

**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. Nos. 55 to 59/Asr/2019
Assessment Years: 2010-11 to 2014-15

Late Sh. Gurmail Singh
S/o Late Sh. Lal Singh
Through Sh. Arshpreet
Singh, Legal Heir, Resident
of 7581, Street No. 3,
Namdev Nagar,
Sh. Muktsar Sahib
[PAN: AJYPS 4799P]

(Appellant)

V. Dy. Commissioner of Income
Tax, Circle-II, Bathinda

(Respondent)

I.T. A. Nos. 60 to 64/Asr/2019
Assessment Years: 2010-11 to 2014-15

Sh. Arshpreet Singh
S/o Late Sh. Gurmail Singh
Resident of 7581,
Street No. 3, Namdev Nagar,
Sh. Muktsar Sahib
[PAN: BCZPS 6061F]

(Appellant)

V. Dy. Commissioner of Income
Tax, Circle-II, Bathinda

(Respondent)

Appellant by : Sh. Parikshit Aggarwal, CA
Respondent by : Sh. S. R. Kaushik, CIT-DR

Date of Hearing : 26.04.2023
Date of Pronouncement : 25.05.2023

ORDER

Per Bench:

This bunch of appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), Bathinda even dated 27.11.2018.

2. The assessee has raised the following common grounds of appeal in ITA Nos. 55 to 58/Asr/2019 and 60 to 63/Asr/2019 in respect of Assessment Years 2010-11 to 2013-14.

- “1. *That the order passed under section 250(6) by the Ld. Commissioner of Income Tax (Appeals), Bathinda in Appeal No. 156/17-18 dated 27.11.2018 is contrary to law and facts of the case.*
2. *That in the facts and circumstances of the case, the Id. Commissioner of Income Tax (Appeals) gravely erred in passing a cryptic and non - speaking order.*
3. *That the statement and surrender made by the appellant during the course of survey was made under coercion, mistaken facts and provisions of law.*
4. *That the alleged incriminating documents on the basis of which the addition has been made by the Id. Assessing Officer and upheld by the Id. Commissioner of Income Tax (Appeals) has no relation or link with the*

appellant, the addition made is illegal and unwarranted, same may kindly be deleted.

5. *That the surrender made during the survey was made to cover all the discrepancies, if any, found relating to the alleged incriminating documents impounded during the survey.*
6. (a) *That in the facts and circumstances of the case, the Id. Assessing Officer as well as the Hon'ble Commissioner of Income Tax (Appeals) gravely erred in not giving the benefit of the surrender made with regard to the alleged incriminating documents found for which addition has been made in different assessment years whereas the surrender was made in Assessment Year 2014-15 covering all the earlier assessment years as well as Assessment Year 2014-15 to buy peace with the Department.*

(b) *That the surrender was made by the appellant in the Assessment Year 2014-15 on the directions of the department.*
7. *That in the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) gravely erred in upholding the proceedings under section 147/148 of the Income Tax Act, 1961 as valid, though proceedings under section 147 are void ab-initio as notice under section 148 was never served in accordance with the provisions of section 282 of the Income Tax Act, 1961.*
8. *That in the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) gravely erred in upholding the proceedings under section 147/148 of the Income Tax Act, 1961 as valid, though they are void ab-initio because the reasons to believe recorded by the Id. Assessing Officer are infact reasons to suspect and are illegal.*
9. *That in the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) gravely erred in upholding the proceedings under section 147/148 of the Income Tax Act, 1961 as valid, though proceedings under section 147/148 of the Income Tax Act, 1961 are void ab-initio because there was no application of mind by the Principal Commissioner of Income Tax while recording the satisfaction in accordance with the provisions of section 151(2) of the Income Tax Act, 1961 which provides*

for recording of satisfaction that it was a fit case for issue of notice under section 148 on the reasons recorded by the Id. Assessing Officer.

10. *That in the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) gravely erred in upholding the action of the Id. Assessing Officer who made addition of Rs. 3,40,64,500/- under Section 69A of the Income Tax Act, 1961 on account of alleged unexplained entries in the impounded diary.*
11. *That in the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) gravely erred in upholding the action of the Id. Assessing Officer who made addition of Rs. 3,40,64,500/- under Section 69A of the Income Tax Act, 1961 on account of entries in the alleged impounded diary despite the fact that repeated requests were made to the Id. Assessing Officer for providing the legible copy of impounded diary.*
12. *Without prejudice to the above grounds, the Id. Commissioner of Income Tax (Appeals) gravely erred in sustaining addition of Rs. 3,40,64,500/- under section 69A made by the Id. Assessing Officer on account of credit entries in the alleged impounded diary without giving set off of debit entries in the diary.*
13. *That the appellant craves to add, amend or alter any ground of appeal before or at the time of hearing of appeal, with the permission of the Hon'ble Income Tax Appellate Tribunal."*

3. Since, the bunch of above appeals involve identical issues on similar facts and these are being decided by the Id. CIT(A) in the case of father and son by a common order and hence, the groups of appeals were heard together and adjudicated by this consolidated order for the sake of brevity.

4. The ground no 1 to 6 and 10 to 12 are inter-related to each other wherein the appellants challenged the addition made by the Id. Assessing

Officer and upheld by the Id. Commissioner of Income Tax (Appeals) alleged to be based on incriminating documents in contrary to the facts on record that since, there was no relation or link with the appellant taken all credit entries and that without giving benefit of debit entries in the said document hence the addition made is illegal and unwarranted.

5. Briefly, the facts as per record are taken from I.T.A. No. 55/Asr/2019 Assessment Years 2010-11 in the case of Late Sh. Gurmail Singh as a lead case. The appellant Sh. Gurmail Singh is now deceased person, hence, in his case, the four appeals are represented by his son as legal heir Sh. Arshpreet Singh in respect of Assessment Year 2010-11 to 2013-14 besides the appeals of Sh. Arshpreet Singh in his own four cases for the same Assessment Year 2010-11 to 2013-14. A survey under section 133A of the Income Tax Act was conducted on the business premises of M/s Satguru Foundation on 18/02/2014 and during the course of this survey number of documents was impounded. It was stated that Sh. Gurmail Singh now deceased who was working as in charge of administration of a dental college run by the aforesaid Satguru Foundation. On the basis of the impounded documents, the Assessing Officer initiated reassessment proceedings by issue of notice under section 148 of Income Tax Act after taking mandatory approval of the Ld. PCIT in respect of all the assessment

years by valid service of the notices issued u/s 148 of the Act, on 14/02/2017, upon the assessees.

5.1 In the case of both appellants for the above-mentioned assessment years under consideration the Assessment u/s 143(3)/ 147 of the Act, were completed on 14/12/2017. In the assessment proceedings, the Assessing Officer has considered one impounded document which was marked as "Dairy no. SGF XIV" said to be containing large amount of cash received during the period covering all the assessment years which are under appeal. The Assessing Officer made the total of cash received as depicted in this diary and one half of that amount has been assessed in the hands of each of the appellant as under:

<i>Assessment year</i>	<i>Total amount of cash received as per diary</i>	<i>Assessed in the hands of Sh. Gurmail Singh</i>	<i>Assessed in the hands of Sh. Arshpreet Singh</i>
<i>2010-11</i>	<i>68129000</i>	<i>34064500</i>	<i>34064500</i>
<i>2011-12</i>	<i>77215100</i>	<i>38607550</i>	<i>38607550</i>
<i>2012-13</i>	<i>54476412</i>	<i>27238206</i>	<i>27238206</i>
<i>2013-14</i>	<i>28399830</i>	<i>14199915</i>	<i>14199915</i>

6. The assessee being aggrieved with the Assessment Order, went in appeal before the Ld. CIT(A) who has confirmed the finding of AO by observing as under:

3.2 *In the course of appellate proceedings, the following written submissions were filed in support of this ground of appeal in each of the above appeal:*

The proceedings u/s 147/148 are void ab-initio because the notice u/s 148 was never served in accordance with the provisions of section 282 of the Income-tax Act, 1961.

The proceedings u/s 147/148 are void ab-initio because the reasons to believe recorded by the AO are infact reasons to suspect.

That no satisfaction was recorded by the Principle CIT which was mandatory under the provisions of Section 151(1) & reliance for the contention has been placed on the following judgments:-

- i. Smt. Nirmal Kaur vs. Dy. CIT International Taxation, Chandigarh I.T.A No. 575/ASR/2016*
- ii. United electrical Co. (P) Ltd. Vs. CIT [2002] 125 TAXMAN 775 (Delhi)*
- iii. ITO vs. M/s Observer Investment & Finance Pvt. Ltd. ITA No. 1185 & 1186/Del/2009 (IT.AT Delhi E)*
- iv. CIT vs. M/s Goyanka Lime and Chemical ITA No. 82 of 2012 (MP).*

“3.3 I have given careful consideration to the contentions of the appellant and to begin with non-service of notice has not been established by the appellant whereas in the assessment order specific date has been mentioned on which the notice was served. The Assessing Officer as mentioned that notices were served on 14th February 2017. It is further noticeable from the assessment order that the appellant has participated in the assessment proceedings without raising any objection about service of notice, therefore section 292C of Income Tax Act would raise a presumption that notice has been served properly upon the appellant. In respect of reasons not been properly recorded, it is to be seen that in the course of the survey proceedings both the appellants were examined and the statements were recorded. In the statements, there has been categorical admission of having earned income which has escaped assessment. The material is available with the Assessing Officer which is sufficient for initiation of reassessment proceedings. At the stage of issue of notice only prima facie belief is required to the extent that income has escaped assessment which was clearly available from the statements of

*the appellant as recorded in the course of survey proceedings. No fault can be found so far as satisfaction and reasons to believe is concerned. Lastly, the appellant has not placed on record any material to show that competent authority has accorded approval without having been satisfied and in mechanical manner. In consideration of totality of circumstances, the grounds of appeal related to challenge to reassessment proceedings in each of the appeal are **dismissed**.*

5.2 The contention of the assessee that the copy of diary provided to him is not legible has also been considered. It is observed that the copy of diary was provided to the assessee on 11.07.2017 and thereafter many opportunities were provided to the assessee to explain the nature and source of the amounts recorded therein. However, the assessee failed to file any explanation. Now, the contention of the assessee on 11.12.2017 when the assessment proceedings are about to get time barred, suddenly the assessee realized that the copy of diary provided to him is not legible. This is surprising and is an attempt of the assessee to avoid giving an explanation about the nature and source of the amounts recorded in the diary. Hence, the contention of the assessee is rejected being devoid of any merit. The contention of the assessee that only receipts have been considered but outgoings have not been considered has also been considered. However, it is observed that the assessee has failed to file explanation about the nature and source of the amounts recorded in the diary. Further, the assessee has failed to file nature of outgoings and it has not been established by the assessee that the amounts were rotated to be reintroduced as receipts in the diary. Under the circumstances, the contention of the assessee is devoid of any merit and is therefore rejected. As observed above, the assessee in his letter dated 25.02.2014 dearly stated that he was confronted with certain documents which related to him. The assessee, on the basis of such documents surrendered an amount of Rs 1,60,00,000/- for the A Y 2014-15 along with his son Sh. Arshpreet Singh, who surrendered an amount of Rs 1,40,00,000, - for the A Y 2014-

15. The documents confronted to the assessee included diaries relevant for the A Y 2014-15 as well diary No SGF-X1V. The assessee, in his statement recorded on 25.02.2014, in reply to Q. No 5 stated that diaries marked as SGF-XII, SGF-XHI, SGF-1X, SGF-XV1 and SGF-XV belonged to him and his son. Further, a copy of diary No SGF- XIV was again provided to the counsel of the assessee on 11.07.2017 and the assessee was required to explain the nature of entries recorded in the diary and source of the amount of Rs. 3,40,64,500/- but the assessee has failed to file any explanation in this regard. In view of the statements of the assessee and his son, the surrender letters dated 25.02.2014 and the fact that the assessee and his son owned up all the documents impounded during survey and on the basis of documents relating to A.Y. 2014-15, both of them surrendered an amount of Rs. 1,40,00,000/- and Rs. 1,60,00,000/- for the A.Y. 2014-15, it is held that the diary No SGF-XJ V related to unaccounted transactions of the assessee and his son. The assessee failed file any explanation regarding the nature of entries recorded in the diary and source of the amount of Rs. 3,40,64,500/- despite the fact that a copy of diary No SGF-XIV was provided to the counsel of the assessee on 11.07.2017.”

7. The Ld. counsel has submitted that the impugned order is contrary to law and facts; cryptic, and nonspeaking; surrender was made under coercion; incriminating document are not related to appellants and that surrender statement covers all discrepancies in the incriminating document whatsoever found during the course of survey u/s 133A of the Act which was made to by peace of mind. He filed a brief synopsis, the relevant part of which reads as under:

11. The respondent has framed assessment and made addition on the basis of notings in the diary SGF XIV. A copy of this is at Pages 45 to 117 and English Translation thereof is at Pages 118 to 192.

12. It is apparent from a look at this diary, that it contains day-wise recording of receipt and payment. However, while making the impugned assessment, Ld. AO has only taken the receipt side and ignored the payment side. We carried out the day-wise tabulation of receipt and payment from this diary which is at Pages 2 to 21 of PB Vol. II. If the benefit of payments is given to arrive at correct picture of peak, the year-wise calculation from this diary comes to as under:

A.Y.	Receipt	Payments	Peak Credit
2010-11	6,61,54,600	6,66,13,700	14,00,000
2011-12	7,57,24,715	7,44,03,715	34,65,000
2012-13	5,84,55,112	5,96,76,112	54,50,000
2013-14	2,83,61,830	2,84,61,830	37,50,000

13. The above is without prejudice to our contention that this diary did not belong to the appellants. Further, the above calculation of peak is to be further divided in both the appellants:

A.Y.	Peak Credit	Arshpreet Singh Share	Gurmail Singh Share
2010-11	14,00,000	7,00,000	7,00,000
2011-12	34,65,000	17,32,500	17,32,500
2012-13	54,50,000	27,25,000	27,25,000
2013-14	37,50,000	18,75,000	18,75,000
Total	1,40,65,000	70,32,500	70,32,500

14. When above kind of noting or diary is found, debits and credits both are to be considered and peak is to be arrived at to compute the real income. For this proposition, we rely upon the ratio of decisions in:

- **Mr. Nadessan Sivapragasam Vs. ACIT fITA No. 112-114 /Cheny/2021(ITAT Chennai) (Refer page no. 92-127 of compilation of judgement already on record)**

- **DCIT Vs. Shree Bhagwati Machines Pvt. Ltd. fITA No. 296-301 /Jp/20221 fITAT Jaipur/ (Refer page no. 128-172 of compilation of judgement already on record)**

15. It is further submitted that as against above aggregate peak of Rs. 1,40,65000/- from the diary in all the years, the appellants have already disclosed Rs. 3 crores in aggregate in their ITRs for AY 2014-15 based on that very survey. Therefore, benefit of that surrender deserves to be given and therefore, no further addition was warranted.

15.1. It has been laid down that if assessee makes disclosure in survey or search in different year or in different hand of the group and files ITR accordingly but subsequently the AO holds that this income pertains to different year or different group assessee, the assessee must be allowed credit of income surrendered and disclosed in other year or other group assessee. Otherwise it will amount to impermissible double taxation, for this proposition, we rely upon the ratio of decisions in:

- **Ashish Plastic Industries Vs. ACIT [373 ITR 451 fSCI (Refer page no. 173-175 of compilation of judgement already on record)**
- **CIT Vs. Alankar Radio Equipments fITA NO. 926 of 2007 did. 15.12.2011] Del. HCfRefer page no. 176-183 of compilation of judgement already on record)**
- **Mehra Art Palace Vs. DCIT f114 Taxman 201] Del ITATfRefer page no. 184-185 of compilation of judgement already on record)**

16. The above were the arguments in case of Arshpreet singh based on documents for AY 2010-11. Identical is the fact situation in other years and also in case of Gurmail Singh. The same arguments may, therefore, be considered in all appeals.

17. It is further submitted that the notices and documents appended in the PB were verified or taken during inspection of record of Ld. AO conducted by us. **A copy of prayer for inspection alongwith challan paid for such exercise is appended on page no. 68 to 95.**

18. The Worthy CIT(A) has confirmed the order of Ld. AO in a ritualistic manner without appreciating the above arguments. It is therefore prayed that the impugned orders may please be quashed and the additions made therein may please be ordered to be deleted. We shall be highly obliged."

8. Per contra, the Ld. DR strongly supported the order of the revenue authorities.

9. Heard rival contentions, perused the material on record, impugned order, written submission and case law cited before us. It is undisputed fact on record that Late Sh. Gurmail Singh who was one of the member and administrator of M/s Satgun Foundation, Muktsar and that he was running a College from its premises. A survey u/s 133A was carried out at the premises of M/s Satgun Foundation on 18.02.2014 (AY 2014-15). The relevant document found during the course of survey, were diaries which were then marked as "SGF-XII", "SGF-XIII", "SGF-IX", "SGF- XII", "SGF-XVI" and "SGF-XV" "SGF-XVI. On confronting, these diaries to Sh. Gurmail Singh, who was present at the time of survey, has admitted in his statement recorded on oath in answer to question no. 5 as above that *"These diaries belong to me and my son Mr. Arshdeep Singh. These dairies have no relevance with the Satguru Foundation or Desh Bhaga Dental College....."*. and in answer to question no. 6 that the dairies marked as "SGF-IX", "SGF-XV", "SGF-XIII" and "SGF- XIV" belongs to me and the balance diaries pertain to my son Mr. Arshpreet

Singh. (APB, Pgs. 194” -204). While recording the statement on oath of the appellant (Sh. Arshpreet Singh) on the date of survey u/s 133A of the Act, in answer to specific question no.3, he admitted that the documents marked at “SGF- XII”, “SGF-XVI (notebook green) loose papers as listed in the impounded order dtd. 18.02.2014, were belong to him (APB, Pgs. 205-208) which is reproduced as under:

“Q.3 During the course of survey at the premises of Satguru Foundation (Regd.) carried out on 18.02.2014, certain documents and loose papers marked at “SGF- XII”, “SGF-XVI (notebook green) loose papers as listed in the impounded order dtd. 18.02.2014, which are being shown to you. In his statement recorded on oath on 18.02.2014 your father Sh. Gurmail Singh has deposed that these dairies/documents pertain to you. Do you agree with his statement?”

Answer - Yes, I agree with the depositions made by my father in respect of these documents, as these documents belongs to me.”

10. The Ld. AR argued that the dairies confronted to him Late Sh. Gurmail Singh do not include diary No. “SGF-XIV” in specific and contended that he has answered that those dairies specified in question did not belong either to his or its son’s activities. He contended that it was only a typographical or a clerical mistake that SGF-XIV was mentioned in the question, hence, the appellants nowhere admitted of being the owner of diary no. “SGF-XIV” and that it may be considered as not belonging to

either Sh. Arshpreet or Late Sh. Gurmail Singh. The Ld. AR further argued that during the assessment proceedings, the appellant categorically denied of being the owner of diary no. "SGF-XIV" (APB, Pgs) 43 to 44).

11. However, it is seen from the statement recorded during the course of survey that Sh. Gurmail Singh, who was present at the time of survey, has made plain admission in his statement recorded on oath in answer to question no. 5 as above that *"These dairies belong to me and my son Mr. Arshdeep Singh. These dairies have no relevance with the Satguru Foundation or Desh Bhaga Dental College....."*. and in answer to question no. 6, he has identified which dairies or documents belongs to him and accordingly, after identification, he owned that the dairies marked as "SGF-IX", "SGF-XV", "SGF-XIII" and "SGF- XIV" belongs to him and the balance dairies pertain to his son Mr. Arshpreet Singh (APB, Pgs. 194" -204). However, he has nowhere mentioned in his statement on oath that which are the dairies belongs to his son in specific and made a general admission that balance dairies belong to his son. Similarly, in the statement on oath of the appellant (Sh. Arshpreet Singh) on the date of survey u/s 133A of the Act, in answer to specific question no.3, he has plainly admitted in answer to question mentioning the documents marked at "SGF- XII", "SGF-XVI"

(notebook green) loose papers as listed in the impounded order dtd. 18.02.2014, and which he admitted were being belonging to him (APB, Pgs. 205-208) which is reproduced as under:

“Q.3 During the course of survey at the premises of Satguru Foundation (Regd.) carried out on 18.02.2014, certain documents and loose papers marked at “SGF- XII”, “SGF-XVI (notebook green) loose papers as listed in the impounded order dtd. 18.02.2014, which are being shown to you. In his statement recorded on oath on 18.02.2014 your father Sh. Gurmail Singh has deposed that these dairies/documents pertain to you. Do you agree with his statement?”

Answer - Yes, I agree with the depositions made by my father in respect of these documents, as these documents belongs to me.”

12. Under the circumstances and considering the material facts, we are of the considered view that the Ld. AR contention that diary No. “SGF-XIV” in specific has never been confronted to the appellant during the survey is appears to be factually correct and this facts is also evident from the statement of the father and son as above wherein neither the survey party nor the AO has confronted any such document marked as Diary No. “SGF-XIV” to Late Sh. Gurmail Singh (Father) or to the appellant Sh. Ashpreet Singh or admitted by either of them in specific denomination except mentioning that balance dairies. At this stage, the revenue authorities ought

to have rebutted this particular Diary No. "SGF-XIV" and its content to the appellant Sh. Ashpreet Singh and corroborated by bringing on record documentary evidence to establish the chain of cash flow cycle and relevant transaction on the entry alleged to be unexplained investment in properties or cash transaction. Since, the AO/the Ld. CIT (A) and the Ld. DR failed to disprove the contention of the appellant and hence, the addition made merely relying on vague statement recorded during survey without substantiating the rough entries of the alleged diaries with corroborative supporting material evidence, is not justified.

13. The contention of the authorities below that there was not typing mistake in the statement and that the subsequent denial in the course of reassessment proceeding by way of reply after a period of 4-5 years to survey and completion of regular assessments has been merely an afterthought when the appellant got seized with notice u/s 148 of the Act for initiating reassessment proceeding by the AO. In our view, it is merely assumption of the AO based on vague statement recorded during the course of survey u/s 133A without rebutting the alleged documents/ diary No. "SGF-XIV" to the appellant either during the survey or assessment proceedings and bringing on record corroborative documentary evidence

on record, has no material evidentiary value for presumption u/s section 292C of the Act. Meaning thereby, the AO or the Ld. CIT(A) failed to establish the disputed income based on corroborative documentary evidence in lieu of the alleged incriminating diary No. "SGF-XIV" although it may be impounded during the course of survey from the business premises. It is pertinent to mention the undisputed fact that the alleged transaction/entries in the diary No. "SGF-XIV" was never owned up in specific by either of the appellant in their statement recorded on oath, as above.

14. Since, the AO, the CIT(A) and the Ld. DR failed to establish before us, with supporting corroborative documentary evidence that the disputed diary No. "SGF-XIV" impounded from the business premises of the foundation, during the course of the Survey U/s 133A did belong to the appellants and that the transaction entered therein are unexplained investment being either made in the properties were out of books of accounts or other tangible or intangible Assets. In view of that matter we are of the considered opinion that the Id. CIT(A) did not appreciate the facts on record and he was not furnished in confirming the addition.

15. Even if the notings in the diary SGF XIV (APB, Pgs. 45 to 117 with English version 118 to 192) presumed to be belonging to the appellant assesses, then the benefit of peak credit would be allowed to the appellants by considering the debits and credits entries of both sides written in the pages of the alleged diary no SGF XIV while computing the real income. If, the benefit of payments is given to the appellant to arrive at correct picture of peak, the year-wise calculation from this diary comes as under:

A.Y.	Receipt	Payments	Peak Credit
2010-11	6,61,54,600	6,66,13,700	14,00,000
2011-12	7,57,24,715	7,44,03,715	34,65,000
2012-13	5,84,55,112	5,96,76,112	54,50,000
2013-14	2,83,61,830	2,84,61,830	37,50,000

16. Without prejudice to the above, if this diary is presumed to be belong to them, the aforesaid calculation of peak has to be further divided in both the appellant assessee being 50% share of each in the business, as under:

A.Y.	Peak Credit	Arshpreet Singh Share	Gurmail Singh Share
2010-11	14,00,000	7,00,000	7,00,000
2011-12	34,65,000	17,32,500	17,32,500
2012-13	54,50,000	27,25,000	27,25,000
2013-14	37,50,000	18,75,000	18,75,000
Total	1,40,65,000	70,32,500	70,32,500

17. The theory of working of peak credit based on noting's of the debits and credits entries of both sides written in the pages of the alleged diary no SGF XIV, to compute the real income of the appellant assesses get support from the decision rendered by the ITAT Chennai Bench in the case of "Mr. Nadessan Sivaprahasam Vs. ACIT", (supra) where it was held that:

"17. In light of above legal and factual background, if you examine case of the assessee, absolutely there is no evidence with the Assessing Officer to allege what is recorded in the seized document shows unaccounted income earned by the assessee from his business. As we have noted already in our order, document relied upon by the Assessing Officer is nothing but dumb document, which does not show any light on financial transactions of the assessee, be it income earned from undisclosed source or expenditure incurred outside regular books of account. The jottings recorded in the so called diary does not show anything about income from whom said income is earned or source from which said income is earned or expenditure incurred outside regular books of account. Therefore, on the basis of said document additions made by the Assessing Officer is highly incorrect. Further, the assessee has filed retraction immediately 15 days after date of search along with affidavit and stated that admission taken during the course of search is by coercion and undue influence, but not based on evidences gathered during the course of search. In the retraction letter dated 18.06.2016 and affidavit dated 04.08.2016, the assessee has explained manner in which statement was recorded u/s.132(4) of the Act, and said letter was filed before the investigation officer, however, the department has ignored retraction filed by the assessee. It is well established principle of law by the decision of the Hon'ble Allahabad High Court in the case of L. Sohan Lal Gupta Vs CIT (1958) 33 ITR 786 that an affidavit filed by the assessee cannot be discarded, unless an opportunity is given to the assessee to substantiate its case. In this case, the Assessing Officer as well as learned CIT(A) has discarded retraction letter filed by the assessee only on the basis of admission of undisclosed income recorded in the statement u/s.132(4) of the Income Tax Act, 1961. In our considered view, the Assessing Officer as well as learned CIT(A) were completely erred in making additions towards only credit entries in the seized documents, disregarding explanation furnished by the assessee.

18. Coming back to another important aspect of the issue. The Id. AR has made an alternative argument without prejudice to its first argument. The assessee contended that if at all, a credit entry in the seized documents is considered as sales made outside regular books of account, then entire sales cannot be added as income, but only net profit from the business should be treated as income of the assessee. The assessee has also made arguments for applying peak credit theory in light of debits and credits contained in very same seized documents and argued that if at all document is to be relied upon, then only peak credit recorded in the document should be considered as undisclosed income of the assessee.

The peak credit theory is not a foreign to the income-tax proceedings. Various courts and tribunals time and again are batting for peak credit theory depending upon facts and circumstances of each case, more particularly, where large amount of cash transactions are involved, the courts observed that peak credit theory is best method to determine undisclosed income of the assessee to avoid duplication of additions towards income & expenditure. In this case, so called diary found during the course of search contains some credit and debit entries. Although, there is no narration in the entries to describe it as income, however, the Assessing Officer has considered entries as unaccounted income earned by the assessee from his business. The said incriminating diary found during the course of search also contains debit entries and the Assessing Officer has conveniently ignored those entries on the ground that said entries pertain to expenditure incurred outside regular books of account, although, there is no narration with regard to nature of entry and to whom said amount is paid. It is well established principle of law by the decisions of the courts and the tribunals that when something is recorded in the seized documents, be it income or expenditure, both needs to be considered for the purpose of taxation and this principle is supported by the decision of the ITAT., Mumbai in the case of Pooja Bhatt Vs. ACIT (supra), where the Tribunal held that expenses eligible for deduction in the seized document should be considered while arriving at net income.

19. In this case, the Assessing Officer has admitted that what was recorded in the seized document towards debit side is expenditure outside regular books of account, although nature of said expenditure is not known to the assessee as well as the Assessing Officer. Therefore, we are of the considered view that when the Assessing Officer has taken credit entries as income of the assessee earned from undisclosed source of income, he ought to have considered debit side of entries as expenditure incurred for earning said income. If you consider

same analogy, then the Assessing Officer should have considered income as well as expenditure. If you consider debit entry as expenditure, then only net income from said document needs to be taxed. Since, we have already stated in earlier part of this order, credit entry does not depict any income and debit entry does not show any light on expenditure, then the only possible method to determine undisclosed income for the above period is adoption of peak credit theory and in this case, particularly peak credit theory is best method to determine undisclosed income of the assessee. The assessee has filed working of peak credit, which is available in paper book filed for relevant period. The assessee has copied entries contained in seized documents relied upon by the Assessing Officer and recorded date-wise receipts and payments. For the financial year 2015-16 as on 23.03.2015, peak credit works out to Rs.36.25 lakhs, which is net of debit and credit entries recorded in seized document. Therefore, addition is required to be made to the extent of Rs.36.25 lakhs for the assessment year 2015-16. Hence, we direct the Assessing Officer to sustain additions to the extent of Rs.36.25 lakhs for the assessment year 2015-16 towards undisclosed income. The assessee has worked out peak credit of Rs.73.13 lakhs as on 25.03.2016 which is relevant to the assessment year 2016-17, on the basis of net of debit and credit entries from so called diary found during the course of search. Therefore, we direct the Assessing Officer to restrict addition to the extent of Rs.73.13 lakhs for the assessment year 2016-17. Similarly, the assessee has worked out peak credit of Rs.422.00 lakhs for the assessment year 2017-18 on 27.05.2016, which is on the date of search, which includes a sum of Rs.3.00 crores cash paid by the assessee to one Mr. Santosh of M/s.NAC Jewellers Pvt. Ltd. and confirmed by the party. Therefore, addition is required to be made to the extent of Rs.422.00 lakhs for the assessment year 2017-18 and thus, we direct the Assessing Officer to sustain addition to Rs.422 lakhs for the assessment year 2017-18.”

18. In another case of “DCIT Vs. Shree Bhagwati Machines Pvt. Ltd.”, (Supra) ITAT Jaipur Bench has held as under:

“14. As regards the ground number four we concur the arguments of the Id. AR of the assessee that the revenue cannot take a plea that in the AY 2017-18, 2018-19 & 2019-20 Shri Yashwant Sharma has not offered peak credit. A cash book was prepared and submitted before the Id. AO and Id CIT(A) which is not disputed even by the AO when he was present in the proceeding before the Id.

*CIT(A) he was fully satisfied with the peak worker out on the basis of the documents recovered during the search. During the AY 2017-18, 2018-19 & 2019-20 no peak was materialized and thus question of offering the peak amount during these period does not arise and this fact is accepted by the Id. AO before the Id. CIT(A). Even in the submission made in this appellate proceeding the Id. AO not commented on the working of the peak. Not only that once a view has already been taken and accepted that the seized material is not related to the assessee and when the calculation of the peak is already accepted in case of Yashwant Sharma whether the peak is taxable in particular year cannot be ground that can be considered in the light of the facts discussed here above we see no merits on this **ground no 4 of the revenue and the same is also stands dismissed.**”*

19. In the instant case, the Assessing Officer has admitted that what was recorded in the impounded document towards debit side and credit side is investment outside regular books of account, although nature of said investment is not known to the assessee as well as the Assessing Officer. Therefore, we are of the considered view that either the Assessing Officer has to take one side credit entries and other side debit entries from the pages of the alleged Diary No. SGF XIV to compute real income of the appellant assesses by considering debit side of entries as expenditure incurred for earning said income or else he ought to have adopt peak credit theory to compute real income investment in properties from the receipts and payment sides of the dairy. Thus, in our view, the credit entry does not depict any income/receipt and debit entry does not show any light on expenditure/investment, then the only possible method to determine

undisclosed income for the above period is adoption of peak credit theory and in this case, particularly peak credit theory is best method to determine undisclosed income of the assessee. The assessee has filed working of peak credit, as above which is available in paper book filed for relevant period. The assessee has copied date-wise of receipt and payments entries contained in impounded documents for washing of peak credit of Rs.1,40,65,000/- and same is filed on record.

20. From the above, it is evident that as against aggregate peak of Rs. 1,40,65000/- (Rs.70,32,500/- each) from the diary in all the years, the appellants have already disclosed income of Rs. 3 crores in aggregate in their ITRs for AY 2014-15 and paid taxes based on the alleged incriminating documents/diaries during the survey. Thus, in our view, the income computed on the basis of peak credit is covered by the surrendered income made during the survey and therefore, no further addition is required to be made in the previous assessment years of the appellants.

21. It is settled law that if assessee makes disclosure in survey or search in different year or in different hand of the group and files ITR accordingly but subsequently the AO holds that this income pertains to different year or different group assessee, the assessee must be allowed credit of income

surrendered and disclosed in other year or other group assessee. If the credit of the disclosed income is not allowed, then it will amount to impermissible double taxation.

22. In the case of “Ashish Plastic Industries Vs. ACIT”, (Supra) the Hon’ble Apex Court has observed as under:

Income-tax Act, 1961 - Section 133A - Course of survey operations – Dishonor of cheques - Sales and closing stock of finished products - It was admitted that the stock as per the books was around excess stock of was accordingly admitted - On this basis addition was made and assessment order was passed by assessing authority in respect of assessment - Before the Commissioner Appellant- sought to explain this difference by alleging that up to finished products was made by one of sister concerns of namely Agro Ltd. and same was wrongly shown to be that - On this plea taken by in support of which some documents/materials were also filed - Commissioner asked for remand report from assessing authority - Before assessing authority representatives of were asked to produce books of account of assessment - It was found that sales of finished product shown in sales register of sister concern tallies with impounded stock register - It was also found that sales proceeds was received by sister concern, namely through its bank account in Bank of Baroda – Held,

learned Counsel for Appellant has brought to our notice a different aspect which was raised at time of admission of present special leave petition filed by Appellant - He drew our attention to orders dated February - Leave granted limited to question as to whether in respect of sales which are shown in stock register of. Ltd., there has been double taxation - It is clear from above that leave was granted limited to question as to whether addition made on account of aforesaid sale would amount to double taxation - To put it differently submission of learned Counsel for Appellant is that on the aforesaid sales, which are found in the accounts of Plastic Industries receipts are shown as income on which tax has been paid by During hearing of this appeal, learned Counsel submitted that he can bring satisfactory evidence in support of this plea - Court are of the view that order of authorities below should be sustained but if Appellant is able to prove that tax on income generated from sale of material has been paid by M/s. Ashish Agro P. Ltd. benefit thereof should be extended to Appellant.

23. In the present cases, since the appellant-assesseees have made disclosure in survey in two hands of the group (Father and Son), paid taxes and accordingly, files ITR and hence, in our view, the assessee must be allowed credit of income surrendered in hands of both the assesses, otherwise it would amount to impermissible double taxation. The Ld. DR did

not file any citation or rebuttal either on the fact of computation of real income by applying peak credit as above or impermissible double taxation on the disclosed income by the appellant assesses.

24. Considering the factual matrix and the judicial pronouncements, we hold that the Ld. CIT (A)'s order is perverse to the facts on record as he has confirmed the order of Ld. AO in a routine manner without appreciating merits of the case. We, therefore, quash the impugned order in respect of the assessment year 2011-12 in ITA No. 55/Asr/2019.

25. The facts in ITA No. 55/Asr/2019 in respect of Asstt. Year 2011-12 to the facts in the bunch of the appeals are identical on parity of facts and therefore, our observation and finding given in the ITA No. 55/ASR/2019 in respect of the Assessment Year 2010-11 shall be applicable to the bunch of appeals in ITA Nos. 56 to 58/ASR/2019 and 60 to 63/ASR/2019 in respect of the Assessment Years 2010-11 to 2013-14, in *mutatis mutandis*.

