

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.782/Ahd/2023
(Assessment Year: 2013-14)

Rolesh Somchandbhai Shah, Prop: New Freezland, A&G 1, Silicon Towers, Law Garden, B/H. Samatheswar M, Ahmedabad-380006 [PAN No.ABJPS2078L]	Vs.	Assistant Commissioner of Income Tax, Circle-5(2)(1), Ahmedabad
(Appellant)	..	(Respondent)

Appellant by :	Shri M. K. Patel, A.R.
Respondent by:	Shri Sushil Kumar Katiar, Sr. DR

Date of Hearing	04.04.2024
Date of Pronouncement	30.04.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 08.08.2023 passed for A.Y. 2013-14.

2. The assessee has taken the following grounds of appeal:-

1. *That on facts, and in law, the learned NFAC-CIT(A) has grievously erred in confirming the re-opening of assessment under Section 147 of the Act, which is on erroneous facts, and hence invalid and void ab-initio.*
2. *That on facts and in law, the learned AO has grievously erred in not providing the adverse materials / statements etc. and also in not providing cross examination of the concerned persons while making the additions under dispute, even though specifically requested for by the appellant.*
3. *That on facts, and in law, the learned NFAC-CIT(A) has grievously erred in confirming the addition of Rs.19,65,150/- made under Section 69 of the Act as unexplained investment of the appellant.*

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4. *That on facts, and in law, and on the evidences on record, the entire addition ought to have been deleted, as prayed for.*

5. *The appellant craves liberty to add, alter, amend any ground of appeal.”*

3. The brief facts of the case are that the assessee is an individual who filed his return of income for the A.Y. 2013-14 on 24.09.2013 showing total income of Rs.3266840/-. The return was processed under Section 143(1). The case was reopened under Section 147 vide notice under Section 148 dated 31.03.2019 against which return was filed by the assessee on 30.04.2019 declaring total income of Rs.32,66,840/- as shown in the original return of income. The assessee asked for reasons of reopening against which the Ld. AO vide letter dated 30.05.2019 furnished copy of reasons of reopening to the assessee. The reasons stated that information was received from ACIT, Central Circle-2(4), Ahmedabad along with statement recorded on oath of Ms. Kalindi Shah, Sales Manager in JP Iskon Ltd with respect to search conducted under Section 132 of the Act. Upon perusal of information, it is observed that incriminating documents / materials, evidences were seized in respect of on-money received from various customers of the projects developed by J.P. Iskon for booking / purchase of units in Iskon Platinum bearing details of date of booking, with amount as per “plan” 1 being cheques of Rs.4585350/-received from the assessee and amount as per plan 2 being cash of Rs. 1965150/- received from the assessee by J P Iskon group, and a mention that booking is by Girish Dani. The Ld. AO analyzed the data and came to the conclusion that assessee has paid cheque payment of Rs. 45,85,350/- and cash payment of Rs. 19,65,150/- for purchase of property with Iskon Group. The assessee filed objection vide letter dated 12.7.2019 with the Ld. AO with multiple points supported by judicial judgments regarding wrongful belief of the Ld.

AO by placing reliance on such loose evidence. The assessee submitted that the crucial link between information made available to the AO and the formation of the belief is absent. It was submitted by the assessee that there is no information or documentary evidence that assessee has paid money for purpose of booking the flat. Neither is there any allotment letter or receipt in the name of the assessee nor the name of the assessee was found in the reproduction of the document found in the search. However, the Ld. AO proceeded to make made addition of Rs. 19,65,150/- as unexplained investment under Section 69 of the Act. While making the addition, the Ld. Assessing Officer made the following observations:

*“In response to above notices, the assessee submitted the ledger account of J P Iscon Ltd. in the books of New Freezland Proprietary concern of assessee for the period from 01/04/2014 to 31/03/2015. The assessee's contention that he has give loan of Rs.1890815/- to J P Iscon as per copy of ledger submitted, is not acceptable. As per the information received from ACIT Central Circle 2(4), Ahmedabad, the assessee had booked a flat H-1002 in the Iscon Platinum Scheme and paid Rs.1965150/- in cash and Rs. 4585350/- by cheque. As per **Platinum final Booking chart 28-03-2015(revision-1)** The assessee had booked a flat the details available on 18/04/2012 which is also authenticated as per Schedule-E of the balance sheet as on 31/03/2013. Since the assessee has made cash payment of Rs19,65,150/- for the purchase of property at Iscon Platinum, the source of the same has remain explained. Moreover, the assessee has not given any explanation to the notice issued u/s. 142(1) of the Act dated.02.12.2019 accept to file the ledger account of J P Iscon Ltd. (Flat) in his books of account. Since it has been esalisbedh beyond doubt that J R I Iscon is indulged in receiving on money from customer along with the cheque amount, the amount of Rs.1965150/- shown under plan-2 in the books of J P Iscon represents the cash quantum paid by the assessee. In absence of any corroborative evidence submitted by the assessee, the cash payment of Rs.1965150/- is treated as unexplained investment of the assessee and added to the total income u/s. 69 of the Act. Penalty proceedings u/s. 271(1)(C) of the Act are initiated separately for concealment of Income.*

(Addition : Rs.19,65,150/-)”

4. Aggrieved by the said assessment order, the assessee filed appeal with Ld. CIT(Appeals). The Ld. CIT(Appeals) dismissed the appeal of the assessee with the following observations:

“5.3 Ground Nos.1, 3, 4 and 7 pertains to addition of Rs119,65,150/- made by the AO on account of on money paid by the appellant to M/s. J P Iscon for booking of a flat H -1002. It was argued by the appellant before the AO that the amount was paid towards loan to M/s. J P

Iscon. However, the appellant has not given any explanation to the notice issued u/s. 142(1) of the act dated 2.12.2019 except to file the ledger account of J P Iscon Ltd. in his books of accounts. In the submissions, the appellant had argued and objected for the reopening of the assessment only. He neither argued on merits nor filed any information called for. In the absence of any details, the contention of the appellant cannot be acceptable. In view of the above, I do not find any reason to interfere in the order passed by the assessing Officer and hence, the ground No. 1, 3 and 4 are dismissed.”

5. Before us, the Counsel for the assessee submitted that the contention of the assessing officer that assessee had advanced/paid cash for booking/purchase of a unit in Iskon Platinum and had paid cash amounting to Rs.19.65 lakhs is absolutely without any basis and corroborative evidences. The Counsel for the assessee firstly submitted that in the reasons recorded for reopening the case of the assessee, the name of the assessee is nowhere appearing in the data on the basis of which the case of the assessee has been reopened. It was submitted before us that name of the assessee is not appearing in any of the data and there is no concrete information on the basis of which the aforesaid additions have been made/sustained in the hands of the assessee. The Counsel for the assessee drew our attention to Pages 55-57 of the Paper Book containing the reasons for reopening the case of the assessee under Section 147 of the Act and submitted that in the aforesaid reasons, the name of the assessee does not find any mention at all. The Counsel for the assessee submitted that in the so-called reasons for reopening the assessment, there is no document whatsoever mentioning the name of the assessee and further, no document has been found in the handwriting of the assessee. Further, the Counsel for the assessee submitted that no details or material or documents were provided to the assessee to corroborate the allegation of any such cash having being paid by the assessee. Further, the assessing officer has also not brought on record any allotment letter given to the assessee or any other documentary evidence

confirming such booking. Further and more importantly, the Counsel for the assessee submitted that the entire amount which had been advanced to J P Iskon group by cheque had been received back by the assessee, as per letter submitted by the assessee during the course of assessment proceedings. Further, the fact of return of the amount so advanced to J P Iskon group to the assessee has also not been disputed by the Department. Therefore, in sum and substance, since the name of the assessee was not appearing in any of the documents on the basis of which the case of the assessee was reopened, there is no handwritten note by the assessee in any of the documents seized, there is no allotment letter in the name of the assessee to show that the assessee had advanced money for purchase of any flat in J P Iskon group, the fact that the amount which was given as loan/advance to J P Iskon group by way of cheque was returned back to the assessee has not been disputed, all substantiate that the additions have been made/sustained in the hands of the assessee without any basis/corroborative evidence.

6. In response, Ld. DR placed reliance on the observations made by assessing Officer and Ld. CIT(Appeals), in their respective orders.

7. We have heard the rival contentions and perused the material on record. In our considered view, the Department has not brought forth any concrete evidence to substantiate that the assessee had made payment in cash towards purchase of property in J P Iskon group. From the documents placed on record, it is seen that the name of the assessee has not been specifically mentioned in any of the documents, no document has been found containing the handwriting of the assessee, there is no allotment letter in the name of the assessee which would show that the assessee had paid

advance towards booking of flat, the amount advanced by way of cheque to J P Iskon group had also been returned back to the assessee etc. all substantiate that the Department had no concrete/corroborative evidence to come to the conclusion that the assessee had in fact made any unaccounted cash payments for purchase of flat. In the recent case of **PCIT v. Kaushik Nanubhai Majithia** in Tax Appeal No. 20 of 2024, on similar facts, the Gujarat High Court, while ruling in favour of the assessee observed as under:

“1. Having noted the findings of the facts returned by the Commissioner of Income Tax (Appeals) ('CITA', in brief) and the Income Tax Appellate Tribunal ('ITAT', herein after), we may record that, essentially, the proceedings under Section 153C of the Income Tax Act, 1961 (in short, 'IT Act of 1961') were initiated against the Respondent- assessee on the basis of an excel sheet found from the computer of a person, associated with the Company, namely Navratna Organizers and Developers Private Limited (in short as 'the Developer'), in the premises of whom the search was conducted.

2. The excel sheet, according to the learned Counsel for the Revenue, contained the details of payment made by the assessee to the developer, with respect to which tax had been paid by the developer before the Settlement Commissioner. The findings returned by the CITA and ITAT on the issue is sought to be assailed on the ground that the payment of tax by the developer, in whose premises search was conducted, before the Settlement Commissioner, with respect to the amount entered in the excel sheet found from the possession of the assistant working with the developer, is sufficient proof of the transaction between the assessee and the developer.

3. We find inherent fallacy in this submission, inasmuch as, there is no basis for conducting proceedings against the assessee merely for the fact that the developer had paid tax on the amount shown in the excel-sheet. There is no adjudication with regard to the payment, which was shown in the excel-sheet to the effect that the same was actually paid by the assessee to the developer. Even otherwise, the concurrent findings returned by the CITA and ITAT are that the document found from the premises of the third party namely excel-sheet, which is the basis of the proceedings was without any signature and there is no corroborative material to substantiate the said document. The nature of the document has not been explained by the Assessing Officer while proceeding against the assessee. The statements of the persons recorded during search with reference to the alleged, seized material, was not provided to the assessee and hence, the entire proceedings under Section 153C of the IT Act of 1961 stood vitiated.

4. Learned Counsel for the petitioner could not successfully demolish the facts, which are recorded concurrently by the CITA and ITAT.

5. No question of law much less any substantial question of law arises to entertain this appeal. The same is accordingly, **dismissed.**”

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8. Accordingly, looking into the instant facts and the observations made by Hon'ble Gujarat High Court, as reproduced above, we are of the considered view that the Ld. CIT(Appeals) erred in sustaining the aforesaid additions made in the hands of the assessee.

9. In the result, the assessee succeeds in the present appeal.

This Order pronounced in Open Court on	30/04/2024
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 30/04/2024

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad