

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI UDAYAN DAS GUPTA JUDICIAL MEMBER

ITA No.250/Ind/2024
Assessment Year: 2012-13

Shoukat Mohd. Khan, H.No.1, Street No.1, Chhawani, Near Bharat Talkies, Bhopal	<u>बनाम/</u> <u>Vs.</u>	ITO 4(2), Bhopal
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AVNPK4460E		
Assessee by	Shri Manish Vaidya & Ms. Preeti Patwa, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	28.01.2025	
Date of Pronouncement	03.02.2025	

आदेश / O R D E R

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

Feeling aggrieved by order of first appeal dated 10.01.2024 passed by learned Commissioner of Income-Tax (Appeals)-3, Bhopal ["CIT(A)"] which in turn arises out of assessment-order dated 30.03.2015 passed by learned ITO-4(2), Bhopal ["AO"] u/s 144 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2012-13, the assessee has filed this appeal.

2. The background facts leading to present appeal are such that the assessee-individual filed his return of income of AY 2012-13 declaring a

total income of Rs. 1,740/-. The case was selected under scrutiny and notices u/s 143(2)/142(1) were issued which remained uncomplied. Ultimately, the AO made assessment to the best of his judgement u/s 144 after making two additions, namely (i) addition of Rs. 1,20,47,000/- u/s 69 on account of unexplained investment in a residential house at HIG-HA-68, NRI Colony, Lake View, Koh-e-fiza, Bhopal, and (ii) denial of exemption of Rs. 38,41,924/- claimed by assessee u/s 54/54F against long-term capital gain from sale of another property at Plot No. 1, MP Housing Board, Lake View Colony, Koh-e-fiza, Bhopal. Aggrieved, the assessee carried matter in first-appeal before CIT(A). The assessee filed additional evidences before CIT(A) in terms of Rule 46A of Income-tax Rules, 1962 which were admitted by CIT(A). The CIT(A) received remand-report from AO and also rejoinder to same from assessee. After considering assessee's submissions, the CIT(A) granted part-relief in following manner:

- (i) The CIT(A) firstly issued a notice for enhancement of investment in purchase of property from Rs. 1,20,47,000/- to Rs. 1,30,13,980/- but at the same time accepted explainable source to the extent of Rs. 60,00,000/-. Accordingly, he confirmed addition of Rs. 70,13,980/- on account of unexplained investment and deleted extra.
- (ii) The CIT(A) allowed the exemption of Rs. 38,41,924/- claimed by assessee u/s 54/54F.

3. Now, the assessee is dissatisfied with the addition confirmed by CIT(A) to the extent of Rs. 70,13,980/-. Accordingly, this second appeal before us.

4. The assessee has raised following grounds:

'1. That the Ld. CIT(A) erred in upholding the action of the Assessing Officer in validating the issuance of notice u/s 143(2) and passing of order u/s 144 of the I.T. Act when the Assessing Officer had been divested of his jurisdiction by an extant order u/s 127 of the I.T. Act passed by Ld. CIT-1, Bhopal. That under the facts and circumstances of the case and in law, the notice issued u/s 143(2) and the assessment order passed u/s 144 by ITO-4(2), Bhopal being passed without assuming valid jurisdiction, is void ab initio, also bad in law, and the said assessment order passed u/s 144 may very kindly be quashed.

2. That the Learned CIT(A) erred in confirming an addition of Rs.70,13,980/- u/s 69 of the I.T. Act, out of a total investment of Rs.1,30,13,980/- in the purchase of new house property. That on the facts and in the circumstances of the case, the said addition of Rs.70,13,980/- u/s 69 is patently wrong and not based on facts and the same may very kindly be deleted.'

5. **Ground No. 1** challenges the validity of assessment-order passed by AO on account of jurisdictional defect. It is submission of assessee that the notice dated 12.08.2023 u/s 143(2) for undertaking case under scrutiny was issued by ITO-2(2), Bhopal and the assessment-order was finally passed by ITO-4(2), Bhopal but neither ITO-2(2), Bhopal nor ITO-4(2), Bhopal was having jurisdiction over assessee. Therefore, the assessment-order is invalid. During hearing, Ld. Representatives of both sides though made their respective submissions *qua* this ground yet agreed that if the Ground No. 2 of assessee, relating to the merit of the addition, is allowed based on evidences of assessee, the Ground No. 1 may not be adjudicated and it may be kept open. Therefore, we first take up Ground No. 2.

6. **Ground No. 2** challenges the merit of addition. The precise facts relevant to this ground are such that during assessment-proceeding, the AO observed that the assessee purchased a residential house at HIG-HA-68, NRI Colony, Lake View, Koh-e-fiza, Bhopal for Rs. 1,20,45,000/- (market value assessed by Stamps Authority - Rs. 1,20,47,000/-) on 19.10.2011. The AO called documents of purchase from the office of sub-registrar u/s 133(6) also. Ultimately, finding no explanation from assessee qua the source of purchase, the AO treated the investment of Rs. 1,20,47,000/- as unexplained u/s 69 and made addition. During first-appeal, the CIT(A) found that the assessee also spent money towards stamps charges – Rs. 8,73,220/- and documentation charges – Rs. 95,560/-. Accordingly, the CIT(A) enhanced assessee's investment to Rs. 1,30,13,980/-. At the same time, the CIT(A) accepted source to the extent of Rs. 60,00,000/- and upheld remaining addition of Rs. 70,13,980/- by passing following order:

'3.2.2 I have considered the acts of the case, plea raised by the appellant, findings of the Id. Assessing Officer, remand report and rejoinder thereupon made during appellate proceedings. I find that this ground of appeal relates to the addition of Rs.1,20,47,000/- made by the Assessing Officer u/s 69 of the I.T Act on account of the appellant's failure to explain the source of the investment that was made by him for the purchase of his residential house at HIG-HA-68, NRI Colony, Lake View, Koh-E-Fiza, Bhopal on 19/10/2011. During the appellate proceedings an enhancement notice u/s 251(2) was served on the appellant as it came to the light that the residential house had been purchased for a consideration of Rs.1,30,13,980/- which includes sales consideration of Rs.1,20,45,000/- stamp charges of Rs.8,73,220/- and documentation charges of Rs.95,560/-.

3.2.3 In reply the appellant submitted that the source of investment was a sum of Rs.80,00,000/- that had been given to him as a loan by his brother Mr. Zafar Mohd. Khan. In his support an affidavit of Sh. Zafar Mohd. Khan was attached stating that an amount of Rs.80,00,000/- had been transferred to the appellant's account through RTGS from Sh. Zafar Khan's SBI account and that the amount has been advanced out of his natural love and affection for his younger brother. However, the appellant was not able to furnish the Income Tax Return of Sh. Zafar

Mohd. Khan and nor was he able to furnish copies of his bank account. Hence, the creditworthiness of Sh. Zafar Mohd. Khan has not been established. As per section 69 of the I.T. Act if the appellant is found to have made any investment not recorded in the books of accounts, if any, maintained by him then he is required to explain the nature and source of this investment to the satisfaction of the A.O. Admittedly, the appellant has not been able to offer a satisfactory explanation. It is not sufficient to say that the funds have been advanced to him by his brother. It is incumbent on the appellant to establish that his brother possessed the financial capacity and the creditworthiness to extend a loan of Rs.80,00,000/-. Unless he does that he will not be able to discharge his onus cast upon him by section 69. As the appellant has failed to do so, his explanation for the source of funds is rejected.

It is also observed that an amount of Rs.23 lacs has been extended by Mrs. Shama Mohammad, W/o Sh. Shoukat Mohammad Khan directly towards the payment of the purchase price of the house and towards the stamp duty payable. Again, the appellant has not been able to establish that Ms. Shama Mohammad has the creditworthiness to extend an amount of Rs.23 Lacs towards the purchase of the house. The appellant was not able to furnish either her bank statement or her Income Tax Return.

However, the appellant was in possession of funds to the tune of Rs. 60 lacs which accrued to him out of the sale of his property at Plot No.01, M.P. Housing Board, Koh-e-fiza, Bhopal in the same financial year. This view has also been upheld by the Assessing Officer in his remand report dated 06.04.2022. Hence, out of the total investment of Rs.1,30,13,980/- Rs.60,00,000/- stands explained and relief to the extent is granted to the appellant. An addition to the extent of Rs.70,13,980/- is confirmed and the AO's order is upheld to that extent. The appellant appeal is partly allowed ad enhanced.'

7. Referring to above order of CIT(A), Ld. AR submitted that the CIT(A) has not accepted two sources, viz. (i) a loan of Rs. 80,00,000/- taken by assessee from Mr. Zafar Mohd. Khan and (ii) direct payment of Rs. 23,00,000/- made by Mrs. Shama Mohd. Therefore, our adjudication should be confined to these two sources only.

8. Thereafter, Ld. Representatives of both sides made their respective submissions *qua* these two sources. We have considered their submissions and carefully examined the documentary evidences to which our attention has been drawn. After a careful consideration, we present below our adjudication:

(i) **Loan of Rs. 80,00,000/- from Mr. Zafar Mohd. Khan:**

We find that Mr. Zafar Mohd. Khan is elder brother of assessee. The assessee has taken loan of Rs. 80,00,000/- through RTGS from Mr. Zafar's A/c with SBI. The Bank statement of assessee is filed at Paper-Book Page 72 wherein two credit entries, one of Rs. 45,00,000/- on 03.10.2011 and other of Rs. 35,00,000/- on 18.10.2011 received through RTGS are reflected. During first-appeal, the assessee filed an affidavit dated 30.12.2021 of Mr. Zafar to CIT(A) on stamp paper of Rs. 100/- duly notarized, copy placed at Page No. 73 of Paper-Book. In this affidavit, Mr. Zafar has made clear-cut averments that (i) the assessee is his real young brother; that his PAN is ABLPK3564B; (ii) that he has given loans of Rs. 45,00,000/- on 03.10.2011 and Rs. 35,00,000/- on 18.10.2011; (iii) that the loans were given through RTGS from his A/c No. 30443188393 with State Bank of India, Sultania Road branch; (iv) that the amounts were advanced to assessee for purchase of property at HIG-HA-68, NRI Colony, Lake View, Koh-e-fiza, Bhopal; and (v) that the amounts were advanced due to nature love and affection towards assessee as brother. But the CIT(A) rejected assessee's submission by mentioning "*However, the appellant was not able to furnish the Income-tax Return of Sh. Zafar Khan and nor was he able to furnish copies of his bank account.*" However, the PAN of Mr. Zafar was clearly mentioned in the affidavit filed to CIT(A). Further, the assessee has also arranged to file copy of ITR at Page 106 to 108 of Paper-Book which shows that the Mr. Zafar is having mining business. During hearing, Ld. AR

has also filed Bank Statement of A/c No. 30443188393 of Mr. Zafar with SBI, Sultania wherein there are debit entries of Rs. 45,00,050/- on 03.10.2011 and Rs. 35,00,050/- on 18.10.2011 and both entries have narrations showing remittance to Shoukat Mohd. Khan (i.e. assessee). Each debit entry is inclusive of RTGS charges of Rs. 50/-. The bank a/c of Mr. Zafar is an Overdraft a/c and the loans have been given to assessee by utilising overdraft facility. Ld. DR also accepted that there are no cash deposits in bank a/c of Mr. Zafar prior to giving loans to assessee. Thus, the objections raised by Ld. CIT(A) are dissolved. Further, Mr. Zafar is assessee's elder brother and his PAN is available; the loans have been given through RTGS; and loans have been given from overdraft facility provided by bank. Therefore, in our considered view, all three ingredients of section 68 namely the identity and creditworthiness of creditor and genuineness of transactions are satisfied and no adverse view is warranted.

(ii) **Direct payment of Rs. 23 lacs by Mrs. Shama Mohd:**

We find that Mrs. Shama Mohd. is wife of assessee. The impugned property was purchased jointly by assessee and Mrs. Shama Mohd., the name of both owners are clearly mentioned as purchasers in the registered-deed placed in Paper-Book at Pages 48 to 71. Mrs. Shama Mohd. made payment of Rs. 15,00,000/- to the seller of property and payment of Rs. 8,00,000/- towards stamps charges. During first-appeal, the assessee filed an affidavit dated 30.12.2021 of Mrs. Shama Mohd. to CIT(A) on stamp paper of Rs. 100/- duly notarized, copy placed at Page No. 75 of Paper-Book. In this affidavit,

Mrs. Shama Mohd. has made clear-cut averments that (i) the assessee is her husband; (ii) that her PAN is CSYPK4202Q; (iii) that during financial year 2011-12, she made a payment of Rs. 15,00,000/- towards purchase of impugned property through cheque No. 151795 dated 08.06.2011 from her A/c No. 900610100017180 with Bank of India, Professor Colony, Bhopal and also paid a sum of Rs. 8,00,000/- vide cheque No. 151806 dated 27.10.2011 of same bank to Shri Viswanath Agarwal, Stamps Vendor, towards stamp duty. But the CIT(A) rejected assessee's submission by mentioning "*The appellant was not able to furnish either her bank statement or her Income-tax Return.*" However, the assessee has provided PAN of Mrs. Shama in the affidavit filed to CIT(A). Further, the receipt of cheque No. 151795 dated 08.06.2011 of Rs. 15,00,000/- is also acknowledged by seller in Para No. 10 of registered-deed of property. Mrs. Shama is assessee's wife; her PAN is on record; the impugned payments have been made through cheques drawn on bank a/c. More importantly, Mrs. Shama is also a joint owner of property which is manifest from registered-deed. Therefore, in such a situation when she is joint owner, the payments of Rs. 15,00,000/- and Rs. 8,00,000/- made by her towards purchase of property through cheques and admitted in her solemnised affidavit, cannot be treated as unexplained investment in the hands of assessee.

9. In view of above discussions, both sources of investment in property are sufficiently explained. Being so, we are inclined to delete the addition of

Rs. 70,13,980/- upheld by CIT(A). The assessee succeeds in Ground No. 2, the same is hereby allowed.

10. Since we have allowed Ground No. 2 and thereby deleted the addition on merit, we are not going to adjudicate Ground No. 1 as agreed by Ld. Representatives of both sides. Accordingly, Ground No. 1 is kept open, undecided.

11. **Resultantly, this appeal is allowed.**

Order pronounced by putting on notice board as per Rule 34 of ITAT Rules, 1963 on 03/02/2025

Sd/-
(UDAYAN DAS GUPTA)
JUDICIAL MEMBER
Indore

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

दिनांक /Dated : 03/02/2025

Dev/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