

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

BEFORE SH. B.R. BASKARAN, ACCOUNTANT MEMBER AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

ITA No.332/Asr/2016
Assessment Year:2005-06

Sh. Jatinder Singh
Kothi No.22-23
Gali No.1, Partap Nagar
Amritsar

Vs.

Income Tax Officer
Ward-3(2), Amritsar

[PAN:ANJPS 2425H]
(Appellant)

(Respondent)

A N D

ITA No.301/Asr/2016
Assessment Year:2005-06

Income Tax Officer
Ward-3(2)
Amritsar

Vs.

Smt. Kulwant Kaur
Kothi No.22-23
Gali No-1
Partap Nagar, Amritsar

(Appellant)

[PAN:ATXPK 6309A]

(Respondent)

Assessee by : Sh. Padam Bahl (Ld. CA)
Revenue Department by : Sh. Charan Dass (Ld. DR)

Date of hearing: 26.08.2019
Date of pronouncement: 09.10.2019

ORDER

PER N.K.CHOUDHRY, JM:

These appeals have been preferred by the Assessee against the orders dated 15.02.2016 passed by the Ld. CIT(A)-1, Amritsar u/s 250(6) of Income Tax Act, 1961 (hereinafter called as the 'Act')

whereby the Ld. CIT(A) affirmed the addition of Rs.91,51,000/- made as substantive addition on account of unexplained investment made in purchase of land in the case of Jatinder Singh and deleted the addition of Rs.91,51,000/- made by the Assessing Officer in the hands of Smt. Kulwant Kaur on protective basis .

2. Both the case are based on the same facts and involved identical issues, therefore for the sake of brevity and convenience have been taken together for adjudication by this composite order. Let us to first decide **ITA No.332/Asr/2016**, in which , the Assessing Officer made the addition of Rs.91,51,000/- by holding that the assessee has purchased the land measuring 41 Kanal, 17 marlas in village Sultanwind for Rs.86,33,000/- on Power of Attorney and also paid Rs.5,18,000/- as Stamp Duty Expenses. The Ld. Assessing Officer further held that the explanation given by the assessee for investment made in purchase of said land measuring 41 Kanal, 17 Marlas in village Sultanwind sub urban area Amritsar vide vasika No.6212 dated 01.10.2004 for Rs.86,33,000/- is not satisfactory. The assessee has made this investment out of unexplained sources known to him which is assessable U/s. 69 of the Income Tax Act, 1961.

3. On appeal, the Ld. CIT(A) affirmed the addition under dispute by holding as under.

“6. I have gone through the grounds of appeal, submission and the assessment order.

In this case assessment has been made on the basis of Tax Evasion Petition that the assessee has purchased land and paid Rs. 86,33,000/- on 30.09.2004. From the perusal of copy of registration deed it seen that at least investment of Rs. 86,33,000/- has been paid by Sh. Jatinder Singh. From the Assessment order it is clear that the assessee has no relevant material to explain the Investment made. No Bank A/c detail has been provided by the assessee vide notice dated 27.11.2012. Further the

assessee was required to submit sale deed related to the above purchase but the assessee again failed to supply the same. Even before me no substantial evidence has been produced to substantiate his claim about source of investment. In reply to my specific request to produce the claimed sale deed dated 10.10.2004. The learned CA of the assessee replied that he is not able to file these details and appeal may be finalized based on document on record.

The Additional evidence of "J" form submitted by Assessee does not pertain to this year. Thus it is clear that the assessee has made this investment out of unexplained sources known to him, which is assessable under section 69 of the Income Tax Act, 1961 and the addition of Rs.91,51,000/- (86,33,000 + 5,18,000) by treating it as unexplained investment is upheld.

7. *I have considered the assessment order and the written submissions of the appellant and the grounds of appeal are disposed off as under:*

- i. The ground of appeal at S.No.3 is dismissed.*
- ii. The ground of appeal at S.No.1,2,4,5,6 are general in nature and required no adjudication.*

8. *In the result the appeal is dismissed."*

4. Having heard the parties and perused the material available on record. As per impugned order, it is observed by the Ld. CIT(A) that *even before him no substantial evidence produced to substantiate the claim about the source of investment and in reply to specific request the assessee failed to produce the claimed sale deed dated 10.10.2004. The Ld. CIT(A) further held that additional evidence of "J" Form submitted by assessee does not pertain to this year. Thus it is clear that the assessee had made this investment out of unexplained sources known to him, which is assessable u/s 69 of the Income Tax Act, 1961 and addition of Rs.91,51,000/- (86,33,000/- + 5,18,000/-) by treating it as unexplained investment is upheld. Though, the Ld. CIT(A) analyzed the facts of the case, however simply rejected the grounds without giving any finding and reasons. The Ld. AR during the course of argument has submitted that the Ld. CIT(A) has grossly erred in ignoring the*

cash flow chart filed before him along with bank statements. Further the authorities below having failed to appreciate that the assessee along with his father, son, wife and mother was holding substantial Agricultural Lands and had Annual Agricultural Income of Rs.25 lacs approximately. Further the Ld. CIT(A) has grossly erred in rejecting the entire explanation of the assessee qua sources of investment in purchase of Agricultural Land filed vide letter dated 13th July, 2015 along with cash flow chart, however, the Ld. CIT(A) wrongly held that no substantial evidence has been produced by the assessee.

We realize from the order that though the Ld. CIT(A) analyzed the facts of the case, however, from the order it does not appear to have examined the cash flow statement and bank statement of the assessee. The assessee has also challenged the charging of interest u/s 234A and 234B of the Act vide ground No.6 and also raised other five grounds before the Ld. CIT(A), however, from the determination/conclusion it appears apparently that no reason has been given by the Ld. CIT(A) while deciding any of the ground, hence considering the peculiar facts and circumstances we are inclined to set aside the order passed by the Ld. CIT(A) and remand the case to its file for decision afresh, suffice to say while affording reasonable opportunities of being heard to the parties. Consequently the appeal i.e. **ITA No.332/Asr/2016** filed by the Assessee is liable to be allowed for statistical purposes.

5. ITA No.301/Asr/2016

This appeal has been preferred by the Revenue Department against the deletion of protective addition of Rs.91,51,000/- by the Ld. CIT(A) . Brief facts of the case are as that as per assessment order, the assessee stated to be Power of Attorney Holder of

agricultural land on behalf of Smt. Tej Kaur who was the real owner of the land and by virtue of Power of Attorney, she had executed the sale deed on 30.09.2004 in favour of Sh. Jatinder Singh, S/o Sh. Amreek Singh for a consideration amount of Rs.86,33,000/-. The Assessing Officer has made the substantive addition of Rs.91,51,000/- in the hands of Sh. Jatinder Singh on account of alleged unexplained investment made by him from undisclosed sources and protective addition in the hands of assessee.

6. On appeal, the Ld. CIT(A) deleted the addition against which the Revenue Department has preferred this appeal and raised the sole ground to the effect that the Ld. CIT(A) has erred in law in deleting the addition of Rs.91,51,000/- made by the AO on protective basis U/s.69 as unexplained investment since, addition of Rs.91,51,000/- made in the case of Sh. Jatinder Singh on substantive basis has been confirmed by Ld. CIT(A) vide order dated 15/02/2016 and the assessee has filed the appeal against the order of the Ld. CIT(A) before Hon'ble ITAT, Amritsar Bench, which is still pending for adjudication.

7. Having heard the parties and perused the order and material available on record. The Ld. CIT(A) deleted the addition by holding *that just holding a Power of Attorney on behalf of someone does not mean that the said person is a real owner of the property.* The Ld. CIT(A) further held that *substantive addition has been made in the hands of Sh. Jatinder Singh, hence, there is no ground to make protective addition in the hands of the assessee.*

We while deciding **ITA No.332/Asr/2016** in the case of Sh. Jatinder Singh, vide para no. 4 of this order, has set aside the order

dated 15/02/2016 passed by the Ld. CIT(A) whereby the addition of Rs.91,51,000/- made by the AO on substantive basis was affirmed by the Ld. CIT(A), and remanded the case to the file of Ld. CIT(A) for decision afresh. Even otherwise while applying our independent mind, we do not find any perversity, illegality and/or impropriety and any substantive material to reverse the decision of the Ld. CIT(A) in the instant case, hence the appeal under consideration is liable to be dismissed.

8. In result , the appeal i.e. **ITA No.332/Asr/2016** filed by the Assessee stand allowed for statistical purposes and **ITA no. 301/Asr/2016** filed by the Revenue department stands dismissed.

Order pronounced in the open Court on 09/10/2019.

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Dated: 09/10/2019.

/PK/ Ps.

Copy forwarded to:

1. The Appellant
2. The Respondent
3. The CIT
4. Then CIT(Appeals)
5. SR DR, I.T.A.T. Amritsar
6. Guard File

True Copy

By Order