

**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. Nos. 187 to 189/Asr/2016
Assessment Years: 2003-04 to 2005-06**

Smt. Debbo Wife of Late Sh. Pal Ram, C/o Pravnder Kailey S/o Sh. Dalbir Chand Resident of VPO ChakDhothar, Tehsil Phillaur, Distt. Jalandhar. [PAN:AVDPD0023A] (Appellant)	Vs.	ITO, Wared-3, Phagwara. (Respondent)
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**I.T.A. Nos. 01 to 03/Asr/2019
Assessment Years: 2003-04 to 2005-06**

Smt. Debbo Wife of Late Sh. Pal Ram, C/o Pravnder Kailey S/o Sh. Dalbir Chand Resident of VPO ChakDhothar, Tehsil Phillaur, Distt. Jalandhar. [PAN:AVDPD0023A] (Appellant)	Vs.	ITO, Wared-2, Phagwara. (Respondent)
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Appellant by	Sh.Himanshu Prasar, Adv.
Respondent by	Ms. Amanpreet Kaur, Sr. DR.

Date of Hearing	22.09.2022
Date of Pronouncement	27.09.2022

ORDER

Per Bench:

The batch of appeals were filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-2, Jalandhar, [in brevity the CIT(A)] for Assessment Years 2003-04 to 2005-06, the order passed u/s 250(6) of the Income Tax Act 1961, [in brevity the Act].The impugned orderswere emanated from the orders of the Id. Income Tax Officer, Ward-3, Phagwara,[in brevity the AO]. All orderswere passed u/s 143(3) and 271(1)(c)of the Act.

2. The Id. Counsel of the assessee stated at the outset that, the relevant factual backdrop as well as the issues involved in the cases, ITA Nos. 187 to 189/Asr/2016 are recorded for challenging the order of the Id. AO passed u/s 143(3)& issues are identical. The rest appeals ITA No- 1 to 3/Asr/2019 is related to the order passed by the Id. AO u/s 271(1)(c) which are consequential in nature. The appeal ITA No.187/Asr/2016 and ITA No.188/Asr/2016 are identical in nature. As per the request of the Id. Counsel, we are adjudicating the matter in ITA No.187/Asr/2016

for A.Y. 2003-04 as lead case & issue of ITA No. 189/Asr/2016 is adjudicating separately.

3. Brief fact of the case is that the assessee is individual and purchased the land on behalf of her son who was staying outside India. The assessment was completed on basis of photocopy of agreement found in the name of the assessee. On basis of the agreement, the investment was calculated and treated it as undisclosed investment and addition was made. Further, the assessee had invested in property. The ld. AO made the valuation through DVO. The difference the valuation & investment of assessee was added back with the total income of the assessee. In A.Y. 2005-06, the assessee's addition was made on basis of the peak credit on basis of the undisclosed cash deposited in bank account & the addition of interest. As per the ld. AO, the assessee had not filed her income tax return during the year under appeal. During any of the assessment year the assessee had not filed any income tax return u/s 139. Only the return for assessment year 2002-03 is annexed with the paper book of the assessee, **Page nos. 43 to 44.**

4. The aggrieved assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) partially allowed the assessee appeal and upheld the order of the ld. AO.

5. Being aggrieved assessee filed an appeal before us. ITA No.1 to 3/Asr/2019, the ld. AO levied penalty u/s 271(1)(c) which are in consequential in nature with the quantum of appeal which is also challenged by the assessee before the bench.

6. The ld. Counsel of the assessee filed paper book with synopsis which are kept in the record. The ld. Counsel further pointed out the order of the ld. AO, paragraph-1, which is reproduced as below:

“In this case proceedings u/s 148 were initiated on the basis of information in the possession of the Deptt., that the assessee had entered into an agreement on 07-10-2002 with Sh. Buta Singh s/o Sh. Bikar Singh of Village Pasla, tehsil Phillaur,’ for the purchase of land measuring 23 Marlas at Village Bara Pind for a consideration of Rs. 27,85,000/-. She paid an amount of Rs. 2 lacs on 07-10-2002 and another amount of Rs. 3 lacs on 16-10-2002 in cash to Sh. Buta Singh. The balance amount was paid later on. However, registration of land in question was executed for Rs. 7 lacs on 02-12-2002. Registration was got done in the names of her sons namely S/Sh.Tarlok Nath and Chhinder Pal who are claimed to be NRI’s. Though the registration has got done in the name of her sons but she herself appeared before the registrar for the purpose of registration which shows that the land had been purchased by the assessee. Accordingly the investment of Rs.

27,85,000/- is held to have been made by the assessee. Perusal of bank a/c of the assessee with Jalandhar Central Coop Bank shows withdrawals ofRs. 15,00,400/- on or around the date of purchase i.e. 02-12-2002. Thus, the balance amount of Rs.

12,84,600/- (2785000-1500400) is treated to have been invested by the assessee ' in the purchase of this property out of her income from undisclosed sources.”

6.1 The Id. Counsel argued that the addition was made on basis of the photocopy copy of the agreement which has no relevance with the purchase of the property. No land was purchased in the name of the assessee. The assessee's son Mr. Tarlok Nath and Mr. Shinder Pal both are staying in Canada &they have purchased the said land. Copy of the registered deed of the land is annexed in **APB pages 6 to 29** with the deed &the Indraj Jamabandi in Gurmukhi language and the deed &Indraj Jamabandi translated in English language are also annexed in APB.

6.2 The Id. Counsel further argued that the source of the investment was from the investment of the assessee's NRI sons. In this respect the certificate from bank related to credit of amount in the bank account of the assessee are annexed in **APB 30 to 31**. The assessee had not purchased or had not registered the property in her own name. The agreement which is relied by the Id. AO for addition of the amount

has no relevance with the assessee's transaction. Even the two witness was not cross verified by the AO who are sign in the photocopy copy of the agreement.

6.3 The Id. Counsel further argued that the Id. CIT(A) had not considered the submission and had not verified the genuineness of the agreement.

7. The Id. Sr. DR vehemently argued and relied on the order of the Id. CIT(A) in Para 5.2 which is reproduced as below:

“5.2 During the course of appellate proceedings, my predecessor in office issued directions to the Assessing Officer under section 250(4) of the Act with regard to conducting of enquiries from Sh. Boota Singh and Sh. Dalip Singh Dhillon regarding purchase of properties under reference. Accordingly, the Assessing Officer recorded the statement of Sh. Boota Singh in which he had denied to have entered into any agreement to sell with the assessee. In his statement, Sh. Dalip Singh Dhillon has also admitted to have sold the land measuring 21 Marlas to the assessee for a sale consideration of Rs.7,00,000/-. When confronted with the written submissions filed by the assessee, the Assessing Officer took the same stand as was taken by him in the assessment order. My predecessor in office also directed the Assessing Officer to got match the thumb impression of the assessee on agreement to sell with that of the thumb impression of the assessee on other documents notices with the help of

fingerprint expert. However, this exercise could not be completed as the fingerprint expert wanted original agreement to sell

to compare the thumb impression which was not made available to him as the same was not in the possession of the Department. The Ld. AR of the assessee has also asked for original agreement to sell time and again if any in the possession of the Department.”

8. We heard the rival submission and relied on the documents available in the record. The assessment was completed on the basis of photocopy of agreement. The ld. AO had not verified or not made any cross verification with the witness of this photocopy of the agreement. Further the ld. CIT(A) in his order was also not verified the genuineness of this agreement. All the properties which are purchased during the year by her son, not by the assessee herself. The source of the investment is also declared and clarified properly during the time of assessment. We find the addition made by the AO depending on the photocopy of the agreement has no relevance. The reliance was placed in the order of coordinate bench in the case of Smt. Gurjeet Kaurv, Income-tax Officer, [2022] 139 taxmann.com 192 (Amritsar -

Trib.):- Held “*Unexplained investments (Unexplained moneys) - Assessment years 2008-09 and 2009-10 - Information was received by Assessing Officer from Dy. Director, that assessee had executed an 'agreement to sell' dated 25-2-2008 with one 'S', wherein she had agreed to sell her land for a consideration of Rs. 7.19 crores and, out of aforesaid sale consideration had received an amount of Rs. 1.5 crore as earnest money - Assessing Officer observed that though assessee had entered into an 'agreement to sell' with 'S', however, sale deed was executed not in his favour, but in favour of certain third parties hence, amount of Rs. 1.50 crore received by assessee as earnest money from 'S', was unexplained money of assessee within meaning of section 69 - However, assessee submitted that alleged agreement to sell was a forged document, and claimed to have sold land in question vide a registered sale deed, dated 8-10-2008 - It was found that revenue was only in possession of photocopy of agreement to sell alleged to have been executed, same was an uncertified document and Assessing Officer though claimed that two parties were witness to agreement to sell, however, despite specific requests assessee had not been facilitated a cross-examination of witnesses, therefore, their statements could not have been acted upon by Assessing Officer for drawing of adverse inferences in hands of assessee - Whether, transaction of sale of land in question, as disclosed in registered sale deed, dated 8-10-2008, could not have been dislodged by Assessing Officer on basis of said document and therefore, addition made to income of assessee under section 69, on basis of uncertified copy of agreement to sell was not justified.”*

So, the addition made by the Id. AO is quashed.

Ld. AO also added the difference in between the valuation of DVO & investment in property by the assessee. The total difference is amount of Rs.21,427/-. The DVO had made the valuation Rs.8,71,427/- and the assessee investment was made Rs.8,50,000/-. The difference is less than 10%. So, the addition amount of Rs.21,427/- is liable to be deleted.

9. As the facts and the issue involved in the present appeal remains the same as were there before us in the assessee's appeal for ITA No-188/Asr/2016, therefore, our order therein passed shall apply mutatis mutandis for the purpose of disposing off the present appeal for in ITA No. 187/Asr/2016

10. Accordingly, appeal of the assessee **ITA No.187/Asr/2016 &188/Asr/2016** are allowed.

ITA No.189/Asr/2016

11. Instant appeal filed by the assessee against the order of the ld. CIT(A). The assessee has raised the following ground which is reproduced as under:

That the learned CIT (A) grossly erred and is highly unjustified unreasonable in dismissing the appeal of the appellant while confirming the assessment order, inter alia, on the following grounds:

1. That on the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) as well as Ld. Assessing

Officer have erred by incorrectly calculating peak credits without including the following: -

- a) Interest incomes from Saving Bank Accounts.*
- b) Maturity proceeds of Fixed Deposits.*
- c) Business Income.*

2. That in the facts and circumstances of the case, the Ld. CIT (Appeals) as well as Ld. A.O. have ignored the expenditure incurred by the appellant/assessee on the repair of her house, part of which was attributable to the construction of shops.

3. That the appellant/assessee requests for leave to add or amend the grounds of appeal before the appeal is heard and/or finally disposed off.

4. That it is prayed that the assessment order of the assessing officer and the order dated 04.11.2015 received on 10.02.2016 passed by the Commissioner of Income Tax (Appeals)-2, Jalandhar may kindly be set-aside in toto thereby deleting/reversing the additions made by the A.O. which were affirmed by the CIT (A), Jalndhar-2; in the interest of justice, equity and good conscience.”

The assessee had not filed the income tax return for this assessment year. The Id. AO had calculated the peak credit in relation to the deposit of amount in the bank. Considering this Rs.79,575/- was added back with the total income of the assessee.

Further the difference in between the valuation of construction work amount of Rs.12,60/- was added back.

12. Here, we are reproducing the order of the Id. AO which is as below:

“Total of peak in all the above accounts comes to Rs.4,76,877/- (5919+73538+397420). Out of this the assessee has received foreign remittance from his sons amounting to Rs.3,97,302/-. Thus , the addition, if any, comes to Rs.79,575/- (476877-397302) Penalty proceedings u/s 271(1)© are being issued separately for concealment of particulars.

The assessee has constructed shops on plot purchased on 02-12-2002 and shown Rs.50,000/- to spent on construction work The matter of determining the cost of construction was referred to valuation Cell. The valuation cell vide his report assessed the cost of construction at Rs. 51,260/- giving a difference of Rs. 1260/-This being investment from undisclosed sources is being added in the income of the assessee. Penalty proceedings u/s 271(1)© are being issued separately for concealment of particulars.”

13. The assessee filed an appeal before the Id. CIT(A) and the Id. CIT(A) had observed in following manner which is reproduced as below:

“5.3 In view of the above stated facts and in the circumstances of the case, the addition made by the Assessing Officer in this case is restricted to Rs.77,858/- as against made by the Assessing Officer at Rs.79,575/-. The addition of Rs.77,858/- made by the Assessing Officer in this case on account of unexplained credit entries in various bank accounts maintained by the assessee out of total peak credit of Rs.79,575/- is, therefore, upheld and balance addition of Rs.1,717/- is directed to be deleted. In the result, ground No. 1 of appeal taken by the assessee is partly allowed.

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“6.2 On careful consideration of rival contentions, I am of the opinion that there is no force in the above-mentioned argument of the assessee. Moreover, the assessee could not her contention with any documentary evidence even at the appellate stage. On the other hand, the cost of construction of shops adopted by the Assessing Officer is based on the report of DVO and the assessee has also not disputed the cost of construction. In my opinion, no, interference in the addition made by the Assessing Officer on account of unexplained investment in construction of shops is called for in this case.”

14. The Id. Sr. DR vehemently argued and relied on the documents of the revenue authorities.

15. We heard the rival submissions and considered the record, related to this assessment year 2005-06. The Id. Counsel claimed that the amount which was deposited in the bank account from the assessee's source of FDR and investment from her son. In this respect, written submission was filed by the Id. Counsel. But no such relevant fact and documents were brought to the notice of the bench. Accordingly, we are relying on the order of the Id. CIT(A). The Id. CIT(A) had after reasonable consideration reduced the addition from Rs.79,575/- to 77,858/-.

We find no infirmity in the order of the Id. CIT(A) related to this issue. The modified addition of peak credit is well accepted fact. The In relation to the valuation of the property the difference is less than 10% so the addition amount of Rs.1260/- is liable to be deleted.

16. So, The Ground no-3 is general in nature. Ground no-1 of the assessee is dismissed. Ground no-2 of the assessee is allowed.

17. Accordingly, appeal of the assessee, **ITA 189/Asr/2016** is partly allowed.

ITA Nos. 01 &02/Asr/2019

18. ITA No. 01/Asr/2019 and 02/Asr/2019 in both appeals the ld. AO had levied penalty u/s 271(1)(c) of the Act. But the quantum appeal related to these penalty are allowed by the Bench. So, the penalty is consequential in nature and both the appeals ITA Nos. 01/Asr/2019 and 02/Asr/2019 are allowed.

19. In the result appeal of the assessee **ITA no-01/Asr/2019 and 02/Asr/2019** are allowed

ITA No.03/Asr/2019

20. ITA No.03/Asr/2019 the assessee got the part relief in the quantum appeal which is related to the ITA No.189/Asr/2016. The penalty U/s 271(1)(c) of the Actis consequential in nature which is related to the quantum appeal of the assessee.

21. The appeal of the assessee**ITA No-03/Asr/2019** is send back to ld AO for further computation after giving effect of quantum appeal.

22. In The result, appeal of the assessee, **ITA No. 187/Asr/2016, 188/Asr/2016, ITA 01/Asr/2019, 02/Asr/2019** are allowed and **ITA 189/Asr/2016** is partly

allowed. The appeal of the assessee, **ITA No.03/Asr/2019** is allowed for statistical purposes.

Order pronounced in the open court on 27.09.2022

Sd/-

**(Dr. M. L. Meena)
Accountant Member**

Sd/-

**(ANIKESH BANERJEE)
Judicial Member**

AKV

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