

**IN THE INCOME TAX APPELLATE TRIBUNAL
CAMP BENCH 'SMC' AT JALANDHAR**

Before Sh. N. K. Saini, Hon'ble Vice President

ITA No.31/Asr./2018 : Asstt. Year : 2009-10

Sh. Mohinder Singh Rattanpal, H.No. 89, Tehang Road, Village-Saifabad, Phillaur, Jalandhar	Vs	Income Tax Officer, Ward-2, Phagwara
(APPELLANT)		(RESPONDENT)
PAN No. AIPPR4180B		

**Assessee by : Sh. Sudhir Sehgal, Adv. &
Sh. Anil Miglani, Adv.**

Revenue by : Sh. Lalit Mohan Jindal, DR

Date of Hearing : 16.01.2019	Date of Pronouncement : 17.01.2019
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ORDER

This is an appeal by the assessee against the order dated 23.10.2017 of Id. CIT(A)-2, Jalandhar.

2. The only grievance of the assessee in this appeal relates to the sustenance of addition of Rs.24,30,000/- made by the AO.

3. Facts of the case in brief are that the assessee e-filed the return of income on 30.03.2010 declaring an income of Rs.1,51,740/- plus agricultural income of Rs.2,50,000/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act). Later on the case was selected for scrutiny. During the course of assessment proceedings, the AO noticed that the assessee had made cash deposits with his bank account with Indian Bank, Sangrur amounting to Rs.26,76,000/- and since the

assessee did not furnish the information for the said deposits, the AO considered the initial deposit of Rs.2,30,000/- on 12.11.2008 and peak amount of Rs.22,00,000/- on 19.11.2008 as unexplained deposits and made the additions of the said amounts.

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) and furnished some additional evidences. However, the Id. CIT(A) did not find merit in the submissions of the assessee.

Being aggrieved the assessee carried the matter to the ITAT Amritsar Bench wherein vide order dated 20.01.2017 in ITA No. 606/Asr./2016, the matter was remanded back to the Id. CIT(A) to consider the documentary evidences filed by the assessee.

5. In the second innings, the assessee submitted to the Id. CIT(A) as under:

“1. Evidence of ownership of property in respect of which advance was received by me, in the shape of copy of registration deed dated 27.02.1998 is enclosed.

2. Copy of receipt issued by me immediately on receipt of the advance (biana) amount containing the addresses of the persons to Whom receipt Was issued is enclosed herewith. However, due to family dispute the amount was returned to erstwhile purchaser on the same day in the evening by issuing payee's account cheques as I had deposited the advance amounts received in my bank account. The refund cheques of Rs. 21,86,500/- were cleared from my bank account in the names of both the erstwhile purchasers on the very next day and balance cash of Rs. 13950/- was handed over to them.

3. During the year under consideration, I was owning a truck bearing RC No. PB08AM4531 besides I was doing agricultural operations on lands taken on lease. Income from truck at Rs. 1,18,300/- and agricultural income at Rs. 2,50,000/- was shown in the return of income filed by me which is duly assessed by the ITO.

The total income shown as per return at R.s. 3,68,300/- for the year under consideration. Out of this income & income from the same source in the earlier years I had deposited Rs. 2,30,000/- in my bank account. As evidence copy of registration certificate of the truck, copies of Fard Jamabandis, copies of Form J and pattanamas are enclosed herewith. Copies the source of my income & savings is from truck income & agricultural income.

In view of the above, it is prayed that since the source of the deposit in bank account stands explained, the addition made by AO be kindly deleted.”

6. The Id. CIT(A) forwarded the submissions alongwith the additional evidences to the AO who objected for admission of the addition evidences. The assessee furnished the counter comments on the remand report of the AO as under:

“1. The AO has objected to the admission off additional evidence. In this respect, it is submitted that the assessee Sh. Mohinder Pal could not appear before the AO due to sufficient reasons as he was not remaining well and to be hospitalized several time due to multiple health problems. A few copies of medical reports and copies of medical prescriptions etc. are enclosed as evidence of his not remaining well. It is brought to your notice that or the same reason the assessee could not attend in his appeal proceedings before the Ld. CIT(A), Jalandhar and his appeal was decided ex-parte but on appeal, the Hon’ble Income Tax Appellate Tribunal had remitted the appeal to the file o the Ld. CIT(A) to be decided afresh. The assessee could not earlier appear before the Ld. CIT(A) on all dates as he was not remaining well as submitted earlier. Therefore, the appellant was prevented by earlier. Therefore, the appellant was prevented by sufficient cause from producing the evidence before the AO which is relevant to ground of appeal. The case of the assessee is duly covered under Rule 46A(1) of the Income Tax Rules, 1962. It is prayed that for the sake of natural justice the additional evidence be kindly admitted.

2. On merits, the AO has merely observed that the documents are an afterthought and it is not believable that an amount of

Rs.22,00,000/- was received as advance against the total deal of Rs.35,00,000/-. In this connection, it is submitted that the evidence in the in the shape of bank statement and certificate has been ignored by the AO which clearly shows that the amounts have been returned to the erstwhile purchases by payee's account cheque in their accounts from the bank account of the assessee on the very next day of deposit of the amount in the bank account of the assessee. This clearly supports the 'biana' wherein the assessee had received the amount of Rs. 22,00,000/- deposited the same in his bank account and on the very next day due to dispute in the family had to return bank the amount to the erstwhile purchasers by cheque in the bank accounts. The evidence of ownership of the land against sale of which the advance was received by the assessee is also filed. The source of the cash deposit in bank account duly stands confirmed. It is submitted that it has been held by various courts that a good evidence cannot be ignored by the AO merely on conjectures &.surmises. The documentary evidence in the shape of bank statement & bank certificate, the biana & ownership documents of the land St most importantly the returning of money by the assessee to the same persons from through banking channels from whom it was received a day before shows the genuineness of the transaction.

In view of the above, it is prayed that since the source of the deposit in bank account stands explained, the addition made by AO be kindly deleted.”

7. The Id. CIT(A) after considering the submissions of the assessee and the remand report of the AO sustained the addition made by the AO by observing in para 4.5 of the impugned order as under:

“4.5 I have carefully considered the evidence placed on record and have no further words but to completely agree with the findings given by the AO as appellant has still not filed any supporting evidence in the form of agreement to sell, for sale of his property at a consideration of Rs. 35 lacs. The appellant has / filed a receipt which has been thumb impressioned to support the deposit Rs. 22 lacs in cash in the bank account. The appellant has not bothered to file an affidavit in the absence of agreement to sale from the persons who have given cash. The appellant has also not filed any

confirmations, proof of identity of those persons who had given cash. The AO in the remand report has rightly stated that focus of assessment proceedings has been to ascertain the sources of cash deposits in the bank account and appellant after six years has made up a story which is not supported with any evidence worth considering. The copy of bank account filed along with a certificate that cheque has been issued to Sh. Gurmit Singh, the purchaser is of no value as the same facts were already present before the AO. Thus, I hold that AO was justified in treating these peak cash deposits of Rs. 24.30 lacs as unexplained income of the appellant.”

8. Now the assessee is in appeal. The ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the assessee received Rs.22,00,000/- in cash on the basis of agreement to sell his property for Rs.35,00,000/- on 19.11.2008 which was deposited in the bank account and on the same day transferred it to the FDR account. However, on next day, due to some dispute, the amount had to be returned and since the assessee did not have any amount, he took a loan against the FDR to the tune of Rs.21,86,500/- and gave back the amount by cheque on 20.11.2008 to the purchasers, namely, Sh. Gurmeet Singh and Sh. Beant Singh. Thereafter, the FDR was encashed and the loan amount was adjusted. Our attention was drawn for the aforesaid proposition towards page nos. 3 & 4 of the assessee's paper book. It was further submitted that the bank has certified the repayment of loan against FDR. A reference was made to page no. 5 of the assessee's paper book. It was submitted that the assessee furnished all the documentary evidences but the same were not appreciated by the authorities below. Therefore, the addition made by the AO and sustained by the ld. CIT(A) was not justified.

9. In his rival submissions, the ld. DR strongly supported the order of the authorities below and further submitted that the assessee did not file any evidence before the AO and the plea taken before the ld. CIT(A) was an

afterthought. Therefore, the addition confirmed by the Id. CIT(A) was fully justified.

10. I have considered the submissions of both the parties and perused the material available on the record. In the present case, it appears that the assessee received a sum of Rs.22,00,000/- from Sh. Gurmit Singh S/o Resham Singh R/o Sangrur and Beant Singh R/o Handiaya on 19.11.2008 on account of sale of one Haveli located at Saifabad, Tehsil Phillaur measuring 14 Marlas for a sum of Rs.35,00,000/-, which is evident from page nos. 1 & 2 of the assessee's paper book, which is the copy of the receipt issued by the assessee to the aforesaid persons. It is also noticed from copy of bank account placed at page no. 3 of the assessee's paper book that cash amounting to Rs.22,00,000/- was deposited in the bank account with Indian Bank, Sangrur on 19.11.2008. On the same day, a sum of Rs.24,29,500/- was transferred to FDR and on 20.11.2008 an amount of Rs.21,86,500/- was credited which was claimed to be loan against the aforesaid FDR. On the same day i.e. 20.11.2008, the assessee returned by cheque a sum of Rs.18,86,050/- to Sh. Gurmit Singh and Rs.3,00,000/- to Sh. Beant Singh. The remaining amount was claimed to be paid in cash. The aforesaid facts has also been certified by the bank vide certificate dated 07.11.2011 (copy of which is placed at page no. 5 of the assessee's paper book). From the aforesaid facts, it is clear that the assessee was having the plausible explanation to explain the source of Rs.22,00,000/- deposited on 19.11.2008. As regards to the opening balance of Rs.2,30,000/- deposited in the bank account on 12.11.2001, it was claimed that it was out of regular income of truck and agricultural income amounting to Rs.1,18,300/- and Rs.2,50,000/- respectively which had been accepted by the Id. CIT(A) also in para 4.6 of the impugned order. Therefore, the explanation regarding deposits of Rs.2,30,000/-

also appears to be plausible out of the said income. I, therefore, considering the totality of the facts, delete the impugned addition made by the AO and sustained by the ld. CIT(A).

11. In the result, the appeal of the assessee is allowed.
(Order Pronounced in the Court on 17/01/2019)

Sd/-
(N. K. Saini)
VICE PRESIDENT

Dated: 17/01/2019

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR