

**आयकर अपीलीय अधिकरण न्यायपीठ जोधपुर में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**JODHPUR BENCH**

**माननीय श्री संदीप गोसाईं, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI SANDEEP GOSAIN, JM AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**(Hearing Through Video Conferencing Mode)**

आयकर अपील सं./ I.T.A. No.286/Jodh/2019

(निर्धारणवर्ष / Assessment Year: 2011-12)

<b>Smt. Anamika Vikas Nahar</b> C/o. Rajendra Jain Advocate 106, Akshay Deep Complex 5th B Road, Sardarpura, Jodhpur Rajasthan-342 001.	<b>बनाम/</b> Vs.	<b>Income Tax Officer-Ward-1</b> Bhilwara Rajasthan
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. <b>AFJPB-7843-Q</b>		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

<b>Assessee by</b>	:	Ms. Raksha Birla (CA) & Shri Rajendra Jain (Advocate) –Ld.ARs.
<b>Revenue by</b>	:	Shri A.S. Yadav- Ld. Sr. DR

<b>सुनवाई की तारीख/ Date of Hearing</b>	:	05/11/2020
<b>घोषणा की तारीख / Date of Pronouncement</b>	:	21/12/2020

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member): -**

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as 'AY'] 2011-12 contest the order of Ld. Commissioner of Income-Tax-(Appeals), Ajmer, [in short referred to as 'CIT(A)'],

Appeal No.373/2018-19 dated 10/06/2019 on following effective grounds:-

1. That on the facts and in the circumstances of the case, the Id CIT (A) erred in upholding the validity & notice u/s. 148 of the Act.
2. That on the facts and in the circumstances of the case, the Id CIT (A) grossly erred in sustaining the addition of Rs.4,27,500/- in respect of undisclosed investment.
3. That on the facts and in the circumstances of the case, the Id CIT (A) grossly erred in arbitrary ignoring the valid documentary evidence in support of claim made by the assessee which clearly established the transaction made by the assessee is genuine.
4. That on the facts and in the circumstances of the case, the Id CIT (A) grossly erred in confirming the addition of Rs.4,27,500/- only on the basis of third party statement as without providing the opportunity for cross verification.
5. That on the facts and in the circumstances of the case, the Id CIT (A) grossly erred in upholding various findings recorded by the Ld.AO in the assessment order based on surmises, assumption and presumptions as such no adverse material evidence found in respect of documents available on record.

As evident, the assessee is aggrieved by the addition of undisclosed investment for Rs.4.27 Lacs. The assessee has also contested the validity of reassessment proceedings.

2. We have carefully heard the rival submissions and perused relevant material on record including written submissions and documents placed in the paper book. The judicial precedents as relied upon during the course of hearing have duly been deliberated upon. Our adjudication to the subject matter would be as given in succeeding paragraphs.

3.1 An assessment was framed against the assessee u/s 143(3) r.w.s. 147 on 11/12/2018 wherein the assessee was saddled with impugned addition of Rs.4.27 Lacs. The original return filed by the assessee was processed u/s 143(1).

3.2 The reassessment proceedings were triggered pursuant to search operations u/s 132 on Rajesh Life-space Group of Companies on 10/03/2016. During search action, the statement of key persons of the group were recorded u/s 132(4) wherein admission was made that the group accepted cash component on sale of flats. The assessee was stated to be purchaser of one such flat and search findings indicated that the assessee made cash payment of Rs.8.55 Lacs as *on-money* while booking a flat in Raj Legacy-II project. Accordingly, the assessee's case was reopened as per due process of law and the assessee was show-caused as to why the aforesaid *on-money* was not to be added to the income of the assessee.

3.3 However, the assessee denied having made any such cash payment and submitted that agreement value of Rs.72.20 Lacs was paid through account payee cheques from home loan taken from SBI. It was also pointed out that the assessee was co-owner in equal share with her husband. However, going by the search findings, Ld. AO made an addition of Rs.4.27 Lacs on account of undisclosed investment on account of assessee's  $\frac{1}{2}$  share. The action of Ld. AO, upon confirmation by Ld. CIT(A), is under challenge before us.

4. Upon careful consideration of factual matrix as enumerated in the preceding paragraphs, it is noticeable that the whole basis of making the additions in the hands of assessee is search findings. There is no corroborative material on record to substantiate the fact that the assessee, in fact, paid any *on-money* against the purchase

of flat. The assessee all along maintained that the agreement value was paid through account payee cheques and no money was paid over and above the same. However, no evidence has been brought on record by Ld. AO to disprove the same and establish that the assessee actually made any cash payment. In our opinion, the primary onus was on revenue to contradict the stand of assessee by bringing on record adverse material. The failure to do so would make the additions unsustainable in the eyes of law. Therefore, we do not find sufficient material on record to sustain the impugned additions. The same stand deleted and the grounds thus raised stand allowed.

5. The assessee has also challenged the validity of assessment proceedings. However, there is nothing on record which would indicate that the proceedings were vitiated, in any manner. The Ld. AO was clinched with specific information which indicated possible escapement of income in the hands of the assessee. Nothing more was required at that stage to reopen the assessment proceedings particularly when the original return was processed u/s 143(1). The legal ground stand dismissed.

6. The appeal stand partly allowed in terms of our above order.

*Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal)*

*Rules, 1963.*

**Sd/-**

**(Sandeep Gosain)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

**आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Jodhpur
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, जोधपुर / ITAT, Jodhpur.**