

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA Nos. 161 to 163/JP/2024
निर्धारण वर्ष/Assessment Years : 2014-15, 2015-16 & 2017-18

Chander Mohan Bhati 17 Kalyan Colony, Barkat Nagar Tonk Phatak, Jaipur	बनाम Vs.	Assistant Commissioner of Income Tax, Central Circle-04, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAPPB 4314 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. S. R. Sharma, CA &
Sh. R. K. Bhatra, CA
राजस्व की ओर से / Revenue by : Sh. Arvind Kumar, CIT

सुनवाई की तारीख / Date of Hearing : 28/03/2024
उद्घोषणा की तारीख / Date of Pronouncement: 03/04/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M.

These three appeals are filed by the assessee aggrieved from the order of the Commissioner of Income Tax (Appeals), Jaipur-5 [Here in after referred as (CIT(A))] for the assessment years 2014-15, 2015-16 & 2017-18 dated 18.12.2023, which in turn arises from the order passed by the ACIT, Central Circle-4,

Jaipur passed under Section 153A r.w.s 143(3) of the Income tax Act, 1961 (in short 'the Act') dated 31.12.2019.

2. Since the issues involved in these appeals are almost identical on facts and are almost common, except the difference in figure, therefore, these appeals were heard together with the agreement of both the parties and are being disposed off by this consolidated order.

3. At the outset, the Id. AR has submitted that the matter in ITA No. 161/JP/2024 may be taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are identical except the difference in the amount in other cases. The Id. DR did not raise any specific objection against taking that case as a lead case. Therefore, for the purpose of the present discussions, the case of ITA No. 161/JP/2024 is taken as a lead case. Based on the above arguments we have also seen that for these appeals grounds are similar, facts are similar, and arguments were similar and therefore, were heard together and

are disposed by taking lead case facts, grounds, and arguments from the folder in ITA No. 161/JP/2024.

4. Before moving towards the facts of the case we would like to mention that the assessee has assailed the appeal in ITA No.161/JP/2024 on the following grounds;

“1. That on the facts and in the circumstances of the case the Id CIT (A) is wrong, unjust and has erred in law in passing impugned order an ex-parte basis and without properly appreciating material on record and submissions made by the appellant in assessment proceeding and may be set aside.

2. That without prejudice to the ground No (1) above on the facts and in the circumstances of the case, the Id CIT (A) is wrong and has erred in law in not accepting plea of the appellant that the proceeding initiated by the Id AO u/s 153A of the IT Act, 1961 and consequent assessment made u/s 153A r/w sec. 143(3) were wrong and bad in law.

3. That without prejudice to the ground No. (1) & (2) above on the facts and in the circumstances of the case Id CIT(A) is wrong, unjust and has erred in law in confirming addition of Rs. 13760836/- made by the Id AO to the income of the appellant after upholding finding recorded by the Id AO that:

(a) the appellant has allegedly purchased plot No. 9, Adrsh Basti. Ruparampura, Tonk Phatak. Jaipur even though sale deed thereof was not registered is favour of the appellant and furthers the appellant has allegedly made investment to the tune of Rs. 12500000/- in the said plot/construction thereon out of his alleged unaccounted and/or undisclosed income, and

(b) the appellant has allegedly earned profit of Rs. 1260836/- during the year from the sale of the said project.

4. That without prejudice to the ground No. (1) & (2) above on the facts and in the circumstances of the case the Id CIT(A) is wrong, unjust and has erred in law:

(a) in confirming disallowance of Rs. 76761/- claimed by the appellant on account of ½ of interest on self occupied property u/s 24(b) of the IT Act, 1961

allegedly on the ground that the appellant is only co-applicant of the housing loan on which said interest is paid

(b) in not accepting alternate plea of the appellant that deduction for abovesaid interest be directed to the allowed in the hands of Smt. Laxmi Devi, wife of the appellant, the owner of the said property.

