

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

170/Jodh/2019
(ASSESSMENT YEAR- 2011-12)

Shri Leela Ram Methani, Near Bank of Baroda, Gulabpura, Bhilwara	Vs	The ITO Ward-1, Bhilwara
(Appellant)		(Respondent)
PAN NO. AKRPM2107M		

Assessee By	Shri Hemant Chhajed, CA
Revenue By	Shri S.M. Joshi, JCIT-DR
Date of hearing	22/03/2023
Date of Pronouncement	24/03/2023

ORDER

PER: SHRI MANISH BORAD, AM

This is an appeal filed by the assessee against the order of the Id.
CIT(A), Ajmer dated 22-02-2019 for the assessment year 2011-12
raising therein following grounds of appeal:-

“1. The impugned additions of Rs.25,25,000 made in the order u/s 143(3)/147 dated 20.12.2018 are bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be deleted.

2. The Ld.AO erred in law as well as on the facts of the case in charging interest u/s 234B of the Act. The appellant totally denies its liability of charging of any such interest. The interest, so charged, being contrary to the provisions of law and facts, kindly be deleted in full.

3. The appellant prays your honour indulgences to add, amend or alter or any of the grounds of the appeal on or before the date of hearing.”

2.1 Brief facts of the case are that the assessee is an individual and engaged in wholesale business of eggs. The income of Rs.1.90 lacs was declared in the return filed for the assessment year 2011-12 on 02-05-2012. A survey was carried out in the case of the assessee on 23-01-2018 and during the course of survey the assessee accepted in the statement that he purchased Plot No.32, Krishna Nagar, Malola Road, Bhilwara for an amount of Rs.24.00 lacs but the sale deed was registered with sales consideration of Rs.14.00 lacs. Based on this statement, the AO issued notice u/s 148 of the Act and carried out reassessment proceedings. The AO show caused the

assessee about the alleged transaction for investment of Rs.24 lacs and registration expenses paid at Rs.1.25 lacs but on account of non-compliance by the assessee, an addition for undisclosed investment was made at Rs.25.25 lacs and income assessed at Rs.27.15 lacs vide order dated 20-12-2018.

2.2 Being aggrieved, the assessee carried the matter before the Id CIT(A) who confirmed the action of the AO

2.3 Aggrieved assessee is now in appeal before this Tribunal. The Id. Counsel for the assessee submitted that survey proceedings took place in the year 2018 and the transaction of purchase of plot was almost 8 years old and the assessee was not aware of actual purchase consideration at that point of time and inadvertently stated the purchase cost at Rs.24 lacs. He submitted that there was no incriminating material to support the said addition and, therefore, addition should not have been made merely based on the statement given in the course of survey.

2.4 On the other hand, the Id. DR supported the orders of the lower authorities.

2.5 We have heard the rival contentions and perused the materials available on record. The sole grievance of the assessee is that the Id. CIT(A) erred in confirming the addition for undisclosed investment of Rs.25.25 lacs made by the AO in reassessment proceedings carried out u/s 143(3) read with section 147 of the Act and taking the basis of statement given by the assessee during the course of survey carried out on 23-01-2018 u/s 133A of the Act. We notice that the alleged addition is based on the statement given during the course of survey. It has been judicially settled by the Hon'ble Courts time and again that statement given during the course of survey do not have any evidentiary value and for making addition reference has to be made to incriminating material unearthed during the course of survey and nexus should be established for making such addition. In the instant case, transaction is regarding purchase of Plot No. 32, Krishna Nagar, Malola Road, Bhilwara. The registered sale deed shows the purchase consideration was Rs.14 lacs. However, in the statement given during the course of survey, the assessee has stated the purchase consideration at Rs.24 lacs. There is no evidence with the Revenue which could indicate that the assessee had paid purchase

consideration of Rs.24 lacs. It is also evident that alleged statement was taken almost after 8 years of the date of transaction. It is also noticed that on one hand the AO observed in the assessment order that purchase consideration as per sale deed is Rs.14 lacs but he made the addition on the total amount of undisclosed investment at Rs.25.25 lacs.

2.5.1 Under the given facts and circumstances of the case, we are of the considered view that in the absence of any incriminating material, the addition cannot be made on the basis of the statement given during the course of survey which has no evidentiary value as they are not given under oath. Assessee has not disputed that he made investment of Rs.14.70 lacs out of accumulated unaccounted income and loan from friends which he failed to explain at any stage. Therefore, we sustain the addition to Rs.14.70 lacs and partly allow Ground No. 1 raised by the assessee.

3.1 The Ground No. 2 and 3 are general and consequential in nature which do not require any adjudication.

4.0 In the result, the appeal of the assessee is partly allowed

Order pronounced in the open Court on 24 /03/2023.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

Dated : 24/03/2023

**Mishra*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The DR
5. Guard File

Assistant Registrar

Jodhpur Bench