

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.210/Ind/2017
Assessment Year: 2013-14**

Shri Gulrez, Khan, C/O Pavan Wed Advocate 203, Mourya Heritage 56 Shops road, 10/5 New Palasia Indore (Appellant)	<u>बनाम/</u> Vs.	DCIT- Ratlam (Revenue)
PAN: ALBPK9072A		
Appellant by	Shri Pavan Ved, Adv.	
Revenue by	Shri Rajib Jain, Sr. DR	
Date of Hearing:	06.12.2019	
Date of Pronouncement:	10.12.2019	

आदेश / O R D E R

PER MANISH BORAD, A.M:

This appeal at the instance of Assessee pertaining to A.Y. 2013-14 is directed against the order of Commissioner of Income Tax(Appeals), Ujjain, (in short 'CIT'), dated 04.01.2017 which is arising out of the order u/s 143(3) of the Income Tax Act

1961(hereinafter called as the 'Act') framed on 28.13.2016 by DCIT-Ratlam.

2. Brief facts of the case as culled out from the records are that the assessee is an individual engaged in the business of Hotel and Travel Agency. A survey u/s 133A of the I.T. Act 1961 was carried out on the business premises of the assessee on 25.09.2012. During the course of survey additional income of Rs.3,50,62,772/- was offered to tax on account of excess cash of Rs.8,80,060/- undisclosed investment of Rs.1,31,00,000/- in construction of Hotel Hilton Tower, undisclosed investment of Rs.69,29,812/- for Imran Marriage Hall, on account of Commission of Rs.43,52,900/- and on account of property of Rs.98,00,000/- with Shri Chechani. However out of above declaration, the assessee has declared only Rs.94,50,000/- in his return of income. During the course of assessment proceedings assessee was asked to justify as to why the income of Rs.94,50,000/- offered to tax as against Rs.3,50,62,772/- declared during the course of survey. Assessee gave detailed submissions which did not find any favour by the Ld. AO. The Ld. AO after giving recording observation made addition for Income from other source at Rs.2,56,12,772/-, disallowance u/s 40A(3) of the Act at Rs.88,550/- and addition in respect of undeclared receipt at Rs.2,87,492/- thereby, assessing income at Rs.3,56,14,914/- as against the income declared at Rs.96,26,100/- in the Income Tax Return filed on 28.03.2015 which was selected for scrutiny assessment by servicing of notices u/s 143(2) & 142(1) of the Act.

3. Aggrieved assessee preferred an appeal before the Id. CIT(A) but failed to succeed.

4. Now the assessee is in appeal before the Tribunal raising following grounds:

(1) Ld. CITCA) erred in confirming addition of Rs. 25,12,930/- as undisclosed investment in Marriage Hall in addition to amount of Rs.44,16,882/ - already declared by the appellant by rejecting the retraction made by the appellant and ignoring the facts on record.

(2) Ld. CITCA) erred in confirming addition of Rs. 98,00,000/- as undisclosed income being receipt as per agreement to sell found in course of survey rejecting retraction of disclosure made at the time of survey and ignoring the facts on record.

(3) Ld. CIT(A) erred in confirming addition of Rs. 1,31,00,000/- for unexplained investment in the hotel building on the basis of valuation report and after rejecting retraction ignoring blatantly the clear facts on record.

(4) Id. CIT(A) erred in confirming addition as per previous ground of appeal taking market value of land at Rs. 79,00,000/- despite the fact that land was already acquired in earlier year and shown as such in that year;; Return of Income. He simply went by disclosure made at the time of survey and ignored vital facts on record.

(5). Id. CIT(A) erred in not giving set off of Rs. 43,52,900/- being income earned while working out unexplained investment and confirmed the addition on the basis of disclosure made at the time of survey ignoring the facts on record and ignoring the basic principle that either income can be added or investment but not both. He thus confirmed double addition of the same income.

(6) ld. CITCA) erred in confirming addition of Rs. 88,550/- u/s., 40A(3).

(7) Ld. CIT(A) erred in confirming addition of Rs. 287492/- as undeclared receipt.

8. The appellant reserves the right to add, amend, or alter any of the grounds of appeal as above.

9. Prayer of interim relief: The additions made by the Ld. AO and confirmed by the Ld. CIT(A) are baseless, perverse and unsustainable. There are glaring errors in the orders passed by both the lower authorities. There are double addition of the same income. The demand raised is very high and beyond the means of the appellant to pay the same. Hence it is prayed that the appeal be listed for hearing early and in the meantime, stay of demand be granted. It is also requested that hearing for stay be fixed early.

5. At the outset, Ld. counsel for the assessee referring to the various grounds submitted that certain material facts could not be brought to the notice of the Ld. CIT(A) during the course of appellate proceedings. He requested for setting aside all the issues raised in this appeal to Ld. CIT(A) for afresh adjudication. One such instance was mentioned with regard to the addition for unexplained investment in the Hotel building at Rs.1,31,00,000/-. Ld. counsel for the assessee submitted that the revenue authorities have only given credit to the loan taken from HDFC Bank for the construction and the remaining amount as was shown in the valuation report was added to income . No credit was given for the value of land and construction cost duly declared and disclosed in the regular books of accounts maintained by the assessee, for which no addition ought to have been made. Similarly, for other grounds also it was pleaded that various material facts if had been placed before the Ld. CIT(A), the same should have affected ultimate finding of Ld. CIT(A).

6. Per Contra Ld. Departmental Representative (DR) vehemently argued supporting the orders of the lower authorities but was fair enough in not objecting to this request of setting aside the issues in the finding of Ld. CIT(A).

7. We have heard rival contentions and perused the record placed before us. The assessee has raised various grounds running from 1 to 9 challenging various additions confirmed by the Ld. CIT(A) which were made by the Ld. AO. In the survey action u/s 133A of the Act conducted at the business premises of the assessee on 25.09.2012, additional income of Rs.3,50,62,772/- was offered for tax by the assessee but in the return of income filed subsequently, only income of Rs.94,50,000/- was declared. So there was a short fall in declaration of Rs.2,56,12,772/-. This amount was added by the ld. AO along with other minor disallowance of Rs.3,76,042/-. Assessee failed to get any relief by Ld. CIT(A).

8. Before us Ld. counsel for the assessee contended that various material facts which were going to the root cause to the addition made in the hands of assessee could not be placed before the Ld. CIT(A) due to unavoidable circumstances. It has been judicially well established that the additions in the course of survey cannot be made, merely on the basis of statements since they have no evidentiary value as they are not given under oath. The revenue authorities had to connect the additions with material facts including incriminating material found during the course of survey.

In the case of assessee various material facts were not before the Ld. CIT(A) including the fact that various investment which were duly appearing the books of accounts are also alleged to have been added to the income declared by the assessee.

9. We, therefore, in the given facts and circumstances of the case and submissions made by Ld. counsel for the assessee and in the interest of justice and being fair to both the parties, restore all the issues raised in this appeal to Ld. CIT(A) for afresh adjudication and also direct the assessee to place all material facts in support of the contention that excessive addition has been made by the Ld. AO. The Ld. CIT(A) after appreciating the same may decide as per the provisions of law. Needless to mention that proper opportunity of being heard to be provided to the assessee.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order was pronounced in the open court on 10.12.2019.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 10/12/2019

Patel. P.S./नि.स.

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

By order
Assistant Registrar