

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JABALPUR BENCH, JABALPUR  
BEFORE SH. KUL BHARAT, VICE PRESIDENT  
AND  
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA Nos.15 & 16/JAB/2024  
A.Ys. 2012-13 & 2013-14

Gomesh Dwivedi, Ward No.3, Durga Nagar Padra Huzur Rewa, M.P.	vs.	Income Tax Officer, Rewa, M.P.
<b>PAN:AKCPD5536A</b>		
(Appellant)		(Respondent)

Assessee by:	Sh. Abhijeet Shrivastava, Advocate
Revenue by:	Sh. N.M. Prasad, Sr. DR
Date of hearing:	17.09.2025
Date of pronouncement:	19.09.2025

**ORDER**

**PER NIKHIL CHOUDHARY, A.M.**

These two appeals have been filed by the assessee against the separate orders of the ld. CIT(A), NFAC under section 250 of the Income Tax Act, 1961 passed on 13.12.2023 and 22.01.2024, dismissing the appeals of the assessee against the orders of the ld. AO passed under section 147 r.w.s. 144 for the A.Ys. 2012-13 and 2013-14.

The grounds of appeal in these two cases are as under:-

**ITA No.-15/JAB/2024**

*"1. That on the facts and in the circumstances of the case and in law, the findings of learned Commissioner of Income Tax (A), NFAC -DELHI are bad and opposed to facts, equity and law and are, therefore, unsustainable in law.*

*2. For that in the facts and circumstances of the case, the Commissioner of Income Tax (A), NFAC- Delhi, erred in violating the principles of natural justice by not providing opportunity for virtual hearing and hence, the action*

*of the Commissioner of Income -Tax (A), NFAC - DELHI was entirely unreasonable, uncalled for and bad in law.*

*3. That on the facts and in the circumstances of the case and in law, the learned A.O. as well as Commissioner of Income Tax (A), NFAC -DELHI erred in making addition of Rs. 2521900/-on account of un-explained investment, without appropriate reasons and justification, hence the same should be deleted.*

*4. Because the Commissioner of Income Tax (A), NFAC -DELHI has passed order without considering the facts & submission, hence same should be quashed.*

*5. The appellant craves leave to add/alter any of the grounds of appeal before or at the time of hearing.*

**ITA No.- 16/JAB/2024**

*“1. That on the facts and in the circumstances of the case and in law, the findings of learned Commissioner of Income Tax (A), NFAC -DELHI are bad and opposed to facts, equity and law and are, therefore, unsustainable in law.*

*2. For that in the facts and circumstances of the case, the Commissioner of Income Tax (A), NFAC-Delhi, erred in violating the principles of natural justice by not providing opportunity for virtual hearing and hence, the action of the Commissioner of Income -Tax (A), NFAC - DELHI was entirely unreasonable, uncalled for and bad in law.*

*3. That on the facts and in the circumstances of the case and in law, the learned A.O. as well as Commissioner of Income Tax (A), NFAC -DELHI erred in making addition of Rs. 9376630/-on account of un-explained investment, without appropriate reasons and justification, hence the same should be deleted.*

*4. Because the Commissioner of Income Tax (A), NFAC -DELHI has passed order without considering the facts & submission, hence same should be quashed.*

*5. The appellant craves leave to add/alter any of the grounds of appeal before or at the time of hearing.”*

2. The facts of the case in A.Y. 2012-13 are that the Department came into possession of information that the assessee had purchased agricultural lands during

F.Y. 2011-12 but not shown this transaction in his ITR. Accordingly, proceedings under section 147 were initiated by issue of notice under section 148 on the grounds that the assessee had invested Rs.23,42,857/- in the part purchase of agricultural lands situated at Chourahata, Rewa alongwith Sh. Dileep Kumar Rajwani and five other persons. In response to the notice under section 148, the assessee filed a letter in which it was submitted, that he had already filed his ITR on 27.11.2012 and therefore, the proceedings should be stopped. He did not furnish any other details. Later, show cause notices were issued, asking him to explain the source of investment of Rs.23,42,857/- but no response was made by the assessee. Therefore, the ld. Assessing Officer decided to proceed with the assessment as per the provisions of section 144. He pointed out, that two agricultural lands amounting to 2.8777 Hectare and 2.419 Hectare situated at Chourahata, Rewa had been sold separately for Rs.90,00,000/- and Rs.74,00,000/- by Sh. Hira Lal Singh and his brother Sh. Pawan Singh on 23.12.2011, to seven persons, whose details were mentioned in the assessment order. The assessee was one of the persons so named. The details of payment amounting to Rs.1,64,00,000/- were also recorded in the assessment order. 1/7<sup>th</sup> of that i.e. Rs.23,42,857/- was held to be the investment made by the assessee. As the assessee did not furnish any response to any notice issued by the AO, a sum of Rs. 23,42,857/- was added back to the income of the assessee in the assessment year 2012-13.

3. Aggrieved with the said addition, the assessee went in appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee submitted, that the order under section 144 had been passed without considering the facts of the case. It was submitted that out of the payment of Rs.1,64,00,000/-, Sh. Dileep Kumar Rajwani had paid a sum of Rs.1,50,00,000/- through account payee cheques issued from Rewa Sidhi Gramin Bank where he had been maintaining the account no.8081959076 and the balance of Rs.14,00,000/- had been paid in cash by remaining co-owners. It was submitted that the assessee, Sh. Gomesh Dwivedi, had paid a sum of Rs.2,33,333/- in cash and his ownership of the land was therefore only 1.42%. Therefore, there was no reason to make an addition of Rs.23,42,857/- in his hands. Since the assessee had not made any compliance before the AO, he filed a petition under Rule 46A for submitting additional evidences which were the copies of the two purchase title deeds of the impugned agricultural lands and the copy of bank account of Sh. Dileep Kumar Rajwani at Rewa Sidhi Gramin Bank. He also asked for permission to file a copy of his bank account for the assessment year 2011-12, to demonstrate that he had only paid Rs.2,33,333/- on account of the purchase of the above agricultural land. The assessee relied upon the judgment of K.Venkataramiah vs. A. Seetharama Reddy & Ors, AIR 1963 AIR 1526 (SC), to argue that as the order had been passed ex parte, there was sufficient cause to justify the admission of additional evidences. The Id. CIT(A) forwarded the additional evidences filed by the assessee to the AO for a remand report. In the remand report, the Id. AO submitted that the assessee had not made

compliance during the course of assessment proceedings and therefore, the assessee's claim for submission of additional evidences under Rule 46A should be rejected. The ld. AO submitted that it was evident from a perusal of the materials on record that all seven purchasers / partners had equal shares / ownership on both the purchased properties and for the first time the assessee was submitting that he only enjoyed 1.42% rights on the property because he had only paid 1.42% of the entire purchase consideration. Therefore, he pointed out that the claim was nothing but an afterthought and moreover the cash withdrawn from the bank account, was withdrawn long after the purchase of the said properties. Furthermore, he pointed out that the assessee had only disclosed income of Rs.1,23,600/- for A.Y. 2011-12, Rs. 1,79,040/- for A.Y. 2012-13 and Rs.4,99,670/- for A.Y. 2013-14 and thus the income shown by the assessee was not commensurate to the bank account submitted by him, where almost Rs.27,00,000/- worth of deposits were noted. The ld. AO also pointed out that the assessee and Sh. Dileep Kumar Rajwani had received large amounts of cash in their bank accounts and had not furnished the source of these credits, in his bank account. The ld. CIT(A) found the logic of the AO for rejection of the additional evidence as *prima facie* acceptable, but in the interest of natural justice, he decided to forward a copy of the remand report to the assessee for his comments. However, the assessee did not furnish the rejoinder to the remand report, therefore, the ld. CIT(A) decided to proceed with the matter on the basis of materials on record and held that the sale deed obtained by the AO clearly revealed that each person had equal share

in the property; the bank account of Sh. Dileep Kumar Rajwani was used for the purchase and that the submission against equal ownership was against the facts that were recorded in the registered sale deed. Furthermore, Sh. Dileep Kumar Rajwani had never filed any income tax returns in the past hence the ld. AO was correct in holding that the assessee had an afterthought in saying that he only had 1.42% of the rights in the property. Therefore, the ld. CIT(A) thought it fit to dismiss the appeals of the assessee.

4. In the assessment year 2013-14, these same two immovable properties were sold by the assessee and his associates for Rs.2,92,53,000/- and Rs.3,47,90,000/-, respectively to Anantpur Grih Nirman Sahkari Samiti Maryadit, Rewa (M.P.) vide sale deed dated 18.04.2012. The ld. AO computed the 1/7<sup>th</sup> share of the assessee on those transactions to be Rs.91,49,000/-, but observed that the assessee had not disclosed any capital gain on the sale of the above property during the year under consideration. In the assessment proceedings, the assessee filed a copy of the computation of his income which he had filed alongwith his return of income for the A.Y. 2013-14 on 31.03.2014, wherein he had shown short term capital gain of Rs.2,72,039/-. During the course of assessment proceedings, the assessee was asked to show cause as to why capital gains in his hands should not be assessed at Rs.91,49,000/-. However, in response to the said letter, the assessee did not furnish copies of the purchase deeds, sale deeds or the details of land development expenses incurred in respect of the land sold by him. Therefore, in the absence of the same, the

ld. AO held that the capital gain shown in the original return of income could not be accepted. He, therefore, added back a sum of Rs. 88,76,961/- on this account.

5. Aggrieved with the said addition, the assessee went in appeal to the ld. CIT(A). Before the ld. CIT(A), it was submitted that the assessee only enjoyed a 1.42% interest in the said property on account of the facts that he had only invested Rs. 2,33,333/- out of the total purchase consideration of Rs. 1,64,00,000/- and, in fact, the amount of Rs.1,50,00,000/- in this purchase had been invested by Sh. Dileep Kumar Rajwani by account payee cheques from his account at Rewa Sidhi Gramin Bank. It was submitted that the assessee was not an equal partner in the said lands and therefore, could not be assessed to tax on a 1/7<sup>th</sup> share of the sale proceeds. Since the assessment had been completed under section 144, the assessee filed an application for submission of additional evidences under Rule 46A of the Income Tax Rules, in which he sought to submit a copy of the ITR, a copy of the two purchase deeds, copy of the sales deeds and the copy of the bank account. The ld. CIT(A) forwarded these additional evidences to the AO and called for a remand report. The AO submitted that since the assessee had been given ample opportunity during the course of assessment proceedings to file the details, there was no justification for accepting the additional evidences at this stage. On the merits of the matter, the ld. AO noted that, contrary to his submission made for the assessment year 2012-13, in this assessment year, the assessee had shown the cost of acquisition of his part of the land at Rs.7,76,251/- in the computation of income furnished by him. He had also

claimed land development expenses of Rs.16,51,710/-, the details of which were unknown and without documentary evidences. Thus there was no basis to the assessee's claim that he had invested only 1.4% of the entire purchase cost and received only 4.2% (i.e. Rs. 27,00,000/-) of the entire sales consideration of Rs.6,40,33,000/-. The ld. AO pointed out that the claim of the assessee did not seem to be genuine because the purchase deed dated 23.12.2011 showed that all the seven purchasers had equal ownership of the land and therefore, his plea was nothing but an afterthought to distort the facts. Looking at the bank account of the assessee, the AO pointed out that many of the credits in the said bank account were unexplained from the returns filed by the assessee in this year and in the previous years. It was also pointed out that Sh. Dileep Kumar Rajwani, who is stated to have paid Rs.1.5 Crores out of the total purchase cost of Rs.1.64 Crores, had never filed a return of income in the past. Thus, the genuineness of transaction could not be accepted. Furthermore, Sh. Dileep Kumar Rajwani had received huge amount in cash into his bank accounts prior to the issue of cheques. Thus, there was no reason to accept the submission of the assessee. The ld. CIT(A) was of the opinion that prima facie the submissions of the Assessing Officer seem to be correct but he forwarded the same to the assessee to make a rejoinder. The assessee did not avail of this opportunity to give a rejoinder and therefore, the ld. CIT(A) decided to proceed on the basis of the materials on record. He pointed out that the details had already been discussed by him in the appeal order for the A.Y. 2012-13. On the specific issues relating to this

appeal, he pointed out that the assessee had submitted LTCG claim calculations before the AO and claimed land development expenditure of Rs.16,15,710/- for which no evidence had been submitted; the fact of investment of only 1.41% had already been disproved during the assessment proceedings for the A.Y. 2012-13; Sh. Dileep Kumar Rajwani was a *benami* purchaser who had been used for the purchase and sale of some of the properties; the purchase and sale deeds indicated that the assessee enjoyed an equal share in the properties; the AO had critically examined the bank accounts of the assessee and recorded that the source of credit entries in his bank account were not explained; that Sh. Dileep Kumar Rajwani had never filed a return of income hence shifting the onus upon him was not acceptable and the assessee had not responded to the remand report. In view of all these factors, the Id. CIT(A) dismissed the appeal of the assessee in A.Y. 2013-14 also.

6. The assessee is aggrieved at these dismissals of his appeal by the Id. CIT(A). It was submitted that the matters had not been considered in their correct perspective. Sh. Abhijeet Shrivastava, Advocate (hereinafter referred to as the Id. AR) appearing on behalf of the assessee submitted that matters had not been considered in their correct perspective by the Id. AO or the Id. CIT(A). It was submitted that the assessee had filed a copy of the bank account of Sh. Dileep Kumar Rajwani and also filed the details of the payment made for the purchase of the land from such bank account. Thus, the payments made by Sh. Dileep Kumar Rajwani towards the purchase of the lands in F.Y. 2011-12 had been proved. Despite this, the Id. AO had refused to accept

the fact that the assessee had only contributed 1.42% of the total purchase price and held him to be an equal owner on the strength of the recordings in the purchase and the sales deed. It was submitted that the facts of payments made by Sh. Dileep Kumar Rajwani had not been disproved by the Id. AO and therefore, the Id. CIT(A), without examining Sh. Dileep Kumar Rajwani, and without understanding why returns of income had not been filed by him, was not justified in using this as an excuse to hold that the assessee had been making payments for the purchase of the land using the account of Sh. Dileep Kumar Rajwani. It was submitted that if that were so, even the cash payments would have been made through Sh. Dileep Kumar Rajwani. It was, therefore, submitted that there was no justification in making additions towards the purchase of the land or assuming that the assessee had received sale consideration more than what his share in the land was. Accordingly, it was prayed that the additions made may be deleted.

7. On the other hand, Sh. N.M. Prasad, Sr. DR (hereinafter referred to as the Id. Sr. DR) pointed out that the ownership over the land was indicated by the purchase and the sales deeds and both of them made out the fact that the assessee was an equal owner of the land. Therefore, it was natural to assume that he had made an equal amount of investment as any other partner or earned an equal amount of capital gains as any other associate, upon the sale of the lands. He, therefore, prayed that the addition sustained by the Id. CIT(A) should not be disturbed and may be confirmed.

8. We have duly considered the facts and circumstances of the case. We noticed that the fact of payment of Rs.1.5Crores through the account of Sh. Dileep Kumar Rajwani has not been disputed at any stage. However, the explanation of Sh. Dileep Kumar Rajwani has never been sought to explain the sources of the income that he used for the purchase of the property or the extent of profits that he enjoyed upon the sale of the property. Rather it has been assumed that the account of Sh. Dileep Kumar Rajwani was used as a *benami* account for making the payments by various assesses, on the strength of the fact that the sale deed does not indicate the shares of the respective parties and that large cash deposits have been made into the account of Sh. Dileep Kumar Rajwani, before the payment of the amounts made for the purchase of the land. It is also observed that the Id. CIT(A) and the Id. AO have pointed out, that Sh. Dileep Kumar Rajwani was not a regular taxpayer. Therefore, we are unable to understand, as to how the Id. AO and Id. CIT(A) could proceed against the assessee without first confronting these facts to Sh. Dileep Kumar Rajwani and recording his explanation on the matter. The payments having emanated out of the account of Sh. Dileep Kumar Rajwani, it is he who must explain the sources of such payments and his share in the property and also the share of the profits on the sale of the property. Further, it is, Sh. Dileep Kumar Rajwani who may explain as to why he had not filed returns despite having purportedly made an investment of Rs. 1.5 Crores and earned capital gains on his share of those properties. Without disproving the credentials of Sh. Dileep Kumar Rajwani, the addition against the assessee is not

possible. Therefore, in the interest of justice to both parties, we restore these matters to the file of the Id. AO so that he may make further enquiries from Sh. Dileep Kumar Rajwani, in order to determine the source of the consideration for the purchase of the land and the extent of profits earned by him and the assessee on the sale of the land. As all matters stand restored to the file of the Id. AO for *de novo* consideration, both the appeals are held to be allowed for statistical purposes.

9. In the result, ITA Nos. 15 & 16/JAB/2024 are held to be allowed for statistical purposes.

Order pronounced in the Open Court on 19/09/2025.

***Sd/-***  
**[KUL BHARAT]**  
**VICE PRESIDENT**

DATED: 19/09/2025  
Sh

***Sd/-***  
**[NIKHIL CHOUDHARY]**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR, ITAT,
4. CIT,
5. The CIT(A)

By order  
Sr. P.S.