRONOUNCED: **26.03.2026**

**SUBMITTED FOR APPROVAL:**

**THE HON'BLE SRI JUSTICE P.SAM KOSHY**

**AND**

**THE HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO**

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| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/ <input checked="" type="checkbox"/> No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals     | <input checked="" type="checkbox"/> Yes/No  |
| 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | <input checked="" type="checkbox"/> Yes/No  |

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**SUDDALA CHALAPATHI RAO, J**

**\* THE HON'BLE SRI JUSTICE P.SAM KOSHY**

**AND**

**THE HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO**

**+ ITTA.No.47 of 2013**

% 26<sup>th</sup> March, 2026

**ITTA.No.47 of 2013**

# The Commissioner of Income Tax-IV

.... Appellant

VS.

\$ Legend Estates Pvt. Ltd.

.. Respondents

! Counsel for the Appellant : **Sri Sudhakar Reddy, learned Senior Standing Counsel for Revenue**

^ Counsel for the Respondent : **Smt K.Pabhabathi, learned counsel representing M.K.Vasanth Kumar**

< Gist:

> Head Note:

? CITATIONS:

1 WP.No.6260 of 2012, dt.20.06.2012

2 ITA.No.806 of 2010, dt.10.10.2013

3 (2009) 319 ITR 276 (Delhi)

4 (2003) 182 CTR (SC) 489

5 2010 TAX PUB(DT) 0893 SC

6 (2005) 94 TTJ 392 (AHD)

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**THE HON'BLE SRI JUSTICE P.SAM KOSHY**

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Dt.26.03.2026

Between:

The Commissioner of Income Tax-IV

.... Appellant

*and*

Legend Estates Pvt. Ltd.

...Respondent

**JUDGMENT:** *(Per the Hon'ble Sri Justice Suddala Chalapathi Rao)*

The instant appeal has been filed by the appellant/revenue assailing the order passed by the Income Tax Appellate Tribunal, Bench 'A', Hyderabad(for short 'ITAT') in ITA.No.1542/H/2010, dt.30.03.2012, for the assessment year 2007-08.

2. The brief facts of the case are that the assessee is a company engaged in the business of building construction and development. For the assessment year 2007-08, the assessee filed its return of income declaring a total income of Rs.1,78,23,580/-.

Further, a survey was conducted by the Income Tax authorities under Section 133A of the Income Tax Act, 1961 (for short 'the Act') on 23.08.2006, and in the said survey, it was revealed that the assessee had not maintained a day-to-day stock register, the cash payments made towards purchase of construction materials as being not verifiable, and the particulars relating to labour charges were not properly mentioned, and however, the assessee had offered income @ 8% of the turnover in the said return. Consequent thereto, the Assessing Officer, without recording any satisfaction, referred the matter to the District Valuation Officer (DVO) under Section 142A of the Act for valuation of the properties so as to ascertain the proper value and the DVO, in his report, estimated the total cost of construction of 22 properties at Rs.55,83,06,733/-.

3. Further, a copy of the valuation report was furnished to the assessee and an explanation was sought as to, why the valuation as per the DVO report should not be adopted for the purpose of assessment, and after considering the objections submitted by the assessee, the Assessing Officer completed the assessment under Section 143(3) of the Act and made an addition under Section 69

of the Act treating the difference in valuation as unexplained income by apportioning the said difference among the assessment years 2004–05 to 2008–09, and for the assessment year 2007–08 the amount was determined at Rs.6,51,01,056/-.

4. Aggrieved by the assessment order passed by the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) (for short, "CIT(A)") and by order, dt.13.10.2010, the CIT(A), dismissed the appeal and confirmed the assessment order passed by the Assessing Officer. Further aggrieved, the assessee filed an appeal before the learned ITAT in ITA No.1542/H/2010 and the learned ITAT, after perusing the material available on record and considering the submissions made by both parties, allowed the appeal by order dt.30.03.2012 and set aside the addition made under Section 69 of the Income Tax Act by the Assessing Officer as per the DVO report.

5. The said order passed by the learned ITAT is challenged in the instant appeal by the Revenue, which is admitted to consider the following substantial questions of law:

Whether on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the reference by

the assessing officer to the District Valuation Officer seeking valuation of the properties as bad and unwarranted and the said report cannot be relied upon in the assessment proceeding?

6. Heard Sri Sudhakar Reddy, learned Senior Standing Counsel for appellant-Revenue and Smt K.Pabhabathi, learned counsel representing M.K.Vasanth Kumar, learned counsel for respondent-assessee.

7. The learned Senior Standing Counsel Sri K.Sudhakar Reddy, contended that the assessee had not properly maintained its books of accounts, such as, the cost of material like sand, steel and other relevant materials, which were not properly accounted for and also the payments made towards labour contracts, which were significantly undervalued, and in view of these discrepancies, the Assessing Officer invoked the provisions of Section 142A of the Act, and referred the matter to the DVO for valuation of the cost of construction relating to 22 properties, who had conducted a detailed inspection and upon enquiry, submitted a report on 14.09.2009.

8. It is further contended by the learned Senior Standing Counsel that as per the report of the DVO, the cost of construction

of 22 properties was estimated at Rs.55,83,05,733/-, whereas the assessee had shown only Rs.38,58,53,662/- and the difference of two amounts was Rs.17,24,53,131/-, which was apportioned for five assessment years and the unexplained expenditure attributable to the assessment year 2007-08 was calculated at Rs.6,51,01,056/-.

9. Learned Senior Standing Counsel would further contend that the Assessing Officer was empowered under Section 142A of the Act to refer the same for matter to the DVO, where the expenditure towards construction appeared to be undervalued. Further, it is contended that the said valuation report was duly served upon the assessee and after considering the objections filed by the assessee, the differential tax was finalized, but, however, as the construction activities relating to the 22 properties was spread over for five years, the differential amount was spread over proportionately among those five years and the addition of Rs.6,51,01,056/- was made for the assessment year 2007-08. As such, the Assessing Officer followed the due procedure contemplated under the provisions of the Act and there was no violation of statutory rights or principles of natural justice.

10. Learned Senior Standing Counsel further contended that the learned ITAT grossly erred in holding that in the absence of rejection of books of accounts under Section 145 of the Act, reference to DVO was not justified and is perverse. The finding of the learned ITAT that the assessee has regularly maintained books of accounts and supporting records relating to materials such as cement, steel, bricks, sand, wood, sanitary wares, labour cost, etc. is untenable and that as the books reflected undervaluation of expenditure, the reference to the DVO is justified, and therefore the learned ITAT's conclusion that no addition could be made without rejecting the books of accounts under Section 145 of the Act, was unsustainable.

11. In support of the aforesaid submissions, learned Standing Counsel has placed reliance on the decision of a Division Bench of this Court in ***Bharathi Cement Corporation Pvt. Ltd. v. The Commissioner of Income Tax-II***<sup>1</sup>, wherein it was held that the assessing authority is empowered under Section 142A to seek a valuation report before taking a final decision regarding reassessment and valuation of investments. The Court observed

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<sup>1</sup> WP.No.6260 of 2012, dt.20.06.2012

that once a final decision is taken, the assessee is at liberty to avail appropriate legal remedies, and accordingly, dismissed the appeal of the assessee as premature. The relevant portion of the judgment is extracted hereunder:

*“Further this is a case where the assessing authority has merely issued a notice earlier to the petitioner calling for certain information regarding valuation of the plant, but subsequently referred the matter to the fourth respondent valuation officer in order to take a decision in the matter. The third respondent is yet to take a decision and pass a final order regarding re-assessment and about the valuation of the investment in question and he may rest his decision on various factors and having regard to the language of Section 142A(1) it can be said that he has that power. Once a decision is taken by the third respondent in this matter and if it goes against the petitioner, it is always open for the petitioner to work out its remedies. Thus the writ petition can be said to be premature”.*

12. Learned Standing Counsel further placed reliance on the decision of the Hon’ble High Court of Punjab & Haryana at Chandigarh in ***Dr.Raghuvendra Singh v. Commissioner of***

***Income Tax, Central Circle, Ludhiana***<sup>2</sup> wherein it was held that as the variance between the declared cost and the valuation exceeded the permissible marginal limit of 15%, the Tribunal was justified in sustaining addition on account of unexplained investment in the construction of the hospital building. The relevant portion of the judgment is extracted hereunder:

13. Drawing a clue from the aforementioned judgments, the learned Standing Counsel contended that the authorities have rightly invoked Section 142A of the Act and after obtaining the valuation report from the DVO, and after giving an opportunity to the assessee to submit objections and by considering the said objections, made the addition under Section 69 of the Act, which is proper, tenable and therefore, the findings arrived by the learned ITAT in allowing the appeal of the assessee are erroneous and the impugned order is liable to be set aside.

