

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**INDORE BENCH, INDORE**  
**BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER**  
**AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.63/Ind/2018**

**Assessment Year 2013-14**

Shri Ramchandra Pushkar Rai Kanungo HUF, Hariganj, Khandwa	Vs.	Income Tax Officer-1, Khandwa
(Appellant)		(Respondent )
PAN No.AAPHR7239R		

Revenue by	Shri R.P. Mourya, Sr.DR
Assessee by	Shri Girish Agrawal, C.A
Date of Hearing	05.11.2018
Date of Pronouncement	26.12.2018

**ORDER**

**PER MANISH BORAD, AM.**

The above captioned appeal is filed at the instance of assessee pertaining to Assessment Year 2013-14 and is directed against the orders of Ld. Commissioner of Income Tax (Appeals)-II (in short 'Ld.CIT(A)'], Indore dated 23.10.2017 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 28.03.2016 framed by ITO-1, Khandwa.

2. Briefly stated facts as culled out from the records are that the assessee is an individual engaged in the business of construction and colonization. Income at Rs.3,26,340/- declared in the return of income submitted on 24.03.2015. Case selected for scrutiny assessment under CASS, followed by issuance of notices u/s 143(2) & 142(1) of the Act along with questionnaire. Assessee received advances from various parties on account of booking of developed plots. For verification of these advances summons u/s 133(6) were issued and the statements from the parties were recorded. Assessment was completed u/s 143(3) after making additions of Rs.50,000/- and Rs.43,12,250/- on account of advances from various parties and Rs.6,03,850/-, Rs.25,000/- and Rs.13,54,380/- on other heads. Income assessed at Rs.66,71,820/-.

3. Aggrieved assessee preferred appeal before Ld.CIT(A) and partly succeeded.

4. Now the assessee is in appeal before the Tribunal raising following grounds of appeal;

*1. Because on facts and in circumstances of the case, Id.CIT(A) has erred in confirming addition by Id. Assessing Officer of amount received from Ramkumar Gangrade Rs4,00,000/- as unexplained credit.*

*2. Because on facts and in circumstances of the case, Id.CIT(A) has erred in confirming addition by Id. Assessing Officer of amount received from Late Shri Vinod Thakkar Rs.27,00,000/- as unexplained credit.*

*3. Because on facts and in circumstances of the case, Id.CIT(A) has erred in confirming addition by Id. Assessing Officer of amount received from Shri Arun Bhat Rs.9,50,000/- as unexplained credit.*

*4. Because on facts and in circumstances of the case, Id.CIT(A) has erred in confirming addition of amount received from Shrimati Malti Sharma Rs.2,62,000/- by Id. Assessing Officer as unexplained credit.*

*5. The CIT(A) ignoring the fact that all the vouchers has been produced for verification before Ld AO, have confirmed the disallowed of cash expenditure of Rs 13,54,680/- .*

5. Ld. Counsel for the assessee made common submission for all the grounds. As regards Ground No. 1 to 4 relating to addition for unexplained cash credit from four persons, Ld. Counsel for the assessee submitted that in the course of business advances for plot booking were received from all these four persons. Apart from the cash received as advance, major amount was received through account payee cheque. Plot of lands were allotted and sale deeds are registered in all the four cases and excess amount received was refunded back to the cash creditors which was duly accepted in the registered sale deed. Following written submissions have been

placed before us by Ld. Counsel for the assessee praying for deletion of impugned addition of cash credit at Rs.43,12,250/-:-

1. Assessee is engaged in the business of construction. It is a trade practice of this business to take advance before booking any property. It is only on the payment of such advance that the booking can happen; otherwise the meaning of 'booking' itself loses its meaning.

2. Booking advance is a trading advance for the assessee which eventually got converted into sales revenue, duly reflected in the Profit & Loss account, offered for tax in the relevant assessment years.

3. There is no "Tax Advantage" sought to be achieved by the assessee in respect of additions made by the Ld. AD and sustained by the Ld. CIT(A) for the alleged 'booking advances' as unexplained.

4. During the impugned year assessee had shown Rs.2,86,77,316 as advance received for booking of plots from various prospective buyers. Ld. AO issued summons u/s 133(6) and statements were recorded on oath u/s 131. Details as are as under-

Sr.No	Party from whom advance is received	Amount of relief granted by Ld. CIT(A)	Amount in appeal before Your Honors
1	Smt.Sushila Devi Sujansingh	50,000	Nil
2	Shri Ramkumar Gangrade	Nil	4,00,000
3	Late Shri Vinod Thakkar	Nil	27,00,000
4	Shri Arun Bhatt	Nil	9,50,000
5	Shri Ravish Patel	Nil	2,62,250
	TOTAL	50,000	43,12,250

Ld. CIT(A) while granting the relief for the addition sustained of Rs. 50,000 received from Smt. Sushila Devi Sujansingh stated that - The advance received has included in the income for the year 2015-16 and if it is added in the impugned year it shall not be correct in the eyes of law. Hence the addition was deleted. [CIT(A) order para 8.1]

5. For the additions sustained in the case of parties mentioned at Sr. no. 2 to 5 in the above table, assessee submits that the advance received was brought to tax in the year for registration of property. This fact is evident from the financial statements, summarized as under –

Party Name	Plot No.	Opening Balance	During the year	Closing Balance	Registry Amount	Registry Date
Shri Ramkumar Gangrade	198	2,21,000	4,00,000	6,21,000	5,88,000	28.01.2015 (PB 18)
Shri Pawan Thakkar	3	9,21,000	27,00,000	36,21,000	13,87,000	13.11.2014 (PB18)
Shri Arun Bhatt (Deepak Malviya)	262	4,00,000	13,00,000	17,00,000	5,25,000	28.01.2014 (PB13)
Shri Arun Bhatt (Dhananjay Jaiswal)	263, 264				11,76,000	08.07.2014 (PB28)
Shri Ravish Patel	261	2,21,000	7,23,155	9,44,155	4,60,000	04.09.2013 (PB13)

Assessee submits that the difference in registry amount and the advance received was refunded to the respective parties in the year of registration. This fact is evident from point no. 13 of the copy of registered sale deed. [PB 28,43]

6. Booking advance pertaining to sale consideration stated in the registered sale deed was transferred to profit and loss account of the respective year and offered to tax. Addition made by Ld. AO and sustained by Ld. CIT(A) amounts to double taxation for the same transaction.

7. During the assessment proceedings, statements of above mentioned parties' were recorded under oath u/s 131. Identity is established. Assessee

submits the fact that the property is registered in the name of respective parties is not under dispute. Thus, the genuineness and creditworthiness also stands established. In the case of Shri Ramkumar Gangrade, Ld. AO alleged for the addition made that in the copy of registered sale deed the details of the amount received are not mentioned and addition was made u/s 68. Ld. CIT(A) sustained the addition on the basis of remand report and the cross examination of Shri Ramkumar Gangrade. During the cross examination he stated that no amount was paid by him as advance for the purchase of impugned plot. The entire amount was paid on 28.01.2015, on the date of registration. Reference may please me made to the receipt issued by assessee which state the date and amount of advance received. [PB 34]

11. In the case of Shri Pawan Thakkar, the fact that plot was booked by his father Late Shri Vinod Thakkar cannot be ignored. The plot was booked through broker Shri Hemant Chaudhary (through mutual friend Shri Prabhat Jhawar who is a signatory as witness to the registry) to whom assessee has paid brokerage. The brokerage was paid through bank which is evident from vouchers. [PB 67-68]. In their affidavits, Shri Hemant Chaudhary and Shri Prabhat Jhawar have stated that the plot was purchased by Late Shri Vinod Thakkar who paid the initial booking amount of Rs. 21,000. The balance amount was paid by him through the broker in installment of Rs. 3,00,000. In their affidavits, it is also mentioned that at the time of registration the plot was booked by Late Shri Vinod Thakkar which was eventually registered by him in the name of his son Shri Pawan Thakkar. [PB 64-66, 69-72]

13. In the statement recorded under oath u/s 131 Shri Pawan Thakkar has stated that plot was purchased and the advance was given before the date of registration. Ld. AO has stated incorrect fact that, assessee has not submitted any document to establish that plot noA was sold to Late Shri Vinod Thakkar or Shri Pawan Thakkar or any amount was received for

purchase of plot. Ld. CIT(A) also erred in ignoring the copy of receipts submitted and sustained the additions made.

