

आयकर अपीलीय अ धकरण, अमृतसर न्यायपीठ, अमृतसर
IN THE INCOME TAX APPELLATE TRIBUNAL AMRITSAR BENCH AMRITSAR
BEFORE SHRI L.P. SAHU, AM & SHRI RAVISH SOOD, JM

आयकर अपील सं./ITA No.11/ASR/2015

(निर्धारण वर्ष / Assessment Year :2009-2010)

Sh. Barat Pal Sood, Rattan Niwas, G.T.Road, Phagwara C/o V.P.Vijh & Co., C.A. K.K. Tower, Ist & IInd Floor, Opp. Circuit House, Jalandhar	Vs.	ITO, Ward-1, Phagwara
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स्थायी लेखा सं./PANNo. : **ACJPS 0851 J**

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	Shri Sandeep Vijh, CA
राजस्व की ओर से /Revenue by	:	Shri Charan Dass, DR

सुनवाई की तारीख / Date of Hearing	:	04/02/2020
घोषणा की तारीख/Date of Pronouncement	:	05/02/2020

आदेश / ORDER

Per L.P.Sahu, AM:

The assessee has filed this appeal against the order of CIT(A), Jalandhar, dated 24.10.2014 for assessment year 2009-2010.

2. The sole issue raised by the assessee in its appeal reads as under:-

"1. That the Learned Commissioner of Income Tax (Appeals), has erred in sustaining an addition of peak amount Rs.9,18,900/- on account of alleged unexplained Cash credits/cash deposit in Savings Bank Account out of an addition of Rs.18,16,500/- made by the Assessing Officer. The submissions made as well as the legal position has not been appreciated. Even the calculation of peak at Rs. 918,900/- is not correct."

3. Facts in brief are that the assessee an individual who is engaged in the business of trading in insecticides and pesticides and is also a

commission agent has filed his return of income for the year under consideration on 25.08.2009 declaring therein an income of Rs.1,98,390/-. During the course of assessment proceedings, the Assessing Officer has noticed that the assessee has made cash deposits of Rs.18,16,500/- in his saving bank account bearing No. 3494001100000206 maintained by him with Punjab National Bank, Railway Road, Phagwara. The Assessing Officer made enquiries with regard to the source of cash deposits in the saving bank account. In response thereto, the assessee filed affidavits of Shri Baljit Singh S/o Shri Gurmail Singh, Shri Narinder Singh S/o Shri Tara Singh and Shri Mohinder Singh S/o Shri Chain Singh, all residents of village Hardaspur, wherein they have stated that they had advanced amounts of Rs.5,64,000/-, Rs.5,10,000/- and Rs.7,05,000/- respectively on various dates to the assessee. However, the explanation furnished by the assessee has not been accepted by the Assessing Officer in view of the reasons mentioned in the assessment order. An addition of Rs.18,16,500/- was, therefore, made to the returned income of the assessee. Apart from this, the Assessing Officer has also made the following additions on account of disallowance of interest on interest free loan/advance to daughter at Rs.88,855/-, on account of undeclared house property Income at Rs.1,17,600/- and on account of undeclared bank interest Income at Rs.34,242/-, respectively. Accordingly, the AO

completed the assessment u/s.143(3) of the Act dated 23.12.2011 assessing total income at Rs.22,55,590/-.

4. Feeling aggrieved from the assessment order, the assessee appealed before the CIT(A) and the CIT(A) partly allowed the appeal of the assessee.

5. Against the order of the CIT(A), the assessee is in further appeal before the Income Tax Appellate Tribunal.

6. Ld. AR before us filed written submission which read as under :-

1. *The first and the only ground of appeal is that the learned CIT(A) has erred in sustaining the addition of peak amount of Rs. 918,000 on account of alleged unexplained cash credits/ cash deposits in saving bank account out of an addition of Rs. 18,16,500 made by the assessing officer. The submissions made as well as the legal position have not been appreciated. Even the calculation of peak at Rs. 918,900/- is not correct.*

The fact of the case are that the assessee had deposits in the saving bank account with Punjab National Bank, Railway Road, Phagwara totaling Rs. 18,16,500 during the year under consideration. During the course of the assessment proceedings itself, it was explained that these deposits were out of the amounts received from three persons namely - Sh. Baljit Singh, Sh. Narinder Singh and Sh. Mohinder Singh. Even the affidavits of these persons were filed with the assessing officer wherein these persons had confirmed that they had given money to the assessee [2nd para at page no. 1 of the assessment order]. Copy of the affidavits is at page no. 14 to 16 of the paper book.

During the assessment proceedings, the assessee was asked to explain as to how being a commission agent advance had been received from agriculturists whereas in general practice, the commission agent gives advance to the agriculturists [1st para at page no. 2 of the assessment order]. In response thereto it was explained that the agriculturists who had advanced money to the assessee were very old clients of the assessee and whenever they had surplus funds these were given to the assessee [2nd para at page no. 2 of the assessment order]. By doing so they avoided spending the amount.

The assessing officer disbelieved the explanation of the assessee since the persons who had given affidavits were having regular business transactions with the assessee and the amount advanced by these persons was not reflected in their regular

accounts. It was also stated that the balances stated by them as per the affidavits were different from those appearing in the books of accounts [3rd para at page no. 2 of the assessment order]. In this connection it was submitted before the CIT(A) that it was permissible for the assessee to keep the money received in personal capacity in his bank account which was not a part of the books of accounts of his proprietorship. Even if multiple bank accounts are maintained by an assessee who is a proprietor, some bank accounts may not be incorporated in the books of accounts and such a situation does not call for any adverse inference [5th to 10th line of 2nd para at page no. 2 of the paper book]. Regarding the difference in the balances as reflected in affidavits, the assessing officer did not make any query on this issue before completing assessment and thus came to a wrong conclusion. The balance as indicated in the affidavits given by the three persons was the balance of the amount given and received back in personal capacity which were not a part of the books of accounts [11th to 14th line of 2nd para at page no. 2 of the paper book]. The personal balances were thus wrongly compared by the assessing officer with their balances in the books of the assessee. The business transactions not being under any doubt were not referred to by the persons concerned in the affidavits. The addition made by the assessing officer was bad in law as relevant query which could have established the correctness of the affidavit was not made and thus the principles of natural justice had been violated. Also the persons who gave affidavits were not cross-examined with reference to the contents of the affidavit. Attention was also drawn to the decision of the Supreme Court in the case of Mehta Parikh vs. CIT reported at 30 ITR 81 wherein was held that the contents of an affidavit cannot be rejected without cross-examining the person who gave the affidavit. In the context of violation of the principles of natural justice reliance was also placed on the decision of the IT AT Amritsar Bench in the case of Mayor & Co. Copy of the order of the IT AT, Amritsar Bench is at page no. 10 to 12 of the paper book [please see para no. 19 & 20 at page no. 11 & 12]. For a better appreciation of this decision, copy of the order of the CIT(A) against which the above mentioned appeal was filed by the revenue is enclosed at page no. 80 to 83 [please see 1st & 2nd para on the reverse of page no. 83]. Relief was allowed by the ld. CIT(A) after appreciating the decision of the Supreme Court in the case of Kishinchand Chellaram vs. CIT reported at 125 ITR 713. Attention is also drawn to the decision of the Delhi High Court in the case of CIT vs. Gulati Industrial Fabrication Pvt. Ltd reported at 217 CTR 494 [SLP (CC) o. 1134/2009 has been dismissed by the Supreme Court]. Copy of the decision of the High Court is at page no. 84 & 85. Copy of the order dismissing the SLP of the revenue is at page no. 13 of the paper book. [Setting aside without specific directions amounts to annulment as has been held by the Calcutta High Court in the case of Fu Sheen Tannery vs. ITO reported at 262 ITR 456]. Attention is also drawn to the view expressed by the IT AT

Mumbai Bench in the case of ACIT vs. Tristar Jewellery wherein for violation of the principles of natural justice, the addition was deleted. Copy of the decision is enclosed at page no. 86 to 89.

The action of the assessing officer in rejecting the contents of the affidavit was not justified and the addition made should have been deleted by the CIT(A). The CIT(A) to make good the fatal defect in the order, directed the assessing officer to record the statement of the persons who gave the affidavits. This action on the part of the ld. CIT(A) was not justified. The addition as sustained by the ld. CIT(A) deserves to be deleted on this score itself.

Also, the initial onus of explaining the credits in the bank account had been discharged by the assessee and if no further inquiry was made by the assessing officer, the addition made was not justified [last two lines at page no. 3 and first para at page no. 4]. Reliance was placed on the decision of the Delhi High Court in the case of CIT vs. Kinetic Capital Finance Ltd reported at 202 Taxman 548. Copy of the decision is enclosed at page no. 17 to 21 of the paper book. This contention has also not been appreciated, by the ld. CIT(A).

It may be submitted that addition was made after referring to various case laws [page no. 4 to 6 of the assessment order] and from a perusal of the same it is clear that the assessing officer has thus relied upon section 68 for making the above referred additions. In this regard, it is submitted that section 68 deals with the amounts credited in the books of accounts. The moot question therefore is as to whether the pass book of the assessee can be treated as his book of account. In this connection we would like to draw your attention to the decision of the Bombay High Court in the case of CIT vs. Bhaichand H. Gandhi reported at 141 ITR 67 wherein it was held that the bank pass book was not the book of the assessee. Section 68 only covers within its purview "sum found credited in the book of an assessee". Therefore the addition made in respect of the credits appearing in the bank account which is not a part of the books of accounts was not justified and deserves to be deleted on this score also [2nd para at page no. 3 of the paper book]. Copy of the decision is enclosed at page no. 90 & 91 [please see page no. 90]. This contention has also not been appreciated by the ld. CIT(A).

Further, simply because the assessing officer has not accepted that funds were given by the farmers will not mean that these represent unexplained funds of the assessee. Reliance was placed on the decision of the Supreme Court in the case of CIT vs. Daulat Ram Rawatmull reported at 87 ITR 347 wherein it was held that from the simple fact that the explanation regarding the source of money furnished by the person in whose name money was lying in deposit was found to be false, it would be remote and far

fetched conclusion to hold that the money belonged to the person with whom it was lying as a deposit [2nd para at page no. 4 of the paper book]. It has been recently held by the Punjab & Haryana High Court in the case of CIT vs. Amar Chand & Sons that it is not possible for the assessee to prove the source of his creditors. Copy of the decision is enclosed at page no. 92 & 93 [please see page no. 93].

The identity and credit worthiness of the three persons whose affidavits had been filed stands established as the regular business transaction with them which are a part of books of accounts have been accepted. Copy of the ledger account of the above referred persons as examined by the assessing officer are at page no. 22 to 25 and 29 of the paper book. In view of the above explanation, the various case laws cited by the assessing officer also stand distinguished.

It may also be submitted that the words used in section 68 are "may be charged to tax" which clearly indicates that it is not necessary to make an addition in every case and situation. We draw your attention to the decision of the Supreme Court in the case of CIT vs. Smt. P.K Noorjehan reported at 237 ITR 570 wherein it was held while dealing with section 69 that the ITO is not obliged to treat the unexplained investment as income in each and every case. Where the assessee was a young land and could not have earned the income in question, the deletion of addition by the IT A T was justified. In this case, the funds were deposited in the bank account during the year under consideration and the assessee's books which are the source of income have been accepted. This shows that the assessee has not earned income outside the books of accounts. The assessee was aged about 71 years could not have generated such huge amount as stands deposited in the bank account. The regular business income of the assessee [as per the last page of the assessment order] is itself an indicator of his financial capacity which suggests that the income representing the addition made could not have been earned by him. Another important aspect is that the money deposited in the bank account in respect of which addition was made has not been used for any business necessity / investment. There is no adverse observation of the assessing officer on this score also. In fact the bank account where the amounts were deposited in not even a part of the books of accounts as indicated above. The addition towards unexplained income at Rs. 18,16,500 which was reduced to Rs. 918,900 was thus totally unjustified and deserved to be deleted on this score also.

The Id. CIT(A) instead of deleting the addition, asked the assessing officer to record the statement of the persons who had given money to the assessee. Accordingly notices were issued to Sh. Baljit Singh, Sh. Narinder Singh and Sh. Mohinder Singh. Out of

the above mentioned persons only Sh. Mohinder Singh who was a handicap did not attend as he had undergone surgery and was not in a position to visit the Income Tax Office. In his statement, Sh. Baljit Singh had accepted having given the money [page no. 30 of the paper book]. The J forms to show that he was an agriculturists were also filed with the CIT(A) as these were not taken on record by the assessing officer [please see page no. 33 to 47 of the paper book. Regarding Sh. Narinder Singh, the copy of receipt from one person for the land taken on lease was filed [please see page no. 49 of the paper book] along with copy of J forms [page no. 50 to 64]. Regarding Sh. Mohinder Singh who was aged about 70 years and was a handicapped person, it was explained that he had undergone surgery in December 2012 and was advised rest. Copy of the certificate from doctor was also filed and is at page no. 65 of the paper book. Copy of certain J forms were also filed and these are at page no. 66 to 70 of the paper book. When the appellate proceedings were taken up subsequently another submission dated 19/5/2014 was filed [please see page no. 71 & 72]. In this submission, copy of the saving bank account of Sh. Narinder Singh along with affidavit for 16 acres and 5 kanals taken on lease were filed [please see page no. 73 to 75 of the paper book]. In the case of Sh. Mohinder Singh, affidavit confirming 11 acres and 6 kanals taken on lease and in the case of was filed [please see page no. 76 of the paper book]. With this evidence, it could not be held that the amounts received represented undisclosed income of the assessee.

The Id. CIT(A) has discussed the issue at para no. 5.8 of his order. He was of the view that the assessee has failed to provide documentary evidence of the with regard to the land holding of the lender of money except for affidavits of Sh. Paramjit Singh who had given his land on lease to Sh. Narinder Singh [16 acre and 5 kanals] and Sh. Mohinder Singh [11 acre 6 kanals]. He has also observed that evidence of land holding of Sh. Paramjit Singh has not been provided and similarly evidence of land holding of the persons who gave money to the assessee has also not been provided. The affidavits of Sh. Paramjit Singh [page no. 75 & 76] have been held to be a self serving documents. On the basis of the above, the CIT(A) concluded that the assessee had failed to explain the source of cash deposits of Rs. 18,16,500 and the assessing officer had rightly treated these cash deposits from unexplained sources. He however allowed the benefit of peak which is being discussed below separately. It is worthwhile to mention that besides the documents referred to by the assessing officer, the assessee had also filed other documents of the persons concerned - ledger a/c's of the three persons in the books of the assessee which show their identity as well as creditworthiness [Page no. 22 to 25 & 29]. Form J pertaining to these persons [page no. 33 to 47, 50 to 70], saving bank account of Sh. Narinder Singh [page no. 73 & 74] and affidavits confirming land on lease with two of the persons [75 & 76]. With these documents, the Id. CIT(A)

was not justified in disbelieving the amounts received by the assessee.

The Id. CIT(A) has not appreciated the submission made before him that in view of the decision of the Supreme Court in the case of CIT vs. Daulat Ram Rawatmull reported at 87 ITR 349, 350 where in it was held that "From the simple fact that the explanation regarding the source of money furnished by X, in whose name the money was lying in deposit, had been found to be false, it would be remote and far-fetched conclusion to hold that the money belonged to Y." Thus even if there was some doubt about the source of funds in the bank account of the depositor, there was no reason to even presume that this belonged to the assessee under appeal. This decision has been followed by the Rajasthan High Court in the case of Labh Chand Bohra vs. ITO reported at 219 CTR 571 wherein it has been held that identity of the creditor having been established and that they confirmed the credits satisfies the requirement of discharge of burden on the part of the assessee to prove genuineness of the transaction. Capacity of the lender to advance money to the assessee was not a matter which the assessee could be required to establish as that would amount to calling for him to establish source of source. The addition in respect of the entries in the names of the creditor thus could not be sustained. Copy of the decision is enclosed at page no. 94 to 97 [please see page no. 94]. In the case of Aravali Trading Co. vs. ITO reported at 8 DTR 199 it has been held by the Rajasthan High Court that one the existence of the credit has been proved and such person owns the credits, the assessee's onus stands discharged and the later is not further required to prove the source from which the creditor could have acquired the money deposited with him. Copy of the decision is enclosed at page no. 98 to 101 [please see page no. 101]. The jurisdictional High Court has in the case of CIT vs. Amar Chand & Sons held that the assessee cannot be asked to prove the credit worthiness of his creditor. Copy of the decision is at page no. 92 & 93 [please see page no. 93].

The above submissions and decisions adequately take care of the objection of the CIT(A) and show that he was not justified in sustaining the disallowance even to the extent of the peak balance. The Id. CIT(A) should have deleted the disallowance as the persons who had given the affidavits had not been cross-examined before rejecting the affidavits. Also the fact that the credits were in the bank account which was not a part of the books of accounts and thus no addition ii] s 68 was called for was also not appreciated. The credits stood confirmed by the persons concerned and supporting documents to show the creditworthiness were also filed even though not required by law. Necessary relief may please be allowed.

Without prejudice to the above submissions, regarding the working of peak balance it is submitted that the working of peak balance was provided to the CIT(A) [please see page no. 26 of the paper book] and as per this working the peak works out to Rs. 712,500 without taking any benefit of cash in hand available with the assessee. It was also explained that the deposits of Rs. 20,000 on 3/4/2008, Rs. 3,000 on 4/4/2008, Rs.12,500 on 8/4/2008 and Rs.2,000 on 16/10/2008 which were self deposits and are out of the regular withdrawals made by the assessee and which was supported by his capital account. It was also contended that some cash balance is always available with a person for urgent needs and it cannot be presumed that the assessee did not have any accumulated amount available with him. It was prayed that benefit of cash balance at the beginning of the year of at least Rs. 100,000 [2nd para at page no. 5]. Besides this, cash balance in the books was also available and which could have been used for deposit in the bank account. Detail of the cash balance available in the books on the various dates on which there were deposits in the bank account along with relevant pages of cash book were filed before CIT(A). Copy of the above referred detail is enclosed at page no. 102.

In the context of the above, the CIT(A) has observed in the 1st para at page no. 19 of his order that benefit of amount withdrawn from the capital account cannot be given as the withdrawals appear to be for household expenses. Also no benefit of the opening cash in hand and cash in hand available in the books of accounts on various dated has been allowed in the absence of evidence with regard to opening balance and in the absence of entry in the books of accounts. There is however a mistake in the computation of the peak balance. Various entries of the individual who gave money and whose accounts were consolidated are missing. For e.g. Rs. 125,000 received back by Mohinder Singh on 18/11/2008 [page no. 16] is not in the consolidated peak statement at page no. 18. Similarly Rs. 30,000 and Rs. 500,000 received back Sh. Narinder Singh on 4/10/2009 and 17/11/2008 are also missing (page 15). Similarly Rs. 50,000, Rs. 120,000 and Rs.50,000 received back by Sh. Baljeet Singh on 17/9/2008, 8/10/2008 and 17/10/2008 are also missing(page 14) Further the figure of Rs. 22,000 in the peak statement on 28/4/2008 is actually Rs. 20,000 paid back to Sh. Mohinder Singh. Also the amount received from Sh. Mohinder Singh as on 16/10/2008 is Rs. 400,000 and not Rs. 402,000. The breakup of Rs.524,600 posted on 17/10/2008, 1/11/2008 and 8/11/2008 is not clear and similar is the position with regard to the consolidated entry.

We would also like to draw your attention to the decision of the Delhi High Court in the case of CIT vs. Surinder Kumar reported at 221 ITR 713 wherein it was held that for the lady married in the

year 1952, a sum of Rs.15,000 could have been saved by the assessment year 1962-63. Copy of the decision is enclosed at page no. 103 & 104. In view of the decision of the Delhi High Court if the lady married for about 10 years could have saved 15,000 by the assessment year 1962-63, the savings of the assessee, on conservative basis would be much more than Rs. 100,000 if the value of money in 2009-10 viz-z-viz 1962 is adjusted. This adjustment by itself for a period of about 47 years (between 1962 & 2009-10) should very well cover the sum of Rs. 200,000. In fact after demonetization, the prime minister had himself announced in November 2017 that a deposit of up to Rs.250,000 in old currency would not be doubted as it would be accepted as past savings. Even if a backward adjustment from 2017 is made, benefit of opening cash of Rs. 200,000 should be allowed. Similarly benefit of the cash available in the books may be allowed.

Translated copy of the two documents which were filed in Punjabi is enclosed at page no. 105 [translation of page 75 of paper book] & 106 [translation of page no. 76 of the paper book].

7. On the other hand, ld. DR relied on the orders of authorities below.

8. After considering the rival submissions of both the sides and perusing the entire material available on the record along with the orders of authorities below, we find that in this case the impugned addition was made by the AO treating the cash deposits as unexplained sources. The CIT(A) after considering the submissions of the assessee and the finding of the AO along with the remand reports sought from the AO, found that the peak amount of unexplained deposits is Rs.9,18,900/- as against worked out by the assessee at Rs.7,12,500/-. The CIT(A) further observed that the benefit of withdrawals from capital account of assessee cannot be given as the withdrawals from capital account appear to have been withdrawn for household

expenses and no benefit of opening cash in hand and cash available in books of accounts related to business can be allowed in the absence of any evidence with regard to opening cash in hand and in the absence of any entry in the cash book. Accordingly, the CIT(A) restricted the addition to Rs.9,18,900/- out of total addition of Rs.18,16,500/-. Before us, Id. AR submitted that documents available before the AO, shows the identity as well as creditworthiness of the transactions and affidavits confirming land on lease with two of the persons. However, the CIT(A) disbelieved the amounts received by the assessee whereas the persons who had given the affidavits had not been cross-examined before rejecting the affidavits. Ld. AR further submitted that the credits were in the bank account which was not a part of the books of accounts and the credits stood confirmed by the persons concerned and supporting documents to show the creditworthiness were also filed. It was also averred by the Id. AR that the cash balance in the books was also available and which could have been used for deposit in the bank account and detail of the cash balance available in the books on the various dates on which there were deposits in the bank account along with relevant pages of cash book were filed before CIT(A). Considering the totality of facts and circumstances of the case and submissions of the Id. AR of the assessee, we restore the issue for a limited purpose to the file of AO to verify and examine as to whether the assessee is

entitled the benefit of opening cash in hand and cash available in books of account related to his business with regard to the amount of Rs.9,18,900/- after providing reasonable opportunity of being heard to the assessee. The assessee is also directed to cooperate with the AO for early disposal of the case and substantiate his claim with regard to cash deposit into the bank account and cash withdrawals from the bank account. Accordingly, we allow the sole ground raised by the assessee partly for statistical purposes.

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

Order pronounced in the open court on 05/02/2020.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(L.P.SAHU)

लेखा सदस्य / ACCOUNTANT MEMBER

अमृतसर/ Amritsar; दिनांक Dated 05/02/2020

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रति ल प अग्रे षत/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
Sh. Barat Pal Sood,
Rattan Niwas, G.T.Road,
Phagwara,
C/o V.P.Vijh & Co., C.A.
K.K. Tower, Ist & IInd Floor,
Opp. Circuit House, Jalandhar
2. प्रत्यर्थी / The Respondent-
ITO, Ward-1, Phagwara
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. वभागीय प्रतिनि ध, आयकर अपीलीय अ धकरण, अमृतसर/DR, ITAT, Amritsar
6. गार्ड फाईल / Guard file.

सत्या पत प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
ITAT Amritsar Bench, Amritsar