

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.73/Ind/2021**  
**(Assessment Years: 2011-12)**

M/s. Bagora Developers Pvt. ltd. 34, Revenue nagar Indore	Vs.	ACIT- Indore
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: AAECB6424E</b>		
Assessee by	Shri Siddharth Mahajan & Ashok Mahajan, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	15.01.2024	
Date of Pronouncement	15.02.2024	

**ORDER**

**Per Vijay Pal Rao, JM :**

This appeal by the Assessee is directed against the order of Commissioner of Income Tax (Appeals), dated 11.02.2020 for A.Y. 2011-12.

2. There is a delay of 323 days in filing the present appeal the assessee has filed an application of condonation of delay which is supported by an Affidavit.

3. We have heard Id.AR as well as Ld. DR on condonation of delay and careful perused the relevant material on record. The impugned order was passed by the CIT(A) on 10.02.2020 and limitation for filing the appeal expired on 10.04.2020. Thus, the limitation for filing the appeal was expiring during the Covid-19 pandemic and therefore, the delay in filing the appeal is now covered by the judgment of Hon'ble Supreme Court in case of Suo-moto Cognizance for extension of limitation reported in 441 ITR 722. Accordingly the appeal of the assessee is treated as within the limitation.

4. The assessee has raised following grounds of appeal:

*“1.That Id. AO erred in passing assessment order overlooking correct facts of the case by making wrong addition of Rs. 30,00,000/-*

*2.Ld. AO erred in assessing the income in hands of a Company which was a non-existent company during the concerned Fin. Year as the registration of the company was received during FY 2011-12 AY 2012-23 on 27.07.2011;*

*3.That the Id. AO erred in charging interest of Rs. 7,87,950- u/s 234A of the Act penalty disputed in appeal*

*4.That the Id. AO erred in charging interest of Rs. 8,62,110- u/s 234B of the Act*

*5 That the Id. AO erred in starting penalty proceedings u/s 271(1)(c) of the Act.*

*6.That the Id. AO erred in starting penalty proceedings u/s 271F of the Act.”*

5. As regard Ground no. 2 the assessee has challenged the validity of assessment order passed by the AO being against non-existing entity during the financial year relevant for the assessment year under consideration. Ld. AR of the assessee has submitted that the AO has reopened the assessment u/s 148 to assessee the income on account of unexplained investment in purchase of land vide sale deed dated 11.10.2010 for consideration of Rs.30 lakhs. He has submitted that assessee company was incorporated in the subsequent year vide certificate of incorporation dated 27.07.2011 placed at page no.13 of the paper book. The Ld. AR has submitted that the assessment framed by the AO for the year under consideration is not valid as the assessee company itself has come into existence on 27.07.2011. He has further pointed out that the land in question was purchased in the name of the assessee company by the directors of the assessee and payment was also made by the Directors and therefore, the addition cannot be made in the hands of the assessee. In support of his contention he has relied upon the following decisions:

- (i)-CIT vs Metacam Industries, (2007) 7ITJ 310(MP):-  
(2000)245 ITR 160: (2000) 161 CTR
- (ii)-P.K. Sethi vs CIT (2006) 286 ITR 318(Gau.) A
- (iii)-Ashok Pal Daga vs CIT (1996) 220 ITR 452 (MP)
- (iv)-Orient Trading Company Ltd. Vs CIT (1963) 49 ITR  
723(Bom.)

6. On the other hand, ld. DR has submitted that the land in question was purchased by the assessee and the sale deed is executed in the name of the assessee. Though the assessee has explained that the purchase consideration was paid by the Directors of the assessee company however, the AO noted from the bank account of the directors that cash was deposited before issuing cheques from the payment of the purchase consideration. Therefore, the creditworthiness of the directors of the assessee company was not proved by the assessee. Further the assessee has failed to produce the copy of bank account of Shri Kapil Dave director of the assessee to establish the source of Rs.5 lakhs paid in cash. The AO has further pointed out that the assessee has also not furnished the return of income of Shri Harishankar Bagora director of the assessee company to prove creditworthiness of the director therefore, the AO has made an addition on account of unexplained investment.

7. We have considered rival submission as well as relevant material on record. There is no dispute that the land in question was purchased vide sale deed dated 11.10.2010 which was executed in favour of the assessee and signed by the Directors of the assessee company. The assessee now claimed that the assessee company was not existence at the time of said transaction of purchase of land and therefore, for the year under consideration no assessment can be framed in the hands of the assessee company being non-existing entity. It is pertinent to note that when the land

was purchased in the name of the assessee and the sale deed was duly executed and signed by the Director of the assessee company then even if the certificate of incorporation was issued subsequently the assessee was very much inexistence as an entity if not as a company then as an AOP having the Directors as members which was subsequently succeeded by the assessee company on its being incorporated vide certificate of incorporation dated 27.07.2011. Therefore, at the time of issuing notice u/s 148 on 27.03.2018 the assessee company was very much inexistence as a successor of the AOP which has purchased the agricultural land in question. Therefore, when the assessee company has not disowned the transaction of purchase of land in question and was very much part of the assets of the assessee company then the onus is on the assessee company to explain the source of investment. We further note that the assessee did not respond to the notice issued by the AO u/s 148 and subsequent show cause notice. The assessment was framed u/s 144 r.w. section 147 as the assessee did not cooperate during the assessment proceedings. The conduct of the assessee shows that it was avoiding assessment proceedings and thereby protecting its directors to discharge their duty for explaining source of investment. The CIT(A) has considered this issue in para 3.2 as under:

*“3.2 I have gone through the assessment order and written submissions as reproduced above. The main contention of the appellant that the company was non-existent during relevant year. At the fag end of assessment proceedings, stating that appellant company was non-entity is not acceptable. If the company was not registered during FY 2010-11 then how the*

*land was purchased in its name. It is also neither proved nor explained that the source of investment was explained in the hands of directors. There is clear cut findings by the AO that the directors have either not filed Return of Income or have failed to prove the source of investment. In view of the above stated facts and circumstances of the case, I am of the considered opinion, the AO has been found justified in making addition of impugned amount of Rs. 30,00,000/- on account of unexplained investment. Thus both the grounds of appeal are dismissed.”*

Therefore, in the facts and circumstances of the case when the transaction is very much in the name of the assessee then the form of entity is irrelevant as the assessee has not disowned the ownership of the land in question and payment of the consideration through its directors. Accordingly we do not find any substance in the ground no.2 raised by the assessee.

8. As regards the other grounds on the merits of the addition made by the AO since the assessee has not cooperated during the assessment proceedings and relevant details and records were not produced consequently, the AO has made the addition for want of the explanation, relevant details and record to explain the source of investment. Hence, in the facts and circumstances of the case we grant one more opportunity to the assessee to produce all the necessary details and evidence to explain source of investment. Accordingly the issue of addition is remanded to the record of the AO for fresh adjudication after verification and examination of the relevant record to be filed by the assessee.

9. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 15 .02.2024.

**Sd/-**  
**(B.M. BIYANI)**  
Accountant Member

**Sd/-**  
**(VIJAY PAL RAO)**  
Judicial Member

**Indore, \_ 15 .02.2024**

**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*