

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH**  
**(VIRTUAL COURT)**

**श्री एन.के.सैनी, उपाध्यक्ष एवं श्री आर.एल. नेगी, न्यायिक सदस्य**

**BEFORE: SHRI. N.K.SAINI, VP & SHRI , R.L. NEGI, JM**

आयकर अपील सं./ ITA Nos. 663 & 664/Chd/2018

निर्धारण वर्ष / Assessment Years : 2008-09 & 2009-10

|  |      |                                      |
|--|------|--------------------------------------|
| Shri Satkar Singh Bawa<br>Prop. M/s S.S. Builders,<br>948, Gilko Valley Heights,<br>The: Kharar, Dist: Mohali,<br>Punjab | बनाम | The ITO,<br>W-6(4), Mohali<br>Punjab |
| स्थायी लेखा सं./PAN NO: AJOPS9346N   |      |                                      |
| अपीलार्थी/Appellant  |      | प्रत्यर्थी/Respondent                |

निर्धारित की ओर से/Assessee by : Shri R.R. Thakur, Advocate

राजस्व की ओर से/ Revenue by : Shri Ashok Khanna, Addl. CIT

आयकर अपील सं./ ITA Nos. 673 & 674/Chd/2018

निर्धारण वर्ष / Assessment Years : 2008-09 & 2009-10

|   |      |                                      |
|---|------|--------------------------------------|
| M/s Wembley's Coop House<br>Building Society Ltd.<br>Mohali | बनाम | The ITO,<br>W-6(4), Mohali<br>Punjab |
| स्थायी लेखा सं./PAN NO: AABTT2117J                          |      |                                      |
| अपीलार्थी/Appellant   |      | प्रत्यर्थी/Respondent                |

निर्धारित की ओर से/Assessee by : Shri M.R. Sharma, Advocate

राजस्व की ओर से/ Revenue by : Shri Ashok Khanna, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 28/06/2021

उद्घोषणा की तारीख/Date of Pronouncement : 30/06/2021

**आदेश/Order**

**PER N.K. SAINI, VICE PRESIDENT**

These four appeals by different assesseees are directed against the separate orders each dt. 15/02/2018 of Ld. CIT(A)-2, Chandigarh.

2. Since the issues involved are common in all these appeals which were heard together, so these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. At the first instance we will deal with ITA No. 663/Chd/2018 for the A.Y. 2008-09 in the case of Shri Satkar Singh Bawa wherein assessee has raised the following grounds.

1) *That the Ld. Commissioner of Income Tax (Appeals) 2 has wrongly dismissed the appeal of the Appellant without going through the facts of the case.*

2) *That the Ld. Commissioner of Income Tax (Appeals) 2 has failed to consider the wrong reasons recorded by the Ld. Assessing Officer for issue of notice U/s 148 of the Income Tax Act 1961. The assessment is likely to be quashed in the eyes of Law.*

3) *That the learned Commissioner of Income Tax (Appeals) 2 has wrongly confirmed the addition of Rs. 17,00,000/- alleged to have been made in cash payment without any evidence. The alleged original receipts of payment made h: cash are not available with the Department and Photo copies have been fraudly prepared by the complaint. The addition may kindly be deleted.*

4) *Any other ground of Appeal which may be taken before the hearing of the appeal with the permission of the Honourable Income Tax Appellate Tribunal.*

From the aforesaid grounds, it would be clear that the main grievance of the assessee relates to the confirmation of addition of Rs. 17,00,000/- made by the A.O.

4. The facts relating to this issue in brief are that the assessee filed its return of income on 25/11/2010 declaring an income of Rs. 8,31,590/-. Later on the A.O., on the basis of the information received from ADIT(Inv.), Patiala to the effect that the assessee had received cash payments of Rs. 17,00,000/- from M/s Wembley Coop. H/B Society, on account of cost of construction of material, reopened the assessment by issuing the notice under section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

4.1 During the course of assessment proceedings the A.O. noticed that the assessee had done work with M/s Wembley Coop. H/B Society as a Contractor and that as per agreement furnished by the assessee executed between the assessee and M/s Wembley Coop. H/B Society, the Contractor will maintain a bank account at Chandigarh/ Mohali in which the amount payable by M/s

Wembley Coop. H/B Society to the contractor will be credited. The A.O. asked the assessee to show cause where the amount of Rs. 17,00,000/- had been accounted for. The relevant extract of the letter written by the A.O. to the assessee read as under:

*"In connection with the assessment proceedings for the A.Y. 2008-09, it is hereby stated that according to an agreement executed on 02.02.2007 between you and M/s. Wembley's Coop. H/B society., as per page-3, para No.4 & on page 8, para 20, the Contractor will maintain a Bank Account at Chandigarh/ Mohali in which the amount payable by M/s. Wembley Coop. Society to the Contractor will be credited. Further vide para-9 of your reply dt. NIL received in this, office on 18.12.15, you have stated that you have done work with M/s. Wembley's Co.op H/B society during the year and all the payments received through cheque from the said society.*

*In this context as per information available with the department, you have received an amount of Rs. 17 lakhs in cash from the said society during the financial year 2007-08 relevant to asstt. year 2008-09. Receipts in support of this contention are enclosed herewith. In this regard, you are hereby required, to show cause where this amount has been accounted for by you, failing which it will be presumed that you have nothing to say in this regard, and the said amount of Rs. 17 lacs will be added back to your returned income treating it as income from undisclosed sources."*

4.2 In response the assessee submitted as under:

*" it is for your kind information that I have not received cash of Rs. 17 lacs from the society during the F.Y.2007-08 & Receipts shown by you are not signed by me...."*

4.3 The A.O. was not convinced from the reply given by the assessee and observed that the assessee did not comply with the enquiry letters and summons issued and served on him and that if assessee had not received cash of Rs. 17,00,000/- from M/s Wembley Coop. H/B Society, he would have cooperated with investigation wing and furnished the requisite details / information as called for by investigation wing regarding the receipts of Rs. 17,00,000/-. Therefore non cooperative attitude of the assessee shows that he had received the amount of Rs. 17,00,000/- from the said society. He further observed that the signatures of the assessee tallied with signatures marked by him on the order sheet and the other documents signed by him during the

course of assessment proceedings. The A.O. did not accept this plea of the assessee that he had not received cash of Rs. 17,00,000/- from M/s Wembley Coop. H/B Society and the receipts were not signed by him. Accordingly the addition of Rs. 17,00,000/- was made.

5. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted as under:

*"The addition made on the basis of photocopy of evidence which is forged and fake one is totally unjustified and it is prayed to kindly delete it. The AO has nowhere confronted the assessee or has shown original receipts or any other material available with ADI Patiala referred to by AO in this order.*

*Proceedings U/s 148 are bad in law as these have been initiated on the basis of fake/forged receipts and both parties have denied having received any such payments.*

a) *The addition has been made on the basis of photocopy of fake receipts and no original has ever been confronted.*

b) *In 89 ITR 65 (SC) in the case of M/s Moosa S Midha & Azam S Masdha Vs CIT 1973 it was held that photocopies have very little evidentiary value. (Copy of judgement stands already filed).*

c) *This judgement was further followed by various courts. In the case of CIT Vs Moorti Devi on 20.9.2010 (para 7) Copy stands filed in reply having been filed in appeal for A.Y 2008-09.*

d) *Under evidence Act also photocopies are not admissible as an evidence. See Judgement of Akhtar Hussain & Ors Vs Md Nasirudin & Ors. On 9.12.2014, 2002 (2 CLJ 449 para 24). Copy already filed.*

e) *ITAT Delhi in Shyam Sunder Jindal Vs ACIT on 10.4.2017 following Supreme Court Judgement 89 ITR 65 the same principal. Copy of order already attached, Para 15, 23 and 24 appeal 2008-09.*

*In view of the above, keeping in view of our submissions in assessment year 2008-09 appeal and this reply, kindly delete the addition which has been made by AO on the basis of photocopies and no originals are available with the deptt. Both giver and receiver as alleged have denied this documents. Agreement between the Society and this client prohibits cash transactions. Accounts of both this client and Society are audited and no such payment pointed out.*

*The accounts of M/s Wimblys are audited by Co-operative Inspector which is a Statutory Auditor of Govt, and that of Mr. Satkar Singh Audited U/s 44AB of the I T Act 1961."*

5.1 The Ld. CIT(A) after considering the submissions of the assessee sustained the addition by observing in para 7.3.1 and 7.3.3 of the impugned order as under:

*7.3.1 I have carefully considered the submission of the assessee and perused the assessment order. The main contention of the assessee is that the addition has been made on the basis of photocopy of receipts when the original is not available with the department. It is also emphasized that the payment outside the books of account has been denied by the payer as well as the recipient. It is also stated that the accounts of the payer society are duly audited by Inspector Audit. During appellate proceedings, it was inquired from the AO whether the original receipts of the alleged cash payments were available with the department. It was informed by the AO that only photocopies of the cash payments were available. It is therefore, undisputed that only photocopies of the receipts of cash payments of Rs 64,30,000/- in two years are available with the Department. The issue for consideration therefore is whether such photocopy can be sufficient evidence to be the basis of inference of unaccounted transactions.*

*7.3.3 In view of the fact that clinching evidence in the form of receipt of cash payment by the assessee was available with the department and the assessee was confronted with this information, I do not find any infirmity in the order of the AO in making the addition of Rs 17,00,000/- to the income of the assessee on account of unexplained cash receipts during the relevant previous year. Ground of appeal no. 2 is dismissed.*

The reliance was placed on the following case laws:

