

**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.717/Asr/2019  
Assessment Year: 2011-12**

Sh. Fauja Singh S/o Sh. Mohinder Singh H. No. 26, Ward No. 27, Jalalabad. [PAN: CXIPS0348Q] <b>(Appellant)</b>	<b>Vs.</b>	ITO, Ward-III(4), Abohar.  <b>(Respondent)</b>
--	------------	---

<b>Appellant by</b>	<b>Sh. Sudhir Sehgal, Adv.</b>
<b>Respondent by</b>	<b>Mrs. Kanchan Garg, Sr.DR</b>

<b>Date of Hearing</b>	<b>19.10.2022</b>
<b>Date of Pronouncement</b>	<b>11.11.2022</b>

**ORDER**

**Per:Anikesh Banerjee, JM:**

The instant appeal of the assessee is directed against the order of the Id. Commissioner of Income Tax(Appeals), Bathinda, [in brevity the CIT(A)] bearing appeal No.555/2018-19, date of order 17.09.2019, the order passed u/s 250(6) of the Income Tax Act 1961, [in brevity the Act] for A.Y. 2011-12.The impugned

order was emanated from the order of the Id. Income Tax Officer, Ward II (4), Abohar, (in brevity the AO) order passed u/s 143(3) r.w.s. 147 of the Act date of order 10.12.2018. The assessee has raised the following grounds:

- “1. That the Ld. CIT(A) has erred in confirming the action of the Assessing Officer in reopening of the case u/s 147 of the Income Tax Act, 1961 (‘the Act’).*
- 2. That there was no reason to believe for confirmation of such action of the Assessing Officer of reopening of the case u/s 148.*
- 3. That the Ld. CIT(A) has erred in confirming the addition of Rs. 16,03,000/- on the basis of certain ledger account of the third party.*
- 4. That the CIT(A) has failed to appreciate the fact that the assessee had furnished copies of two registered sale deeds and affidavit of Sh. Kaku Singh, which has been ignored summarily on surmises and conjectures.*
- 5. That the confirmation of addition is against the facts and circumstances of the case.*
- 6. That the appellant craves leave to add or amend the grounds of appeal before the appeal is heard or disposed off.”*

2. Tersely, we advert the fact of the case, the assessee's case was reopened u/s 148 of the Act. Accordingly the assessment was completed. The reopen was made on basis of the search conducted in the business premises of M/s J.P. Industries, Jalalabad u/s 133A on dated 20.02.2014. As per the ledger account page no. 221 belonging to M/s Surinder Sat Agro Foods, Jalalabad (W) shown that an amount of Rs.16,03,000/- has been credited to the account of the assessee during financial year 2010-11 on account of cash paid to M/s Surinder Sat Agro Foods, Jalalabad (W) by the assessee on that basis the reopened was made u/s 148. During assessment proceeding the assessee was unable to submit a proper evidence but in the appeal the additional evidence was filed under Rule 46A of the Income Tax Rule 1962 (In brevity Rule) the evidence was duly accepted by the Id. CIT(A). Remand Report was called for and after a detailed discussion the Id. CIT(A) accepted the issues which were taken during the assessment by the Id. AO. Being aggrieved assessee filed an appeal before us.

3. The Id. Counsel for the assessee filed a paper book with brief note which are kept in the record. The Id. Counsel first agitated the ground no. 1 and 2 which are legal in nature. According to the Id. Counsel, the assessee is a regular filing of the return and during assessment year under appeal the return was filed which is

enclosed in **APB page no. 1**. The Id. Counsel pointed out that the reasons recorded by the Id. AO are erroneous and liable to be rejected.

3.1 In his argument the “*recorded reasons*” are submitted in **APB page nos. 4 to 5**. The PAN No. which is mentioned by the Id. AO is CXDPS0488R whereas the corrected PAN No. of the assessee is CXIPS0348Q. According to the Id. Counsel the entire recorded reason is erroneous and also the Id. AO mentioned that the assessee has not filed his return for this assessment year under consideration. But return was already filed so the reopening was made on basis of entirely wrong facts. In this respect the Id. Counsel relied on the judgment of following Courts and ITAT which are as follows:

- i. **‘Monika Rani vs. The Income Tax Officer’, ITA No.582/Chd/2019 (Chd. Trib.)**
- ii. **Gaurav Joshi vs. The Income Tax Officer, 55 CCH 83 (JAL Trib.)**
- iii. **Sagar Enterprises vs. Asstt. Commissioner of Income Tax’, 257 ITR 335 (Guj. HC).**
- iv. **Baba Kartar Singh Dukki Educational Trust vs. ITO’, 63 taxmann.com 112 (Chd.-Trib.).**
- v. **Zauri Foods and Farms Pvt. Ltd. vs. ACIT’, 408 ITR 0279 (Bom-HC).**
- vi. **Pr. Commissioner of Income Tax vs. Light Carts Pvt. Ltd.’, 404 ITR 574 (All-HC).**

vii. **Dempo Brothers Pvt. Ltd. vs. ACIT**, 403 ITR 196 (Bom- HC).

viii. **Anne Venkata Vishnu Vara Prasad vs. ACIT**, 405 ITR 491 (T & AP- HC).

4. The Id. Sr. DR only relied on the order of the revenue authorities and not able to bring any contrary judgment against the fact of the assessee.

5. We heard the rival submission and relied on the documents available in the record. In fact, the reasons recorded of the assessee that there are lacuna in the factual findings and in the PAN No. Respectfully relied on the judgment of Hon'ble Bombay High Court in the case of **Zuari Foods and Farms Pvt. Ltd. vs. ACIT, (2018) 408 ITR 279** is held:

*“10. Thereafter, the reassessment proceedings have been initiated after a period of four years. The first requirement is that there must be failure on the part of the assessee to disclose fully and truly, all material facts. The reasons supplied to the Petitioner do not contain even the usual formal statement that there has been failure to disclose material information by the Petitioner. The legal position is settled that even if such a statement is made, it is only a reproduction of the section and does not necessarily show the existence of this fact. But in the present case, even that statement is missing.....”*

5.1 The issue was already agitated before the Id. CIT(A) but the matter was not taken proper care in relation to the legal ground. We find that the recorded reasons itself is erroneous and erred in fact. So the assessment order issued by the Id. AO is itself erroneous and *non est*. So the ground no. 1 and 2 of the assessee is allowed.

6. The next issue in the factual ground covered in the ground 3 and 4. In this issue the addition was made on basis of the entries were found in the books of accounts of the party under searched. In a seized book entries are found that assessee is paying and accepting the money and a separate account was placed in the books of the searched person. During assessment and appeal proceeding the assessee produced the copy of the registered deed as proof of sale of property of a person Mr. Kaku Singh. Mr. Kaku Singh is a seller of property and Smt. Nirmal Devi Grover W/o Mohan Lal Grover and Smt. Krishna Rani W/o Sh. Sher Singh Ghubaya are purchasers of said property in consideration amount of Rs.15,33,000/- and Rs.15,10,000/- respectively. The assessee is only facilitated the transaction as the broker and made the transaction on behalf of the parties. The Id. Counsel in this point, first mention in the findings of the Id. CIT(A) which is reproduced as below:

*“The remand report was forwarded to the assessee for his comments which were received vide letter dated 16.09.2019. In the rejoinder it was stated that the Assessing Officer has stated that the payments of Rs. 16,03,000/-were made to M/s Surinder Sat Agro Foods by Sh. Fauja Singh and Sh. Sher Singh MP, whereas as per books shows that Sh. Fauja Singh and MP Sh. Sher Singh (Kaku Singh) is debited in the books of M/s Sat Surinder Agro Foods as per the books shown in the order. So the payments are made by the owner of M/s Sat Surinder Agro to M/s Fauja Singh and MP Sher Singh on behalf of Sh. Kaku Singh. The name of Sh. Kaku Singh is clearly written in the books. Therefore, the appellant had submitted that the registries shows that the owner of M/s Sat Surinder Agro have paid this amount to Sh. Kaku Singh for sale of land were presented before the ITO and he assured to admit it at the time of order.*

*That Sh. Kaku Singh had sold his property to the owners of M/s Sat Surinder Agro and Sh. Sher Singh MP and he had given his affidavit saying that the payment is related to him. That the said payment is in respect of sale of agriculture land which he received from the owners of M/s Sat Surinder Agro and Sh. Sher Singh MP. That assessee is a poor layman having no relation with these payments.”*

6.1 The Id. Counsel further argued and submitted a synopsis the relevant paragraph 28 to end of the synopsis is reproduced as under:

*“28. The AO cannot make any addition on the basis of a document which is found in the premises of third person and which has no base. Reliance in this regard is being placed upon the following Judgment wherein on similar facts, addition u/sec 69C of the Act has been deleted by the Hon'ble Pune Bench in the case of Ekdanta Land Pvt Ltd. Vs ITO in ITA No. 1400/Pun/2015 order dated 17.10.2018:*

*"3. Briefly stated relevant facts include that the assessee is a company engaged in the business of land deals. Assessee filed the original return of income on 21-09-2009 declaring total income of Rs.7,300/-. There was search and seizure action u/s.132 of the Act in the Jai Corp Group of companies, its employees and close associates. Shri Dilip Dherai is one such person covered in the search and he was in charge of the land acquisition on behalf of the 62 other companies. The search resulted in seizure of various incriminating evidences/documents/loose papers etc. The seized documents reveal the details relating to land transactions in the 62 companies and the assessee is one among them. The documents indicate the unaccounted cash payments for acquisition of lands. Statement of Shri Dilip Dherai was recorded and confronted with the various documents seized from the premises. Statement of Shri Anand Jain (main person of Jai Corp Group) was also recorded. AO found that the contents of the said loose papers are*

*recorded in the books of accounts of the assessee except the transactions mentioned in column 'cash payment'.*

*Shri Dilip Dherai agreed about the cash payments and retracted later on by stating that the statement recorded was under pressure and coercion.*

*At the end of the assessment proceedings, the AO invoked the provisions of section 69C of the Act and made addition of Rs.3.84 crores (rounded off) as unexplained expenditure.*

*From the above judgments, it is a settled issue that the seized papers seized from the premises of Jai Corp Group and others cannot be relied upon for making additions in the hands of the land aggregators whose names appeared in the said documents. It is not the case of the Revenue that the judgments/decisions delivered in the cases of appeals involving M/s. Arpit Land Pvt. Ltd., M/s. Lavanya Land Pvt. Ltd. and Harsha Land Private Limited (supra) etc. do not relate to such land aggregators. These names also appeared in the said seized papers along with the name of the assessee. On similar facts, the Hon'ble Jurisdictional High Court in the case of CIT Vs. Arpit Land Pvt. Ltd., as well as in the case of M/s. Ambit Reality Pvt. Ltd., held that the said seized documents cannot be held to be belonging to the assessee. Considering the above binding decisions of Hon'ble High Court as well as Hon'ble Apex Court, we are of the opinion that the ground No.2 raised by the assessee is to be allowed on technical grounds."*

*Similarly Reliance is also being placed upon the following Judgments wherein similar issue has been decided by the various Hon'ble Courts:*

- a) *CIT vs Arpit Land P Ltd. 78 taxmann.com 300 Bombay HC*
- b) *M/s Avkash Land Reality Pvt Ltd. Vs DCIT and others in ITA No. 8237/Mum/2011 order dated 22.03.2013*
- c) *CIT vs M/s Lavanya Land Pvt Ltd. And others in ITA no. 72 of 2014 order dated 23.06.2017*
- d) *Harsha Land Pvt Ltd. Vs ITO in ITA No. 5666/Mum/2015 order dated 08.11.2017*
- e) *M.M Financers P ltd vs DCIT 107 TTJ 200 (Chennai Bench)*

*"No addition could be made in the hands of assessee on the basis of the statement made by a third party and the unsigned agreement and dumb loose slips seized from his residence, in the absence of any corroborative material to show payment of any undisclosed consideration by the assessee towards purchase of land."*

- f) *ManoharLal Rattan Lalvs DCIT 91 TTJ 737 Amritsar Bench*

*"In the absence of any examination of the seller of the property, addition on account of alleged undisclosed investment in the property could not be sustained solely on the basis of a copy of agreement found and seized by the Department, which did not bear signature of the purchaser namely, assessee."*

g) *Omega Estates vs ITO 106 ITD 427 Chennai*

*"Revenue having failed to cogently prove that estimated sale price was the actual sale consideration, nor having taken assistance of valuation cell nor brought out comparative figures, additions made by AO on the basis of letters written to bank or to others showing a higher rate are liable to be deleted."*

h) *RIVERIA PROPERTIES P. LTD, MUMBAI VS ITO CIR 7(2)(1), MUMBAI ON 27 OCTOBER, 2017 I.T.A NO.250/MUM/2013, ASSESSMENT YEAR 2006-07*

*"Considering the total facts and circumstances of the case and also applying the ratios of the judgements cited above, we are of the view that the A.O. is not correct in coming to the conclusion that on money is exchanged between the parties based on a loose sheet found in the premises of a third person. To sustain the addition, the A.O. should have conducted an independent enquiry about the value of the property and ascertain whether any under valuation is done, if so what is the correct value of the property."*

i) *2019 (12) TMI 1193 - ITAT DELHIM/S SIR SHADILAL ENTERPRISES LTD. VERSUS DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-8 (1), NEW DELHI*

*"Assessment u/s 153A - unexplained expenditure u/s 69C- HELD THAT:- Addition made by the Assessing Officer based on the entries in the books found, belonging to and seized at the premises of the third party, in the*

*absence of cross examination of such party based on which the addition has been made cannot be held to be sustainable in the eyes of the law. - Decided in favour of assessee."* j) *PRARTHANA CONSTRUCTION (P) LTD. VS. DEPUTY COMMISSIONER OF INCOME TAX (2001) 118 TAXMAN 112 (IT AT- AHMEDABAD) (MAG)*

*"It has been held that loose papers and documents seized from premises of third parties and statement recorded at back of assessee without it being afforded opportunity to interrogate said documents and without bringing on record any supporting evidence, could not be made basis for adding undisclosed income in hands of assessee".* k) *AMARJIT SINGH BAKSHI (HUF) VS. ASSISTANT COMMISSIONER OF INCOME TAX (2003) 86 ITD 13 (DELHI)*

*"It has been held that where document in question was not recovered from assessee's possession but was recovered from N's possession, and assessee was not allowed any opportunity of cross- examination and further, N's testimony was not found credible at all, it could not be said that there was any iota of evidence to support revenue's case that a huge figure over and above figure booked in records and accounts changed hands between parties and therefore, no addition could be made based on such document in hands of assessee.*

*I) 2020 (3) TMI 692 - DELHI HIGH COURT, COMMISSIONER OF INCOME TAX VERSUS SANT LAL*

*Income from undisclosed sources- Addition u/s 69A- Material discovered during search of third person- Assessment u/s 153A - undisclosed cash transactions -HELD THAT:- Revenue has not been able to produce any cogent material which could fasten the liability on the respondent. The CIT(A) has also examined the assessment record and has observed that the AO did not make any further enquiry/investigation on the information passed on by the DCIT, Central Circle-19, New Delhi. No attempt or effort was made to gather or corroborate evidence in this relation. In these facts and circumstances, we are not inclined to entertain the present appeal as no substantial question of law arises for our consideration."*

29. *If the department would make huge additions on the basis of such documents which has no base then any person would fabricate the documents and proceed to complaint without gaining any advantage, it is quite possible that anybody could fabricate entries on some sheets on papers by incorporating some genuine entries also to give a colour of genuineness of such entries.*

30. *Reliance in this regard is being placed upon the following Judgments wherein it has been held that no addition can be made on the basis of dumb document:*

- i). *Jagdamba Rice Mills vs. ACIT [ 67 TTJ (Chd) 838]*
- ii). *Satnam Singh Chhabra vs. DCIT [74 TTJ 976 (Lucknow)]*

- iii). *Pooja Bhatt vs. ACIT [ 66 TTJ (Mumbai) 817 (Mumbai)]*
- iv) *CIT vs S.M Aggarwal 293 ITR 43*
- v) *Dimsy Food and Chemical vs DCIT 110 TTJ 450*
- Vi) *ACIT vs Ravi Agricultural Inds. 121 TTJ 903*
- vii) *Smt. Lakshmi Savitri Devi vs. ACIT 60 DTR 148*
- viii) *CIT vs Girish Chaudhary 296 ITR 619*
- ix) *DCIT vs Brinsar Foods Pvt Ltd as reported in ITA No. 6/Chd/2007 vide order dated 19.09.2014*
- x) *ACIT vs. Amarjit Singh Dhingra in ITA No. 47/CHD/2005 vide order dated 29.05.2014*

31. *The Assessee is a property dealer and has nothing to do with the huge cash payments as alleged by the department. The Assessee has been earning a meagre commission income of around 1% in any deal.*

32. *During the course of CIT(A) proceedings, the Assessee had filed an affidavit of Sh Kaku Singh and has even filed two registered sale deeds, wherein the seller is Sh kaku Singh and purchasers were Smt Nirmala Devi w/o Sh Mohan Lai and Smt Krishna Devi w/o Sh Sher Singh (Partner in M/s Surinder Sat Agro Foods.(affidavit placed in the Pb at Pg-21-22 and registered sale deeds along with English translation in the PB at page- 23-30).*

33. *From the perusal of the affidavit of Sh Kaku Singh (Seller of property) has clearly affirmed that he had sold property to Smt Nirmala Devi w/o Sh Mohan Lai and Smt Krishna Devi w/o Sh Sher Singh for an amount of Rs. 15.33.000/- and 15.10.000/- totalling Rs. 30,43,000/-. He has further stated that out of above said sum an amount of Rs. 16,03,000/- was received between 07.09.2010 to 31.03.2011 and the balance amount of Rs. 14,40,000/- is still outstanding.*

34. *In the said affidavit, Sh Kaku Singh has even stated that the Assessee has nothing to do with the amount of Rs. 16,03,000/- and he is only a dealer and witness to the amount received by him and the pending amount to be received by him. Further it is worth to mention here that the name of "Sh Kaku Singh" is repeatedly mentioned in the said alleged document in every narration. So, if the entries pertains to a transaction which has happened with Sh Kaku Singh and the same person is admitting and stating the facts by filling an affidavit, the same cannot be ignored.*

35. *The Worthy CIT(A) has dismissed the appeal of the Assessee by holding that the despite the additional evidence documents have been filed, the source of Rs. 16,03,000/- remains unexplained. But in this regard it is duly stated that the Assessee is not concerned with the source of Rs.16,03000/- as he was merely a dealer, earning a small amount of 1%. The AO must have enquired the matter from MP Shersingh or M/s Surinder Sat Agro Foods or Sh kaku Singh. But no such exercise was done during the assessment proceedings.*

36. *There was no onus upon the Assessee to even explain the said document. The Assessing Officer has never asked anything from party from whose premises from whom the said document was obtained. The Assessing Officer had even not enquired about the said document from M/s Surinder Sat Agro Foods and even not from Mr MP Sher Singh whose name is found at the top i.e parallel to the name of Sh Fauza Singh.*

37. *The Assessee cannot be penalised for an act which has not been done by the Assessee. So, we request the Hon'ble Bench to kindly delete the addition in the case of the Assessee.”*

7. The ld. Sr Dr. only relied on the order of revenue authorities and not able to bring any contrary fact against the submission of the assessee. We heard the rival submission relied on the documents available in the record. The entire addition was made on basis of the documents available in the record of the third party. Fact that the assessee has produced the deed documents to substantiate his claim related to transaction cash with the party. In remand report the issue was not properly controverted and taken care with relation to the search person and the parties related to sale and purchase of land. But the seller of the land confirmed the fact of the assessee and submitted the affidavit before the authority. The ld. Counsel has submitted the catena of judgment in favour of the assessee, considering the ratio

decidendi of the judgment. The addition made by the ld. AO is duly set aside the addition amount of Rs.16,03,000/-& addition is quashed. Ground No. 3 and 4 of the assessee are allowed. Ground No. 5 and 6 of the assessee are general in nature which are not required for adjudication.

8. In the result, the appeal of the assessee bearing **ITA No. 717/Asr/2019** is allowed.

**Order pronounced in the open court on 11.11.2022**

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