

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 Nos.93&94/Ind/2009**

**Assessment Year: 2003-04 & 2004-05**

Dharampal Sahu C/p I.P. Sachdeva & Co. 40-B, 9 <sup>th</sup> Floor Jhabua Tower RNT Marg Indore 452001 (Appellant)	<u>बनाम/</u> Vs.	DCIT-4(1) Indore (Revenue)
P.A. No.AGTPS5125K		

**IT(SS)A Nos.2&3/Ind/2009**

**Assessment Year: 2003-04 & 2004-05**

Munnalal Sahu C/p I.P. Sachdeva & Co. 40-B, 9 <sup>th</sup> Floor Jhabua Tower RNT Marg Indore 452001 (Appellant)	<u>बनाम/</u> Vs.	DCIT-4(1) Indore (Revenue)
P.A. No.AHCPS6307H		

Appellant by	S/Shri Manjeet Sachdeva & Avinash Gaur, A.Rs
Respondent by	Smt. Ashima Gupta, D.R.
<b>Date of Hearing:</b>	<b>23.09.2019</b>
<b>Date of Pronouncement:</b>	<b>17.10.2019</b>

## आदेश / O R D E R

### PER KUL BHARAT, J.M:

This bunch of four appeals by two different assesseees are pertaining to the assessment years 2003-04 & 2004-05. All the appeals were heard together and are being disposed off by way of a consolidated order for the sake of brevity. First we take up ITA Nos.93 & 94/Ind/2009. The assessee has raised following grounds of appeal:

#### ITA No.93/Ind/2009:

1. That the Learned Commissioner of Income Tax (Appeals) has erred by confirming the following addition made to the declared total income of the appellant.

- i. On investment in plot No.124B Suryadev Nagar, Indore  
Rs.225000/-
- ii. On investment in plot No.26 & 27 in joint with Shri Sanjay Vyas  
Rs.735000/-

*iii. On alleged sale agreement executed by Smt. Rekha Sharma for 2 unit in Balaji Palace*

*Rs.157000/-*

*iv. On loans and advanced with interest*

*Rs.209000/-*

*v. On estimation of interest @ 2% on Rs.1278750/-*

*Rs. 33247/-*

*vi. On account of low household withdrawals*

*Rs. 65000/-*

*Total*

*Rs.1425147/-*

- 2. That the learned CIT (A) has failed to appreciate and or overlooked the submissions made by the appellant.*
- 3. That the Ld. CIT(A) confirmed the addition without considering the facts and circumstances of the case.*
- 4. That the total addition of Rs.1425147/- are bad in law, illegal, wrong, uncalled for and unwarranted.*
- 5. That the appellant carves leave to add or alter any grounds of appeal.*

2. At the outset, Ld. Counsel for the assessee submitted that the assessee was not given sufficient opportunity and also the assessee was not provided with the material gathered. It is further stated that the statements were taken at the back of the assessee and no cross examination

was provided. It was further submitted that the A.O. failed to appreciate that a common notice was issued for all the persons and therefore, a common reply was filed. Ld. Counsel for the assessee submitted that in the interest of justice, atleast an opportunity to be given to the assessee.

3. Ld. D.R. opposed these submissions of the assessee and submitted that the assessee failed to explain the entries made on the seized documents. It was incumbent upon the assessee to satisfactorily explain the material seized during the search. The assessee grossly failed to do so.

4. In rejoinder, Ld. Counsel for the assessee submitted that both the authorities below have simply recorded that the assessee could not satisfactorily explain. In fact, the assessee was not given sufficient opportunity to make his submissions. Under these facts, he prayed that the

impugned orders may be set aside and the assessment may be restored to the file of the A.O. for framing the assessment de-novo.

5. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. We have given our thoughtful consideration to the submissions made by the Ld. authorised representatives of the parties and also material placed before us. Looking to the facts and circumstances and the orders of the authorities below, we are of the considered view that the assessee should be given an opportunity in the interest of justice to explain the material gathered during the search since both the authorities have decided on the ground that the assessee could not satisfactorily explain and correlate the impugned additions with the disclosed source of income. However, the

submission of the assessee is that there is no undisclosed income and the authorities below have not appreciated the facts in right perspective. Therefore, the impugned order is set aside and the assessment is restored to the file of the A.O. to make assessment afresh after providing a reasonable opportunity to the assessee. The grounds of appeal are allowed for statistical purpose. Appeal of the assessee is allowed for statistical purposes.

**ITA No.94/Ind/2009:**

6. Now we take up ITA No.94/Ind/2009. The assessee has raised following grounds of appeal:

*That the Ld. CIT(A) has erred by confirming the following addition made to the declared total income of the appellant.*

I.	<i>On out of excess cash found</i>	<i>Rs.613312/-</i>
II.	<i>On commission and hundi brokerage</i>	<i>Rs.40500/-</i>
III.	<i>On commission on sale of plots of IDA Sch. No.103, Indore</i>	<i>Rs.60000/-</i>
IV.	<i>On investment in plot No.47 Sudarshan Nagar, Indore</i>	<i>Rs.1170577/-</i>

V.	<i>On income from transaction in VIP Nagar, Indore</i>	<i>Rs.100000/-</i>
VI.	<i>On investment in plot No.36-37 Sudarshan Nagar, Indore</i>	<i>Rs.700000/-</i>
VII.	<i>On income from sale of plot No.4 Vidhyanagar, Indore</i>	<i>Rs.185000/-</i>
VIII.	<i>On LPS-2/Page 16</i>	<i>Rs.825000/-</i>
IX.	<i>On BS-1/7 Page 2</i>	<i>Rs.250000/-</i>
X.	<i>On account of low household withdrawals</i>	<i>Rs.70000/-</i>
	<i>Total</i>	<i>Rs.4014389/-</i>

1. *That the Ld. CIT(A) has failed to appreciate and or overlooked the submissions made by the appellant.*
2. *That the Ld. CIT(A) confirmed the addition without considering the facts and circumstances of the case.*
3. *That the total addition of Rs.4014389/- are bad in law, illegal, wrong, uncalled for and unwarranted.*
4. *That the appellant craves leave to add or alter any grounds of appeal.*

7. The facts are identical as were in ITA No.93/Ind/2009.

Therefore, with the same reasoning, the grounds of appeal of the assessee are allowed for statistical purposes and the impugned order is set aside to the file of the A.O. for making assessment afresh. The appeal of the assessee is allowed for statistical purposes.

**ITA No.2/Ind/2009:**

8. Now we take up ITA Nos.2/Ind/2009. The assessee has raised following grounds of appeal:

ITA No.2/Ind/2009:

1. *That the Ld. CIT(A) has erred by confirming the addition of Rs.50000/- on account of alleged sale of plot and Rs.65000/- on account of low household withdrawals of the declared total income of the appellant.*
2. *That the learned CIT(A) has failed to appreciate and or overlooked the submissions made by the appellant.*
3. *That the Ld. CIT(A) confirmed the addition made to the declared total income of the appellant on above account without considering the facts and circumstances of the case.*
4. *That addition of Rs.50000/- on account of sale of plot and Rs.65000/- on account of low household withdrawals are wrong, bad in law and unwarranted.*
5. *That the appellant craves leave to add or alter any grounds of appeal.*

9. The facts are identical as were in ITA No.93/Ind/2009. Therefore, with the same reasoning, the grounds of appeal of the assessee are allowed for statistical purposes and the impugned order is set aside to the file of the A.O. for

making assessment afresh. The appeal of the assessee is allowed for statistical purposes.

**ITA No.3/Ind/2009:**

10. Now we take up ITA Nos.3/Ind/2009. The assessee has raised following grounds of appeal:

1. *That the Ld. CIT(A) has erred by confirming the following addition made to the declared total income of the appellant:-*

I. On sale of plot	Rs.50,000/-
II. On sale of plot	Rs.6,00,000/-
III. On sales of plot from three persons	Rs.3,72,666./-
IV. On account of low household withdrawals	Rs.70,000/-
Total	Rs.10,92,666/-

2. *That the learned CIT(A) has failed to appreciate and or overlooked the submissions made by the appellant.*

3. *That the Ld. CIT(A) confirmed the addition without considering the facts and circumstances of the case.*

4. *That the addition made on account of sale of plot and Rs.50000/- + Rs.6090000/- + Rs.372666/- totalling to Rs.10,22,666/- are bad in law, illegal, wrong, uncalled for and unwarranted.*

5. *That the appellant craves leave to add or alter any grounds of appeal.*

11. The facts are identical as were in ITA No.93/Ind/2009. Therefore, with the same reasoning, the grounds of appeal of the assessee are allowed for statistical purposes and the impugned order is set aside to the file of the A.O. for making assessment afresh. The appeal of the assessee is allowed for statistical purposes.

12. In the result, the appeals filed by the assessee in ITA Nos.93&94/Ind/2009 for the A.Ys 2003-04 & 2004-05 & the appeals filed by another assessee in ITA Nos.2&3/Ind/2009 for the A.Ys 2003-04 & 2004-05 are allowed for statistical purposes.

*Order was pronounced in the open court on 17.10.2019.*

Sd/-

(MANISH BORAD)  
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 17/10/2019

VG/SPS

Sd/-

(KUL BHARAT)  
JUDICIALMEMBER

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

By order

**Assistant Registrar, Indore**