

**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.82/Asr/2021
Assessment Year: 2012-13**

Kuldeep Singh S/o Bhura Singh, H.No. 514, Vill. Ralla Distt. Mansa. [PAN: CSPPS9897A] (Appellant)	Vs.	Income Tax Officer, Ward-1(4), Mansa. (Respondent)
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Appellant by	None.
Respondent by	Sh. Rajeev Wadhera, Sr. DR

Date of Hearing	08.02.2023
Date of Pronouncement	10.02.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee is 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/250/2021-22/1035029006(1), date of order 23.08.2021, the order passed u/s 250 of the Income Tax Act 1961, [in brevity the Act] for A.Y. 2012-13.The impugned order was emanated from the

order of the Id. Income Tax Officer, Ward-1(4), Mansa, (in brevity the AO) order passed u/s 147/143(3) of the Act date of order 11.12.2019. The assessee has taken the following grounds:

“1. That the order of the CIT (A) upholding the order of ITO passed under section 147/143(3) is illegal, violative of natural justice, without fair application of the mind to the extent of Rs. 39,25,000/- on account of unexplained investment made in purchase of land.

2. a. That the learned CIT (A) has erred in not taking cognizance of affidavit of Smt. Basant Kaur W/o Sh. Bhura Singh and Smt. Paramjit Kaur W/o Sh. Kuldeep Singh thereby confirming that they made gift of Rs.1000000/- each to the appellant.

b. That the learned CIT (A) appeal has rejected the genuineness of gifts of Rs. 1000000/- after alleging that three parameters of the gift i.e. identity, genuineness of the transaction and creditworthiness have not been proved by the appellant.

3. That the learned CIT (A) has erred in not taking cognizance of the facts that the appellant and his family member are agriculturist owning 34 Acres of agriculture land and the captioned investment was made from sale of properties by self, wife and mother as per sale deeds produced by the assessee to the tune of Rs.2029406/- pertaining to the year 2009 and 2010 at the time of assessment proceedings and out of past savings.

4. That the assessee craves leave to add or amend any other grounds of appeal either at the time of hearing or before the hearing.”

2. When the appeal was called for hearing, the person appeared & introduced him. But the person was not carrying any valid power of attorney for representing the matter on behalf of assessee. The Id. Council for the assessee had filed an adjournment petition before the bench with request for short adjournment for the hearing. But there is no such valid reason for adjournment. The bench has rejected the adjournment petition for non-submission of any reasonable cause. In view of the above and considering the nature of dispute, we proceed to dispose the appeal *ex-parte qua* the assessee after hearing the learned DR and on the basis of material available on the record

3. Brief fact of the case is that the assessee has purchased a property amount of Rs.52,50,000/-. The assessee was asked for source of the investment during assessment proceeding. It was explained that the source of investment was from agricultural income and further assessee has taken the gift from Smt. Basant Kaur and Smt. Paramjit Kaur amount to Rs. 10 lacs each. But the said gift was not accepted by the revenue authorities due to the lack of genuineness. During

assessment, the ld. AO accepted the agricultural income of assessee amount to Rs.13,25,000/- as genuine. The balance amount of investment Rs.39,25,000/- (Rs.52,50,000/- (-) Rs.13,25,000/-) was added back with the total income of the assessee being unexplained investment u/s 69 of the Act. Aggrieved assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) upheld the order of the ld. AO. Being dissatisfied on the order passed by the ld. CIT(A), the assessee filed an appeal before us.

4. The ld. Counselfor assessee filed a written submission and placed the additional evidence Under Rule 29 of the Income-tax (Appellate Tribunal) Rules, 1963 and request for accepting the additional evidence for hearing. In the additional evidence the assessee filed the affidavit related to confirmation of the purchaser for receiving the amount as per the agreement to sale. In written submission the assessee respectfully relied on the order of the **Hon'ble Supreme Court in the case of Tek Ram 262 CTR 118** held that the additional evidence is being relevant and required to be looked into.

5. The ld. Sr. DR had not made any objection related to acceptance of the additional evidence of the assessee.

6. We peruse the documents & submission of assessee available in the record & consider the orders of revenue authorities. In respect of the addition, the ld. CIT(A) has taken the view in the order of appeal which is reproduced hereasbelow:

“Appellate finding and decision: -

I have carefully gone through the Assessment order, grounds of appeal, Statement of facts and written submissions of the appellant which is received on 10.08.2021 through ITBA Portal.

In this case as per the information available, the assessee had made investment in purchase of agriculture land for Rs. 52,50,000/-. Since the source of investment made in purchase of land was not explained, proceedings u/s 147 of the I.T. Act, 1961 were initiated, particulars of which have been given above.

Now before me in the course of appellate proceedings, the assessee has not furnished any details regarding source of investment made in purchase of land of Rs. 52,50,000/-. The assessee has not furnished any documentary evidence regarding the source of investment. Only general comment has been made by the appellant in his written submission. In his written submission, regarding source of investment made in purchase of land, the appellant says that land was purchase

from past savings, current income from agriculture land, the sale proceeds of land sold by the assessee in the previous year and also by contribution by the wife and mother who have also agriculture land in their name and have also sold agriculture land in previous year. The assessee received 10 lakhs from his wife and Rs. 10 lakhs from his mother as gift. Which is not acceptable. Since three parameter of the gift i.e. Identity, genuineness of the transaction and creditworthiness have not been proved by the appellant neither at the time of assessment proceedings nor at the time of appellate proceedings. Only affidavit certificate from his wife and mother has been filed which is not acceptable. The onus is upon the assessee to furnish the documentary evidence regarding the source of investment made in purchase of land. Here, the assessee has failed to furnish any documentary evidence regarding the source of investment. Hence, addition made by AO in his order dated 12.12.2019 is confirmed and appeal of the appellant is dismissed.

Hence, the addition of the AO is confirmed, and the appeal of the assessee is dismissed.”

6.1 We find that the assessee through his counsel had filed the written submission with documents and the additional evidence before the bench. The assessee had never produced the additional evidence before any of the lower

authorities. We remit back the matter to the Id. AO for verification of the additional evidence including the submission made by the assessee before the bench for fresh adjudication *de novo*. The assessee should cooperate the revenue in hearing by submitting the evidence. Needless to say, the Id. AO shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings. The evidence/explanations submitted by assessee in his defence shall be admitted by the Id. AO and adjudicated on merits in accordance with law. We order accordingly.

10. In the result, the appeal of the assessee bearing **ITA No. 82/Asr/2021** is allowed for statistical purposes.

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.

True Copy
By Order