

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.534/Ind/2018
Assessment Year: 2007-08

Shri Omprakash Patidar Bhopal	<u>बनाम</u>	ITO-2(4), Bhopal
(Appellant / Assessee)	<u>/Vs.</u>	(Respondent/ Revenue)
PAN: CPXPP0831E		

ITA No.536/Ind/2018
Assessment Year: 2007-08

Shri Devbaksh Patidar Bhopal	<u>बनाम</u>	ITO-2(4), Bhopal
(Appellant / Assessee)	<u>/Vs.</u>	(Respondent/ Revenue)
PAN: CRZPP6677E		
Assessee by	Shri Ashish Goyal, AR	
Revenue by	Shri P.K. Singhi, Sr. DR	
Date of Hearing	26.07.2022	
Date of Pronouncement	29.07.2022	

आदेश / O R D E R

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

1. These are the two appeals filed by different assessees. ITA No. 534/Ind/2018 is an appeal by Shri Om Prakash Patidar against the order dated 22.03.2018 of learned Commissioner of Income-Tax (Appeals)-1, Bhopal [**Ld. CIT(A)**], which in turn arises out of the order of assessment

dated 23.03.2015 passed by the learned ITO-2(4), Bhopal [**Ld. AO**] u/s 144(1)/143(3)/147 of the Income-tax Act, 1961 [**the Act**] for the Assessment-Year 2007-08. ITA No. 536/Ind/2018 is an appeal by Shri Devbaksh Patidar against the order dated 21.03.2018 of learned Commissioner of Income-Tax (Appeals)-1, Bhopal [**Ld. CIT(A)**], which in turn arises out of the order of assessment dated 30.03.2015 passed by the learned ITO-2(4), Bhopal [**Ld. AO**] u/s 143(3)/147 of the Income-tax Act, 1961 [**the Act**] for the Assessment-Year 2007-08.

2. Although the assesseees involved in these appeals are different, but Shri Om Prakash Patidar is son and Shri Devbaksh Patidar is father and the factual matrix involved in the appeals are inter-connected. Hence these appeals were heard together and being disposed of by this common order.

3. The registry has informed that there is a delay of 13 days in filing these appeals. Ld. AR submitted that assesseees have filed condonation applications with supporting documents. According to Ld. AR, the delay was caused due to illness of a relative (sister-in-law of Shri Om Prakash Patidar and accordingly a close-relative of Shri Devbaksh Patidar) who was seriously ill and had to be taken to Bombay for treatment. It is further submitted that the said close-relative had to undergo a long treatment and unfortunately died too because of complications. Ld. AR submitted that the family of assesseees including the assesseees themselves have to be involved in taking care of the relative and therefore, the appeals could not be filed within time. Ld. AR further submitted that the delay is a small period of 13 days only and

considering the compelling circumstances of assessee, the delay should be condoned to enable the grant of substantial justice. We confronted the Ld. DR who did not express any objection. Therefore, the small delay of 13 days is condoned and the matters were proceeded for hearing.

4. The revenue has taken these cases u/s 147 to examine the sources of cash-deposits of Rs. 20,00,000/- by Shri Om Prakash and Rs. 29,08,000/- by Shri Devbaksh Patidar in their respective bank-accounts. During the course of assessment-proceedings, when the Ld. AO asked the assesseees to explain the sources of cash-deposits, it was submitted that Shri Devbaksh Patidar sold a rural agricultural land for a consideration of Rs. 72,16,000/- but the consideration was received through cheque to the extent of Rs. 28,16,000/- only and the buyer paid remaining consideration of Rs. 44,00,000/- in cash but the cash-consideration was not shown in the registered-deed. It was further submitted that out of the cash-receipt of Rs. 44,00,000/- which is not shown in the registered-deed, a sum of Rs. 20,00,000/- was deposited in the bank account of Shri Om Prakash Patidar and Rs. 24,00,000/- was deposited in the bank account of Shri Devbaksh Patidar. This way, the assesseees explained the sources of cash-deposits. On the issue of taxability of capital gain resulting from sale of agricultural land, it was submitted that the impugned land was an agricultural land situated in rural area and hence capital gain was not taxable. These submissions were made to Ld. AO but the Ld. AO rejected the same, while passing assessment-orders, with the reasoning that the relevant evidences were not filed. During the appellate proceeding, although the assesseees filed evidences before the

Ld. CIT(A) in terms of Rule 46A but the Ld. CIT(A) did not admit those evidences and accordingly did not grant any relief.

5. Before us, the Ld. AR submitted that the assesseees are agriculturists and they have sold rural agricultural land and received cash component which was deposited in the bank accounts. Ld. AR submitted that the Ld. AO has made additions in the assessment-orders due to the sole reason that the assesseees did not file proper evidences. Ld. AR submitted that the assesseees are agriculturists and do not have adequate support system to make adequate representations before the Ld. AO and that is why there was a reasonable cause of non-filing evidences before Ld. AO. Ld. AR submitted that during first appeal, the assesseees filed those evidences with the help of consultant but however the Ld. CIT(A) did not admit for the simple reason that they were not filed before Ld. AO. Ld. AR has placed copies of those evidences in the Paper-Book filed before us and made a very humble submission that one more opportunity should be given to the assessee to make adequate submissions before the Ld. AO in the matter. Ld. AR submitted that by giving such opportunity the assesseees would be taxed in a proper manner.

6. Initially the Ld. DR attempted to oppose the submission of Ld. AR, yet finally the Ld. DR could not show any serious objection and agreed for remanding this case back to Ld. AR.

7. We have heard both sides and considered their submissions. We observe that the assesseees have filed certain evidences before Ld. CIT(A)

during the course of appellate proceeding to justify the sources of cash-deposits, although the same could not be filed before the Ld. AO. We also observe that the assesseees are agriculturists who have sold the agriculture land and it is quite possible that the land is situated in rural area and therefore not taxable. But, however, the capital gain has been taxed by Ld. AO for the lack of evidence. We observe that tax has to be paid on proper taxable income and the proper taxable income can be computed only after examining the relevant evidences. We further observe that the assesseees are agriculturists and did not have sufficient means to deal the income-tax issues adequately. Therefore, in the interest of granting substantial justice to the assesseees, we are of the considered view that an opportunity should be given to assesseees to represent their case fully before the Ld. AO. In view of this, we remand this matter back to the file of Ld. AO, who will give opportunity to the assessee, consider the submissions of assessee and assess the income in accordance with law.

8. In the result, these appeals of assessee are allowed for statistical purposes.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 29/07/2022.

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated :29.07.2022

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 Bench, Indore

1.	Date of taking dictation	27.7.22
2.	Date of typing & draft order placed before the Dictating Member	27.7.22
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	