

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AGRA BENCH: AGRA**

**BEFORE SHRI LALIT KUMAR, JUDICIAL MEMBER, AND  
DR. M.L. MEENA ACCOUNTANT MEMBER**

I.T.A. NO. 153/Ag/2018  
ASSESSMENT YEAR – 2014-15

Rakesh Porwal, Village -Acchalda,Agra PAN: CAWPK3653H (Assessee)	Income Tax Officer, Ward-1(1)(4),Auraiya, Etawah (Revenue)
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Assessee by	Shri Deepak Maheshwari, A.R.
Revenue by	Shri Waseem Arshad, Sr. D.R.

Date of Hearing	10.07.2019
Date of Pronouncement	30.07.2019

**ORDER**

Per Dr. M.L. Meena, A.M.

This appeal by the assessee is directed against the order dated 07.11.2017 passed by the Commissioner of Income Tax (Appeals)-1, Agra, [hereinafter referred to as 'the CIT(A)'] in respect of the Assessment Year 2014-15 wherein the assessee has challenged the confirmation of impugned additions made by the Assessing Officer ("the AO" in short) on account of investment made by the assessee in plots during the year as per grounds of appeal.

2. The following grounds of appeal have been taken by the assessee before us-

1. *The Ld. CIT(A) has erred on facts and in law in passing the order u/s 250 of the Income Tax Act, 1961 affirming the demand assessed by the assessing officer amounting to Rs.12,31,630/-*
2. *The Ld. CIT(A) has erred on facts and in law in confirming the income determined by the assessing officer on the basis of "Best Judgment Assessment" u/s 144 of the Act.*
3. *The Ld. CIT(A) has erred on facts and in law in confirming the addition made by assessing officer amounting to Rs.9,75,000/- as undisclosed*

*investment without giving any opportunity of being heard to the appellant which is against the principle of natural justice.*

4. *The appellant craves for liberty to add fresh ground(s) of appeal and also to amend, alter and modify any of the grounds of appeal.*

3. In the present case the assessment was completed u/s 144 of the act, wide over dated 26.12.2016, determining assessee income at ₹ 1 231630 as against the alternative income of ₹ 2 56630. The AO wide passing this exporting assessment order, has treated the assessee is investment in purchase of two plots and in construction of the guesthouse as unexplained income from other sources. Thus, in addition of ₹ 9 75000 has been made by the AO to the assessee returned income.

4. The aggrieved assessee carried the matter before the 1<sup>st</sup> appellate authority, the Ld. CIT(A) where he submitted that he is carrying on the tent house business in the name of "Porwal Tent House" from, and also receives rent which was shown in return of income at Rs.2,56,630/-. The amount invested in the disputed two plots as well as amount spent on construction of guest house was out of old savings of assessee & his father who has invested in MIS, KVP etc. The Ld. CIT(A) considering the explanation of the assessee rejected the contention of the assessee and confirm the addition by observing vide para 7.1 as follows:

*"7.1 In the lights of the above facts, I have reached to the conclusion that the appellant is not in a position to satisfactorily explain the source of funds invested by him in the three properties, and hence the A.O. adverse finding on the issue is justified and so the said investment is to be treated as unexplained investment of the appellant. The addition of Rs.9,75,000/- to the appellant's returned income, is accordingly confirmed."*

5. Being aggrieved, the assessee has filed this appeal before us. He submitted that the appellant is an individual living in Acchalda, a small village and having income from rent received from tent house. The appellant filed the return for the A.Y. 2014-15 declaring income of Rs.2,56,630/- on 07.10.2014. During the year under consideration,

the appellant has purchased 2 plots of Rs.75,000 and Rs.4 lacs in the name of his wife Smt. BeenaPorwal. Later on, the appellant spent nearly 5 lacs cash on the construction of the guest house on the above mentioned plots. During the year, the AO received information vide TEP and issued notices to appellant which were duly complied by the appellant. After which the Ld AO issued notice u/s 148 dated 28/07/2016 to verify the amount invested by the appellant of Rs.9,75,000 in purchasing of plots. The assessment was completed under section 144/147 dated 26/12/2016 making the addition of Rs.9,75,000/- to the income of the appellant considering it as income from other sources.

6. The Ld. AR for the assessee submitted that during the year, the appellant has purchased only 2 plots, one of Rs.75,000 which is purchased by cash withdrawn from post office account and second of Rs.4,00,000/- which is purchased vide cheque of Rs. 2 lacs each as reflected in central bank of India account statement dated 04.03.2013 and 01.06.2013. Further, the amount spent on construction was also arise out of old savings of appellant & investment in saving schemes of his father Lt Shri Baleshwar DayalPorwal which gets matured and transferred to appellant & his son's post office account being the nominees. He contended that all these facts were already verified and available on record of AO before reopening of the assessment. In support of his contention, he has submitted copy of notices issued by AO before reopening, copy of letters filed by assessee, copy of post-office passbook in the name of assessee and his wife (APB, Pg. 57-58), copy of joint account of bank statement in the name of assessee and his wife (APB, Pg. 59-61), copy of post-office passbook in the name of assessee's son (APB, Pg. 62-63), and copy of certificates of investment made by assessee's father (APB, Pg. 66-67),.

7. On the other hand, the Ld DR placed heavy reliance on the order passed by lower authorities. He contended that the assessee had not submitted any proof of investment made by his father as well as any bills/vouchers with respect to the amount spent on construction.

8. Heard the rival contention and perused the material facts on record. We have also gone through the case laws relied upon by Ld A.R. of the assessee. It is not disputed that the assessee had purchased only two plots of Rs.4,00,000/- and Rs.75,000/- during the year under consideration. From the bank account/statement of the assessee, placed before us, it can be seen that there was transfer of Rs.2,00,000/- on 04.03.2013 and Rs.2,00,000/- on 01.06.2013. The post office account passbook of assessee also shows an entry of cash withdrawn of Rs.1,66,000/- on 22.04.2013. Considering the entries in the bank accounts and post office account of assessee, we find merits in the contention of the assessee that the aforesaid entries have reasonable nexus to the payment of purchase of the disputed plots in view of the date of withdrawal and the date of payment for the purpose of purchase of plots as above. The payments of Rs.4,00,000/- was made by joint bank account of assessee & his wife and the payment of another plot of Rs.75,000/- and other related charges were made by cash being withdrawn by the appellant from his post office account on 22.04.2013 which are verifiable with corroborative documentary evidences submitted by the Ld AR before the AO, and the CIT(A) and even before us (APB, Pg. 1-67). Thus, the investment in the purchase of plots stands explained.

9. It is evident that the assessee has withdrawn a cash of Rs.3,85,000/- from the post-office account of his son, and Rs. 1,15,000/- out of personal saving for the purpose of investment on construction of the guest house worth Rs.5,00,000/-. The issue before us, is regarding to the source of unexplained cash investment on construction Guest House. The argument raised by the Ld DR with respect to the bills/ vouchers related to construction of Guest House is irrelevant. The documents/ evidences placed before us by the assessee such as bank statement, post-office passbook, books of accounts of previous years, old investment certificates etc which were also submitted before the subordinate authorities, are sufficient to establish the source of investment and source of cash spent on construction. However, the counsel for the assessee has not demonstrated the source of accumulated personal saving of Rs. 1,15,000/- claimed to be invested on the construction of the Guest House. Under

the facts and circumstances, the amount of Rs. 1,15,000/- claimed to be invested on the construction of the Guest House remained as an unexplained investment.

10. Considering the factual matrix of the case, in our considered view, the CIT(A) was not justified in treating the entire amount of investment of Rs. 9,45,000/- (Rs 4,75,000/- in plots and Rs. 5,00,000/- on the construction of the Guest House) as unexplained investment of the assessee. Since, the amount of Rs. 8,30,000/- stands explained out of corresponding withdrawals either from the bank A/c or post office account as above, however, the balance Rs. 1,15,000/- invested on the construction of the Guest House claimed out of personnel saving being not supported by material evidences can be treated as unexplained investment of the assessee. Thus, an amount of Rs. 8,30,000/- stands explained and balance amount of Rs. 1,15,000/- is confirmed as unexplained investment on the construction of the guest house out of the total addition on account of unexplained investment of Rs. 9,45,000/-. Accordingly, the ground is partly allowed.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 30/07/2019

**Sd/-**  
**(Laliet Kumar)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Dr. M.L. Meena)**  
**ACCOUNTANT MEMBER**

\*AKV\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sr. Private. Secretary