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. 162/Asr/2019
Assessment Year: 2010-11

Sh. Boota Singh S/o Nachhater Singh, Grain Market, Goniana Mandi, Bathinda [PAN: CNNPS 4573C] **(Appellant)**	**Vs.**	I.T.O.,Ward 2(1), Bathinda **(Respondent)**

I.T.A. No. 163/Asr/2019
Assessment Year: 2010-11

Sh. Babu Singh S/o Nachhater Singh, VPO Bhokhra, Bathinda [PAN: GIMPS 7937E] **(Appellant)**	**Vs.**	I.T.O.,Ward 2(1), Bathinda **(Respondent)**

I.T.A. No. 164/Asr/2019
Assessment Year: 2010-11

Sh. Nachhater Singh, S/o Gurbaksh Singh, VPO Bhokhra, Bathinda	**Vs.**	I.T.O.,Ward 2(1), Bathinda

[PAN: JEPPS 8993G] **(Appellant)**		**(Respendent)**

Appellant by	**Sh. Sudhir Sehgal, Adv., Sh. J. K. Gupta, Adv. & Sh. Jyotsna, C. A.**
Respondent by	**Sh. Charan Dass, D. R.**

Date of Hearing	**13.07.2021**
Date of Pronouncement	**20.07.2021**

ORDER

Per Laliet Kumar, J.M.

This appeal filed by the assessees are directed against the order dated 20.01.2019 passed by the Ld. Commissioner of Income Tax (Appeals), Bathida in respect of A.Y. 2010-11 on the following grounds:-

CONCISE GROUNDS OF APPEAL in ITA No.163/ASR/2019

1. **That the Ld. PCIT has** erred in confirming the action of the Assessing Officer in reopening the case by issuing notice u/s 148 as there was no reason to believe that income of the assessee has escaped assessment as it has been stated in the reasons that the case needs more enquiry.

2. That the reopening is bad in law since there is mechanical application of mind by the PCIT, while granting the approval U/S 151 for issuance of notice u/s 148.

3. Notwithstanding the above said grounds of appeal, the notice issued in the status of individual is void abinitio, since the correct status is HUF as the land is ancestral.

4. Notwithstanding the above said grounds of appeal, the adoption of rate of land at Rs. 19000/- per kanal as on 1.4.1981 by the Assessing Officer and confirmed by the CIT(A) is against the facts and circumstances of the case and the rate of Rs. 70000/- to 85000/- per kanal in the other similar cases in the same Village has been upheld by the CIT(A) following the report of the revenue official and such orders have been accepted by the department.

5. That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not relying upon the agreements to sell dated 18.02.2009 and 12.03.2009 for deleting the whole addition u/s 54B on the basis that the same were not registered with the Revenue Authority.

6. That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not giving more deduction u/s 546 of the Act as the payments were made through cheques from the bank account of the assessee even though the sale deed was registered at less value but the fact remain that the assessee purchased the agricultural land in higher cost.

CONCISE GROUNDS OF APPEAL in ITA No.164/ASR/2019

1. That the Ld. PCIT has erred in confirming the action of the Assessing Officer in reopening the case by issuing notice u/s 148 as there was no reason to believe that income of the assessee has escaped assessment as it has been stated in the reasons that the case needs more enquiry.

2. That the reopening is bad in law since there is mechanical application of mind by the **PCIT,** while granting the approval U/S 151 for issuance of notice u/s 148.

3. Notwithstanding the above said grounds of appeal, the notice issued in the status of individual is void abinitio, since the correct status is HUF as the land is ancestral.

4. Notwithstanding the above said grounds of appeal, the adoption of rate of land at Rs. 19000/- per kanal as on 1.4.1981 by the Assessing Officer and confirmed by the CIT(A) is against the facts and circumstances of the case and the rate of Rs. 70000/- to 85000/- per kanal in the other similar cases in the same Village

has been upheld by the CIT(A) following the report of the revenue official and such orders have been accepted by the department.

5. That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not relying upon the agreements to sell dated 18.02.2009 and 12.03.2009 for deleting the whole addition u/s 54B on the basis that the same were not registered with the Revenue Authority.

6. That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not giving more deduction u/s 54B of the Act as the payments were made through cheques from the bank account of the assessee even though the sale deed was registered at less value but the fact remain that the assessee purchased the agricultural land in higher cost.

Similar are grounds in ITA no 162/2019

Back Ground Facts

1. These are three appeals fillede by. Sh. Nachhatar Singh,(ITA no 164/2019) who is father of Sh. Boota Singh & Babbu Singh and facts in all the three cases are absolutely identical and the Assessing Officer has passed the identical order in all the three cases and the CIT(A), Bathinda has also passed the consolidated order in all the three cases as the facts are common and they belongs to one family.

2. It is the case of the assessee that all the above three assessees are agriculturists and do not have any other business income and not filing their Income tax returns, because they did not have any business or professional income either. They had inherited the land from their ancestral as per kursinama is placed at page 10, and English translation placed at page 10- of PB.

3. The issue arising in all the three appeals is that the father and two sons alongwith their mother had sold land in “Village Bhokhra” for a total consideration of Rs. 4.70 crores and which detail has been mentioned by

the CIT(A) in para 2 of his order. The CIT (A) in order had mentioned as under :-

4. The notices u/s 148 were issued to all the above persons, since they are not being assessed to tax on the basis of identical reasons which have been recorded and certified copy of reasons have been placed at pages 1 to 3 of the Paper Book. The notices u/s 148 have been served upon them as per certified copies placed at pages 4 to 6 of the paper book.

5. The assessees filed their returns of income in response to notices u/s 148, declaring only agricultural income. The Ld. Assessing Officer has passed the order u/s 143(3)/147 and calculated the capital gain on the sale of agricultural land by adopting the value as on 1.4.1981 @ Rs. 19000/- per kanal, on adhoc basis, as per para 3 of the order, without any supporting evidence and, then, after giving the benefit of further purchase of agricultural land u/s 54B calculated the capital gain in all the three cases as under:-

S.No.	Name of Assessee	Capital Gain Assessed
1.	Sh. Boota Singh	Rs. 95,90, 100/-
2.	Sh. Babbu Singh	Rs. 95,90, 100/-
3.	Sh. Nachhatar Singh	Rs. 87,49,720/-

6. The assessees filed appeals before the Commissioner of Income Tax (Appeals), Bathinda, challenging the action of the Assessing Officer in reopening of the case u/s 148 and also the computation of capital gain by adopting the rate as on 1.4.1981 and other grounds of appeals with regard to not allowing full deduction u/s 54B.

7. Feeling aggrieved by the order passed by the CIT(A), the assessees before us for the ground mentioned above .

Submissions of AR

8. AR had been submitted that notice issued under section 148 on the issue of 'mechanical application of mind' by the Ld. PCIT and also there was no 'Reason to Believe' that the income of assessee has escaped assessment as per concise 'grounds of appeal,' the following submissions may, please, be considered: -

a). In all the three cases, since the assessments were sought to be reopened beyond four years and, therefore, the sanction of PCIT was required u/s 151 and for that the copy of the 'duly certified' copy of the sanction by the Ld. PCIT in all the three cases have been placed at paper book pages 7 to 9, while the concerned Joint Commissioner of Income Tax has not mentioned anything and on the other hand, the PCIT has not applied his mind to the reopening of the case, before giving sanction and has only mentioned "YES" and which is evident from pages 7, 8 & 9 of the Paper Book submitted, which are certified copies from the department.

b). From the above said satisfaction as recorded by the Ld. PCIT, it is absolutely clear that, he has not applied his mind and has only given a 'mechanical approval', which is not permitted as per law and this is further evident from the copy placed at pages 11 to 13 of Paper Book.

c). The law on this issue is well settled by the Hon'ble Apex Court, which have been followed by the different Benches of the ITATs and High Courts and though, the gist of the cases on the above said issues of 'mechanical approval' have been enclosed in the paper book at pages 43 to 47, where the judgment of Hon'ble Apex Court in the case of CIT Vs. M/s S. Goyenka Lime and Chemical Ltd. have been mentioned, besides the number of other judgments and that judgment has been followed in the following cases, placed in the paper book as under:-

