

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. 145/Ind/2024
Assessment Year: 2014-15

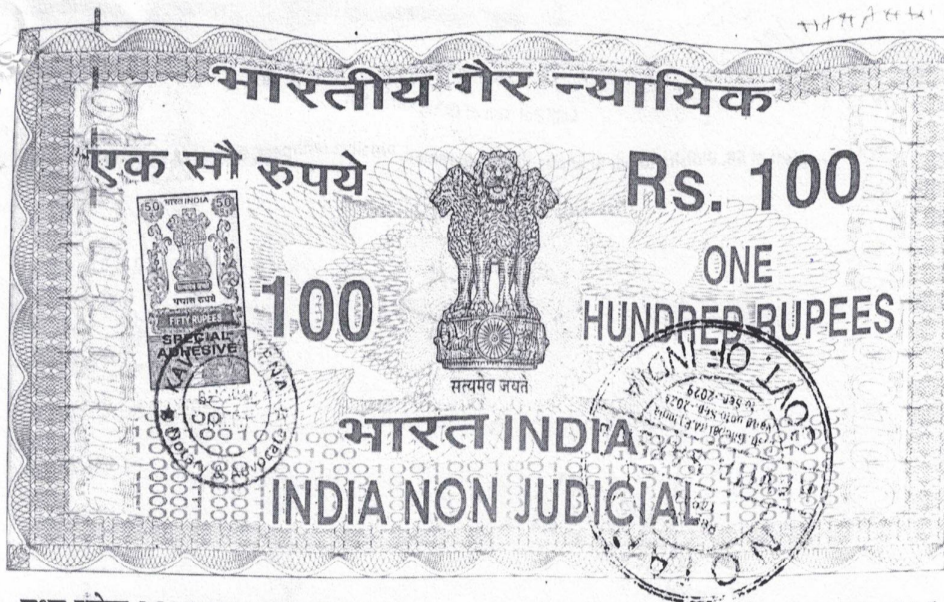
Laljipal, Ward 65, House No.75, Vidisha Road, Gram Khejda Bramad, Bhopal (Assessee/Appellant)	बनाम/ Vs.	The Income-tax Officer, Ward 5(3), Bhopal (Revenue/Respondent)
PAN: ASQPP7836B		
Assessee by	Ms. Nisha Lahoti, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	25.09.2024	
Date of Pronouncement	11.10.2024	

आदेश / O R D E R

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

Feeling aggrieved by appeal-order dated 06.12.2023 passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 27.12.2016 passed by learned ITO-5(3), Bhopal ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2014-15, the assessee has filed this appeal.

2. There is a small delay of 13 days in filing this appeal. The assessee has filed an affidavit showing reason of delay as under:



मध्य प्रदेश MADHYA PRADESH

CS 234795

AFFIDAVIT

I, Lalji Pal son of Cchaganlal Pal resident of 58, Bidisha Road, Bhanpur, Khejda Baramad, Pipaliya Jahirpeer, Bhopal M.P. 462010 hereby solemnly affirm and declare as under :

1. That I am assessed to income-tax by the Assessing Officer, Ward -5(3) Bhopal on file bearing Permanent Account Number ASQPP7836B.
2. That I preferred an appeal to the Commissioner (Appeals) .24.01.2017 against the Assessing Officer's order of assessment dated 27.12.2016 for the assessment year 2014-15
- 3 That I received the order of the said Commissioner (Appeals) 06.12.2023 on 06.12.2023
4. That being aggrieved by the said order I requested my Chartered Accountants to prefer an appeal to the Hon'ble Appellate Tribunal thereafter due to chest pain occurred on 01.02.2024 I was not in state to communicate with my counsel. My counsel directed me to sign form 36 which was filed online on ITAT portal on 30.01.2024. On 01.02.2024 my doctor advised me complete bed rest and hospitalization for monitoring my condition and due to this reason there was a delay in filing appeal before your Honour. I Humbly request you to kindly condone the delay and accept my appeal before your Honour.
5. That soon thereafter I got in touch with my counsel and had the appeal filed on 17.02.2024. I further declare that the above statement is true and correct to the best of my knowledge and belief.

Le
Deponent
Lalji Pal

मध्य प्रदेश

Name: Ashish Chakraborty
Address: Newely Tower - Plot No. 2, K. P. Road Ind. Pur Bhopal.

Signature: [Handwritten Signature]

SWORN BEFORE ME
BY THE WITHIN NAMED

NOTARY-ADVOCATE BHOPAL (INDIA)

24 SEP 20

The affidavit given by assessee conveys a 'sufficient cause' for occurrence of delay. Considering the same, Ld. DR for revenue did not raise any objection if the delay is condoned. Accordingly, we condone the delay and hearing is proceeded.

3. The background facts leading to present appeal are such that the assessee-individual filed his return of AY 2014-15 declaring a total income of Rs. 2,18,690/- which was subjected to scrutiny-assessment. During scrutiny-proceeding, the AO asked the assessee to explain source of payment of Rs. 90,75,000/- made towards purchase of an immovable property plus stamp duty of Rs. 6,39,990/- paid thereon. In response, the assessee submitted that a sum of Rs. 26,00,000/- was paid by way of unsecured loan taken from relative which was directly paid by relative to the seller of property through RTGS and balance Rs. 71,14,990/- was paid out of own sources. The AO accepted assessee's own sources for payment of Rs. 71,14,990/-. However, for payment of Rs. 26,00,000/-, the AO found from purchase-deed of property that a total payment of Rs. 26,00,000/- was made through 4 RTGS each of Rs. 6,50,000/-, accordingly the AO asked the assessee to submit supporting documents. Ultimately, on failure of assessee to submit supporting documents, the AO made addition of Rs. 26,00,000/- to the total income of assessee as unexplained investment u/s 69. Aggrieved, the assessee carried matter in first-appeal.

4. During first-appeal, the assessee submitted that the payment of Rs. 26,00,000/- through 4 RTGS was made by assessee's private limited

company named "M/s Himanshu Devbuild Pvt. Ltd.". The assessee also filed evidences in the shape of various documents of said company including bank-statement of cash-credit a/c of company in which the impugned payments were debited. The CIT(A) admitted additional evidences in terms of Rule 46A of Income-tax Rules, 1962 and forward to AO seeking a remand-report thereon.

5. In response, the AO filed remand-report which is extracted by CIT(A) in Para 5 of his order, the same is re-produced below:

"The assessee has submitted the following documentary evidences in support of his explanation :-

1. *Copy of sale deed dated 25.03.2014*
2. *Copy of bank statement showing the payments of Rs. 26,00,000/- from the cash credit loan account no. 903130110000053*

On going through the documents provided by the assessee, it has been observed that the assessee purchased an agriculture land situated at village Kanasaiyan, The. Fanda, Distt. Bhopal, during F.Y. 2013-14 amounting to Rs. 90,75,000/- from Shri Mukesh Rajput and Shri Pranay Sabu and paid total of Rs. 6,39,990/- as stamp duty and registration fee thereon. The said immovable property was registered on 25.03.2014.

Here it is pertinent to mention that as per sale deed payment of Rs. 90,75,000/- was made by the assessee to the seller in following manner :-

<i>S.No.</i>	<i>Amount</i>	<i>Mode of payment and date</i>
<i>1.</i>	<i>6,50,000/-</i>	<i>Through cheques no. 0006867 dated 05.03.2014</i>
<i>2.</i>	<i>6,50,000/-</i>	<i>Through Cheque N. 0006868 dated 10.03.2014</i>
<i>3.</i>	<i>6,50,000/-</i>	<i>Through RTGS</i>
<i>4.</i>	<i>6,50,000/-</i>	<i>Through RTGS</i>
<i>5.</i>	<i>64,75,000/-</i>	<i>Through RTGS</i>

Further, the assessee submitted vide his reply dated 25.09.2023 that total investment in purchase of agriculture land was amounting to Rs. 97,14,990/- (cost of land Rs. 90,75,000/- + stamp duty 6,39,990/-), out of which Rs. 71,14,990/- was paid from sale proceeds of ancestral agriculture land sold by the assessee and the details of same were furnished by the assessee before the AO at the time of assessment proceeding.

He was further asked to explain the source and details of payments of balance amount of Rs. 26,00,000/-. The assessee submitted that as per sale deed Rs. 26,00,000/- was paid to the seller through cheques and the same are reflecting in the bank a/c no. 903130110000053.

The documents submitted by the assessee has been verified and appears to be acceptable. In the light of the above facts, the appeal of the assessee may be decided on merits.

Submitted to your kind consideration”

[Emphasis supplied]

6. The CIT(A), however, upheld the addition by passing following order:

“6. The Decision :-

The assessment-order, grounds of appeal, additional evidences produced during the appeal proceedings and the remand report have been perused. It is seen from the assessment order that the appellant paid Rs. 26,00,000/- through RTGS into the bank account of seller as mentioned in the purchase deed. It was further mentioned that the amount was said to be paid directly by one of the relative of the appellant. However, during the appeal proceedings, the amount of Rs. 26,00,000/- was stated to be paid out of cash credit loan account of the appellant's company. Thus, there is a contradictory statement by the appellant. However, in the interest of natural justice, the additional evidence and the submissions were forwarded to the AO for thorough examination and the AO has sub mitted remand report, the contents of which are reproduced in the preceding paragraphs. Though the sources of payment of Rs. 71,14,990/- out of Rs. 97,14,990/- towards purchase of agricultural land was explained by the appellant, the amount of Rs. 26,00,000/- paid directly by his relative where confirmation and source stands unexplained. For any credit to be explained, the details are essential. The remand report and the submissions of the appellant are silent on his important issue. Hence, the investment of Rs. 26,00,000/- is unexplained.”

7. During hearing before us, Ld. AR for assessee drew us to the highlighted portion of remand-report of AO as re-produced in foregoing para to demonstrate that the AO has clearly submitted to the CIT(A) that the documents (i.e. additional evidences) submitted by assessee had been verified and appeared to be acceptable. Therefore, Ld. AR contended, once the AO has himself given acceptance to the additional evidences filed by assessee in support of source of payments, the CIT(A) ought to have

accepted the same and deleted the addition. However, the CIT(A) has upheld addition being swayed by the point that the assessee has made a contradictory submission to AO and CIT(A) in as much as before AO the assessee explained that the payment was made by relative but before CIT(A) there was an explanation that the payment was made by company. Further, the CIT(A) observed that the confirmation and source of payer remains unexplained. Ld. AR submitted that all documents of the payer-company including bank statement were filed to CIT(A) and accepted by AO in remand report also and the bank-statement, which is also filed in Paper-Book, clearly shows four debit entries each of Rs. 6,50,000/-. These entries corroborate with the details of payments mentioned in the registered purchase-deed of land. Further, a copy of audited balance-sheet of company is also filed at Page 41-43 of the Paper-Book wherein an amount of Rs. 26,00,000/- with the caption "Advance for Land Purchase – Lalji Pal" is shown in Schedule A – Loans & Advances. Therefore, from these documentary evidences in the shape of Bank-Statement and Audited Balance-Sheet of the company "M/s Himanshu Devbuild Pvt. Ltd.", it is quite evident that the payment of Rs. 26,00,000/- was made by that company.

8. Per contra, Ld. DR for revenue submitted that the assessee has not filed correct details of source before AO. Had the assessee explained to AO that the impugned payments were made by the said company, the AO would have perhaps stepped ahead to make further enquiry with regard to the

source available to that company for making payment. While submitting so, Ld. AR drew us to the bank statement of company to show that a sum of Rs. 12,00,000/- was deposited in cash on 05.03.2024 in the a/c of company immediately before making payment through RTGS of Rs. 6,50,000/- on 08.03.2024 & Rs. 6,50,000/- on 13.03.2024 which is clearly an adverse feature. Therefore, the CIT(A) is justified to uphold addition even after admitting additional evidences.

9. In rejoinder, Ld. AR submitted that from the evidences brought by assessee, it is very much clear that the four RTGS of Rs. 6,50,000/- resulting into aggregate payment of Rs. 26,00,000/- were made by company. Thus, the assessee has proved the source of payment i.e. the company. Once the 'source' is proved, there is no burden on assessee to explain 'source' of 'source'.

10. We have considered rival submissions of both sides and perused the documents to which our attention has been drawn. Admittedly, the AO has made addition of Rs. 26,00,000/- in respect of payments of Rs. 6,50,000/- each made through 4 RTGS/Cheques towards purchase of property. It is true that at first stage before AO, the assessee submitted that the said payments were made by way of loans from relatives directly to the sellers and the assessee did not submit supporting evidences even when called by AO. However, during first appellate proceeding, the assessee submitted that the payments were made by assessee's company and the assessee also filed additional evidences to that fact. The AO has accepted additional evidences

in his remand report submitted to CIT(A). Thus, it becomes an undisputed fact that the impugned payments were made by assessee's company. However, the only concern of revenue is whether or not the company was having explainable sources to make payments? Ld. DR has also raised the very same concern by arguing that there was a cash deposit of Rs. 12,00,000/- in company's bank a/c immediately before making two RTGS payments of Rs. 6,50,000/- each. But on a careful examination, we find the company has made payments from cash-credit a/c by utilizing the credit facility given by bank and not for current a/c. In fact, there is a debit balance in the range of Rs. 29 lacs to 30 lacs in cash-credit a/c which is the credit facility given by bank to the company. The cash deposit of Rs. 12,00,000/- has only reduced such debit balance to approx. Rs. 16 lacs and subsequently, when two RTGS of Rs. 6,50,000/- is debited, the debit balance in cash-credit a/c upscaled to Rs. 29 lacs again. Thus, the source the RTGS paid by company is not the cash deposit of Rs. 12,00,000/- but the credit facility given by bank. In any case, when the company is having credit facility from bank, there cannot be any doubt with regard to source. Considering these aspects, we are of the considered view that the assessee has explained the source of impugned payments of Rs. 26,00,000/- which is the assessee's own company. Therefore, the investment does not remain unexplained. Consequently, the addition made by AO has to be deleted. We delete the same. The assessee succeeds in its appeal.

11. Resultantly, this appeal is allowed.

Order pronounced in open court on 11.10.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

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

Indore

दिनांक /Dated : 11.10.2024

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