

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

IT(SS) No.189, 190/Ind/2017 & ITA No.503/Ind/2017
Assessment Years 2008-09, 2011-12 & 2012-13

Smt. Archana Agrawal, The Sagar, E-2/4, Arera Colony, Bhopal (Appellant)	Vs.	DCIT Central-1, Bhopal (Respondent)
PAN No.AASPA9447R		

Revenue by	Smt. Ashima Gupta, CIT
Assessee by	S/Shri S.S. Deshpande & Manoj Ayachit, C.As
Date of Hearing	10.01.2019
Date of Pronouncement	15.01.2019

ORDER

PER MANISH BORAD, AM.

The above captioned bunch of three appeals filed at the instance of assessee pertaining to Assessment Year 2008-09, 2011-12 and 2012-13 are directed against the orders of Ld. Commissioner of Income Tax (Appeals)-3 (in short 'Ld.CIT(A)'), Bhopal dated 21.04.2-017 which are arising out of the order u/s 153A r.w.s. 143(3) of the Income Tax Act 1961(In short the 'Act') dated 19.02.2014 framed by DCIT (Central), Bhopal.

2. As all these appeals pertain to same assessee, these were heard together and being disposed off by this common order for the sake of convenience and brevity.

3. Brief facts as culled out from the records are that the assessee is an individual earning income from salary and business. Post search u/s 132 of the Act conducted on 22.10.2011 at the business premises of the assessee and other business associates and assessment proceedings u/s 153A r.w.s 143(3) of the Act were carried out for the Assessment Year 2006-07 to 2011-12. Additions for the undisclosed on-money payment for Assessment Year 2008-09 & 2011-12 and addition for undisclosed jewellery for Assessment Year 2012-13 were made. Assessee filed appeal before Ld.CIT(A) but failed to succeed.

4. Now the assessee is in appeal before the Tribunal.

5. First we will take up ITA No.189&190/Ind/2017 wherein the common issue relating to the undisclosed on-money payment for purchase of immovable property.

6. At the outset Ld. Counsel for the assessee submitted that there is an allegation on the assessee that she has paid on-money to Mr. Abdul Wahid Khan and Shri Janak Singh at Rs.7,00,000/- and Rs.1,02,45,000/- respectively for the purchase of land. However the documents have been registered as per the stamp duty/valuation and no such on-money has been paid. Though the statement of both the above referred persons have been taken by the Ld. A.O but no opportunity of cross examination have been provided to the assessee. Ld. Counsel for the assessee therefore prayed that in the interest of justice an opportunity of cross examination should be given.

7. Per contra Ld. Departmental Representative though supported the orders of lower authorities but did not oppose the request of the assessee of providing opportunity of cross examination with the sellers who have stated to have received on-money.

8. We have heard rival contentions and perused the records placed before us. Assessee is aggrieved with the addition for unaccounted investment of Rs.7,00,000/- and Rs.1,02,45,000/- for the alleged on-money payment for the purchase of land from Shri

Abdul Wahid Khan and Shri Jhanak Singh for Assessment Year 2008-09 and 2011-12 respectively. The common facts are that the assessee purchased immoveable property from Shri Abdul Wahid Khan and Shri Jhanak Singh. Both these persons stated on oath before the Ld. A.O that they have received the on-money in cash at Rs.7,00,000/- and Rs.1,02,45,000/- over and above the consideration mentioned in the registered sale deed at Rs.8,40,000/- and Rs.44,55,000/- respectively.

