

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**

**ITA No.290/Ind/2018  
Assessment Year: 2012-13**

|                                   |                     |   |
|-----------------------------------|---------------------|---|
| ITO-2(2)<br>Indore<br>(Appellant) | <b>बनाम/</b><br>Vs. | Smt. Shiv Kumari Maurya<br>33/4, Perdeshipura, Indore<br>(Revenue ) |
| P.A. No.DMNPS6463K                |                     |   |

**ITA No.291/Ind/2018  
Assessment Year: 2012-13**

|                                   |                     |  |
|-----------------------------------|---------------------|--|
| ITO-2(2)<br>Indore<br>(Appellant) | <b>बनाम/</b><br>Vs. | Smt. Rita Bai Maurya<br>33/4, Perdeshipura, Indore<br>(Revenue ) |
| P.A. No.CKDPB6076J                |                     |  |

|                               |                            |
|-------------------------------|----------------------------|
| Appellant by                  | Smt. Vinita Dubey, Sr.D.R. |
| Respondent by                 | N O N E                    |
| <b>Date of Hearing:</b>       | <b>22.07.2019</b>          |
| <b>Date of Pronouncement:</b> | <b>24.07.2019</b>          |

## **आदेश / O R D E R**

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

These two appeals by the revenue are pertaining to the assessment year 2012-13 against two different assessees.

The revenue has raised identical grounds except change into figures. Both the appeals were taken up together for the sake of convenience and are being disposed of together.

First we take up the ITA No.290/Ind/2018. The revenue has raised following grounds of appeals:

- 1. Whether in the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the total addition of Rs.1,81,83,477/- which was made by the A.O.*
- 2. Whether in the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs.87,15,960/- without giving any finding/enquiry that land is situated beyond 8 k.m. from municipal limits and holding that it is not capital asset.*
- 3. Whether in the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs.61,34,230/-, Rs.31,69,000/- & Rs.1,38,125/- without giving any finding regarding eligibility of assessee for deduction u/s 54B of the I.T. Act, 1961 and source of funds.*
- 4. Whether in the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs.1,81,83,477/- in lump sum without individually discussing various grounds raised by assessee.*

2. The facts in brief are that the case of the assessee was reopened and the assessment u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter called as 'the Act') was framed vide order dated 27.12.2016. The A.O. observed that the assessee had sold a land to M/s. Gold City Developers for a sale consideration of Rs.1,02,24,000/-. Further, the stamp value of the same property was Rs.1,89,39,960/-. The A.O. therefore invoking provisions of section 50C of the Act added the difference amount of Rs.87,15,960/-. Further, the A.O. observed that the assessee had sold diverted urban land to development for developing a colony and claimed deduction u/s 54B of the Act. The A.O. rejected the claim of deduction and made addition of Rs.61,34,230/-. Further, the A.O. observed that the payments were made through cash. However, the assessee has not disclosed this cash component, thus made addition of Rs.31,69,000/-.

3. Aggrieved by this order, assessee preferred an appeal before the Ld. CIT(A). The A.O. also made addition of Rs.1,38,125/- by disallowing the claim of the assessee in respect of purchase consideration of the agricultural land. Against this, the assessee preferred an appeal before Ld. CIT(A), who after considering the submissions allowed the appeal.

4. It is noticed that on the last date of hearing, none appeared on behalf of the assessee despite the service of notice. Again a notice of hearing was sent which is received back unserved with a remark from the postal authority “does not reside here”. Hence, the appeal was taken up for hearing in the absence of the assessee. At the outset, Ld. CIT(DR) pointed out that the Ld. CIT(A) allowed the appeal without giving opportunity to the A.O. Ld. D.R. submitted that no remand report was called by the Ld. CIT(A) from the A.O. Ld. D.R. at the outset submitted that

the impugned order is non-speaking and cryptic. The finding of the A.O. is not adverted in detail.

4. We have heard the Ld. CIT(DR). We find that the Ld. CIT(A) has decided the issue in his order in paras 3.1.4 & 3.1.5 by observing as under:

*“3.1.4 At the time of original assessment the Assessing Officer had held that the appellant had sold diverted land to M/s. Gold City Developers. A forensic report has been submitted which states that the thumb impression as on the diversion deed does not tally with the thumb impression of the appellant. M/s. Gold City Developers has fraudulently diverted the said agricultural land by forging the signature of the appellant. The appellant has filed a complaint against Shri Mahaveer Jain, partner of M/s. Gold City Developers. The newspaper report cuttings have also been placed on record which shows that Shri Mahaveer Jain has defrauded the public. Thus, from the remand report of the Assessing Officer it is clear that the appellant has sold agricultural land. This view is also been upheld by the CIT(A)-III, Indore while deciding the appeal of the following for A.Y. 2011-12 where the substantive addition had been made. The CIT(A)-III, Indore decided the appeal in favour of the appellant vide Appeal No.IT-1237/2015-16 dated 29.9.2017.*

*3.1.5 In view of the above, as the appellant has sold agricultural land which is exempt from Long Term Capital Gain tax the additions of Rs.1,81,57,320/- made by the Assessing Officer cannot be upheld. Therefore, the addition made by the A.O. amounting to Rs.1,81,57,320/- is **Deleted**. Therefore, the appeal on these grounds is **Allowed**.”*

5. We agree with the Ld. D.R. that order is non-speaking, therefore, considering the totality of the facts, the impugned order is set aside and the matter is restored to the file of Ld. CIT(A) to decide it afresh after passing a

speaking order on every finding of the A.O. Hence, the grounds raised in the appeal are allowed for statistical purposes.

6. Now we take up ITA No.291/Ind/2018. The revenue has raised identical grounds except into figures. Since the appeal of the revenue in ITA No.290/Ind/2018 is decided in para 4 & 5 above, the same findings may also be applicable for this appeal and the grounds raised in this appeal are also allowed for statistical purposes.

7. In the result, the appeals filed by the revenue in ITA Nos.290 & 291/Ind/2018 for the assessment year 2012-13 are allowed for statistical purposes.

*Order was pronounced in the open court on 24.07.2019.*

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Sd/-  
(KUL BHARAT)  
JUDICIALMEMBER

Indore; दिनांक Dated : 24/07/2019

VG/SPS

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

By order

**Assistant Registrar, Indore**