16. In the case of Shri Arun Bhatt, plot no. 262, 263 and 264 were booked by him. These plots were registered in the name of Shri Deepak Malviya (Plot no. 262) and Shri Dhananjay Jaiswal (Plot No. 263 and 264) who gave Rs. 2,50,000 and Rs. 1,00,000 respectively at the time of registration. He gave the advance for booking of the above mentioned plots out of his past savings, agriculture income of his family and his salary income earned as Branch Manager of Bhumi Vikas Bank. In the statement recorded under oath, he has stated that the advance was paid through State Bank of India, Civil Line Branch into Bank of India. [PB 78 Q 8]. Ld. AO has raised a very specific question asking that the plots taken on advance were sold to whom? Relevant extract is as under - [PB 78 Q 8]

19. In the registered sale deed for plot no. 263 and 264 sold to Shri Dhananjay Jaiswal, details of amount and date of payment are specifically mentioned. Further at point no. 13, it is specifically stated that the advance received for booking of plot was adjusted against the sale consideration and the excess of advance was refunded. [PB 96 and 99]

20. Considering the above facts and circumstances, it is evident that the advance was received by assessee for booking of plot, which is in accordance to the trade practice in which the assessee operates, and the excess of advance against the sale consideration was returned to the respective party upon registry of sale deed. Also, the entire sale consideration was offered to tax in the year of registry. Hence, such an addition leads to double taxation for the same transaction.

21. Ld. AO during the assessment proceedings, made addition of Rs. 13,54,380 on account of certain expenses by holding that assessee failed to produce all the vouchers in support of its claim. Assessee submits that Ld.

AO had asked to furnish these vouchers on 21.03.2016 through order sheet entry, hearing for which was fixed on 28.03.2016. This fact is noted in the remand report at PB 362, back side. The impugned assessment order is dated 28.03.2018.

Owing to the paucity of time given to produce the vouchers for the expenses claimed, assessee on this date of hearing could not produce all these vouchers. Ld. AO considered part of the submitted vouchers and passed the order on 28.03.2016, on the date of hearing itself. [AD page 14]

22. In the proceedings before Ld. CIT(A), all the vouchers were submitted. Ld. AO in the remand report stated that the vouchers could not be accepted as additional evidences. Statements of few were recorded to whom payments were made for the said expenses.

a. Shri Gyanswaroop Vishwakarma: In his statement recorded under oath he has stated that he an electric contractor holding license no. 25/4321. He admitted that he has done work of electrification for Mahadevi Nagar, Colony, Khandwa. The work was started but the agreement was entered into later on 25.03.2014. The payment was received by him in accordance to the agreement entered into. Expense stands explained and no addition is called for. [PB 394]

b. Shri Firoz Khan: In his statement recorded under oath, in response to Q. No. 6 he stated that the entire amount was received by him from assessee and all the vouchers have been signed by him. He has also stated that he has received weekly labour charges of Rs. 12,000 to Rs. 20,000. Shri Firoz Khan made the payment to the labour arranged by him and hence the voucher was made in his name.[PB 391A Q. No.4 and PB 392 Q No.6]

c. Shri Narendra Kumar Thakur: In his statement recorded under oath,

in response to Q. No.5 he has stated that no amount was received by him in cash. [PB 393]

23. Reliance is placed on judicial precedents -

a. Hon'ble High Court of Gujarat in the case of Navinbhai N. Patel - [2014] 41 taxmann.com 424 - order pronounced on 30.04.2013

b. Hon'ble Delhi bench of ITAT in the case of Dr. Sunil Kumar Sharma - [2014] 52 taxmann.com 437 - order pronounced on 21.10.2014 - identity and genuineness established no addition can be made.

c. Hon'ble Jodhpur Bench of ITAT in the case of Ayushi Builders & Developers - [2014] 50 taxmann.com 396 - order pronounced on 14.08.2014 - Para 4.3".

6. Per contra Ld. Departmental Representative vehemently argued supporting the orders of lower authorities.

7. We have heard rival contentions and carefully perused the records placed before us.

8. First we will take up Ground No. 1 to 4 which relates to unexplained cash credit at Rs.43,12,250/- from the following persons;

1. Shri Ram Kumar Gangrade
2. Late Vinod Thakkar

3. Shri Arun Bhatt

4. Shri Ravish Patel

9. The above stated amounts were part of advances received for plot booking at Rs.2,86,77,316/- as on the year end. Information was called for by the Ld. A.O u/s 133(6) of the Act and he was satisfied with the explanation given for the cash credits in the shape of advances totaling to Rs. 2,43,50,066/-. One of the addition of Rs.50,000/- made in the case of Smt. Sushila Devi Sujan Singh was deleted by Ld. CIT(A). The dispute remains only for the above referred four cash creditors at Rs.43,12,250/- for which the assessee has claimed that these amounts were received as advances for plot booking and receipts were issued for the cash received from these persons. The allegation of the revenue is that no such cash advances was received and for the year under appeal these amounts were in the form of unexplained cash which was utilized for the payments for expenses and other business related expenditure.

10. We find that all the above referred four persons/their legal heir/representative were called by the Ld.A.O and due compliances

were made. So there is no dispute for the identity of the cash creditors. Now the genuineness and creditworthiness of the cash creditors needs to be examined in the given facts. After perusal of the paper book running from page No. 1 to 403 as well as orders of lower authorities, we find that sale deeds have been registered in all the four cases meaning thereby that the transactions which took off by the advance which was received for plot booking finally materialized and the plots were sold to the respective persons through registered sale deed wherein the impugned transactions have been verified by both the parties placed before a Government authority. The dispute arised only when the alleged cash creditors refused to have given advances during the year under appeal but nowhere they have questioned the genuineness of the transaction and the purchase of plots/immovable property from the assessee. It is also not disputed that the sale consideration received by the assessee has been duly offered to tax in the year when sale deeds were registered and due taxes have been paid thereof. It is also evident from the record that the excess amount left with the assessee, if any was also refunded to the respective parties and the same is verifiable from going through para 13 of the registered sale

deeds where the purchaser accepts to have received any excess amount received as advance and it has been duly admitted that the advanced amount have been received. So in nutshell there seems to be no loss to the revenue as regards to sale consideration received. Identity is already not disputed. Sale consideration received in cash as well as the cheque has also been accepted by the alleged cash creditors. However in our considered opinion and in the given circumstances of the case as well as the materials placed before us, we find merit in the contention of Ld. Counsel for the assessee that the alleged cash credits of Rs.43,12,250/- are duly explained with regard to the identity, genuineness and creditworthiness as the sale deeds have been registered in the name of the four persons accepting the transactions. Therefore no addition was called for u/s 68 of the Act for Rs.43,12,250/- . We accordingly set aside the findings of Ld. CIT(A) and delete the addition of Rs.43,12,250/-. In the result Ground No. 1 to 4 of the assessee's appeal is allowed.

11. Now we take up Ground No.5 which relates to the disallowance for cash expenditure of Rs. 13,54,680/- . We find that

during the course of assessment proceedings Ld.A.O while examining the expenditure totaling of Rs. 24,43,811/- was satisfied with various expenditures totaling to Rs.10,89,431/- and for the remaining amount he disallowed the impugned expenditure for want of necessary vouchers and records. We find that before the first appellate authority necessary details were placed and remand report was called for but Ld. A.O objected to acceptance of additional evidence. We find that statements of some of vendors Shri Gyanswaroop Vishwakarma who did the electrification work, Shri Firoz Khan who did the labour work and Shri Narendra Kumar Thakur who had did the labour work gave their statements on oath stating that they received the amounts from the assessee for various works provided by them. All necessary vouchers have also been placed on record of which major are cash expenses. Books of accounts have been maintained. We therefore in the given facts and circumstances of the case and in the interest of justice and being fair to both the parties are of the view that 10% disallowance of the impugned expenditure of Rs.13,54,680/- i.e. Rs.1,35,468/- will be justified. We accordingly order so and partly allow Ground No.5 of the assessee.

Ramchandra Pushkar Rai Kanungo HUF  
ITA No.63/Ind/2018

12. In the result appeal of the assessee is partly allowed.

The order pronounced in the open Court on 26.12.2018.

Sd/-

Sd/-

**( KUL BHARAT )**  
**JUDICIAL MEMBER**

**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

दिनांक /Dated : December, 2018

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)  
concerned/ DR, ITAT, Indore/Guard file.

By Order,  
Asstt.Registrar, I.T.A.T., Indore