

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

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No. 49/Ind/2023**  
**Assessment Year: 2013-14**

Lalit Premchandani, C-5, Windsor Estate, Phase-I, Chuna Bhatti, Bhopal	<b><u>बनाम/</u></b> Vs.	ITO (IT&TP), Bhopal
(Assessee / Appellant)		(Revenue / Respondent)
<b>PAN: APGPP3175G</b>		
Assessee by	Shri Ashish Goyal and Shri N.D. Patwa, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	17.08.2023	
Date of Pronouncement	15.09.2023	

**आदेश / O R D E R**

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

Feeling aggrieved by assessment-order dated 29.12.2022 passed by ITO (IT & TP), Bhopal ["AO"] u/s 147 r.w.s. 144C(13) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2013-14, the assessee has filed this appeal on following grounds:

- 1. That the Id. AO was not justified in passing the assessment order, which is bad in law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*
- 2. The Id. AO was not justified in providing sufficient opportunity to the appellant to furnish document or reply in support of the claim and confirming the addition.*

3. *The Id. AO was not justified in making addition of Rs. 56,00,000/- as income from unexplained investment u/s 69 without considering the facts and circumstances of the case.*
4. *That the Id. AO was not justified in levying interest of Rs. 20,24,568/- u/s 234B of the Income-tax Act."*

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Brief facts leading to present appeal are such that the assessee is an individual and non-resident in India. For the relevant AY 2013-14, the assessee filed original return declaring a total income of Rs. 13,26,062/- on 14.03.2014 which was duly assessed. Subsequently, the AO recorded reason u/s 148 (copy of reasons is filed at Page No. 19-20 of the Paper-Book) that he received an information through the insight portal, uploaded by DCIT(Central)-II, Bhopal, which revealed that the assessee purchased a property called DV (Dream Vila)-11, Bhopal for Rs. 2,53,50,000/- but the purchase-consideration shown in the registered-deed was Rs. 1,97,50,000/- only. Thus, the assessee has paid unaccounted on-money of Rs. 56,00,000/- [Rs. 2,53,50,000 (-) Rs. 1,97,50,000] in cash from undisclosed sources. Accordingly, the AO believed that the income of Rs. 56,00,000/- chargeable to tax had escaped assessment. Therefore, the AO issued show-cause notice dated 31.03.2021 u/s 148 to re-open case u/s 147. During re-assessment proceeding when the AO confronted the assessee *qua* on-money payment, the assessee denied having made any such payment. However, the AO was not satisfied with submission of assessee who passed assessment-order on 29.12.2022 u/s 147 read with section 143(3) after making an addition of Rs. 56,00,000/- u/s 69 on account of unexplained investment.

4. Ld. AR for assessee carried us to Para No. 6 of assessment-order where the AO has noted that two (2) documents were found from possession of one Shri Dinesh Goswami ["Shri Goswami"] during search proceeding u/s 132 conducted upon him inventorised as Page No. 38 of LPS-2 and Page No. 58 of LPS-1. The first document (Page No. 38 of LPS-2) has been re-

produced by AO on Page No. 4 of assessment-order. The AO observed that this document contained the details of impugned House DV-11 sold by M/s Amrit Homes Pvt. Ltd. to assessee for Rs. 2,53,50,000/- [Rs. 2,55,00,000 (-) discount Rs. 1,50,000]. Further, the document also contains break-up of "cheque-payment" and "cash-component". The second document (Page No. 58 of LPS-1) has been extracted by AO on Page No. 5 of assessment-order which shows "cash as per Binda Sir at 05.11.2013" – Rs. 56,00,000/-". On the basis of these documents, the AO concluded that the assessee paid on-money of Rs. 56,00,000/- in cash. As the assessee was non-resident, the AO issued draft assessment-order dated 31.03.2022 in terms of section 144C. Thereafter, the assessee filed objection to Disputes Resolution Panel (DRP) against draft assessment-order which DRP rejected. Ultimately, the AO passed final assessment-order making the addition of Rs. 56,00,000/-.

5. With this factual background, Ld. AR contended that the impugned documents seized from Shri Goswami are dumb documents and the department has not allowed even cross-examination of Shri Goswami to assessee. Therefore, those documents do not have any evidentiary value and could not have been used against assessee. That apart, Ld. AR also submitted that the first-document does not contain any date or year of alleged on-money payment. And if the second-document is believed by department, it clearly mentions the transaction date as 05.11.2013 which falls within previous year 2013-14 relevant to AY 2014-15 and not at all within the scope of AY 2013-14 involved in present appeal. Therefore, the AO is patently wrong in making addition in AY 2013-14 under consideration; therefore the addition made by AO deserves to be deleted on this very reasoning. Ld. AR also made an alternative submission that in the present case, the AO has made assessment u/s 147 instead of invoking correct jurisdiction of section 153C and therefore also the assessment is technically illegal.

6. Ld. DR for revenue carried us to Para No. 5.3 of the order of DRP, copy at Page No. 49 of Paper-Book, and submitted that the following observations made by DRP clearly demonstrate that the seized documents can't be said to be dumb:

*"5.3 We have considered the entire matter carefully. We are compelled to state that the evidence found by way of loose papers are rather clinching. Firstly, there are no abbreviations used. Nor, are the transactions written in any coded language. Secondly, the transactions mentioned for the account part match perfectly with the declared consideration. The assessee is not denying that. Thirdly, the GST or AMC mentioned in these loose papers are also not in dispute. Fourthly, the persons mentioned in the seized papers, namely Manoj Sabnani and Binda Sir, or, the person from whom the papers were seized, namely, Dinesh Goswami, are real persons and not fictitious ones."*

7. Then, Ld. DR made further submission that the registered sale-deed of property, filed at Page 56-64 of Paper-Book, was executed on 19.03.2013. Thus, the cash payment must have been made before 19.03.2013 only as in practical life, the cash component is always paid before execution of registered sale-deed. Therefore, taking into account the date of 19.03.2013, the AO is very much justified to make addition in previous year 2012-13 relevant to AY 2013-14.

8. We have considered submissions of both sides and perused the material held on record including the Paper-Book filed by assessee. After a careful consideration, we firstly scan and re-produce the second-document being "Page No. 58 of LPS-1" extracted by AO on Page No. 5 of assessment-order:

APGPP3175G- LALIT PREMCHANDANI  
A.Y. 2013-14  
ITBA/AST/S/147/2022-23/1048317385(1)

S.N.	Party name	Sale consideration	Cash as per Bindra Sir at 05.11.2013	Percentage completion on 30.11.2016	Total collection in Cheques
11	Mr. Manoj Sabnani trf to lalit Premchandani	25,500,000	5,600,000	90%	7,000,000

9. On perusal of above document, we find two important contents therein, namely (i) Cash as per Bindra Sir at 05.11.2013 – Rs. 56,00,000, and (ii) Percentage completion as on 30.11.2016 – 90%. Then, we go to the documents executed in respect of the property filed in Paper-Book. At Page No. 56-64, there is a registered sale-deed dated 19.03.2013 as referred by Ld. DR. Under this sale-deed, only Plot No. 11 with understructure-level house was purchased by assessee for Rs. 70,00,000/-. Then, at Page No. 52-55 of Paper-Book, there is another document titled “allotment-cum-acceptance letter”. In Clause No. (e) and (g) of this document, the consideration of Rs. 1,97,50,000/- is mentioned and it is also mentioned that the assessee has paid Rs. 70,00,000/- and the balance of Rs. 1,27,50,000/- was agreed to be paid before completion of construction and handing over possession of villa. Therefore, it is very much clear that the registered sale-deed 19.03.2013 was for plot (with understructure-level house) only and the construction was to be done subsequently for which the assessee was required to make independent payments. This also corroborates with the seized document “Page No. 58 of LPS-1” re-produced above which clearly mentions “Percentage completion as on 30.11.2016 – 90%”. In fact, this also meets the contention raised by Ld. DR for revenue that the cash-component is always paid before execution of registered-deed because in the present case, the registered-deed is for plot and cash-component (even if believed to paid) was for construction-work and not for plot.

10. In any case, the seized document “Page No. 58 of LPS-1” clearly shows date of 05.11.2013 which falls within previous year 2013-14 relevant to AY 2014-15, therefore the Ld. AR is very much correct and justified in arguing that there was no cash-payment during the previous year 2012-13 relevant to AY 2013-14. Hence the addition made by AO in AY 2013-14 is patently wrong and unsustainable. Being so, we are inclined to delete the addition made by AO on this reasoning itself. Ordered accordingly.

11. Since we have already deleted addition in foregoing paragraph on the aspect of relevant previous-year/assessment-year, it would be unnecessary to go into other contentions raised by Ld. AR. Therefore, other contentions are kept open and undecided at this stage.

**12. Resultantly, this appeal of assessee is allowed.**

*Order pronounced in the open court on 15.09.2023.*

sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 15.09.2023

CPU/Sr. PS

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

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Indore Bench, Indore*