

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**INDORE BENCH, INDORE**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**  
**AND**  
**SHRI MANISH BORAD, ACCOUNTANT MEMBER**  
**VIRTUAL HEARING**

ITA No.615/Ind/2019  
Assessment Year: 2010-11

Smt. Kamna Khandelwal,  
Indore  
PAN:AFNPK7114D

: Appellant

V/s  
ITO 1(4)  
Indore

: Respondent

Appellant by	S/Shri S.N. Agrawal & Pankaj Mogra ARs
Revenue by	Shri Harshit Bari, Sr. DR
Date of Hearing	30.09.2021
Date of Pronouncement	30.11.2021

**ORDER**

**PER MANISH BORAD, A.M.:**

The above captioned appeal filed at the instance of the Assessee for Assessment Year 2010-11 is directed against the order of Ld. Commissioner of Income Tax(Appeals) (in short 'Ld. CIT]-1 Indore dated 13.02.2019 which is arising out of the order u/s

143(3) of the Income Tax Act 1961(In short the 'Act') dated 29.12.2017 framed by ITO-1(4), Indore.

2. Brief facts of the case as culled out from the records are that the assessee is an individual. As per Annual Information Report the assessee along with 21 other persons had sold immovable property at Talawali Chanda, Indore during F.Y. 2009-10 relevant to A.Y. 2010-11. The stated consideration as per the deed was Rs.30,00,000/- and it was registered on 21.10.2009 and on this date market value of the property assessed by the Sub-Registrar was Rs.1,31,00,000/-. The assessee's proportionate share in the deemed consideration worked out to Rs.5,96,315/-. PAN of the assessee was not quoted in the sale deed. Ld. AO after necessary approval issued notice u/s 148 of the Act followed by serving of notice u/s 142(1) of the Act. Return of income for A.Y. 2010-11 was filed in reply to notice u/s 148 of the Act. It was claimed before Ld. AO that the assessee had sold her share during relevant to A.Y. 2007-08 (through power of attorney issue on 19.02.2007) and has also offered the income under capital gain. The sale deed was signed on 27.11.2007. Ld. AO was not satisfied with this submission and he computed the capital gain adopting the value

taken by Sub-Registrar at Rs.1,31,00,000/- for the purpose of levy of Stamp Duty. Against the income shown in the Income Tax Return at Rs. 1,47,570/-. Ld. AO after making addition for Long Term Capital Gain at Rs. 5,25,742/-. Income assessed the at Rs. 6,73,312/-.

3. Aggrieved assessee preferred an appeal before the Ld. CIT(A) but failed to succeed. Now the assessee is in appeal before this Tribunal raising following grounds:

1. *That on the fact and in the circumstances of the case and in Law the ld. CIT(A) erred in confirming the act of the Assessing Officer in respect of issuing notice for reopening of the assessment u/s 147/148 of the Act dated 31.03.2017 even when the said notice was served to the appellant on 21.12.2017 i.e. after six years from the end of the relevant assessment year. The said reopening is therefore without jurisdiction, illegal and bad in law.*
2. *That on the fact and in the circumstances of the case and in Law the ld. CIT(A) erred in confirming the act of the Assessing Officer regarding issuance of notice u/s 148 of the Act even when the same was issued on the wrong address and not on the proper address of the assessee as available with the Income Tax Department. Hence, assessment framed on the basis of such notice is without jurisdiction, illegal and bad in law the same now requires to be quashed.*
3. *That on the fact and in the circumstances of the case and in Law the ld. CIT(A) erred in approving the proceeding initiate by the Assessing Officer by issuance of notice u/s 148 of the Act in absence of any tangible material in possession of the assessing officer having live link with the concealment of income but the same was issued merely on the basis difference in sale price and value as per stamp authority.*
4. *That on the fact and in the circumstances of the case and in Law the ld. CIT(A) erred in confirming the addition made by the Assessing Officer of Rs.5,25,742/-on account of alleged Long Term Capital Gain on sale of land at Talawali Chanda, Indore without appreciating the fact that the said land was already sold by the assessee on 19.02.2007, entire payment was received through account payee*

- cheque and the Long Term Capital Gain was duly shown by here in the Income Tax Return filed for the Assessment year 2007-08.*
- 5. That on the fact and in the circumstances of the case and in Law the ld. CIT(A) erred in confirming the addition as made by the Assessing Officer in making addition of Rs.5,25,742/- on account of alleged Long Term Capital Gain on sale of Land at Talawali Chanda Indore without properly appreciating the fact that entire share of the assessee of Rs.1,31,000/- was received through an account payee cheque on 18.02.2007 and entire payment was received as per prevalent guideline value. Hence, guideline rate as prevailing for the Asst. Year 2007-08 only can applied in this case.*
  - 6. That on the fact and in the circumstances of the case and in Law the ld. CIT(A) erred in deciding the grounds related to charging of interest u/s 234A of Rs.89,606/- even when the assessee has duly filed the return in response to notice issued u/s 148 within time as allowed from the actual date of service of notice to her.*
  - 7. That on the fact and in the circumstances of the case and in Law the ld. CIT(A) erred in not deciding the ground related to charging of interest u/s 234B of Rs.93,588/- which is excessive and moreso interest under this section is chargeable as per sub-section (3) of section 234B of the Act.*

4. Ld. counsel for the assessee vehemently argued referring to the written submission and compilation containing 149 pages and citing various decisions appearing in the paper book.

5. Per contra ld. Departmental Representative (DR) supporting the orders of both lower authorities.

6. We have heard rival contentions and perused the records placed before us. On perusal of the grounds, we find that effectively two issues are raised, firstly challenging the validity of notice u/s 148 of the Act and the assessment proceedings carried thereafter and

secondly on merit challenging the addition for Long Term Capital Gain of Rs. 5,25,742/-.

7. Apropos to the legal issue challenging the validity of issue notice u/s 148 of the Act and reassessment proceedings carried thereafter, we find that Ld. AO come across information through Annual Information Report that a registered sale deed was registered by Sub-registrar on 21.10.2009. Sale consideration stated is Rs.30,00,000, but market value assessed by the Sub-Registrar is Rs. 1,31,00,000/-. There were 22 persons who jointly sold the immovable property in question. PAN No. of the assessee was not mentioned in the registered sale deed. In our view these information were sufficient enough for the Ld. AO to move ahead and issue notice u/s 148 of the Act to examine the transaction. Issuing of notice in itself cannot be given certainty that the addition will be made in the hands of assessee. By way of issuing notice Ld. AO gathers the information and examine the transaction and making addition in the hands of assessee comes at a subsequent stage i.e. during assessment proceedings. The assessee's case was not scrutinized u/s 143(3) of the Act for A.Y.

2010-11 and information was received by the Ld. AO from external sourced.

7.1. Under these given facts we find no merit in the legal issue raised by the assessee. The decision referred and relied by the ld. counsel for the assessee will not be of any help since the facts are distinguishable. We accordingly dismiss legal ground raised by the assessee challenging the validity of assessment proceedings by issuance of notice u/s 148 of the Act.

8. As far as merits of the case are concerned on perusal of the records and the copy of sale deed available in the paper book, we find that the sale deed was presented before Sub-Registrar on 27.11.2007 and the Stamp of the Sub-Registrar office exhibit the presentation of the sale deed on 27.11.2007. Assessee issued Power of Attorney in favour of Raj Kumar Tiwari on 19.02.2007 and received her sale consideration and also disclosed the income for capital gain in her return of income for A.Y. 2007-08. It is also not in dispute that sale consideration mentioned in this sale deed was received by the sellers and vacant possession was handed over to the purchasers. As per the definition of 'transfer' provided in sub-clause (v) of section 2(47) of the Act, if possession is being given in

lieu of consideration, then for the purpose of Income Tax it is to be assumed as 'transfer'. We also find that the sale deed got finally registered on 21.10.2009 but the gap between the presentation of sale deed on 27.11.2007 and the deed getting finally registered on 21.10.2009 is attributable only for the necessary formalities being carried at the Sub-Registrar office as number of sellers were 22.

8.1 Under the given fact, we are of the considered view that for the purpose of taxability of the capital gain, the transfer of property took place during F.Y. 2007-08 when the sale deed was signed and presented for registration before Sub-Registrar on 27.11.2007 and by this date total sale consideration was received from the buyers *M/s Sarthak Innovations Pvt. Ltd.* It is also established fact that the assessee has disclosed this transaction in its income tax return for A.Y. 2007-08.

8.2 We, therefore, are of the considered view that the Ld. AO erred in making the addition for Long Term Capital Gain of Rs. 5,25,742/- in the hands of assessee during A.Y. 2009-10. The finding of Ld. CIT(A) is *set aside* and the ground raised on merit by the assessee are allowed.

9. In the result, Assessee's appeal ITANo.615/Ind/2019 is partly allowed.

The order pronounced as per Rule 34 of ITAT Rules, 1963 on 30.11.2021.

Sd/-

(MAHAVIR PRASAD)  
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)  
ACCOUNTANT MEMBER

दिनांक /Dated : 30.11.2021

Patel/PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/  
DR, ITAT, Indore/Guard file.

By Order,  
Asstt.Registrar, I.T.A.T., Indore