

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.21/Ind/2021
Assessment Year:2013-14

ACIT (Central)-1, Bhopal (Appellant)	<u>बनाम/</u> Vs.	Shri Sanjay Mehta, Indore (Respondent)
P.A. No.AGEPM2676G		

ITA No.12/Ind/2021
Assessment Year:2014-15

Shri Sanjay Mehta, Indore (Appellant)	<u>बनाम/</u> Vs.	DCIT (Central)-1, Bhopal (Respondent)
P.A. No.AGEPM2676G		
Assessee by	Shri Sanjay Mehta, CA	
Revenue by	Shri P.K. Mitra, CIT-DR	
Date of Hearing:	03.01.2022	
Date of Pronouncement:	11 .03.2022	

आदेश / O R D E R

PER MANISH BORAD, A.M:

The above captioned appeals filed at the instance of the Revenue and Assessee for Assessment Year 2013-14 & 2014-15 are directed against the order of Ld. Commissioner of Income Tax(Appeals) (in short 'Ld.CIT]-III & 3, Indore & Bhopal dated 28.07.2020 & 11.11.2020 which are arising out of the order u/s

153A r.w.s.143(3) of the Income Tax Act 1961(In short the 'Act') dated 23.03.2015 & 18.12.2018 framed by DCIT (Central)-1, Bhopal.

The Revenue has raised following grounds of appeal in ITA No. 21/Ind/2021:-

1. *On the facts and in the circumstances of the case, the Ld. CIT((A) has erred in law in deleting the addition of Rs. 35,18,653/- made on account of cash and foreign currency found at the premise of the assessee and has overlooked the findings of the AO mentioned in the assessment order.*
2. *On the facts and in the circumstances of the case, the Ld. CIT((A) has erred in law in deleting the addition of Rs. 49,48,500/- made on account of unexplained investment in the construction of residential house and has overlooked the finding of the AO mentioned in the assessment order.*
3. *On the facts and in the circumstance of the case, the Ld. CIT((A) has erred in law in deleting the addition of Rs. 1,21,00,000/- made on account of cash payment against the purchase of property and has overlooked the findings of the AO mentioned in the assessment order.*
4. *On the facts and in the circumstances of the case, the Ld. CIT((A) has erred in law in deleting the addition of Rs. 2,50,000/- made by the assessing officer on account of cash deposits in bank accounts and has overlooked the findings of the AO mentioned in the assessment order.*

The Assessee has raised following grounds of appeal in ITA No. 12/Ind/2021:

1. *The Order passed by the Hon'ble CIT(A) is unreasonable, unjustified, not based on facts on records, contrary to law, bad in law and is against Principle of Natural Justice.*
2. *The Hon'ble CIT(A) has erred, in law and facts, in upholding addition of Rs. 5,27,407/-made by the Learned AO, towards proportionate amount of interest paid on unsecured loans based on presumption that there exists a nexus between borrowed funds and funds advanced by the Appellant, without any additional evidence on record.*
3. *The Hon'ble CIT(A), has erred, in facts and law, in upholding the action of the Learned AO towards issuance of Notice u/s 148 of the Act on the basis of the reasons to believe recorded by the Learned AO despite the fact AO did not bring any additional evidence on record as compared to*

facts and documents already on AO's record submitted during the course of Assessment proceedings u/s 143(2).

4. *The Hon'ble CIT(A) has erred, in facts and law, by not considering the fact that the Learned AO passed a summary order u/s 147 r.w.s 143(3) of the Act, instead of a speaking order, for disposing the objections raised by the Appellant against issuance of Notice u/s 148 of the Act.*

5. *The Hon'ble CIT(A) has erred, in law and facts, by not considering the fact that the Learned AO passed order u/s 147 r.w.s.143 (3) of the Act after giving only 3 days' time to Appellant to respond to the Notice issued u/s 142(1) of the Act, which was clearly inadequate and against the tenements of law and principle of natural justice.*

6. *The Hon'ble CIT(A) has erred in law and facts, by dismissing the ground raised by appellant regarding penalty proceedings initiated by the Learned AO u/s 271(1)(c) of the Act for the above addition.*

7. *The Appellant craves leave to amend, alter add to the ground(s) of appeal and / or raise any other ground of appeal.*

We will first take up revenue's appeal in ITANo.21/Ind/2012 pertaining to A.Y. 2013-14

2. Brief facts of the case as culled out from the records are that the assessee is an individual engaged in the profession of accountancy and also earns income from house property and income from other sources. Assessee is connected to DBL group which was subjected to search u/s 132 of the Act on 20.06.2012. Assessee's business and residential premises were searched. Thereafter notice u/s 153A of the Act were issued for the period of A.Y.2007-08 to A.Y. 2012-13 and notice u/s 143(2) of the Act was issued for A.Y. 2013-14 i.e. an year of search. The present appeal pertains to A.Y. 2013-14. Return of income was filed on 07.01.2014 declaring income of Rs.1,43,93,780/- which included income surrendered during the course of search of Rs.99,03,000/- towards unaccounted receipt utilized for purchase of residential house in May 2012 and miscellaneous gifts of Rs.17.15 lacs offered to tax. Ld. AO called for

various information to which detailed submissions were filed, Ld. AO completed the assessment after making following additions:

Particulars	Amount
i. On account of cash and foreign currency	Rs.35,18,653/-
ii. On account of unexplained investment in the construction of residential house	Rs.49,48,500/-
iii. On account of cash payment against the purchase of property	Rs.1,21,00,000/-
iv. On account of cash deposit in bank account	Rs.2,50,000/-
Totaling to Rs.2,08,17,153/-	

3. Aggrieved assessee preferred an appeal before the ld. CIT(A) and filed detailed submissions and documentary evidences. Ld. CIT(A) based on the facts of the case and also similar issue is being decided in the case of other family members of the assessee deleted all the above stated additions made for A.Y. 2013-14.

4. Aggrieved revenue is now in appeal before this Tribunal.

5. Ld. DR vehemently argued supporting the order of Ld. AO.

6. Per Contra Ld. counsel for the assessee reiterated the submissions made before the Ld. CIT(A) and relied on the finding of Ld. CIT(A) and prayed for confirming the finding of Ld. CIT(A).

7. We have heard rival contentions, perused the records placed before us. We observe that assessee was subject to search u/s 132 of the Act carried out on 20th June, 2012. Assessee succeeded in

getting relief from Ld. CIT(A) as all the additions made by the Ld. AO were deleted. Revenue has challenged all the issues before us.

7.1 Ground no.1: This ground relates to deletion of addition of Rs. 36,18,653/- made on account of unexplained cash found at the premises of the assessee. We find that during the course of search when the assessee and other family members were searched including locker, office and residence total cash found and seized was at Rs. 43,35,000/- which included cash found from locker owned by assessee and his wife and cash found at home totalling to Rs.32,15,290/- and foreign currency of Rs.3363/-. Ld. AO treated the total amount of Rs.35,18,653/- as unexplained.

7.2 We further find that during the course of assessment proceedings assessee filed the complete details of cash balance as per books of account as on the date of search which comprised of the following:

Name of assessee and his family members	Balance as per books of account on the date of search (Amount in Rs.)
Sanjay Mehta	86670
Rita Mehta	1482554
Shyama Mehta	150000
Akshay Mehta	200000
Pyramid Consultant and Services Private Ltd.	2545505
Sanjay Mehta HUF	5000
Sanjay Mehta and Associates (Partnership firm)	65403
Total	4535132

7.3 The above lists shows that as on the date of search the assessee along with his family and professional concerns had cash in hand of Rs.45,35,132/- in its books of accounts and complete details of cash book were filed before the ld. AO to which no error was found by the Ld. AO at any stage. Along with the above detailed cash in hand of Rs.45,35,132/-, assessee's mother also stated to have Stridhan in cash Rs.1.50 lac, which was duly stated in the statement. We notice that Ld. AO has not made any effort to controvert the confirmation filed by the appellant with respect to cash balance in books of his own family members and promoted company namely Pyramid Consultant and Services Private Ltd.

7.4 We, therefore, under the given facts and circumstances of the case, are of the considered view that assessee has successfully explained the cash in hand of Rs.45,35,132/- in his own name, family members and professional concerns and addition of Rs.1,50,000/- owned by his mother, totalling to Rs.46,85,132/- which is sufficient to explain the alleged addition of Rs.35,18,653/-. We, thus, fail to find any inconsistency in the finding of Ld. CIT(A) and the same is confirmed. Ground no.1 raised by the revenue is dismissed.

