

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.179/Ind/2023
(Assessment Years:2018-19)

ITO-1(1) Ujjain	Vs.	M/s. Radheratan Developers 234, Gayatri Nagar Ujjain
(Appellant / Revenue)		(Assessee)
PAN: ADOFFS4444B		
Revenue by	Ms. Simran Bhullar, CIT- DR	
Assessee by	Shri S.S. Deshpandey, AR	
Date of Hearing	02.11.2023	
Date of Pronouncement	09.11.2023	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the Revenue is directed against the order dated 06.03.2023 of Commissioner of Income Tax(Appeal), National Faceless Appeal Centre, Delhi for A.Y.2018-19. The assessee has raised following grounds of appeal:

“1. Whether on the facts and the circumstances of the case the CIT(A) was correct in allowing the appeal of the assessee by accepting additional evidences where no remand report has been called for.

2. Whether on the facts and the in the circumstances of the case Ld. CIT(A) was justified in setting aside the case to the file of AO for verification where specific provisions has been mentioned in section 250 of the Income Tax Act, 1961..”

2. The only grievance of the revenue against the impugned order of the CIT(A) is entertaining the additional evidence filed by the assessee during

the first appeal proceedings. Ld. CIT-DR has submitted that the CIT(A) has entertained the additional evidence first time filed by the assessee in the appeal proceedings without calling for a remand report from the AO and therefore, the impugned order passed by the CIT(A) is in violation of the provisions of Rule 46A of IT. Rules. She has relied upon the order of the AO and submitted that there was no representation on behalf of the assessee before the AO despite various notices and reminders given by the AO.

3. On the other hand, Ld. AR has submitted that the CIT(A) has not decided the appeal of the assessee on merits but simply directed the AO to verify the evidence and documents filed by the assessee and then decide the matter. Thus, Ld. AR has submitted that there is no prejudice caused to the revenue by the impugned order of the CIT(A).

4. Having considered the rival submissions and careful perusal of the orders of the authorities below we find that there was no representation on behalf of the assessee despite the notices issued u/s 142(1) of the Act. Accordingly the AO has made an addition of Rs.16,90,73,870/- as unexplained expenditure in purchase of agricultural land. Thus, it is clear that for want of any representation and supporting evidence that the AO has made addition while framing the assessment. Before the CIT(A) the assessee filed the relevant evidence and details and consequently the CIT(A) has decided the appeal of the assessee in para 3 as under:

“All these grounds are interlinked and hence decided together. Appellant's Return of Income was selected for scrutiny under E-assessment scheme, 2019 to scrutinize 'income from real estate business. The Assessing Officer noted that the appellant has high closing stock and asked about it. The appellant explained that the closing stock in the books was land purchased but no further development was done hence there was no income. The Assessing Officer asked for sale deed and sources of purchase but these documents remained unavailable to the AO till the date of order. Hence, the AO treated expenses on purchase of land as unexplained expense u/s 69C of the Act and made an addition of the value of land purchase, i.e., Rs. 16.91 crore.

Now the appellant has filed copies of land purchase deed, bank statements and financial transaction. The appellant is directed to produce the originals before the AO for verification and the AO is directed to take call accordingly. The appeal is thus, partly allowed.”

5. The Ld. CIT(A) has accepted the explanation of the assessee and directed the AO to verify the relevant record from the original to be produced by the assessee. In substance the impugned order of the CIT(A) amounts to setting aside the assessment order and remanding the matter to the record of the AO which is beyond the provisions of section 250 of the Act. However the AO made addition for want of the supporting evidence and non-representation on behalf of the assessee and the said deficiency on the part of the assessee was made up by producing relevant documents and evidence before the Ld. CIT(A). Therefore, the income of the assessee has to be assessed after considering the relevant record and evidence including books of account of the assessee. It is settled proposition that only real income of the assessee has to be assessed to tax. Now the assessee has produced relevant record and documents which are required to be verified at the level of the AO. Accordingly considering the facts and circumstances of the case, we set aside this matter to the record of the AO for fresh adjudication after proper verification and examination of the documents and evidence to be filed by the assessee.

6. In the result, the appeal of revenue is allowed for statistical purpose.

Order pronounced in the open court on 09.11.2023

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 09.11.2023

Patel/Sr. PS

Sd/-

(VIJAY PAL RAO)
Judicial Member

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