

**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.164/Ind/2020  
Assessment Year:2013-14**

ITO 4(1) Bhopal	<b><u>बनाम/</u></b> Vs.	RSR Housing Construction P. Ltd. Bhopal
(Appellant)		(Respondent )
P.A. No.BYJPC4571L		

Revenue by	Shri P.K. Mitra, CIT-DR
Respondent by	Shri Girish Agrawal & Mis. Nisha Lahoti, ARs

<b>Date of Hearing:</b>	<b>12.11.2021</b>
<b>Date of Pronouncement:</b>	<b>17.01.2022</b>

**आदेश / O R D E R**

**PER MANISH BORAD:**

The above captioned appeal at the instance of Revenue is directed against the order of Ld. Commissioner of Income Tax(Appeals)-2, (in short 'CIT(A)'), Bhopal dated 31.01.2020 which are arising out of the order u/s 143(3) r.w.s 263 of the Income Tax

Act 1961(In short the 'Act') dated 20.11.2018 framed by DCIT-4(1) Bhopal.

2. Brief facts of the case as culled out from the records are that the assessee is a Private Limited Company engaged in the business of construction of residential flats. Return for A.Y.2013-14 filed on 30.06.2014 declaring total income of Rs.37,67,690/-. Case selected for scrutiny under CASS and assessment u/s 143(3) of the Act was completed on 22.03.2016 assessing income at Rs.3,99,15,160/-. Subsequently, Ld. Pr. CIT invoked the provisions of section 263 of the Act and held the order of Ld. AO is erroneous and prejudicial to the interest of revenue and restored it for fresh assessment along with necessary directions. In compliance thereto assessment proceedings u/s 143(3) r.w.s. 263 of the Act were carried out and after considering the submissions of the assessee income assessed at Rs.6,12,83,690/- after making various additions to the tune of Rs.5,75,51,600/- to the returned income of Rs.37,67,690/-.

4. Aggrieved assessee preferred an appeal before the Ld. CIT(A) and partly succeeded.

5. Now the revenue is in appeal before this Tribunal raising

following grounds of appeal:

1. *Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs.3,65,50,000/- made by AO on account of difference between stamp duty value and sale consideration.*
  2. *Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs.22,00,000/- made by AO on account of unaccounted sale of flat.*
  3. *Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs.6,20,000/- made by AO on account of interest paid on vehicle loan and depreciation thereon.*
  4. *Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs.1,63,46,000/- made by AO on account of unexplained expenditure.*
  5. *Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs.18,00,000/- made by AO on account of unexplained cash credit.*
6. Ld. DR vehemently argued supporting the order of Ld.AO.
7. Per contra, Ld. counsel for the assessee apart from relying on the finding of Ld. CIT(A) also referred to written synopsis dated 11.11.2021 and paper book dated 11.10.2021 containing 132 pages.
8. We have heard rival contentions and perused the records placed before us. The revenue has challenged the finding of Ld. CIT(A) deleting the various additions made by the Ld. AO raising 5 grounds of appeal.
9. Apropos to ground no.1 relating to addition of Rs.3,65,50,000/- deleted by Ld. CIT(A) we find that the assessee held 3.5 acres of

land which was initially planned to be sold under an agreement dated 08.07.2011 for Rs.1.75 cr. and against this agreement assessee received Rs. 1.70 cr. The stamp duty valuation of the said property was Rs.4,90,50,000/-. Subsequently only 2.5 Acres of land was sold on 31.03.2012 for a consideration of Rs.1.25 cr. Ld. AO treated the sum of Rs.1.25 cr. as a total sale consideration and made an addition of suppressed sale proceeds of Rs.3,65,50,000/-, being the difference between the Stamp Valuation of 3.5 acres of land at Rs.4,90,50,000/- and the sale consideration of Rs. 1,25,00,000/- cr. received.

We further note that Ld. CIT(A) on examination of the records has observed that the assessee has sold only 2.5 acre of land. Out of Rs.1.70 cr. initially received against agreement for sale of 3.5 acres of land, buyer returned back the amount of Rs.45 lac through banking channel. So it remains an undisputed fact that the assessee sold only 2.5 acres of land for a consideration of Rs.1.25 cr. which was received on 31.03.2012 and sales was recorded accordingly in the books of account. Under these given facts we find no infirmity in the finding of Ld. CIT(A) firstly holding that the alleged sale consideration of Rs.1.25 cr. has already been declared

in the books of account as sales during F.Y. 2011-12 and this transactions did not pertain to the year under appeal and secondly has also rightly held that provisions of section 43CA of the Act which provides for considering the stamp duty valuation if sale consideration is less, came into effect only from A.Y.2014-15 and the same was not applicable on the transaction in question as the said land was held as stock in trade. We, accordingly dismiss ground no.1 raised by the revenue.

10. Apropos to ground no.2 relating to deletion of addition of Rs.22,00,000/- towards unaccounted sale of flat we on perusal of the records as well as the finding of Ld. CIT(A) find that the Ld. AO made addition for suppression sale of flat at Rs.22,00,000/-. Ongoing through the records we find that there was a miscommunication from Sub-registrar office Bhopal about the sale of flat No. 306, D-Bloc, Pocket-II of Sagar Royal Villa to the extent that it was informed to the department that the assessee has sold the said flat to Mr. Dinesh Shukla. The correct information is that this flat was not sold by the assessee but was sold by Mr. Shriram Patil and Smt. Archana Patil. Since this fact remains uncontroverted by Ld. DR, no interference is called for in the finding

of Ld. CIT(A) deleting the wrong addition of suppression of sale made by the Ld. AO at Rs.22,00,000/-. Ground no.2 of the revenue's appeal is dismissed.

11. Apropos to ground no.3 relating to deletion of addition of Rs.6,20,000/- on account of interest paid on vehicle loan and depreciation thereon, Ld. AO denied this claim made by the assessee towards the interest paid on Car loan and depreciation on the Motor car. We find that during the course of regular assessment proceedings no such disallowance was made except lump-sum disallowance of Rs.2,10,081/- but subsequent to revisionary order u/s 263 of the Act, the impugned disallowance was made. But while making such disallowance of interest and car loan and depreciation on motor car no reason has been mentioned by Ld. AO in the assessment order. We find that Ld. CIT(A) on perusing the record has rightly held that the depreciation has been claimed on the written down valuation of the Motor car brought forward from previous year and the interest has been rightly claimed on the vehicle loan. Thus, finding of the Ld. CIT(A) is confirmed and ground no.3 raised by the revenue is dismissed.

12. Apropos to ground no.4 relating to deletion of addition for

unexplained expenditure of Rs. 1,63,46,000/- we find that this addition was made by the ld. AO for undisclosed expenditure of purchase of land. We have gone through the sale deed executed for the purchase of this land and the same is dated 30.03.2012. The said consideration was paid during F.Y. 2011-12 and the assessee has shown total cost for purchase of this land situated at Khasra No.-54/1 (old 54) village Bawadia Kalan, Vikas Khand-Phanda, Tehsil-Hazur, Bhopal for Rs. 1,76,62,500/- which includes purchase consideration as well as the registration cost and this fact remains uncontroverted from Ld. DR that Ld. AO erred in making addition for undisclosed expenditure as the purchase of the said land was duly disclosed in the books during F.Y.2011-12 since the consideration was paid on 30.03.2012 but the Registry was completed on 01.06.2012 i.e. during F.Y. 2012-13. Therefore, there cannot be any case for undisclosed expenditure for the purchase of the said land. Ld. CIT(A) has rightly deleted the same. We, thus dismiss revenue's ground no.4

13. Ground no.5 relates to addition for unexplained cash credit of Rs.18 lacs which was made by the ld. AO for unexplained share application money. Before Ld. CIT(A) and also in the paper book

filed before us Ld. counsel for the assessee has demonstrated that there was an accounting mistake during F.Y.2012-13 as the sum of Rs.18 lacs received from other persons towards booking advance/unsecured loans were wrongly credited to the account of Mr. Ram Kumar Singh under share application account. Rectification entries have been made by the assessee in the books of account for A.Y.2014-15 and the amount had been transferred from share application money account to the correct account. For arriving at this finding Ld. CIT(A) has observed as follows:

*9. During the original assessment proceedings u/s 143(3) the Ld. AO found that the appellant had received Rs.84,50,000/- on account of share application money in the year under consideration. The AO found that amount of Rs.42,00,000/- was received from Shri Ram Kumar Singh, Director of the company out of which the appellant explained amount of Rs.24,00,000/- only. Therefore, remaining amount of Rs.18,00,000/- was added u/s 68 of the Act.*

*9.1 The appellant submitted that due to an inadvertent clerical mistake a sum of Rs.18,00,000/- received from other persons has booking advance/unsecured loan were credit in the account of Shri Ram Kumar Singh in share application account. On re-conciliation of the account, reversal of share application account was made in F.Y.2014-15. The appellant also submitted relevant ledger account in this regard. The appellant further submitted the details of such wrong credit during the assessment proceeding as well as in the appellate proceedings which are as under:*

- i. On 19.09.2012 a sum of Rs.10,00,000/- being cash received from Shir Ram Kumar Tiwari against sale of Flat no.506 of 'Opel Heights' Project.
- ii. On 03.03.2013, a sum of Rs.5,00,000/- received through cheque no.020386/- against sale of flat no.706 of Opel Oris project.
- iii. on 03.03.2013, a sum of Rs.50,000/- was received through cheque no.001568/- against sale of flat no.305 of "Opel Oris' Project.
- iv. On 03.03.2013, a sum of Rs.2,50,000/- received through cheque no.095240 from Shri Rajneesh as unsecured loan. A confirmation letter along with bank statement has also been furnished by the appellant.

The appellant submitted that the above mistake has been corrected in the A.Y.2015-16. This misclassification has not affected the taxable income of the appellant. Therefore, the addition of Rs.18,00,000/- was not correct.

92. I have considered the fact of the case and found that the Ld. AO had made addition of Rs.18 lac in the original assessment order dated 22.03.2016 and the same has been added in the order u/s 143(3)r.w.s. 263 of the Act which is under appeal before me. I have gone through the entire fact of the case. I agree with the contentions of the appellant that amount of Rs.18,00,000/- was inadvertently shown as share application money in the name of Shri Ram Kumar Singh and the same has been corrected by passing reverse entries in the books of account of F.Y.2014-15. I have also seen the ledger account and balance sheet for the A.Y. 2015-16. The fact presented by the appellant is found to be correct. Therefore, no addition was warranted from this account. Hence, addition of Rs.18,00,000/- u/s 68 of the Act is hereby deleted. This ground of appeal is allowed.

14. The above finding of Ld. CIT(A) remains uncontroverted by the ld. DR, we accordingly confirm the same and dismiss revenue's ground no.5

15. In the result, Appeal of the Revenue in ITANo.164/Ind/2020 is dismissed.

Order pronounced as per Rule 34 of I.T.A.T., Rules 1963 on ... 17.01.2022.

Sd/-  
(RAJPAL YADAV)  
VICE PRESIDENT

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 17/01/2022

*Patel/PS*

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

By order

**Assistant Registrar, Indore**