

**आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**IT(SS)A No.81/Ind/2015  
Assessment Year: 2008-09**

ACIT-3(1) Indore	<b><u>बनाम/</u></b> Vs.	M/s. Jawaharlal Pannalal Nema(HUF) 43/4, Pragati Kesar Bagh Road Indore (M.P.)
(Appellant)		(Revenue )
P.A. No.AADHJ11112M		

**C.O. No.66/Ind/2015  
(Arising out of IT(SS)A No.81/Ind/2015)  
Assessment Year: 2008-09**

M/s. Jawaharlal Pannalal Nema(HUF) Indore	<b><u>बनाम/</u></b> Vs.	ACIT-3(1) Indore
(Appellant)		(Revenue )

**ITA No.324/Ind/2015**  
**Assessment Year: 2008-09**

ACIT-3(1) Indore	<u>बनाम/</u> Vs.	M/s. Jawaharlal Pannalal Nema(HUF) 43/4, Pragati Kesar Bagh Road Indore (M.P.)
(Appellant)		(Revenue )

Appellant by	Smt. Ashima Gupta, D.R.
Respondent by	Shri K.G. Agrawal, A.R.
<b>Date of Hearing:</b>	<b>17.12.2018</b>
<b>Date of Pronouncement:</b>	<b>08.01.2019</b>

**आदेश / O R D E R**

**PER KUL BHARAT, J.M:**

This appeal and cross objection in quantum proceedings and appeal in penalty proceedings were taken up together and are being disposed of by way of consolidated order. First we take up the revenue's appeal in IT(SS)A No.81/Ind/2015. The revenue has raised following grounds of appeal:

*“On the facts and in the circumstances of the case, the Ld. CIT(A):-*

- i. Erred while deleting the addition of Rs.1,06,00,956/- made by the A.O. under the head ‘Long Term Capital Gain’ owing to the sale of land having Survey No.231/1, 207, 211,212 & 213 at Gram: Umania, Tehsil: Mhow, Distirct; Indore.*
- ii. Erred while placing undue reliance upon the report of Patwari, Rau though the Anuvibhageeya Adhikari Rau has not endorsed the said report and merely forwarded the same without inking his/her specific remarks with regard to consent or dissent with the Patwari’s report; and after considering the said report deleted the addition made by the A.O.*
- iii. The appellant reserves the right to add, amend or alter the ground of appeal on or before the date the appeal is finally heard for disposal.”*

2. The only effective ground in the revenue’s appeal is against deletion of addition of Rs.1,06,00,956/- made by the A.O. treating the sale of agricultural land as sale of capital asset. The facts in brief are that a search & seizure operation u/s 132 of the Income Tax Act, 1961 (hereinafter called as ‘the Act’) was conducted on 2.5.2008 at the office premises of Rajesh Nema and at his residence. The A.O. issued a notice after case was transferred on DCIT-1 Indore dated 12.8.2010 for taking action u/s 153C of the Act. The A.O. thereafter framed assessment u/s 153C r.w.s. 143(3)

of the Act vide order dated 30.12.2010. The A.O. while framing the assessment treated the sale of agricultural land as transaction in the nature of transfer of capital asset and computed long term capital gain arising there from of Rs.1,06,00,956/- and added the same into the income of the assessee.

3. Aggrieved by this the assessee had filed appeal before Ld. CIT(A) where the assessee had challenged proceedings on both legal and factual grounds. The legal ground of the assessee's appeal was against not recording of satisfaction by the assessing officer of the searched person. This ground of the assessee's appeal was not adjudicated by the Ld. CIT(A) on the basis that the relief was given in assessee's appeal on merit i.e. on factual basis. Against this order, both revenue as well as the assessee have filed appeal and cross objection respectively.

4. Ld. CIT(DR) vehemently supported order of the A.O. and submitted that Ld. CIT(A) was not justified in deleting the addition. He further submitted that the Ld. CIT(A) has wrongly appreciated the facts by coming to the conclusion that the said land did not fall within the Municipal limit. Per contra, Ld. Counsel for the assessee submitted that Ld. CIT(A) has considered the notification governing the issue of asset being capital or not.

5. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that Ld. CIT(A) has considered the certificate of the revenue official who has categorically stated that the land in question do not fall within 4 kms. of the limit of Mhau Cantonment Board. Further, it is noticed that Ld. CIT(A) has duly considered the objections of the assessing officer and rejected the same on the basis of notification. The

revenue has not controverted this finding by placing any contrary material. The finding of the Ld. CIT(A) is based upon the notifications issued by the competent authority. Therefore, we do not see any infirmity into the finding of the Ld. CIT(A) and the same is hereby affirmed. Ground of the revenue's appeal is dismissed.

6. Now we take up cross objection of the assessee. The assessee has raised following grounds of cross objection:

- i. *On the facts and in the circumstances of the case the learned Commissioner of Income Tax (Appeals)-I, Indore has rightly deleted the addition so made by the learned Assessing Officer of Rs.1,06,00,956/- under the head "Long term Capital Gain" owing to the sale of land having Survey No.231/1, 207, 211, 212 & 213 at Gram Umaria, Tehsil Mhow, District Indore by relying on the report of Patwari, Rau.*
- ii. *On the facts and in the circumstances of the case the learned Commissioner of Income Tax (Appeals)-I, Indore has observed that the alternate plea of the respondent relating to claim of exemption u/s 54B though justified and allowable but, erred in rejecting the same in view of the allowance of main ground of appeal.*
- iii. *The respondent craves leave to make an addition alteration, deletion and/or amendment in the grounds of appeal arising out of this order.*

7. Ld. Counsel for the assessee submitted that the Ld. CIT(A) was not justified in rejecting the grounds merely on

the basis that the assessee has succeeded on merit as the addition has been deleted. He submitted that the legal ground raised by the assessee goes to the route of the jurisdiction of the A.O. and the same ought to have been adjudicated. He further submitted that the revenue has grossly failed to furnish satisfaction recorded by the A.O. of the searched person. He submitted that in the recent judgement of jurisdictional High Court in the case of CIT Vs. Mechmen in ITA No.44/2011 dated 10.7.2015 has held that the satisfaction is to be recorded not only by the A.O. of the searched person but also the assessing officer of the assessee. He has placed reliance on the decision of the Tribunal in the case of Mansingh Chouhan Vs. ACIT in ITA No.235/Ind/2016.

8. On the contrary, Ld. D.R. opposed the submissions.

9. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. We find that the assessee had raised issue of recording of satisfaction by the assessing officer of the searched person as well as allowability of deduction u/s 54B of the Act. Both these grounds have not been adjudicated by the Ld. CIT(A). We are of the view that the Ld. CIT(A) ought to have adjudicated this ground. Therefore, respectfully following the judgement of the Hon'ble jurisdictional High Court in the case of CIT Vs. Tolaram Hassomal 298 ITR 22 (MP) we restore both the grounds to the file of the A.O. to decide the case afresh.

10. Now we take up the revenue's appeal in ITA No.324/Ind/2015. The revenue has raised following grounds of appeal:

*On the facts and in the circumstances of the case, the Ld. CIT(A):-*

- i. Erred while deleting the penalty of Rs.20,96,410/- levied by the A.O. u/s 271(1)(c) of the Income Tax Act, 1961.*
- ii. The appellant reserves the right to add, amend or alter the ground of appeal on or before the date the appeal is finally heard for disposal.*

11. At the outset, Ld. Counsel for the assessee submitted that the addition made by the A.O. has been deleted by the Ld. CIT(A). He further submitted that the appeal against deletion of addition has been filed by the revenue in IT(SS)A No.81/Ind/2015. The assessee has raised cross objection regarding validity of the assessment. He reiterated the submissions as made before the Ld. CIT(A).

12. Ld. D.R. supported the order of the A.O.

13. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. In quantum appeal in IT(SS)A No.81/Ind/2015, we have already affirmed the view of the Ld. CIT(A) deleting the addition. We therefore, do not see

any reason to interfere in the finding of the Ld. CIT(A). The grounds raised by the revenue are dismissed.

14. In the result, the appeals filed by the revenue are dismissed and the cross objection filed by the assessee is partly allowed for statistical purposes.

*Order was pronounced in the open court on 08.01.2019.*

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Sd/-  
(KUL BHARAT)  
JUDICIALMEMBER

Indore; दिनांक Dated : 08/01/2019  
VG/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

**Assistant Registrar, Indore**