S.No.	Name of the Case	Placed at pages of PB	Relevant pages
1.	Smt. Charanjit Kaur	23-33	26,30,31 & 32
2.	Sh. Tek Chand	34-42	40 & 41
3.	Sh. Chhugamal Rajpal	110-115	110
4.	Omkam Developers Ltd.	116-140	127,128, 133 & 137
5.	N.C. Cables Ltd.	141-145	141

d). Thus, on the basis of above said judgments, it was submitted that the reassessment proceedings are void abinitio on account of 'mechanical

approval' given by the PCIT and, therefore, the assessment deserves to be quashed.

10. Secondly it was submitted that assessment proceedings not valid on account of the fact that there is no 'Reason to Believe. For the above said purposes the Ld. AR has drawn our attention to

a). Copy of the reasons recorded u/s 147 in all the three cases are identical, which are placed in 'Paper Book' at pages 1 to 3 and it has been mentioned in the reasons that the assessee had made certain transactions regarding the land sale, but no return has been filed and then it has been mentioned that the capital gain issue may arise and needs more enquiry.

b). It is submitted for the purpose of 148, there has to be valid reason to believe that income of the assessee has escaped assessment and notice u/s 148 cannot be issued for the purposes of verification. The Ld.AR further relied upon the decision in the case of Sh. Raj Singh passed by the ITAT Agra, copy of the judgment is placed at pages 48 to 74 . Similar view was taken by 'Delhi Bench' in the case of "Sh. Mohd Yameen Munna", which copy of the judgement has been placed at pages 81 to 109 and at page 96 of the paper book. it has been stated that the notice have been issued for verification of transactions and which cannot be equated to 'Reason to Believe' .

11. The Ld. for a further relied upon the decision in the case of 'Sh. Ashwani Kumar' and which copy of the judgment has been placed at pages, '75 to 80' of the paper book , wherein it was held that the deposit in the bank will not constitute the reasons to reopen the assessment. He also relied upon the case of Smt. Charanjit Kaur of the Chandigarh Bench of

ITAT, the same view has been taken and finding is there at page 32 of the paper book. On the basis of the above it was submitted that there was no reason to believe with the assessing officer therefore no reopening can be made by the assessing officer.

12. On Merits it was submitted that Assessing Officer/ CIT(A) for the purposes of computing the capital gain, had applied a rate of Rs. 19000/- per kanal and there is no basis for application of this rate of Rs. 19000/- . It was submitted that this issue of adoption of rate as on 1.4.1981 of the land situated at Village Bhokhra is now settled with regard to the application rate of 1.4.1981 by the department, because in other similar cases, in which, the land was situated at Village Bhokhra, the same issue was there and the Assessing Officer during remand proceedings in other group of case of 'Village Bhokhra' confirmed the rate as on 1.4.1981 from the 'Revenue Authorities', wherein, the Assessing Officer have reported to the CIT(A) in other similar cases, the rate as on 1.4.1981 between Rs. 70000/- to 85000/- per kanal and the Ld. CIT (A) by following other cases where similar rate has been applied has allowed the appeal of the assessee and no appeal by the department. Copy of the order of CIT(A) in the case of '**Sh. Paramjit Singh'** has been placed at pages 14 to 19 of the paper book and the relevant discussion starts from pages 17 to 19 and another case of **Sh. Mander Singh** , copy placed at pages 20 to 22 of the Paper Book and the same facts are there, which is evident from pages 21A of the Paper Book. In these two judgements and many other cases, where the rate of Rs. 70000/- to 85000/- per kanal has been adopted and, therefore, it is prayed that the average rate of Rs. 77500/- per kanal may, please, be adopted as applied in other cases.

13. The Ld. DR for the Department had relied upon the order passed by the lower authorities. He had filed the written submission in support of the case of the revenue and had also relied upon the decision of the jurisdictional High Court whereby the issue of reasons to believe and reopening have been settled by the High Court in the matter of Rakesh gupta vs CIT in CWP no 27068 of 2016 by holding as under.

"44. Mrs. Suri **relied upon judgment of the Supreme Court in Chhugamal Rajpal's case (supra) and in particular paragraph 9 thereof which reads as under :-**

"9. In his report the Income-tax Officer does not set out any reason for coming to the conclusion that this is a fit case to issue notice under Section 148. The material that he had before him for issuing notice under Section 148 is not mentioned in the report. In his report he vaguely refers to certain communications received by him from the C.I.T., Bihar and Orissa. He does not mention the facts contained in those communications. All that he says is that from those communications "it appears that these persons (alleged creditors) are name lenders and the transactions are bogus". He has not even come to a prima facie conclusion that the transactions to which he referred are not genuine transactions. He appears to have had only a vague feeling that they may be bogus 39 of 43 transactions. Such a conclusion does not fulfil the requirements of Section 151 (2). What that provision requires is that he must give reasonsfor issuing a notice under Section 148. In other words he must have some prima facie grounds before him for taking action under Section 148. Further his report mentions : "Hence proper investigation regarding these loans is necessary. In other words his conclusion is that there is a case for investigating as to the truth of the alleged transactions. That is not the same thing as saying that there are reasons to issue notice under Section 148. Before issuing a notice under Section 148, the Income-tax Officer must have either reasons to believe that by reason of the omission or failure on the part of these assessee to make a return under Secton 139 for any assessment year to the Income-tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year,income chargeable to tax has escaped assessment forthat year or alternatively notwithstanding that there has been no omission or failure as mentioned above on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year. Unless the requirements of clause (a) or (b) of Section 147 are satisfied, the Income-tax Officer has no jurisdiction to issue a notice under Section 148. From the report submitted by the Income-tax Officer to the 40 of 43 Commissioner, it is clear that he could not have had reasons to believe that by reason of the assessee's omission to disclose fully and truly all material' facts necessary for his assessment for the accounting year in question, income chargeable to tax has escaped assessment for that year; nor could it be said that he as a consequence of information in his possession, had reasons to believe that the income chargeable to tax has escaped assessment for that year. We are not satisfied that the Income-tax Officer had any material before him which could satisfy the requirements of either Clause (a) or Clause (b) of Section 147. Therefore he could not have issued a notice under Section 148. Further the report submitted by him under Section 151 (2) does not mention any reason for coming to the conclusion that it is a fit case for the issue of a notice under Section 148. We are also of the opinion that the Commissioner has mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice under Section 148. To Question No. 8 in the report which reads "Whether the, Commissioner is satisfied that it is a case for the I issue of notice under Section 148", he just noted the word "yes" and affixed his signatures thereunder. We are of the opinion that

if only he had read the report carefully, he could never have come to the conclusion on the material before him that this is a fit case to issue notice under Section

148. The important safeguards provided in 41 of 43 Sections 147 and 151 were lightly treated by the Income-tax Officer as well as by the Commissioner. Both of them, appear to have taken the duty imposed on them under those provisions as of little importance. They have substituted the form for the substance." (emphasis supplied) This judgment does not support the petitioner's case. It is clearly distinguishable. As noted in the earlier part of paragraph 9, the Supreme Court held that the reasons recorded by the ITO for initiating proceedings under Sections 147 and 148 were not in accordance with law. As in that case, the Commissioner merely accorded permission under Section 151 without stating any reason himself it is axiomatic that his order would also not be in accordance with Section 151. The case before us is entirely different. We have found that the reasons recorded by the AO justify the initiation of proceedings under Sections 147 and 148. As the Principal Commissioner agreed with these reasons, it was not necessary for him in his order according sanction to reiterate the reasons furnished by the AO. There is nothing that indicates that he did not apply his mind to the reasons furnished by the AO.

45. Reasons to believe are there. The reasons are based on tangible material. The return and account books of assessee had not undergone scrutiny at the time of assessment. The information is specific and not vague. A reasonable person can form an opinion on the basis of the material. The information received could form the basis of reason to believe that 42 of 43 income has escaped assessment and the re-opening is not on mere suspicion. Hence, the assumption of jurisdiction is in accordance with law."

14. On the basis of the above said decision it was submitted by the Ld.DR that the reopening was made by the assessing Officer in accordance with law and there was no error in reopening of the case of the assessee before us . It was further submitted that the present case was reopened on done by the assessing officer on account of non-filing of the return of income and deposit of cash in the bank account. It was submitted that the decisions relied upon by the assessee are not applicable to the facts of the case. In any case it was submitted that once the decision of the jurisdictional High Court is available on the subject matter, then the same is required to be denied to by the parties.

15. The Ld. DR had not contradicted the application of the higher rate by the CIT(A) in the remand proceedings in the matter of 'Sh. Paramjit Singh'

and Sh. Mander Singh(supra). However it was submitted that the matter requires confirmation by the lower authorities as to the application of the land rate.

16. We have considered the rival contention of the parties and perused the material available on record, including the judgments cited at bar during the course of hearing by both the parties.

17. On merits it was submitted by the Ld.AR that the assessing officer wrongly applied the rate of Rs. 19000/- per kanal and there was no basis for application of this rate of Rs. 19000/- . Further it was submitted, the Assessing Officer have reported to the CIT(A) in other similar cases, the rate as on 1.4.1981 between Rs. 70000/- to 85000/- per kanal in the matter of 'Sh. Paramjit Singh' bearing appeal Appeal no 61/ 2018-19 passed by CIT(A) AMRITSAR CAMP AT BATHINDA on 27.O9.2019 and Sh. Mander ingh bearing appeal no Appeal No. I l0-IT/17-l8 passed by CIT(A) BATHINDA on 27 .02.2019 (supra). In para 5 of the appellate order it was held as under in the case of Paramjit Singh :-

"…….Hardeep Singh are brothers and nephew and they have jointly sold the agriculture land measuring 40 kanal to PACL India Ltd, New Delhi amounting to Rs 240,80,000/- and the share of the appellant in the said land was 50% and other 50% belong to Sh. Gurdeep singh and Sh. Hardeep Singh. The AO had taken the same value of land in all the three cases and the case of the co-owner of the appellant Sh. Gurdeep Singh was decided by the CIT(A), Bhatinda on 1.3.2019 and no further appeals against this order has been filed by the department. In his order the CIT(A) observed that AO had not referred the matter to the valuation officer but deputed his inspector for enquiry. The report of the inspector dated 25.10.2017 is based on no

material because merely by visiting the village bhokhra, no one can ascertain the prevalent rate of the year 1981. The report of the inspector does not mention as to which enquiry was conducted to obtain the information. In the circumstances the AO had arrived at the conclusion without any basis. In the remand proceedings the AO had again obtained information from revenue authority which vide letter dated 22.1.2019 mentioned that in the year 1981 the rate in the area was between Rs 70,000/- to Rs 85000/-. There is no reason to discard the authenticated report of the e revenue authorities regarding the rate in the year 1981 in contradiction. to unsubstantiated inspectors report. The rate adopted by the appellant at Rs 25000/- per kanal is far less than the lowest rate quoted by the revenue authorities. Therefore, the addition made by the AO was deleted by the CIT(A), Bhatinda in the said case.

Following the order of the CIT(A), Bhatinda dated. 1.3.2019 in appeal no. 309/IT/17-18 for AY 2010-11 in the case of Sh. Gurdeep Singh s/o Sh. Karamjit singh, Goniana Mandi, dist, Bhatinda, the AO is directed to recompute the long term capital gain on the sale of 20 kanals of the impugned land by the appellant at bhokhra village, by adopting the value of land as on 1.4.1981 at Rs 70,000/ - per kanal as per report of the halka patwari submitted vide letter dated 4.2.2019 to the AO in the remand proceeding in the said cited case decided by the CIT(A), Bhatinda. As against this the AO had applied the rate of the impugnedproperty in the year 1981 at Rs 19000/- per kanal which is far too less than the rate quoted by the halka patwari of Rs 70000/- to Rs 85000/- per kanal as above. Therefore the addition made by the AO is deleted and the grounds of appeal are allowed.

6.In the result the appeal is allowed"

Similarly it was held in the case of Mander singh as under

"4.1 I have given careful consideration to the facts of the case and find that the report of Inspector dated 25.10.2017 is based on no material because merely by visiting village Bhokhra, no one can ascertain the prevalent rate of the year 1981. The option to adopt fair market value for computation of

capital gain/arriving at cost of acquisition is provided under section 55(2)(b)(i) of Income Tax Act for the assets acquired prior to 01/04/1981. In case, the Assessing Officer is not satisfied with fair market value then section 55A of Income Tax- Act comes into play which empowers the Assessing Officer refer the matter to the valuation officer. But in this case, the Assessing Officer decided not referred the matter to the valuation officer but deputed his Inspector for the enquiry. The Inspector report does not mention as to which inquiry was conducted to obtain the information. In such circumstances, the Assessing Officer has arrived at a conclusion without any basis. On the other hand, the - appellant submitted are credible information in the form of report from dated 27-11-2007 Revenue Authority clearly mentioning the details of immovable property (Khasra Number) and reported that per kanal rate was Rs.1,00,000/- in the year 1981. This report of Revenue Authority was also forwarded to the Assessing Officer for conducting remand proceedings. **It also pertinent to mention that during the remand proceedings also the Assessing Officer again obtained information from Revenue Authority which vide letter dated 22-01-2019 mentioned that in the year 1981 the rate in the area was between Rs. 70,000/- to Rs. 85,000/-.** There is no reason to discard the authenticated reports on the Revenue Authorities regarding rate in the year 1981 in contradiction to unsubstantiated Inspector's report. The rate adopted by the appellant at Rs. 37,700/-per kanal is far less than the lowest rate quoted by the revenue authorities. The addition made by the AO to the extent of the Rs. 4,39,685/- is deleted and grounds of appeal are allowed."

18. In our view it is the duty of the revenue, which is a state within the meaning of Article 12 of the Constitution of India, to treat the citizens equally , without discrimination and at par . In the present case the lands of Village Bhokhra" were acquired and the compensation were granted to various parties, including the assessee before us . Uniform land rate as applicable on 1.4.1981, were required to be applied for the purpose of computing long capital gain, in respect to all the land holders, unless some special rates were shown to be applicable, as the AO had not referred the matter to DVO under section 55A of the ACT. No dissimilarity had been brought to the notice by the ld DR between the assessee before us Sh.

Paramjit Singh' and Sh. Mander Singh(supra), where in higher rates of Rs70,000/ to Rs 85,000/ per kanal were applied by AO/ CIT(A). It was also not disputed that the land of these assessee were also acquired under the same proceedings and was situated in the same village.

20 In the light of the above we set aside the order passed by the CIT (A) and AO and remand the matter back the matter to the file of the assessing officer with the direction to apply the average of rates i.e Rs 77, 500/- per Kanal as were applied to in the matter of 'Sh. Paramjit Singh' and Sh. Mander Singh(supra) and work out the LTCG and thereafter grant the benefit of 54B to assessee before us, Needless to say this exercise shall be carried out after following the principle of natural justice and affording the opportunity of hearing to the assessee/s.

21. As we have decided the grounds on merit raised in the present set of appeals, we do not feel it appropriate to decide the legal grounds raised before us , pertaining to reopening of assessment on account of borrowed satisfaction/ inchoate satisfaction/ reopening for the purpose of enquiry , these issues shall be decided by us in some appropriate case . further the legal grounds raised before us have became academic/infructuous.

In the result all the appeals of the assessee are allowed for statistical purposes.

Announced on 20th July 2021 as per rule 34 of ITAT rules 1962 .

Sd/-	Sd/-
(Dr. M. L. Meena)	**(Laliet Kumar)**
Accountant Member	**Judicial Member**

Dated: .07.2021

GP/Sr. Ps.

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