

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.351/Ind/2020  
Assessment Year 2011-12

ACIT, 4(1)  
Indore : Appellant

V/s  
M/s. Sharthak Real Built P. Ltd.  
Indore : Respondent  
PAN AAECM8887E

ITA No.352/Ind/2020  
Assessment Year 2011-12

ACIT, 4(1)  
Indore : Appellant

V/s  
Shri Ashwin Mehta  
Indore : Respondent  
PAN: ACVPM3467E

Revenue by	Shri Amit Soni, Sr. DR
Assessee by	S/Shri Kunal Agrawal & Mahesh Agrawal, ARs

Date of Hearing	05.10.2021
Date of Pronouncement	.2021

**ORDER**

**PER MANISH BORAD, A.M**

The above captioned appeals filed at the instance of the Revenue for Assessment Year 2011-12 are directed against the orders of Ld. Commissioner of Income Tax(Appeals)-II(in short 'Ld. CIT], Indore dated 13.08.2020 & 12.08.2020 which are arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 19.12.2018 framed by DCIT-5(1), Indore.

The Revenue has raised following grounds of appeal in ITANo.351/Ind/2020:

- 1. The Ld. CIT(A) was not justified in not appreciating the findings and establishment of the AO.*
- 2. The ld. CIT(A) was not justified in deleting the addition of Rs.2,43,12,100/- on account of non-enquiry by the AO, non-establishment of greater market value, non-appreciation of statement of the joint seller which was taken on oath and absence of tangible evidence, whereas the AO had clearly established the acceptance of the on money from the assessee company.*
- 3. The Ld. CIT(A) was not justified in not appreciating the statement recorded from seller during investigation where the seller categorically admitted regarding the cash transaction and subsequent cash receipt from the assessee.*
- 4. The Ld. CIT(A) was not justified in not relying on the information & report received by the AO which was based*

*on detailed inquiry & investigation made by the Investigation Wing.*

The Revenue has raised following grounds of appeal in ITANo.352/Ind/2020:

- 1. The Ld. CIT(A) was not justified in not appreciating the findings and establishment of the AO.*
- 2. The ld. CIT(A) was not justified in deleting the addition of Rs.2,43,12,100/- on account of non-enquiry by the AO, non-establishment of greater market value, non-appreciation of statement of the joint seller which was taken on oath and absence of tangible evidence, whereas the AO had clearly established the acceptance of the on money from the assessee company.*
- 3. The Ld. CIT(A) was not justified in not appreciating the statement recorded from seller during investigation where the seller categorically admitted regarding the cash transaction and subsequent cash receipt from the assessee.*
- 4. The Ld. CIT(A) was not justified in not relying on the information & report received by the AO which was based on detailed inquiry & investigation made by the Investigation Wing.*

2. As the issues raised in these appeals are common and relate to different assessees, at the request of all the parties, both the appeals were heard together and are being disposed of by this common order for sake of convenience and brevity.

3. The registry has informed that the present appeals are delayed by 48 days. Ld. Counsel for the assessee submitted that the delay in filing the appeal is due to covid-19 crisis and through CBDT's notification No.35/2020 dated 24.06.2020, due dates of filing of appeal is extended till 31.03.2021. The extension has been given in those cases where the due date falls between 20.03.2020 to 31.12.2020. Prayer was made to condone the delay. Ld. AR opposed the request. We, however, under the given facts and circumstances of the case, are satisfied with the reasons giving rise to delay in filing the instant appeals. We condone the delay and admit the appeals for adjudication on merits.

4. The grounds raised in these departmental appeals relate to the only issue of challenging the deletion of the addition of Rs.2,43,12,100/- made by the Assessing Officer on account of alleged cash payment by the assessees to the sellers of the land. Facts, in brief, are that the case of the assessee for AY 2011-12 was reopened u/s 147 of the Act on the basis of information received from DDIT (Inv.) - II, Indore on the ground that the assessee has allegedly paid cash amounting of Rs. 2,43,12,000/-

to co-sellers namely Shri Manohar Patel, Shri Satyanarayan Patel, Shri Dinesh Patel & Smt. Annapurna Devi on account of purchase of land situated at Village Tigaria Badshah, Hatod admeasuring 11.20 Bigha. While framing the assessment order, the Ld. AO made the said addition of Rs. 2,43,12,000/- in the hands of assessee i.e. Ashwin Mehta on substantive basis and in the hands of the company Sarthak Real Built Private Limited, the other assessee before us, on protective basis. The main premise of the said allegation was that statements u/s 131(1A) of the Act were recorded by DDIT (Inv.) – II, Indore of Shri Manohar Patel (Co-seller) where he admitted the acceptance of “Cash/On-money” at Rs. 2,43,12,000/- for the abovesaid sale which was over and above consideration mentioned in registered sale deed of Rs. 2,69,90,000/-.

5. Being aggrieved, the assessees filed the appeals before the ld. CIT(A) and ld. CIT(A) deleted the addition observing that merely on the basis of admission of joint seller Shri Manohar Patel, it cannot be concluded that the assessees had paid the “cash/on-money”. There should be some evidence in respect of ‘on-money’ paid by the

assessee and in absence of any tangible evidence, the addition made by AO is not justified in view of the various judicial precedents which suggest that in cases of allegation of “on-money”, burden to prove such allegations lies on the Assessing Officer and in the instant case, there are no evidence on record except admission by joint seller to prove the same. Further, the ld. CIT(A) also noted that the AO had not given proper opportunity of cross-examination with joint seller Shri Manohar Patel despite specific request being made which is in contravention with the ratio laid down in the case of *Andaman Timber Industries Vs CCE, 281 CTR 241 (SC)*.

6. Being aggrieved, the Revenue is in appeals before this Tribunal. Before us, the ld. CIT-DR relied on the orders of the Assessing Officer whereas the learned Counsel for the assessee relied upon the orders of the ld. CIT(A).

7. We have considered the rival submissions of both the parties and gone through the material available on the file. We find that ld. CIT-DR except

placing reliance upon the orders of the Assessing Officer could not bring any contrary material on record to controvert the finding of the Id. CIT(A). We find that the Id. CIT(A) decided the issue as under:

*“5.0 Through these grounds of appeal, the appellant has challenged the addition of Rs.2,43,12,000/- made on Substantive basis on account of payment of cash by appellant for purchase of plot of land situated at Tigaria Badsha, Village Hatod by company Sarthak Real Built Private limited (Earlier known as Mehta Infratech Private limited) in which appellant is .a director. It has also come to my notice that similar addition on Protective basis has also been made in the hands of company Sarthak Real Built Private limited.*

*The company Sarthak Real Built Private limited (Earlier known as Mehta Infratech Private limited) had purchased plot of land situated at Tigaria Badsha, village Hatod through conveyance deed executed on 15.12.2011 (Assessment year 2012-13) for consideration mentioned at Rs. 2,69,90,000/ -. The land was purchased from joint sellers namely' Smt. Annapurna Bai shri. Manohar Patel, Shri Dinesh Patel & Shri Satyanarayan Patel. The DDIT (Inv.) - II, Indore had issued summon to joint sellers Shri Manohar Patel and his statements were recorded on oath. During the statements, Shri Manohar Patel had admitted that in addition to the consideration mentioned in the registered deed, cash amounting to Rs. 2,43,12,000/ - was given by appellant, director of the Sarthak Real Built Private limited.*

*5.1 The appellant has submitted that the purchase transaction was conducted in the capacity of director of Sarthak real built privat7 limited and has denied the payment of any cash / on money to the sellers individually or as director, Further, the appellant had submitted that transaction has been executed at value mentioned in registered deed. The appellant in support of its contention had submitted the copy of purchase deed, Ledger account of sellers in company books & bank statements highlighting the payment through*

banking channel.

