

IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH, RAIPUR
BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI PAWAN SINGH, JUDICIAL MEMBER
I.T.A. No. 248/RPR/2019 for (AY: 2011-12)

Smt. Nitisha Agrawal, 65, Vs. ITO, Ward-3(2),
Vivekanand Nagar, Pension Raipur.
Bada, Raipur (CG)

PAN No. AOJPA 4641 N (Respondent)
(Appellant)

Assessee by : Shri S.R. Rao, Advocate.
Department by : Shri R.K. Baral, DR

Date of hearing : 12/08/2021.
Date of pronouncement : 12/08/2021.

Order Under Section 254(1) of Income –tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal filed by the assessee is directed against the order of Learned Commissioner of Income Tax (Appeals)-1, hereinafter called as “ld.CIT(A)” Raipur, dated 07.10.2019 for the A.Y. 2011-12. The assessee raised the following grounds of appeal:-

- “1. *In the facts and circumstances of the case and in law the ld. Commissioner of Income-tax (Appeals) has erred in confirming 50% addition at Rs. 65,79,375/- treating it as appellant’s share of investment in purchase of immovable property overlooking the facts and assessment completed with respect to same property in the case of appellant’s spouse, the primary holder.*
2. *The impugned order is bad in law and on facts.*

3. *The appellant reserves the right to add, amend, alter, omit or withdraw all or any of the grounds of appeal.”*
2. Brief facts of the case are that assessee has not file the return of income for the assessment year under consideration. The case of the assessee was reopened under section 147 on the basis of information in AIR that assessee has purchased property worth Rs. 1.31 crore. Notice under section 148 was issued to the assessee on 16/08/2018 to file the return. In response to the notice under section 148, the assessee has not filed return of income. The AO recorded that despite service of notice under section 148 and notice under section 142(1), no compliance was made by the assessee. Accordingly, the AO completed the assessment ex-parte and also initiated penalty proceedings under section 271-F and 271(1)(b) of the Act. The AO further recorded that as per information in AIR, the assessee purchased property of Rs. 1.31 crore. Despite giving so many opportunities the assessee has not complied with the said notices, accordingly the entire amount of consideration value of Rs. 1.31 crore was added to the income of the assessee vide assessment order dated 24/11/2018 passed under section 147 r.w.s. 144.
3. On appeal before the Id. CIT(A), the assessee in its submission, submitted that Shri Raj Agrawal purchased the Flat No. 1704 in K-Wing of Reheja Vistas on 19/04/2010 and the assessee was shown as second owner. The entire investment was made by her husband. The assessee also stated that

all these facts were explained vide letter dated 24/11/2018. The assessee also stated that similar action under section 147 for reopening of the case of the assessee's husband was initiated by Assistant Commissioner of Income-tax-35(2), Mumbai. During the said assessment proceedings, complete details were filed, which were verified by the AO concerned and income of the husband was accepted by the assessment order dated 20/12/2018. The assessee also explained that all these facts could not be explained before AO due to non-availability of sufficient time. The assessee furnished copy of agreement of purchase of property along with registered sale deed and copy of assessment order dated 26/12/2018 in the case of her husband. The submission of the assessee was forwarded to the AO for seeking his remand report by treating those documents as additional evidence. In response thereto, the AO furnished his remand report dated 09/10/2019. In the remand report, the AO stated that explanation of the assessee regarding assessment proceedings in her husband's case was passed on 26/12/2018, however, assessment order in the case of assessee was passed on 24/11/2018. On documentary evidence regarding purchase of property, the AO commented that the documents are incomplete and contained the name of parties; the pages containing details and cheque number, name of bank are not ascertainable. Though, the AO recorded the complete details of payment schedule in para 5 in his remand report, in para 6 of his remand report contended that the payment

details and sources of investment are not discussed in assessment order dated 26/12/2018 passed in the case of husband of the assessee. The AO in para-6 of his remand report stated that as the payments details in assessment order of assessee husband is not discussed, it is not clear whether he gave complete information to AO or not in alternative the AO stated that the share of assessee is Rs. 65,79,375/-

4. The Id. CIT(A) after considering the submission of assessee and remand report of AO held that in the case of husband of assessee, the payment details and sources of investment are not discussed the assessee is 50% shareholder of the flat/ property which remained to be explained and confirmed the addition to that extent, thereby confirmed the addition of Rs. 65,79,375/-. Further aggrieved, the assessee has filed the present appeal before this Tribunal.
5. We have heard the submissions of Id. Authorised Representative (AR) for the assessee and the Id. Departmental Representative (DR) for the revenue and have gone through the orders of the lower authorities. The Ld.AR of the assessee submits that husband of the assessee has purchased a flat in Mumbai. The name of assessee was shown as second owner. The entire payment of consideration was paid by her husband. The husband of assessee availed a loan of Rs. 70.00 lakhs from ICICI Bank. The certificate of EMI schedule issued by the ICICI bank is placed on record. The Ld.AR of the invited our attention on summary of statement

of payment paid to the Builder. It was submitted that Rs. 5.00 lakhs was paid on 11/02/2009 vide cheque No. 482169, Rs. 21,31,750/- vide cheque No.482171. Further Rs. 17,54,061/- was paid on 18/03/2010 vide cheque No.748726, a sum of Rs. 70,16,244/- was paid (remitted) through bank loan account No.LBUMUM00001802460 from ICICI Bank and Rs.18,01,929/- was paid by cheque No.871051 and Rs. 10,000/- was paid by cheque No. 871052 dated 25/02/2011. The Id.AR of the assessee while referring the agreement of sale submits that the name of assessee was mentioned as second owner, the entire consideration was paid by her husband. The Id.AR of the assessee while referring the assessment order of her husband submits that for A.Y. 2010-11, the husband of assessee declared income of Rs. 61,01,271/-. On similar AIR information, the case of the husband of the assessee was also reopened on recording reasons that income chargeable to tax to the extent of Rs. 1.31 crore for investing in immovable property has escaped from assessment. The husband of the assessee contested reopening as explained hereinabove. The explanation furnished by the husband of the assessee was accepted and no addition in case of husband of the assessee. The Id.AR submits that assessee has explained complete facts before the Id. CIT(A). The Id. CIT(A) despite recording of submissions and instead of deleting the addition confirmed 50% of the additions by taking a view that payment details and source of

investment are not discussed. The ld.AR of the assessee prayed that the entire addition is liable to be deleted.

6. The ld.AR of the assessee also furnished copy of written submissions filed before the AO, letter dated 24/12/2018 sent to AO, summary of bank account of husband of assessee from 01/01/2009 to 31/03/2009, 01/01/2010 to 31/03/2010, 01/04/2010 to 31/03/2010, loan disbursement certificate and EMI schedule issued by the ICICI bank to the husband of the assessee, receipt of amount/consideration for flat by the builder, copy of agreement for purchase of flat in the name of assessee and her husband and copy of assessment order dated 26/12/2018 for A.Y. 2011-12 in the case of husband of assessee.
7. On the other hand, ld. DR for the revenue after hearing the submissions and going through all the documentary evidence explained by the ld.AR of the assessee would submit that he support the orders of the lower authorities.
8. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities. We find that the AO reopened the assessee on the basis of AIR information that the assessee made investment in property. The assessment was completed under section 144 r.w.s. 147. The AO made addition of 100%. Before the ld. CIT(A) the assessee filed the written submissions which we have

recorded in para 5 (supra). We find that the Id. CIT(A) recorded the following payments details:-

1	Raj Agrawal	ICICI Bank Cheque	Rs. 500000/-	F.Y.09
2	Raj Agrawal	ICICI Bank Cheque	Rs. 2131750	F.Y. 09
3	Raj Agrawal	ICICI Bank Cheque	Rs. 1754061/-	F.Y. 10
4	Raj Agrawal	ICICI Bank Cheque	Rs. 7016244/-	F.Y. 11
5	Raj Agrawal	ICICI Bank Cheque	Rs. 1801929/-	F.Y. 12
		Total	Rs. 13203984	

9. We further find that the Id CIT(A) instead of verifying the fact for seeking further explanation from assessee confirmed 50% addition. Before us, the Id.AR of the assessee explained that the entire payment was made by husband of assessee. The payments details was explained in the following manner:-

				Date	Cheque No.
1	Raj Agrawal	ICICI Bank Cheque	Rs. 500000/-	11/02/2009	482169
2	Raj Agrawal	ICICI Bank Cheque	Rs. 2131750	11/02/2009	482171
3	Raj Agrawal	ICICI Bank Cheque	Rs. 1754061/-	18/03/2010	748726
4	Raj Agrawal	ICICI Bank Cheque	Rs. 7016244/-	25/02/2011	871051
5	Raj Agrawal	ICICI Bank Cheque	Rs. 1801929/-	25/02/2011	871052
		Total	Rs. 13203984		

10. From the aforesaid details which are duly supported by the statement of accounts of husband of assessee, we find that the entire payment of sale consideration of flat in dispute was paid by the husband of assessee. We further noted that similar issue was examined by the AO/ACIT-35, Mumbai and accepted the similar explanation for reopening of case and no addition was made in the assessment order dated 26/12/2011. In view of the aforesaid factual discussions, we are of the view that additions in the hand of the assessee is not justified, which were fully explained before Id CIT(A).

11. In view of the aforesaid discussion, the grounds of appeal raised by the assessee are allowed. In the result, appeal of the assessee is allowed.

Order pronounced on 12-08-2021 by placing result on notice board.

Sd/-
(PRADIP KUMAR KEDIA)
Accountant Member

sd/-
(PAWAN SINGH)
Judicial Member

Vr SPS

Dated: 12th August, 2021

Copy to:

1. *The Assessee - Smt. Nitisha Agrawal, 65, Vivekanand Nagar, Pension Bada, Raipur (CG)*
2. *The Revenue – ITO, Ward-3(2), Raipur.*
3. *Ld. CIT(A)-1, Raipur (CG).*
4. *Pr. CIT-II, Raipur.*
5. *The D.R., Raipur.*
6. *Guard file.*

By order

Sr. Private Secretary,
ITAT, Raipur (on tour).