

**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.309/Asr/2018
Assessment Year: 2008-09**

Sh. Bharat Arora, 129, Urban Estate, Phase-II Jalandhar, Punjab. [PAN:AGVPA4505D] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Central Circle-II, Jalandhar. (Respondent)
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Appellant by	None (Written Submission).
Respondent by	Sh. Rajiv Wadhera, Sr. DR

Date of Hearing	11.04.2023
Date of Pronouncement	13.04.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals)-1,Jalandhar,[in brevity the CIT (A)] order passed u/s 250 (6) of the Income Tax Act 1961[in brevity the Act], for A.Y. 2008-09.The impugned order was emanated from the order of the Id.Dy. Commissioner

of Income Tax, Central Circle-II, Jalandhar[in brevity the AO] order passed u/s 143(3)/147 of the Act date of order 01.02.2018.

The assessee has taken the following grounds: -

- “1. 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. AO in framing the impugned assessment order u/s 143(3) r.w.s.147 and without complying with the mandatory conditions u/s 147/148/151 as envisaged under the Income Tax Act,*
- 2. That having regard to the facts and circumstances of the case, Hon’ble CIT(A) has erred in law and on facts in addition of Rs. 39,68,800/- u/s 69 of the Act on account of investment in properties ignoring the fact that assessee has not made total investment in the properties and sold these properties after earning 10% profit.*
- 3. That having regard to the facts and circumstances of the case, Hon’ble CIT(A) has erred in law and on facts in making addition of Rs. 1,31,862/- u/s 68 of the Act on account of credit in South Indian Bank account ignoring the fact that while filing return of income assessee has duly consider the credit in this bank account.*

4. *That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in making addition of Rs. 6,98,100/- u/s 68 of the Act on account of credit in ICICI Bank account ignoring the fact that while filing return of income assessee has duly consider the credit in this bank account.*

5. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition u/s 68 of the Act without considering the submissions of the assessee and without complying with the mandatory conditions u/s 68 as envisaged under the Income Tax Act, 1961, is bad in law and against the facts and circumstances of case.*

6. *That having regard to the facts and circumstances of the case, the Hon'ble CIT(A), is erred in law and on facts in making addition of Rs. 46,060/- on account of reduction in revised return as compare to the original return, ignoring the fact that assessee did not file any revised return.*

7. *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."*

2. Brief fact of the case is that the assessee had filed a return u/s 139. After receiving the notice u/s 148, the assessee filed a revised return u/s 148 of the Act. The assessee declared the taxable income in which return u/s 148 an amount of Rs.1,08,200/-. The assessee is a trader of land and invested in the land and sold @ 10% of profit. During the year under appeal, the addition was made Rs.39,68,800/- on the basis of the investment on the land out of the total amount Rs.22,33,000/- was invested during the year and the rest amount of Rs.13,75,000/- was related to the balance payment remaining the impugned financial year. Also, the revenue prayed that profit Rs.3,60,800/- for trading of land should be added back with the total income of assessee. Further, the amount of Rs.1,31,862/- was added back u/s 68 on account of credit in South Indian Bank. The amount of Rs.6,98,100/- was added back u/s 68 on account of credit in ICICI Bank. The assessee declared total income in the return u/s 139 amount of Rs.1,54,260/-. In the return u/s 148 Rs.1,08,200/-. So the balance amount of Rs.46,060/- was added back with the total income of the assessee for reduction of income. All the issues are challenged before the Id. CIT(A). The Id. CIT(A) upheld the order of the Id. AO. Being aggrieved assessee filed an appeal before us.

3. The assessee was called for hearing. But none was present on behalf of the assessee. The assessee filed a petition for acceptance of appeal on basis of the

written submission filed on dated 21.02.2023. The ld. DR rebutted the same by a submission on dated 23.02.2023. After considering both the written submissions and the argument of the ld. DR, the matter is disposed of as follows.

Ground No. 1

4. Ground No. 1 was not pressed.

Ground No. 2

5. Ground No. 2, the addition of Rs.39,68,800/- on account of investment made from the sale on land which is regular trading business of the assessee and the assessee had earned profit Rs.2,23,000/- during financial year. Further the addition related to Rs.13,75,000/-, the ld. AR placed that this is balance payment which was agreed to be paid. So, this the amount was never paid during the impugned financial year. The ld. AR prayed that the amount should not be added back with the total income.

5.1 The ld. DR submitted a written submission covering all arguments and relied on the order of the ld. AO. The relevant paragraph of the assessment order is extracted as below:

“The above transactions are tabulated as under:

Page No.	Amount actually paid as per agreement	Amount to be paid in current year	Amount to be paid in next year
31	2,00,000/- on 15.05.2007	5,50,000/- by 25.12.2007	
36	83,000/- on 15.01.2008		
46 to 48	6,00,000/- on 21.01.2008		18,00,000/- by 10.12.2008
49 to 51	6,00,000/- on 24.12.2007		10,00,000/- by 20.08.2008
59	3,00,000/- on 27.02.2008	3,25,000/- by 25.03.2008	
60	2,50,000/- on 29.02.2008		-
61	2,00,000/- on 07.06.2007	5,00,000/- by 25.12.2007	
TOTAL	22,33,0007-	13,75,000/-	28,00,000/-

Therefore, as per the agreements impounded during the survey, the assessee has made payments of Rs. 22,33,000/- during the year and has agreed to pay further amounts of Rs. 13,75,000/- during the current year and Rs. 28,00,000/- in the next year i.e. F.Y. 2008-09.”

6. The Id. DR submitted a written submission which is extracted as below:

“With reference to proceedings during hearing of the above referred appeal the following submission are made for kind consideration of Hon'ble bench. It May also be considered as a rejoinder the written submission/synopsis filed on behalf of the assessee on 21.02.2023. The major ground of appeal of the

assessee is ground No. 2. The total addition made by the AO is Rs. 39,68,800/-. This comprises of three components. First is payment already made by the Assessee as per the agreement Rs. 22,33,000/-, Second component is balance payment made during the remaining F.Y. Rs. 13,75,000/- and the third is profit on sale of the concerned properties Rs. 3,60,800/-.

1.1 In support of his claim that the payments made Rs. 22,33,000/- have been made out of accounted for sources, he has submitted a cash book for the F.Y. 2007-08 at pages 7-34 of the synopsis and a statement of cash account at pages 37-40. The later statement is derived from the cash book itself. It may be highlighted that the cash book is not a part of regular book of account and it has never been shown that the return of income has been filed on the basis of this cash book. As per the summary version of this cash book, during the year the assessee received cash/cheques amounting to Rs. 57,35,624/- during the year. Out of these the deposits in bank account with South Indian Bank (Grounds of appeal No. 3) as well as the payments against agreement have been tried to be explained. So far as credits in South Indian Bank are concerned, the AO has given due credit for the same. However, the source and nature of the other receipts in this cash book which are invariably in cash, has not been explained. In the absence of any such explanation

all these are unexplained and rightly treated as deemed income of the assessee by the AO.

1.2 As regards the second components of payments made upto the end of the F.Y. the addition has been made on the basis of the contents of the agreements. The assessee has agreed to make further payments. In the absence of any evidence to the contrary, the AO was rightful in treating that this has been made as per the terms of the agreements. Since there was no explanation regarding its sources, he rightfully treated this as the deemed income of the assessee and added to the income. The assessee has claimed that he sold the properties without making any further payments or getting them registered in his name. However, he has not furnished any evidence or details of the same. He has not been able to tell the details of the buyers and the amount of sale. Had the property been so sold as claimed by the assessee, the sellers would have asked for the agreement to be returned which has not happened. All these circumstances show that the payments have been made and made from undisclosed sources.

As regards the third component of profit on sale of properties the same was added on the basis of statements of the assessee. However, the Hon'ble Bench may take its considered view on the same.”

7. We considered the rival submission and relied on the documents available in the record. The assessee has placed the cash flow statement in paper book which is annexed from the **APB page nos. 7 to 34**, list of purchase of property **APB page no. 35** with the details of sale and purchase of properties **APB page 36**, the statement of accounts **APB 37 to 40** and the agreement to sale **APB page 41 to 56**. This fact, that the assessee is a regular trader of property and cash flow statement the assessee has sufficient cash balance during the time of investment. So, amount of Rs.22,33,000/- is not liable to be added back. Related to addition amount to Rs.13,75,000/- the amount was agreed to pay but the AO was not able to provide any such document that the said amount was paid during the financial year. The Id. DR placed the written submission but not contradict the fact of the assessee and the documents which was placed before the bench. Related to profit Rs.3,60,800/- was challenged and requested for added back with the total income. But the profit will be calculated @ 10% an amount of Rs.22,33,000/- which works out to Rs.2,23,300/- and will be added back with the total income of the assessee. Considering the above discussion, the addition amount of Rs.22,33,000/- and amount of Rs.13,75,000/- are quashed. The addition of net profit amount of Rs.2,23,300/- is upheld.

In the result, **the Ground No. 2 of the assessee is partly allowed.**

Ground No.3

8. The addition was made in relation to the credit in South Indian Bank amount of Rs.1,31,862/- u/s 68 of the Act. The ld. AR submitted the written submission and the fact which is extracted as below:

“Addition of Rs. 1.31,822/- on account of credit in south Indian Bank:

1. That the Ld. Assessing while framing assessment wrongly calculate the income of assessee and made addition of Rs. 1,31,862/- on account of deposit in South Indian Bank by stating as under:

Addition on account of south Indian Bank the relevant portion at page no. 8 of the order is reproduced herein below:

<i>"Total receipt in the account</i>	<i>Rs. 9,40,062/-</i>
<i>Less: Total expenses form the account</i>	<i>Rs. 7,00,000/-</i>
<i>Total Income</i>	<i>Rs. 2,40,062/-</i>
<i>Less Income actually shown</i>	<i>Rs.1,08,200/-</i>
<i>Undisclosed Income</i>	<i>Rs.1,31,862/-</i>

Sir in this regard it is stated that the Ld. Assessing Officer is incorrect to state that assessee disclosed income of Rs. 1,08,200/-. Assessee filed its return of income declaring income amounting to Rs. 2,04,062/-. If the benefit of Rs. 2,04,062/- is given to assessee the remaining addition is sustain amounting

to Rs. 36,000/-. In support of this return of income is enclosed herewith. (Page 57 to 59) Further, it is submitted as under.

1 That assessee duly consider all the bank account in his books of accounts and also at the time of filing return of income for the year under consideration.

2 That books of accounts and return of income filed by the assessee has already been produced during the course of assessment and also in appellate proceedings but the both the lower authorities ignoring the submission of assessee made the impugned addition.”

9. The Id. DR only relied on the order of the revenue authorities. The Id. DR invited out attention in appeal order page no. 12 para 6.2 which is reproduced as below:

“6.2 I have carefully considered the facts of the case and submission of the appellant. The assessing officer considered the deposits and withdrawal from the bank account and after considering income of Rs. 108200/- shown by the assessee, made an addition of Rs. 131862/- on account deposits in the bank account. During appeal proceedings in its reply the assessee has stated that the assessee disclosed income of Rs.204062/-, therefore, no addition was called for on this account. From the submission made by the assessee it is noted

that he filed return of income declaring income of Rs. 108000/- which was considered by the assessing Officer. The assessee has not filed any other explanation in this regard, therefore, this ground of appeal is dismissed.”

10. We heard the rival submission and relied on the documents available in the record. In fact, the amount of Rs.1,31,862/- the assessee already declared in the return of income. The ld. CIT(A) placed that the income actually shown Rs.1,08,200/- in the return u/s 148 and Rs.154,260/- u/s 139. The assessee submitted a computation which is annexed in **APB page nos. 52 to 59**. The income from business and profession is declared Rs.2,04,260/- in computation, **APB page 58**. But in submission the assessee has mentioned the total income amount of Rs. 240,062/-, vide paragraph-8 of the order. The explanation of the assessee is not proper. On the other hand, the assessee should not be taxed doubly in the same income. We find that the issue should be remanded back to CIT(A) and to consider the issue afresh.

In the result, the ground no3 of the assessee is allowed for statistical purpose.

Ground No. 4

11. The addition amount of Rs.6,98,100/- u/s 68 related to deposit in ICICI Bank. The ld. AR claimed that in the bank account no. 008201010938, maintained

with ICICI Bank, the assessee had not deposited any amount during impugned financial year. In his support the bank statement is enclosed in **APB 60 to 63** where there is no cash or credit deposit is reflected.

12. The Id. DR relied on the order of the revenue authorities and was not able to dispute the fact of the case.

13. We heard the rival submission and relied on the documents available in the record. The relevant para 4.4 of the assessment order is extracted as below:

“4.4. Cash credits in account number 938 in ICICI Bank: It is seen that this is a saving accounts and therefore the assessee’s contention that receipts from business are being deposited in this bank account holds, no force. There are regular deposits in this bank account. The total of these deposits is Rs. 6,98,100/-. The benefit of all the expenses for business has already been given to the assessee in the examination of account number 36 in para-4.3 above. Therefore, the assessee has been unable to offer any explanation regarding the source of deposits of Rs. 6,98,100/- in this bank account. The amount of Rs. 6,98,100/- is being treated as cash credits u/s 68 of the Act and added to the total income of the assessee.”

14. It is relevant from the documents that the Id.AO relied on the account no. 008201010938 of ICICI bank and concluded that the deposit Rs.6,98,100/- was made. In the paper book, the assessee has submitted the bank account but there is

no such any credit entry is reflected. The assessee fully denied the fact. The Id. DR has not made any contrary argument against the assessee's submission. Accordingly, the addition made by the AO Rs.6,98,100/- is quashed.

15. In the result, **the Ground no. 4 is allowed.**

16. **Ground No. 5** is general in nature.

17. **Ground No. 6,**

The addition was made on basis of the difference in the total income declared in return filed u/s 148 and the return filed u/s 139. The Id. AO placed that in the return of income u/s 148 the total income disclosed amount of Rs.1,08,200/- whereas return of income declaring in the return u/s 139 amount of Rs.1,54,260/-. So, Rs.46,060/- was less declared. The assessee place that the actually the total income amount to Rs.2,04,062/- was declared, copy of the return and computation is enclosed **APB pages 57 to 59.**

We consider the available records and there is no such any evidence that the said amount can be added back with the total income of the assessee. Amount to Rs.46,060/- is ultimately the total outcome of the addition made by the AO during assessment. The Id. DR fully relied on the order of the revenue authorities&has not made any strong objection. Accordingly, amount to Rs.46,060/- is deleted.

18. In the result, **Ground no. 6 is allowed.**

19. **Ground No. 7** is general in nature.

20. In the result, the appeal of the assessee bearing **ITA No. 309/Asr/2018** is partly allowed.

Order pronounced in the open court on 13.04.2023

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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By order