

**IN THE INCOME TAX APPELLATE TRIBUNAL
“INDOREBENCH”, INDORE**

**BEFORE SMT. MADHUMITA ROY, JUDICIAL MEMBER,
AND
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

**IT(SS)A.No.78/Ind/2016&ITA No.552/Ind/2016
Asstt.Year :2010-11 & 2011-12**

DCIT, Ward-2(1) Indore.	Vs.	Smt. Renudevi Nachani 614, Usha Nagar Extension. Narendra Tiwari Marg Indore. PAN : AAZPN 2263 P
----------------------------	-----	--

**ITA No.326 & 327/Ind/2018
Asstt.Year : 2010-11 & 2011-12**

Smt. Renudevi Nachani 614, Usha Nagar Extension. Narendra Tiwari Marg Indore.	Vs.	DCIT, Ward-2(1) Indore.
--	-----	----------------------------

अपीलार्थी/ (Appellant)		प्रत्यर्थी/(Respondent)
Assessee by :	Shri S. S. Deshpande, CA	
Revenue by :	Shri P.K. Mishra, CIT-DR	

सुनवाई की तारीख/**Date of Hearing** : **24/11/2022**
घोषणा की तारीख /**Date of Pronouncement**: **14/02/2023**

आदेश/O R D E R

PER BENCH:

These are cross-appeals by the Revenue's appeals and assessee's against respective orders of the ld.Commissioner of Income-tax (Appeals)-1, Indore. The details of orders of the ld.CIT(A) which are under challenge by the Revenue before us are as under:

Appeals by Revenue:

Sr.No.	Asstt.Year	CIT's order dated
1	2010-11	25-2-2016 against order under section 153A r.w.s. 143(3) of the Act

2	2011-12	25-2-2016 against order under section 153A r.w.s. 143(3) of the Act
---	---------	---

Appeals by Smt. Renu Devi Nachani:

Sr.No.	Asstt.Year	CIT's order dated
1	2010-11	05-2-2018 against order under section 153A/250 of the Act
2	2011-12	05-2-2018 against order under section 153A/250 of the Act

2. All these appeals have arisen consequent upon search action under section 132 of the Income Tax Act, 1961 carried out at the residential premises of assessee and simultaneous survey actions at various business premises of other group concerns. The assessee belonged to the "M.P. Bullion" group of cases. Consequently, the assessment order was framed under section 153A read with section 143(3) of the Act by making certain additions including the differential amount of sale consideration disclosed by the assessee in the return and the amount reflected in the AIR information on account of sale of shops. Against these additions, the assessee went in appeal before the first appellate authority, but partly succeeded. Against the decisions of the Id.CIT(A) both the Revenue and assessee are before the Tribunal. First we take up Revenue's appeals:

IT(SS)A.No.78 and 552/Ind/2016

3. In both the appeals, the Revenue has raised common grounds which are identically worded. Therefore, the grievances of the Revenue in both the appeals are similar. They read as under:

(i) Whether in the facts and in the circumstances of the case the Id.CIT(A) erred in law by allowing the appeal of the assessee without receiving the remand report as called for from the AO.

(ii) Whether in the facts and in the circumstances of the case the Id. CIT(A) erred in law by allowing the appeal of the assessee whereas the assessee

has furnished new evidence before him but the very same evidence was not furnished before the AO,

(iii) Whether in the facts and in the circumstances of the case the Ld. CIT(A) justified to set aside the matter to the AO.

4. A perusal of the above grounds reveals that the only effective ground raised by the Revenue is against by action of the Id.CIT(A) for not calling for remand report from the AO and not furnishing copies new evidences provided by the assessee during the appellate proceedings for rebuttal.

5. We have gone through orders of the Id.CIT(A). *Qua* the above grievance of the Revenue, we find, it is not the case of the Revenue. Reason being that the Id.CIT(A) in his impugned order has categorically recorded an observation in para-4 (page no.9) that *“the submissions of the appellant were also forwarded to the AO but no report from the AO has been received till date.”* In this order also, the Id.CIT(A) has also dealt with the issue of additions. Observation of the Id.CIT(A) in both the years are similarly worded. For clarity, we reproduce the relevant para-4 (Asst.Year 2011-12) of the impugned order as under:

“4. Ground No.1: By this ground the appellant has disputed the addition of Rs.31069500/- being suppression of sale of property as per AIR information. As noted in the assessment order the Sub-registrar Indore provided information that the appellant had shown only receipts of Rs.168800/-. Appellant explained that the amount of such sale partly pertained to Radhika Enterprises a proprietary concern of the husband of the appellant Shri Keshav Nachani and partly to M/s.Chugh Housing & developers with who m the appellant along with her husband had entered into a development agreement for the development of property Orbit Mall on land owned by them. As per the said agreement the developers developed the project and it was agreed to distribute the construe lee shops/offices. The sale as noted in the AIR Information was of Unit No. 501 which as per the distribution agreement was part of the share of M/s Chugh Housing 85

Developers and unit UG 34/B which as per the distribution agreement was a part of the share of Shri Keshav Nachani Proprietor of Radhika Enterprise. Appellant pointed out that a confirmation of the sale from M/s Chugh Housing & Developers was also filed during the assessment proceedings. Appellant also filed a copies of the deed and copies of account and explained that the amount as shown in the AIR Information was the value adopted by the stamp valuation authority at Rs.27670000/- 85 Rs.5087500/- respectively while the agreed sale consideration was Rs.9900000/- and Rs.3100000/- respectively. The above explanation is found to be duly confirmed by M/s Chugh Housing & Developers and Radhika Enterprises. The submissions of the appellant were also forwarded to the AO but no report from the AO has been received till date. In view of the above explanation the addition of Rs.31069500/- is found to be unwarranted. AO is directed to re-verify and allow the same. This ground of the appellant is therefore allowed.”

6. This factual recording by the ld.CIT(A) has not been controverted by the Revenue before us nor furnished any evidence to compel us to find any merit in the allegations of the Revenue. In the absence of the same, particularly when the ld.CIT(A) has given opportunity to the AO to contradict the submissions of the assessee, we are unable to accept the allegation of the Revenue that the AO has not been provided with proper opportunity to submit remand report or opportunity to rebut the new evidences furnished by the assessee during the appellate proceedings. Thus, we find the grounds raised by the Revenue in both the appeals being devoid of any merits, the same are rejected in both the appeals.

7. In the result, both the appeals of the Revenue are dismissed.

8. Now we take up assessee's appeal being ITA No.326/Ind/2018 for A.Y.2010-11.

9. In this appeal, the sole grievance of the assessee is that the ld.CIT(A) while upholding order of the AO passed under section

143(3) read with section 250 of the Act has been deviated from the order of his predecessor dated 25.2.2016 by which the latter has given clear cut direction to the AO to allow claim of the assessee by observing that the impugned addition of Rs.1,71,03,449/- on account of difference of value of the property as per stamp duty valuation authority and sale consideration received by the assessee on sale of shops was unwarranted. Without looking to the merit of the case and the direction of the Id.CIT(A) vide order dated 25.2.2016, the AO maintained the same addition, which was confirmed by the present CIT(A) in the impugned order dated 5.2.2018. The grievances of the assessee, thus, reflected in the following grounds as raised in the appeal:

“1. On the facts and in the circumstances of the case the learned Commissioner of Income Tax (Appeals)-I, Indore, has erred in upholding the action of the learned Assessing Officer misinterpreting the absolute directions given by the Hon'ble Commissioner of Income Tax (Appeals)-I, Indore, in his order after considering the material and evidences furnished before him. And thereby while giving effect to the order of the Hon'ble Commissioner of Income Tax (Appeals)-I, Indore recomputed income ignoring directions and thus, the appeal effect order is void and bad in law.

2. On the facts and in the circumstances of the case the learned Commissioner of Income Tax (Appeals)-I, Indore has erred in upholding the action of the learned Assessing Officer of not allowing the addition made earlier in the order passed u/s 143(3) of Rs.1,71,02,449/- on account of alleged difference in sales as reported in accounts and as observed by the learned Assessing Officer on the basis of A.I.R. details available with hi-, without considering the submissions made before him and without adopting proper procedure laid down under the Act.

3. Without prejudice to the above and on the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals)-I, Indore has erred in upholding the action of the learned Assessing Officer of considering the value of property at Rs.2,11,69,500/- being value for stamp duty purposes as reported in AIR instead of transaction values of Rs.1,07,00,000/-.