- M/s Moosa S Midha Vs. CIT 89 ITR 65 (SC)
- Dhakeshwari Cotton Mills Ltd. Vs. CIT 26 ITR 775 (SC)
- C Basant Lal Company Vs. CIT 45 ITR 206 (SC)

6. Now the Assessee is in appeal.

7. Ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that although agreement was signed by the assessee with M/s Wembley Coop. H/B Society, however no amount was received as alleged by the Department. It was further submitted that no original receipt was shown to the assessee and no reliance can be placed on the photocopy without providing opportunity of cross examination to the assessee. It was further submitted that as per the agreement, the payments were to be received by the cheque and no amount was to be received in cash. Therefore

the allegation that the assessee received the cash and did not account for, was not acceptable. It was contended that no opportunity of cross examination of the evidence had been provided by the A.O. therefore the impugned addition made by the A.O. and sustained by the Ld. CIT(A) was not justified.

7.1 The Assessee also furnished an affidavit stating therein as under:

*"I Satkar Singh Bawa son of Shri Joginder Singh Prop M/s S.S. Builders*

*House No. 906 Gilco Heights Kharar do hereby solemnly affirm and declare as under:-*

*1. That I have filed an affidavit in ITA No. 664/2018 and filing this affidavit in addition to the said affidavit.*

*2. That I have already stated in the affidavit already filed that the photocopies of the receipts on the basis of which additions has been made are stated to be signed by me which is factually incorrect as the signatures on the same are not of the deponent. Moreover the person who has made the complaint has not been produced for cross examination. The payer of the cash has also denied having paid the cash in question and is also in appeal before the ITAT.*

*3. That in the interest of justice the signatures on the receipts needs to be got verified by the handwriting experts in order to verify its correctness.*

*4. That neither the Assessing Officer nor the CIT(A) has allowed opportunity to cross examine the payer of the cash as well as the complainant and genuineness of the receipts on the basis of which additions has been made by the A.O. and confirmed by the CIT(A). "*

*Sd/-  
Deponent*

7.2 The said affidavit has been furnished as an additional evidence. The Ld. Counsel for the assessee submitted that the contents of the said affidavit are self explanatory and go to the root of the matter therefore the same may be admitted. The reliance was placed on the following case laws :

- C. Vasantlal And Co. Vs. CIT (1962) 45 ITR 206 (SC)
- Dhakeswari Cotton Mills Ltd. Vs. CIT (1954) 26 ITR 775 (SC)
- M/s Moosa S Midha Vs. CIT 89 ITR 65 (SC)

8. In his rival submissions the Ld. Sr. DR reiterated the observations made by the authorities below in their respective orders and strongly supported the impugned order passed by the Ld. CIT(A).

9. We have considered the rival submissions of both the parties and perused the material available on the record. In the present case it appears that the A.O. made the impugned addition for the reasons that the assessee could not explain satisfactorily that the amount of Rs. 17,00,000/- was not received by him. On the contrary the claim of the assessee was that the said amount was never received by him as there was no provision at all in the contract that any amount would be received in cash, rather the amount was to be received through cheque. The assessee also filed an affidavit dt. 24/06/2021 first time before this Bench of Tribunal with an application to admit the same as an additional evidence. In our opinion, the contents of the said affidavit go to the root of the matter and the assessee had averred in the said affidavit that the signature on the photocopy of the receipt used against him for making addition were not his, the person who had made the complaint had not been allowed to be cross examined and that the signature on the receipt needs to be got verified by hand writing expert. We therefore considering the totality of the facts admit the additional evidence in the form of the affidavit of the assessee but since the said affidavit was not before the A.O. or the Ld. CIT(A), we deem it appropriate to remand this issue back to the file of the A.O. to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

10. In ITA No. 664/Chd/2018 for the A.Y. 2009-10 the facts are similar as were involved in ITA No. 663/Chd/2018 therefore our findings given in respect to A.Y. 2008-09 shall apply with the same force for the A.Y. 2009-10 in the assessee's case.

11. As regards to appeals in ITA No. 673 & 674/Chd/2018 for the A.Y. 2008-09 & 2009-10 respectively, the facts are similar as were involved in ITA No. 663 & 664/Chd/2018 (supra), the only difference is that the assessee in these appeals i.e; ITA No. 673 & 674/Chd/2018 is the payer while the assessee in ITA No. 663 & 664/Chd/2018 was the recipient of the same amount and since there is direct

nexus in these appeals therefore the appeal in ITA No. 673 & 674/Chd/2018 are also set aside to the file of the A.O. for fresh adjudication in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

12. In the result, all the above appeals are allowed for statistical purposes.

(Order pronounced in the open Court on 30/06/2021 )

**Sd/-**

**आर.एल. नेगी**

**(R.L. NEGI)**

**न्यायिक सदस्य/ Judicial Member**

**AG**

**Date: 30/06/2021**

**Sd/-**

**एन.के.सैनी,**

**( N.K. SAINI)**

**उपाध्यक्ष / VICE PRESIDENT**

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar