

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR "SMC" BENCH : NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

ITA.No.193/NAG./2024
Assessment Year 2015-2016

Taradevi Babulal Patni, Near Jain Temple, Tanga Stand, Itwari, NAGPUR. PIN – 440 002 PAN AAOPP2630D Maharashtra.	vs.	The DCIT, Circle-3, Aaykar Bhavan, Civil Lines, Telangkhedi Road, NAGPUR – 440 001. Maharashtra.
(Appellant)		(Respondent)

ITA.No.194/NAG./2024
Assessment Year 2015-2016

Patni Housing Private Limited, Dharpude Bldg., Balraj Marg, Patwardhan Ground S.O. NAGPUR (URBAN) - 440 012 PAN AACCP2303G Maharashtra.	vs.	The DCIT, Circle-1(2), Aaykar Bhavan, Civil Lines, Telangkhedi Road, NAGPUR – 440 001. Maharashtra.
(Appellant)		(Respondent)

ITA.No.196/NAG./2024
Assessment Year 2015-2016

Babulal Roshanlal Patni, Near Digambar Jain Mandir, Bapurao Galli, Itwari, NAGPUR – 440 002 PAN AAOPP2757M Maharashtra.	vs.	The DCIT, Circle-1(2), Aaykar Bhavan, Civil Lines, Telangkhedi Road, NAGPUR – 440 001. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri K.P. Dewani, Advocate
For Revenue :	Shri Abhay Y. Marathe, Sr. DR

Date of Hearing :	22.01.2025
Date of Pronouncement :	06.02.2025

ORDER

PER V. DURGA RAO, J.M. :

These three appeals are filed by three different assessees against the respective orders of the learned CIT(A)-3, Nagpur, relating to assessment year 2015-2016. Since common issues are involved in these appeals, these appeals were heard together and are being disposed of by this consolidated order for the sake of convenience and brevity.

2. Facts of the case, in brief, are that a search was conducted in the premises of Soni Maloo, Talda, Panapliya group of cases and various documents were seized from the residential premises of Shri Pradeep Maloo. On verification of the documents i.e., Sale Deed it is found that Soni Maloo, Talda and Panapaliya had purchased a land for an amount of Rs.70 lakhs but the original sale consideration of the property was for Rs.2,28,50,000/- of which Rs.70,000/- was

paid in cheque and balance of Rs.1,58,50,000/- was paid in cash to the assessee viz., Taradevi Babulal Patni and other co-sellers. Accordingly, the assessee viz., Taradevi Babulal Patni had received on-money of Rs.39,62,500/- being 1/4th share of Rs.1,58,50,000/- which has been accepted by the members of Soni Maloo, Talda and Panapliya Group.

2.1. The case of the assessee viz., Taradevi Babulal Patni was reopened u/sec.147 of the Act. The assessee filed her original return of income on 31.03.2017 declaring total income of Rs.3,72,820/-. In response to the notice u/sec.148, the assessee has filed her revised return of income on 17.07.2021 admitting total income of Rs.4,55,500/-. The Assessing Officer after following the due procedure, completed the assessment u/sec.147 r.w.s.143(3) of the Act and determined the total income of the assessee at Rs.44,18,000/- as against the returned income of the assessee at Rs.4,55,500/- after making addition of Rs.39,62,500/- u/sec.69A of the Act on account of unexplained money in the case of the assessee viz., Taradevi

Babulal Patni [ITA.No.193/NAG./2024] vide order dated 22.03.2022 u/sec.147 of the Act.

2.2. Similar addition of Rs.1,87,01,000/- was made by the Assessing Officer u/sec.69A of the Act on account of unexplained money in the case of Patni Housing Private Limited and determined the total income of the assessee at Rs.1,95,95,030/- as against the returned income of Rs.8,94,030/- for the A.Y. 2015-2016 [ITA.No.194/NAG./2024] vide order dated 22.03.2022 passed u/sec.147 of the Act.

2.3. Similarly, in the case of Babulal Roshanlal Patni [ITA.No.196/NAG./2024], the Assessing Officer made an addition of Rs.39,62,500/- u/sec.69A of the Act on account of unexplained money and determined the total income of the assessee at Rs.44,56,200/- as against the returned income of Rs.4,93,700/- for the A.Y. 2015-2016 vide order dated 22.03.2022 passed u/sec.147 of the Act.

3. On being aggrieved by the order(s) of the Assessing Officer, these assessee's carried the matter in appeals before the learned CIT(A). The learned CIT(A) after considering the submissions of these assessee's held that issue of notice u/sec.148 of the Act by the Assessing Officer is not *abinitio void* and the proceedings u/sec.148 are legal and correct. The learned CIT(A) further noted while confirming the addition made by the Assessing Officer on account of unexplained money u/sec.69A of the Act at Rs.39,62,500/-; Rs.1,87,01,000/- and Rs.39,62,500/- in the cases of Taradevi Babulal Patni, Patni Housing Private Limited and Babulal Roshanlal Patni, respectively, noted that the on-money was paid as is evident from page no.70 and 71 of bundle no.B-1, which are not dumb documents as claimed by the assessee's. Accordingly, the learned CIT(A) confirmed the order(s) of the Assessing Officer.

4. Aggrieved by the orders of the learned CIT(A), these assessee's carried the matter in appeals before the Tribunal.

5. During the course of hearing, Learned Counsel for the Assessee at the very outset submitted that the reopening of the assessment by the Assessing Officer u/sec.147 of the Act is bad in law and liable to be cancelled as the authorities are declined to provide copy of approval granted by the competent authority u/sec.151 of the Act and it is settled position of law that re-assessment framed without providing complete reasons recorded for issue of notice u/sec.148 results into assessment framed being bad in law and relied on the decision of Hon'ble Bombay High Court in the case of CIT vs. Videsh Sanchar Nigam Ltd., 340 ITR 66 (Bom.) and PCIT vs. V. Ramaiah 103 taxmann.com 202 (SC).

5.1. Secondly he submitted that the copy of objections submitted for issue of notice u/sec.148 are with the Assessing Officer and the learned Assessing Officer without disposing off the objections filed by the assessee and made assessment u/sec.147 r.w.s.143(3) is bad in law as held by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd., vs. ITO & Ors 259 ITR 19 (SC).

5.2. Thirdly, he submitted that the impugned additions were made in the hands of the assessee on the basis of 'loose papers' found during the course of search at the premises of Soni Maloo Talda Group and came to the conclusion that the assessee's had received 'on-money' and made the impugned additions on account of unexplained money u/sec.69A of the Act. He submitted that the seized documents does not indicate the names of these assessee's and the loose papers were collected from the premises of third party and as such, they are in the nature of 'dumb documents' which has no legal evidence to hold that these assessee's were in receipt of 'on-money'. He further submitted that Assessing Officer had not conducted enquiry or brought any evidence on record to show that these assessee's were in receipt of on-money and in absence of such evidence, the additions made in the hands of these assessee's u/sec.69A of the Act is unjustified as repeatedly held by the Coordinate Bench of this Tribunal in the case of M/s. Bommidala Realty Ltd., vide order dated 07.03.2017 in ITA.No.241/VIZ/2012.

5.2.1. He further submitted that evidence on record does not indicate any money found with these assessee's and from the perusal of the record it is crystal clear that without such evidence, invoking provisions of sec.69A is not valid and the onus is lies on the Revenue authorities to show that these assessee's are owner of such on-money by relying decision of Hon'ble Supreme Court in the case of CIT vs. Smt. P.K. Noorjahan 237 ITR 570 (SC) and DN Singh vs. CIT 150 taxmann.com 301 (SC).

5.2.2. He further submitted that loose papers found from the premises of Shri Praveen Maloo in search is not supported by any corroborative evidence found during the course of search to show that these assessee's were in receipt of on-money and the notings made on 'loose papers' has no evidentiary value as held by Hon'ble Supreme Court in the case of CIT vs. PV Kalyanasundaram [2007] 294 ITR 49 (SC); PCIT vs. Nishant Construction (P.) Ltd., [2019] 101 taxmann.com 180 (SC) and Hon'ble Bombay High Court decision in case of M/s. Supreme Industries ltd., in ITA.No.1224 of 2011 order dated 17.01.2013.

5.2.3. He further submitted that the loose papers on which belief of escapement of income chargeable to tax has been derived does not even indicate name of these assessee's or any date of alleged payment and without making any independent enquiry by the Assessing Officer, the reopening of assessment u/sec.147 and issuance of notice u/sec.148 is bad in law by relying on the decision of Hon'ble Bombay High Court in the case of CIT vs. Shodiman Investments Pvt. Ltd., [2020] 422 ITR 337 (Bom.) and South Yarra Holdings vs. ITO [2019] 104 taxmann.com 216 (Bom.). He further submitted that the 'dumb documents' being rough scribblings and has no legal evidence to show that 'on-money' was received by these assessees. He submitted that Assessing Officer had not made verification before recording reasons for issue of notice u/sec.148 even though the loose papers are dumb documents which does not have any evidentiary value by relying on the decision of Hon'ble Supreme Court in the case of ITO vs., Lakhmani Mewal Das 103 ITR 437 (SC) and Ganga Saran & Sons (P) Ltd., vs. ITO 130 ITR 1 (SC).

5.3. Fourthly, he submitted that pursuant to search action u/sec.132(1) of the Act, the Assessing Officer received information and no valid notice u/sec.148 could be issued in the case of these assessee's pursuant to such information received and found in the course of search by relying decision of Hon'ble High Court of Karnataka at Bengaluru in ITA.No.32 of 2020 in the case of M/s. VSL Mining Company Pvt. Ltd., vide order dated 20.09.2024 and decision of Coordinate Bench of Delhi Tribunal in the case of Narendra Kumar in ITA.No.1218/Del./2019 vide order dated 19.07.2023.

