

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

BEFORE SH. RAVISH SOOD, JUDICIAL MEMBER AND  
Dr. M. L. MEENA, ACCOUNTANT MEMBER

**ITA No. 174/(Asr)/2018  
Assessment Year: 2009-10**

Shri Amardeep Singh Vs. Sarkaria, VPO Mudal, Distt. Amritsar. [PAN: BIMPS 6113 H] <b>(Appellant)</b>	Income Tax Officer, Ward-2(1), Amritsar.  <b>(Respondent)</b>
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Appellant by : Shri K.R. Jain, Adv.

Respondent by: Shri Rohit Mehra, D.R.

Date of Hearing: 21.12.2021

Date of Pronouncement: 21.02.2022

**ORDER**

Per Dr. M. L. Meena, AM:

The appeal has been filed by the Assessee against the impugned order dated 22.12.2017, passed by Ld. Commissioner of Income Tax (Appeals)-I, Amritsar, in respect of the Assessment Year 2009-10. In the grounds of appeal, the Assessee has raised the following grounds:

*“1. That the Learned Income Tax Officer has erred in law and on facts while initiating proceedings u/s. 148 and likewise CIT(A) is not justified while confirming the same.*

*2. That initiation of proceedings by the AO are without application of mind & is based on borrowed information and as such proceedings initiated are illegal, invalid and void ab initio.*

3. *That no valid service of notice u/s 148 has been effected upon the appellant.*
4. *That the Ld. AO has not appreciated the explanation furnished in response to notice u/s. 142(1) received by the brother of the appellant in a proper and judicial manner.*
5. *That the learned AO has not appreciated in a judicial and proper manner explanation on record including the email sent by the appellant and proceeded to make the addition arbitrarily.*
6. *That the Ld. AO has observed that the brother of Amardeep Singh and his appointed advocate had no authority and on this basis no notice may be considered to have been served.*
7. *That copy of reasons recorded have not been supplied and as such assessment is wrong, illegal and without justification.*
8. *That explanation offered regarding Rs.2,66,522/- have not been appreciated. The source of deposit has been duly explained. Same was conversion of Australian Dollar where appellant is staying.*
9. *That in view of the material on record learned AO has erred in law and on facts while completing assessment u/s 144.*
10. *That appellant is non-resident and living in Australia since 2008 and now a permanent resident of Australia.*
11. *That no reasonable opportunity of being heard was granted to the appellant.”*

2. Grounds No.1 to 3 are interlinked where the assessee has challenged initiation of proceedings u/s.148 by the Assessing Officer without application of mind in view of no valid service of notice u/s.148 on the assessee.

3. The facts of the case as per record are that the assessee's case was selected for scrutiny based on information that he has deposited cash in his Savings Bank Account with HDFC Ltd., Amritsar amounting to Rs.10,25,000/- on different dates pertaining during the financial year relevant. He has mentioned in the assessment order that notice u/s.148 of the Income Tax Act, 1961 was issued to the assessee on 30.03.2016 after taking approval of the Id. PCIT-I, Amritsar, which was received back undelivered. Subsequently, notices u/s.142(1) of the Act and show cause were issued on different dates were also issued and notices were sent by office server of this office, Shri Jaimal Singh who reported that assessee was not traceable. The Assessing Officer has mentioned that finally the notice was received by his brother Shri Yadvender Singh and Shri S.B. Khanna, Advocate attended the proceedings on 22.11.2016 along with power of attorney given in favour of advocate by the aforesaid Shri Yadvender Singh, younger brother of the assessee. The Assessing Officer has requested the Advocate to either file legally executed power of attorney in his favour of the assessee or to file return reply duly signed by the assessee himself as per order sheet entry as per page 2 of the assessment order. In the absence of power of attorney in favour of either younger brother of the assessee or Shri S.B. Khanna, Advocate except a photocopy of e-mail of the assessee, the Assessing Officer did not entertain the reply filed by the assessee in response of cash deposits in his bank account during the relevant period as above. Accordingly, the Assessing Officer has passed assessment order u/s.144 of the Income Tax Act treating the cash deposits of Rs.10,25,000/- in his bank account as unexplained income u/s.68/69 of the Income Tax Act, 1961.

4. Aggrieved, assessee filed an appeal before the Id. CIT(A) who has confirmed the addition stating therein that return of income in response to notice u/s.142/148 was duly filed by the assessee's younger brother and Shri S.B. Khanna, Adv. as the appellant-assessee being non-resident and the notice was also

received by his brother issued u/s.148 on 30.03.2016. He observed that the addition of Rs.10,25,000/- was made on account of unexplained cash deposited in his Savings Bank Account with HDFC wherein the assessee-appellant has explained the source of deposits of Rs.9,75,000/- by transfer entry, therefore, the source of cash deposits in the Savings Bank Account of the appellant-assessee was remained unexplained and the addition was confirmed.

5. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

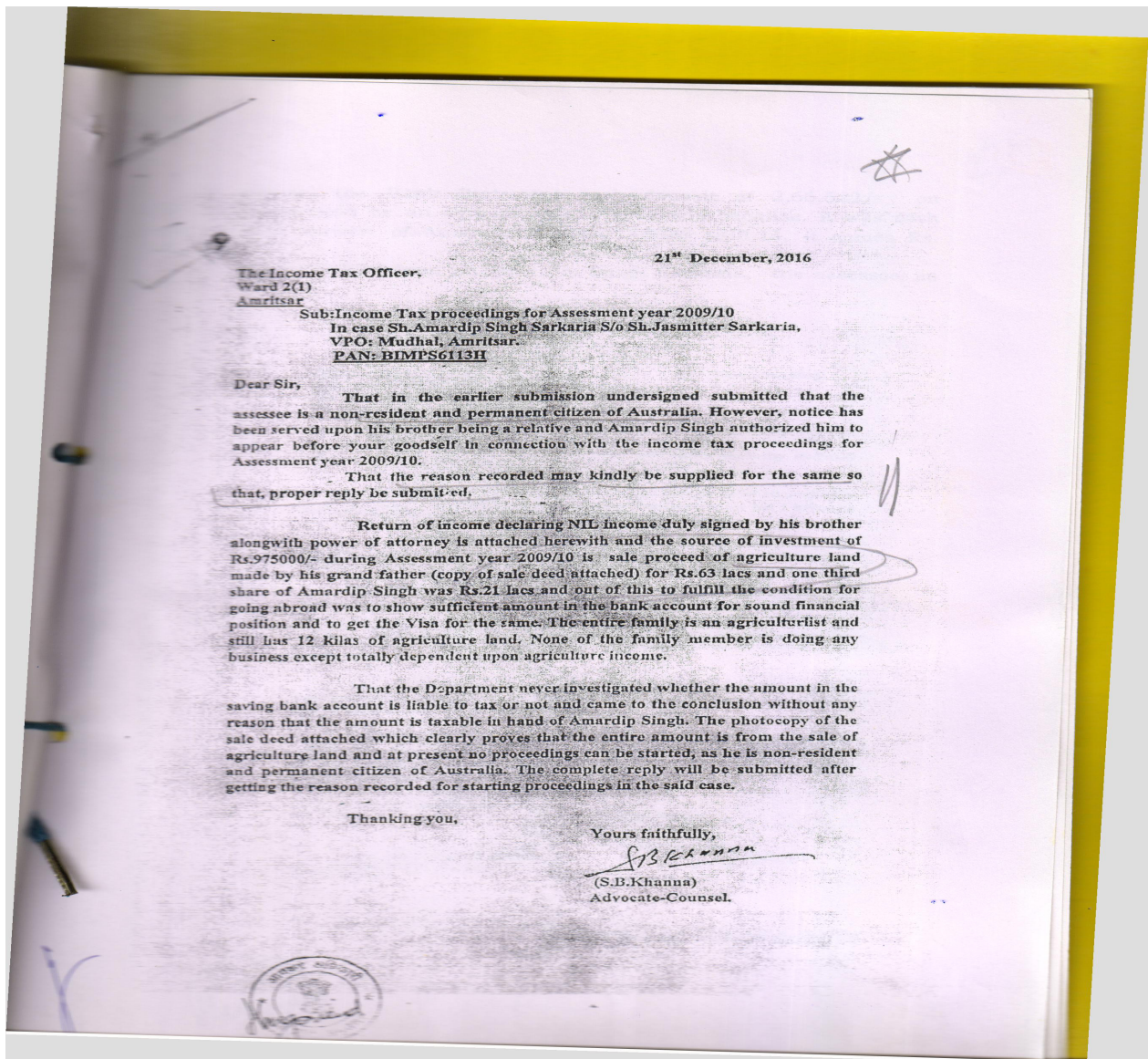
6. The Ld. Counsel for the assessee submitted that no notice u/s 148 was served. Reference may kindly be made to assessee's order wherein it has been observed by the AO **“Notice u/s 148 of the Income Tax Act, 1961 was issued to the assessee on 30/03/2016 after taking approval of the Pr. Commissioner of Income Tax -1, Amritsar which was received back undelivered.”** In support, he placed reliance on the following decisions:

1. ITAT Agra Bench in the case of Rajeev Kumar Doneria vs ACIT reported at 94 ITD 345 (Agra)
2. The Hon'ble Delhi High Court in the case of Brahm Prakash VITO reported at (2005) 275 ITR 242 (Del).

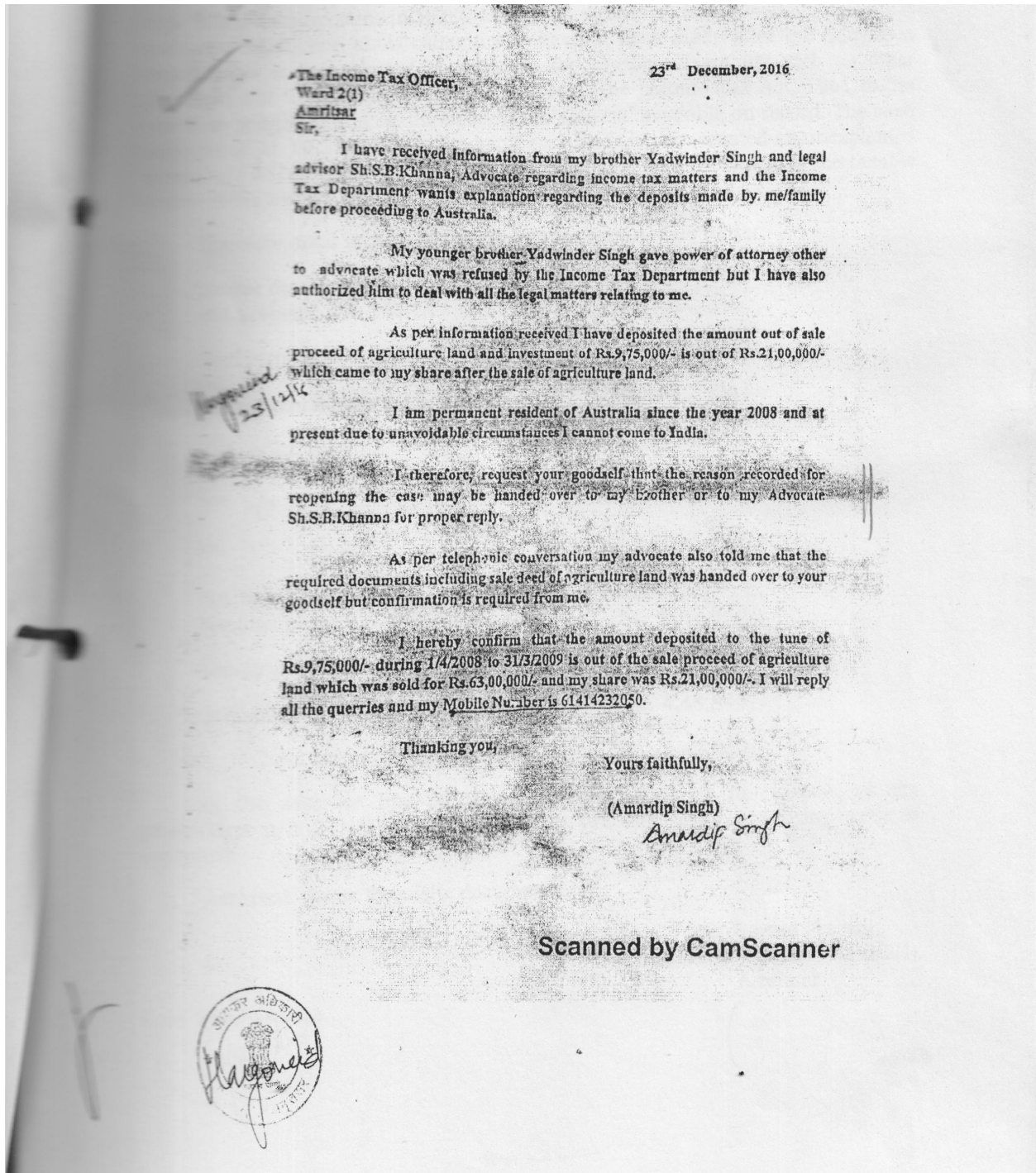
7. The Ld. Counsel further submitted that Notice received by his brother Shri Yadvender Singh who presented on 22.11.2016 with Shri S.B. Khanna advocate as per order sheet entry made as under:-

“Today Shri S.B. Khanna, Adv. attended and filed returned reply along with POA given in his favour by Shri Yadvender Singh, younger brother of the assessee. He has been requested to attend the assessee to either file legally executed POA in his favour or to file return reply duly signed by the assessee himself.

The reply filed by Shri S.B. Khanna, Advocate requesting for the copy of reasons is under:-



8. He contended that Sh. Amardip Singh Sarkaria, the assessee, vide email again requested for supply of the copy of reasons recorded as under:-



9. The Counsel argued that inspite of request made by the assessee as above he has not been supplied the copy of reasons recorded. In support, he cited 259 ITR

19. The counsel concluded that initiation of proceedings by the AO are without application of mind and as such proceedings initiated are illegal, invalid and void ab initio in the present case of no valid service of notice u/s 148 has been effected upon the appellant.

10. The Ld DR on the other side stands by the order of the authorities below.

11. Heard both the sides and perused the facts on record and citations placed before us. It is admitted fact on record that no notice u/s 148 has been served upon the assessee as per the assessment order itself, Pg.1 wherein the AO stated that the notice issued u/s 148 on 30.03.2016 was received back undelivered and had never been attempted to serve this notice till the passing of the assessment order. Further the Assessee has not been supplied the copy of the reasons recorded by the AO despite written request letter of the assessee as reproduced on Pg, No 3 and 4 of the Assessment order and also above submissions of the assessee. The relevant para of the letters reads as under:

AO Pg. 3

“That the reasons recorded may kindly be supplied for the same so that proper reply be submitted”

Pg. 4

“I therefore, request your goodself the reasons recorded for reopening the case may be handed over to my brother or to my advocate Sh. S.B. Khanna for proper reply.”

12. In the backdrop of the aforesaid admitted fact, we appreciate the grievance of the assessee that the AO has no valid jurisdiction to reassess the income of the assessee. The ITAT Agra Bench in the case of “Rajeev Kumar Doneria”, (Supra) held that unless notice is served on proper person in manner prescribed under section 282, service is insufficient and Assessing Officer does not have jurisdiction to reassess escaped income.

13. The Hon'ble Delhi High Court in the case of "Brahm Prakash (Supra) held that it will be mandatory to serve a notice under section 148 before initiating any reassessment against the assessee. Principal of natural justice and the mandatory provisions of section 148 ought to have been followed by the Revenue. The principle of audi alteram partem should have been followed by the revenue. Hence the reassessment done without serving notice under section 148 was bad in law.

14. As regards to the supply of reasons recorded u/s 148 of the act, the Hon'ble HIGH COURT OF BOMBAY in the case of "Commissioner of Income-tax, (Large Tax Payer Unit), Mumbai v. IDBI Ltd.", [2016] 76 taxmann.com 227 on the issue of assessment without supplying assessee reasons recorded to issue re-opening notice, order of reassessment would be without jurisdiction. Assessee asked from Assessing Officer copy of reasons for issuing re-opening notice and the reasons were never communicated to assessee inspite of its repeated requests. Assessing Officer passed assessment order in absence of supply of reasons recorded for issue of re-opening notice, re-assessment notice would be without jurisdiction.

15. In the case at hand, the Assessment order being passed without service of notice U/s 148 of the act and in absence of supply of the reasons recorded for issue of re-opening notice. In our view, such an assessment order reassessing the income of the assessee is without assuming valid jurisdiction is bad in law.

16. In the above view, we accept the grievance of the assessee justified. We quash the order of the authorities below as the assessment order was without jurisdiction.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-

(Ravish Sood)

Judicial Member

Date: 21.02.2022

*prabhat*

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

Sd/-

(Dr. M. L. Meena)

Accountant Member

By Order