

**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.258/Asr/2022  
Assessment Year: 2008-09**

Sh. Satbir Singh Bhullar, 432- East Mohan, Nagar, Amritsar. [PAN: ANQPB0308P]  <b>(Appellant)</b>	<b>Vs.</b>	Income Tax Officer, Ward-5(4), Amritsar.  <b>(Respondent)</b>
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<b>Appellant by</b>	<b>Sh. Rohit Kapoor, CA</b>
<b>Respondent by</b>	<b>Sh. Ravinder Mittal, Sr. DR</b>

<b>Date of Hearing</b>	<b>23.02.2023</b>
<b>Date of Pronouncement</b>	<b>02.03.2023</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), NFAC, Delhi,[in brevity the ‘CIT (A)’] order passed u/s 250of the Income Tax Act 1961, [in brevity the Act] order dated 05.08.2021 for A.Y. 2008-09.The impugned order was emanated from the order of the Id. Income Tax Officer, Ward-5(4), Amritsar, (in brevity the AO) order passed

u/s 147 r.w.s. 144 of the Act date of order 19.01.2016. The assessee has taken the following grounds:-

*“1. That the Ld. CIT(A) has erred in dismissing the appeal by passing order u/s 250(6) and sustaining the addition made by the AO.*

*2. That the order passed u/s 250(6) of the Income Tax Act, is bad in law as the same has been disposed off without examining the merits of the case and is against the principles of natural justice.*

*3. That the CIT(A) has erred in confirming the addition of Rs. 737948/- on account of cash deposited in ICICI Bank Account No 006601529228 u/s 68 without appreciating that bank passbook or statement are not books of accounts and as such no addition can be made u/s 68.*

*4. That the CIT(A) has erred in confirming the addition of Rs. 737948/- on account of peak cash deposited in ICICI Bank Account No 006601529228 u/s 68 without providing the benefit of opening cash in hand and agriculture income earned during the year under consideration.*

*5. That the CIT(A) has erred in not appreciating that the cash was deposited in bank out of agriculture income earned by the assessee during the year under consideration.*

*6. That the Ld. CIT(A) has erred in confirming the addition of Rs. 737948/- made by the Ld. AO by alleging that the assessee made a bald statement in respect of ownership of agriculture land of more than 20acres. That the observation of the Ld. CIT(A) is erroneous since the assessee had duly furnished proof of ownership of agriculture land along the bank account statement.*

*7. That the Ld. CIT(A) has erred in not appreciating that the assessee has filed income tax returns from AY 2012-13 onwards and has duly disclosed agriculture income which has not been disputed.*

*8. That the appellant craves leave to add or amend the grounds of appeal before the appeal is heard and disposed off.”*

2. The appeal was filed with delay of 441 days. The assessee filed condonation petition with medical certificate from Hospital. The ld. Sr Dr did not make any strong argument against the assessee's submission. Considering the medical exigency the delay for 441 days is condoned.

3. Brief fact of the case is that the assessee's case was reopened u/s 148 on basis of reasons recorded after getting approval from Joint Commissioner of Income Tax. The appellant is an agriculturist and has been declaring agriculture

income consistently in the returns of income filed on year-to-year basis. The assessee owns more than 20 acres of land individually and jointly with his family at village Bhangala. The appellant had not filed return of income u/s 139(1) for the year under consideration since the total income of the assessee was below the statutory limit as prescribed by the Income Tax Act, 1961. The case of the assessee was re-opened u/s 148 on the basis of the AIR information that the assessee had deposited cash to the tune of Rs. 10,46,000/- in his ICICI Bank Account. The assessment was completed under section 147 r.w.s 144 of the Act, with an addition of Rs. 7,37,948/- by taking into consideration peak amount date 24.12.2017 on account of cash deposited in ICICI bank. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) uphold the order of assessment. Being dissatisfied the assessee filed an appeal before us.

4. The Id. Counsel for assessee filed the Written submission which are kept in record and vehemently argued. The Id. Counsel submitted that the appellant has filed the returns for subsequent years in which agriculture income has been declared and accepted by the department. The copy of return for A.Y. 2012-13 is enclosed at **page no 63-84 of APB.**

In argument the Id. Counsel placed that the assessee in appeal filed the written submissions explained that the cash deposit was out of cash withdrawals, agriculture income and out of opening cash in hand. The assessee had also furnished land holding detail mentioning the fact that the agriculture operations were performed through tube well installed in the land. It was also submitted that the appellant holds approximately 20 acres of land which includes self-owned land and land in the name of family members. It was also submitted that the peak as calculated by the Id. AO is not correct and has furnished cash flow explaining the source of cash deposits.

5. The Id. Counsel depicted the ground-wise fact in his written the submission before the bench. Accordingly, the groundwise adjudication is as follows: -

**Assessee's Ground No 5 to 7**

<i>Ground No 5</i>	<i>That CIT(A) has erred in not appreciating that the cash was deposited in bank out of agriculture income earned by the assessee during the year under consideration.</i>
<i>Ground No 6</i>	<i>That Ld. CIT(A) has erred in confirming the addition of Rs. 737948/- made by the Ld. AO by alleging that the assessee made a bald statement in respect of ownership of agriculture land of more than 20 acres. That the observation of the Ld. CIT(A) is erroneous since the assessee had duly furnished proof of ownership of agriculture land along the bank account statement.</i>

<i>Ground No 7</i>	<i>That the Ld. CIT(A) has erred in not appreciating that the assessee has filed income tax returns from AY 2012-13 onwards and has duly disclosed agriculture income which has not been disputed.</i>
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The Id. Counsel for assessee placed that the Id. CIT(A) is in order has stated that the appellant has neither filed any evidence in support of the claim made in the written submissions. In this regard it is submitted by the Id. Counsel that the appellant has duly furnished Jamabandi mentioning land holding detail appearing in the name of the appellant along with the family members. A copy of same is enclosed at page no. **7 to 40 of the APB**. Furthermore, the Id. CIT(A) has also relied upon judgment of the Hon'ble Allahabad High Court in the case of **Avdesh Kumar Jain vs. CIT reported in 178 ITR 443**. The Id. CIT Appeals has failed to appreciate that the fact of the said case is not applicable to the assessee particularly in the circumstance where in the present case the assessee has duly submitted the 'Jamabandi' mentioning the fact that the land used for the agriculture operations.

6. In order to further substantiate the claim the Id. Counsel placed that the assessee was earning agriculture income and the copies of 'Girdawari/Jamabandis' are enclosed at **page no 7-40 of APB**. The Id. Counsel argued that as such, when the assessee has established on record that he was doing agriculture activities, in this circumstance no adverse view can be drawn. As regards the documentary evidence

in respect of agriculture income, it is most respectfully submitted that the there is a lag of more than 10 years and as such the copies of J-form could not be produced. That non-availability of J-form cannot be a ground from making an addition where the appellant has submitted Girdawari which clearly that agriculture activities were done on such land. In this regard respectfully relied upon the following case laws:

<b>Sr. No</b>	<b>Citation</b>	<b>Brief</b>
1.	<b>Shri Hardev Singh Versus ITO, Ward 6 (4) Mohali, 2023 (2) TMI 194 – ITAT, Chandigarh</b>	<i>I have considered the submissions of both the parties and perused the material available on the record. In the present case it appears that the A.O. made the addition and rejected the explanation of the assessee that the Popular trees were also planted on the periphery of the field having the crops of wheat and paddy. The A.O. did not doubt the crops sown by the assessee but had not accepted this contention that the Popular trees planted on the land and on the periphery of the field were sold for Rs. 20.65 lakhs. Ld. CIT(A) estimated the agriculture income at Rs. 11,00,000/- from 27.5 Acres of land @ Rs. 40,000/- per acre and also accepted the income from sale of Popular trees at Rs. 2,00,000/- on estimate basis. However, while accepting the income at Rs. 2,00,000/- no cogent reason has been given on the contrary the</i>

		<p><i>assessee furnished the affidavit of Shri Zileadar Ali and Shri Mohan Walia copies of which are placed at page 6 to 8 of the assessee's compilation. In the said affidavits both the persons accepted that they purchased Popular trees from the assessee. Shri Zileadar Ali stated in his affidavit that he purchased the Popular trees for Rs. 10.40 lakhs, similarly Shri Mohan Walia in his affidavit stated that he purchased the Popular trees for a sum of Rs. 10.25 Lakhs. Shri Mohan Walia also accepted in his statement before the A.O. that he purchased Popular trees from the assessee for approximately Rs. 10,00,000/- . The assessee also furnished the copy of Girdawari before the A.O. and mentioned the Khasra number, on which the Popular trees were planted. In the present case, the A.O., while observing that trees were already cut in the earlier years had not brought any evidence on record to rebut this contention of the assessee that the Popular trees were already planted on the periphery of the field. Therefore, by considering the totality of the facts, particularly the acceptance given by the purchasers of the Popular trees in their respective affidavits, I am of the view that the sale proceeds amounting to Rs. 20.65 Lakhs from Shri Zileadar Ali and Shri Mohan Walia apart from the agriculture income estimated by the Ld. CIT(A) at Rs. 11,00,000/- was sufficient to make the deposit of Rs. 26,68,850/- in the bank account of the assessee. In that view of the matter the addition sustained by the Ld. CIT(A) is deleted.</i></p>
2	<b>Sanjeev Kumar Malik vs ITO Ward 2(3)</b>	<p><i>13. In my view, when the assessee has established on record that it had receipts from sale of agricultural produce, only because some invoices relating to sale are not available, assessee's claim cannot be rejected. More so, considering the</i></p>

<p><b>ITANo. 7732/Del/2018. AY 2010-11</b></p>	<p><i>reasonable quantum of sale proceeds.</i></p> <p>14. <i>Before me, the assessee furnished the details of agricultural land holdings, which clearly supports assessee's claim of receipts from sale of agricultural produce. Thus, assessee's claim that he received Rs.24,00,000 from sale of potato, can be accepted.</i></p> <p>15. <i>In such a scenario, the source of investment in purchase of land stands explained. That being the factual position emerging on record, the addition cannot be sustained.</i></p> <p>16. <i>Accordingly, I delete the addition sustained by learned Commissioner (Appeals).</i></p> <p>17. <i>In view of my decision on merits, legal grounds raised by the assessee having become academic, do not require adjudication.</i></p> <p>18. <i>In the result, the appeal is allowed, as indicated above.</i></p>
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**7. Assessee's Ground No. 3**

The Id. Counsel has started argument on Ground No 3. The Ground no. 3 is reproduced as below: -

<p><i>Ground No 3</i></p>	<p><i>That CIT(A) has erred in confirming the addition of Rs. 737948/- on account of cash deposited in ICICI Bank Account No 006601529228 u/s 68 without appreciating that bank passbook or statement are not books of accounts and as such no addition can be made u/s 68.</i></p>
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In argument it is placed that the appellant was not maintaining books of accounts during the year under consideration. The whole addition of Rs. 7,37,948/- has been made u/s 68 on account of cash deposited in ICICI Bank account.

The Id. Counsel further argued that as per section 68 of the Act, any sum found credited in the books of an assessee was maintained in any previous year. As such the primary requirement for invoking the provisions of section 68 is maintenance of books of accounts. However, in the present case, the assessee has not maintained any books of accounts and as such the provisions of section 68 are not at all applicable. In this regard reliance is being placed on the following case laws:

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Sr. No	Citation	Brief
1.	<b>Smt. Ramilaben B. Patel v. Income Tax Officer, Ward-3, Gandhinagar, [2018] 100 taxmann.com 325 (Ahmedabad Trib.)</b>	<i>IT: Bank statement is not considered as books of account and, therefore, any sum found credited in bank passbook cannot be treated as an unexplained cash credit</i>  <i>Section 68 of the Income-tax Act, 1961 - Cash credit (Agricultural income) - Assessment year 2011-12 - Certain credit entries were reflecting cash deposit in bank account of assessee - Assessee submitted that said sum was loan taken from some parties - Said parties claimed to have generated agricultural income, but such agricultural income was not declared in their income-tax return - It was treated as undisclosed income of assessee - Whether in absence of disclosure of agricultural income in income-tax return, it cannot</i>

		<i>be believed that parties had generated agricultural income - Held, yes - Whether further bank statement is not considered as books of account and, therefore, any sum found credited in bank pass book cannot be treated as an unexplained cash credit - Held, yes - Whether in interest of justice and fair play, matter was to be restored to file of Assessing Officer for fresh adjudication in accordance with provisions of law - Held, yes.</i>
2.	<b>Income-tax Officer, Barabanki v. Kamal Kumar Mishra</b> [2013] 33 taxmann.com 610 (Lucknow - Trib.)	<i>Section 68 of the Income-tax Act, 1961 - Cash credits [Bank deposits] Assessment year 2009-10 - Assessee was advocate by profession and had not maintained any books of account for previous year - Whatever credit entries were found by Assessing Officer, were from bankaccounts of assessee in which deposits is made at different points of time - Whether maintenance of books of assessee was condition precedent and, therefore, provisions of section 68 could not be invoked on basis of deposits made in bankaccount of assessee - Held, yes</i>
3.	<b>Mehul V. Vyas v. Income-tax Officer, 23(2)(3), Mumbai</b> [2017] 80 taxmann.com 311 (Mumbai - Trib.)	<i>Section <a href="#">68</a> of the Income-tax Act, 1961 - Cash credit (Bank deposit) - Assessment year 2006-07 - Whether it is only when an amount is found credited in account books of assessee for any previous year that deeming provisions of section 68 would apply in circumstances mentioned therein - Held, yes - Assessing Officer on basis of information that assessee had made a 'cash deposit' in her saving bank account treated same as unexplained cash credit within meaning of section 68 and added same in her income - Whether where assessee was not maintaining any account books, bank statement could not be construed to be</i>

		<i>a book maintained by assessee and, thus, impugned addition was unsustainable on account of inapplicability of section 68 - Held, yes.</i>
4.	<b>ROOPAK JAIN VERSUS ITO, WARD -48 (3), NEW DELHI,  2016 (10) TMI 692 - ITAT DELHI</b>	<i>Deposits from unexplained sources addition u/s 68 - Held that: - The assessee does not maintain any books of account. Under these circumstances, no addition can be made u/s 68 of the Act.  Even otherwise, the alternative contention of the assessee that the peak credit has to be taken into account by considering both the bank accounts has much force. On a perusal of the cash credit of the peak submitted by the assessee, the addition cannot be sustained. On this ground also the addition cannot be sustained.</i>
	<b>Smt. Manasi Mahendra Pitkar v. Income-tax Officer 1 (2), Thane [2016] 73 taxmann.com 68 (Mumbai - Trib.)</b>	<i>Section 68 of the Income-tax Act, 1961 - Cash credit (Bank deposit) - Assessment year 2011-12 - Whether it is only when an amount is found credited in account books of assessee for any previous year that deeming provisions of section 68 would apply in circumstances mentioned therein - Held, yes - Assessing Officer examined bank Pass Book of assessee and treated cash deposits in bank account as unexplained cash credit within meaning of section 68 and added same in income of assessee - Whether since assessee was not maintaining any account books and bank Pass Book or bank statement could not be construed to be a book maintained by assessee for any previous year, impugned addition was unsustainable on account of inapplicability of section 68 - Held, yes.</i>
5	<b>Bombay High Court  Commissioner Of Income-Tax, vs Bhaichand H.</b>	<i>It is fairly well settled that when money is deposited in a bank, the relationship that is constituted between the banker and the customer is one of debtor and creditor and not of trustee and beneficiary. Applying this principle, the pass book supplied by the bank to its constituent is only a copy of the constituent's account</i>

	<p><b>Gandhi on 12 February, 1982 (1983) 141 ITR 67 (Bombay).</b></p>	<p><i>in the books maintained by the bank. It is not as if the pass book is maintained by the bank as the agent of the constituent, not can it be said that the pass book is maintained by the bank under the instructions of the constituent. In view of this, the Tribunal was, with respect, justified in holding that the pass book supplied by the bank to the assessee in the present case could not be regarded as a book of the assessee, that is, a book maintained by the assessee or under his instructions. In our view, the Tribunal was justified in the conclusions at which it arrived.”</i></p>
6	<p><b>Smt. Bhagwati Devi</b> v. <b>Income-tax Officer</b> <b>[1993] 47 ITD 58 (CAL.)</b></p>	<p><i>Section 68 of the Income-tax Act, 1961 - Cash credits - Assessment year 1983- 84 - During relevant accounting year assessee received a gift from a foreign resident out of natural love and affection- Amount in question was brought in by way of demand draft and credited to assessee’s account directly with bank - A sworn declaration from donor was also filed by assessee - Whether when there was no proof that gift was collusive or a dubious device or a subterfuge to evade tax, amount of gift could be assessed in assessee’s hands - Held, no - Whether, since amount of gift was not credited in books of account maintained by assessee during relevant accounting period, section 68 was inapplicable for assessment of such gift in assessee’s hands - Held, yes</i></p>

**8. Assessee’s Ground No. 4**

The Id. Counsel placed the argument related to Ground No. 4

Ground No 4	<p><i>That CIT(A) has erred in confirming the addition of Rs. 737948/- on account of peak cash deposited in ICICI Bank Account No 006601529228 u/s 68 without providing the benefit of opening cash in</i></p>
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<i>hand and agriculture income earned during the year under consideration</i>
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The counsel submitted the Broad Submission which is reproduced here for the explanation of fact. The relevant paragraph is extracted as follows: -

*“a) That the case of the assessee was reopened u/s 148 for AY 2008-09 on the basis of AIR information available with the department that the assessee has deposited cash to the tune of Rs 1046000/- in ICICI Bank account no 006601529228. However, the Ld. AO has made the addition to the tune of Rs 737948/- by relying upon the peak. Please refer page no 48 of paper book. That the said peak has been calculated without taking into account the withdrawals made by the assessee between the period 01.04.2007 to 22.10. 2007. The said peak as worked out by the AO cannot be relied upon as the assessing officer has not given any tangible reason in assessment order as to why such benefit of cash withdrawals between the period 01.04.2007 to 22.10.2007 was not allowed. The Ld. AO has failed to provide the evidence that the money so withdrawn was used elsewhere. Therefore, the said action of the AO is based on surmises and conjectures without bringing anything on record.*

*b) That we have recalculated the peak by taking into consideration the cash withdrawal and deposit for the period 01.04.2007 to 31.03.2008. The said working of peak is enclosed at page no 44-45 of paper book. From the said peak, your good self will find that the maximum peak was Rs 78150/- on 01.03.2008. The copy of bank statement highlighting bank withdrawals is also enclosed at page no 41-42 of the paper book. It is a settled law that the assessing officer is required to give the benefit of cash withdrawal and the maximum income which can be taxed is the peak amount. That the said peak has been calculated without taking into consideration the agriculture income earned by the assessee. Therefore, if the*

*agriculture income is taken into consideration then there is no peak of cash. In this regard, the reliance is being placed on the following case laws in which it has been held that the benefit of cash withdrawals can't be denied to the assessee. The headnotes of the case laws relied upon are as under:*

<b>S no.</b>	<b>Citation</b>	<b>Decision</b>
1.	<i>ShivcharanDass vs. CIT 126 ITR 263 [1980] (Punj. &amp; Har.)</i>	<i>"Income from undisclosed sources— Unexplained investment— Amount disclosed by HUF under Voluntary Disclosure Scheme— Thereafter kept lying in assessee's house with his wife till her death— ITO questioning its source after the same had subsequently been deposited with a bank in the names of assessee's then major daughters—In the absence of any evidence to the effect that the said sum was utilized by the assessee in any other manner, the Department was not justified in unreasonably rejecting a good explanation and adding the amount as income from undisclosed sources.</i>
2.	2022 (9) TMI 924 - ITAT AMRITSAR  LATE SH. PARVEEN KOCHHAR, LEGAL HEIR KAMINI CHOUDHARY VERSUS ITO WARD-5 (4) , AMRITSAR.	<i>Unexplained Cash withdrawn out of bank account - Gap between withdrawal and deposit of the cash - withdrawn and deposit of cash with a gap of 70 days - HELD THAT:- The withdrawn and deposit of cash with a gap of 70 days which was considered by the ld. AO as seven months. The ld. Counsel clearly stated that the sufficient cash was withdrawn in same bank account and after part utilization of the same; the amount was deposited in same HDFC Bank account. Appellate authority without</i>

		<p><i>considering the proper fact and submission of the assessee had passed the order ex parte. CIT(A) failed to dispose the appeal on merits and has not contended the explanation of the assessee.</i></p> <p><i>As stated in the submission, the assessee was not able to present before the CIT(A) due to the fact that the appellant expired on 23.10.2020 thereafter her husband also expired on 03.11.2020. The copy of the death-certificate of the assessee and her husband are being enclosed - In these circumstances here the genuine cause for non-appearance before the CIT(A). We are in opinion that the assessee has sufficient cause during the depositing of cash in her bank account.</i></p> <p><i>The hefty amount was withdrawn 70 days ago for utilising the same for the business of her son. Unused amount was deposited in the same bank account of the assessee. The source of deposit of cash was well explained before the revenue authorities by the assessee. Therefore, AO was indeed in error in adopting a wrong fact in his order. The grievance raised by the ld. Sr. Dr. in this appeal, is, therefore, devoid of any legally sustainable merits. We reject the addition amount of made by the ld. AO. - Decided in favour of assessee.</i></p>
4.	<i>2017] 88 taxmann.com 400 (Cochin - Trib.)IN THE ITAT</i>	<i>Section 69 of the Income-tax Act, 1961 - Unexplained investments (Immovable</i>

	<p><i>COCHIN BENCH</i> <i>Smt.SuryakalaGopakumar</i> <i>v.</i> <i>Income tax Officer, Ward-4,</i> <i>Thiruvalla</i></p>	<p><i>property) - Assessment year 2010-11 - Where cash deposited in bank account of assessee was explained from sale proceeds of her husband's property and assessee's husband, a NRI, had declared said sale consideration and paid capital gain tax, Assessing Officer erred in treating said deposit as unexplained investment of assessee [In favour of assessee]</i></p>
<p>6.</p>	<p><i>2015] 61 taxmann.com 425 (Chandigarh - Trib.) IN THE ITAT CHANDIGARH BENCH 'A'</i> <i>Gurpreet Singh</i> <i>v. Income-tax Officer*</i></p>	<p><i>Section 68 of the Income-tax Act, 1961 - Cash credit (Bank deposits) - Assessment year 2008-09 - Assessee made deposits of certain sum in bank account - He made various withdrawals from bank account - Assessing Officer in assessment order had given a list of cash deposits in bank account and asked assessee to explain source of cash deposits - Assessing Officer found certain deposits as explained;</i></p>
	<p><i>[1997] 93 TAXMAN 487 (PUNJ. &amp; HAR.) HIGH COURT OF PUNJAB AND HARYANA</i> <i>Wadhwa Ram</i> <i>v.</i> <i>Commissioner of Income-tax</i></p>	<p><i>Section 69 of the Income-tax Act, 1961 - Unexplained investments - Assessment year 1989-90 - Assessing Officer made certain additions on ground that money utilised by it in purchasing drafts amounted to unexplained investment - Tribunal having found that assessee actually paid money for meeting customs duty and demurrage charges for imported goods, that goods were released on payment of such charges, sale proceeds of which were utilised for making further remittances to Customs Collector for releasing more goods, held that only peak amount could at best be treated as money available from unexplained sources, and, accordingly, sustained addition of Rs. 1,95,000 as unexplained investment - Whether Tribunal's findings being pure findings of fact, did not give rise to any referable question of law - Held, yes</i></p>

9. The Id. Counselfurther argued that the Id. AO has failed to appreciate that the applicant has received Rs 7,50,000 and Rs 9,00,000/- estate of Jagir Singh Bhullar as his share vide cheque dated 04-04-2017 and 26-06-2017 on which tax has duly been paid by estate of Jagir Singh Bhullar. The copy of ledger account explaining each debit and credit entries are enclosed **APB page no 85-87**.

10. The Sr Dr vehemently argued and relied on the orders of revenue authorities.

11. We heard the rival submission and considered the documents available in record. The assessee is an agriculturist. The assessee owns more than 20 acres of land individually and jointly with his family at village Bhangala. The copy of 'Jamabandi' mentioning the 'khasara number' and shareholding details is enclosed at **page no 7 to 40 of APB**. The summary of Landholding details is enclosed separately on **page 43 of APB**. That the appellant has filed the returns for subsequent years in which agriculture income has been declared and accepted by the department. The copy of return for A.Y. 2012-13 is enclosed on **page no 63-84 of APB**. The nature of income of the assessee is properly depicted which is from agriculture. The evidence was submitted before the Id. CIT(A) by the assessee by a

letter dated 13/02/2021 which is enclosed at **page 1-4 of APB**. The Jamabandi/Girdawari represents the nature of income of assessee as agriculturist. Further, the assessee properly raised the ground related addition U/s 68 of the Act without maintaining the books of accounts. The assessee confirmed that as an agriculturist is not maintain books of accounts for the impugned year. We fully relied on the order of **Smt. Ramilaben B. Patel v. ITO, Ward-3, Gandhinagar***supra*. Mere possession of pass book cannot be treated as books of accounts. We respectfully relied on the order of **CIT vs Bhaichand H. Gandhi**, *supra*. The application of Section 68 is uncalled for the assessee.

In our considered view the cash deposited by assessee is income from agriculture which is not come under purview of the taxable income. The opening balance of cash was also not considered during determination of peak by the Id. AO. We set aside the order of revenue authorities. So, the entire addition amount to Rs. 737,948/- is quashed. Considering the ground, no-4 of assessee the Id. Counsel filed a calculation related to peak but the issue is remained only for academic purpose.

12. Considering the above discussion, the Assessee's ground no. 1 & 2 are not pressed. Ground no. 3,5,6 & 7 are allowed. Ground No. 4 is for academic purposes. Ground no.8 is general in nature.

13. In the result, the appeal of the assessee bearing **ITA No. 258/Asr/2022** is allowed.

**Order pronounced in the open court on 02.03.2023**

**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