5.4. The Learned Counsel for the Assessee lastly submitted that the evidence relied upon has been collected at the back of these assessee's and cannot be used adversely unless the same stood for test of cross-examination. He submitted that in the instant case, these assessee's are not provided with cross-examination and in absence of such cross-examination and any corroborative evidence on record, it cannot be the basis for making the impugned addition in the hands of these assessee's as held by Hon'ble Supreme

Court in the case of Andaman Timber Industries vs. CIT [2015] 281 CTR 241 (SC) and the decision of Coordinate Bench of the Tribunal in the case of M/s. Riveria Properties Pvt. Ltd., in ITA.No.250/MUM./2013 vide order dated 27.10.2017. He accordingly submitted that the order(s) of the Assessing Officer in reopening the assessment(s), making the impugned addition(s) in the hands of these assessee's as unexplained money u/sec.69A of the Act without any corroborative evidence, relying on dumb documents/loose sheets and not collected from the premises of these assessee's and not allowing for cross-examination is bad in law and, therefore, the reopening of the assessment by the Assessing Officer u/sec.147 of the Act and sustaining the additions by the learned CIT(A) be cancelled in the interest of justice.

6. The Learned DR, on other hand, heavily relied on the orders of the authorities below. He submitted that the assessee's in the instant appeals are failed to substantiate their claims that the impugned money is not 'on-money' and the source of such money has not been proved. The assessee's are not discharged their primary onus in proving

the excess money in their hands. Therefore, the Assessing Officer has rightly reopened the assessments in the case of these assessee's u/sec.147 of the Act, pursuant to search conducted u/sec.132(1) of the Act and after following due procedure under the Act, the Assessing Officer made the impugned additions u/sec.69A of the Act on account of unexplained money in the hands of these assessee's and the learned CIT(A) after examining the documents placed on record by the Authorised Representative(s) of these assessee's and assessment order, rightly confirmed the reopening of the assessment u/sec.147 of the Act as not *abinitio void* and confirmed the additions made in the hands of these assessee's. He accordingly submitted that the orders of the authorities below are in accordance with law and pleaded that the order of the learned CIT(A) be confirmed.

7. I have heard rival submissions of both the parties, perused the written submissions and case laws relied upon by the Learned Counsel for the Assessee, paper books placed on record and the orders of the authorities below. I find that admittedly the Assessing Officer reopened the assessment in

the case of these assessee's pursuant to search conducted u/sec.132(1) of the Act. He accordingly recorded reasons u/sec.147 to the effect that 'the income chargeable to tax has escaped assessment' in the hands of these assessee's and issued notice(s) u/sec.148 of the Act. The reasons recorded u/sec.147 of the Act were also furnished to these assessee's. After examining the explanations offered by these assessee's and documents placed on record, the Assessing Officer being not satisfied with the explanations of these assessee's made the impugned addition u/sec.69A of the Act on account of unexplained money and on appeal, the learned CIT(A) sustained the additions made in the hands of these assessee's as well as confirmed the order of the Assessing Officer in reopening the assessment u/sec.147 of the Act. I find that there is a *prima facie* case in favour of these assessee's in the instant appeals. The cases of these assessee's are reopened on the basis of 'dumb documents/loose sheets' collected from the premises of a third party. Further, these assessee's were not allowed for cross-examination on the basis of which the Assessing Officer

reopened the assessment u/sec.147 of the Act. Without providing such an opportunity to these assessee's, the Assessing Officer cannot reopen the assessment which is bad in law. It is settled position of law as held by the Hon'ble Supreme Court in the case of Andaman Timber Industries vs. CIT [2015] 281 CTR 241 (SC) that in absence of cross-examination providing to an assessee and in absence of corroborative evidence, it cannot be the basis for making the impugned additions in the hands of an assessee and the evidences collected behind the back of an assessee cannot be used adversely unless the same stood for test of cross-examination. In the instant cases, such an opportunity of cross-examination has been denied to these assessee's and therefore, the re-assessments u/sec.147 of the Act is bad in law and consequently, the additions made in the hands of these assessee's are deleted. I further note here that loose sheets/dumb documents are collected from a third party and does not indicate any money found with these assessee's and the onus on the part of the Revenue that these assessee's are owner of the impugned money is not proved. Further, the

loose papers are found from the premises of Shri Praveen Maloo in search is not supported by any corroborative evidence to show that these assessee's are in receipt of on-money. In absence of proper enquiry conducted by the Assessing Officer while reopening the assessment pursuant to search conducted u/sec.132(1) of the Act which is the basis for reopening of the assessment and in absence of cross-examination provided to the assessee, the reopening of the assessment is bad in law as held by Hon'ble Supreme Court in the case of Andaman Timber Industries vs. CIT (supra). I, therefore, set aside the order(s) of the learned CIT(A) and delete the additions made in the hands of these assessee's. Accordingly, the grounds of appeal raised by these assessee's are allowed.

8. In the result, appeals of the assessee's are allowed. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 06.02.2025.

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Nagpur, Dated 06th February, 2025

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A), Nagpur concerned
4.	The CIT, Nagpur concerned
5.	The D.R. ITAT, Nagpur SMC-Bench, Nagpur
6.	Guard File.

//By Order//

//True Copy//

Sr. Private Secretary : ITAT : Nagpur Bench
NAGPUR.