

अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI RAJPAL YADAV HON'BLE VICE PRESIDENT
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.211/Ind/2020
Assessment Year:2010-11**

Nawab Raza Bhopal (Appellant)	<u>बनाम/</u> Vs.	Pr. CIT-1 Bhopal (Respondent)
P.A. No.ABHPR8761P		

Appellant by	S/Shri Hitesh Chimnani, & Yash Kukreja, ARs
Respondent by	Shri P.K. Mitra, CIT-DR

Date of Hearing:	10.11.2021
Date of Pronouncement:	06.12.2021

आदेश / O R D E R

PER MANISH BORAD:

The above captioned appeal at the instance of Assessee is directed against the order of Ld. Pr. Commissioner of Income Tax(Appeals)-1, (in short 'CIT(A)'), Bhopal dated 20.03.2020 which is arising out of the order u/s 263 of the Income Tax Act 1961(In short the 'Act') dated 25.03.2013 framed by ACIT-1(2) Bhopal.

The Assessee has raised following grounds of appeal:

1. *That on the facts and in the circumstances of the case the ld. Pr.CIT(A) has erred in invoking the provisions of section 263 of the Income Tax Act for the A.Y. 2010-11 in the case of the assessee.*
2. *The order so passed by the Ld.Pr. CIT being illegal and bad in law may very kindly be quashed.*
3. *That on the facts and i the circumstances of the case and in the law the Ld.Pr. CIT erred in summarily holding the assessment order dated 28.09.2017 as erroneous & prejudicial to the interest of revenue without going through the case records and detailed investigation done by the ld. AO.*
4. *That the appellant seeks leave to add, amend, alter, abandon or substitute any of the above grounds during the hearing of the appeal.*

2. From perusal of the above grounds sole grievance of the assessee is challenging the jurisdiction invoked by Ld. Pr. CIT u/s 263 of the Act and directing the Ld. AO to make afresh assessment for the issue relating to receipt of an amount of Rs.12 lac from Mr. Omkar Singh Patel for the transaction of sale of land carried out during A.Y. 2010-11.

3. Brief facts of the case as culled out from the records are that the assessee filed return of income for A.Y. 2010-11 on 17.03.2011 declaring income of Rs.21 lac. Assessment framed u/s 143(3) of the Act on 25.03.2013 assessing income at Rs.33 lac after making an addition of Rs. 12 lac for unexplained cash deposit in the bank

account. Assessee failed to succeed before the ld. CIT(A) and then to approached this tribunal challenging the addition of Rs.12 lac. This Tribunal vide its order dated 21.06.2016 in ITANo.183/Ind/2016 set aside the order to the file of the Ld. AO with a direction to examine the evidence filed by the assessee in respect of amount of Rs. 12 lac received from Mr. Omkar Singh Patel. Ld. AO examined this transaction and come to conclusion that no addition was called for at Rs.12 lac and accepted the returned income of the assessee at Rs.21 lac.

4. Subsequently, Ld. Pr. CIT invoked revisionary powers u/s 263 of the Act to examine the following issue which is mentioned in the impugned order:

2. On perusal of the assessment order and case record, it is noticed that assessee during the relevant A.Y.2010-11 received an amount of Rs.12 lac as advance from Shri Omkar Singh Patel for sale of land to Shri Omkar Singh Patel. However, the sale was not executed due to some dispute in the measurement of land. It is further observed from the records that the amount of Rs.12, lac received as advance was not returned to Shri Omkar Singh Patel and that the same is lying with the assessee Shri Nawab Raza. Therefore, the said amount of Rs.12, lac should have been added back to the total income of the assessee which

was not done by the AO resulting in underassessment of income. In view of the above facts the said assessment order was prima facie found to be erroneous and prejudicial to the interest of revenue.

5. Before the Ld. Pr. CIT, it was contended by the assessee that ld. AO has thoroughly examined this issue. Ld. Pr. CIT was not satisfied and held that order of the Ld. AO dated 28.09.2017 framed u/s 254 r.w.s. 147 r.w.s 143(3) of the Act is erroneous and prejudicial to the interest of revenue and accordingly directed the Ld. AO to make afresh assessment.

6. Before us Ld. counsel for the assessee made detailed submissions referring to the paper book filed on 16.08.2021 containing 37 pages and also stating that ld. AO has examined this transaction of cash receipt of Rs.12 lac from Mr. Omkar Singh Patel and after being satisfied with the explanation and documentary evidences accepted that no addition was called for towards cash deposit at Rs.12 lac in the bank account of the assessee.

6. Per contra Ld. DR supported the order of the ld. Pr. CIT

7. We have heard rival contentions and perused the records placed before us. Ld. Pr. CIT invoke the provision of section 263 of the Act

for a single transaction of Rs.12, lac which the assessee claimed to have received from Mr. Omkar Singh Patel for sale of land but since the sale was not executed due to some dispute in the measurement of land and the amount of Rs.12 lac was not returned to Mr. Omkar Singh Patel . Ld. Pr. CIT was of the view that the said amount should have been added back to the total income of the assessee.

8. From perusal of the impugned order we find that ld. Pr. CIT has held the order of the Ld. AO dated 28.09.2019 as erroneous and prejudicial to the interest of revenue alleging that the Ld. AO did not make proper enquiry/verification regarding amount of Rs.12 lac received by the assessee from Mr. Omkar Singh Patel for a land deal which was never executed. To verify the correctness of this observation of Ld. Pr. CIT, we have perused the assessment order framed on 28.07.2019 by ld. AO in compliance to the order of this tribunal u/s 254 of the Act, solely for the purpose of examining the transaction of Rs.12 lac received as cash advance by the assessee from Mr. Omkar Singh Patel . In the body of the assessment order itself complete details of conducting the enquiry about the said transaction are mentioned and the same are extracted below:

Hon'ble I.T.A.T., Indore has vide order appeal no.ITA?183/Ind/2016 dated

21.06.2016 set aside the order to the file of assessing officer with a direction to examine the evidences filed by the assessee in respect of Shri Omkar Singh Patel. Thereafter notice u/s 142(1) dated 13.2.2017 was issued to assessee to provide an opportunity of being heard and to submit documentary evidence in his support. Assessee submitted his reply on 20.2.2017. Further an opportunity was provided to assessee on 11.09.2017 to produce Shri Omkar Singh Patel in the office on 20.09.2017 and a copy of the same was forwarded to Shri Omkar Singh Patel. A summons was also issue to Omkar Singh Patel on 19.09.2017 which was served by hand.

Shri Omkar Singh Patel appeared in the office on 20.09.2017. His statement was recorded on oath. He accepted of giving Rs.12 lac as advance in lieu of entering into an agreement in order to purchase the immovable property. Regarding the source of fund he stated that he receive approx. Rs.7 lac cash from Mahakaushal Sugar Mill in F.Y. 2008-09 against sale of sugarcane. During F.Y. 2009-10 he claimed to have received approx. Rs.10 lac by sale of sugarcane to same sugar mill. He produced details of sale of sugarcane to sugar mill and receipt of cash from mill.

In view of his statement documents produced by him in his support and direction of I.T.A.T., Indore, addition of Rs.12 lac in the hands of the assessee does not seem warranted.

Meanwhile the case of the assessee was opened u/s 148 by ITO2(1) by issuing notice u/s 148 on 29.03.2017. the case of the assessee was opened on the ground that Rs.36,00,000/- was found to be deposited in his saving bank account during F.Y. 2009-10. There the case was transferred to this office on 25.5.2017. On change of incumbency, another notice was issued to assessee on 25.05.2017. assessee proceed the submission against proceedings initiated u/s 148 along with the submission against proceedings u/s 254. Assessee denied of depositing Rs.36,00,000/- in any saving bank account during F.Y. 2009-10 and claimed that he had deposited only Rs.13,00,000/-. On verification of his claim with the AIR

date and records available in this office , his claim has found to be correct. It was noticed that assessee deposited Rs.14 lac in his saving bank account during F.Y. 2009-10. Assessment on the issue of depositing Rs.14 lac has already been taken place. Therefore proceeding su/s 148 are also being finalized with set aside proceedings u/s 254.

In view of above mentioned points, submission of the assessee, directions issue by Hon'ble I.T.A.T., Indore and considering the totality of the facts, returned income of the assessee at Rs.21,00,000/- is accepted.

9. From perusal of the above finding of the Ld. AO there remains no ambiguity to the fact that the ld. AO has conducted an extensive enquiry about the alleged transaction of Rs.12 lac received by the assessee and Mr. Omkar Singh Patel has appeared before the Ld. AO and recorded the statement on oath accepting to have given advance to the assessee and also explained the source of such advance. Under these given facts and circumstances of the case where the Ld. AO has conducted sufficient and adequate enquiry and made proper application of mind to examine the issue in question. Ld. Pr. CIT erred in invoking the revisionary powers u/s 263 of the Act. We, accordingly quash the impugned order u/s 263 of the Act and restore the assessment order dated 28.09.2017 framed u/s 254 r.w.s. 147 r.w.s 143(3) of the Act. Accordingly effective grounds raised by the assessee are allowed.

10. In the result, Appeal of the Assessee in ITANo.211/Ind/2020 is allowed.

Order pronounced as per Rule 34 of I.T.A.T., Rules 1963 on 06.12.2021.

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 06.12/2021

Patel/PS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore