

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.35/Ind/2020
Assessment Year:2012-13

Akhil Kumar C-1/110, Area Colony, Bhopal	<u>बनाम/</u> Vs.	ITO (IT & TP) Bhopal
(Assessee/Appellant)		(Revenue/Respondent)
PAN: BAQPK6099G		
Assessee by	Shri Vinod Joshi, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	01.05.2025	
Date of Pronouncement	05.05.2025	

आदेश / O R D E R

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

Feeling aggrieved by order of first appeal dated 31.10.2019 passed by learned Commissioner of Income-Tax (Appeals)-13, Ahmedabad ["CIT(A)"] which in turn arises out of assessment-order dated 21.12.2016 passed by learned ITO (IT & TP), Bhopal ["AO"] u/s 143(3)/147 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2012-13, the assessee has filed this appeal on following grounds:

"1. That the Impugned Appeal Order is bad in law in as much as there is no material on record as to show that the Appellant Assessee has in fact paid any 'on money' for the purchase of the house.

2. That the Impugned Appellate Order is further bad in law as the Assessing Officer acted in total violation of the principles of natural justice and the Hon'ble CIT (A) upheld the action of the Learned Assessing Officer by not allowing opportunity to cross examine the persons who have allegedly made a statement that the Appellant Assessee has paid 'on money' amounting to Rs. 14.00 lacs for purchase of the property nor did the Assessing Officer provide the copy of the said statement or documents to the in assessment proceedings. The Impugned Assessment Order being passed based on proceedings conducted against the principles of natural justice and fair play deserves to be quashed.

3. That on the facts and in the circumstances of the case, the impugned order passed by the learned AO is contrary to law, materially incorrect and unsustainable in law as well as on facts. The findings and conclusions of the learned AO are also contrary to the material on record while being opposed to the facts, equity and law.

4. The Appellant prays leave to add further or additional grounds in case the same have inadvertently been omitted here."

2. This is a re-called matter. Originally, this appeal was dismissed by ITAT, Indore bench vide order dated 29.07.2021 for the reason that the assessee had opted for Vivad Se Vishwas Scheme, 2020 ["VsV"] with a liberty to assessee that if the assessee's application under VsV is rejected by department for any reason, the assessee shall be entitled to file M/A for re-calling of ITAT's order. Subsequently, the assessee filed M/A No. 47/Ind/2024 claiming that its application under VsV had been rejected by department. Vide order dated 09.09.2024, the ITAT, Indore bench allowed assessee's M/A and restored the original appeal of assessee. Accordingly, this appeal has come up before us for hearing.

3. The background facts leading to present appeal are such that the assessee-individual was a Non-Resident Indian (NRI) during the relevant

year. For AY 2012-13 under consideration, the assessee filed return declaring a total income of Rs. 1,71,243/-. The AO, on the basis of a document "BI-17" impounded by department from premise of one Shri Dilip Gupta (director of marketing agency of Amrit Homes Group, Bhopal), reflecting that the assessee had purchased a residential house for Rs. 3,00,00,000/- and paid part consideration of Rs. 14,00,000/- (out of total consideration of Rs. 3,00,00,000/-) in cash on 15.03.2012 to Amrit Homes, formed a belief that the income to the tune of Rs. 14,00,000/- chargeable to tax has escaped assessment within the meaning of section 147. Accordingly, the AO initiated proceedings to re-open assessee's case u/s 147 through notice dated 07.09.2015 u/s 148 which ultimately culminated into passing of assessment-order dated 21.12.2016 at a total income of Rs. 15,75,740/- after making two additions, namely (i) addition of Rs. 14,00,000/- u/s 69 on account of unexplained investment, and (ii) addition of Rs. 4,500/- on account of interest on FDR not disclosed in return. Aggrieved, by first addition of Rs. 14,00,000/-, the assessee carried matter in first-appeal before CIT(A) but did not get any success. Now, the assessee has come in next appeal before us.

4. Having heard learned Representatives of both sides and carefully perusing the proceedings conducted by lower authorities, we find that the AO has made impugned addition of Rs. 14,00,000/- u/s 69 on account of unexplained investment on the basis of (i) the notings found in 'BI-14' claimed to have been found and impounded during survey u/s 133A upon

Shri Dileep Gupta and (ii) the statement of Shri Dilip Gupta recorded u/s 131 on 19.12.2016. However, the AO has neither provided both of these documents to assessee nor allowed cross-examination of Shri Dilip Gupta to assessee despite a specific request made by assessee vide letter dated 16.12.2016 in following words (Copy of assessee's letter at Page No. 24-25 of Paper-Book):

"In absence of any documentary statement on record, it is utmost necessary that the assessee be provided with a certified copy of the document which would go to prove that the assessee has made any payment as alleged. Further a copy of the statement recorded in respect of that document in the case of the person in whose possession the-said document has been found. The assessee further requests for being provided with an opportunity to cross examine the said person, in the interest of justice, as to ascertain the circumstances which have led the said person to make a statement which has the effect of making an allegation against the assessee."

5. When the Ld. DR for revenue was questioned to address above infirmity in the action of AO, he left the matter to the wisdom of bench without making any rebuttal. Therefore, by not providing documents to assessee and not providing opportunity of cross-examination, there are violation of fundamental principles of 'natural justice' and 'audi alteram partem'. Hence, in the situation, we are left with no option except to remand this matter to the file of AO afresh. The AO shall provide documents required by assessee and also provide opportunity of cross-examination of Shri Dileep Gupta and thereafter taking into account the submissions of assessee, decide issue afresh. The assessee is also directed to make an

effective participation before AO failing which the AO shall be at liberty to pass order in accordance with law.

6. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in open court on 05/05/2025

Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 05/05/2025

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