9. During the course of appearing it has been prayed by the Ld. Counsel for the assessee that no opportunity of cross examination was provided to the assessee with Shri Abdul Wahid Khan and Shri Jhanak Singh. Revenue has not raised any objection to this request. We therefore in the given facts and circumstances of the case and in the interest of justice are of the view that assessee deserves to be given an opportunity to cross examine both the sellers with whom she transacted to purchase immoveable property. We therefore set aside all the issues raised in both these appeals of the assessee for Assessment Year 2008-09 and 2011-12 to the file of Ld. CIT(A) who shall call for remand report from the Ld. A.O

directing him to summon both the alleged sellers Shri Abdul Wahid Khan and Shri Jhanak Singh and give the opportunity for cross examination to the assessee and record the minutes of the cross examination of all the three parties and send it along with the remand report. If after the cross examination it is confirmed that the on-money has been paid by the assessee to both the persons at Rs.7,00,000/- and Rs.1,02,45,000/- then the impugned addition shall stand confirmed. Needless to mention that reasonable opportunity of being heard should be provided to the assessee. In the result ITA No.189&190/Ind/2017 filed by the assessee are allowed for statistical purposes.

10. Now we take up ITA No.503/Ind/2017 wherein the assessee has raised following grounds of appeal;

“1. That on the facts and in the circumstances of the case and in law, the assessee submits that having regard to the explanation furnished before the learned lower authorities, the learned CIT(A) is not justified in her findings that the entire jewellery possessed by the assessee in excess of 800 gms. represent her unexplained investment of the impugned assessment year, hence the addition sustained for the value of jewellery in excess of 800 gms. is wholly unjustified and unlawful and, therefore, the same be

kindly deleted.

2. That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred and not justified in her findings that the cash found with the assessee Rs. 64815 is an unexplained cash representing her unexplained investment. The said unjustified and unlawful addition of Rs. 64815 be kindly deleted.

3. That on the facts and in the circumstances of the case and in law, the levy of interest u/s 234B is contrary to the provisions of sub-section (3) of section 234B, hence the same be kindly quashed. That on the facts and in the circumstances of the case, the order of the Id. CIT (A) is incorrect and bad in law.”

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

12. As regards Ground No.1 facts in brief are that during the course of search gold jewellery was found and seized from the residence and bank locker owned by the assessee. Gold jewellery weighing 2027 gram was found (1127 gram from residence and 900 gram from locker No.12/29). The assessee was unable to explain the source of the gold jewellery for which addition was made. Against the addition for unexplained gold jewellery assessee preferred appeal before Ld.CIT(A) who keeping in view the CBDT

Instruction No.1916 dated 11.5.1994 gave the benefit of 800 gram of gold jewellery treating it to be belong to the assessee, her husband and two sons comprising of 500 gram for lady assessee, 100 gram each for three males.

13. Now the assessee is in appeal challenging the remaining amount of addition for 1227 grams of gold jewellery. Ld. Counsel for the assessee pleaded casually submitted that the assessee belongs to a rich family and such acquisition of gold jewellery are quite reasonable in such families. However we are not inclined to give any benefit to this contention of Ld. Counsel for the assessee as it was not supported by any facts, evidences or any other details which could prove the source of the unexplained gold jewellery. We therefore in the given facts and circumstances of the case are of the considered view that the Ld.CIT(A) has rightly sustained the addition of unexplained gold jewellery of 1127 grams and the same needs to be confirmed. In the result Ground No.1 raised by the assessee stands dismissed.

14. Apropos Ground No.2 which relates to addition for unexplained cash amount of Rs.64,815/-, we observe that this

cash amount was found in the bank locker which was treated as unexplained by both the lower authorities. We are of the view that looking to the Indian customs and accumulation of Streedhan of the assessee for past many years which is normally saved by the Indian ladies, as well as looking to the smallness of the amount and the fact that the assessee is regularly filing income tax return, we find no justification in the addition of Rs.64,815/- confirmed by both the lower authorities. We accordingly delete the addition of Rs.64,815/- for the alleged unexplained investment and allow Ground No.2 raised by the assessee.

15. Ground No.3 is general in nature which needs no adjudication.

16. Accordingly ITA No.189 & 190/Ind/2017 of the appeal of the assessee are allowed for statistical purpose and ITA No.503/Ind/2017 is partly allowed.

The order pronounced in the open Court on 15.01.2019.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 15 January, 2019
/Dev

Archana Agrawal
IT(SS)Nos.189, 190/Ind/2017 & ITA No.503/Ind/2017

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

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