

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No. 14/Ind/2018
Assessment Year: 2009-10

Shri Akash Agarwal, 5-A, Kalani Bagh, Dewas (M.P.)	<u>बनाम</u>	ACIT, Circle, 1(1), Ujjain
(Appellant / Assessee)	<u>/Vs.</u>	(Respondent/ Revenue)
PAN: ADTPA7266Q		
Assessee by	Ms. Richa Porwal, AR	
Revenue by	Shri Harshit Bari, DR	
Date of Hearing	02.06.2022	
Date of Pronouncement	20.07.2022	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

1. This appeal filed by assessee is directed against the order dated 04.10.2017 of learned Commissioner of Income-Tax (Appeals), Ujjain [**"Ld. CIT(A)"**] in Appeal No. U-627/2016-17, which in turn arises out of the order of assessment dated 26.12.2016 passed by the learned ACIT, 1(1), Ujjain [**"Ld. AO"**] u/s 147 read with section 143(3) of the Income-tax Act, 1961 [**"the Act"**] for the Assessment-Year 2009-10.

2. The original assessment of assessee was finalized by an order dated 30.11.2011 u/s 143(3) of the act. Subsequently, it was noticed that the assessee

had shown purchase of an agricultural land measuring 1.177 hectares situated at village - Nausarabad from Shri Motilal S/o Bheraji Ranawat alias "motiya" ["**Seller**"] for Rs. 9,50,000/-. However, in the statements of seller recorded on 18/10/2013 and 28/10/2013, the seller had stated to have received a total consideration of Rs. 20,30,000/-, consisting of Rs. 9,50,000/- through cheque and Rs. 10,80,000/- in cash from assessee. On the basis of statements of seller, the Ld. AO formed a belief that the assessee has paid an on-money of Rs. 10,80,000/- out of undisclosed sources and therefore re-opened assessment u/s 147. During proceedings, the assessee denied having paid Rs. 10,80,000/- but the Ld. AO rejected assessee's submission and made addition. Being aggrieved by the order of Ld. AO, the assessee filed appeal to Ld. CIT(A). The Ld. CIT(A) did not grant any relief on this count. Aggrieved by order of Ld. CIT(A), the assessee has filed this appeal and now before us.

3. The assessee has raised following grounds:

"1. That the Hon'ble CIT(A) grossly erred, both on facts and in law, in confirming the additions of Rs. 1080000/- by considering the said amount as undisclosed income of the Appellant.

2. That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 10,80,000/- u/s 69 of the I.T. Act.

2.1 By not appreciating that that the Ld. AO has erred in assuming jurisdiction and making the assessment u/s 147 without recording proper reasons to believe a prerequisite to assume jurisdiction and by not discharging the objections raised by the Appellant judiciously.

2.2 By endorsing evidentiary value to the Statements recorded u/s 131 and by ignoring several anomalies and contradictions specifically pointed out in the statement so recorded and in proceeding by grossly relying on those statements.

2.3 By denying the natural justice to the Appellant by not giving him a chance to cross examine / examine the witness and the statements used against the Appellant.

2.4 Without proving any nexus between the amounts so deposited by Shri Motilal and the Appellant and without bringing any positive material on record to prove that the appellant has channelized his

undisclosed income towards purchasing the said agricultural land.

2.5 By ignoring the several other deposit / withdrawals and multiple other transactions in the bank account of Shri Motilal and by proceeding in making assessment by picking and choosing transactions favourable to Revenue.

3. The assessee craves to add/alter any of the grounds of appeal on or before the date of hearing.”

4. Although the assessee has challenged legal issues of the proceeding u/s 147 as well as the merits of addition of Rs. 10,80,000/- in the Grounds and Written-Synopsis yet during the course of hearing before us, the Ld. AR did not make any submission on the legal issues, her submissions and contentions were confined to the merits of addition of Rs. 10,80,000/-. Same way, the Ld. DR too restricted his contentions to the merits of addition as argued by Ld. AR. Therefore, we adjudicate upon the merits of the addition of Rs. 10,80,000/- only, treating the legal issues as uncontested by the parties.

5. Facts *qua* the addition of Rs. 10,80,000/- are such that the assessee purchased the impugned land for Rs. 9,50,000/- from seller through registered-deed dated 08.07.2008. A copy of the deed is placed in the Paper-Book, according to which the consideration was paid through cheque No. 077040 dated 28.06.2008 drawn on Axis Bank, Dewas Branch. The revenue recorded statements of the seller on 18.10.2013 and 28.10.2013 in which the seller stated to have received a total consideration of Rs. 20,30,000/-, consisting of Rs. 9,50,000/- through cheque and Rs. 10,80,000/- in cash. During assessment-proceeding, the assessee denied to have paid any cash to the seller. Further the assessee, vide letter dated 09.12.2016 placed in Paper-Book at Page No. 59, raised doubts over genuineness and integrity of the statements of seller and made a specific request to the Ld. AO to provide cross-examination of the seller, whereupon the Ld. AO issued a summon dated 13.12.2016 u/s 131 to the seller to attend office on 26.12.2016. But the seller showed inability to appear due to ill-health, therefore the inspector of revenue carried out spot-statement at the residence of the seller wherein the seller again admitted to have received a sum of Rs. 10,80,000/- in cash from the assessee.

Relying upon the statements of seller and ignoring the submission of assessee, the Ld. AO made an addition of Rs. 10,80,000/- as undisclosed income of assessee.

6. During appellate proceeding before Ld. CIT(A), the assessee submitted that the addition has been made on the basis of statement of seller recorded at the back of assessee without providing opportunity of cross-examination. The assessee also pointed out certain anomalies and inaccuracies in the statements given by seller. The assessee also submitted that the transaction of purchase is evidenced by a registered-deed executed in terms of Transfer of Property Act, 1882 and the averment of seller in the registered-deed has to be given more credence than the oral-false-statements given by seller in response to the notice u/s 131. However, the Ld. CIT(A) observed that the seller has admitted to have sold the property for Rs. 20,30,000/- and received on-money of Rs. 10,80,000/- in cash from assessee. Ld. CIT(A) also observed that the assessee has not filed any copy of agreement with the seller which could substantiate his contention of purchase for Rs. 9,50,000/-. Ld. CIT(A) further observed that the seller has deposited cash on 08.07.2008 in bank account, which is exactly the same date on which the registered-deed was executed. Ld. CIT(A) further observed that the seller does not have any source of income except agricultural income and "sutari income" of Rs. 300/- per day. With these findings and taking into account certain legal precedents, the Ld. CIT(A) observed that the seller has received on-money of Rs. 10,80,000/- from the assessee and thus confirmed the addition made by Ld. AO.

7. Before us, the Ld. AR made extensive submissions which are summarized below:

- (i) The original enquiry was initiated by revenue against the seller for the reason that the seller had deposited a sum about Rs. 15.52 lakh in cash in his bank account. There was no information or allegation against the assessee to have paid on-money. During such enquiry proceeding, the seller's statements were recorded in which the seller had conveniently stated to have received cash of Rs. 10,80,000/- from the assessee to save his skin.

- (ii) The statements of seller were recorded at the back of the assessee. As the assessee observed grave anomalies in the statements of seller, vide letter dated 09.12.2016 the assessee raised doubts over genuineness and integrity of the statements of the seller and made a specific request to the Ld. AO for cross-examination of the seller. However, no opportunity of cross-examination was made available to the assessee. The spot-enquiry stated to have been conducted by the inspector of department was again at the back of assessee. Denial of cross-examination is a serious lacuna.
- (iii) There are serious contradictions and anomalies in the statements of seller:
- (a) The statements were recorded in parts, viz. initially on 18.10.2013 and thereafter on 28.10.2013. Question No. 1 to 7 were recorded on 18.10.2013 and thereafter only Question No. 8 was recorded on 28.10.2013. Question No. 9 is general. There is no justification to record Question No. 8 alone on 28.10.2013. Even it is quite clear from the query raised in Question No. 8 that it was recorded only to give an opportunity to the seller for no valid reason.
- (b) Question No. 7 is reproduced below:

बन न) मैं आपसे Normada Malwa Kshetraya Gramin Bank, Dewas का Statement of account जो कि खाता नं: 12645 दिखा रहा हूँ जिसके अनुसार आपके खाते में वित्तिय वर्ष 2008-09 में रु. मजदूरी रूप में 15,54,000/- जमा किया गए हैं उक्त जमा राशी आपके पास क्या स्वीकृत है?

जान) मैंने मेरी संयुक्त रूप से मेरे बड़े भाई श्री हिरालालजी राणावत कि संयुक्त मलकियत की हृषि भूमि कुल 6 बीगा कुल रूप में 20,00,000/- में बेची थी। इस विक्रम प्रतिफल से मैंने आधा हिस्सा मैंने अपने बैंक खाते में जमा किया था। बैंक से जमा राशी का विलुप्त विवरण दिनांक 28/10/2013 तक प्रस्तुत कर दूंगा।

17/11/13

अगली दिनांक 28/10/2013 को पुनः प्रारंभ किया जाएगा। मोतीमाल

वर्षान्त आज दिनांक 28/10/2013 को पुनः प्रारंभ किया जाता है।


(c)

Question No. 8 is reproduced below:

वर्षान्त आज दिनांक 28/10/2013 को पुनः प्रारंभ किया जाता है।

8) आपके द्वारा नौसैराबाद स्थित 1.177 Hectare भूमि का विक्रम को Registered प्रति की फोटो कॉपी जहाँ प्रस्तुत किया है जिसके अनुसार यह पता लगा है कि आपने श्री अजयरा अजयरा S-A, कालानी बाग, को अपनी उक्त भूमि कंपनी में विक्रम की है जिसका भूगणन आपने Axis बैंक अकाउंट नंबर 077040 दिनांक 28/6/2008 द्वारा किया है।

(26) मोतीमाल



In Question No. 8, the seller changed his stand and stated to have made cash-deposit of about Rs. 80,000/- to Rs. 90,000/- earned from “sutari” work *plus* cash-receipt of Rs. 10,80,000/- from assessee against sale of impugned land for Rs. 15,50,000/-. The figure of Rs. 15,50,000/- is also over-written as Rs. 20,30,000/- to match with sum total of Rs. 9,50,000/- and Rs. 10,80,000/-.

Ld. AR submitted that the seller has contradicted his own reply in Question No. 7 by making a different reply in Question No. 8. Ld. AR submitted that it is very much apparent from the manner in which Question No. 7 and 8 were recorded on different dates, with different versions and even replied by the seller differently that the statements are neither credible nor having any truth.

- (iv) The assessee has purchased the impugned land through a registered sale-deed for Rs. 9,50,000/- and the consideration was paid through cheque. The seller has admitted clearly before the Registrar of properties to have sold the land exactly for Rs. 9,50,000, nothing more or less. The sale-deed is a registered document under Transfer of Property Act, 1882. Therefore, in case of inconsistency between the registered sale-deed and oral statement, the registered sale-deed shall prevail.

8. Finally, the Ld. AR relied upon the decision of this Bench in **ITA No. 379/Ind/2013 M/s Shree Parshwanath Construction Vs. ITO-2(1), Ujjain dated 18.07.2014** and argued that in the similar set of facts, this Bench has deleted the addition of Rs. 2,18,75,000/- made by revenue on the basis of oral statements of the sellers. Ld. AR argued that the present appeal is squarely covered by this decision both in facts and in law. Hence in the light of decision, the addition made by Ld. AO deserves to be deleted.

9. Per contra, the Ld. DR relied upon the orders of lower authorities and claimed that the Ld. AO has made addition on the basis of clear admission made by the seller of the factum of receipt of Rs. 10,80,000/- in cash from assessee. Ld. DR

emphasized that the seller has made cash deposit of Rs. 10,80,000/- on 08.07.2008 and the date of registered-deed is also 08.07.2008. With these submissions, the Ld. DR requested to uphold the addition. Ld. DR, however, could not controvert the submissions made by Ld. AR.

10. We have considered rival submissions and contentions of both sides and perused the material held on record as well as the decision cited by Ld. AR. On a careful consideration, we observe as under:


- (i) The sole basis of addition is the statements of seller recorded on various dates. It is on record that those statements were recorded at the back of assessee and opportunity of cross-examination was not afforded to the assessee despite specific request made by assessee. Therefore, the action of Ld. AO is against *audit alteram partem*, a well-recognised principle of jurisprudence.
- (ii) The anomalies and inconsistencies pointed by Ld. AR in the statements of seller are very serious and fatal. *Firstly* we fail to understand why the statements were recorded on two different dates, viz. on 18.10.2013 and 28.10.2013, particularly when the Question No. 1 to 7 had already been recorded on 18.10.2013 and there is a reply given by the seller *qua* the source of cash-deposit in Question No. 7 itself. *Secondly*, we find that the reply given in Question No. 8 contradicts the reply given in Question No. *Thirdly*, on perusal of statements we also observe a serious contradiction in Question No. 2 and Question No. 8, which although the Ld. AR has not pointed out yet we find very grave and relevant:

Question No. 2 is reproduced below:

आप क्या काम करते हैं तथा आपका आम का स्तोत्र क्या है कृपया बताएं ?
मैं खुतारी का काम करता था जो वर्ष 2006 के बाद बंद कर दिया अब मैं आराम करता हूँ। मैं अभी कुछ काम नहीं करता हूँ, मैं अपना पैसा श्री रामचन्द्र राणावत के साथ अपने घर में रखा हूँ।

Question No. 8, though re-produced earlier, is against being reproduced below for an immediate reference:

व्याज आज दिनांक 28/10/2013 को पुनः प्रेषित किया जाता है।
2) आपके द्वारा नौसैराबाद स्थित 1.177 Hectare भूमि का विक्रय को Registered प्रति की फोटो कॉपी जहाँ प्रस्तुत किया है जिसके अनुसार यह पचा गया है कि आपने श्री आबुल आजीज अहमद अली, कातावी काज, को अपनी उक्त भूमि कंपनी में विक्रय की है जिसका भूगणन आपने Axis बैंक अकाउंट नंबर 077040 दिनांक 28/6/2008 द्वारा किया है।
(26) मो. 9811111111



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कर लिया है उक्त लेख के अनुसार यह उचित होता है कि आपने उक्त भूमि रूप में 9,50,000/- में विक्रय की है। उक्त भूमि का स्पष्ट कर ही आपने खाते में वर्ष 2008-09 में जमा नगद राशि के क्रय स्रोत थे जो कि लग-भग रु 10,60,000/- है का स्रोत स्पष्ट करे ?

28) मैं खुदरे रूप में सुतारी काम भी करता हूँ जिससे मुझे करीब रूप 300/- प्रतिदिन की आय हो जाती है। उक्त सुतारी की कमाई से उक्त वर्ष में लग-भग रु 80,000/- से रु 90,000/- तक कर भुगतान-अलग दिनांकों के बैंक खाते में जमा करे थे। बाकी राशि जो कि लग-भग रु 9,50,000/- है के बारे में यह स्पष्ट करना चाहूँगी मैंने अपनी जमीन कुल रूप 15,50,000/- में विक्रय किया था जिससे मैं रूप 9,50,000/- का भुगतान चेक द्वारा प्राप्त हुआ। तथा शेष राशि रु 10,80,000/- मुझे अलग-अलग समय पर नगद भुगतान किया था। इस नगद भुगतान के संबंध में दाखिलेनी सबूतों में असमर्थ हूँ।

It is interesting to note that Question No. 2 was recorded on 18.10.2013 and Question No. 8 was recorded 28.10.2013. In reply to Question No. 2, the seller has categorically stated that “he was doing “sutari” work which has been discontinued after year 2006. He is not doing any work presently”. Thereafter, in reply to Question No. 8, the seller stated “I am doing “sutari” work from which I earn approximate Rs. 300/- per day”. Thus, the seller has

given diagonally-opposite statements about his daily routine and source of income which are very primary aspects in any statement. This is something very serious. We believe that on account of these serious anomalies and contradictions, there is no reliability in the statements of seller.

(iii) The assessee has purchased the impugned land through a registered sale-deed for Rs. 9,50,000/-. The consideration was paid through cheque and the seller has admitted before the registrar of properties to have sold the land exactly for Rs. 9,50,000, nothing more or less. The sale-deed is a registered document. Now we have two evidences before us, viz. (a) registered-deed of the land in which the seller has accepted to have sold land for Rs. 9,50,000/- and received consideration through cheque, and (b) oral statement of seller, that too unreliable as observed earlier, in which the seller has admitted to have received a sum of Rs. 10,80,000/- in cash in addition to the receipt of Rs. 9,50,000/- through cheque. Needless to mention that we have to accept the registered sale-deed which is a document under Transfer of Property Act, 1882 in preference to the oral-unreliable-statement of seller.

(iv) We have also perused the decision of this Bench in **ITA No. 379/Ind/2013 M/s Shree Parshwanath Construction (supra)** quoted by Ld. AR and observe that the said decision is directly applicable to the issue before us.

11. In view of the foregoing discussion, we are of the view that the revenue is not having any credible basis to prove its stand that the assessee has paid on-money of Rs. 10,80,000/- to the seller. Therefore, the addition of Rs. 10,80,000/- made by

Ld. AO deserves to be deleted. Accordingly we delete the addition of Rs. 10,80,000/- made by Ld. AO.

12. In the result, this appeal of assessee is allowed.

Order pronounced as per Rule 34 of I.T.A.T. Rules 1963 on 20.07. 2022.

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 20.07.2022

Patel/Sr. PS

- Copies to:*
- (1) *The appellant*
 - (2) *The respondent*
 - (3) *CIT*
 - (4) *CIT(A)*
 - (5) *Departmental Representative*
 - (6) *Guard File*

By order
Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Benches, Indore

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the fair order is placed before the Dictating Member for pronouncement	
5.	Date on which the file goes to the Bench Clerk	
6.	Date on which the file goes to the Head Clerk	
7.	Date on which the file goes to the Assistant Registrar for signature on the order	
8.	Date of dispatch of the Order	