

**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.135 & 136/Asr/2022
Assessment Years: 2009-10 &2011-12**

Joginder Singh, 95, Adarsh Nagar, Jalandhar. [PAN: ABQPS0961B] (Appellant)	Vs.	ACIT, Circle-1, Jalandhar. (Respondent)
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Appellant by	Sh. Ashray Sarana, CA
Respondent by	Sh. Rajeev Wadhera, Sr. DR

Date of Hearing	07.02.2023
Date of Pronouncement	10.02.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeals of the assessee were directed against the order of the Id. Commissioner of Income Tax (Appeal), NFAC, Delhi,[in brevity the 'CIT (A)'] bearing appeal DIN & Order No. ITBA/NFAC/S/250/2022-23/1042889530(1), date of order 28.04.2022, the order passed u/s 250of the Income Tax Act 1961, [in

brevity the Act] for A.Ys. 2009-10 &2011-12.The impugned orders are emanated from the order of the ld. Asstt. Commissioner of Income tax,Circle-1, Jalandhar (in brevity the AO) order passed u/s 143(3)/147of the Act date of order 28.10.2015.

2. At the outset, we advert that both the appeals, have common issue and assessed u/s. 147/143(3). Both the appeals are taken together for adjudication. With the consent of both the parties, we take the **ITA 135/Asr/2022** as a lead case. The assessee has raised the following grounds which are reproduced as under: -

“1. That the order passed by the Hon’ble CIT (A) dated 28.04.2022 is against the law and facts of the case.

2. I hat having regard to the facts and circumstances of the case. Hon'bleCIT(A) has erred in law' and on facts in confirming the action of ld. AO in framing the impugned assessment order u/s 143(3) read with section 147 of the Act and without complying with the mandatory conditions u/s 147/148/151 as envisaged under the Income Tax Act. 1961.

3. That having regard to the facts and circumstances of the case. Hon'ble CIT (A) has erred in law and on facts

in confirming the action of ld. Assessing Officer in making an addition of Rs. 45,00.000/- u/s 69 of the Act. without appreciating the fact the Deputy Commissioner cum collector has passed order dated 26.11.2014, wherein the validity of impugned agreement was challenged and has decided in favour of assessee. stating that this forged agreement was prepared by Smt. Kulwinder Kaur daughter in law of S. Jaswinder Singh.

4. That having regard to the facts and circumstances of the case. Hon'ble CIT (A) has erred in law and on facts in confirming the action of Ld. Assessing Officer in ignoring the fact that during assessment proceedings S. Jaswinder Singh @ Taswinder Singh (seller) also stated that lie has not entered into any agreement to sell regarding this property.

5. That having regard to the facts and circumstances of the case. Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. Assessing Officer in making an addition of Rs. 45.00.000/- in the hand of assessee by wrongly relying upon the order of Hon'ble Punjab & Haryana High Court, Chandigarh, wherein the only

reference of the said impugned "agreement to sell" was made. The Hon'ble High Court has passed no verdict regarding validity or authenticity of the impugned "agreement to sell" on the basis of which the Ld. Assessing Officer made addition.

6. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."

3. Brief facts of the case are that the assessee had filed his return u/s 139 by declaring total income amount of Rs.45,85,210/-. The return was processed u/s 139(1). The assessee purchased a property from Mr. Jasminder Singh alias Tasminder Singh with a value of Rs. 26,40,000/- by Registered Sale Deed dated 02/07/2010. The assessment was reopened U/s 148 of the Act on basis of the photocopy of the "agreement to sell" of the said transaction. In response, the assessee filed a return of income. During the course reassessment proceeding assessee filed all the information and documents which were called for and challenged the veracity of the impugned photocopy "agreement to sell" due to absence of original

copy. The claim of assessee is that the daughter in law of seller, Mrs. Kulwinder Kaur had made a complaint by pursuing the photocopy of “agreement to sell” of higher value of transaction to harass her father-in-law. As per the said photocopy of agreement to sale of the property, sale value was fixed @ 1.3 crore per acre by both the parties and total value was ascertained is Rs. 2.6 crore for transfer of land. Taking cognizance of the photocopy of ‘Agreement to sale’ of the property, the assessment was completed. Excess value stated in the instrument was entirely added back in the hands of the purchaser, assessee in two assessment years. The amount of Rs.1,89,92,000/- was added back for assessment year 2011-12 and Rs.45 lacs was added back for assessment year 2009-10 with the total income of the assessee. One of the crucial reasons of addition was the order of Hon’ble Punjab and Haryana High court bearing case no. COCP No. 2212 of 2010 in the case of Kulwinder Kaur vs Jasinder Singh, **APB Page 22-28**. The contempt petition was proceeded by the daughter in law of seller before the Hon’ble High Court against her father-in-law. The revenue authorities relied on specific para of this judgment and confirmed the addition of the assessee in two assessment years u/s 69 of the Act. Being aggrieved assessee filed an appeal before the ld. CIT(A).

The Id. CIT(A) upheld the order of the Id. AO. Being dissatisfied on the order passed by the Id. CIT(A), the assessee filed an appeal before us.

4. During, hearing before bench, the Id. Authorised Representative of assessee(in short AR)has filed written submission with brief note which are kept in the record. The Id. AR further placed that the assessee purchased the property with a value of Rs.26,40,000/- by a registered sale deed dated 02.07.2010. On basis of the complaint of the daughter-in-law of the purchaser, the assessee claimed that the photocopy of ‘agreement to sell’ is fake and the complainant was not able to submit the original one in any of the proceedings before any authority. The proceeding U/s 148 was initiated on basis of this photocopy of the ‘Agreement to sell’ is entirely misleading. The revenue has called the complainant, Smt. Kulwinder Kaur for recording the statement. The Id. AR pointed out Q. No. 2 of the statement recorded before us. The copy of the statement recorded is annexed in **APB page no. 6 to 14** the relevant paragraph is reproduced as below:

“STATEMENT OF SMT. KULWINDER KAUR (DAUGHTER IN LAW of JASMINDER SINGH):

Sir, during the course of assessment proceedings statement of Smt. Kulwinder Kaur was recorded and at the time of cross objection Smt. Kulwinder Kaur was asked Q-2 which is as follows:

Q-2 From where you received this agreement.

Ans: I have received this agreement from unanimous person.”

4.1 The stamp vendor was also called for who had sold the stamp paper of ‘agreement to sale’. The counsel further invited our attention in the statement recorded of the stamp vendor Sh. Surjit Ram and the recorder statement is annexed in **APB page nos. 15 to 18**. The Q-1 is reproduced as below:-

“Q-1 Please state whether Sh. Jaswinder Singh S/o Kirpa Singh had come for purchase of stamp papers mentioned above.

Ans: I am not able to recollect who come to purchase these stamp papers.”

4.2 The Id. AR in argument further mentioned that the daughter-in-law of the purchaser, Mrs. Kulwinder Kaur also filed a complaint before Dy. Commissioner – Cum- Registrar, Jalandhar and filed the impugned photocopy of the ‘agreement to sale’. The Dy. Commissioner–Cum-Collector had passed the order dated 26.11.2014, wherein the validity of impugned agreement was challenged and was decided in favour of the assessee by stating that forged agreement was prepared by Smt. Kulwinder Kaur daughter in law of purchaser. The specific paragraph of the order, duly annexed in **APB pages 19 to 21**is reproduced as below: -

“In the Court of Shri Pritam Singh P.C.S Comissioner Cum Collector , Jandhar

Case No : 101/ADC

*“I have listen the argument of the council on behalf of the purchaser and clarify the facts of the documents /files and reached on the conclusion, that the photocopy of the agreement produced by the complainant . The same is incomplete and without signature of the purchaser . After verify the photocopy of the agreement states that on this astam the purchase date mentioned of these astam was 29/06/2008, but the cheque shows on this agreement, date mentioned as 17-06-2008 which is incorrect because the cheque given in this agreement is written after purchase of astam. **So it is clear that the complainant prepared the forged agreement for harrasment to the parties or as per the reportof Sub-Registrar , Jalandhar-I the Sell deed is correct as per collectorate rate there is no pending and recovery from purchase . So the notice issued to the purchaser has been withdrawn.**”(Emphasis supplied)*

4.3 The ld. AR further in argument stated that the daughter-in-law of purchaser Mrs. Kulwinder Kaur has filed a contempt petition before the Hon’ble Punjab & Haryana High Court against her father-in-law, Sh. Jasminder Singh. The observation of the relevant paragraph of the Hon’ble High Court bearing C.O. CP No. 2212/2010 is reproduced as below:

“Court of Punjab and Haryana at Chandigarh COCP No. 2212 of 2010

6. The respondent thus had to stay in India per force and not by choice. It also Appears that the land property of the respondent was already attached in some other court case also and an entry to this effect was duly made in the revenue record. The respondent is alleged to have interpolated and tampered with the said entry and thereafter executed the Sell deed in question duping one and all. Since the forgery and/or tampering with the revenue record was an independent offence, a separate FIR No. 173 dated 15.08.2011

(Annexure P28) has been got registered against the respondent and his co-accused in thereto.

8. *The record speaks in volume that the respondent voluntarily made the statement, may be to deceive the petitioner and deprive her of the interim relief under the 2005 Act. No sooner he gave the undertaking, the respondent wanted to wriggle out and sought to withdraw his statement as well as permission to sell the property . His application was dismissed and the order was upheld by the Appellant Court. The above stated order(s) have attained finality. But the respondent has in brazen violation of the undertaking and the court order based thereupon, executed the subject Sell deedon 02.07.2010. The intentment of the respondent to dupe the petitioner or to play fraud on the court and to hoodwink the law of the land, stands proved beyond any doubt by the fact that the respondent in his reply/affidavit claims that the Sell deed was got executed by the vendee by taking the respondent to the tehsil office forcibly and paltry sell consideration of Rs 26,40,000 /- only was paid to him.However, the ‘Agreement to Sell’ entered into between the respondent and his vendee (Annexure P29) shows that the land was sold for a sum of Rs 1,30,00,000/- per acre and substantial part of the sell consideration was received by the respondent in cash except the part consideration of Rs 26,40,000/-.* ***The half –hearted false plea taken by the respondent thus has no legs to stand and has to be rejected.***

9. *The respondent is a well educated person living abroad and it cannot be believed that he was forced to execute the Sell deed by the vendee. The fact that no compliant or FIR against the vendee for the alleged incident was ever made by the respondent who sat at home and enjoyed the sell consideration, leaves **no room to doubt that the Sell deed was executed by the respondent voluntarily and in total disregard to his undertaking and the order passed by the learned Judicial Magistrate.***”

(Emphasis supplied)

5. The Id. Sr. DR in his argument relied on the order of the revenue authorities. The Id. Sr. DR placed that the total transaction was made by the assessee with amount of Rs.26,40,000/- and rest amount was transacted through cash. So, the entire addition was made u/s 69 on basis of the payment of cash in both the years. The reliance was placed in para nos. 10 and 11 of the assessment order. The relevant para is extracted as below: -

“10. In view of the above facts and inferences, the income of the assessee was under assessed at Rs.16,20,410/- for A.Y. 2009-10 as the source of investment in purchase of land is shown at Rs.26,40,000/- only, whereas actual investment in purchase of land amounts to Rs.2,61,32,000/- (i.e. Cost of affidavit Rs.1,32,000/-, Advance Money of Rs.35,00,000/- and Rs.10,00,000/- paid in cash on 17.06.2008 and 17.07.2008 respectively). Thus, the total source of investment of Rs.2,34,92,000/- remained unexplained in the hands of Sh. Joginder Singh (the assessee) which requires to be taxed in the assessment years as tabulated below:

<i>Assessment Year</i>	<i>Amount (In Rs.)</i>	<i>Date of payment</i>
<i>2009-10</i>	<i>Rs.35,00,000/- (Advance Money)</i>	<i>17.06.2008</i>

2009-10	Rs.10,00,000/- (Advance Money)	17.07.2008
2011-12	Rs. 1,89,92,000/-	02.07.2010 i.e., date of sale deed

Thus, out of the total unexplained investment of Rs.2,34,92,000/- paid in cash, the amount of Rs. 45,00,000. -(paid in cash as Advance Money as per 'agreement to sell')pertains to the FY 2010-11 relevant to AY 2011-12 remained unexplained for the FY 2008-09 relevant to AY 2009-10.

11. Hence, the difference between the registered value and the 'agreement to sell' value amounting to Rs. 45,00,000/- paid in cash in the FY 2008-09 relevant to AY 2009-10 is added under Section 69 of the Income-tax Act, 1961 as unexplained investment in purchase of aforesaid immoveable property. Since the assessee has Wilfully concealed the particulars of this income in order to avoid the payment of taxes, penalty proceedings us 271(l)(c) for concealment or furnishing inaccurate particulars of his income are separately initiated. (Addition Rs. Rs. 45,00,000/-)."

6. We heard the rival submission and considered the documents available in the record. The entire addition was made on basis of the observation of the Hon'ble High Court in a contempt petition. In Hon'ble High Court, assessee was never the party related to execution of the order. The revenue had never been able to submit

the original copy of the “agreement to sell” before any of the authority nor even before the bench. In the order of the Jurisdictional High Court bearing case No. C.O. CP No. 2212/2010 specifically mentioned about the sale deed. But have never been mentioned that ‘agreement to sell’ is in photocopy only. The issue of absence of original instrument was in disguise before the Hon’able jurisdictional High Court. In factual observation in the Court of Shri Pritam Singh P.C.S. Commissioner –Cum-Collector, Jalandhar, Case No. 101/ADC declared that the ‘agreement to sell’ as forged one. But the said issue was never be discussed before the Hon’ble High Court. We respectfully observed the order of the Hon’ble jurisdictional High Court and in observation, the veracity of the instrument, ‘agreement to sell’ was not discussed in order which is the moot point of adjudication. The revenue cannot take the issue on ‘pick and choose’ basis to make the addition in the hands of the assessee. In query before the bench, the revenue was also unable to reply whether the same addition was happened in the hand of the seller, under the relevant provision of the Act. The ld. Sr. DR was silent in this point before the bench. The ld. AR of the assessee relied on the different judicial pronouncement of the Hon’ble High Court and also the Co-ordinate Bench of ITAT, Amritsar in which case of **ACIT vs. Kulwinder Singh, ITA No.659**

&660/Asr/2014 and ACIT vs. Harman Builders P. Ltd. ITA No. 666/Asr/2014.

The Id. AR respectfully relied on the observations of the Hon'ble Apex Court and the Hon'ble High Courts which are extracted as below:-

a) **H. Siddiqui (Dead) By LRS. Vs. A Ramalingam (2011) 5 S.C.R 587** wherein the Hon'ble Supreme Court held that..... “ *Secondary evidence relating to content of a document is inadmissible, until non production of original is accounted for, so as to bring it within one or other of the cases provided for in this section- The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original- Mere admission of a document in evidence does not amount to its proof- The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon.*

The provision of section 65 of the Evidence Act,1872 provide for permitting the parties to adduce secondary evidence. However, such a course is subject to a large number of limitations. In a case where original documents are not produced at any time, nor, any factual foundation has been led for giving secondary evidence, it is not permissible for the court to allow party to adduce secondary evidence.

The trial court could not proceed in such an unwarranted manner for the reason that the respondent had merely admitted his signature on the photocopy of the power of attorney and did not admit the contents thereof. More so, the court should have borne in mind that admissibility of document or content thereof may not necessary lead to drawing any inference unless the contents thereof have some probative value.”

(Emphasis supplied)

- b) **Arati Bhargava (Ms.) Vs. Shri Kavi Kumar Bhargava AIR 1999 Delhi 280** wherein the Hon'ble court held that *“it is well settled principal of law that a photocopy of a copy is not admissible in evidence under section 65 of the Evidence Act. To the same effect are the observations of the Division bench of the Madras High Court as reported in Ramgopal Naicker Muthukrishna Ayyar and another,. Thus, if the said letter cannot be admitted in evidence, it would serve no useful purpose to take the same on the file of this court.”*

(Emphasis supplied)

- c) **Ashok Dulichand Vs. Madahavial Dube and Anr. 1975 AIR 1748, 1976 SCR (1) 246.**Wherein the Hon'ble Supreme Court held that.....*“According to clause (a) of Section 65 of Indian Evidence Act. Secondary evidence may be given of the existence , condition or contents of a document when the original is shown or appears to be in possession or power of the person against whom the documents is sought to be proved or of any person out of reach of , or not subject to, the process of the court of any person legally bound to produce it, and when , after the notice mentioned in section 66 such person does not produce it . Clause (b) to (g) of section 65 specify some other contingencies wherein secondary evidence relating to a document may be given.”*

(Emphasis supplied)

- d) **Rakesh Mohindra Vs. Anita Beri and Ors.CIVIL APPEAL NO. 13361 OF 2015, Date of Order 06/11/2015.**

Wherein the Hon'ble Supreme court held that *The preconditions for leading secondary evidence are that such original documents could not be produced by the party relying upon such documents in spite of the best efforts , unable to produce the same which is beyond their control. The party sought to produce secondary evidence must establish*

for the non-production of primary evidence . Unless , it is established that the original documents is lost or destroyed or is being deliberately withheld by the party in respect of that document sought to be used .Secondary evidence in respect of that document cannot be accepted.’’(Emphasis supplied)

6.1 We find that entire addition was made in both the years on basis of the photocopy of the agreement which has no evidentiary value in the eyes of law. The photocopy of the ‘Agreement to Sell’ itself is inadmissible without submitting the original one. On basis of the observation of the jurisdictional High Court in disposal of contempt petition cannot be the part of assessee’s addition without making any cross verification to assessee itself. There is the gross violation of the natural justice without allowing the assessee to cross verify the photocopy of the “Agreement to sell” which is the basis of the addition. We find there is no *locus standi* of the ld. AO to make addition amount of Rs.45 lacs with the total income of the assessee on basis of photocopy of document.

6.2 Considering the fact the grounds of appeal of the assessee are allowed.

7. The facts of the present case are, mutatis mutandis, similar to this in ITA No.136/Asr/2022 also. In ITA 135/Asr/2022, for the detailed discussion recorded therein, the notice issued u/s 148 of the Act in the present case, and all proceedings

pursuant thereto, culminating in the impugned order, are cancelled. Nothing further survives for adjudication. Therefore, the appeal is allowed.

8. In the result, both the appeals of the assessee bearing **ITA No. 135/Asr/2022 & 136/Asr/2022** are allowed.

Order pronounced in the open court on 10.02.2023

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.

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