

**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. 152/Ind/2023**  
**Assessment Year: 2009-10**

Atiq Ahmad, 4/5, E Block, Ashoka Garden, Bhopal	<b><u>बनाम/</u></b> Vs.	Income-tax Officer, Ward 5(3), Bhopal
(Assessee / Appellant)		(Revenue / Respondent)
<b>PAN: ADGPA3390N</b>		
Assessee by	Shri S. S. Deshpande, C. A.	
Revenue by	Shri Ashish Porwal, Sr. DR.	
Date of Hearing	20.09.2023	
Date of Pronouncement	21.09.2023	

**आदेश / O R D E R**

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

Feeling aggrieved by appeal-order dated 06.09.2022 passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi which in turn arises out of assessment-order dated 13.12.2016 passed by learned ITO, Ward-5(3), Bhopal ["Ld. AO"] u/s 147 read with section 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2009-10, the assessee has filed this appeal on the grounds raised in Appeal-Memo.

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

3. Briefly stated the facts are such that the assessee filed the original return on 31.03.2011 declaring a total income of Rs. 2,30,910/-.

Subsequently, the case of assessee was re-opened u/s 147 through notice dated 28.03.2016 u/s 148. Finally, the AO completed re-opened assessment after making two additions u/s 69, one of Rs. 2,02,417/- and other of Rs. 4,00,000/-, in respect of unexplained investments in purchase of two agricultural lands. The assessee carried the matter in first appeal but did not make any response to the notices of hearing issued by the CIT(A). Therefore, the Ld. CIT(A) decided the first appeal on the basis of facts available on record, whereby he confirmed the findings made by the AO in assessment-order and dismissed the grounds raised by the assessee. This way, the assessee could not succeed in first appeal. Now the assessee has come in next appeal before us.

4. The assessee is aggrieved by the addition of Rs. 2,02,417/- and Rs. 4,00,000/- made by the AO u/s 69 on account of unexplained investments towards purchase of agricultural lands.

5. Ld. AR for assessee carried us to Para No. 3.2 and 3.3 of the assessment-order where the AO has dealt the impugned additions. Precisely, the AO has noted following reasoning of additions made by him:

(i) The assessee purchased one agricultural land for Rs. 30,36,500/- consisting of 3 acres in joint ownership in which the assessee's share was 2.5 acres amounting to Rs. 25,30,417/-. The assessee paid Rs. 23,28,000/- through cheque on 29.10.2007. Further, the assessee claimed to have paid remaining consideration of Rs. 2,02,417/- in cash on 24.03.2007 but the assessee has not produced any evidence to support his claim that the cash portion was paid on 24.03.2007. Since the purchase-deed was executed/registered on 05.05.2008, the AO assumed that the cash payment was also made on 05.05.2008. As the assessee was not having cash availability on 05.05.2008, the AO made addition in previous year 2008-09, AY 2009-10 under consideration.

- (ii) The second land was purchased for Rs. 4,00,000/- in cash. The assessee claimed to have made cash payment by withdrawing moneys from bank on 22/03/2007, 23/03/2007 and 28/03/2007 in the financial year 2006-07 but the assessee could not produce any evidence to support his claim. Since the purchase-deed was executed/registered on 12.06.2008, the AO assumed that the cash payment was also made on 12.06.2008. As the assessee was not having cash availability on 12.06.2008, the AO made addition in previous year 2008-09, AY 2009-10 under consideration

6. Having explained AO's order, Ld. AR drew our attention to two important and unquestionable facts, namely (i) the assessee has paid consideration of Rs. 23,28,000/- through cheque dated 29.10.2007 which is mentioned by AO himself and also evident from assessee's bank pass-book filed in Paper-Book showing clearance of cheque on 06.11.2007, and (ii) both of the lands have been purchased from same seller i.e. Shri Kallu Khan which is also evident from copies of registered-deeds filed in Paper-Book. From these facts, Ld. AR submitted, it is very much clear that the purchase-deeds of lands purchased from Shri Kallu Khan were executed/registered much later on 05.05.2008/12.06.2008 but the cheque payment itself was made as early as on 29.10.2007. Therefore, the AO's observation that the payments must have been made on the date of execution of deeds is a mere apprehension. Ld. AR also carried us to the registered-deeds which though do not contain the dates of payments but at least mentions that the entire consideration has been received earlier. Ld. AR submitted that it is true that the assessee did not execute any separate agreement/evidence to demonstrate the dates of cash-payments but it is an honest fact that all

payments were made on different dates, much prior to execution/registration of deeds, as submitted by assessee at the very first stage of assessment before AO, copy of assessee's submission stands re-produced by AO in assessment-order itself. Ld. AR also submitted that the assessee has purchased agricultural lands.

7. Then, Ld. AR carried us to Para No. 3.1 of assessment-order where the assessee's submission during assessment-proceeding is re-produced by AO. Drawing our attention to same, Ld. AR submitted that the assessee withdrew a sum of Rs. 2,00,000/- through self cheque no. 727923 dated 24.03.2007 from State Bank of India and used for payment of first-land. So far as the second-land is concerned, the same was purchased for Rs. 4,00,000/- and the entire consideration was paid in cash by making withdrawals from same bank a/c on three different dates, namely, Rs. 1,00,000/- on 22.03.2007, Rs. 1,00,000/- on 23.03.2007 and Rs. 2,00,000/- on 28.03.2007. Ld. AR carried us to Page No. 53 of Paper-Book where the copy of bank pass-book is filed wherein all withdrawal entries are debited. Thus, Ld. AR submitted that the assessee made cash-payments towards purchase of lands by withdrawing monies from his Bank A/c. However, the deeds of purchase were executed lately on 05.05.2008 and 12.06.2008. Ld. AR submitted that the assessee's explanation with regards to sources of payments must be given credence and the addition made by AO on mere surmise or conjecture must be deleted.

8. Ld. DR for the revenue strongly supported the order of AO and argued that the assessee has not given any evidence to establish that the cash payments were in fact made on various dates claimed by assessee. He submitted that the registered-deeds were executed on 05.05.2008 and 12.06.2008 and the registered-deeds also do not contain details of cash payments. Therefore, the AO was very much justified in concluding that the cash-payments would have been made on the date of execution of deeds. Hence, the additions made by the AO are very much correct and same should be upheld.

9. We have considered rival submissions of both sides and perused the material held on record including the documents placed in the Paper-Book filed by assessee. After a careful consideration, we find that the assessee has purchased impugned two lands from the same seller. We also find that the assessee made a substantial payment of Rs. 23,28,000/- through cheque dated 29.10.2007 although the registered-deed were executed much later on 05.05.2008/12.06.2008. Therefore, it is discernible that the payments were not made on or nearing the dates of execution of deeds. The assessee is also consistent from claiming since beginning that the cash-payments were made on different dates by withdrawing from bank a/c. On perusal of bank pass-book, we find cash withdrawals having made by assessee as claimed. Therefore, the assessee's explanation before AO gets corroborated. We feel that a judicious approach must be adopted and the assessee's explanation must be believed. However, one of the withdrawal entry of Rs. 1,00,000/- from bank a/c on 23/03/2007 is having narration as "Paid to CH No 375059" from which it is not very clear as to whether it was a payment to third party or to the seller or a cash withdrawal. Therefore, we are little hesitant in accepting the same without a proper verification. Hence, we delete entire addition except the addition to the extent of Rs. 1,00,000/- pertaining to debit entry in bank pass-book on 23/03/2007. We remit this entry to AO for a proper verification and thereafter take a call. With this, out of the total addition of Rs. 6,02,417/- the addition to the extent of Rs.

5,02,417/- is clearly deleted and remaining addition of Rs. 1,00,000/- qua the debit entry in pass-book on 23/03/2007 is left for deletion or sustenance by AO after necessary verification as indicated above.

**10. Resultantly, this appeal of assessee is allowed in terms indicated above.**

*Order pronounced in the open court on 21.09.2023.*

Sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

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

**Indore**

दिनांक /Dated : 21.09.2023.

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*