8. Ground No.2: This ground relates to deletion of addition of Rs.49,48,500/- made on account of unexplained investment in the construction of residential house. We notice that in the month of May, 2012 assessee purchased a 22 years old constructed house property situated at 338, Saket Nagar, Indore. Purchase

consideration as per registered sale deed is Rs.1,46,97,000/-. This property is jointly owned by assessee and his wife Rita Mehta. Assessee claimed to have incurred expenses Rs.1,24,03,000/- over and above the registry cost. Total cost of the house comes to Rs.2,71,00,000/- which has been accounted in the books of account of Sanjay Mehta at Rs.1,36,08,000/- and Rita Mehta at Rs.1,34,92,000/-. During the course of assessment proceedings Ld. AO while examining the issue of investment in residential house for the purpose of valuation referred it to Departmental Valuation Officer (in short DVO) who valued it at Rs. 2,45,94,000/-. Ld. AO deducted the registry cost of Rs.1,46,97,000/- and a difference amount of Rs.98,97,000/- was added 50% each in the hands of assessee and his wife Rita Mehta.

8.1 We further find that during the course of search assessee has surrendered undisclosed cash receipt of Rs.99,03,000/- which has been used for purchasing the residential house. This fact is verifiable from the computation of income filed before us. Further a sum of Rs.25 lac was also spent by the assessee and his wife on the house which is duly incorporated in the books of account. Thus, the assessee has successfully explained that it had invested Rs.2,71,00,000/- jointly with his wife in the said residential house. The valuation as per DVO is only Rs.2,45,94,000/- which is much less than the amount already disclosed by the assessee and his wife individually. As against the DVO's valuation of assessee's share of Rs.1,22,79,000/-, assessee has already recorded an investment of Rs.1,36,08,000/- in its books of account which also includes the

miscellaneous income of Rs.99,03,000/- offered to tax being the cash income applied for purchase of residential house. Therefore, since the assessee has already offered undisclosed investment to tax and successfully explained remaining investment made in the residential house along with his wife, we fail to find any inconsistency in the finding of Ld. CIT(A) who has rightly followed the finding of his predecessor given in the case of assessee's wife Rita Mehta who is 50% of the owner of the said house and similar addition made in her hands was deleted by the ld. CIT(A). Thus, finding of Ld. CIT(A) is confirmed. Ground no.2 raised by the revenue is dismissed.

9. Ground No.3: This ground relates to deletion of addition of Rs.1,21,00,000/- made on account of alleged cash payment made against the purchase of property. The alleged addition was made by the Ld. AO for the unaccounted payment made for purchase of house property at Rs.338 Saket Nagar, Indore. As discussed above that the assessee offered the unaccounted payment component of Rs.99,03,000/- to tax during the course of search proceedings itself and has paid tax thereon. Ld. AO while dealing with the issue of valuation of the alleged residential house comparing the valuation made by the DVO had already made the addition of Rs.98,97,000/- (49,48,500/- each in the hands of assessee and his wife). Now the Ld. AO has further made addition for alleged unaccounted payment for acquisition of house property at Rs.1,21,00,000/-. This addition made by the Ld. AO is purely double addition. The issue of investment in the residential house had already been considered

and discussed in the preceding paras wherein we have deleted the addition on observing that assessee had explained investment in the house and has also offered undisclosed income of Rs.99,03,000/-.

9.1 We, therefore, under the given facts and circumstances of the case find no inconsistency in the following finding of Ld. CIT(A) given in the impugned order deleting addition of Rs.1.21 cr made by the Ld. AO:

“6.4 I have gone through the submission and factual matrix presented before me as well as the assessment order. The following uncontroverted facts emerge out of the order and submissions given:-

(i) In the assessment order the AO has observed under print 6 of the order that in the statement recorded at the time of search by the appellant, the appellant had admitted Rs.99.00 lacs as income. He has attached the extract of statement taken at the time of search on page 5 of the order. The questions and answers clearly bring out the fact that appellant had declared Rs.99.00 lacs as his income against cash receipts against property purchase papers so seized from his residence.

(ii) The AO has further observed in point 6.1 and 6.3 of the order that the appellant had offered this income of Rs.99.00 lacs under Income from other sources in return filed for A.Y. 2013-14.

(iii) In the point no.1.5 of the order AO has further given the finding that in return filed u/s 139(1) for A.Y.2013-14 the total income from other sources offered by appellant is Rs.116.18 lacs out of total income offered to tax of Rs.143.93 lacs.

(iv) CIT appeal in the matter of appellant's wife in his order passed on 13.09.2019 in ITANo.10357/2018-19 has ruled that the entire purchase consideration of Rs.271.00 lacs of the house property bought jointly by appellant and his wife stood fully explained.

6.5 In view of the above uncontroverted facts, the appellant submission that” the payment of Rs.121.00 lacs as mentioned in cash receipt was only an application of income already offered i.e. Rs.116.18 lacs from income offered during search proceedings itself (being sum total of Rs.99.00 lacs) against cash receipts seized and Rs.17.15 lacs as additional income from other sources offered) as income from other sources and balance of Rs.4.82 lacs being application from cash in hand is based on facts brought by the AO himself in the order” makes sense.

6.6 These facts clearly bear out that income underlining the cash payment in property transaction has already been offered by the appellant in his return of income for the A.Y.2013-14 as income from other sources.

6.7 The source of this offered income in FINANCIAL YEAR 2013-14 under income from other sources has been explained by appellant as having been received from Dilip Suravanshi to the extent of Rs.99.97 lacs, (which is mentioned on page 64 of seized documents No.BS-3 dealt separately in this order) and the balance having come out of other income offered in return for the A.Y.2013-14 and cash in hand. Shri Dilip Suryavanshi, admitted to the transaction of cash payment to appellant in his application to settlement commission. It is also a matter of record that CIT appeal in the matter appellant’s wife in his order passed on 13.09.2019 in Income-tax Act, 1961.-10357/2018-19 has ruled that the entire purchase consideration of Rs.271.00 lacs of the house property bought jointly by appellant and his wife stood fully explained. The AO has by the addition of this income apparently taxed, an application of income already offered and taxed separately hence this addition needs to be deleted. Accordingly I allow this ground of appeal.

We accordingly confirm the finding of Ld. CIT(A) and dismiss the revenue’s ground no.3.

10. Ground no.4: This ground relates to deletion of addition of Rs. 2,50,000/- made by the Ld. AO on account of cash deposit in the bank account. We notice that the addition on account of cash deposits in the bank account of the appellant and minor son Akshay Mehta and Karan Mehta has been made for A.Y.2008-09 to 2013-14 totaling to Rs.26,93,000/-. For A.Y. 2013-14 addition of Rs.2,50,000/- has been made. The assessee has claimed it to be the gifts received by him/his minor children on auspicious occasion. Assessee has further stated that Miscellaneous gifts received at Rs. 17,15,000/- has been offered to tax in the return of income for A.Y. 2013-14 which *inter alia* includes alleged cash gifts of Rs.2,50,000/- which were deposited in cash in the bank account. This fact seems not to have been appreciated by the Ld. AO but taken in the right prospective by Ld. CIT(A) and further Ld. DR failed to controvert this fact that alleged sum has already been offered to tax in the income tax return. We, thus find no reason to interfere in the finding of Ld. CIT(A) and the same is confirmed. Thus, ground no.4 raised by the revenue is dismissed.

Now we take up assessee's appeal in ITANo.12/Ind/2021

11. From perusal of the above grounds, we find that the assessee has raised a legal issue challenging reopening of the assessment proceedings by way of issuance of notice u/s 148 of the Act and on merit has challenged the addition of Rs.5,27,407/- made by the Ld. AO towards disallowance of proportionate amount of interest paid on unsecured loans.

12. Brief facts of these issues are that the assessee furnished return of income for A.Y.2014-15 on 30.11.2014 declaring income of Rs.1,95,70,140/-. Case selected for scrutiny under CASS and assessment u/s 143(3) of the Act framed on 30th August 2016 after calling detailed submission of the assessee and considering the same. Thereafter the notice u/s 148 of the Act was issued on 12.03.2018 i.e. within four year from instant year under appeal. In the reasons recorded it was stated that the assessee has claimed interest expenditure of Rs.8,34,934/- paid on unsecured loans taken during the year. But no interest has been changed from Rita Mehta to whom loans and advances of Rs.48,24,847/- has been paid. Therefore, the proportionate interest of Rs.5,27,407/- deserves to be disallowed. Based on this reason the assessment proceedings u/s 147 of the Act were carried out and after considering the submissions by the assessee, addition for disallowance of proportionate interest paid on unsecured loan of Rs.5,27,407/- was made. Income reassessed at Rs.2,00,97,550/- vide order dated 18.12.2018. Assessee challenged the matter before Ld. CIT(A) but failed to succeed.

13. Now the assessee is in appeal before this Tribunal. Ld. counsel for the assessee vehemently argued referring to the detailed written submissions and the paper book containing 55 pages in support of its grounds raising legal issue as well as grounds on merits.

14. Per contra, Ld. DR supported the order of both lower authorities.

15. We have heard rival contentions, perused the records placed before us. As far as the legal grounds are concerned it is alleged by the assessee that there is a change of opinion by the Ld. AO. We however, fail to find any merit in this submission since the case of the assessee has been reopened within four years from the end of the assessment year. Further the assessment order framed u/s 143(3) of the Act is not a speaking order. Ld. counsel for the assessee failed to point out any specific detail relating to the issue having been examined by the Ld. AO about not charging the interest on the loans and advances given, even when interest expenditure has been claimed in the profit and loss account. Though it is submitted that complete details were filed and Ld. AO may have looked into it, but no specific question seems to have been asked by the Ld. AO nor any specific detail has been filed by the assessee pertaining to this issue in dispute before us.

16. We are thus of the considered view that Ld. AO has rightly reopened the assessment proceedings u/s 147 of the Act and it cannot be said to be a case of “change of opinion” by the Ld. AO. Thus, finding of Ld. CIT(A) is confirmed and the legal grounds raised by the assessee is dismissed.

17. As far as the merit of the case are concerned the facts are that unsecured loan as on 31.03.2014 including the interest credited is Rs. 76,38,183/-. Apart from the unsecured loans of Rs.56,00,000/- taken from Sunil Jain during F.Y. 2012-13 and loan of Rs.5,42,077/- taken from Akshay Mehta during F.Y.2012-13, all

other unsecured loans were taken before F.Y.2009-10. We also find that loans from Sunil Jain were taken on 21.09.2012 at Rs.30,00,000/- on 26.09.2012 at Rs.6,00,000/- and on 22.10.2012 at Rs.20,00,000/-. On the other hand, interest free loans and advances to Rita Mehta were given on 28.03.2012 at Rs.60,00,000/- on 20th April 2012 at Rs. 45,00,000/- on 30th July 2012 at Rs,2,26,940/-. All the loans have been given much before the loans taken from Sunil Jain which is a major component of the unsecured loan of Rs.76,38,183/- and further a sum of Rs.45,99,649.54 was repaid by Rita Mehta during F.Y. 2012-13 and 2013-14. The above details of loans taken and advance along with respective dates are sufficient to show that the interest bearing funds have not been applied for giving interest free loans and advances. It is also an undisputed fact that the assessee has shown income of Rs.2,04,58,746/- during A.Y. 2012-13 and Rs.1,52,41,701/- during A.Y. 2013-14. Also assessee's closing capital on 31.03.2013 is Rs.2.86 cr. and as on 31.03.2014 is Rs. 4.20 cr. This claim of the assessee that his own capital has been applied for giving the loan to his wife has sufficient merit, as the figures of the income disclosed in the preceding two years and the closing capital balance supports the same.

18. We, therefore, under the given facts and circumstances of the case are of the considered view that Ld. AO failed to appreciate the fact that interest bearing funds were not used to give the loan to Rita Mehta and secondly assessee has sufficient capital and interest free funds to cover up loans given to his wife without interest. Thus,

we find no justification in the finding of Ld. CIT(A) confirming the disallowance of interest expenditure of Rs.5,27,407/- and the same is reversed, disallowance of interest expenditure at Rs.5,27,407/- is deleted and the ground raised on merit by the assessee through ground no.2 is allowed.

19. In the result, appeal of the Revenue in ITANo.21/Ind/2021 for A.Y. 2013-14 is dismissed and appeal of the Assessee in ITANo.12/Ind/2021 is partly allowed.

The order pronounced as per Rule 34 of ITAT Rules, 1963 on 11 .03.2022.

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 11 .03.2022

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

By Order,
Sr. Private Secretary, I.T.A.T., Indore