5. The appellant craves permission to add to or amend to any of grounds of appeal or to withdraw any of them.”

5. The fact as culled out from the records is that a search and seizure action u/s 132 of the Income Tax Act, 1961 (“the Act”) and/or survey action u/s 133A of the Act was carried out by the Income Tax Department on the members of Chandra Mohan Bhati and Kishan Singh Group, Jaipur on 23.08.2017 of which the Assessee is one of the members. During the course of the above referred action(s), cash, jewellery valuables, stock-in-trade, documents, books of account and/or loose papers were found and/or seized from the premises of the members of the Chandra Mohan Bhati and Kishan Singh Group, Jaipur of which one such member happens to be the assessee. The assessee has derived income u/s 44 AD from running a paying guest facility. In this case, original return of income was filed on 26/10 / 2013 for the A.Y. 2014-15 declaring total income at Rs. 3,75,600/-. As there were search operation notice u/s 153A of the IT Act, 1961 for the assessment year 2014-15 was issued on 9/4 / 2018 and duly

served upon the assessee. In compliance to the notice u/s 153A of the IT Act, 1961, return of income was e- filed on 31/12/2018 for the A.Y. 2014-15 declaring total income at Rs. 3 ,24,040/ . After filing return u / s 153A the notices u / s 143(2) and 142(1) of Income Tax Act, 1961 with questionnaire issued on 18/11 / 2018 and duly served upon the assessee.

5.1 The Id. AO noted that a TEP was received in the department that the assessee along with his partner, Shri Kishan Singh is allegedly involved in investing their unaccounted money and undisclosed income into the purchase of land and development of project thereon. It was alleged that Shri Chandra Mohan Bhati and Shri Kishan Singh had purchased a land situated at Plot No. 9, Adarsh Basti, Ruparampura, Tonk Phatak, Jaipur through agreement in the name of two benamidars, Shri Kishan Mali and Shri Ramesh Chand Saini at sale consideration of Rs. 1.50 crores and developed a three storey building, namely Balaji Tower, comprising of thirteen shops each on ground and first floor and a flat on the second floor. Along with the TEP, an agreement to sell was also received in the department. During the course of survey

at the premises of M/s Prince Bhojnalaya, Proprietorship firm of Sh. Akshat Bhati S/o Shri Chandra Mohan Bhati certain incriminating documents were found and impounded. The document impounded at Annexure-A, Exhibit-2 page on 22-29 is a registered sale deed dated 24.10.2013 executed between Smt. Mohini Devi (Seller) and Shri Ramesh Chand Saini S/o Shri Chhotu Mali (Buyer) for sale of southern part of residential plot No. 9, Adarsh Basti, Rampurarupa, Tonk Phatak, Jaipur measuring 20 x 60 feet except the shop on south-east corner without terrace. As per the deed, the said plot was sold to Shri Ramesh Chand Saini by Smt. Mohini Devi W/o Shri Trilok Chand Sharma for total consideration of Rs. 16 Lakhs and out of total sale consideration amount of Rs. 10 lakhs was paid in cash at the time of registration and amount of Rs. 6.00 Lakhs was paid through two cheques of Rs. 3.00 lakhs each (Ch. No. 376712 dt. 23.10.2013 and No. 076713 dt. 25.10.2013). During the search proceedings, another registered deed, dated 24/10 / 2013 was seized from the residential premises of Shri Chandra Mohan Bhati, which was inventoried as Annexure-AS, Exhibit-7 page no. 212-224, was a sale deed executed between Sh. Ram Krishna Sharma (seller) and

Shri Kishan Mali S/o Shri Chhotu Mali (purchaser) for sale of northern part of residential Plot No. 9, Adarsh Basti, Rampurarupa, Tonk Phatak, Jaipur measuring 20 * 60 Feet except the shop on north-east corner without terrace. As per this registered deed the said land was sold to Shri Kishan Mali for total consideration of Rs. 16 Lakhs and out of total sale consideration, Rs. 10 lakhs were paid in cash at the time of registration and Rs. 6.00 Lakhs were paid through two cheques of Rs. 3.00 lakhs each (No. 989600 dt. 13.05.2013 and No. 000006 dt. 14.05.2013). During the search proceedings, the purchasers, Shri Ramesh Chand... Saini and Shri Kishan Mali, were summoned u/s 131 of Income-tax Act, 1961 and their statements were recorded on oath on 23.08.2017. Shri Kishan Mali and Shri Ramesh Chand Saini were confronted with the contents of the above mentioned agreement dated 14.04.2013 and registered sale deeds. They were asked about the source of payments made by them as mentioned in these agreements and sale deeds. Shri Kishan Mali was also confronted with the registered sale deed dated 24.10.2013. In his reply, he stated that this is a sale deed in respect of Plot No. 9, Adarsh Basti, Tonk Phatak, Jaipur measuring 121.78 sq yard. He further stated that

Shri Kishan Singh and Shri Chandra Mohan Bhati had forced him to sign on the said sale deed. He further stated that they had also forced his brother Shri Ramesh Chand Saini to sign on sale deed of the other part of the same plot. The assessee had surrendered the amount of Rs. 2,28,44,808/- (1,25,00,000 + 1,03,44,808) as his undisclosed income for F.Y 2014-15, but the purchase of the said property was effected in F.Y 2013-14, relevant to the AY 2014-15. From the perusal of the return of income filed by the assessee in response to the notice u/s 153A of the IT. Act, 1961, it is clear that the assessee has retracted from his statements recorded u/s 132(4) of the IT Act, 1961. The total number of shops at Balaji Tower was twenty six and a flat was also built on the second floor of the three storey building. The sale consideration of only sixteen shops are mentioned in the seized document, hence to ascertain the total sale consideration of the remaining shops and flat. The total sale consideration of the shops and flat is of Rs. 4,53,50,000/- , hence the profit ratio has to be worked out according to the ratio of investment of both the persons. On the top of this page, the details of investment of both the persons, i.e. Sh. Kishan Singh and Sh. Chandra Mohan Bhati are delineated.

The ratio of the profit has been stated as $121/139 = 260$

The total sale consideration is of Rs 4, 53 ,50,000/-

Total cost of construction is of Rs. 2, 60 ,00,000/-

Hence, the gross profit is of Rs. 1, 93 ,50,000/-

G. P 5 is 42.67%

Assessee's share of profit is $139/260 = \text{Rs } 1,03,44,808/-$

The shops and the flat of "Balaji Towers" were sold during the F. Y. 2013-14, 2014-15 and 2015-16, hence the profit has to be decided for each assessment year. The property was purchased on the first end of October 2013, and the construction got underway, hence it is not possible that the shops and the flat would have been sold this year itself. From the registered deeds available with the department, it is seen that four shops were sold this year, i.e. G-5, G-6, F-2 and F-4. As per annexure-AS-2, page no. 14 and 15 scanned above, the sale considerations of the shops, G-5 and G-6 and F-2 are Rs. 14.00, 15.00, 18.00 respectively and for shop no. F-4 Registered Value of 6.00 lakhs i.e. for total sale consideration of Rs. 54,00,000/-. To determine the profit component, the cost

price of the shops and the flat as calculated by the Id. AO and the same is as under:

A) Cost of Flat: $1,20,00,000 \times 1,93,50,000 / 4,5350,000 = 68,79,600 /$

B) Cost of each shop: $2,60,00,000 - 68,79,600 / 26 = 7,35,400 /-$

The profit on sale of the shops are 53,00,000 ($7,35,400 \times 4$)
 $29,41,600 /- = 23,58,400 /-$

The assessee's share of profit as per the ratio of his investment is
 $23,58,400 \times 139 / 260 = 12,60,836 /-$

The investment made in the purchase of the land and in construction of the building of Rs. 1,25,00,000/- is the undisclosed income of the assessee. The profit earned on the sale of the four shops during the year of Rs. 12,60,836/- is also being added to the income of the assessee undisclosed income. This will result in an addition of Rs. 1,37,60,836/- to the income of the assessee as his undisclosed income.

5.2 On perusal of the computation of the income, it is seen that the assessee has claimed deduction u/s 24(b) of the IT. Act, 1961 of Rs. 76,761/- on self occupied property, 17, Kalyan Colony,

Jaipur. From the assessment records for the A. Y. 2011-12 of Smt. Laxmi Bhati, it is seen that the housing loan has been taken for the property at 16, Telephone Colony, Jaipur, owned by Smt. Laxmi Bhati and not for this property. Moreover, for claiming the deduction u/s 24(b) of the I. T. Act, 1961, the person should be the co-owner of the property as well as the co-applicant of the housing loan. The property, 17, Kalyan Colony, Jaipur, belongs to his wife, Smt. Laxmi Bhati, hence the deduction claimed u/s 24(5) of the I. T. Act, 1961 is being disallowed and added to the income of the assessee.

6. Aggrieved from the order of the Id. AO, the assessee preferred an appeal before Id. CIT(A). The Id. CIT(A) noted that even though the assessee was given five opportunities from 2021 to 2023. The assessee has neither filed any reply nor attained to the notice to the assessee. Therefore, the Id. CIT(A) has dismissed. The appeal of the assessee and relevant part of the decision of Id. CIT(A) is reiterated here in below:-

“5. DECISION:

5.1 Despite of the various opportunities, the appellant has neither filed any reply nor any documentary evidences in support of his pending

appeal. Hence the appeal is decided on the basis of material available on record.

5.2 During the course of search, various incriminating material were found and seized. On analysis of these documents, it was found that assessee has made unaccounted investment and had earned unaccounted profit on sale of flats and shops. During the course of search the assessee had surrendered this undisclosed income while recording statement u/s 132(4). The AO had discussed each fact in assessment order in detailed manner. Further relevant seized material and statement recorded u/s 132(4) had also scanned in the assessment order. These documents and figures written on these documents clearly reflect that the assessee had made unaccounted investment and had earned profit. It was concluded that the total investment and profit earned for the year was Rs 1,37,60,836/- and the same had added in the hand of the appellant.

5.3 The addition was based upon incriminating material found and admission in statement recorded u/s 132(4). Such statement was based upon documents seized from his residence, which is sufficiently reliable in the eye of law. The disclosure was made voluntarily by the appellant. Admission of a particular fact during the course of search proceedings is strong evidence, which can be used against the person giving it. More so, when a person himself admits it to be true it may reasonable be presumed to be so, unless it is satisfactorily explained otherwise. Thus the effect of an admission is to shift the burden of proof to the person making the admission especially in a case when the statement so given was based upon incriminating documents impounded during search. The Supreme Court in the case of Basant Singh Janki Singh AIR 1967 SC 341 held that "An admission by a party in a plaint signed and verified by him in a prior suit is an admission within the meaning of section 17 of the Indian Evidence Act, 1872 and may be proved against him in other litigation. Section 17 of the Act makes no distinction between an admission made by a party in a pleading and other admission". Considering the evidentiary value of an admission and the fact that an admission shifts the onus in terms of section 31 of the evidence Act, the Supreme Court in Kishorilal Vs. Mst Chaltibai AIR 1959 SC 304 held that the admission shifted the onus on to the respondent on the principle that what a party himself admits to be true may reasonably be presumed to be so and until the presumption was rebutted the facts admitted must be taken to be established It is also relevant to point out that the statement which are recorded are presumed to be carrying truth in view of section 181 and section 193 of the Indian penal Code. In the Income tax proceedings, admission made during the course of search proceedings binds its maker unless rebutted through clear and specific evidence to the contrary. Unless the

contrary is specifically demonstrated, the admission is to be considered as conclusive evidence.

5.4 Considering the above facts and circumstances, the addition made by the AO of Rs 1,37,60,836/- (Rs 1,25,00,000+ Rs 1260.836/-) as his undisclosed income is hereby confirmed.

5.5 It was noticed that the assessee has claimed deduction u/s 24(b) of the Act of Rs 76,761/- on self occupied property 17, Kalyan Colony, Jaipur. On verification it was found that housing loan has been taken on property 16, Telephone Colony, Jaipur which is owned by his wife Smt Laxmi Bhati. Moreover the property 17, Kalyan Colony, Jaipur also belongs to his wife Smt Laxmi Bhati. Considering the above facts and circumstances, the appellant had wrongly taken deduction u/s 24(b) and the AO had correctly disallowed the same. Hence the addition made by the AO of Rs 76,761/- by disallowing deduction u/s 24(b) is hereby confirmed.

5.6 Further, I take support from a judgement of the Hon'ble ITAT Agra Bench in the case of Shivangi Steel (P.) Ltd. v. Assistant Commissioner of Income tax, Central Circle, reported in [2014] 42 taxmann.com 393 (Agra Trib.), where it has been held that Section 251, read with section 144, of the Income-tax Act, 1961-Commissioner (Appeals) Powers of [Exparteorder) - Assessment year 2005-06 - Despite several notices issued under sections 143(2) and 142(1), assessee did not attend assessment proceedings, nor filed any explanation -Assessing Officer, therefore, passed an exparte assessment order under section 144 on assessee - Further assessee in spite of large number of adjournments granted by Commissioner (Appeals) did not produce any document in respect of grounds of appeal, nor made written or oral submissions before him Commissioner (Appeals), therefore, proceeded ex parte against assessee and confirmed assessment order -Whether both Commissioner (Appeals) and Assessing Officer rightly proceeded ex parte against assessee Held, yes [Para 6] [In favour of revenue] Section 254 of the Income-tax Act, 1961 read with rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 Appellate Tribunal Powers of [Powers to admit additional evidence] Assessment year 2005-06 Assessing Officer passed an exparte assessment order under section 144 on assessee -Commissioner (Appeals) in absence of any co-operation from side of assessee proceeded exparte against assessee and confirmed assessment order Against order of Commissioner (Appeals), assessee filed appeal before Tribunal - It also moved application under rule 29 of Appellate Tribunal Rules, 1963 for admission of additional evidences - Whether since assessee had not made out any case that authorities below had decided case without giving sufficient opportunity to adduce evidence, requirement of rule 29

had not been satisfied - Held yes Whether, therefore, above application was liable to be rejected - Held, yes [Para 7][In favour of revenue]

5.7 Following the above discussion, I uphold the additions made by the AO Rs 1,37,60,836/-(Rs 1,25,00,000+ Rs 1260,836/-) and Rs 76,761/-. Thus, grounds of appeal 1 to 9 are hereby dismissed

7. Aggrieved from the above ex-party order of Id. CIT(A), the assessee has preferred the present appeal submitting that the Id. CIT(A) has not appreciated the contentions raised by the assessee before Id. AO and has simply confirmed the view of the Id. AO and even the assessee could not advance the argument because of the fact that they have filed the adjournment application and the proof of the same was placed on record. Since, the assessee could not get chance to represent the case on all the occasion as the assessee sought the adjournment and therefore, the assessee humbly prayed that the order of the Id. CIT(A) be set aside and the assessee may be granted one more opportunity.

8. Per contra, the Id. DR opposed the prayer of the assessee that Id. CIT(A) has given as many as five opportunities from 2021 to 2023 and on all five opportunities granted to the assessee has not filed any written submission and has not responded to the notices and considering aspect of the matter there is no meaning of

set aside. The relevant fact of the case of the assessee has been decided on merit by the Id. CIT(A) and therefore, there is no meaning to give the 2nd inning to the assessee

9. We have heard the rival contentions and perused the material placed on record. A propose to the grounds so raised by the assessee that the order of the Id. CIT(A) is ex-party. The Id. AR of the assessee submitted that although four notices were issues and all the occasions. They have filed adjournment application and the proof of the same is placed on record. The bench noted that there is no reference as to the acceptance or rejection of these adjournment applications by the Id. CIT(A) and therefore, the assessee is deprive of justice and therefore, considering that aspects of the matter which is not disputed by the Id. DR that these adjournment applications were not on record. In the light of this fact, we are of considered view that the assessee sought adjournment. The adjournment applications were not discussed or disposed off by Id. CIT(A) and the order has been passed without giving any opportunity to the assessee and therefore, we set aside the order of Id. CIT(A) and directly to set aside afresh in

accordance with law and set aside the issue on merits after giving proper opportunity being heard to the assessee. At the same time, the assessee is directed to represent and present all the facts before the Id. CIT(A) and should not ask for adjournment of trifles grounds. At this stage, we remand back the matter without commenting upon the merits of the case and Id. CIT(A) is directed to pass an order in accordance with law.

In terms of these observations, the appeal of the assessee in ITA no. 161/JP/2024 is allowed for statistical purposes.

10. The fact of the case in ITA Nos. 162 & 163-JP-2024 is similar to the case in ITA No. 161-JP-2024 and we have heard both the parties and persuaded the materials available on record. The bench has noticed that the issues raised by the assessee in this appeal No. 162 & 163/JP/2024 is equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by both the parties. Hence, the bench feels that the decision taken by us in ITA No. 161/JP/2024 for the Assessment Year 2014-15 shall apply mutatis mutandis in the

case of Shri Chander Mohan Bhati in ITA Nos. 162 & 163-JP-2024
for the Assessment Year 2015-16 & 2017-18.

In the result, three appeals of the assessee are allowed for
statistical purposes.

Order pronounced in the open court on 03/04/2024.

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-
(राठौड कमलेश जयंतभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 03/04/2024

*Ganesh Kumar, PS

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

1. अपीलार्थी / The Appellant- Shri Chander Mohan Bhati, Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Central Circle-04, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA Nos. 161 to 163/JP/2024}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar