

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “बी”, चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
CHANDIGARH BENCH ‘B’, CHANDIGARH

BEFORE SMT.DIVA SINGH, JUDICIAL MEMBER  
AND SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

**ITA No. 65/Chd/2020**

(Assessment Year: 2009-10)

Sh.Ram Singh(Demised), Through Legal Heir Sh.Harvinder Singh, #31, Sector 11, Panchkula. स्थायी लेखा सं./PAN NO: CYFPS4028H	बनाम	The Income Tax Officer, Ward – 6(5), Mohali.
--	------	--

निर्धारिती की ओर से/Assessee by : None  
राजस्व की ओर से/ Revenue by : Shri Manveet Sehgal, Sr.DR  
सुनवाई की तारीख/Date of Hearing: 22.02.2022  
उद्घोषणा की तारीख/Date of Pronouncement: 28.02.2022

**(Hearing through Webex)**

**आदेश/ORDER**

**Per Vikram Singh Yadav, Accountant Member:**

This is an appeal filed by the assessee against the order of Learned Commissioner of Income Tax(Appeals)-2, Chandigarh, [in short the ‘Ld.CIT(A)’] dated 23.10.2019 pertaining to assessment year 2009-10 wherein the assessee has taken the following grounds of appeal:

- “1. That the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in upholding the proceedings initiated under section 147 of the Act in as much as there has been no escapement of income warranting issuance of notice under section 148 of the

*Act and as such the order passed is arbitrary and unjustified.*

2. *That the Ld. Commissioner of Income (Appeals) has erred in law and facts in upholding the reopening in as much the assessment has been re-opened on the basis of borrowed information without any independent enquiry and reason to believe before the recording of reasons and as such the order passed is arbitrary and unjustified. Without prejudice to the above, the Ld. Commissioner of Income Tax (Appeals) has further erred in upholding the addition of Rs.82,56,500/- in utter disregard of the explanations rendered which is arbitrary and unjustified.*
3. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*
4. *That the order of the Ld. Commissioner of Income Tax (Appeals) is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable.”*

2. None has appeared on behalf of the assessee and on perusal of records it is observed that the Counsel appointed by the assessee had withdrawn his Power of Attorney on 05.10.2021 and thereafter the matter has been fixed for hearing on 09.12.2021 and thereafter on 22.02.2022. However, there is a constant non-compliance on part of the assessee. None has appeared nor any adjournment application has been filed by/on behalf of the assessee. Therefore, keeping into account the fact that the appeal was filed way back in the year 2020 and the matter has been adjourned from time to time and there is complete non-compliance and reluctance on the part of the assessee to pursue the present matter, it was decided not to adjourn the

matter any further as no useful purpose seems to be served and decide the matter after hearing the ld DR and basis the material available on record.

3. Briefly, the facts of the case are that in this case notice was issued u/s 148 of the Act, basis information that the assessee had deposited cash amounting to Rs.83,01,500/- in his bank account maintained with Oriental Bank of Commerce. In response to the notice, the assessee filed his return of income declaring income of Rs.2,39,964/- including agricultural income of Rs.1,50,000/-. Regarding cash deposit in the bank account, it was submitted that the assessee owned a piece of land situated at Village Shingariwala, which was acquired by IAS/PCS officers Cooperative House Building Society Limited, Mohali for a sum of Rs.79.36 lacs and the entire sale consideration was received in his bank account maintained with Punjab National Bank, Mullanpur, Kharar. Thereafter he withdrew the amount from time to time for making appropriate investments. However, due to lack of suitable opportunity of making the investment, the amount was re-deposited into his bank account during financial year 2008-09 and thereafter he purchased land for a sum of Rs.1.02 crores. Further the cash-flow statement was submitted during the course of assessment proceedings. The

submission so filed by the assessee was considered but not found acceptable to the AO and addition of Rs.82,56,500/- was made in the hands of the assessee besides addition of Rs.89,964/- towards interest earned on the saving account and the relevant findings of the AO are contained at paras 3 and 4 of the assessment order, which read as under:

*“3. The assessee's counsel has submitted cash flow statement as per table above in respect of the respective deposits. As per cash flow, the cash in hand has been stated to have been generated from cash withdrawal from the said bank account since December, 2005 onwards. It has been contended that the assessee was looking for appropriate investment and since no suitable opportunity of investing money could materialize as the market during the period was highly inflated/volatile, the cash was deposited back in bank account. However, no specific documentary evidence has been submitted in support of the said contention. The assessee has also failed to clearly establish the purpose of holding such huge cash for so long since the year 2005. Hence the contention of the assessee has not been found acceptable and the source of the said deposits remains unexplained. After considering deposits made in the said bank account on various dates and after allowing benefit of cash withdrawals made during the relevant financial year which have been redeposited, an amount of Rs. Rs, 82,56,500/- remains unexplained and is treated as income of the assessee from unknown and unexplained sources of the assessee and is charged to tax accordingly. I am satisfied that the assessee has concealed the particulars of income of Rs. 82,56,500/-. Therefore, penalty proceedings u/s 271(1) (c) of the I.T. Act, 1961 for concealment of particulars of Income are initiated separately.*

*4. Further, perusal of statement of bank account reveals that the assessee has earned interest of Rs. 89,964/- on savings during the year under consideration, The same is treated as income of the assessee from other sources and is charged to tax. accordingly. I am satisfied that the assessee has concealed the particulars of income of Rs. 89,964/- because had the case not been selected for scrutiny, the same would have escaped assessment. Therefore, penalty proceedings u/s*

*271(1) (c) of the I.T. Act, 1961 for concealment of particulars of income are initiated separately.”*

4. Being aggrieved, the assessee carried the matter in appeal before the Ld.CIT(A) challenging the order passed by the AO both on legality as well on merits of the case. The Ld.CIT(A), however, rejected the grounds of appeal taken by the assessee and the relevant findings are contained at paras 9.12 to 10.1 of his order, which read as under:

*“9.1 The submissions of the assessee have been considered. It is clear in light of above case laws that the re-assessment proceedings had been initiated rightfully in the case. Upon the formation of a reason to believe under section 147 and following the issuance of a notice under section 148, the Assessing Officer has the power to assess or reassess the income, which he has reason to believe had escaped assessment and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The notice was served upon the assessee through affixture. He also hired counsel for the case i.e. Smt. Meenakshi Gupta, CA. She appeared on his behalf and attended the case time to time and submitted relevant documents which the AO did not find satisfactory and the cash deposits remains unexplained. Accordingly, the AO completed the assessment. Having participated in the assessment proceedings and thereafter taking the plea that notice was not served upon the assessee fails logic. It's relevant to mention that the counsel who partook in the assessment proceedings in the same who attended the appellate proceedings. There is thus a continuity in the pleadings, on behalf of the assessee, before the income tax authorities. The plea that notice was not served upon the assessee and therefore the entire reassessment was void abinitio needs to be summarily rejected. Grounds of appeal no. 3 85 4 are dismissed.*

*9.2 It has been noticed that the appellant has expired on 21.10.2018. The fact as asserted by the death certificate of the assessee. The counsel of the assessee*

*vide letter dated 14.08.2019 submitted that the appellant is survived by the following legal heirs alongwith a request for impleading them in the appellate case:*

- (i) Smt. Nachattar Kaur, aged 65 Years, w/o Late Sh. Ram Singh.*
- (ii) Sh. Balwinder Singh, aged 45 years s/o Late Sh. Ram Singh.*
- (iii) Sh. Harvinder Singh, aged 40 years s/o Late Sh. Ram Singh. All are resident of Vill. Shingariwala, PO Mullanpur, Kharar, Mohali.*

*10. Grounds of appeal no. 5 & 6 are against addition of Rs.82,56,500/- on account of cash deposits.*

*10.1 The submissions of the assessee have been considered. It is pretty much /evident that the additions have been made primarily on the basis of sweep in credits reflected in the bank account. In support of the sources for the impugned deposits the additional evidence that he sold his land in Village Shingariwala for consideration of Rs.79.36 lacs to IAS/PCS Officers Co-operative House Building Society ltd. Mohali was submitted. The records, however, reveal evidence for only one sale deed of Rs.34.36 lakhs against the claims of assessee for Rs.79.36 lacs. The assessee has not been able to explain the balance amount of Rs.45 lacs. It is further relevant to examine that the date mentioned on the sale deed is 01/12/2005 however, the assessment was for the F.Y. 2008-09 relevant to A.Y. 2009-10. The subsequent argument was that the deposits in F.Y. 2008-09 were made in order to purchase land for Rs. 1.02 Crores. There is no evidence of the purchase of land amounting to Rs.1.02 Crores. As per the bank statement of account no. 11962011000843 maintained with Oriental Bank of Commerce, there are debit entries of Rs.56,00,000/- and Rs.45,95,000/- , the said amount was given to Sh. Manpreet Singh. The same was riot explained by the assessee. The crux of the arguments therefore are that the assessee had withdrawn nearly 80 lacs in F.Y. 2005-06 (that was sourced from sale of land previously to the IAS/PCS Co-operative House Building Society) which was retained and deposited back in F.Y. 2008-09 and subsequently used in 2008-09 to buy property worth*

*Rs.1.02 crores. The following relevant issues crop up when the aforementioned is examined:*

- (i) There is evidence of only 17 lakhs received by the assessee (half share) out of Rs.34 lakhs paid by the IAS/PCS Co-operative House Building Society.*
- (ii) It's highly unlikely that a society of IAS/PCS officers made payments in cash that could explain the balance 45 lakh cash claimed by the assessee out of the said transaction.*
- (iii) Even if the above was true the assessee would be captioned as a party to an arrangement designed to hoodwink the state government authorities of the stamp duties leviable.*
- (iv) Further if the assessee had such a large amount of cash available with him there was no occasion for subsequent withdrawals of cash from the same account in small quantities presumably to meet household expenses.*
- (v) The explanation given that the said deposits were made to facilitate purchase of another property for Rs.1.02 Crores in the same year has not been evidence. No proof of the transaction was provided either during the assessment or the appellate proceedings.*

*In the light of all the above, when the matter is examined through the prism of human probability the contention that the amounts deposited in 2008-09 were the same as what was withdrawn in 2005-06, have to be rejected as improbable and unlikely. Both the source of money withdrawn in 2005 and the destination of money utilized in 2008-09 don't get corroborated. As a consequence the treatment of the amounts deposited in cash during the year in contention as income from other source does not require any intervention. The AO's order is upheld. It is, by no stretch of imagination, an order based on whims and fancies but squarely based on assessee's inability to provide credible evidence. Grounds of appeal no. 5 & 6 are dismissed.”*

5. We have carefully gone through the assessment and appellate orders and also heard the Ld. DR who has relied upon the findings of the lower authorities. We find that the AO has carried out necessary examination and investigation in relation to the source of the cash deposits in the bank account maintained by the assessee and has found the explanation so submitted by the assessee in terms of holding huge cash in hand since the year 2005, not acceptable and has made the additions. Thereafter the Ld.CIT(A) has again examined the factual matrix of the case and has held that the crux of the argument of the assessee that he had withdrawn nearly Rs.80 lacs in financial year 2005-06, which was sourced from sale of land to IAS/PCS Cooperative House Building Society and it was retained and re-deposited in the bank account in financial year 2008-09 as improbable and unlikely as both the source of money withdrawn in 2005 and destination of money utilized in 2008-09 does not get corroborated. Therefore, in the light of material available on record, we do not see any justifiable basis to interfere with the findings of the lower authorities and the addition so made, is hereby confirmed and the grounds of appeal so taken by the assessee are dismissed.

6. Before parting we may add that where so advised, the assessee may seek liberty to recall this order after showing reasonable cause to the satisfaction of the Bench for non-compliance and non-appearance inspite of repeated opportunities, and any material which has been bearing on the matter and which has skipped the attention of the Bench.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced on 28.02.2022.

Sd/-

**(DIVA SINGH)**

**न्यायकि सदस्य/Judicial Member  
Member**

**Dated: 28.02.2022**

**\*रती\***

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

Draft dictated	24.02.2022	Sr.PS
Draft placed before author	25 .02.2022	Sr.PS
Approved Draft comes to the Sr.PS/PS		Sr.PS
Order signed and pronounced on		
File sent to the Bench Clerk		Sr.PS
Date on which file goes to the AR		
Date on which file goes to the Head Clerk.		
Date of dispatch of Order.		