

IN THE INCOME TAX APPELLATE TRIBUNAL
“DB” BENCH, AGRA

**BEFORE HON’BLE SHRI SATBEER SINGH GODARA, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**1. आयकरअपील सं. / ITA No.16/Agr/2020
(निर्धारणवर्ष / Assessment Year: 2011-12)**

Shri Ashok Kumar Gupta F-11, Harishankar Puram Gwalior 474 002	बनाम/ Vs.	ACIT - Circle-2 Gwalior
स्थायीलेखासं./जीआइआरसं./TAN/GIR No. ACLPG-8972-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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**2. आयकरअपील सं. / ITA No.23/Agr/2020
(निर्धारणवर्ष / Assessment Year: 2011-12)**

ACIT Circle-2 Gwalior	बनाम/ Vs.	Shri Ashok Kumar Gupta F-11, Harishankar Puram Gwalior 474 002
स्थायीलेखासं./जीआइआरसं./TAN/GIR No. ACLPG-8972-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Anurag Sinha (Advocate) – Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Sukesh Kumar Jain (CIT) – Ld. CIT-DR

सुनवाईकीतारीख/ Date of Hearing	:	21-02-2025
घोषणाकीतारीख / Date of Pronouncement	:	28-03-2025

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid cross-appeals for Assessment Year (AY) 2011-12 arises out of an order of learned Commissioner of Income Tax (Appeals), Gwalior [CIT(A)] dated 26-11-2019 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 25-03-2013.

1.2 The Ld. AR as well as Ld. CIT-DR advanced arguments and made various submissions during the course of hearing. Having heard rival submissions and upon perusal of case records, the cross-appeals are disposed-off as under.

1.3 The grievance of the revenue is – (i) Addition of unaccounted payments and investments; (ii) Addition of cash seizure; (iii) Profit on sale of agricultural land; (iv) Addition of fresh credits; (v) Additions for purchase of land; (vi) Disallowance of expenditure. The same are adjudicated as under.

2. Addition of unaccounted payments and investments

2.1 From the assessment order, it could be seen that the assessee is associated with Pooja Guthka group of cases which was searched on 07-10-2010. The assessee admitted income of Rs.516.07 Lacs. During the course of search, certain incriminating documents were found which were confronted to the assessee during the course of assessment proceedings. These documents include loose sheets page nos. 7,8,12,13 & 14 of Annexure LPS-5, party BR-8 wherein certain figures were written. The same has been extracted in the assessment order. These figures allegedly reflected certain receipts by the assessee. Though the assessee denied receipt of any amount as noted therein, Ld. AO alleged that the said figures represent advance received by the assessee from certain persons for purchase of lands. The amount were written in coded language viz. 21-40B. The figure '21' would be deciphered to represent Rs.21 Lacs. The Page Nos. 8 & 9 contained receipts from unexplained sources whereas Page Nos.12 to 14 indicates unexplained payments by the assessee, the source of which could not be explained by the assessee. All these sums aggregated to Rs.427.02 Lacs which were

added to the income of the assessee considering the assessee's statement as recorded u/s 132(4) during search.

2.2 The Ld. CIT(A), having considered assessee's elaborate written submissions, rendered its finding in para 6.6. The Ld. CIT(A) noted that the assessee made disclosure of Rs.515.70 Lacs under various heads and offered the same in its return of income. The same disclosure was on account of various discrepancies including sum of Rs.390 Lacs for advance paid for purchase of agricultural land / other advances as mentioned on various pages seized as annexure LPS-5. The assessee offered another sum of Rs.85 Lacs in the name of Smt. Mamta Gupta. The said amount was duly offered to tax and incorporated in the regular books. Regarding LPS-5, Page Nos.7, it was stated that the figures written were dumb figures having no meaning. There was no date or any reference of advance and Ld. AO erred in arriving at conclusion of unaccounted receipts.

2.3 The Ld. CIT(A) concurred with the quantum of surrender made by the assessee. It was held that Ld. AO was not justified in making separate addition on the basis of same loose sheets which form the very basis of surrender by the assessee which was already offered in the return of income. The assessee honored his statement by incorporating undisclosed income found recorded in various incriminating material / loose papers for taxation and offered the same to tax. Adding the same again would tantamount to double taxation which is not permissible under the law. Upon perusal of LPS-5, Page No.7, it was noted that front side of this page had rough jottings / scribbling. The backside was a small slip carrying rough jottings on it. The paper was in the nature of dumb paper which did not give any meaning to the figures / notings as

made in the paper. The paper did not carry any vital details and the figures were in coded language. Merely by looking at this paper, no one could infer that the assessee received those sums against sale of some land / property. Therefore, the impugned additions were deleted against which the revenue is in further appeal before us.

2.4 From the fact, it clearly emerges that considering the incriminating material / loose sheets as found during the course of search, the assessee admitted disclosure of Rs.615.70 Lacs under various heads and also offered the same in the return of income. The disclosure include sum of Rs.390 Lacs as allegedly received by the assessee as advance. The assessee made another disclosure of Rs.85 Lacs in the name of Smt. Mamta Gupta. The said amounts have duly been offered to tax and incorporated in the regular books of accounts. The Ld. AO completely overlooked this fact and made separate addition for the same. As rightly held by Ld. CIT(A), adding the same again would amount to double taxation which is not permissible under the law. The assessee honored his statement by incorporating undisclosed income found recorded in various incriminating material / loose papers for taxation and offered the same to tax. Further, upon perusal of LPS-5, Page No.7, it could be seen that these are rough jottings / scribbling without any vital details. This paper is in the nature of dumb document which do not give any meaning to the figures / notings therein. The figures are in coded language and the same has been deciphered on mere presumption without there being any corroborative evidence. Merely by looking at this paper, it could not be inferred that the assessee actually received those sums. Therefore, we concur with the adjudication of Ld. CIT(A) on this issue. The corresponding grounds of revenue's appeal stand dismissed.

3. Addition of cash seizure

3.1 During search, cash was seized for Rs.8.93 Lacs which was stated to be belonging to the assessee. However, during assessment proceedings, the assessee attributed cash to various family members. Rejecting the same, Ld. AO added the same to the income of the assessee.

3.2 The Ld. CIT(A) held that the assessee disclosed Rs.90 Lacs towards cash which was part of total disclosure of Rs.515 Lacs. Therefore, there was no justification for making separate addition on this account. Accordingly, the addition was deleted against which the revenue is in further appeal before us.

3.3 It is finding of Ld. CIT(A) that the assessee made disclosure of Rs.90 Lacs towards cash whereas cash was found only for Rs.8.93 Lacs only. This being the case, no separate addition is warranted for the same. We order so. The corresponding grounds stand dismissed.

4. Profit on sale of agricultural land

4.1 The assessee earned profit of Rs.59.73 Lacs on sale of agricultural land but the same was not offered in the return of income. The assessee submitted that it had sold agricultural land in rural area and the profit was duly shown in the capital account. However, Ld. AO added the same as capital gains.

4.2 The Ld. CIT(A), noted that the agricultural land as sold by the assessee was not a capital asset u/s 2(14) and the assessee was not engaged in sale and purchase of land. The lands were situated in Village *Lakhnoti* and *Turari* which were not covered within the municipal limits of Gwalior before 31-01-2014 considering the notification issued by M.P. State Govt. on 31-01-2014. The assessee also furnished copies of

Khasra / Khatoni and sale deed establishing the facts about land being agricultural lands. The said claim was found by Ld. CIT(A) to be correct. The Ld. CIT(A) further held that the said activity could not be treated as adventure in the nature of trade since there was no concrete evidence that the assessee was dealing in real estate. The said land was shown in the Balance Sheet under the head fixed assets. The land was held as investment and not as stock-in-trade. There was no material to indicate that the assessee was engaged in frequent sale and purchase of agricultural lands. These lands were purchased during the years 2006 to 2010 and sold in current year. Considering the ratio of various judicial decisions as enumerated in the impugned order, Ld. CIT(A) held that Ld. AO was not justified in treating the gains as arising out of an adventure in the nature of trade. Accordingly, the impugned addition was deleted against which the revenue is in further appeal before us.

4.3 It is factual finding of Ld. CIT(A) that the pieces of lands as sold by the assessee, at the relevant point of time, were rural agricultural land since the same were not covered within the municipal limits of Gwalior before 31-01-2014. The copies of Khasra / Khatoni and sale deed established the fact that the lands were agricultural lands. Further, the lands were held by the assessee as investment and not a trading stock. All these facts remain uncontroverted before us. Therefore, no fault could be found in the adjudication of Ld. CIT(A), on this issue. The corresponding grounds of revenue's appeal stand dismissed.

5. Addition of fresh credits

5.1 The assessee reflected fresh credits in its books from 6 persons / entities. The same aggregated to Rs.232.67 Lacs. The Ld. AO rejected the explanation of the assessee and added the same u/s 68.

5.2 The Ld. CIT(A) rendered factual findings with respect to each of the loan creditors. The creditors for Rs.3.21 Lacs were opening balances and therefore, the addition thereof was deleted. The addition of Rs.1.50 Lacs as received from Shri Satish Gupta was confirmed despite the fact that the assessee furnished balance confirmation, address and PAN. With respect to amount of Rs.76.81 Lacs as received from M/s Natural Commercial Company Ltd., a finding has been rendered that the assessee furnished confirmation letter and PAN details with respect to that entity. The same was evidenced by financial statements of that entity. Therefore, the primary ingredients of Sec.68 were satisfied and accordingly, the addition for this entity was deleted. The amount of Rs.151.14 Lacs was nothing but post dated cheques issued by the assessee for purchase of land at Bhatkheri. All these cheques were outstanding / unpaid as on 31-03-2011. The assessee furnished copies of sale deed wherein entry of these cheques was duly mentioned. The assessee also filed bank statement of payee showing encashment of post dated cheques. Therefore, the amount of Rs.150 Lacs was merely a book entity and the assessee did not receive any money from any person. Therefore the addition, to that extent, was deleted. The addition of Rs.1.14 Lacs represents cheque issued to Shri Satender Singh as advance part payment for purchase of land. The same remained unrepresented during the year and in next year also. The assessee reversed the entry and the account got square-off. However, the addition was confirmed for want of documentary evidences. Aggrieved, the assessee as well as revenue is in further appeal before us.

5.3 We find that Ld. CIT(A) has rendered factual findings on each of the credits. The creditors for Rs.3.21 Lacs were opening balances and

accordingly, the same could not be added to the income of the assessee. With respect to amount of Rs.76.81 Lacs as received from M/s Natural Commercial Company Ltd., the assessee successfully discharged the primary onus as required u/s 68 by furnishing confirmation letter and PAN details with respect to that entity. The credits were evidenced by financial statements of that entity. Therefore, this addition has rightly been deleted. The amount of Rs.150 Lacs represents only an accounting entry and no money was received by the assessee. The assessee purchased certain property and issued three post dated cheques which were outstanding as on 31-03-2011. The same were encashed in next year which is evidenced by bank statement. Therefore, this addition has rightly been deleted. We concur with the adjudication of Ld. CIT(A) and dismiss the corresponding grounds of revenue's appeal.

5.4 The assessee, in its appeal, has contested confirmation of addition of Rs.1.50 Lacs and addition of post dated cheque of Rs.1.14 Lacs as issued to Shri Satender Singh. It could be seen that with respect to credit of Rs.1.50 Lacs, the assessee has filed balance confirmation containing PAN and address of the lender. This being the case, the ingredients of Sec.68 were duly fulfilled. Therefore, we delete this addition. The amount of Rs.1.14 Lacs represents post dated cheques given to Shri Satender Singh as part of advance payment. The cheques remained unrepresented for two years and the entry was reversed. Thus, the assessee has not received any money. It was merely an accounting entry which stood reversed later on. This being the case, the addition of Rs.1.14 Lacs stands deleted. The corresponding grounds of assessee's appeal stand allowed.

6. Additions for purchase of lands

6.1 Upon perusal of purchase / sale deeds as found from the residence of the assessee, it was noted that the assessee purchased two lands for Rs.88.40 Lacs as tabulated on para-13 of the order. Since the same was not appearing in the statement of affairs, Ld. AO added the same as investment from undisclosed sources.

6.2 During appellate proceedings, it was submitted by the assessee that property of Rs.80 Lacs was acquired in which the assessee's share was 40% and the same was reflected under Fixed Assets as Land at Swaroop Nagar for Rs.35 Lacs. The same was duly verifiable from the sale deed as well as from bank statement of the assessee. Accordingly, it was held by Ld. CIT(A) that the investment stood properly explained. With regard to investment of Rs.8.40 Lacs, the assessee filed registered sale and purchase deed. The land was purchased and sold in the year 2010 itself and therefore, it was not appearing in the Balance Sheet as on 31-03-2011. The same stood verified from the bank statements as well as relevant deeds also. Accepting the same, Ld. CIT(A) deleted the addition against which the revenue is in further appeal before us.

6.3 Upon perusal of adjudication of Ld. CIT(A), it could be ascertained that the alleged undisclosed investments were duly reflected in the books of accounts and the transactions have happened through banking channels only. Therefore, the adjudication of Ld. CIT(A) could not be faulted with. We order so. The corresponding grounds of revenue's appeal stand dismissed.

7. Disallowance of expenditure

7.1 The assessee claimed various expenditure u/s 57(iii) which includes depreciation, interest on housing loan, car loan and interest paid

to two entities. The same aggregated to Rs.9.14 Lacs which was disallowed u/s 57(iii). The Ld. CIT(A) noted that these expenditure were not claimed u/s 57(iii). The assessee earned business income of Rs.4.84 Lacs against which the assessee incurred various expenses viz. car depreciation, car interest loan and bank commission. These expenses were related to business activities only and therefore, allowable to the assessee. The interest paid on house loan was allowable against house property income. The claim was held to be allowable subject to production of necessary evidence relating to payment of interest. The assessee reflected interest income of Rs.3.46 Lacs against which the assessee claimed interest expenses of Rs.0.34 Lacs which was held to be allowable against interest income. Aggrieved, the revenue is in further appeal before us.

7.2 We find that this issue has been clinched in correct perspective by Ld. CIT(A). Further, the aforesaid findings of Ld. CIT(A) remain uncontroverted before us also. Therefore, no interference is required in the impugned order, on this issue. The corresponding grounds of revenue's appeal stand dismissed. The appeal of the revenue stand dismissed.

8. The subject matter of assessee's appeal is confirmation of addition of loan of Rs.2.64 Lacs which has already been adjudicated by us in preceding para 5.4. The remaining issue in assessee's appeal is addition of Jewellery and disallowance of expenses. The same are adjudicated as under.

9. Addition of Jewellery

9.1 During search jewellery weighing 4055.73 grams valuing for Rs.79.76 Lacs was found and the assessee was directed to explain the

source of the same. The assessee attributed the jewellery to various family members. The Ld. AO accepted the explanation for jewellery stated to be belonging to assessee and his wife but rejected explanation for jewellery inherited by the assessee and jewellery belonging to daughter and minor son. Accordingly, jewellery weighing 800 grams valued at Rs.16.80 Lacs was added to income of the assessee. The Ld. CIT(A) confirmed the same against which the assessee is in further appeal before us.

9.2 We find that CBDT Instruction No.1916 dated 11-05-1994, considering the prevailing customs / tradition, provides for concession of 500 grams of jewellery per married lady, 250 grams of jewellery per unmarried lady and 100 grams per male member of the family. By allowing these quantities, nothing would be left for addition in assessee's case. The case law of Hon'ble Allahabad High Court in the case of **CIT vs. Ghanshyam Das Johri (41 Taxmann.com 295)** duly supports granting of such concession to the assessee. Therefore, we direct Ld. AO to delete the impugned addition. The grounds raised by the assessee stand allowed.

10. Disallowance of Expenses

10.1 The assessee paid interest of Rs.2.81 Lacs to M/s Natural Commercial Company Ltd. The same was stated to be against advances received against let out property to that entity. The same was disallowed by Ld. AO. The Ld. CIT(A) confirmed the same on the ground that there was no evidence that the interest was incurred for the purpose of house property.

10.2 We find that the fact that the expenditure was incurred for the purpose of house property could not be established by the assessee.

Further, only specified expenditure is allowable under the head Income from House Property. Therefore, this expenditure has rightly been disallowed.

10.3 The assessee's appeal stand partly allowed.

Conclusion

11. The revenue's appeal stand dismissed whereas the assessee's appeal stand partly allowed.

Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(SATBEER SINGH GODARA)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

Dated: 28-03-2025

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT AGRA