

Cited Here

SURAT SINGH vs. INCOME TAX OFFICER

IN THE ITAT AMRITSAR

LALIET KUMAR, JM & DR. M. L. MEENA, AM.

ITA No. 387/Asr/2018

Aug 16, 2021

(2021) 62 CCH 0440 AsrTrib

Legislation Referred to

Asst. Year 2009-10

Case pertains to

Asst. Year-

Decision in favour of:

Assessee

Income from undisclosed sources—Unexplained deposits— Assessee an agriculturist engaged in business of dairy farming filed his return of income declaring bank interest income and agricultural income — Assessee claimed to have deposited out of his savings from agriculture income, sale of live stocks sale of his agriculture land in his alleged saving account case was transferred to Income Tax Officer who has assessed income u/s 144/147 addition as unexplained deposits — CIT(A), confirmed addition on account of alleged unexplained deposits in assessee's Bank Account — Held, Commissioner of Income Tax (Appeals) has treated cash deposits out of explained sources of income, namely Sale of land and lives stock, agricultural income and opening cash in hand besides part cash withdrawal of claim of assessee which is not under dispute — Benefit of cash withdrawn on 22.05.2008 earlier from date of deposit in bank on 13-06-2008 has to be allowed to Assessee unless AO or CIT (A) is able to show that cash so withdrawn was spent elsewhere — Cash was withdrawn 21days earlier by him on 22.05.2008, to date of deposit in bank on 13-06-2008 — AO/CIT(A) had led no evidence to show that cash withdrawn by him had been spent and was not available for re- deposit — Finding of CIT(A) regarding allowed claim of benefit only out of cash withdrawal on 22.05.2008 is legally not justified — CIT(A) ought to have

brought on record evidence to show that balance cash of Rs. 11, 05000/- out of total so withdrawn cash of Rs. 15,50,000/- was spent elsewhere — Assessee being agriculturist, who has shown agricultural income in return of income for year under consideration out of which only Rs. 4,00,000/- is treated explained and balance 2,50,000/- as unexplained without supporting corroborative evidence such as, agricultural produce bills, type of cropping pattern and crops grown whether irrigated, rainfed as per revenue records — Agricultural income out of total agricultural income claimed by assessee can't be treated unexplained, unless, CIT (A) is able to establish that such part of agricultural income was bogus/inflated with corroborative evidences — Grievance of assessee is genuine and addition so confirmed by CIT(A) is hereby deleted — Assessee's appeal allowed.

Held

Commissioner of Income Tax (Appeals) has treated cash deposits out of explained sources of income, namely Sale of land and lives stock, agricultural income and opening cash in hand besides part cash withdrawal of the claim of the assessee which is not under dispute. Benefit of cash withdrawn on 22.05.2008 earlier from the date of deposit in the bank on 13-06-2008 has to be allowed to the Assessee unless the AO or the CIT (A) is able to show that the cash so withdrawn was spent elsewhere.

(para 8)

Cash was withdrawn 21 days earlier by him on 22.05.2008, to the date of deposit in the bank on 13-06-2008. AO/CIT(A) had led no evidence to show that the cash withdrawn by him had been spent and was not available for re- deposit. Finding of the CIT(A) regarding allowed claim of the benefit only out of the cash withdrawal on 22.05.2008 is legally not justified. CIT(A) ought to have brought on record evidence to show that the balance cash of Rs. 11, 05000/- out of the total so withdrawn cash of Rs. 15,50,000/- was spent elsewhere.

(para 9)

Assessee being agriculturist, who has shown agricultural income in the return of income for the year under consideration out of which only Rs. 4,00,000/- is treated explained and balance 2,50,000/- as unexplained without supporting corroborative evidence such as, agricultural produce bills, type of cropping pattern and crops grown whether irrigated, rainfed as per revenue records. Agricultural income out of the total agricultural income claimed by the assessee can't be treated unexplained, unless, the CIT (A) is able to establish that such part of agricultural income was bogus/inflated with corroborative evidences. Grievance of the assessee is genuine and addition so confirmed by the CIT(A) is hereby deleted. Assessee's appeal allowed.

(para 10)

Conclusion

Agricultural income out of the total agricultural income claimed by the assessee can't be

treated unexplained, unless, the CIT (A) is able to establish that such part of agricultural income was bogus/inflated with corroborative evidences.

In favour of

Assessee

Cases Referred to

Shri Shiv Charan Dass vs. CIT 126 ITR 236 (Punjab & Haryana)
ACIT vs. Anand Autoride Ltd in 99ITD 227

Counsel appeared:

Sh. Charan Dass, DR for the Respondent

DR. M. L. MEENA, AM.

1. This appeal by the assessee is directed against the order of the CIT(A)-2, Jalandhar for A.Y. 2009-10. The assessee has raised the following ground of appeal:

"1. That the learned Commissioner of Income Tax (Appeals)-2, Jalandhar has erred both law and on facts in confirming the addition of Rs. 16,28,004/- made by the Income Tax officer, Nakodar on account of alleged unexplained deposits made in assessee 's Bank Account.

2. That the learned Commissioner of Income Tax (Appeals)-2 Jalandhar has failed to appreciate that the cash withdrawn from the same Bank Account on prior dates was available with the assessee for redeposit in the same Bank Account.

3. That the learned Commissioner of Income Tax (Appeals)-2 Jalandhar ought to have allowed credit for the past savings out of Agricultural Income available with the assessee in cash. "

2. The facts as record are that appellant assessee is an agriculturist. He was engaged in the business of dairy farming in Vill. Sidhupur, Lohian Khas, Teh. Nakodar, Distt. Jalandhar. He has filed his return of income declaring bank interest income of Rs. 14,560/- and agricultural income of Rs. 6,50,000/- for the year under consideration. The appellant assessee claimed to have deposited Rs.51,37,000/- out of his savings from agriculture income, sale of live stocks (33 buffalos) and sale of his agriculture land in his alleged saving account no. 0752000100070314 of Punjab National Bank. Primarily, the assessment proceedings were initiated by Income Tax Officer Ward-5, Phagwara where the assessee had filed relevant documents with the Income Tax Officer Ward-5, Phagwara. Later, the case was transferred to Income Tax Officer to Nakodar, who has assessed income u/s 144/147 of income tax act 1961 with addition of Rs. 51,37,000/- as unexplained deposits.

3. The Id. CIT(A) after considering the assessment order, assessee's submissions and remand report of the AO, stated that the reassessment proceedings were initiated based on the information available in the ITD database that cash deposits of Rs. 51,37,000 has been made in the savings bank account of the appellant; that the savings bank account was held jointly by the appellant and the AO reports a negative balance of cash on different dates of the cash flow and that 3 persons were being produced for examination out of 6 persons to whom sale of buffaloes was made who have given a receipt of Rs. 9,89,000. He further stated that the appellant in the counter comments has stated that AO has not given credit of agricultural income of Rs. 6,50,000 earned by him, has also not given credit for the opening balance of Rs. 2,74,996 in the bank account; that it had made withdrawal of Rs. 15,50,000 on

22-05-2008 from the bank account, out of which an amount of rupees for 4,45,000 has been subsequently deposited on 13-06-2008 in the bank account. The Ld. CIT(A), having considered the evidence available on record, held that there is no justification on the part of the AO in not giving credit for the agricultural income earned by the appellant, sale of buffaloes and opening capital. However, he has confirmed addition of Rs. 16,28,004/- out of Rs. 51,37,000 made by the Income Tax officer, Nakodar on account of alleged unexplained deposits in assessee's Bank Account.

4. Assessee being aggrieved with the order of the CIT(A) is in appeal before us on the issue of bank deposits, explaining the same were being made from his explained sources of income. None attended for the assessee, but in support of his grounds of appeal, a written submissions is received which reads as under:

Written Submissions: -

It is submitted that the Assessing officer had made an addition of Rs. 51,37,000/- in the hands of the assessee on account of unexplained deposits in the Saving Account of the assessee with Punjab National Bank for A.Y 2009-10 A/c No. 0752000100070314. A copy of the Bank Account has been placed in the Paper Book Pages 1 & 2.

The assessee did not file any reply to notice u/s 133(6) of the Income Tax Act. So, the Assessing Officer made an addition of Rs. 51,37,000/- as unexplained Cash Deposits.

The assessee filed application under Rule 46A of Income Tax Rules before Worthy Commissioner of Income Tax (Appeals) and submitted that the assessee was an Agriculturist and was doing dairy farming in his village. The evidence filed by assessee was admitted and the same was forwarded to the Assessing Officer. The Assessing Officer sent his remand report which is part of the order of Worthy Commissioner of Income Tax (Appeals) at Pages 3 to 6 of the Assessment Order.

It is submitted that Worthy Commissioner of Income Tax (Appeals) allowed the benefit of the following evidences to treat cash deposits of Rs. 35,08,996 as explained.

	Date	Particulars	Amount(In Rupees)
	06.09.2008	Sale of land	14,00,000/-
	Different dates	Sale of live stock	9,89,000/-
	13.06.2008	Out of cash withdrawal of Rs. 15,50,000 on 22.5.2008	44,5000/-
	01.04.2008	Opening cash in hand	2,74,996/-
	Different dates	Agriculture Income	4,00,000/-

Total	35,08,996/-
-------	-------------

The Balance addition of Rs. 16,28,004/- was confirmed.

The under signed has prepared a date wise cash flow statement for the period from 01.04.2008 to 31.03.2009 based upon the Saving Fund Account of the assessee. The Same appears at Pages 3 & 4 of the Paper Book. The Cash Flow Statement shows that there is no negative cash in hand at any stage during the year. The under signed has prepared the break-up of the cash receipt as per cash flow statement and cash deposits accepted by Worthy Commissioner of Income Tax (Appeals) which shows sufficient cash withdrawals to explain the remaining cash deposits in the bank.

Your honour will kindly notice that the Counsel who appeared before Worthy CIT (Appeals) claimed benefit of cash withdrawal of Rs. 15,50,000/- on 22.05.2008 to explain cash deposits in the Bank Account. The CIT (Appeals) allowed the benefit of Rs. 4,45,000/- only being amount deposited on 13.06.2008.

Date	Amount
08.04.2008	50,000/-
25.04.2008	85,000/-
22.05.2008	15,50,000/-
11.06.2008	1,70,000/-
19.06.2008	4,50,000/-
03.07.2008	20,000/-
07.07.2008	15,000/-
22.07.2008	10,000/-
07.08.2008	50,000/-
26.09.2008	6,10,000/-

11.10.2008	60,000/-
27.12.2008	25,000/-
24.01.2009	20,000/-
28.01.2009	1,00,000/-
02.02.2009	1,00,000/-
02.02.2009	10,000/-
13.02.2009	1,40,000/-
16.02.2009	25,000/-
17.03.2009	30,000/-
Total	35,20,000/-

Your honour will kindly notice that assessee had withdrawn a sum of Rs. 35,20,000/- during the year from the same bank account as under: -

However, the Worthy CIT (Appeals) allowed benefit of Rs. 4,45,000/- only deposited on 13.06.2008. The assessee had the cash availability of nearly Rs. 35,20,000/- to explain remaining cash deposits of Rs. 16,28,004/-. The Worthy CIT (Appeals) should have allowed this benefit even when it had not been claimed by the assessee or his Counsel in the interests of natural justice. The assessee is left with a cash in hand of Rs. 14,52,000/- on 31.03.2009 even after explaining all cash deposits in the Bank.

It is therefore humbly submitted that the addition of Rs. 16,28,004/- confirmed by the Worthy CIT (Appeals) deserves to be deleted in view of the cash flow statement placed on record.

Your kind attention is invited to the decision of Honourable ITAT Amritsar Bench in the case Chandan Niiar in ITA No. 61 (Amritsar) 2016 Dated 08.08.2016 for A.Y 2011-12 where under similar circumstances the addition of Rs. 50,00,000/- was deleted. (Copy enclosed).

The following decisions are also being relied upon in the above order:

1. Shri Shiv Charan Dass vs. CIT 126 ITR 236 (Punjab & Haryana) .

2. ITAT ASR Bench in case of Ram Nath & Raj Kumar in ITA No.336 (ASR)/2006 & ITA No.337 (ASR)/2006 dated 25.01.2007.

3. ITAT Delhi Bench B in case of ITO vs. Mrs. Deepali Sehgal in ITA No.5660/Del/2012 Dated 05.09.2004.

Your honours are therefore requested to kindly consider the cash flow statement as placed on record and allow the benefit of Rs. 16,28,004/-as against withdrawals of Rs. 35,20,000/-made from the same bank and in the same year by the assessee and also the case law relied above and delete the additions confirmed by the Worthy Commissioner of Income Tax (Appeals) and oblige.

5. The defendant Addl. CIT(DR) stands by impugned order.

6. We have heard rival contentions, perused material on record and citations relied in support. It is admitted fact that

7. The appellant assessee grievance is that the Ld. CIT (A) has allowed claim of the benefit of Rs. 4,45,000/- only out of the cash withdrawal of Rs. 15,50,000/- on 22.05.2008 being the amount of cash deposited on 13.06.2008 the alleged Saving Bank Account.

8. It is fact on record that the Commissioner of Income Tax (Appeals) has treated cash deposits of Rs. 35,08,996 out of explained sources of income, as above, namely Sale of land and lives stock, agricultural income and opening cash in hand besides part cash withdrawal of the claim of the assessee which is not under dispute. In our view, the benefit of cash withdrawn of Rs. 15,50,000/- on 22.05.2008 earlier from the date of deposit in the bank on 13-06-2008 has to be allowed to the Assessee unless the AO or the Ld. CIT (A) is able to show that the cash so withdrawn was spent elsewhere.

9. It is discernable from the written submission of the assessee that the cash of Rs. 15,50,000/- was withdrawn 21days earlier by him on 22.05.2008, to the date of deposit in the bank on 13-06-2008. The AO/CIT(A) had led no evidence to show that the cash withdrawn by him had been spent and was not available for re- deposit. In view of that the finding of the Ld. CIT(A) regarding allowed claim of the benefit to the tune of Rs. 4,45,000/- only out of the cash withdrawal of Rs. 15,50,000/- on 22.05.2008 is legally not justified. The Ld. CIT(A) ought to have brought on record evidence to show that the balance cash of Rs. 11, 05000/- out of the total so withdrawn cash of Rs. 15,50,000/- was spent elsewhere. The following decisions support the argument of the assessee.

a) Decision of Hon'ble ITAT, Amritsar in the case of Shri Ram Nath & Raj Kumar in ITA no. 336(ASR)/2006 8s ITA No. 337(ASR)/2006 dated 25-01-2007.

b) Decision of Hon'ble Punjab & Haiyana High Court in the case of Shri Shiv Charan Dass vs CIT, reported in 126ITR 263.

c) Decision of Hon'ble ITAT, Amritsar in the case of ITO vs Navdeep Singh in ITA no. 24(ASR)/2013 dated 17-04-2013.

d) Decision of Hon'ble ITAT, Amritsar in the case of ACIT vs. Inderpal Singh Ahuja in ITA no. 132(ASR)/2006.

e) Decision of Hon'ble ITAT, Ahmadabad in the case of ACIT vs. Anand Autoride Ltd in 99ITD 227.

f) Decision of Hon'ble ITAT, Delhi Bench B in the case of ITO vs. Mrs Deepali Sehgal in ITA

10. Again, considering the facts that the assessee being agriculturist, who has shown agricultural income of Rs. 6,50,000/- in the return of income for the year under consideration out of which only Rs. 4,00,000/- is treated explained and balance 2,50,000/- as unexplained without supporting corroborative evidence such as, agricultural produce bills, type of cropping pattern and crops grown whether irrigated, rainfed as per revenue records. In our view, agricultural income of Rs. 2,50,000/- out of the total agricultural income Rs. 6,50,000/- claimed by the assessee can't be treated unexplained, unless, the Ld. CIT (A) is able to establish that such part of agricultural income was bogus/inflated with corroborative evidences. In our view, in the light of facts of the assessee's ownership of agricultural land and 33 buffaloes, the agricultural income shown at Rs. 6,50,000/- is quite reasonable and as such, accepted. Thus, the appellant assessee gets further relief of Rs. 2,50,000/- on account of agricultural income. Further, the remaining balance cash deposit of Rs. 2,73,004/- [16,28,004 - 13,55,000 (11,05,000+2,50,000)] can be allowed as explained as the personal saving out of agricultural income to the assessee, in the absence of any cogent evidence brought on record by either of the lower authorities to prove otherwise. Thus, the appellant assessee claims to have deposited Rs. 16,28,004/- out of his savings from agriculture income, sale of live stocks (33 buffalos) stands explained.

11. In view of above, we accept the grievance of the assessee genuine and accordingly the addition of Rs. 16,28,004/- so confirmed by the CIT(A) is hereby deleted.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 16.08.2021
