

**INCOME TAX APPELLATE TRIBUNAL
[DEHRADUN BENCH]**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
ITA No 09/ DDN/2019
A Y 2015-16**

Appellant		Respondent
Ajaykumar Mangain S/o Shri ved Prakash Village Kaluwala Badowala Bhaniawala Dehradun 248140 PAN : CEYPM0160F	Vs.	THE INCOME TAX OFFICER Ward 1 (4) (1) Rishikesh
(Appellant)		(Respondent)

Date of Hearing: - 28/02/2020

Date of Order:- 13/05/2020

ORDER

PER PRASHANT MAHARISHI, A.M.:

1. This appeal in ITA 09/DDN/2019 for assessment year 2015-16 is filed by an individual, assessee, against the order of The Commissioner Of Income Tax – A, Dehradun dated 15/03/2019 raising several grounds of appeal challenging confirmation of action under section 148 of the income tax act as well as confirmation of addition u/s 68 of Rs 11 lakhs.
2. Brief facts of the case shows that assessee is an individual who filed his return of income on 31-3- 2016 declaring an income of ₹ 3 74340/-. Action under section 147 of the income tax act was initiated and the notice under section 148 was issued on 24/3/2017.

In response to that notice, assessee submitted its original return filed. Assessee has declared his income from the business of sale and purchase of plots. Such income was declared under the provisions of section 44AD of The Income Tax Act. Assessee in the income tax return has disclosed his gross receipts at ₹ 4898020 and consequent profit thereon of Rs. 402341/- was declared.

3. However, during the course of assessment proceedings for assessment year 2014 – 15, Ld AO noticed that assessee has deposited cash of Rs. 25,50,000/- in his savings bank account number 76001642669 with Uttarakhand Gramin Bank, in the financial year relevant to the assessment year 2014 – 15. In that assessment year, assessee explained that he has entered into an agreement to sale property with 10 different people on 8/12/2013 and had received cash amounting to ₹ 30 lakhs from these persons. He further stated that in the month of June 2014, he received ₹ 1033000 , being second installment from these persons. The sum of ₹ 30 lakhs received by the assessee in assessment year 2014 – 15 was added by the learned assessing officer in that AY as assessee failed to prove the genuineness of the transaction and creditworthiness of those persons. The above sum of ₹ 30 lakhs was deposited in the month of December 2013. However ₹ 10,33, 000 was deposited in the month of June 2014 and therefore the above sum pertained to financial year 2014 – 15 relevant to the assessment year 2015 – 16. As this sum remains unexplained in the hands of the assessee being received allegedly on agreements to sale the properties and therefore it has escaped the assessment and accordingly action under section 147 of the income tax was initiated. The Ld AO obtained approval of The Joint Commissioner Of Income Tax, Range – 4 on 22/3/2017 and thereafter notice under section 148 was issued on 24/3/2017.
4. On the merits of the addition, the assessee was asked to furnish the deeds of properties purchased and sold during the relevant financial year and to explain the source of cash deposit of Rs. 1033000/- made by him in his bank account. Assessee furnished the copies of the purchase and sale deed executed during the year under consideration and further with respect to the amount of cash deposit it was submitted that above sum was deposited from the sale proceeds from land sold on 20/05/2014 and some other cases advances received from the prospective buyers for the purchase of land. Assessee further submitted a cash flow statement on 14/12/2017 for the period ended on 31/3/2015

showing that the assessee has received ₹ 11 lakhs from the prospective buyers against the agreement to sale of the properties> However sale deeds were not executed and the amount is received in advance against the sale of land was repaid. Assessee further explained that there are no formal cancellation agreements entered into. The assessing officer asked the assessee to produce the person from whom advance against the agreement to sale has been claimed to be received. Assessee submitted that statement of the six persons were already recorded during the course of assessment proceedings for assessment year 2014 – 15 and confirmation of the other two person was also submitted. Assessee also stated that assessee has already cancelled the agreement from them; hence, it would not be possible for him to produce them before the assessing officer. Therefore, the learned assessing officer had gone through the copy of the agreement to sale dated 8/12/2013 filed by the assessee and found that agreements are not registered agreement. He further noted that when the agreement to sale was cancelled on 10/5/2014, there is no reason why the second installment of advances claimed to have been received in the month of June 2014. Thus, genuineness of the transaction is not proved. He further referred to his finding for assessment year 2014 – 15 made the addition of ₹ 11 lakhs as assessee has failed to produce the bank statement of most of the parties which could have demonstrated the availability of the cash for making the alleged advance of ₹ 11 lakhs to the assessee. Ld AO was also of the view that the learned CIT –A has already dismissed the appeal of the assessee for assessment year 2014 – 15 confirming the above addition of ₹ 30 lakhs for that year, the consequent addition of ₹ 11 lakhs in this year also deserves to be made in the hands of the assessee. Therefore, he held that assessee has failed to discharge onus cast upon him to satisfactorily explain source of cash credit of ₹ 11 lakhs and hence it was added under section 68 of the income tax act. Accordingly the total income of the assessee was determined u/s 143 (3) rws 147 of the Act at ₹ 1 474340/- against the returned income of ₹ 3 74340 by passing an order on 28/12/2016.

5. The assessee aggrieved with the order of the learned assessing officer preferred an appeal before The Commissioner Of Income Tax Appeals. Before the learned CIT – A, Assessee submitted that the reopening has been made by the learned assessing officer based on the assessment order passed for assessment year 2014 – 15 which travelled to

the income tax appellate tribunal and the addition got deleted. As the facts and circumstances of the case for assessment year 2014 – 15 and assessment year 2015 – 16 are similar and also the parties involved are the same, the addition cannot be sustained. The learned CIT – A disregarded the contention of the assessee and stated that each assessment year is separate, directed the learned assessing officer to submit the remand report. Thereafter on appreciation of the remand report, he dismissed the appeal of the assessee confirming the above addition. Therefore, assessee is in appeal before us.

6. Despite notice, none appeared on behalf of the assessee. Therefore, the issue is decided on the merits of the case as per information available on the record.
7. The learned departmental representative vehemently supported the order of the lower authorities.
8. We have carefully considered the rival contention and find that the reopening of the assessment has been made by the learned assessing officer based on the observation made by him in order for assessment year 2014 – 15. The matter for assessment year 2014 – 15, wherein the addition of ₹ 30 lakhs was made by the learned assessing officer, travelled up to the income tax appellate tribunal. The Income tax appellate tribunal deleted the above addition. This fact is uncontroverted and accepted by the Id CIT- A. Therefore, it is apparent that the reason for which the case of the assessee for assessment year 2015 – 16 was reopened does not survive. Even otherwise, there is no change in the facts and circumstances of the case including the parties covered in the assessment proceedings for assessment year 2014 – 15 from whom advances have been received. As the issue for assessment year 2014 – 15 is squarely covered issue in favour of the assessee by the order of The coordinate bench, , we find no reason to not to follow the order of the coordinate bench for that year, when there is no change in the facts and circumstances of the case. Furthermore, though the learned CIT – A has remanded the case back to the assessing officer for submitting the remand report, however, the lower authorities could not point out that what is the difference between the facts in the case for assessment year 2014 – 15 decided by the coordinate bench and the facts of the case of the assessee for this assessment year. Unless that is pointed out, following the principles of consistency, we do not find any merit in sustaining the addition by the learned CIT – A. In view of this, on the issue of reopening of the assessment, as the

reasons based on which the reopening has been made does not survive, as well as on the merits of the case, as addition in the earlier year has been deleted by the coordinate bench, addition cannot be sustained for this year. Thus, on both the counts the appeal of the assessee succeeds.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 13/05/2020

-Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

-Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 13/05/2020

Copy forwarded to

1. Appellants;
2. Respondents;
3. CIT;
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT,