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. 311 & 84/Asr/2019 & 2021
Assessment Year: 2009-10

Sh. Ramandeep Singh Sidhu S/o Sh. Gurdeep Singh, VPO Rampura Phul, Bathinda [PAN: BIJPS 1030E] **(Appellant)**	**V.**	The Income Tax Officer, Ward-1(3), Bathinda **(Respondent)**

Appellant by Sh. Sudhir Sehgal and Sh. P. N. Arora, Adv.
Respondent by Sh. Rajiv Wadhera, Sr. D.R.

Date of Hearing : 08.02.2023
Date of Pronouncement : 20.02.2023

ORDER

Per Dr. M. L. Meena, AM:

Both the appeals have been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), Bathinda, dated 18.02.2019 in respect of Assessment Year 2009-10.

2. The assessee has raised the following grounds of appeal in ITA No. 311/Asr/2019:

"1. The proceedings initiated by the AO u/s 147/148 are void ab-initio because the reasons recorded by the AO (reproduced in the assessment order) are reasons to suspect and not reasons to believe.

2. The proceedings initiated by the AO u/s 147/148 are void ab-initio because no satisfaction was recorded by the prescribed authority as provided u/s 151 that the case of the assessee is fit for issue of notice u/s 148.

3. The proceedings initiated by the AO u/s 147/148 are void ab-initio because the cash deposited in the bank by the assessee amounting to Rs. 58,74,210/- was^ treated as escaped income.

4. The Ld. CIT(A) erred on facts and law in confirming the addition of Rs.40,06,360/- as against the addition of Rs. 58,74,210/- made by the AO u/s 69 of the Income Tax Act 1961 without rebutting the explanation of the assessee submitted during the course of assessment proceedings.

5. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed o f f . "

In ITA No. 84/Asr/2021:

"1. The Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Center, erred on facts and law, in dismissing the appeal of the assessee, vide order u/s 250 dated 28.07.2021, against the order imposing penalty u/s 271(1) (c) without providing proper opportunity of hearing.

2. That the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Center, erred on facts and law, in dismissing the appeal of the assessee against the order imposing penalty u/s 271 (1)(c) dated 06.02.2020 because of the following reasons:-

2.1 The assessee requested for adjournment vide letters dated 17.02.2021, 01.04.2021 and the adjournment on 07.05.2021 was requested because the lockdown on account of Covid-19 was imposed in the State of Punjab w.e.f. 1st of May, 2021 which continued up to

30th of May, 2021 and during this period the private offices were not allowed to work.

2.2. That on 1st of June, 2021 the new e-filing portal of the Income Tax Department was launched which was not operational up to 15th of July, 2021 and the adjournment was applied in "seek adjournment utility" for 15th of August,2021.

2.2.1 That further adjournment could not be applied as in the new e-filing portal of the Income Tax Department, the further adjournment could only be applied through Digital Signatures or OTP.

2.2.2 That Digital Signature of the assessee could not be registered and OTP could not be generated due to technical glitches in the new e-filing portal of the Income Tax Department.

3. That the Hon'ble Supreme Court vide order dated 27th April, 2021 in Suo Motu Writ Petition (Civil) No.3 of 2020 restored the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 directed that the period(s) of limitation, as prescribed under any General or Special Laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.

4. That the Central Board of Direct Taxes vide its clarification dated 25.05.2021 has extended the limitation for counting the period of limitation for filing the appeal before the Commissioner of Income Tax (Appeals) till further order by the Hon'ble Supreme Court.

5. It is submitted that when due/ reasonable opportunity have not been provided by the Ld. CIT(A), as the order as passed by the Ld. CIT(A) is void abinitio and, therefore, the Appellate order as passed by the Ld. CIT(A) vide order, dated 17.08.2021 deserves to be quashed.

6. Without prejudice to above grounds of appeals:-

i) It is submitted that the CIT(A) has acted against the settled principle of law that the penalty proceedings are independent of assessment

proceedings because penalty proceedings are quasi criminal proceedings.

ii) It is also settled principle of law that the evidence filed during the course of assessment proceedings should be considered again in the penalty proceedings but the CIT(A) did not consider the documentary evidence filed during the course of appellate proceedings, that the assessee is purely agriculturalist having no other source of income, but the CIT(A) has only relied on the findings in the appellate order deciding the quantum appeal of the assessee.

7. That the Appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed-off."

I.T. A. No. 311/ASR/2019:

3. On the basis of the information of "AIR DATA" non-PAN based, the Assessing Officer noticed that during the year under consideration the appellant deposited Rs.58,74,210/- in his saving bank account. The AO stated that the assessee did not made compliance to either notice issued u/s 148 of the Act or show cause letter along with notice u/s 142(1) of the Act. The AO completed the assessment ex-parte on the basis of material available on records treating the amount of Rs.58,74,210/- deposited in his bank account as income from undisclosed sources u/s 69 of the Act.

4. In appeal, the ld. CIT(A) has granted part relief by observing vide paras 4.2 to 4.2.4 as under:

*"**4.2 I have given** careful **consideration to the explanation** submitted by the appellant and most important is fund flow where all the receipts have been posted along with the claim source. The fund flow statement is reproduced here under:*

Date	Particulars	Cash Withdrawal/Inflow	Cash Deposit/ Outflow	Balance
01.04.2008	Opening Balance	20,00,000	-	20,00,000
25.04.2008	Cash received from Sohan Lai & Co	9,00,000		29,00,000
28.04.2008	Cash Deposit	-	9,03,500	19,96,500
29.04.2008	Cash Deposit	-	9,00,000	10,96,500
27.10.2008	Cash received from K.S Company	1,00,000	-	11,96,500
30.10.2008	+-Theka Received from Kinnus	4,00,000	-	15,96,500
03.11.2008	Cash Received from K.S. Company	1,50,000	-	17,46,500
08.11.2008	Cash received from agriculture income	4,11,150	•	21,57,650
11.11.2008	Cash received from Sohan Lai & Co,	72,325.72	-	22,29,975.72
14.11.2008	Cash received from K.S. Company	1,50,000	-	23,79,975.72
21.11.2008	Cash deposit	-	10,510	23,69,465.7
27.11.2008	Cash received from K.S. Company	2,95,525.67	-	26,64,991.39
01,03.2009	Sales of Potatoes	6,50,000	-	33,14,991.39
12.03.2009	Sales of Potatoes	7,50,000	-	40,64,991.3
14.03.2009	Cash deposit	-	40,60,200	4791.39
		58,79,001.39	58,74,210	

***4.2.1 <u>Meager land holding:</u>** Even though the appellant claims that the family owns 40.5 acres of land for which necessary details were furnished but a close perusal of the same shows that most of the land pertains to mother of the appellant namely Smt. Balwinder Kaur widow of Gurdeep Singh, the brother of the*

appellant Sh. Gagandeep Singh along with his son Ramandeep and his wife Balvinder owns the balance land where as the appellant owns only 21K9M and 17K3 M of land which is merely 4.5 Acres. It would be fallacy to take on record that entire sale proceeds of the family would be in the possession of the appellant as has been claimed but this is not believable the other family members would not part with their income.

4.2.2 Sale of Potatoes: *The appellant in the cash flow statement was claiming- a sum of Rs.34,00,000/- (Rs. 20,00,000/- at the opening of the year, Rs. 6,50,000/- on 01/03/2009 and Rs.7,50,000/- on 12/03/2009) from potatoes. The appellant could not furnish convincing & cogent evidence in respect of sale of potatoes but merely relied upon some vague evidence of cold storage to show that the crop of potatoes was stored. Even if the slips of cold storage are believed it would show that the appellant was stocking potato in cold storage from 02/03/2009 to 29/03/2009 then how could he simultaneously sell the same on 01/03/2009 and 12/03/2009 for such large amount. It is matter of record that in Punjab successively for the year 2009 and 2010 there was sharp decline in the rates of potatoes and the produce was sold at distress. There is no quantitative details of sale and any evidence of converting those potatoes into actual cash by the appellant. There are no quantitative details and there is no evidence to show that the potatoes have been sold resulting into cash accumulation of Rs. 20,00,000/- at the opening of the year, Rs. 6,50,000/- on 01/03/2009 and Rs.7,50,000/- on 12/03/2009. It need to be appreciated that potatoes are very inexpensive crop and for generating sale to the extent of Rs.34,00,000/- as has been claimed in the fund flow statement above it would require institutional selling and not the retail selling. The appellant might for such purposes necessarily engage itself into sophisticated farming and marketing. There is not even a shred of evidence to substantiate that contention. The version put forth by the appellant is unbelievable because even if he does not desire to keep the evidence for selling potatoes resulting into such a large cash accumulation would automatically leave behind footprints and trail. In absence of any such evidence the explanation of the appellant deserves* ***dismissed.***

4.2.3 ***Other Agriculture income:*** *Besides the potatoes the appellant also provided evidence of amount received from K. S. Company and Sohan lal company for himself and his brother. These parties have confirmed the amounts on different dates. The appellant is entitled to benefit of the amounts from these sources to the extent of* ***Rs. 8,67,850/-*** *(1,00,000 + 1,50,000/- + 72,325/- +*

1,50,000/- + 2,95,525/-). No benefit can be given for entry of Rs. 4,11,150/- dated 08/11/2009 posted in cash flow on contention that there was possibility of agriculture income because it is without evidence. There is no evidence for thekka of Kinnus which is claimed by the appellant at Rs. 4 lakhs on 30/10/2009. However, considering the totality of circumstances of land holding of the family engaged in agriculture activity for past many years an estimated benefit of Rs. 10 lakhs is being given because in the remand report also there is an indication that family might have income to that extent. The total benefit of agriculture Income is Rs. 10 lakhs plus Rs. 8,67,850/-.

4.2.4 Out of the deposited cash of Rs. 58,74,210/- an amount of Rs. 18,67,850/- is treated as explained and the balance as unexplained."

5. The Ld. Counsel for the assessee submitted that the Ld. CIT(A) erred on facts & law in confirming the addition of Rs.40,06,360/- as against the addition of Rs.58,74,210/- made by the AO u/s 69 of the Income Tax Act, 1961 without rebutting the explanation of the assessee submitted during the course of assessment proceedings. The Ld. AR has filed a brief note in support of its contention which reads as under:

The CIT(A) has accepted the fact that the family owns 40.5 acres of agriculture land for which necessary details have been furnished but according to the CIT(A), the entire sale proceeds of the agriculture land of the family would not be in the possession of the assessee as the assessee owns only 4.5 acres of land.[Out of 40.5 acres of land] {Para 4.2.1) & the relevant finding of the CIT(A) as under:-

"It would be fallacy to take on record that entire sale proceeds of the family would be in the possession of the appellant as has been claimed but this is not believable the other family members would not part with their income."

There is a contradiction in the findings of the CIT(A) in para 4.2.3 as the CIT(A) has accepted the agriculture income to the tune of Rs. 18,67,850/- while categorically

recording the finding on the basis of total land holding of the family St the relevant finding are as under: -
"However, considering the totally of circumstances of land holding of the family engaged in agriculture activity for past many years an estimated benefit of Rs.10 lakhs is being given because in the remand report also there is an indication that family might have income to that extent. The total benefit of agriculture income is Rs.10 lakhs plus Rs.8,67,850/-. "

Further the CIT(A) has challenged the cash flow [reproduced in para 4.2 on page 6 of the order] while rejecting the contention of the assessee regarding availability of funds to the extent of Rs.34,00,000/- from sale of crop of potato detailed as under:-

Date	***Amount***
Opening balance as on 01.04.2008	*20,00,000/-*
01.03.2009	*6,50,000/-*
12.03.2009	*7,50,000/-*

The contention of the assessee has been rejected only on the basis of presumption of the CIT(A) that the sale of potato to the tune of Rs.34,00,000/- would require institutional selling ft not retail selling fit the relevant findings is as under: -

"The appellant might for such purposes necessarily engage itself into sophisticated farming and marketing. There is not even a shred of evidence to substantiate that contention. The version put forth by the appellant is unbelievable because even if he does not desire to keep the evidence for selling potatoes resulting into such a large cash accumulation would automatically leave behind footprints and trail. In absence of any such evidence the explanation of the appellant deserves dismissed".

The kind attention of this Hon'ble Bench is drawn to the following documents submitted during the course of appellate proceedings and admitted as additional evidence: -

- *Details of land holding of the family members. [PB-58]*
- *Girdawari of the family members of the family [PB 47- 57] in which the sowing of crop of potato has been confirmed.*

- *Certificate of conformity [PB 85-86] issued to Ramandeep Singh Sidhu by markfed as registered being a potato grower ft is crop being found in compliance to the standards of Global GAP*
- *Certificate of Dy. Director Horticulture, Bathinda* ***[PB-33]*** *in which average crop of the potato has been confirmed to the extent of 117 quintal per acre during F.Y. 2008-09.*
- *Calculation of sale receipts of Potato on [PB-83] in which Rs.20,00,000/- has been calculated as sale consideration of Potato for F.Y. 2008-09 only.*
- *Evidence of stocking pf potato with Avtar Cold Storage, [Rampura Phul] of 3809 bags during F.Y. 2008-09 [PB-8-32].*

From the above stated facts, the amount of Rs.34,00,000/- taken by the assessee from sale consideration of potato [detailed as above] is reasonable.

The kind attention of your goodself is drawn to the order of the Delhi bench of the ITAT in the case of Sanjeev Kumar malik vs. ITO in ITA No.7732/Del/2018 dated 28.12.2022 in which it has been held that where the assessee has established on record that it had receipts from sale of agriculture produced a has furnished the details of agriculture land holding, the claim of the assessee regarding the agriculture income cannot be denied only because invoices relating to sale are not available."

6. The ld. DR relied on the order of ld. CIT(A).

7. Heard the rival contentions, perused the material on record, written submissions and citations filed before us. It is admitted and undisputed fact on record that the assesse in joint ownership with family members owns 40.5 acres of agriculture land, including 4.5 Acres in his own individual ownership for the agriculture income earned on yearly basis and for that all the necessary details have been furnished but the CIT(A), doubted that the

entire sale proceeds of the agriculture land of the family would not be in the possession of the assessee as the assessee owns only 4.5 acres of land (Para 4.2.1). The relevant observation of the CIT(A) is reproduced below:-

> *"It would be fallacy to take on record that entire sale proceeds of the family would be in the possession of the appellant as has been claimed but this is not believable the other family members would not part with their income."*

8. It is seen that there is a contradiction in the findings of the Ld. CIT(A) as in para 4.2.3, the CIT(A) has accepted the agriculture income to the tune of Rs. 18,67,850/- by categorically recording the finding on the basis of total land holding of the family by observing as under: -

> "However, considering the totally of circumstances of land holding of the family engaged in agriculture activity for past many years an estimated benefit of Rs.10 lakhs is being given because in the remand report also there is an indication that family might have income to that extent. The total benefit of agriculture income is Rs.10 lakhs plus Rs.8,67,850/-"

9. The Ld. CIT (A) has stated that the appellant in the cash flow statement claimed a sum of Rs.34,00,000/- (Rs. 20,00,000/- at the opening of the year, Rs. 6,50,000/- on 01/03/2009 and Rs.7,50,000/- on

12/03/2009) from potatoes. However, the appellant could not furnish convincing & cogent evidence in respect of sale of potatoes but merely relied upon some vague evidence of cold storage to show that the crop of potatoes was stored. Even if the slips of cold storage are believed it would show that the appellant was stocking potato in cold storage from 02/03/2009 to 29/03/2009 then how could he simultaneously sell the same on 01/03/2009 and 12/03/2009 for such large amount. Thus, the CIT(A) has rejected the contention of the assessee only on the basis of presumption that the sale of potato to the tune of Rs.34,00,000/- would require institutional selling and not retail selling. The relevant findings are as under:

> "The appellant might for such purposes necessarily engage itself into sophisticated farming and marketing. There is not even a shred of evidence to substantiate that contention. The version put forth by the appellant is unbelievable because even if he does not desire to keep the evidence for selling potatoes resulting into such a large cash accumulation would automatically leave behind footprints and trail. In absence of any such evidence the explanation of the appellant deserves dismissed".

10. The Ld. Counsel vehemently argued that the Ld. CIT(A) has not appreciated the facts of the case and ignored the material additional

evidence placed before him, although admitted on record. The AR has drawn attention of this Bench to the following documents submitted during the course of appellate proceedings and admitted as additional evidence: -

- Details of land holding of the family members. [PB-58]
- Girdawari of the family members of the family [PB 47- 57] in which the sowing of crop of potato has been confirmed.
- Certificate of conformity [PB 85-86] issued to Ramandeep Singh Sidhu, and marked as registered potato grower, it is crop being found in compliance to the standards of Global GAP.
- Certificate of Dy. Director Horticulture, Bathinda [PB-33] in which average crop of the potato has been confirmed to the extent of 117 quintals per acre during F.Y. 2008-09.
- Calculation of sale receipts of Potato on [PB-83] in which Rs.20,00,000/- has been calculated as sale consideration of Potato for F.Y. 2008-09 only.
- Evidence of stocking pf potato with Avtar Cold Storage, [Rampura Phul] of 3809 bags during F.Y. 2008-09 [PB-8-32].

11. The AR contended that from the above stated facts, the amount of Rs.34,00,000/- as agricultural income taken by the assessee from sale consideration of potato is reasonable.

12. The Delhi bench of the ITAT in the case of Sanjeev Kumar Malik vs. ITO in ITA No.7732/Del/2018 dated 28.12.2022 held that where the assessee has established on record that it had receipts from sale of agriculture produced and has furnished the details of agriculture land holding, the claim of the assessee regarding the agriculture income cannot be denied only because invoices relating to sale are not available. The Ld. DR has not filed any objection or citation in rebuttal to the contention of the Ld. AR before us.

13. From the above, it is evident that the Ld. CIT(A) has merely suspected the size of land holding used for cultivation of potato on the basis of joint ownership without rebuttal to the additional evidence admitted on record or contentions raised by the appellant. The Ld. CIT(A) ought to have brought on record corroborative documentary evidence by way of examining the issue of share of family member's in the income from the potato cultivation from the agricultural land held in joint ownership. The Ld.

CIT (A) has failed to disprove the claim of the cash flow and agricultural income of the appellant. Thus, the Ld. CIT(A) has not appreciated the documentary evidences regarding, potato cultivation, computation of agriculture Income and cash flow filed by the appellant in the appellate proceedings before him. In our view, the amount of Rs.34,00,000/- shown as agricultural income by the assessee from sale consideration of potato is quite reasonable considering the size of land holding, calculation sheet, certificate from Horticulture Department etc., as above.

14. In view of above discussion, we hold that the order passed by the Ld. CIT(A) is perverse to the facts on record. Accordingly, the amount of Rs. 40,06,360/- u/s 69 of the Income Tax Act 1961, confirmed by the CIT(A) is deleted.

15. The Ground No. 1 to 3 pertains to legal issue on validity of reopening of the assessment. Since, the assesse gets relief on merits, the legal issue rendered academic and hence not adjudicated.

<u>in ITA No. 84/Asr/2021:</u>

The quantum appeal in I.T. A. No. 311/ASR/2019 is decided in favour of the assesse where entire amount of Rs. 40,06,360/- confirmed by the

CIT(A) u/s 69 of the Income Tax Act 1961, has been deleted. Therefore, the consequential penalty is deleted as non maintainable.

16. In the result, both the appeals of the assessee are allowed

Order pronounced in the open court on 20.02.2023

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

GP/Sr./P.S.

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