14. *Per contra*, learned counsel for the respondent/assessee contended that the Assessing Officer had not rejected the books of accounts under Section 145 of the Act, and once the books of accounts were accepted and no defects were pointed out in the

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<sup>2</sup> ITA.No.806 of 2010, dt.10.10.2013

bills, merely on the presumption that the cost of construction disclosed by the assessee is low, is not justified, as such, no addition can be made on the basis of DVO's report without rejection of the books of accounts, and as such, reference under Section 142A of the Act for valuation was beyond the jurisdiction of the assessing authority and the said report cannot be a basis for arriving at a conclusion for addition under Section 69 of the Act.

15. Learned counsel for the respondent-assessee has supported the findings of the learned ITAT and submitted that the power under Section 142A of the Act can be exercised only when the Assessing Officer finds it necessary to determine the value of the investment and such requirement must arise from material available on record indicating that the estimate shown by the assessee is incorrect or unreliable, as the term 'require' used in Section 142A of the Act is not superfluous but signifies a definite meaning whereby some preliminary formation of mind by the assessing officer is necessary which require him to make a reference to the DVO under section 142A. Learned counsel also placed reliance on the CBDT Circular issued by the Board

Circular, whereby the word 'expenditure' as well as section 69 of the Act, were omitted from the ambit of Section 142A of the Act.

16. Learned counsel for the respondent/assessee has placed reliance on the judgment of a Division Bench of Hon'ble High Court of Delhi in **CIT v. Aar Pee Apartment P. Ltd**<sup>3</sup> wherein the principle laid down by the Hon'ble Supreme Court in **Amiya Bala Paul vs Commissioner Of Income Tax, Shillong**<sup>4</sup>, was followed and observed that the power under Section 142A permits the Assessing Officer to obtain a valuation report only for determining the value of investments or assets referred to in Sections 69, 69A, or 69B of the Act, and does not extend to estimating unexplained expenditure under Section 69C. the relevant portion of the judgment is under:

*"9. It is clear from the reading of sub-s (1) of this provision that it enables the AO to get the valuation done from the Valuation Officer in certain specific types of cases. These would be the cases wherein an estimate of the value of any investment referred to in s. 69 or 69B or the value of any bullion, jewellery or other valuable article referred to in s. 69A or 69B is required. There is no mention about s. 69C of the Act. As is clear from the above, s.69A deals with unexplained*

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<sup>3</sup> (2009) 319 ITR 276 (Delhi)

<sup>4</sup> (2003) 182 CTR (SC) 489

money. Sec. 69B likewise relates to the amount of investment, etc., not fully disclosed the books of account. On the other hand, the provision relates to unexplained expenditure in s.69C.

16. From the reading of sub-s.(1) of s.142A, it is clear that the Legislature referred to the provisions of s.69, 69A and 69B but specifically excluded s.69C. The principle of *causus omissus* becomes applicable in a situation like this. What is not included by the Legislature and rather specifically excluded, cannot be incorporated by the Court through the process of interpretation. The only remedy is to amend the provisions. It is not the function of the Court to legislate or to plug the loopholes in law.

17. In the present case, except the report of the DVO on which the AO relied upon, there was nothing on record to suggest that there was any other evidence to disbelieve the expenditure shown by the assessee. In fact, during the course of arguments, learned counsel for the assessee produced the assessment order which clearly demonstrates that the expenditure shown by the assessee from the time, when it was an ongoing project, was examined and accepted by the AO”.

17. Learned counsel for the respondent/assessee further placed reliance on the judgment of the Hon’ble Supreme Court in **Sargam Cinema v. CIT**<sup>5</sup>, wherein it was held that the Assessing Authority cannot refer the matter to the Valuation Officer without

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<sup>5</sup> 2010 TAXPUB(DT) 0893 SC

the Books of account being first rejected. The Hon'ble Supreme Court observed as under:

*“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 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”.*

18. By drawing clue from the aforesaid judgments, learned counsel for the assessee contended that basic requirement for referring Section 142A of Act is that Assessing Officer must first examine the books of accounts and then after recording categorical finding and if the books of accounts are rejected, thereafter, a reference can be made to the Valuation Officer for determining the cost of construction and since this procedure was not followed in the instant case, the learned ITAT was justified in allowing the appeal of the assessee and thus, contended that the appeal is devoid of merits and is liable to be dismissed.

19. ***We have given earnest consideration to the submission of the learned counsel appearing on either side and perused the record.***

20. The main question that falls for consideration is, whether in the absence of rejection of books of accounts, the Assessing Officer was justified in referring the properties of the assessee to the DVO for ascertaining the valuation of the properties under Section 142A of the Act and whether the findings arrived by the learned ITAT, are proper and legally sustainable.

21. For better understanding of the case, Section 142A of the Act is extracted hereunder:

***“142A. - Estimate by Valuation Officer in certain cases.***  
*[Inserted by Act 23 of 2004, Section 34 (w.r.e.f. 15.11.1972).]*

*(1) For the purposes of making an assessment or re-assessment under this Act, where an estimate of the value of any investment referred to in section 69 or section 69-B or the value of any bullion, jewellery or other valuable article referred to in section 69-A or section 69-B is required to be made, the Assessing Officer 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 under section 38-A of the Wealth-tax Act, 1957 (27 of 1957).*

*(3) On receipt of the report from the Valuation Officer, the Assessing Officer may, after giving the assessee an opportunity of being heard, take into account such report in making such assessment or re-assessment:*

*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 re-assessment is required to be made in accordance with the provisions of section 153-A.*

*Explanation. - In this section, "Valuation Officer" has the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957)."*

22. Thus, Section 142A of the Act provides that for the purpose of making an assessment or reassessment, the Assessing Officer may require the Valuation Officer to estimate the value of any investment referred to in Sections 69 or 69B, or the value of any bullion, jewellery or other valuable article referred to in Sections 69A or 69B, and to submit a report for the purpose of such assessment.

23. In the instant case, the primary grievance of the Assessing Officer is that the assessee had under-declared the cost of material, such as, sand, steel, labour contract, etc., in the books of accounts, but however, while making reference to the DVO, the Assessing Officer neither rejected the books of accounts nor

pointed out any defects in them, for all the years, and on the contrary, it is an admitted fact that the assessee had maintained books of accounts regularly, along with supporting records, relating to the material purchased and used in the construction of the said 22 properties.

24. A careful reading of Section 142A indicates that the power to refer a matter to the Valuation Officer can be exercised only for the purpose of making assessment or re-assessment and therefore, such reference must be made during the course of assessment proceedings when the Assessing Officer finds it necessary, based on available material, to determine the correct value of an investment, which would categorically mean that the process of assessment is initiated and the word 'making' should be presumed to be associated with the assessment or reassessment for reference under Section 142A of the Act.

25. Hence, invoking powers under Section 142A is after initiation of assessment proceedings and reference to DVO under Section 142A can be made only when a requirement is felt by the Assessing Officer for making such reference, when there is some

material with the Assessing Officer to show that whatever the estimate the assessee has shown is not at all correct and not reliable.

26. Also, the view that a reference under Section 142A of the Act can be made only during the course of assessment and reassessment and not for the purpose of initiating such proceedings, which is fortified by the judgment of the Hon'ble Division Bench of Ahmadabad High Court in ***Umiya Co-operative Housing Society Ld. v ITO***<sup>6</sup>, wherein it was held that the powers under Section 142A empowers the Assessing Officer to require the Valuation Officer for making the estimate of the value of any asset provided the Assessing Officer required the same for the purpose of making the assessment or reassessment.

27. The provision under Section 142 of the Act does not empower the Assessing Officer to refer the matter to the DVO for gathering information for reopening of assessment. In the present case, the valuation report was not called for assessment or reassessment proceeding, but was done in the process of reopening of assessment. Thus, the action of the Assessing Officer

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<sup>6</sup> (2005) 94 TTJ 392 (AHD)

in referring the matter to the DVO and relying upon the valuation report of current assets in one assessment year and disturbing the concluded assessments of other assessment years is untenable and perverse.

28. Furthermore, it is trite law that where the books of accounts are neither rejected nor found to be defective, the Assessing Officer cannot solely rely on the DVO's report to make additions by invoking Section 142A of the Act to its benefit and the said principle has been clearly laid down by the Hon'ble Supreme Court in **Sargam Cinema's** case(supra) and by the Division Bench of the Hon'ble High Court of Delhi in **Aar Pee Apartments P. Ltd.**'s case(supra).

29. In view of the above legal position and in the factual matrix of the case, we are of the considered view that the learned ITAT has correctly appreciated the facts and law in proper perspective and the appellant/Revenue has failed to establish any substantial ground warranting interference of this Court with the well-reasoned order of the learned ITAT. Thus, the substantial question of law is answered against the appellant/Revenue and in

favour of the respondent/assessee, and the appeal is devoid of merit and is liable to be dismissed.

30. Accordingly, the Appeal is dismissed by confirming the order passed by the learned ITAT in ITA.No.1542/H/2010, dt.30.03.2012.

As a sequel, miscellaneous applications pending if any, shall stand closed.

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**P.SAM KOSHY, J**

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**SUDDALA CHALAPATHI RAO, J**

26<sup>th</sup> March, 2026

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