5.2 I have observed that no inquiry whatsoever was conducted by assessing officer u/s 131 or 133(6) and reliance was merely placed on information supplied by DDIT(Inv,) - II, Indore, Also, there is-!19 evidence on record to establish the fact that market value of land is greater than considered mentioned in the registered deed, Therefore, merely on the basis of admission of joint seller shri Manohar Patel, it cannot be concluded that appellant had paid the cash/on money without evidence, There should be some evidence in respect of on-money paid by 'the appellant, In the a~ of any tangible evidence the addition made by AO is not justified.

5.3 I am of the view based on various judicial precedents that in cases of allegation of on - money, burden to prove such allegations lies on the assessing officer and in the instant case there are no evidence on record except admission by joint seller to prove the same, I place my reliance on the judgement of Commissioner of Income-tax v. P. V. Kalyanasundaram [2006] 282 ITR259 (Mad.HC)-fir1ned by Supreme Court in Civil appeal No. 4262 of ,2007 294 ITR 0049 (SC) which has held as under: "The burden of proving actual consideration in such transaction is that of the revenue. The Tribunal had given factual finding and. inter alia. held that the Apex Court in K,P, Varghese v. ITO [1991] 131 ITR 597/ 'I Taxmari 13 held that the burden of proving actual consideration in such transaction is that of the revenue. The revenue, m the instant case, had failed to discharge its duties {Fora 5} The Assessing Officer did not conduct any independent enquiry relating to the value of the property purchased. He merely relied upon the statement given by the seller. If he would have taken independent enquiry by referring the matter to the valuation officer, the controversy could have been avoided. Failing to refer the matter was a fatal one. {Para 6}

In view of the above, there was no error in the order of the Tribunal and required no interference. ))

5.4 Further, it will be worthwhile to mention the judgement of Jurisdictional bench of ITAT, Indore in the case of Lokesh Gadiav. Asstt. Commissioner of Income Tax (2019) 35 ITJ 301 which which has followed the same ratio of the judgement (supra) and has held as

under -

*"Certainly due to number of evidences filed by the assessee enumerating the fact that the transaction of sale of land was entered for a sale consideration of Rs. 95,00,000/- are much more in weight age in comparison to single piece of evidence in the [form of statement given by the sellers. situation may have been different if the department had undertaken the valuation of land in question to prove that market price of the land was around Rs. 2.70 crores. [para 25]*

*The credibility of the documentary evidences corroborating the fact that sale consideration is only Rs. 95,00,000/ - and not Rs.2, 70,00,000/ - is far more than the statement given by the sellers and the Ld. Departmental Representative failed to controvert the submissions as well as documentary evidences placed before us by the Ld. Counsel for the assessee. It is a settled law that documentary evidence has precedence over oral evidence. In the case of Roop Kumar v. Mohan Thedani 2003 6 see 595 Hon'ble Supreme Court observed that "It is likewise a general and most inflexible rule that wherever written instruments are appointed either by the requirement of law, or by the contract of the parties, to be the repositories and memorials of truth, any other evidence is excluded from being used either as a substitute for such instruments or to contradict or alter them. This is a matter both of principle and policy. It is of principle because such instruments are in their own nature and origin, entitled to a much higher degree of credit than parole evidence. It is of policy because it would be attended with great mischief if those instruments, upon which men's rights depended, were liable to be impeached by loose collateral evidence. (See Strike on Evidence p. 648" (Emphasis applied). We therefore on the basis of the facts and documentary evidences placed before us are inclined to hold that the sale consideration for sale of land in question was only Rs. 95, 00, 000/and revenue authorities failed to bring any credible material on record to prove that the sale consideration was Rs. 2,70,00,000/and not Rs. 95,00,000/- . [Para 26]"*

*5.5 The appellant has also taken the plea that the AO had not given proper opportunity of cross examination with joint seller Shri Manohar Patel despite specific request being made. In support of his view, the appellant has relied on the case of Andaman Timber Industries Vs CCE 281 CTR 241 (SC), which has held as under:-*

*Not allowing assessee to cross-examine witness by*

*Adjudication Authority through state men soft house witness were made abases impugned order amounted in serious flaw which making impugned order nullity a sit amounted to violation of principles of natural justice.*

