

**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.628/Asr/2018: A.Y. 2008-09**

**I.T.A. No.138/Asr/2019:A.Y. 2009-10**

M/s Paradise Multiplexes Cum Villas Pvt. Ltd. College Road, Abohar. [PAN: AAECP5839P] <b>(Appellant)</b>	<b>Vs.</b>	ITO, -Ward,-II(3), Abohar.  <b>(Respondent)</b>
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<b>Appellant by</b>	<b>None.</b>
<b>Respondent by</b>	<b>Sh. Ravinder Mittal, Sr. DR</b>

<b>Date of Hearing</b>	<b>25.04.2023</b>
<b>Date of Pronouncement</b>	<b>28.04.2023</b>

**ORDER**

**Per:Anikesh Banerjee, J.M.:**

Both the appeals of the same assessee are filed against the order of the Id. Commissioner of Income Tax (Appeals), Bathinda,[in brevity the ‘CIT (A)’] order passed u/s 250(6) of the Income Tax Act 1961, [in brevity the Act] for A.Ys. 2008-09 & 2009-10.Both the orders wereemanated from the orders of the Id. Income Tax Officer, Ward -II(3) Abohar[in brevity the AO], order passed u/s 143(3) of the Act.

**I.T.A. No.628/Asr/2018**

The assessee has taken the following grounds:

*“1. That the Id. Commissioner of Income Tax (Appeals), Bathinda has erred in law & on facts in upholding the validity of notice issued under section 148 of the Income Tax Act merely on the ground that the assessee has made deposit in l.ic banl.; account amounting to Rs. 1,88,00,000/-. As such, there is an escaped assessment without appreciating the fact that the referred bank account has been duly disclosed in the return of income filed.*

*2. That the Id. Commissioner of Income Tax (Appeals), Bathinda has erred in law & on facts in upholding the validity of assessment framed in response to an invalid notice issued under section 148 of the Income Tax Act without considering the fact that the assessment has been framed without disposing of the objections filed by the assessee appellant on account of its validity. As such, assessment framed is void-ab-initio.*

*3. That the Id. Commissioner of Income Tax (Appeals), Bathinda has erred in law & on facts in upholding the validity of notice issued under section 148 of the Income Tax Act whereas as per explanation furnished and other material placed on record, there is no escaped assessment.*

*4. That the Id. Commissioner of Income Tax (Appeals), Bathinda has erred in law & on facts in confirming the addition*

*of Rs. 84,00,000/- on account of credit made by Shri Rajesh Babbar, Director of the company without appreciating that during the assessment proceedings, the assessee has duly proved the identity of the person, confirmation from Shri Rajesh Babbar has been filed and his PAN has also been placed on recor.1. As such, addition confirmed by wrongly placing reliance on the judgment of Pavankumar M. SanghviVs. Income Tax Officer (2018) 97 taxmann.com 398 (SC) whereas the facts of this case are altogether different from the case of the assessor appellat. As such, add Ton so confirmed is unjustified an 1 e: railed for. The same be deleted.*

*5. That the Id. Commissioner of Income Tax (Appeals), Bathinda has erred in law & on facts in confirming the addition of Rs. 34,00,000/- on account of credit made by M/s Aar Dee Towers Pvt. Ltd. without appreciating that during the assessment proceedings, the assessee has duly proved the identity of the person, confirmation from M/s Aar Dee Towers Pvt. Ltd. has been filed and his PAN has also been placed on record. As such, addition confirmed by wrongly placing reliance on the judgment of Pavan Kumar M. Sanghvi Vs. Income Tax Officer (2018) 97 taxmann.com 398 (SC) whereas the facts of this case are altogether different from the case of the assessee appellat. As such, addition so confirmed is unjustified and uncalled for. The same be deleted.*

6. *That the appellant craves to add, amend or alter any ground of appeal on or before the hearing.”*

**I.T.A. No.138/Asr/2019**

The assessee has taken the following grounds:

*“1. On the facts & in the circumstances of the case and in law, the Id. Commissioner of Income Tax (Appeals), Bathinda has erred in upholding the validity of notice issued under section 148 of the Income Tax Act merely on the ground that the AO is unable to verify the source of deposits in the bank account and purchase of property from the income tax return is valid to be ‘reason to believe’ without considering the fact that the referred bank account and property amount have been duly disclosed in the return of income filed.*

*2. On the facts & in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in not deciding the ground No.3 & 4 reproduced as under:*

*Ground No. 3 “That the learned AO has erred in law and on facts by making reassessment in response to notice under section 148 without considering the objections filed by the assessee appellant on account of its validity. As such, assessment framed is void ab initio. The same be cancelled.*

*Ground No. 4 “That the learned AO has erred in law and on facts by making an addition of Rs. 6,72,99,721/- on the issues*

*which are not part of the re-opening of the assessment. As such, addition made in violation of law is unjustified. The same be deleted.”*

3 *On the facts & in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the validity of notice issued under section 148 of the Income Tax Act whereas as per explanation furnished and other material placed on record, there is no income escaped assessment.*

4. *On the facts & in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the addition made on account of undisclosed investment made in the purchase of property of Rs. 6,10,20,750/- merely on the basis of rough piece of paper found during third party search and ignoring the explanation and other material placed on record during the assessment proceedings.*

5. *On the facts & in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the disallowance of Rs. 22,71,000/- made u/s 40(A)(3) of the Income Tax Act on account of purchase of agricultural land especially when no expenditure has been claimed on this account during the year under consideration.*

6. *On the facts & in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred*

*in upholding the disallowance of Rs. 10,07,971/- made u/s 40(a)(ia) of the Income Tax Act on account of expenditure incurred on the development of land especially when no expenditure has been claimed on this account during the year under consideration.*

7. *On the facts & in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the addition of Rs. 5,00,000/- on account of credit in the name of Rajesh Babbar u/s 68 of the Income Tax Act.*

8. *On the facts & in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the addition of Rs. 25,00,000/- on account of credit in the name of Sunrise Educational & Welfare Society u/s 68 of the Income Tax Act.*

9. *On the facts & in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the high-pitched assessment made by the Assessing Officer by making addition of Rs. 6,72,99,721/- against Nil returned income without affording proper and reasonable opportunity to the assessee appellant and following the various Circulars issued by the Central Board of Direct Taxes.*

10. *That the appellant craves leave to add or amend any grounds of appeal before the appeal is finally heard or disposed of.”*

2. When the appeal was called for hearing, no one appeared on behalf of assessee to represent his case. There is no application for seeking adjournment either. On perusal of record, we find that the hearing is scheduled on 25/04/2023 & the notice of hearing was served through the revenue department. As per the report of the Id. Income Tax Officer, Wd. 2(3), Abohar, the assessee denied to take the notice of hearing & finally it was served through order of affixture under V Rule 20 of Code of Civil Procedure, 1908 (V of 1908). Previously the dates were fixed number of times. 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.

At the outset that, the relevant factual backdrop as well as the issues involved in all the cases are identical. We, therefore treat the Assessee's appeal, I.T.A. No.138/Asr/2019 for the Assessment Year 2009-2010 as the lead case.

3. Brief fact of the case is that the assessee has challenged both the legal and factual grounds. The assessee has challenged the jurisdiction of assessment u/s 147 and issuance of notice U/s 148 of the Act. In ITA No. 138/Asr/2019, the assessee has raised the ground no. 3 & 4 which were agitated before the Id. CIT(A). But as per assessee, the Id. CIT(A) had not adjudicated the grounds in the appeal order.

Further, the addition was also challenged, made during assessment. The addition was made in different heads by the ld. AO. Being aggrieved on the assessment order the assessee challenged the order before the ld. CIT(A). The ld. CIT(A) after considering all the issues upheld the order of the ld. AO. Being aggrieved assessee filed the appeals before us.

**ITA No. 138/Asr/2019**

4. **Ground No. 1 & 2**, the assessee challenged the jurisdiction u/s 148 of the Act and placed that the objection filed before the AO was not disposed of before completion of the assessment.

4.1 The ld. DR pointed out that there is no such application was placed before the AO related to objection u/s 148 of the Act.

5. The ld. DR first invited our attention in page no. 6 of the ld. CIT(A) order which is extracted as below:

*“In view of the above, it is, therefore, requested that addition made is not justified. The same be deleted.*

*4.3 The submissions were sent to the Assessing Officer and the following report was received:*

*“In this regard, the brief facts of the case are that the assessee has filed the Return of income for the A.Y. 2009-10 u/s 139(1)*

*at Nil Income on 29.03.2010. Thereafter, on the basis of information available with this office, a notice u/s 148 was issued to the assessee on 25.03.2015 after recording the reasons u/s 147 of the Income Tax Act, 1961. In response to notice u/s 148. the assessee filed its reply on 16.04.2015 that the return already filed on 29.03.2010 may be treated as return filed in response to notice u/s 148. The then AO completed the assessment u/s 143(3) of the Act vide his order dated 29.03.2016 at income of Rs. 6,72,99,721/- for the assessment year 2009-10 with the following additions/disallowances after discussing the case in detail while passing the order.”*

5.1 The Id. DR further invited our attention in para no. 4 page no. 3 of the CIT(A)'s order which is extracted as below:

*“4. Ground of appeal no. 2, 3 and 4: Challenge to reassessment proceedings:*

*The appellant has challenged mounting of reassessment proceedings on legal grounds. It is contended that the statutory notice u/s 148 of the Income Tax Act was issued on 25/03/2015 was not legal challenging the reasons recorded by the Assessing Officer; however the objections and the merit of contention are being dealt in succeeding paragraphs.*

*4.1 The Assessing Officer recorded the following reasons for mounting reassessment proceedings:*

*“As per information available with this office that the above noted assessee has credited in the bank account no. 65030336634 with SBOP, Abohar amounting to Rs.7,37,60,500/- and also purchased properties for a consideration of Rs. 1,72,88,000/-. The above noted assessee has filed its income tax return for the assessment year 2009-10 on 29/03/2010. From the return it is not verifiable from which source the assessee has deposited the huge amount in its bank account and also transactions of purchase of properties at Rs. 1,72,88,000/- are not verifiable from the return. I have therefore, reasons to believe that the amount deposited in its bank account to the tune of Rs. 7,37,60,500/- and investment on properties amounting to Rs. 1,72,88,000/- is unexplained deposits which has escaped assessment. Accordingly, I have reasons to believe that the income of the assessee amounting to Rs. 9,10,48,500/- besides any other incomes chargeable to tax which may come to notice subsequently during the course of assessment proceedings has escaped assessment within the meaning of section 147 of the Income Tax Act , 1961. Therefore, proceedings u/s 147 are being initiated by issuing of notice u/s 148 of the IT. Act, 1961.”*

5.2 The ld. DR again placed that the recorded reason is specifically mentioned, the concealment of income and there is no such any illegality in the recorded reason. So, the ground related to jurisdiction u/s 148 is liable to be quashed.



- (ii) *the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or*
- (iii) *fish or fish products<sup>90</sup>; or*
- (iv) *the products of horticulture or apiculture, to the cultivator, grower or producer of such articles, produce or products;”*

During the hearing before the bench no evidence is submitted by the assessee in relation to the claim. So, the ground taken by the assessee before the ld. CIT(A) is dismissed.

7.2. Related to addition for violation of section 40(a)(ia) is amount of Rs.10,07,971/-. No tax was deducted at source. But in the appeal the assessee was unable to substantiate its claim in favour of its ground. No evidence is placed before the bench in support of the claim.

7.3. The ground was placed for addition of received credit from Shri Rajesh Babbar Rs.5 lac and from Sunrise Educational & Welfare Society Rs.25 lac. In first appeal assessee placed the details before the ld. CIT(A). The ld. CIT(A) has taken the view in appeal order page no. 16 para 8.1 & 8.2 which are extracted as below:

*“8.1 In the course of appellate proceedings it was contended that the Assessing Officer has made these additions without making any enquiries whereas complete details of the persons*

*extending credit was available with the Assessing Officer. It has been specifically argued that Sh. Rajesh Babar was being assessed with the same Assessing Officer. In case of the other entity M/s Sunrise Educational & Welfare Society, the appellant has provided complete details of the transaction. In case, the Assessing Officer had any doubts then he should have made enquires.*

*8.2 I have given careful consideration to the contention above and find that the same is not acceptable because merely by stating that the transaction has happened through the banking channel and the allegedly lender is a regular income tax assessee does not discharge the burden of the appellant. Hon'ble Supreme court in the case of Pavan Kumar M. Sanghvi v. ITO [2018] 97 taxmann.com 398 (SC) dismissed the SLP of the appellant upholding decision of Hon'ble Gujrat High court [2018] 90 taxmann.com 386/404 ITR 601 (Guj.) holding that the assessee has to satisfy the Assessing Officer about the creditworthiness of the lender namely Sh. Rajesh Babar (Rs. 5 lakhs) and Sunrise Educations & welfare Society (Rs. 25 lakhs). In this case, the appellant failed to discharge the onus of satisfying that the lenders are creditworthy and hence the Assessing Officer was justified in making addition. The grounds of appeal are dismissed.”*

8. The ld. DR fully relied on the order of the revenue authorities.

9. We consider the documents available in the record and rely on the order of both the revenue authorities. The assessee has filed the appeal before the bench but there is no such any evidence is produced before the bench in favour of the grounds of the assessee. The Id. CIT(A) has passed a speaking order and explained the details submission of the assessee. No application for filing additional evidences is filed before the bench from end of assessee. In our considered view, the order passed by the Id. CIT(A) is detailed and speaking order. We are not interfering in the appeal order. Accordingly, the order of the Id. CIT(A) is upheld.

9.1 In the result, **groundno. 3 to 9of the assessee are dismissed.**

10. Ground no. 10, is general in nature.

**ITA No. 628/Asr/2018**

11. In this appeal the assessee has taken the different grounds apart from challenging the jurisdiction of section 148. In ground no. 5 is related confirming the addition of Rs.34 lac on account of credit made by the M/s Aar Dee Towers Pvt. Ltd.

12. The Id. DR vehemently argued and invited our attention in page no. 10 para 5.2 to 6 of the appeal order which are extracted as below:

*“5.2 I have given careful consideration to the contention above and find that the same is not acceptable because*

*merely by stating that the transaction has happened through the banking channel and the allegedly lender is a regular income tax assessee does not discharge the burden of the appellant. Hon'ble Supreme court in the case of Pavan Kumar M. Sanghvi v. ITO [2018] 97 taxmann.com 398 (SC) dismissed the SLP of the appellant upholding decision of Hon'ble Gujrat High court [2018] 90 taxmann.com 386/404 ITR 601 (Guj.) holding that the assessee has to satisfy the Assessing Officer about the creditworthiness of the lender. In this case, the appellant failed to discharge the onus of satisfying that the lender is creditworthy and hence the Assessing Officer was justified in making addition. The ground of appeal is dismissed.*

*6.0 Ground of Appeal no. 5: Addition of Rs. 34,00,000/- : The Assessing Officer has made an addition of Rs. 34 lakhs on account of unexplained credits from Aar Dee Towers P Ltd. by holding that the appellant has failed to satisfy the necessary ingredients of Section 68 of Income Tax Act and hence the credit has been treated as deemed income of the appellant.”*

13. We heard the ld. DR and consider the order of the revenue authorities. Related to the credit transaction the revenue is dissatisfied about the creditworthiness of creditor related to amount of Rs, 34,00,000/-. We find that

during hearing before the bench the assessee has not filed any evidence about the creditworthiness of the creditor, M/s Aar Dee Towers Pvt. Ltd. The addition was confirmed due to lack of creditworthiness of the creditor. We find that there is no infirmity in the order of the ld. CIT(A)

Accordingly, **the ground no. 5 of the assessee is dismissed.**

14. In ITA Nos. 628/Asr/2018, the rest of grounds are decided on the basis of the order of ITA No. 138/Asr/2019 which is mutatis mutandis applicable for ITA No. 628/Asr/2018 and follows accordingly.

15. In the result, the appeals of assessee bearing **ITA No.628/Asr/2018 & ITA No. 138/Asr/2019** are dismissed.

**Order pronounced in the open court on 28.04.2023**

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