10. The brief facts leading to the present case is that the assessee is engaged in development of project. She earned income from house property, profit from business and profession in the name of Kunal

Enterprises and income from other sources. In the original assessment framed under section 143(3) r.w.s 153A, the AO made an addition of Rs.1,71,01,450/- on the basis of AIR information available with him. As per the information, the assessee had shown sale of immovable property to the tune of Rs.40,67,550/- whereas as per the AIR, the sale transaction of the property was Rs.2,11,69,000/-. It was explained by the assessee that Sub-registrar had taken the figure of Rs.2,11,69,000/- as value of the property only for the purpose of determining stamp duty, but the actual transaction value was Rs.1,07,00,000/-. It was explained by the assessee that transaction value of the property would differ with the market value in the case of transaction relating to sale of property being stock-in-trade; that all the impugned transactions were duly booked in the relevant accounts; that the impugned property was owned by her along with her husband Shri Keshav Kumar Nachani; that thereafter they both entered into a development agreement with M/s.Chugh Housing & Developers for development of commercial complex in the name of "Orbit Mall"; that all three of them received their respective share in the form of shops/offices which their respective personal capacity sold and profit earned from sale was offered for taxation. On verification, the AO noticed substantial difference in the total sale of assets; that in the books of Kunal Enterprises, an amount of Rs.40,67,500/- showed as sale proceeds, while in the books of M/s.Chugh Housing & Developers sales reflected at Rs.2,38,16,000/-. He further noticed that names of purchasers also differed in the accounts of both Kunal Enterprises and M/s.Chugh Housing & Developers. Therefore, the AO doubted sales proceeds showed by the assessee. The explanation and details submitted by the assessee were not satisfied the AO, and he accordingly, made an addition of Rs.1,71,02,449/-

being the differential amount of sale proceeds and treated the same as undisclosed income.

11. Against this action of the AO, the assessee went in appeal before Id.CIT(A), who after considering the contentions and the details submitted by the assessee during the appellate proceedings allowed the claim of the assessee, and directed the AO to re-verify and allow the same. The relevant observation at para-9 is as under:

“9. Ground No. 2.c: By this ground the appellant has disputed the addition of Rs.17102449/- being suppression of sale of property as per AIR Information. As noted in the assessment order the Sub-registrar Indore provided information that the appellant had sold property for an amount of Rs.21169999/- and the appellant had shown only receipts of Rs.4067550/-. Appellant explained that the amount of such sale pertained to M/s Chugh Housing 85 Developers with whom the appellant had entered into a development agreement for the development of property Orbit Mall on land owned by them. As per the said agreement the developers developed the project and it was agreed to distribute the constructed shops/offices. The sale as noted in the AIR Information was of Unit No. 501 which as per the distribution agreement was part of the share of M/s Chugh Housing & Developers. Appellant pointed out that a confirmation of the sale from M/s Chugh Housing & Developers was also filed during the assessment proceedings. Appellant also filed a copy of the deed and explained that the amount as shown in the AIR Information was the value adopted by the stamp valuation authority and the agreed sale consideration was Rs.10700000/-. The above explanation is found to be duly confirmed by M/s Chugh Housing 8s Developers. The submissions of the appellant were also forwarded to the AO but no report from the AO has been received till date. In view of the above explanation the addition of Rs.17102449/- is found to be unwarranted. AO is directed to re-verify and allow the same. This ground of the appellant is therefore allowed.”

12. Pursuant to this direction of the Id.CIT(A) dated 25.2.2016, the AO passed an order giving appeal effect order u/s.250 of the Act, the AO maintained the addition by holding that in the absence of the books of accounts and other required details, it was also not established that whether the whole or partly amount of

Rs.1,07,00,000/- or Rs.2,11,69,000/- received or owned by M/s.Chugh Housing & Developers or not. The AO observed that the property in question being unit no.501 was the subject property mentioned in the AIR information which property belonged to M/s.Chugh Housing & Developers which sold property to one Omprakash Khatri with consent of Shri Keshav Nachani and Smt.Renu devi Nachani, in the absence of books of accounts of audited final accounts, the genuineness of the transaction was not verifiable. The assessee did not produce the books of accounts, audited balance sheets and copy of the bank account of M/s.Chugh Housing & Developers; that whatever bank statement furnished did not reveal the real sale consideration of the unit was Rs.1,07,00,000/-; that therefore the AIR information could not be verified, it could not be doubted that the assessee had sold the unit no.501 but the entire sale proceeds were not offered for taxation. Accordingly, the AO repeated the addition of Rs.1,71,02,449/-. This action was again challenged before the Id.CIT(A).

