

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

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 221/Asr/2018**  
Assessment Year: 2009-10

Sh. Balbir Singh,  
Vill. Mazara Dingrian,  
Teh. Garshankar,  
Hoshiarpur

[PAN: CCTPS 7177M]  
**(Appellant)**

Vs. Income Tax Officer,  
Ward-1, Hoshiarpur

**(Respondent)**

Appellant by : Sh. Rakesh Joshi, Adv.

Respondent by: Sh. S. M. Surendranath, Sr. DR

Date of Hearing: 13.07.2022

Date of Pronouncement: 11.08.2022

**ORDER**

**Per Dr. M. L. Meena, A.M.:**

The appeal has been filed by the assessee against the impugned order dated 04.01.2018 passed by the Ld. Commissioner of Income Tax (Appeals)-1, Jalandhar in respect of the Assessment Year 2009-10 challenging the confirmation of the addition of Rs.12,00,000/- without

considering the agricultural income and previous withdrawals of the assessee as per following grounds of appeal:

1. *That the order of the Ld. Commissioner of Income Tax (Appeals), Jalandhar is against law & facts of the case.*
2. *That the Id. Commissioner of Income Tax (Appeals) Jal, has erred in law and facts of the case in conforming the additions of Rs.12,00,000/- as income from undisclosed sources instead of agricultural income and previous withdrawals.*
3. *That the Id. Commissioner of Income Tax (Appeals) [CIT(A)], Jal. Further also erred in law & facts of the case in violation of the principles of Natural Justice.*
4. *That the impugned order under appeal is arbitrary and contrary to Law & facts of the case, hence deserves to be cancelled.*
5. *That the appellant craves leave to amend/alter or add any of the grounds of appeal before or at the time of hearing of appeal.*

2. At the outset, the Id. counsel for the assessee submitted that the assessee is an agriculturist. The Income Tax Department has got information regarding cash deposit of Rs.34,64,760/- in Joint Sb. a/c No. 123201000009831 with HDFC Bank Mahilpur, Distt. Hoshiarpur (Earst while Centurion Bank of Punjab) and accordingly A.O., Hoshiarpur issued verification letter against the Assessee. In compliance, the assessee has filed fund flow statement and various receipt of Agriculture income and receipts of withdrawals etc.

3. In appeal, the Id. CIT(A) has confirmed the finding of the AO by confirming the addition made in the assessment order passed u/s 144 of the Act, exparte qua the assessee by granting part relief of Rs.2,00,000/- and confirmed the balance amount of Rs. 12 lacs.

4. Aggrieved with the impugned order, the assessee has filed an appeal before us. The Id. counsel of the assessee has submitted a written submission which reads as under:

*“The Assessee is an agriculturist. The Income Tax Department has got information regarding cash deposit of Rs.34,64,760/- in Joint Sb a/c No. 123201000009831 with HDFC Bank Mahilpur distt Hoshiarpur (Earstwhile Centurion Bank of Punjab) And Accordingly A.O. Hoshiarpurr issued verification letter against which Assessee filed fund flow statement and various receipt of Agriculture income etc. Not satisfied with the reply Notice u/s 148 dated 04.03.16 was sent through regd post which was received back with the remarks Addressee Left India... Again service of notice u/s 148 were made through his brother Mohinder Singh. A further notice u/s 142(1) dated 02.06.16 were served through affixture and on one Vijay person available at Assessee' residence which remained unattended as the Assessee was out of India.*

*And finally assessment was made exparte u/s 144 at Rs. 1400000/- on the basis of Documents information available on record. **And in Further appeal before CIT (Appeals) Jalandhar-1 , the Id CIT Appeals has partially allowed the Appeal and gave relief of Rs.200000/- (Two Lac only) as against 14Lac requested by the Assessee and now the assessee is in appeal before the Hon'ble ITAT Amritsar Bench for remaining Relief of Rs. 12 lacs***

*The assessee deposited Rs. 34,64,760/- in Sb a/c No. 123201000009831 with HDFC Bank Mahilpur (Earstwhile Centurion Bank of Punjab) in cash on different dates during the year under consideration . Assessee filed fund flow statement and various receipt of Agriculture income, sale of Popular Receipts as an evidence to support his claim for cash deposits. The Assessee made cash withdrawal of from his saving Bank A/c The Detail is given as under:-*

<b>Sr. No.</b>	<b>Date</b>	<b>Amount withdrawn</b>
<b>1</b>	<b>15.04.08</b>	<b>60000</b>
<b>2.</b>	<b>18.04.08</b>	<b>300000</b>
<b>3.</b>	<b>13.05.08</b>	<b>129000</b>
<b>4.</b>	<b>29.05.08</b>	<b>150000</b>
<b>5.</b>	<b>22.07.08</b>	<b>300000</b>
<b>6</b>	<b>26.07.08</b>	<b>425000</b>
<b>7.</b>	<b>08.08.08</b>	<b>70000</b>
<b>8.</b>	<b>12.08.08</b>	<b>500000</b>
<b>9.</b>	<b>12.09.08</b>	<b>200000</b>
<b>10.</b>	<b>11.10.08</b>	<b>95000</b>
<b>11.</b>	<b>20.10.08</b>	<b>400000</b>
<b>12.</b>	<b>10.11.08</b>	<b><u>700000</u></b>
<b>Total</b>		<b><u>3329000/-</u></b>

*Out of Rs 3329000/- withdrawn the AO has given credit of 1664760 only just saying these entries are old only (some of them are just which is not a valid reason and is against the spirit of law and natural justice. Withdrawal dated 18.04.08 was allowed whereas Withdrawal dated 15.04.08 was denied. Withdrawals dated 13.05.08,12.08.08,12.09.08 and 20.10.08 was allowed and whereas Withdrawal of Rs.150000/-dated 29.05.08 , Rs 300000/- dated 22.07.08, Rs. 425000 dated 26.07.08 70000/- dated 08.08.08, Rs 95000/- 11.10.08 and Rs 700000/- dated 10.11.08 was denied invariably on flimsy ground **that the withdrawals are not made for redeposit in the bank as such and the assessee had not explained the destination and purpose of each and every withdrawal.***

***And in this regard it is submitted that it is for the AO to show that the cash withdrawn by him had been spent and was not available for re-deposit. The AO did not bring any material on record that the withdrawals made from the bank accounts were utilized somewhere else rather than deposited in his bank account on various dates during the Asstt. year under Consideration as claimed and shown by the Appellant. Merely raising doubt and suspicion on the recorded transactions by the AO cannot be taken as Valid basis to disown the claim of the Assessee which are based upon documents/papers and records The Presumption cannot substitute documentary evidence.***

*The reliance is placed upon the following decisions in support of his argument against the addition*

- a. *Decision of Hon'ble ITAT, Amritsar in the case of Shri Chandan Nijjar in ITA no. 61(ASR)/2016 dated 08-08-2016.*
- b. *Decision of Hon'ble IT AT, Amritsar in the case of Shri Ram Nath & Raj Kumar in ITA no. 336(ASR)/2006 8s ITA No. 337(ASR)/2006 dated 25-01-2007.*
- c. *Decision of Hon'ble IT AT, Lucknow in the case of Smt. Veena Awasthi in ITA no. 215(LKW)/2016 dated 30-11 -2018.*
- d. *Decision of Hon'ble Punjab & Haryana High Court in the case of **Shri Shiv Charan Dass vs CIT**, reported in 126 ITR 263.*

*As the AO has however not led/produced any evidence to show that the cash withdrawals made by the assessee from his Bank account in HDFC Bank in all these years FY , 2008-09, had been spent/invested by him and was therefore not available with him. In view of the various decisions of Hon'ble High Court and Hon'ble ITAT, Amritsar Bench, cited by the appellant (Supra), the benefit of cash withdrawal made by the assessee from his account in HDFC bank therefore cannot be denied. Accordingly the addition of Rs 1200000/- should be deleted.*

*So in the light of abovementioned facts and Judicial Pronouncements it is prayed that the appeal of the assessee/appellant may kindly be accepted and/or such other relief may please granted to the assessee/appellant as may be deemed fit and proper by the Hon,ble Bench under the circumstances and facts of the case.”*

Income Tax Appellate Tribunal, Amritsar in the case of ITO v.

Chandan Nijjar para 11 which is reproduced as under:

*“11. The Department contends that since the assessee had not disclosed the purpose of withdrawal of cash from bank and usage thereof, the Id. CIT(A) ought not to have granted her the benefit of such cash withdrawn from the bank, a long period back. However, there is no legal basis for such stand taken by the department. There is no law warranting any such requirement for the assessee to make such a disclosure. As per the decision of the Delhi Bench of the Tribunal in the case of 'Mrs. Deepali Sehgal', dated 05.09.2014. in ITA A.Y. 2011-12 No.5660/Del/2012. as correctly taken note of and followed by the Id. CIT(A), it is not mandatory under any law that an individual has to keep his/her savings in the*

bank account only and not as cash in hand. In 'Shiv Charan Dass vs. CIT', 126 ITR 263 (P&H), in this regard, it has been held by the Hon'ble jurisdictional High Court that the onus is on the Department to show that the explanation of the assessee should not be accepted. Further, it is trite that nobody can be asked to prove a negative, as was sought to be done by the AO.

Punjab & Haryana High Court para 5 which is reproduced as under:

"5. After hearing the learned counsel for the parties and going through the records we are of the opinion that the question of law referred to us has to be answered in the negative, i.e., in favour of the assessee and against the revenue. It is not disputed that there was no provision analogous to the provisions of Section 69 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") in the Indian I.T. Act, 1922. Since the assessment relates to the assessment year 1957-58, the provisions of the Indian I.T. Act, 1922, are admittedly applicable to the present case. It is also not disputed that the amount of Rs. 10,000 each was found deposited in the names of the two major daughters of the assessee. Sudarshan Kumari was 18 years of age at the time of partial partition of the HUF, whereas Satya Metha was 13 years old. The money was found deposited in the names of the two girls after five years of the partial partition and, therefore, it is obvious that both these daughters were major at the time when the money was found deposited in their names. The assessee took the plea that this amount represented a sum of Rs. 20,000 belonging to the HUF which was declared under the Voluntary Disclosure Scheme. It is not disputed that a sum of Rs. 20,000 was declared by the HUF of which the assessee was the karta under the disclosure scheme in October, 1951. It has also been found that this amount of Rs. 20,000 was not found mentioned in the books of accounts of the assessee, nor the same was found to have been deposited in the accounts of the assessee or that (r) of the HUF. That being so, the explanation offered by the assessee has to be accepted in the absence of any other evidence to show that a sum of Rs. 20,000 disclosed under the disclosure scheme was utilized by the assessee or by the HUF in some other manner than the one which was represented by the assessee. The AAC as well as the Tribunal came to the conclusion that there was nothing on the record to show that this sum was utilized by the assessee in any other manner. That being so, the onus heavily lay on the revenue to show that the explanation put forth by the assessee should not be accepted, but there is nothing on the record to

show that. Their Lordships of the Supreme Court in *Sreeleka, Banerjee v. CIT* [1963] 49 ITR (SC) 112, held as follows (p. 120):

*"In cases of high denomination notes, where the business and the state of accounts and dealings of the assessee justify a reasonable inference that he might have for convenience kept the whole or a part of a particular sum in high denomination notes, the assessee, prima facie, discharges his initial burden when he proves the balance and that it might reasonably have been kept in high denomination notes. Before the department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence which it has in its possession. The department cannot by merely rejecting unreasonably a good explanation, convert good proof into no proof."*

5. The Id. DR stands by the impugned order.

6. We have heard both the sides and perused the material on record and written submissions. Admittedly, assessee has agriculture income, sale of Popular Tree Receipts as evidence to support his claim for cash deposits, which has not been disputed by either of the authorities below. In fact, the appellant assessee has deposited Rs. 34,64,760/- in Sb a/c No. 123201000009831 with HDFC Bank Mahilpur (Earstwhile Centurion Bank of Punjab) in cash on different dates during the year under consideration. The Ld AR argued that assessee filed fund flow statement and various receipt of Agriculture income, sale of Popular Receipts as evidence to support his claim for cash deposits before the authorities below which has not been appreciated by either of them. The Ld. AR further argued that out of Rs 3329000/ - withdrawal as per fund flow statement as above, the AO has given credit of Rs.16,64,760/- by observing that these entries are old

only, which cannot be said to be a valid reason and it is against the spirit of law and natural justice.

7. From the above, it is evident that withdrawals of Rs. 60,000/- dated 15.04.08; Rs.150000/- dated 29.05.08; Rs 300000/- dated 22.07.08; Rs. 425000 dated 26.07.08; 70000/- dated 08.08.08; Rs 95000/- 11.10.08 and Rs 700000/- dated 10.11.08 was denied on flimsy ground, merely stating that such withdrawals are not made for redeposit in the bank and as such the assessee had not explained the destination and purpose of each and every withdrawal.

8. In our view, the observations of the Ld. CIT (A) are vague and irrational in confirming the finding of the AO without support of any material evidence on record and even ignoring the withdrawals made from the bank accounts by way of disproving that these were utilized somewhere else rather than being deposited in his bank account on various dates as claimed by the appellant assessee, during the Assessment Year under Consideration. Mere doubt and suspicion raised by the authorities below, on the recorded transactions, without being substantiated with cogent material evidence can not be a ground to disown the claim of the Assessee. We hold that, the Presumption cannot substitute documentary evidence.

9. The Ld. CIT (A) ought to have brought on record any evidence to establish that the cash withdrawals made by the assessee from his Bank account in HDFC Bank in the Financial Year 2008-09 under consideration, that the aforesaid amounts of withdrawals had been invested by appellant for some other purpose to hold that these funds were not available with

him. In view of the various decisions of Hon'ble High Court and Hon'ble ITAT, Amritsar Bench, cited by the appellant (Supra), the benefit of cash withdrawal made by the assessee from his own account in HDFC bank therefore cannot be denied. Accordingly, the addition of Rs 1200000/- confirmed by the Ld. CIT(A) is not sustainable.

10. In the case of "ITO v. Chandan Nijjar", (Supra) ITAT, Amritsar Bench vide para 11 held the similar view as follows:

*"11. The Department contends that since the assessee had not disclosed the purpose of withdrawal of cash from bank and usage thereof, the Id. CIT(A) ought not to have granted her the benefit of such cash withdrawn from the bank, a long period back. However, there is no legal basis for such stand taken by the department. There is no law warranting any such requirement for the assessee to make such a disclosure. As per the decision of the Delhi Bench of the Tribunal in the case of Mrs. Deepali Sehgal, dated 05.09.2014. in ITA A.Y. 2011-12 No.5660/Del/2012. as correctly taken note of and followed by the Id. CIT(A), it is not mandatory under any law that an individual has to keep his/her savings in the bank account only and not as cash in hand. In 'Shiv Charan Dass vs. CIT', 126 ITR 263 (P&H), in this regard, it has been held by the Hon'ble jurisdictional High Court that the onus is on the Department to show that the explanation of the assessee should not be accepted. Further, it is trite that nobody can be asked to prove a negative, as was sought to be done by the AO."*

11. Similar view has been held by the Hon'ble Punjab & Haryana High Court in the case of 'Shiv Charan Dass vs. CIT', (Supra).

12. In the above view, the decision of the Ld. CIT(A) is illogical, being passed brushing aside the bare facts of the cash withdrawals made by the assessee from his own account in HDFC Bank in the Financial Year 2008-

09 under consideration. Accordingly, we hold that the order of Id. CIT(A) in confirming the addition of Rs. 12,00,000/- is an arbitrary, irrational and unjustified and as such, the same addition is deleted.

13. In the result, the appeal of the assessee is allowed.

*Order pronounced in the open court on 11.08.2022.*

**Sd/-**  
**(Anikesh Banerjee)**  
**Judicial Member**

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

*\*GP/Sr.PS\**

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.

True Copy  
By Order