

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH (SMC), JODHPUR**

**BEFORE SHRI N.K. SAINI, VICE PRESIDENT**

**ITA No. 276/Jodh/2018**  
**(ASSESSMENT YEAR-2009-10)**

Shri Bhoorsingh Chimansingh Rajpurphit, B-98, Saraswati Nagar, Basni Ist Phase, Bhagat Ki Kothi, Jodhpur-342005	Vs	The ITO, Ward - Barmer
<b>(Appellant)</b>		<b>(Respondent)</b>
PAN: ACTPR7945Q		

<b>Revenue By</b>	Sh. P.K. Singi, DR
<b>Assessee By</b>	Shri Sunil Tolati, CA

**ITA No. 418/Jodh/2018**  
**(ASSESSMENT YEAR-2009-10)**

Shri Bhikam Chand Jain Imartiya Bera, Poata C Road, Jodhpur	Vs	The ITO, Ward-1(2) Jodhpur
<b>(Appellant)</b>		<b>(Respondent)</b>
PAN: ADCPJ8179Q		

**ITA No. 483/Jodh/2018**  
**(ASSESSMENT YEAR-2009-10)**

Shri Pardeep Kumar Charan, Village Post Panchetiya, Marwar Junction, Distt. Pali	Vs	The ITO, Ward-3 Pali
<b>(Appellant)</b>		<b>(Respondent)</b>
PAN: ADCPJ8179Q		

**ITA No. 471/Jodh/2018**  
(ASSESSMENT YEAR-2009-10)

Smt. Pushpa Panwar, Pushpa Kunj, Fulad Road, Sojat Road, District Pali	Vs	The ITO, Ward-3 Pali
<b>(Appellant)</b>		<b>(Respondent)</b>
PAN: ABHPP8811G		

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**ITA No. 470/Jodh/2018**  
(ASSESSMENT YEAR-2009-10)

Shri Inda Ram Meghwansi, 18/566, Chopsni Housing Board, Jodhpur	Vs	The ITO, Ward-1 Pali
<b>(Appellant)</b>		<b>(Respondent)</b>
PAN: AAWPM5904B		

<b>Revenue By</b>	Sh. P.K. Singi, DR
<b>Assessee By</b>	Shri Amit Kothari CA
<b>Date of hearing</b>	07.05.2019
<b>Date of Pronouncement</b>	09.05.2019

**ORDER**

These appeals by the different assessees are directed against the order of CIT(A)-2, Jodhpur dated 7.3.2018 in the case of Shri Bhoorsingh Chimansingh Rajpurohit and the orders of the CIT(A)-1, Jodhpur dated

30.7.2018 in the case of Shri Bhikam Chand Jain and other orders each dated 27.8.2018 in respect of all other assessees.

2. Since the issues involved are common and the appeals were heard together so these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. At the first instance, I will deal with appeal in ITA No. 276/Jodh/2018.

Following grounds have been raised in this appeal:-

1. *That the Ld. CIT(A) has erred in law and on facts in confirming the action of AO that reopening of case by invoking the provisions Section 147 of the Act. It is submitted that while reopening of assessment u/s 147 is totally bad in law and void-ab-initio and thus the order passed by the Assessing Officer u/s 143(3) rws 147 deserves to be quashed and be set aside.*

2. *The Ld. CIT(A) has erred in confirming the addition made by AO of Rs 5,83,320/- on account of unexplained investment. It is submitted that the addition was made purely relying on third party statement namely Shri Madan Mohan Gupta without having any sound basis / independent findings on the part of Ld A.O. It is therefore submitted that the incorrect and illegal addition confirmed of Rs 5,83,320/- deserves to be deleted. The same be held now.*

3. *The Ld CIT(A) has erred in confirming the addition of Rs 5,83,320/- on basis of statement recorded of Shri Madan Mohan Gupta without providing copy of that statements recorded to the assessee and without providing opportunity of cross-examination. It is therefore submitted that the order passed by Ld AO is completely incorrect, illegal and unlawful and thus the entire addition made of Rs 5,83,320/- on account of unexplained investment kindly be deleted.*