13. Before the Id.CIT(A) has submitted that the Id.CIT(A) in the first appellate order had categorically stated that details of M/s.Chugh Housing & Developers were furnished before him and the same were forwarded to the AO for his comments, no response was received. Considering the facts, the then Id.CIT(A) found the impugned addition to be unwarranted and accordingly directed the AO to re-verify the same and delete the addition. The AO instead of re-verification of the details filed, again re-examined the issue ignoring the evidences submitted by the assessee, and therefore, the AO acted beyond his jurisdiction. On the merit of the addition also, the assessee reiterated the submissions made before the assessment proceedings and first appellate proceedings. The assessee has

furnished copy of sale deed, confirmation, ITR, ledger accounts of buyers, sales account and audited final accounts from M/s.Chugh Housing & Developers. It was further submitted that as per the sale deed, it was clearly mentioned that amount of Rs.1,07,00,000/- has been received by M/s.Chugh Housing & Developers, as seller no.2 and so also, in the relevant bank statements and ledger accounts all the amounts so received were clearly reflected, and thus, there was no question of any suspicion on this point. This fact had been verified and taken cognizance by the Id.CIT(A) in the first appellate proceedings dated 25.2.2016, and therefore, there was nothing in the form of any material evidence with the department to contradict the claim of the assessee. However, the Id.CIT(A) did not satisfy with the explanation of the assessee, and found order of the AO to be justified, and accordingly, addition made by the AO was confirmed.

14. Aggrieved by the decision of the Id.CIT(A), the assessee is now before the Tribunal.

15. The Id.counsel for the assessee has filed a written submission in this behalf, and relevant part read as under:

“For giving the appeal effect, the Ld AO again made enquiries and in para 6.1.2 observed that point No. 3 and 5 of the registry, support statement of the AR in which it is mentioned that the said property was sold to Omprakash Khatri by M/s Chugh Housing & Development with consent of Shri Keshav Nachani and Smt. Renu devi Nachani but in the absence of books of accounts or audited final accounts, the genuineness of the transaction is not verifiable. The assessee did not produce the books of accounts, audited balance sheet and copy of bank account of M/s Chugh Housing &

Development. Even from the bank statement it is not proved that the real consideration of unit no. 501 is Rs.1,07,00,000/-. Thus, the AIR information could not be verified and as such it is established that Smt Renudevi Nachani has sold the unit no. 501 but the sale proceeds were not offered for taxation. He therefore repeated the addition of Rs.1,71,02,449/-.

The Ld. CIT(A) has maintained the addition with the same observation as that of the Ld. AO and further observed that the appellant failed to prove that unit no. 501 is pertaining to M/s Chugh Housing & Development.

Submission filed by the appellant:

It is humbly submitted that the particular property was in the share of M/s Chugh Housing & Development. The sale deed of the property which is placed at page of the PB. The sale deed was effected at Rs. 1,07,00,000/- . In clause 3 and clause no. 5 it was mentioned that the full sale consideration has been received by the second party which is M/s Chugh Housing & Development with the consent of Keshav Nachani and Renudevi Nachani. The said sale has been credited in the P&L account of M/s Chugh Housing & Development (page 48, 49 & 50 of PB). They have offered this as income and paid tax. The bank statement of both the parties, the purchaser and M/s Chugh Housing & Development clearly show that the transaction is between them. The Ld. AO has made contradictory statement about filing of bank account. At one stage he observes that no bank statement is filed and secondly in para 7.1, he observes that

from the bank statement it is not proved that the real consideration is only Rs.1,07,00,000/-. In the hands of M/s Chugh Housing & Development, the income has been assessed after reopening the case on this account taking the full value consideration as per stamp valuation(page 60 of PB). All this clearly establishes that the property in question was allotted in the share of M/s Chugh Housing & Development and thus no addition can be made in the hands of the assessee.”

It is therefore humbly prayed that the addition made by the Ld. AO and maintained by the Ld. CIT(A) may please be deleted.”

On the other hand, the ld.DR while supporting the order of Revenue authorities, also submitted that the ld.CIT(A) has justified in upholding the finding of the ld.AO on this issue, and therefore impugned appellate deserves to be upheld.

16. We have considered submissions of both the parties, and gone through the orders impugned order. We find that on the issue of impugned addition, the ld.CIT(A) in his first appellate order dated 25.2.2016 has categorical given a finding to the effect at page no.16 that the assessee has filed a copy of the deed and explained that the amount as shown in the AIR information was the value adopted by the stamp valuation authority and the agreed sale consideration was Rs.1,07,00,000/-, which explanation was found to be duly confirmed by M/s.Chugh Housing & Developers. In view of this explanation, the impugned addition made by the AO was unwarranted and required to be deleted. The ld.CIT(A) accordingly directed the AO to re-verify the same and delete the addition, and thus allowed the claim of the assessee. However, order of the AO

giving appellate effect, has maintained and repeated the said addition, which according to the assessee was re-examination of the whole issue again, instead of reverification as directed by the then ld.CIT(A). We find that the ld.CIT(A) in his earlier order dated 25.2.2016 has already considered all the evidences provided by the assessee to support her claim, and by taking cognizance of the same, directed the AO to allow the same. However, the second appellate proceedings, it appears that the ld.CIT(A) in the impugned order has not appreciated the earlier directions of the ld.CIT(A) dated 25.2.2016, and in a very cryptic manner, upheld the finding of the AO without any justifiable reasons. Though the ld.CIT(A) in the impugned order has recorded the submissions of the assessee supported with the documentary evidences, like, copy of the ledger books purchasers, bank statements, ITR and audited accounts of M/s.Chugh Housing & Developers, but he has not discussed any of them in the impugned order, rather simply confirmed ultimate finding of the AO. We find that all the documents furnished by the assessee during the assessment as well as appellate proceedings were sufficient to justify claim of the assessee. On the contrary, the findings of the lower authorities were not based any documentary evidences, but based on some presumption that the assessee has concealed sale of plot, and thereby earned undisclosed income which action of the AO was not justified by any documentary evidence and therefore not in accordance with law. On such presumption, burden to establish concealment of income indeed was with the AO with some incriminating material. In the absence of the same, we are unable to find any merit in the impugned order of the ld.CIT(A), which we set aside, and allow the grounds of appeal of the assessee.

17. In the result, the appeal of the assessee for A.Y. 2010-11 is allowed.

18. Now we take up assessee's appeal in ITA No.327/Ind/2018 (A.Y.2011-12).

19. The grounds raised by the assessee in this appeal are as under:

"1. On the facts and in the circumstances of the case the Commissioner of Income Tax (Appeals)-I, Indore, has erred in upholding the, action of the learned Assessing Officer misinterpreting the absolute directions given by the Hon'ble Commissioner of Income Tax (Appeals)-I, Indore, in his order after considering the material and evidences furnished before him. And thereby while giving effect to the order of the Hon'ble Commissioner of Income Tax (Appeals)-I, Indore recomputed income ignoring directions and thus, the appeal effect order is void and bad in law.

2. On the facts and in the circumstances of the case the learned Commissioner of Income Tax (Appeals)-I, Indore has erred in upholding the action of the learned Assessing Officer of not allowing the addition made earlier in the order passed u/s 143(3) of Rs.3,10,69,500/- on account of alleged difference in sales as reported in accounts and as observed by the learned Assessing Officer on the basis of A.I.R. details available with him, without considering the submissions made before him and without adopting proper procedure laid down under the Act.

3. Without prejudice to the above and on the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals)-I, Indore has erred in upholding the action of the learned Assessing Officer of considering the value of property at Rs.2,76,70,000/- and Rs.50,87,500/- being value for stamp duty purposes as reported in AIR instead of transaction values of Rs.99,00,000/- and Rs.31,00,000/- respectively.

4. The respondent craves leave to make an addition, alteration, deletion and/or amendment in the grounds of cross objection arising out of this order."

20. On perusal of the above grounds, we find that the issue raised in this appeal is similar to the issue raised in Asst. Year 2010-11, except quantum and particulars of the sale of property in question. The discussion, observation and finding of both the authorities below are also similarly worded except, as stated above, variation in the amounts and details of impugned sale of properties. Before us also this factual position has not been denied, and reiterated their respective submissions and explanation as were made for the issue

raised in 2010-11, which we have discussed in the foregoing paragraphs of this order and given a finding in favour of the assessee. Therefore, finding similarity of the facts and circumstances in both the years, we incline to adopt the same view as were made for the Asstt.Year 2010-11 hereinabove, more so, in view of the fact that there is no material placed before us by the Id.DR to deviate from the view taken by us for the earlier assessment years. Therefore, having found no justification in the impugned orders, for the reasons hereinabove in AY 2010-11, we also allow this appeal of the assessee and set aside the impugned order.

21. In the result, the appeal of the assessee for A.Y.2011-12 is allowed.

22. In the combined result, both appeals of the Revenue are dismissed, and that of the assessee are allowed.

Order pronounced as per Rule 34 on 14.02.2023

Order pronounced in the Court on 14 February, 2023 at Ahmedabad.

Sd/-

**(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER**

Sd/-

**(MADHUMITA ROY)
JUDICIAL MEMBER**

True Copy

Ahmedabad, dated 14/02/2023

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad