

आयकर अपीलिय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL

INDORE BENCH, INDORE

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

AND

SHRI MANISH BORAD, ACCOUNTANT MEMBER

VIRTUAL HEARING

ITA No.130/Ind/2020
Assessment Years: 2013-14

Smt. Manorama Singhal

Indore

: Appellant

PAN: AHCPS6665G

V/s

ITO-3(2)

Indore

: Respondent

Appellant by	Shri Pankaj Shah, AR
Revenue by	Shri P.K. Singhi, Sr. DR
Date of Hearing	29.07.2021
Date of Pronouncement	21.09.2021

ORDER

PER MANISH BORAD, A.M

The above captioned appeal filed at the instance of the assessee for Assessment Year 2013-14 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-I (in short

[Ld. CIT], Indore dated 05.01.2020 which is arising out of the order u/s 147 r.w.s. 143(3) of the Income Tax Act 1961 (In short the 'Act') dated 19.12.2018, framed by ITO -3(2) Indore.

2. Brief facts of the case as culled out from the records are that the assessee is an individual earning income from house property and other sources. Return of income for A.Y. 2013-14 filed on 30.07.2013 declaring income of Rs.8,80,350/-. Notice u/s 148 of the Act was issued on 22.09.2017, based on the information received on the basis of search conducted u/s 132 of the Act on 21.09.2012 at Garha Group and Apollo Group, Indore, alleging that 'on-money' of Rs. 36,46,175/- paid by assessee in cash for purchasing a plot of land from M/s Rani Agro Pvt. Ltd. In reply to notice u/s 148 of the Act return of income was filed on 01.09.2018 declaring same income of Rs.8,80,350/- as declared in the original return.

3. During the assessment proceeding carried out after issuance of notices u/s 143(2) & 142(1) of the Act assessee stated that no 'on-money' has been paid and the plot of land was purchased from M/s. Rani Agro Pvt. Ltd. on 03.12.2012 for consideration of Rs.40,00,000/- after payment of stamp duty of Rs.2,50,000/-

. Ld. AO however was not convinced and based upon the seized documents found in the case of Garha Group and Apollo Group made addition of Rs.36,46,175/- in the hands of assessee, assessing income at Rs.45,26,530/-.

4. Aggrieved assessee preferred an appeal before the ld. CIT(A) challenging the validity of reassessment proceedings as well as the challenging the addition made for the alleged 'on-money'. Ld. CIT(A) however find no merit in the contentions made by the assessee and confirmed the finding of ld. CIT(A).

5. Now assessee is in appeal before the Tribunal raising following grounds:

1. On the facts and circumstances of the case and in law the learned Commissioner of Income tax (Appeals)-I ("CIT(A)") erred in confirming the action of Assessing Officer in reopening the case and making reassessment under Section 147 of the Act which is prayed to be quashed and held as unwarranted, illegal and bad-in law.

2. On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming the act of AO in assuming jurisdiction under Section 148 of the Act and failed to appreciate that the reasons state that income has escaped assessment based on incriminating material found in search proceedings at the premises of seller of property and thus the proceedings ought to have been invoked under Section 153C of the Act. Accordingly the Appellant prays that the order be held invalid and directed to be quashed.

3. On the facts and circumstances of the case and in law the learned CIT(A) erred in not holding the action of AO as invalid in not providing the third party external information based on which the case has been reopened. Accordingly the Appellant prays that the basis on which exercise has been carried out is in violation of principles of natural justice the assessment be held to be invalid and directed to be quashed.

4. On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming the action of AO in not

providing the opportunity to cross examine the persons who have allegedly stated to have received on money from the Appellant, inspite of specific request for it. Accordingly reliance placed on third party external information without affording opportunity of cross examination makes the assessment invalid in violation of principles of natural justice and renders the assessment be held to be invalid.

5. On the facts and circumstances of the case and in the law the learned CIT(A) erred in confirming the addition on account of alleged unexplained investment under Section 69 of the Act amounting to RS.3646175 based on dumb documents without any cogent evidences and following principles of natural justice. Accordingly, the Appellant prays that the said addition be deleted.

6. On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming the action of Assessing Officer determining total income at Rs.4526530/as against declared income of Rs. 880350/-, which is bad in law and excessive.

7. The Appellant craves leave to add to, alter and/or amend all or any of the foregoing grounds of appeal.

6. Ld. counsel for the assessee reiterated the submission made before the Ld. CIT(A) placed at pages 1 to 9 of the paper book and also referred to the written submissions placed at pages 1 to 11. Reliance was placed on following decisions:

- i. C. Vasantlal and Co. 45 ITR 206 (SC)
- ii. Kishan Chand Chellaram vs. CIT (125 ITR 713)
- iii. CIT, Central Jaipur vs. Smt. Sunita Dhadha
- iv. M/s. Andaman Timber Industries v. Commissioner of Central Excise 92015) 281 CTR 241(SC)

7. Per contra Ld. DR vehemently argued supporting the finding of both lower authorities.

8. We have heard rival contentions and perused the records placed before us. As regards ground No.1 to 3 challenging the validity of the reassessment proceedings we find that there was

specific information received by the ld.AO on the basis of search conducted in some other cases. The seized documents revealed the details of assessee having transacted with the searched parties and the same formed the basis for issuance of notice u/s 148 of the Act.

9. Under these given facts, we are of the view that Ld. CIT(A) has rightly dismissed the assessee's legal ground challenging the validity of assessment proceedings u/s 147 of the Act holding that the notice u/s 148 of the Act has been rightly issued. The relevant portion of the Ld. CIT(A) is mentioned below:-

“3. Ground nos.1 to 6: All these grounds of appeal have been raised against the addition of Rs.36,46,175/- on account of on-money paid on account of unexplained investment for purchase plot no.14/1, New Palasia, Indore. A search and seizure action u/s 132 of the Income Tax Act, 1961 was carried out at the business premises of Garha Group of Indore along with Apollo Group, Indore on 21.09.2012. During the course of search action, several incrementing documents have been found and seized. As per information, M/s Rani Agro pvt. Ltd. had undertaken a project in the name of “Gold Green” and Gold Link” during the period from F.Y. 2009-10. It was a joint venture project with Apollo Group in the ratio of 60% to M/s Rani Agro Pvt. Ltd. and 40% to the Apollo Group, Indore. During the course of search proceedings, it was established that M/s. Rani Agro Pvt. Ltd. and Apollo Group have accepted on money from the persons who have purchase plots. It has been sought to my notice that the Garha Group of Indore had filed petition for settlement before the settlement Commission. In the Excel Sheet filed along with application

to settlement Commission, the name of the appellant was mentioned as one who had paid on money in purchase of plot. Therefore, on the basis of admission of Garha Group of Indore and Apollo Group, it has to be concluded that appellant has paid the on-money which is also based on various incriminating documents found during the course of search. Therefore, the Assessing Officer proceeded to re-open the case under section 147 of the IT Act on the basis of various incriminating documents and statement filed by Graha Group before the Settlement Commission admitting the on-money received from various person including the appellant under consideration. The notice u/s 148 of the IT Act 1961 after due approval by Pr. CIT, Indore. I don't find any infirmity in issue of notice for reopening the case. The Assessing Officer has not been debarred by law to issue notice u/s 148 even if the case of appellant fell within the ambit of section 153C of the IT Act. Rather in this case, the reopening has been found made only after the Grah Group filed the statement before the Statement Commission admitting on money. Therefore, the reopening has been found as per law. The ground on this point are dismissed.

10. We, therefore, under the given facts and circumstances of the case, are of the considered view that Ld. CIT(A) has rightly dismissed the assessee's legal ground challenging the validity of assessment proceedings. We, thus, set aside the finding of Ld. CIT(A) and dismiss the legal ground challenging the validity of assessment proceedings. Thus, Ground nos. 1 to 3 raised by the assessee are dismissed.

11. As regards the legal ground raised in ground no.4 challenging the addition having been made without providing

the opportunity of cross examination of the search parties to the assessee before making impugned addition. We find that the addition made by the Ld. Assessing Officer is solely based on the seized material found from the Garha Group & Apollo Group. The registered documents for the purchase of plot of land shows that the consideration is not less than the guidelines rate and both buyer and seller have agreed to this consideration. Assessee has sought opportunity for cross examination of the searched person, during the proceedings before the Ld. CIT(A) and the same was ignored.

12. We, observe that such action of the Ld. Assessing Officer of making addition in the hands of assessee based on 3rd party statement/evidence cannot withstand unless proper opportunity of cross examination is provided to the assessee. For this proposition we find support from the judgment of Hon'ble Apex Court in the case of *M/s Andaman Timber Industries Vs. CCE (supra)* wherein Hon'ble Court held as under:

Not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the

statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.

Appellant has contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the adjudicating authority simply relied upon the priced list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the priced list itself could be the subject matter of cross-examination. Therefore, it was not for the adjudicating authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. Para7

If the testimony of these two witness is discredited, there was no material with the department of the basis of which it could justify its action as the statement of the aforesaid two witnesses was the only basis of issuing the show cause notice. Para8

Conclusion:

Not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice”

13. Similar view was also taken by Hon’ble High Court of Rajasthan in the case of *CIT vs. Sunita Dhadda (supra)* wherein Hon’ble Court has considered the judgment of Hon’ble

Supreme Court in the case of *M/s Andaman timber Industries vs. CCE (supra)* and confirmed the view taken by the Tribunal holding that *“if the assessee is not provided any opportunity to cross examine the person who stated to have received ‘on-money’ is a violation of principles of natural justice. We, thus called for the deletion of addition so made by the Ld. Assessing Officer”*.

14. We, therefore, under the given facts and circumstances of the case, respectfully following the decisions referred hereinabove, are of the considered view in the instant case also assessee has not been provided any opportunity of cross examination of the parties who have stated to have received ‘on-money’ from sale of land. We, thus, set aside the finding of Ld. CIT(A) and delete the addition of Rs.36,46,175/- and allow ground no.4 raised by the assessee. Ground No.5 & 6 raised by the assessee becomes merely academic in nature as we have already deleted the addition allowing ground no.4 of the assessee. Ground no.7 is general in nature which needs no adjudication.

15. In the result, assessee's appeal in ITANo.130/Ind/2020 is partly allowed.

The order pronounced as per Rule 34 of ITAT Rules, 1963 on 21.09.2021.

Sd/-

(C.M. Garg)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 21.09. 2021

Patel/PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/
DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore