

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.140/Ind/2020  
Assessment Year:2011-12**

Shri Ram Singh Chouhan Indore (Appellant)	<u>बनाम/</u> Vs.	ITO 1(4) Indore (Respondent )
P.A. No.BYJPC4571L		

**ITA No.141/Ind/2020  
Assessment Year:2011-12**

Smt. Meera Bai Chouhan Indore (Appellant)	<u>बनाम/</u> Vs.	ITO 1(4) Indore (Respondent )
P.A. No.DUPPB1243A		

Revenue by	Shri H.N. Joshi, AR
Respondent by	Shri Amit Soni, Sr. DR

<b>Date of Hearing:</b>	<b>11.10.2021</b>
<b>Date of Pronouncement:</b>	<b>06.12.2021</b>

**आदेश / O R D E R**

**PER MANISH BORAD:**

The above captioned appeals at the instance of Assessee are directed against the order of Ld. Commissioner of Income

Tax(Appeals)-I, (in short 'CIT(A)'), Indore dated 10.12.2019 which are arising out of the order u/s 144 r.w.s 147 of the Income Tax Act 1961(In short the 'Act') dated 12.12.2018 framed by ITO-1(4) Indore. The assessee namely Ram Singh Chouhan has raised following grounds of appeal in ITANo. 140/Ind/2020:

- 1. That the Ld. CIT(A) has erred both in law and in fact in passing the 1<sup>st</sup> appeal order without considered the fact and confirming the assessment order.*
- 2. That the Ld. CIT(A) has not considered the document which has produced at the time of appeal.*
- 3. That the Ld. CIT(A) has not considered all the fact that the appellant has on money from sale of ancestral agricultural land.*
- 4. That thus the 1<sup>st</sup> appeal order so passed is quit illegal unjust, unwarranted contrary to fact and deserve to be set aside.*
- 5. That the appellant further craves leave to add other and/or amend any of the forgoing grounds as and when necessary.*

The assessee namely Meera Bai Chouhan has raised following grounds of appeal in ITANo. 141/Ind/2020:

- 1. That the Ld. CIT(A) has erred both in law and in fact in passing the 1<sup>st</sup> appeal order without considered the fact and confirming the assessment order.*
- 2. That the Ld. CIT(A) has not considered the document which has produced at the time of appeal.*
- 3. That the Ld. CIT(A) has not considered all the fact that the appellant has on money from sale of ancestral agricultural land.*
- 4. That thus the 1<sup>st</sup> appeal order so passed is quit illegal unjust,*

*unwarranted contrary to fact and deserve to be set aside.*

*5. That the appellant further craves leave to add other and/or amend any of the forgoing grounds as and when necessary.*

2. As the issues raised in these appeals are common and relate to assessee's related to each other (husband and wife) at the request of both the parties both appeals were heard together and are being disposed of by this common order for sake of convenience and brevity.

3. Brief facts of the case as culled out from the records are that on the basis of Annual Information Report available with the Department it was noticed that a cash of Rs.28,00,000/- and Rs.26,45,000/- was deposited during F.Y. 2010-11 relevant to A.Y. 2011-12 in the Saving Bank Account held by the assessee's namely Shri Ram Singh Chouhan & his wife Smt. Meera Bai Chouhan respectively. PAN No. of both the assesseees were not quoted. Query letters were issued to both the assesseees to explain the source of cash deposit in the Saving Bank Account held with the State Bank of India, but there was no compliance. Ld. AO accordingly passed *ex-parte* order u/s 144 of the Act and made the addition for unexplained cash as well as bank interest earned from the Saving

Bank Account assessing the income of Rs. 28,19,290/- & Rs.26,61,740/- in the case of assessee namely Shri Ram Singh Chouhan & his wife Smt. Meera Bai Chouhan respectively.

4. Aggrieved assessee(s) preferred an appeal before the ld. CIT(A). It was contended by Ram Singh Chouhan along with necessary documentary evidences and an affidavit that he sold the ancestral agricultural land for a consideration of Rs.22,14,000/- received in cash. Assessee also accepted on oath through an affidavit that he also received 'on money' of Rs. 32,31,000/- and the total consideration received was Rs.54,45,000/-. It was further stated on oath that out of the total consideration of Rs.54,45,000/-, sum of Rs. 26,45,000/- was deposited on various dates in the bank account of his wife Smt. Meera Bai Chouhan and remaining sum of Rs.28,00,000/- was deposited in his own bank account. It was also stated on oath that Mr. Ram Singh Chouhan accepts that he received sum of Rs. 54,44,000/- on sale of agricultural land and he is ready to pay income tax (as applicable) on this amount and no income was earned by his wife Smt. Meera Bai Chouhan and the cash amount of Rs.26,45,000/- deposited in her bank account is

owned by him (Ram Singh Chouhan) only. But, ld. CIT(A) was not satisfied with these submissions and was of the view that the assessee failed to corroborate the 'on money' received by any confirmation from the purchaser of the aforesaid land and the date of registry of agricultural land does not corroborate with the impugned deposit, and accordingly confirmed the addition of Rs.28,00,000/- & Rs.26,45,000/- made by the Ld. AO in the case of Shri Ram Singh Chouhan & Smt. Meera Bai Chouhan respectively.

5. Aggrieved assessee preferred an appeal before this Tribunal. Ld. counsel for the assessee took us through written submission and paper book filed in both the cases stating that sale consideration so received was from sale of agricultural and part of the same has been further utilized for purchasing the agricultural land and since the said land sold by Mr. Ram Singh Chouhan is out of the purview of the definition of capital asset, the income earned from sale of land is exempt. Reference was also made to various decisions placed in the paper book.

6. Per contra Ld. DR vehemently argued supporting the orders of

both lower authorities.

7. We have heard rival contentions and perused the records placed before us. Common issue raised in both instant appeals relates to addition for unexplained cash deposit in the Saving Bank Account held by the respective assessees at Rs.28,00,000/- & Rs.26,45,000/- made in the hands of the assessee namely Shri Ram Singh Chouhan & Smt. Meera Bai Chouhan. We, find that the alleged sum has been deposited in cash in the Saving Bank Account held by the assessee(s). Perusal of the registered sale deed shows that Shri Ram Singh Chouhan entered into sale agreement with Mr. Divesh Shah for selling 1.281 hectare of ancestral land situated at Gram-Baroli, Tehsil Sanwar District Indore on 15<sup>th</sup> June 2010 and sold the said land for a cash consideration of Rs.22,14,000/-. Further on page 34 of the paper book Mr. Ram Singh Chouhan has filed an affidavit stating on oath that apart from the sale consideration of Rs.22,14,000/- mentioned in the registered sale deed, he also received 'on money' of Rs.32,31,000/-. In other words, the said land was sold for a consideration of Rs.54,45,000/- and out of this amount of Rs.28,00,000/- was deposited in his own Saving Bank Account and remaining amount of Rs.26,45,000/- in

the bank account of his wife Smt. Meera Bai Chouhan.

8. As far as the case of the assessee namely Meera Bai Chouhan is concerned, all these series of facts are sufficient enough to prove that she had no regular source of income except the bank interest and the alleged sum of Rs.26,45,000/- was not owned/earned by her and it was her husband who deposited the said sum in her bank account. So there is a sufficient explanation towards the source of cash deposited in her bank account, therefore, as far as the appeal of the assessee namely Smt. Meera Bai Chouhan is concerned, we are of the view that no addition for Rs.26,45,000/- was called for in her hands for the alleged cash deposit. We accordingly set aside the finding of ld. CIT(A) and delete the addition of Rs.26,45,000/- and allow grounds of appeal raised in the case of assessee Smt. Meera Bai Chouhan in ITANo.1541/Ind/2020.

9. As far as, the case of another assessee i.e. Shri Ram Singh Chouhan in ITANo.140/Ind/2020 is concerned, we find that he has owned this transaction of sale of agricultural land for a consideration of Rs.22,14,000/- and the 'on money' of Rs.32,31,000/- received from sale of this land. Though the Ld.

CIT(A) has doubted the genuineness of the claim that 'on money of Rs.32,31,000/- has been received by the assessee over and above, the sale consideration but we find that the assessee has stated this fact on oath through an affidavit and this fact was also brought before the ld. CIT(A) with necessary evidences. Since no effort has been made by the Revenue to controvert this fact by way of calling information from the purchaser namely Divesh Shukla, we accept this contention of the Ld. counsel for the assessee that total sale consideration received from the sale of land is Rs.54,45,000/- which includes 'on money' of Rs.32,31,000/-.

10. We find that there is no appearance of the assessee before the Ld. AO and when the matter traveled before the Ld. CIT(A) there is no discussion about the said land as to whether it forms part of the capital asset or not. No such enquiry has been conducted at any stage. In case the land sold by the assessee is an agricultural land not forming part of the capital asset as provided in section 2(14) of the Act, then the income earned from sale of such agricultural land will be exempt from tax. Since this aspect remained to be verified by the lower authorities and the assessee has also not filed any such

evidence to prove that the said land does not fall in the category of capital asset u/s 2(14) of the Act, in the interest of natural justice and being fair to both parties, we set aside the issue raised in the case of assessee namely Ram Singh Chouhan to the file of the ld. AO for the purpose of limited verification as to whether 1.281 hectare land sold by the assessee situated at Gram-Baroli, Tehsil Sanwar District, Indore falls in the category of capital asset u/s 2(14) of the Act and if Ld. AO find that it is not a capital asset u/s 2(14) of the Act then no addition will be called for in the hands of assessee and if found otherwise then assessee will be required to file computation of capital gain after claiming the benefit if any pertaining to index cost of acquisition, cost of improvement (if any) and the amount applied for purchase of other agricultural land as provided in section 54B of the Act and the same shall be examined by the ld. AO as per the Provision of Income Tax Act. Needless to mention that assessee should be provided reasonable opportunity of being heard to file necessary evidences as and when called for. Accordingly grounds of appeal raised in ITANo.140/Ind/2020 are allowed for statistical purposes.

11. In the result, Appeal of the Assessee in ITANo.141/Ind/2020 is allowed and in ITANo.140/Ind/2020 is allowed for statistical purposes.

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**