

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

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

Sh. Ravish Sood, Judicial Member

ITA No.228/Asr./2017 : Asstt. Year : 2012-13

ITA No.125/Asr./2018 : Asstt. Year : 2012-13

Sh. Gulshan Rai Prop. M/s. Ram Prakash & sons G.T. Road, Phillaur, Distt. Jalandhar	Vs	DCIT, Central Circle-II, Jalandhar
(APPELLANT)		(RESPONDENT)
PAN No. AATPR5202L		

**Assessee by : Sh. Sudhir Sehgal & Sh.. Anil Miglani, Advs
Revenue by : Smt. Parvinder Kaur, CIT DR**

Date of Hearing : 16.01.2019	Date of Pronouncement : 17.01.2019
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ORDER

Per N. K. Saini, Vice President:

These two appeals by the assessee are directed against the separate orders of the CIT(A)-2 dated 28.2.2017 and 1.12.2016.

2. At the first instance, we will deal with appeal in ITA No. 228/Asr/2017. The only grievance of the assessee in this appeal relates to the confirmation of addition of Rs. 3,44,006/- out of the addition made by the AO.

3. Facts of the case in brief are that in this case action under section 132(2) of the Income Tax Act, 1961 was carried out on 27.12.2011. The response the assessee filed the return of income on 29.2.2012 declaring taxable income of Rs. 60,15,128/-. During the course of assessment proceedings, the AO noticed that on 27.12.2011 during Punjab Assembly Election cash amounting to Rs.

6,00,000/- was seized from the assessee near Phillaur for which satisfactory reply / evidence regarding the source was not given. The AO asked the assessee to explain the source of above cash seized. In response the assessee submitted that it was out of the cash in hand, he furnished the copy of cash book dated 27.11.2012 showing closing cash in hand of Rs. 6,28,025/- copy of sale bills of Pig iron weighing 10.170 Tons totaling Rs. 3,44,006/-. Copy of weighment slip etc.,. The AO noticed that the assessee was having opening cash balance of Rs. 2,84,559/-. However, he did not accept the cash on account of cash sale of Rs. 3,44,006/- for the reason that the existence of the firm M/s Ubhi Agro Industries at G.T. Road Nabha was not proved. Accordingly addition of Rs. 3,44,006/- was made.

4. Being aggrieved the assessee carried the matter to the learned CIT(A) who sustained the addition by observing in para 4.10 of the impugned order as under:-

“4.10 It is not a case of normal cash sale but is a case where cash was seized in the course of assembly elections and therefore, the onus is higher on the appellant to prove the sources of available cash in hand. The fact that books of accounts have not been rejected by the AO does not give shelter to the appellant against making an addition on specific account of non genuine sale booked in the accounts. The contention of the appellant that opening & closing stock has been accepted by the AO and have not been rejected does not mean that cash sale stated to have been made before the seizure stands automatically verified. The fact that cash sale stated to have been made on that day, has not been accepted by the AO and that too on the basis of field enquiries made after going through the evidence filed by the appellant. The appellant has not been able to bring on record any further evidence to substantiate his explanation. The supporting evidence filed by the appellant has failed to substantiate even the existence of the party to whom cash sale was made. AO has rejected the contention of the appellant that cash sale on that date was made and to that particular party namely M/s Ubhi Agro Industries. The judicial decisions cited by the appellant are found to be distinguishable on account of peculiar facts of this case. Therefore, I hold that AO was justified in treating the amount of Rs. 3,44,006/- as unexplained cash. Accordingly, I confirm the addition of Rs. 3,44,006/- made by the AO under this head.”

5. Now the assessee is in appeal.

6. The learned counsel for the assessee reiterated the submissions made before the authorities below and submitted that the assessee maintained the proper books of accounts in which the cash in hand at Rs. 6,28,025/- on 27.12.2011 was reflected. Out of the said amount assessee was travelling with cash of Rs. 6,00,000/- which was handed over by the police to the Income Tax Department. It was submitted that there was cash sale of Rs. 3,29,508/- vide bill no. 395 on the same date i.e. 27.12.2011. In the said bill, an amount of Rs. 14,498/- was charged on account of Sales Tax, Surcharge and Rs. 27,871/- for Excise Duty. It was further submitted that the copy of Excise Register was furnished before the AO and quantitative tally was also accepted, therefore, there was no reason to doubt the cash sales particularly when books of accounts had not been rejected.

7. In his rival submissions, the learned DR strongly supported the orders of the authorities below and reiterated the observations made therein.

8. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it is an admitted fact that the assessee maintained regular books of account which were produced before the AO and no defect was pointed out in those books. Assessee also furnished the quantitative tally and copy of the bill no. 395 dated 27.12.2011 showing the cash sale amounting to Rs. 3,44,006/-. The sale value arising out of the aforesaid bill was entered in the cash book, copy of which is placed at page no. 1 of the paper book. The assessee explained that the cash found by the police was out of the cash in hand, said explanation of the assessee was not doubted, however, the addition has been made only for the cash sale bill. In our opinion, when the

books of accounts including the cash books were accepted by the AO. There was no occasion to doubt the cash sale of the excisable goods particularly when the assessee furnished all the relevant documents relating to the sale vide Bill No. 395. We, therefore, considering the totality of the facts delete the impugned addition made by the AO and sustained by the learned CIT(A).

9. In ITA No. 125/Asr/2018, the grievance of the assessee relates to the penalty under section 271(1)(c) of the Act levied by the AO and sustained by the learned CIT(A) on account of the aforesaid referred to addition. Since the addition sustained by the learned CIT(A) has been deleted in the former part of this order while deciding the appeal of the assessee in ITA No. 228/Asr/2017, therefore, the impugned penalty is also directed to be deleted.

10. In the result, the appeals of the assessee are allowed.

(Order Pronounced in the Court on 17/01/2019)

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

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

Dated: 17/01/2019

SH

Copy forwarded to:

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

ASSISTANT REGISTRAR

		Date	<u>Initial</u>	
1.	Draft dictated on	16.01.2019		PS
2.	Draft placed before author	17.01.2019		PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			