

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE SH. LALIET KUMAR, JUDICIAL MEMBER
AND DR. M. L. MEENA, ACCOUNTANT MEMBER**

**I.T.A. No. 30/Asr/2019
Assessment Year: 2008-09**

Sh. Sukhdev Singh S/o Sh. Ajit Singh, Azad Nagar, Sarhali Road, Tarn Taran. [PAN: BPVPS0391M] (Appellant)	Vs .	ITO, Ward-2, Tarn Taran. (Respondent)
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Appellant by	Sh. Ashwani Kalia, CA.
Respondent by	Sh. S.M. Surendra Nath (DR)

Date of Hearing	17.09.2021
Date of Pronouncement	14.10.2021

ORDER

Per Dr. M. L. Meena, AM:

This appeal of the assessee is directed against the order dated 09.10.2018 passed by the CIT(A). The assessee has raised the following grounds:

“1. That the Id.Cl 1(A)-1. Amritsar has erred in rejecting the ground of the assessee that proceedings u/s 147/148 were initiated by AO merely on the basis of suspicion that the bank

deposits were out of undisclosed income on the basis of AIR information received from the bank hence void abinitio.

2. *That the Id.CIT(A)-1, Amritsar has erred in rejecting the assessee's explanation that the deposit of cash in the bank was out of the sale proceeds of agriculture land inspite of the fact that there was sufficient evidence in support of the same.*

3 *That the Id.CIT(A)-1, Amritsar has erred in law and on facts in rejecting the assessee's explanation that assessee being a pure agriculturist having no other source of income the deposit of cash was out of sale proceeds of agriculture land.*

4 *That the Id. CIT(A)-Amritsar has erred in law' and on facts in ignoring the fact that the department has failed to make any trail of cash deposit to any other source of income.*

5 *That the order is bad in law and on facts.*

6. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is heard and disposed off.*

2. Briefly facts as per record are that Notice u/s 148 of the Act was issued on 27.03.2015 for the reasons that during F Y 07-08, the assessee had deposited cash of Rs.54,16,960/- in his saving bank accounts maintained with the ICICI Bank, Sarhali Road. The assessee was required to explain the source of cash credits in his bank accounts with ICICI Bank Ltd, account no.502512 and account no. 500445 wherein a total cash of Rs 68,03,046/- was deposited. The assessee stated that he is purely an agriculturist and that the cash deposits were out of sale of agricultural land measuring 72 K 18 M made by him and his brother for a total consideration

of Rs.1,24,92,700/- His shares in the land was 4/7 and he received Rs.71,38,685/-. As per the registered sale deed dated 11.05.07, the land was sold for Rs.23,26,000/- The sale consideration is stated in the registered deed to have been received through two cheques. Rs. 11,63,000/- each. The AO required the assessee to produce the buyer Sh. Kanwaljeet Singh S/o Sh Kuldeep Singh. However, the assessee failed to produce him on the given date 22 03.16. In view of above, Ld AO held that only the registered sale deed was to be considered and sacrosanct Cash credits of Rs.54,16,960/- were held to be income from undisclosed sources.

3. The Id. CIT(A) confirmed the addition by observing that in this case, a validly executed and duly registered sale deed dated 11/05/2007 has come on record which is sought to be disproved by the appellant through unregistered agreements to sell /oral evidence. Such a recourse by the appellant is not permitted in law as per provisions contained in chapter VI of the Indian Evidence Act, 1872, which prohibits admission of oral evidence to contradict the contents of a contract reduced into writing and registered as per law subject to certain exceptions like fraud, misrepresentation, etc. It is not the case of the appellant that the contents of the sale deed were ambiguous or of such a nature which required elaboration or clarification through oral evidence cum any fraud,

misrepresentation or intimidation or want of due execution of any executing party, or failure of consideration, or mistake. Accordingly confirmed the addition as sacrosanct Cash credits of Rs.54,16,960/-held to be income from undisclosed sources.

4. The Ld. Counsel for the assessee submitted that the Id.CIT(A)-1, Amritsar has erred in law and on facts in rejecting the assessee's explanation that assessee being a pure agriculturist having no other source of income for cash deposit in bank, except cash received out of sale proceeds of agriculture land. In support of his contentions, he has filed copy of unregistered agreements viz~a~ sale deed to substantiate the source of cash receipt and deposit in bank account from the buyer Shri kavar jeet Singh. The additional evidence so filed has been placed on the record, however the veracity of the documentary evidence to substantiate the magnitude of cash deposits in bank and its verification is required to be done by the Id. CIT(A) after seeking rebuttal of the AO.

5. The Ld. AR further argued that cash of Rs 30.00.000, - was deposited on the date of registration itself, as the appellant has no other source of income, it would be fair to presume that the cash of Rs 30,00.000 - was received from sale of land only and as per the registered sale deed dated 11.05.07, the land was shown to be sold for Rs.23,26,000/- The sale

consideration is stated in the registered deed to have been received through two cheques. Rs. 11,63,000/- each. One of the cheques has been deposited in the bank account no.500445 of the appellant on 15 05.07 “by clearing”. In addition, he stated that there are cash credits made as under:

Date	Mode	Amount
09 04.07	By cash	Rs 2200'-
21 04.07	By cash	Rs 50,00,000 -
11 05.07	By cash	Rs 3,000,000/-
13.06.07	By cash	Rs.33,000/-
20.06.07	By cash	Rs. 6,00,000/-
26.06.07	By cash	Rs.10,000/-
21.07.07	By cash	Rs.2,00,000/-
23.07.07	By cash	Rs.25,000/-
24.07 07	By cash	Rs 1 1.500 -
18 08 07	By cash	Rs 20,000 -
06.09.07	By cash	Rs 25,000 -
07.0907	By cash	Rs 3,000 -
24 10.07	By cash	Rs.8,000/-
23.11.07	By cash	Rs.8,90,000/-
03.12.07	By cash	Rs. 11,760/-
24.03.08	By cash	Rs.50,000/-

6. The additional evidence submitted by the appellant counsel in this regard as under:

SUBMISSIONS & BRIEF FACTS

1 The assessee is a pure agriculturist and his only source of income was from agriculture. The assessee had absolutely no other source of income.

2 Proceedings u/s 147/148 were initiated by the AO on the basis of AIR information that the assessee had made cash deposit of Rs.5416960 in his bank a/c. The total amount of Rs.5416960 deposited by the assessee was treated by the AO as unaccounted income and addition of the same amount was made as income from undisclosed sources.

3 The appellant during the financial year relevant to assessment year 2008-09 had sold his agriculture land which was situated at more than 20 KM from the nearest town Tam Taran. Accordingly, the capital gain arising on sale of agriculture land, if any, was total exempt from tax being agriculture land situated beyond 8 KM from the city. At the time of entering into Sale Agreements' with buyers two Sale Agreements were executed between the seller and buyer in the presence of two witnesses.

4 As per the two Sale Agreements the assessee and his brother received the following amounts :-

Sale Agreement No.1 for sale of 20 Kanal 3 Marla @ Rs.1385000 per kanal

Advance on sale of execution of Sale Agreements Rs.400000 Further advance received on 18.4.2007 Rs.200000

Balance amount received on execution of Sale Deeds Sale Agreement No.2 for sale of 49 Kanal @ Rs.1385000 per kanal

Advance on sale of execution of Sale Agreements Rs.400000 Further advance received on 18.4.2007 Rs.200000

Balance amount received on execution of Sale Deeds

5 The buyer at the time of execution of Sale Deed paid Rs.2326000 by cheques and the balance amount was paid in cash to two sellers. Both the

assesee and his brother deposited the total amount received from the buyer in their respective bank accounts.

During the proceedings u/s 148 the Id.AO issued questionnaire to the assessee requiring him to explain the source of deposit of cash in the bank account. Copy enclosed.

From the perusal of the assessee's reply to the questionnaire it will be observed that in reply to question no.6 the assessee submitted that he had sold agriculture land and payment received in cash for the same was deposited in the bank account.

8 In the reply he had submitted complete detail of agriculture land sold and the rate at which the land was sold vide two Sale Agreements. One for 49 kanal and second for 20 kanal 3 maria. Copy of Sale Agreements and copy of Sale Deed was also filed along with the reply.

9 It was explained that buyer of land got Sale Deed executed for Rs.2326000 vide Sale Deed dated 11.5.2007 which was paid by the buyer to the two brothers by cheque. The cheque of Rs. 1163000 received by the assessee is lying credited in the assessee's bank account.

10 Before the execution of Sale Deed the assessee had received the balance amount of his share in cash out of which he deposited in the bank Rs.30 lacs on 11.5.2007 and the balance amount was deposited on different dates.

11 Copy of Sale Deed executed by the assessee and his brother in favor of Kamaljit Singh and copies of Agreements executed in favour of Kamaljit

Singh @ Rs.1385000 per acre dated 12.4.2007 are enclosed. Copies of the same were also filed with AO & CIT(A).

12 The AO required the assessee to produce the buyer and in response to the same the assessee submitted that buyer is not directly known to him and the department may directly ask the purchaser and make the necessary queries from him.

13 The assessee also filed Affidavit before the AO confirming all the above facts.

14 The Id.AO without making any enquiry from the purchaser made the addition of Rs.5616960 treating the total cash deposit in the bank as unaccounted income.

15 There is no doubt that the Sale Deed executed was for lesser amount than the actual sale price but the assessee being an absolutely lay man and a pure agriculturist did not have any idea of the implication of the same.

16 It will be appreciated that major chunk of the cash amounting to Rs.30 lacs was deposited by the assessee on 11.5.2007 itself i.e. the date of execution of Sale Deed. This is clear evidence that the said amount was received from the buyer since the assessee had no other source of income or receipt of cash except for sale of agriculture land.

17 Moreover, no malafide intention could be charged against the assessee for executing the sale deed at a lesser amount as the capital gain on the sale was in any way fully exempt being agriculture land situated more than 20 KM from Tam Taran City.

18 Your honor's kind attention is invited to the decision in the case of Smt.Sarabjit Kaur where under similar circumstances the Id.CIT(A) had decided the case in favour of the seller Smt.Sarabjit Kaur holding that the cash deposited in the bank has clear nexus with the sale of agriculture land and accepting the contention of the assessee. Copy of the order is enclosed

19 While rejecting the assessee's submissions the AO has held that the document relied upon (Sale Agreement) are just created documentary evidence to prove the unexplained cash deposit in the bank and in the absence of cross verification the same cannot be relied upon.

20 The assessee had categorically submitted in Affidavit that buyer of land was not known to him and the deal was struck through an agent. It was requested that the department may directly enquire from the buyer. Secondly, the sale agreements and sale deed executed bear the signature of buyer Sh.Kanwaljit Singh and in case the AO had any doubt that these agreements are created documentary evidence he could have verified the same from the handwriting expert to ascertain the genuineness of the same. The AO did neither and simply made the addition in the hands of an innocent, uneducated and pure agriculturist without pointing out even an iota of evidence of any other source of cash deposit in the bank of assessee.

21 The Id.CIT(A) in her order confirmed the addition primarily on same grounds on which the addition was made by AO. The Id.CIT(A) has stated in her order that Sale Deeds executed between the buyer and seller has higher evidentiary value than Sale Agreements.

22 There is no denying the fact that the Sale Deeds executed between the buyer and have full legal entity as they are executed in writing between the seller and buyer in the presence of two witnesses duly signed by all.

23 Moreover, the assessee had conveyed to the AO that he may summon the buyer to confirm the contents of the sale agreements. It was also requested that in case the AO has any doubt to refer the sale agreements, which are signed by the buyer also, to handwriting experts for matching the signatures of buyer on the sale deed as well as on sale agreements. The assessee himself has no authority to force the appearance of buyer before the AO whereas the AO has all the authority to force the presence of buyer to conform the facts of the case and genuineness of the sale agreements.

24 In view of the above facts the major portion of the cash deposited was made exactly on the execution of sale deed which prove the source of cash was on the sale of land only and not from anywhere else.

25 In case the AO was to disbelieve the source of cash he made no effort to make a trail of source of cash coming in the hands of assessee.

26 The assessee is a pure agriculturist and had absolutely no other source of income. In support, he placed reliance on the case of CIT vs. Intezar Ali (2013) 372 ITR 649 (All.). The counsel contended that from the perusal of this decision it will be observed that facts of the case are similar to the facts of the case of assessee. Hon'ble Allahabad High Court has accepted the assessee's explanation explaining the source of deposit of cash in bank from the sale proceeds of agriculture land. In that case also the sale deed was executed for Rs.2200000 only against which cash deposited in the bank was Rs. 1,20,00,000 whose source was explained to be the sale of agriculture

land. The High Court accepted the explanation of assessee and confirmed the order of IT AT who had deleted the addition made by the AO.

The facts of assessee's cases are almost similar. The cash was desposited by the assessee in the bank on same date on which the sale of agriculture land was made and assessee being a pure agriculturist had no other source of income or receipt except for the sale of agriculture land. The assessee had also filed Affidavit before AO confirming the above facts and had also filed copy of two Sale Agreements which contained the actual value of sale of land which was deposited by two sellers who are real brothers in their bank account. The assessee had requested the AO to summon the buyer but the AO did not do so.

It will not be out of place to mention that assessee's brother had also deposited in the bank his share of sale proceeds but his case was not reopened by the department.

7.The Ld.DR Stands by the impugned order and opposed the admission of additional evidence.

8.We have heard both the sides, perused the relevant material and submission made and citation relied by both the sides. Admittedly, the assessee is an agriculturist who had no source of income other than agriculture income. It is also not disputed that the assessee has sold an agricultural land in the joint ownership to his brother under two unregistered agreement and a registered sale deed under the signature of two independent witnesses. The question before us is to decide whether the

value of sale of agricultural land shown in the unregistered agreements viz~a~viz sale deed duly supported with the affidavit of the assessee is true to explain the source of cash deposit in the ICIC bank account of the assessee as above. We have gone through these documents and other submission made by the assessee, however in our considered opinion, the competent authority in this regard is the Id. CIT(A) who had just rejected the evidentiary value of the unregistered sale agreements without examine the facts and rebuttal of AO in terms of apparent may not be real always. He merely held that such a recourse by the appellant is not permitted in law as per provisions contained in chapter VI of the Indian Evidence Act, 1872, which prohibits admission of oral evidence to contradict the contents of a contract reduced into writing and registered as per law subject to certain exceptions like fraud, misrepresentation, etc. Such approach of the Id. CIT(A) can not be justified and approved. He was required to examine the veracity of the unregistered documents by way of verification from the witnesses, Sh. Kavar Jeet Singh, Purchaser of Agricultural land, and prevailing market value of the land in the neighborhood/ vicinity.

9. In our view, the Id. AR, contention that details required by the CIT(A) were submitted but same was not taken on record by him. Considering the Id. AR contentions that the assessee's additional evidence be considered

by the CIT(A) with independent application of mind to the facts of the case and verification of the respective witnesses, purchaser of land and factual field verification would reveal the actual sale consideration and in turn the actual amount of sale consideration received by the assessee. Considering the principles of natural justice, in our view, the assessee should get one more chance to prove its case before the Ld. CIT(A), with corroborative evidences. Accordingly, the case is restored to the CIT(A), for afresh consideration to pass De Novo order after granting sufficient opportunity of being heard to the assessee. No doubt, the assessee shall cooperate in the fresh proceeding before the CIT(A).

11. In result, the appeal is allowed for statistical Purpose.

Order pronounced in the open court on 14.10.2021

Sd/-
(Laliet Kumar)
Judicial Member
*DOC**

Sd/-
(Dr. M. L. Meena)
Accountant Member

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order