*5.6 Therefore, in view of the above facts and judicial decision so .discussed above, the addition so made on substantive basis by the AO amounting to Rs.2,43,12,000/- is Deleted.”*

8. On consideration of material available on record, we find that on behalf of the assesseees, it was submitted that purchase transaction was conducted by one of the present assesseees i.e. the Company Sarthak Real Built Private Limited in which the other assesseee i.e. Shri Ashwin Mehta is a director. The said purchase transaction was executed on 15.12.2011 (AY 2012-13 and not in relevant assessment year) for a consideration of Rs. 2,69,90,000/- at prevailing Guideline value for which all the payments were made through banking channel and were duly accounted in the books of accounts as is evident from the copies of Ledger Account, Purchase Registry & relevant portion of bank statements reflecting payments made filed at Page no. 51-76 of the paper book. We find that the assesseees had categorically denied to have paid any alleged “cash/on–money” to the sellers either individually or as director on behalf of company submitting that the purchase transaction was executed at value mentioned

in the purchase deed at Rs. 2,69,90,000/- only and no payment whatsoever beyond this sum was given. We find that the onus of proof was also discharged by the assessee by submission of various details and documentary evidences during the assessment proceedings substantiating the said fact. However, we find that the Ld. AO merely placed reliance on the Statements of Shri Manohar Patel but failed to appreciate the fact that there was no tangible evidence brought on record to substantiate the allegations made and no independent inquiries were conducted by the Ld. AO either u/s 131 or 133(6) to bring out correct facts on record rather sole reliance was made on the information given by DDIT (Inv.)-II, Indore. We also find that there are no evidences on record to establish the market value of land being more than actual sale consideration. Thus, the alleged additions made by the ld. Assessing Officer are purely based on suspicion, conjectures and surmises. Therefore, we are of the view that mere admission of seller of acceptance of “cash/on-money” cannot be considered as tangible material in the absence of any other corroborative material. Our view is supported by the ratio laid down in the judgment in case of *Shree Parshwanath Construction Vs. ITO (2014) 24 ITJ 409 (ITAT Indore Bench)*. It is a

settled law that documentary evidence has precedence over the oral evidence. The same ratio was laid down in the case of *Roop Kumar V/s Mohan Thedeni (Arising out of S.L.P. (C) No. 5835/2001) DATE OF JUDGMENT: 02/04/2003 (SC)*. We find that Hon'ble Madras High Court in the case of *Commissioner of Income-tax v. P. V. Kalyanasundaram [2006] 282 ITR 259 (Mad)* and Hon'ble Supreme Court in Civil appeal No. 4262 of ,2007 294 ITR 0049 (SC) have laid down the ratio that: -

*"The burden of proving actual consideration in such transaction is that of the revenue. The Tribunal had given factual finding and inter alia held that the Apex Court in K.P. Varghese v. ITO (1981) 131 ITR 597 (SC) held that the burden of proving actual consideration in such transaction is that of the revenue. The revenue, in the instant case, had failed to discharge its duties and the Assessing Officer did not conduct any independent enquiry relating to the value of the property purchased. He merely relied upon the statement given by the seller. If he would have taken independent enquiry by referring the matter to the valuation officer, the controversy could have been avoided. Failing to refer the matter was a fatal one. In view of the above, there was no error in the order of the Tribunal and required no interference."*

9. We also find that Jurisdictional bench of ITAT, Indore in the case of *Lokesh Gadiav. Asstt. Commissioner of*

*Income Tax (2019) 35 ITJ 301* has followed the same ratio of the judgement (supra) and has held as under -

"Certainly due to number of evidences filed by the assessee enumerating the fact that the transaction of sale of land was entered for a sale consideration of Rs. 95,00,000/- are much more in weight age in comparison to single piece of evidence in the [form of statement given by the sellers. situation may have been different if the department had undertaken the valuation of land in question to prove that market price of the land was around Rs. 2.70 crores. [para 25]

The credibility of the documentary evidences corroborating the fact that sale consideration is only Rs. 95,00,000/ - and not Rs.2, 70,00,000/ - is far more than the statement given by the sellers and the Ld. Departmental Representative failed to controvert the submissions as well as documentary evidences placed before us by the Ld. Counsel for the assessee. It is a settled law that documentary evidence has precedence over oral evidence. In the case of *Roop Kumar v. Mohan Thedani* 2003 6 see 595 Hon'ble Supreme Court observed that "It is likewise a general and most inflexible rule that wherever written instruments are appointed either by the requirement of law, or by the contract of the parties, to be the repositories and memorials of truth, any other evidence is excluded from being used either as a substitute for such instruments or to contradict or alter them. This is a matter both of principle and policy. It is of principle because such instruments are in their own nature and origin, entitled to a much higher degree of credit than parole evidence. It is of policy because it would be attended with great mischief if those instruments, upon which men's rights depended, were liable to be impeached by loose collateral evidence. (See *Strike on Evidence* p. 648" (Emphasis applied). We therefore on the basis of the facts and documentary evidences placed before us are inclined to hold that the

sale consideration for sale of land in question was only Rs. 95, 00, 000/and revenue authorities failed to bring any credible material on record to prove that the sale consideration was Rs. 2,70,00,000/and not Rs. 95,00,000/-."

10. Further, in relation to relevance of tangible evidence in respect of allegation of "on-money", our view is fortified with the following judicial pronouncements:

- I. *Pr. CIT Vs. Vivek Prahalad Bhai Patel (2016) 237 Taxmann 331 (Guj. HC)*
- II. *Assistant Commissioner of Income-tax -Central Circle-1, Baroda v. Govindbhai N. Patel [2013] 33 taxmann.com 237 (Gujarat HC)*

11. On going through record and rival submissions, we also find that during the course of assessment proceedings, the assessee had requested the Ld. AO for opportunity of cross-examination with the sellers on whose statement's reliance was placed but the same was ignored by the Ld. AO leading to violations of principles of Natural Justice which is, in our view, unjustified in view of the judgment of Hon'ble Supreme Court laid down in the case of *Andaman Timber Industries vs CCE 62 taxmann.com 3/52 GST 355 (SC)* wherein the addition was made against the assessee (Andaman Timber Industries) by the AO by

relying on the statement of two witnesses namely Sri Sreeram Tekriwal and Sri Laxmidas Panchmati. Even though the assessee pleaded for cross-examination of these two witnesses, the AO did not give opportunity to the assessee and when the action of the AO was confirmed by the appellate authorities, the Hon'ble Supreme Court examined the omission on the part of the AO not providing opportunity to assessee to cross-examine of two witnesses and held that it was a serious flaw and since the statements of those witnesses were made the basis of the impugned order, this omission on the part of AO makes the order nullity inasmuch as it amounted to violation of Principles of natural justice. This view is also fortified by the following judicial pronouncements:

- I. Commissioner of Income-tax, Central, Jaipur v. Smt. Sunita Dhadha [2018] 100 taxmann.com 525 (Rajasthan)*
- II. Smt. Manorama Singhal Indore V/s ITO-3(2), Indore [ITA NO. 130/IND/2020] [ INDORE ITAT BENCH]*

12. Thus, considering the above, we are of the view that the totality of the above facts, submissions and discussion thereof in the light of the judicial pronouncements (supra) clearly suggests

that the addition made of Rs. 2,43,12,000/- on account of alleged payment of cash/on-money is totally baseless and erroneous. Thus, we do not find any reason to interfere with the orders of the ld. CIT(A). Hence, we confirm the findings of the ld. CIT(A). Accordingly, the grounds raised in the departmental appeals are dismissed.

13. In result, the departmental appeals i.e. ITA Nos.351 & 352/Ind/2020 are dismissed.

The order pronounced as per Rule 34 of ITAT Rules, 1963 on 21.12.2021.

Sd/-

(MAHAVIR PRASAD)  
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)  
ACCOUNTANT MEMBER

दिनांक /Dated : 21.12.2021

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

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