4. *The Ld CIT(A) has erred in confirming the addition made of Rs. 5,83,320/- without appreciating facts and various evidence available on record including lease deed, payment receipt , possession letter etc. It is submitted that the order passed appears to be predetermined order without considering the materials and evidences provided and not providing the opportunity of cross examination of the person on which the Department relied upon is totally incorrect and illegal and the entire addition made on account of unexplained investment of Rs 5,83,320/- kindly be deleted.*

5. *The order passed by Ld. CIT(A) is bad in law and contrary to the provisions of law and facts to the extent of above grounds of appeal. It is submitted that the same be held so now.*

6. *Your appellant craves leave to add, alter and / or amend all or any of the grounds before final hearing.*

4. Ground No.1 was not pressed so it does not require any comment on my part.

5. All other grounds are co-related which relates to the sustenance of addition of Rs. 5,83,320/- made by the Assessing Officer on account of unexplained investment in the purchase of land on the basis of statement of one Shri Madan Mohan Gupta.

6. Facts of the case in brief are that the Assessing Officer on the basis of information available during the course of assessment proceedings observed that the assessee purchased one plot measuring 291.66 square yards in the residential project "Revenue Residency" (Nizi Khatedar Residential Scheme)

at village Bharatsingh, Jaisingpura - Muhana Road, Bhankrota Teh. Sanganer, Jaipur. The said scheme was developed and sold by Shri Madan Mohan Gupta in whose case search and seizure was carried out on 23.5.2013 and during the course of search his statement was recorded wherein he had accepted and honoured on-money receipt on sale of plots in Revenue Residency scheme which was Rs. 2000/- per sq. yard as per seized documents. The Assessing Officer made the addition of the said amount in the hands of the assessee.

7. Being aggrieved, the assessee carried the matter to the Ld. CIT(A) who sustained the addition by observing in para 4.1 of the impugned order as under:-

*"4.1. I find that a search and seizure operation u/s 132 of the Act was carried out in the case of Sh Madan Mohan Gupta and the statements of Shri Madan Mohan Gupta were recorded. The AO noted that in the statements recorded during the search operation and during the assessment proceeding, Shri Madan Mohan Gupta had accepted receipt of on-money on sale of plots of the scheme. The AO on the basis of assessee's name appearing in one of the documents seized during the course of search, inferred that the assessee had also paid on-money of Rs. 5,83,320/- to Shri Madan Mohan Gupta, the seller for purchase of plot No. 5, Revenue Residency (Nizi Khatedar Residential Scheme) at Village Peepla Bharat Singh, Bhankarota Jaipur during the year under consideration and failed to explain the source of the same. Accordingly, the AO made the addition of Rs. 5,83,320/- u/s. 69 treating it as unexplained investment. The appellant has vehemently contested this action of the AO by submitting that the AO merely on the basis of statement of third party and without giving proper opportunity of cross-examination held that the assessee had paid on-money*

*towards purchase of plot. It was claimed by the appellant that it had duly produced all the relevant evidences so as to discharge burden as laid down in sec. 69 of the Act. The appellant therefore, requested that the addition made by the AO may be directed to be deleted. Upon due consideration of facts and appellant's submissions, I am not inclined to agree with the appellant's contention that in the instant case, the addition was made merely on the basis of statement of third party. In fact, in the instant case, the AO on the basis of corroborative evidence in shape of seized documents (Annexure AS (Unique ACCOUNT Book Register) inferred that assessee had made investment outside books of accounts against the purchase of plot no. 5 in the residential project "Revenue Residency". These documents seized by the Investigation Wing, Jaipur were not simply piece of papers, in fact, they contained specific notings regarding sale/purchase of plots in "Revenue Residency", per square rate, and amount actually received. The appellant contended that no addition could be made on the basis of third party statement. However, I find no force in appellant's case. This third party was not unknown to the assessee, the assessee and Sh. Madan Mohan Gupta had executed the purchase/sale deed, documents which were seized specifically reflected assessee's name from whom Sh. Madan Mohan Gupta had accepted on-money on sale of plots of the scheme. In fact, there is plethora of decisions, ratio of which holds that statement of third Party can be used against the assessee where seized documents duly reflected assessee's name and evident or direct link with the third party."*

8. Now, the assessee is in appeal.

9. The Ld. counsel for the assessee at the very outset stated that a similar issue having identical facts has already been disposed off by this Bench of the Tribunal in the case of Shri Mehtab Singh Ujjawal Vs. ITO, Ward-3 (1), Jodhpur in ITA No. 271/Jodh 2018 for the assessment year 2009-10 vide

order dated 18.1.2019. It was pointed out that in the said case also, similar addition was made on the basis of the statement of the aforesaid person i.e. Shri Madan Mohan Gupta. Copy of the said order was furnished which is placed on record.

10. In his rival submissions, the Ld. Sr.DR supported the orders of the authorities below.

11. I have considered the submissions of both the parties and perused the material available on record. It is noticed that on identical issue having similar facts was a subject matter of the appeal in the case of Shri Mehtab Singh Ujjawal Vs. ITO, Ward-3 (1), Jodhpur in ITA No. 271/Jodh 2018 for the assessment year 2009-10 (supra), wherein vide order dated 18.01.2019, the similar addition was deleted by the ITAT Jodhpur Bench (SMC). The relevant finding has been given in para 5 to 14 of the order which read as under:-

*"5. Rival contentions have been heard and record perused. The issue under consideration is squarely covered by the decision of Tribunal in the case of Shri Deva Ram Suthar in ITA No.342/Jodh/2018 wherein exactly similar addition was deleted by the Tribunal after observing as under:-*

*"7. Rival contentions have been considered and record perused. I had also deliberated on the judicial pronouncements referred by lower authorities in their respective orders as well as cited by learned AR and DR during the course of hearing before us in the context of factual matrix of the case. From the record I found that the assessee had purchased Plot No. 84 measuring 233.33 Sq.yards in the residential project "Revenue Residency" at Village Peepla Bharatsing, (Jaisinghpura-Muhana Road), Bhankrota, Tehsil- Sanganeer, Jaipur developed by Shri Madan Mohan*

*Gupta in F.Y.2008-09 relevant to A.Y.2009-10 for total purchase consideration of Rs.2,68,330/- for plot and Rs.2,670/- for boundary total Rs.2,71,000/- (Rs.1150/-per Sq.Yard). Thus, total investment by assessee is Rs.2,71,000/- out of this amount Rs. 1,90,000/- was paid through bank by taking personal loan and balance Rs.81,000/- was given in the financial year 2007-08.*

*8. In the assessment order, the AO alleged that the assessee has paid to the seller Shri Madan Mohan Gupta on money of Rs.4,66,660/- for the purchase of plot no.84 having total area of 233.33 Sq.Yards*

*9. In reply to the same, assessee submitted as under:-*

*"a. That the allegation of the Id.AO is baseless and imaginary and not maintainable.*

*b. The Id.AO has relied upon the statement of Shri Madan Mohan Gupta recorded by the I.T. Authorities on 23.05.2013 during the course of search. But from reading the reply given by Shri Madan Mohan Gupta in the statement, it is clearly conveyed that Shri Madan Mohan Gupta sold the land for Rs.1150/- per Sq.Yard. and the appellant paid as purchase consideration to the seller Madan Mohan Gupta a sum of Rs.2,71,000/-.*

*c. That the entire fabric being woven against the appellant for treating the alleged payment of on money go around the statement of Shri Madan Mohan Gupta. It is submitted that after thought statement carry no weight under the law and they are against the spirit of natural justice because they have no evidence value.*

*d. That except the above statement of Shri Madan Mohan Gupta there was no supporting evidence available with the Id.AO which could corroborate that on money of Rs.4,66,660/- was paid by the appellant to Shri Madan Mohan Gupta.*

*e. That while making the allegation the Ld.AO has relied upon the statement of Shri Madan Mohan Gupta course of search proceedings.*

*10. Assessee also asked before the AO to provide opportunity for the cross examination of the person on whose statement addition was made.*

*However, no such opportunity was provided neither by the AO nor by the CIT(A). Thus, without affording cross examination, the AO has made addition on the basis of statement of Shri Madan Mohan Gupta u/s 69 being unexplained investment and added the same in assessee's income. However, there was no corroborative material available with the AO for making addition. As per our considered view, not providing opportunity of cross examination amount to violation of principle of natural justice, a serious flaw which makes the order null and void.*

*11. For this purpose, reliance can be placed on the decision of Hon'ble Supreme Court in the case of Andaman Timber Industries 281 CTR 241 wherein it was held that not allowing assessee to cross-examine witnesses by adjudicating authority though statements of those witnesses were made as basis of impugned order, amounted in serious flaw which made impugned order nullity as it amounted to violation of principles of natural justice. The precise observation of the Hon'ble Supreme Court was as under :-*

*"Not allowing the appellant 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 appellant 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 appellant disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the appellant. 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 appellant. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. Appellant had 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 price 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 price 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."*

12. Reliance can also be placed on the on the decision of Bombay High Court in the case of Ashish international in ITA No.4299/Murn/2009 dated 22/02/2011, wherein Court held as under:-

*"The question raised in this appeal is, -whether the Tribunal justified in deleting the addition on account of bogu purchases allegedly made by the appellant from M/s Thakkar Agro Industrial Chem Supplies P. Ltd. According to the revenue, the Director of M/s. Thakkar Agro Industrial Chem Supplies P.Ltd. in his statement had stated that there were no sales/ purchases but the transactions were only accommodation bills not involving any transactions. The Tribunal has recorded a finding of fact that the appellant had disputed the correctness of the above statement and admittedly the appellant was not given any opportunity to cross examine the concerned Director of M/s. Thakkar Agro Industrial Chem Supplies P. Ltd. who had made the above statement. The appellate authority had sought remand report at that stage the genuineness of the statement has not been established by allowing cross examination of the person whose statement was relied upon by the revenue. In these circumstances, the decision of the Tribunal being based on the fact, no substantial question of law can be said to arise from the order of the Tribunal. The appeal is dismissed with no order as to costs ".*

13. Reliance is also placed on the decision of Bombay High Court in the case of H.R. Mehta in its order dated 07/07/2016. The Hon'ble High Court held as under:-

*"The assessee is bound to be provided with the material used against him apart from being permitted to cross examine the deponents. The denial of such opportunity goes to root of the*

*matter and strikes at the very foundation of the assessment order and renders it vulnerable."*

*14. Applying proposition of law laid down by Hon'ble Supreme Court and High Court as discussed above, I do not find any merit for the addition made by AO merely on the basis of statement, when there is no corroborative material with AO suggesting the alleged addition, without allowing assessee an opportunity to cross examine the person on whose statement addition was made. Accordingly, AO is directed to delete the addition so made."*

12. So, respectfully following the aforesaid referred to order dated 18.1.2009 in ITA No. 271/Jopdh/2018 in the case of Shri Mehtab Singh Ujjawal Vs. ITO, Ward-3 (1), Jodhpur, the impugned addition is deleted. In all other appeals of the different assessees, the facts are identical, even the rival contentions were similar, therefore, the findings giving in the former part of this order in case of Shri Bhoorshing Chimansingh Rajpurphit, Bhagar Ki Kothi, Jodhpur Vs. ITO, Ward- Barmer in ITA No. 276/Jodh/2018 for the assessment year 2009-10 shall apply mutatis mutandis in the case of all other assessees.

13. In the result, the appeals of the assessees are allowed.

(Order Pronounced in the Court on 09.05.2019)

Sd/-  
(N.K. SAINI)  
Vice President

**Dated :09.05.2019**

"आर.के."

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, Jodhpur
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order

सहायकपंजीकार/ Assistant Registrar

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