

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M. JOSHI, JUDICIAL MEMBER

ITA No.112/Ind/2023 (AY:2018-19)

DCIT(Central)-2 Indore	<u>बनाम/</u> Vs.	Shri Jitendra Singh Rathore 1, Petlawad Road, Anu Nagar, Badnawar, Dhar
(Revenue/Appellant)		(Assessee/Respondent)
PAN:ANSPR7237B		

ITA No.113/Ind/2023 (AY:2018-19)

DCIT(Central)-2 Indore	<u>बनाम/</u> Vs.	Shri Ajit Jain 77, Kabir Marg, Dhar
(Revenue/Appellant)		(Assessee/Respondent)
PAN:AHKPJ9013F		
Assessee by	S/Shri Aadit Runwal & Arpit Gaur, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	06.05.2025	
Date of Pronouncement	13.05.2025	

आदेश / ORDER

Per B.M. Biyani, AM:

The captioned two appeals are filed by revenue for Assessment Year ["AY"] 2018-19, the details are as under:

- (i) **ITA No. 112/Ind/2023** is an appeal in the matter of assessee '**Shri Jitendra Singh Rathore**' wherein the revenue is challenging the

order of first-appeal dated 25.01.2023 passed by learned Commissioner of Income-tax (Appeals)-3, Bhopal ["CIT(A)"] which in turn arises out of assessment-order dated 25.06.2021 passed by ACIT, Central Circle-2, Indore ["AO"] u/s 143(3) of Income-tax Act, 1961.

- (ii) **ITA No. 113/Ind/2023** is an appeal in the matter of assessee '**Shri Ajit Jain**' wherein the revenue is challenging the order of first-appeal dated 23.01.2023 passed by same CIT(A) which in turn arises out of a separate assessment-order dated 25.06.2021 passed by same AO u/s 143(3) of Income-tax Act, 1961.

2. Since these appeals are inter-related on facts and in issue, they were heard together at the request of parties and are being disposed of by this consolidated order for the sake of convenience, brevity and clarity.

3. The grounds raised in these appeals are as under:

ITA No. 112/Ind/2023 – Shri Jitendra Singh Rathore:

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs 1,33,15,863/- out of addition of Rs 1,49,17,500/- made on account of disclosure of additional income by the assessee during survey u/s 133A of the Income tax Act, 1961, ignoring the fact that the assessee has made a voluntary disclosure of additional income on account of on-money received from customers?"

2. Whether on the facts and circumstances of the case and in law, Ld. CIT(A) was justified in accepting the version of the assessee that several bookings were cancelled and the assessee had refunded the corresponding booking amounts, ignoring the fact that the assessee had failed to establish his claim of refund of booking advances to customers during the assessment proceedings?"

3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in allowing additional expenses of Rs 100/-per sq. ft on account of finance cost, administrative expenses and other operating charges, ignoring that the assessee has not filed any evidence even before CIT(A), in support of claim of such expenses."*

ITA No. 113/Ind/2023 – Shri Ajit Jain:

"1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 1,33,15,863/- out of addition of Rs 1,49,17,500/- made on account of disclosure of additional income by the assessee during survey u/s 133A of the Income tax Act, 1961, ignoring the fact that the assessee has made a voluntary disclosure of additional income on account of on-money received from customers?*

2. *Whether on the facts and circumstances of the case and in law, Ld. CIT(A) was justified in accepting the version of the assessee that several bookings were cancelled and the assessee had refunded the corresponding booking amounts, ignoring the fact that the assessee had failed to establish his claim of refund of booking advances to customers during the assessment proceedings?*

3 *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in allowing additional expenses of Rs 100/-per sq. ft on account of finance cost, administrative expenses and other operating charges, ignoring that the assessee has not filed any evidence even before CIT(A), in support of claim of such expenses."*

4. The background facts leading to these appeals are such that the assessees 'Shri Jitendra Singh Rathore' and 'Shri Ajit Jain' were jointly engaged in developing a real estate project at 'Anumesh Nagar', district – Dhaar (MP). A survey u/s 133A of the Act was conducted by Income-tax Department on 26.10.2017. During survey, incriminating material/register marked as 'BI-1' was found and the statements of assessee 'Shri Ajit Jain' were also recorded. Copy of statements is filed at Pages 29-35 of Paper-Book. In his statements, 'Shri Ajit Jain' admitted total undisclosed income of Rs. 2,98,35,000/- having been earned by him and his partner 'Shri Jitendra Singh Rathore' [each having 50% share amounting to Rs. 1,49,17,500/-]

from sale of plots in aforesaid project. 'Shri Ajit Jain' also agreed that the undisclosed income shall be separately offered and tax shall be paid thereon by him and his partner 'Shri Jitendra Singh Rathore' and that his partner 'Shri Jitendra Singh Rathore' has given consent. Thereafter, the cases of both assesseees were subjected to compulsory scrutiny on account of survey. During scrutiny proceedings, on perusal of returns, the AO found that the assesseees have not offered the undisclosed income admitted during survey. The AO queried the assesseees to explain the reason of not offering additional income in returns. The assesseees filed replies as also Retraction to Statements. But the AO was not convinced with assesseees' submissions who ultimately passed respective assessment-orders of both assesseees making an addition of Rs. 1,49,17,500/- in the hands of each assessee. Aggrieved, both assesseees went in first-appeals to CIT(A) and succeeded partly to a large extent. Now, the revenue is aggrieved by the impugned orders of first-appeal passed by CIT(A) and has come in these appeals.

5. Ld. AR for assesseees at the outset submitted that the facts of both appeals are same. Therefore, he has chosen to make submissions from the case record of *ITA No. 112/Ind/2023* in the case of '*Shri Jitendra Singh Rathore*' while agreeing that the adjudication made therein shall apply to both appeals. Ld. DR for revenue is not against such submission of Ld. AR. Accordingly, in subsequent discussions, we shall be adjudicating the facts/issue in case of *ITA No. 112/Ind/2023* and the same adjudication shall also apply *mutatis mutandis* to other *ITA No. 113/Ind/2023*.

6. We have accordingly heard the learned Representatives of both sides with reference to the case record of ITA No. 112/Ind/2023. It emerged from deliberations of both sides and on perusal of documents held on record that the undisclosed income of Rs. 2,98,35,000/- was surrendered by 'Shri Ajit Jain' in reply to Q.No. 6 & 7 of Statements by admitting sale of a total area of 70,200 square feet of plots at a profit of Rs. 425/- per square feet [sale price of Rs. 750/- per square feet (-) cost of Rs. 325/- per square feet]. However, during first-appeal, the CIT(A) has accepted that the sale of 1,900 square feet was made in subsequent AY 2022-23 and there was a cancellation of sale of 49,900 square feet resulting in refund to customers. Accordingly, the CIT(A) accepted effective sale of 18,400 square feet [70,200 (-) 1,900 (-) 49,900]. Further, the CIT(A) also allowed additional cost of Rs. 100/- per square feet having been incurred by assessee on account of finance expenses, administrative expenses and other expenses and thereby accepted effective rate of profit at Rs. 325/- [Rs. 425 (-) Rs. 100]. Ultimately, the CIT(A) granted relief of Rs. 1,33,15,863/- to assessee as under:

*"3.2.6 Hence, it is evident that appellant alongwith his associate has only sold land admeasuring 18400 sq. ft. Therefore, the share of appellant in total land comes at 9200 Sq.Ft. Thus, the actual profit of appellant on sale of his share is worked out to Rs. 29,90,000/- [9200*325/- per Sq. Ft.]. The appellant has offered profit of Rs. 13,88,363/-. Therefore, the appellant would get relief of Rs. 1,33,15,863/- and addition of Rs. 16,01,637/- (Rs. 29,90,000 - Rs. 13,88,363) is confirmed."*

7. Ld. AR made a detailed submission justifying the order passed by Ld. CIT(A). He argued that the CIT(A) has, based on documents of assessee, rightly accepted cancellation of bookings and arrived at a correct conclusion

that the effective sale was only 18,400 square feet. Further, the CIT(A) has rightly given benefit of additional cost of Rs. 100/- after due consideration.

8. Per contra, Ld. DR strongly supported the order of AO. He drew our attention to Para No. 4.3 of AO's order reading as under:

"4.3 In view of the above it is clear that the Shri Ajit Jain has given statement in peaceful mind after knowing the facts. Thus, retraction of assessee is not acceptable. Further in reply of the assessee, it is submitted that "In respect to above the total plot area booked 70200 Sq. ft. booking of 51800 sq ft has been cancelled by the parties and the amount received in respect of the same has been refunded to them, further we booked sale for 18400 sq. ft. (9200 sq ft being 50% for the assessee's share) as per actual which were registered in the year under consideration, and accounted the same while furnishing our income tax return".

The above contention of the assessee is also not acceptable because after giving sufficient opportunity & laps of too much times, the assessee didn't submitted any evidences of cancellation of Plots and supporting documents regarding refunded to them. Thus, the assessee is misguiding the department and the undisclosed income accepted during survey on account of on-money received, after considering the land & development cost is duly justified."

[Emphasis supplied]

9. Referring to above para of assessment-order, Ld. DR contended that the AO has categorically mentioned that the assessee did not submit any evidence of cancellation of plots and supporting documents regarding refunds made to customers. So far as the additional cost of Rs. 100/- allowed by CIT(A) is concerned, Ld. DR submitted that the CIT(A) has allowed the same on 'reasonability basis' without having any iota of evidence from assessee's side. Therefore, the assessment-order passed by AO is very much correct and CIT(A) is wrong in giving substantial relief to assessee. Ld. DR prayed to uphold the AO's order.

10. In reply, Ld. AR drew us to Paper-Book Page 49 where a screenshot of an email sent by assessee to INDORE.DCIT.CEN2@incometax.gov.in on Fri, June 25, 2021, 14:49 (i.e. 25.06.2021) is filed. The reply dated 25.06.2021 claimed to have been filed through this e-mail is also filed at Paper-Book Pages 50-86. Referring to these pages, Ld. AR submitted that the assessee e-mailed his detailed reply dated 25.06.2021 alongwith supporting evidences of cancellation of bookings by customers in the shape of notarized Affidavits, PAN cards and Aadhar Cards of customers, to the office of AO but the AO has not considered the same in framing assessment. Ld. AR went ahead to submit that the AO passed assessment-order dated 25.06.2021 which is the very same date as the aforesaid e-mail/reply dated 25.06.2021 sent by assessee to AO but the assessment-order is digitally signed by AO on 29.06.2021.

11. We have considered rival submissions of both sides and carefully perused the documents held on record including the orders of lower-authorities. Admittedly, there was an admission of undisclosed income during survey u/s 133A but the same was not offered in the return of income filed by assessee. The total undisclosed income admitted was Rs. 2,98,35,000/- based on 70,200 square feet of plots sold at a profit of Rs. 425/- per square feet. There were two assessees who jointly earned this income and 50% share of each assessee amounting to Rs. 1,49,17,500/- was surrendered during search. During assessment-proceedings, the asesees filed a reply as well as Retraction to statements. It was a submission of

assessee that out of total area of 70,200 square feet, the bookings of 51,800 square feet was cancelled and the actual sale was only 18,400 square feet. Then AO did not accept this submission of assessee by making a categorical observation that no evidence of cancellation of bookings and no supporting document of refund was submitted. The CIT(A) however accepted the claim of cancellation of bookings. Ld. DR for revenue has strongly contended that the AO has made a clear-cut noting that no evidence was filed before him qua the cancellation of bookings and refunds to customers. However, the assessee is claiming to have filed reply including documentary evidences to the office of AO through an email dated 25.06.2021. It is a claim of assessee that the AO is wrong in not considering assessee's reply. During hearing, when we asked Ld. AR as to why the reply of assessee was e-mailed to the office of AO when the e-filing system on designated portal of Income-tax Department was already in vogue? In reply, Ld. AR narrated that the AO issued notice dated 30.03.2021 requiring the assessee to file reply by 05.04.2021 and the window for e-filing portal was closed thereafter, hence the assessee had to e-mail documents on 25.06.2021. At the same time, Ld. AR expressed that a part reply dated 23.04.2021 was filed to AO but the supporting documents were not filed with that reply. This submission made by Ld. AR is a clear pointer to show that the assessee has not filed evidences to AO within the time specified by AO in notice dated 30.03.2021 u/s 142(1) and subsequently the assessee has chosen the route of sending documents through e-mail on 25.06.2021 which is exactly the same date on which the

AO passed assessment-order (25.06.2021) or at the feg end even if the date of digital signing (29.06.2021) by AO is considered. Therefore, in such a situation, the AO has made this observation *"The above contention of the assessee is also not acceptable because after giving sufficient opportunity & laps of too much times, the assessee did not submitted any evidences of cancellation of Plots and supporting documents regarding refunded to them."* Further, when it was a case of Central Circle on account of survey, the assessee could have filed his reply physically to the office of AO but the same was also not done. The assessee claims to have filed documents through e-mail but the fact remains that the AO was unable to examine the documents of assessee. Needless to mention that the documents of assessee are such that substantial verification is involved. During first-appeal, the CIT(A) has accepted the assessee's version of cancellation of bookings against clear-cut adverse finding made by AO that no evidence was filed by assessee before him. The CIT(A) has taken no pain to seek remand-report from AO or invite comments of AO *qua* the documents before giving benefit of cancellation of bookings. Furthermore, the CIT(A) has allowed deduction of additional cost of Rs. 100/- on 'reasonability basis' without any evidence. In such a situation, we are unable to support the order passed by CIT(A). On a careful consideration, we find it most appropriate to remand these matters to the file of AO to enable the AO to consider the reply dated 25.06.2021 being claimed to have been e-mailed by assessee and make a fresh adjudication. It is made clear that the AO shall give necessary opportunities

of hearing to assessee and pass a proper order after taking into consideration the assessee's reply dated 25.06.2021 and any other submission as the assessee may choose to file before AO. The assessee is also directed to ensure participation before AO without seeking unnecessary adjournments failing with the AO shall be at liberty to pass an appropriate order in accordance with law. Since we have remanded these matters to AO for adjudication afresh, other pleadings made by both sides are not required to be mentioned.

12. Resultantly, both of these appeals are allowed for statistical purpose.

Order pronounced in open court on 13/05/2025

Sd/-
(PARESH M. JOSHI)
JUDICIAL MEMBER

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

Indore

दिनांक/ Dated : 13/05/2025

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore