

IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE  
Before Shri Kul Bharat, Hon'ble Judicial Member and  
Shri Manish Borad, Hon'ble Accountant Member

ITA Nos. 782 & 783/Ind/2016  
A.Ys.2009- 2010

ACIT 2(5)  
Indore  
Vs

::: Appellant

Smt. Rukmabai Banglewala  
Indore

::: Respondent

ITA Nos. 781 & 1020/Ind/2016  
A.Ys.2009- 2010

ACIT 2(5)  
Indore  
Vs

::: Appellant

Mahesh B. Banglewala

::: Respondent

|                       |                  |
|-----------------------|------------------|
| Appellant by          | Shri R.P. Mourya |
| Respondents by        | None             |
| Date of hearing       | 7.3.2018         |
| Date of pronouncement | 20.3.2018        |

**O R D E R**

**PER SHRI MANISH BORAD, AM**

This bunch of four appeals are directed at the instance of the revenue relating to two assesseees for the assessment

year 2009-10 out of which two are against deletion of quantum addition and the remaining two are against deletion of penalty imposed u/s 271(1)(c) of the Act. ITA No. 781/Ind/2016 & 782/Ind/2016 are directed against the order of the Commissioner of Income Tax (Appeals)-I, Indore, dated 29.3.2016 which are arising out of the order u/s 144/147 of the Act framed by the ITO, Ward 2(5), Indore, on 26.3.2014. ITA No. 783/Ind/2016 and ITA No. 1020/Ind/2016 are directed against the order of the Commissioner of Income Tax (Appeals)-I, Indore, dated 31.3.2016 which arise out of the order u/s 271(1)(c) of the Act framed on 11.9.2014 by the ITO 2(5), Indore.

2. During the course of hearing, none appeared on behalf of the assessee. As informed by the registry the assessee has been communicated for date of hearing by registered AD as well as notice has been served through learned DR but the assessee has remained non-compliant. As the case

has been adjourned on various dates, we find it appropriate to hear these appeals with the assistance of the learned DR.

3. As the issues raised in all these appeals are common, these appeals were heard together and are being disposed of by this common order for the sake of convenience.

4. For the purpose of adjudication we take the facts of the assessee Shri Mahesh B.Bunglewala. Brief facts are that through AIR information, the learned Assessing Officer came to know that the assessee has deposited cash of Rs.15 lacs in his savings bank account. Notice u/s 148 of the Act was issued on 30.3.2013 and information called for from the bank u/s 133(6) of the Act. On 24.10.2013 the assessee filed reply stating that agricultural land in the name of his grand-father, late Shri Ram Prasad Bunglewala was sold during F.Y. 2008-09 for a sum of Rs.1,91,80,000/- and payment towards sale consideration

was received through cheque as well as cash. Part of the cash was deposited in the assessee's account and some portion was deposited in the account of the mother of the assessee, Smt. Rukmabai. Thereafter, the Assessing Officer carried out necessary inquiries from the purchaser company i.e. Makewell Developers Pvt. Ltd. and observed that as per the registry the sale consideration was shown at Rs.1,60,00,000/- whereas the assessee has disclosed the for sale consideration of Rs.1,91,80,000/-. There was further mis-match with regard to the amount received by assessee as to whether it was through account payee cheque or cash. A show cause notice was sent to the assessee calling for details of bank passbook, ownership of other agricultural land, copy of Rin Pustika, statement of affairs and other source of income but the assessee did not reply to the show cause notice and the learned Assessing Officer had no option except to go ahead with passing an

ex-parte assessment, making addition of Rs.1,72,00,000/- u/s 68 of the Act. In the case of the assessee's mother, the learned Assessing Officer made an addition of Rs. 40 lacs u/s 68 of the Act. Aggrieved, both the assessees preferred appeals before the Commissioner of Income Tax (Appeals) and succeeded. Subsequent to the passing of the assessment order the Assessing Officer also initiated penalty proceedings but the assessee again remained non-compliant and accordingly ex-party order was framed imposing penalty of Rs.57,39,000/- and Rs.12,50,000/- in the hands of Shri Mahesh B. Bunglewala and Smt. Rukmabai Bunglewala, respectively.

5. Aggrieved, both the assessee preferred appeal before the Commissioner of Income Tax (Appeals) against the quantum addition and the penalty imposed u/s 271(1)(c) of the Act and succeeded. Now the revenue is in appeal before the Tribunal raising the following grounds :-

ITA No.781/Ind/2016 – Mahesh B. Bunglewala

- (i) *Whether in the facts and in the circumstances of the case, the ld. CIT(A) erred in law in deleting the addition amounting to Rs.1,62,50,000/- out of total addition of Rs.1,72,00,000/- made by the A.O. on account of illegal cash credit even though the assessee did not explain proper source of the same, nor was any documentary evidence filed regarding availability of cash with the assessee. Thus, the amount remained undisclosed income in the hands of the assessee u/s 68 of the IT Act.*
- (ii) *Whether in the facts and in the circumstances of the case, the ld. CIT(A) erred in allowing the appeal of the assessee by passing his order even before the submission of the remand report.*

ITA No.782/Ind/2016 – Smt.Rukmabai Bunglewala

- (i) *Whether in the facts and in the circumstances of the case, the ld. CIT(A) erred in law in deleting the addition amounting to Rs.40,00,000/- made by the A.O. on account of illegal cash credit even though the assessee did not explain proper source of the same, nor was any documentary evidence filed regarding availability of cash with the assessee. Thus, the amount remained undisclosed income in the hands of the assessee u/s 68 of the IT Act.*
- (ii) *Whether in the facts and in the circumstances of the case, the ld. CIT(A) erred in allowing the appeal of the assessee by passing his order even before the submission of the remand report.*

ITA No. 783/Ind/2016  
Smt.Rukmabai Bunglewala

(i) *Whether in the facts and in the circumstances of the case, the ld. CIT(A) erred in law in deleting the penalty of Rs.12,50,000/- imposed by the A.O. u/s 271(1)(c) of the Act for concealing of the tax raised on account of illegal cash credit of Rs.40,00,000/- even though the assessee did not explain proper source of the same, nor was any documentary evidence filed regarding availability of cash with the assessee. Thus, the amount remained undisclosed income in the hands of the assessee u/s 68 of the IT Act.*

ITA No. 1020/Ind/2016  
Mahesh B. Bunglewala

*“On the facts and in the circumstances of the case, the ld. CIT(A) erred in restricting the penalty u/s 271(1)(c) of*

*the IT Act, 1961 imposed by the A.O. at Rs. 57,39,000/-  
to Rs. 1,97,480/- only.”*

6. From the perusal of the above grounds we observe that in ITA Nos. 781 & 782/Ind/2016 the revenue apart from being aggrieved with deletion of quantum addition has also raised a ground against the order of the Commissioner of Income Tax (Appeals) which has been passed without awaiting the remand report called from the Assessing Officer.

7. The learned DR vehemently argued supported the order of the Assessing Officer and further submitted that the Commissioner of Income Tax (Appeals) has given relief to the assessee on the basis of cash flow statements and other documents which never came up before the Assessing Officer for examination. Further, the Commissioner of Income Tax (Appeals) did not wait for the remand report from the Assessing Officer which was very much crucial for

adjudication of the issue and, therefore, an opportunity may be given to the Assessing Officer for examining the related documents and decide the issue afresh and direction may also be given to the assessee to remain compliant on the date of hearing.

8. We have heard the learned DR and perused the record placed before us. In these four appeals two relate to quantum addition and the remaining two relates to penalty imposed on the additions made by the Assessing Officer. The Commissioner of Income Tax (Appeals) has given relief to the assessee deleting the substantial portion of quantum addition as well as penalty u/s 271(1)(c) of the Act.

9. We find that the assessee did not cooperate during the course of assessment proceedings as well as the penalty proceedings and further the Commissioner of Income Tax (Appeals) overlooked the fact that remand report was very crucial in the present cases and the

assessee did not file requisite details during the assessment and penalty proceedings.

10. From perusal of record we also observe that following issues remained un-examined by the lower authorities :-

- (i) Even when the assessee has claimed to own and possess agricultural land, there is no income from agriculture shown in the return of income.
- (ii) The sale consideration for the impugned land has been accepted by the assessee at Rs. 1,91,80,000/- whereas the purchaser M/s Manewell Developers Pvt. Ltd. vide its letter dated 20.12.2013 along with copy of registered document, has shown the sale consideration of Rs.1,60,00,000/-.
- (iii) The details of cheques received in the account of the assessee/his mother/his grand-mother as well as

remaining portion in cash or whether the cheques were not account payee and who has withdrawn the cash from the bank and subsequent thereto, the basis of depositing the cash in various bank accounts is also not clear on going through the orders of the lower authorities.

(iv) A detailed cash flow has been submitted before the Commissioner of Income Tax (Appeals) and there are plethora of entries in cash flow statement and in our view a remand report from the Assessing Officer was a must for verification of various details.

(v) Taxability of transaction is also one of the issues because the impugned land was owned by the grand-father Mr. Ramprasad who was alive at the time of selling the land and he died in the year 2012. Looking to this aspect, whether the impugned land was owned by Ramprasad or it was an ancestral property. It also

needs to be examined that the income is to be assessed under which the assessee i.e. legal heir of Ramprasad or HUF of Ramprasad or the assessee Mr. Mahesh along with his mother.

11. We, therefore, in the given facts and circumstances of the case as well as in the interest of justice and in view of our above observation, are of the considered view that all the issues raised in these four appeal relating to quantum as well as penalty imposed u/s 271(12)(c) of the Act needs to be set aside to the file of the Assessing Officer for de novo assessment and we further direct the assessee to remain compliant with the notices of hearing and should not take unnecessary adjournment unless otherwise required. Needless to mention that proper opportunity of being heard be provided to the assessee.

12. Our above finding shall mutatis mutandis apply to other appeals also.

13. In view of our above discussion, all the grounds raised by the revenue in all these four appeals are allowed for statistical purposes.

14. In the result, all the appeals are allowed for statistical purposes.

Pronounced in open Court on 20 March, 2018.

Sd/-

sd/-

(KUL BHARAT)  
JUDICIAL MEMBER

(MANISH BORAD)  
ACCOUNTANT MEMBER

20 March, 2018

Dn/-

Copy to – Appellant/Respodent/Pr.CIT/CIT(A)/DR/Guard File

By order

Private Secretary