26. The additional ground and the Ground No. 7,8 and 9 are legal ground, challenging the validity of assessment proceedings under section u/s 143(3)/147 of the Income Tax Act. 1961 on account of invalid reason being recorded by the AO to suspect and not to belief; non-service of notice issued u/s 148. Approval of the PCIT u/s 151(2) of the Act, and one

additional legal ground that Notice u/s 143(2) issued on the same day of filing of ITR in response to notice u/s 148, has rendered the impugned assessment as invalid since issuance of such notice u/s 143(2) on same day is invalid.

27. Since, the appellant assessee gets relief on merits and hence, the legal issue rendered academic and not adjudicated.

In ITA No. 59 & 64/Asr/2019:

28. The appellants have raised following identical grounds of appeal against the penalty levied u/s 271(1)(c) of the Income Tax Act, in ITA No. 59 & 64/Asr/2019 in respect of the Assessment Year 2014-15.

- “1. That the order passed under section 250(6) by the Id. Commissioner of Income Tax (Appeals), Bathinda in Appeal No. 135-IT/17-18 dated 12.11.2018 is contrary to law and facts of the case.*
- 2. That in the facts and circumstances of the case, the Id. Commissioner of Income Tax (Appeals) gravely erred in passing a cryptic and non-speaking order.*
- 3. That in the facts and circumstances of the case, the Id. Commissioner of Income Tax (Appeals) gravely erred in upholding the penalty of Rs.54,61,000/- imposed by the Id. Assessing Officer under section 271(1)(c) of the Income Tax Act, 1961.*
- 4. That the appellant craves to add, amend or alter any ground of appeal before or at the time of hearing of appeal, with the permission of the Hon'ble Income Tax Appellate Tribunal.”*

29. The Ld. AR submitted that during survey, the father-son agreed to make disclosure of Rs. 1.60 crores and Rs. 1.40 crores as additional income from their construction business and filed their ITR for AY 2014-15 (survey year) disclosing this additional income. The assessment for that year was completed wherein this disclosure of additional income was accepted with minor addition of Rs. 64,000/- and Rs. 66,000/- respectively in the cases of father and son. The assessee having not preferred any appeal against this quantum assessment for that AY 2014-15, the AO, imposed penalty u/s 271(l)(c) on such additional income disclosed and minor additions which has been confirmed by the CIT(A) by observing as under:

“3.2 I have given careful consideration to the entire gamut of facts and it is to be noted that on the date of survey on 18/02/2014 the appellant was made aware that even though the financial year has not yet concluded but there was enough evidence of income of the current financial year which has not been disclosed. The statements were recorded in the survey where the additional income was disclosed by the appellant.

*Hon'ble jurisdictional High Court in the case of **B K Jain Vs. CIT, (2017) 81 taxmann.com 134 (P&H)** has taken judicial notice of the fact that there are instances where during the course of survey the assessee was found to be clearly hiding income but yet there was audacity of being defiant and not filing the return. The Hon'ble court took a view that such cases cannot go out of the clutches of penal provisions. In the present case, the appellant has been made aware of the default in the month of February 2014 and it took more than two years for the appellant to realise that there existed a legal obligation under Income Tax Act to file return of income disclosing undisclosed part of income*

which has been unearthed during the course of survey proceedings u/s 133A of Income Tax Act. The appellant has been palpably defiant and therefore the Assessing Officer was justified in invoking penal provisions and eventually levying penalty u/s 271(1)(c) of the Act.

*The contention that the appellant that he has filed return of income voluntarily disclosing the income does not hold good in view of decision in the case of **Rajesh Chawala v. CIT** reported in 203 CTR 209, where Hon'ble Punjab & Haryana High Court has held that the assessee has filed (revised) return surrendering additional income only on coming to know about the detection of concealment by the department and that it is not a case of bona fide voluntary disclosure, penalty under section 271(1)(c) is leviable. Hence, it is not possible to hold that in every case mere surrender of income will foreclose any action of concealment of income. The penalty is levied on the basis of the relevant material and revised return was filed on coming to know about the detection of the concealment and the assessee cannot escape penalty merely on the ground that he has surrendered the impugned amount.*

*The initiation of reassessment proceedings by the Assessing Officer has also made the appellant culpable and amenable to penal provisions of the Income Tax Act. Hon'ble jurisdictional High Court in the case of *Prempal Gandhi v. CIT*, [2009] 185 Taxman 64 (Punjab & Haryana) laid down that the defiant taxpayer would not be absolved of penal provisions merely because the return has been correctly filed in response to reassessment notice u/s 148 of Income Tax Act when there was clear concealment. In the present case, it was an admitted concealment which the appellant did not disclose till reassessment proceedings were mounted. The levy of penalty was justified hence the grounds of appeal are dismissed.”*

30. The Ld. AR contended that the cryptic and non-speaking order passed under section 250(6) by the Id. Commissioner of Income Tax (Appeals), Bathinda in Appeal No. 135-IT/17-18 dated 12.11.2018 is contrary to law and facts of the case and that he gravely erred in upholding the penalty of Rs.54,61,000/- imposed by the Id. Assessing Officer under

section 271(1)(c) of the Income Tax Act, 1961. The Ld. AR has filed a synopsis on penalty u/s 271(1)(c) that reads as under:

- “1. The assessee is an individual. His father is Late Sh. Gurmail Singh who was working as an administrator in M/s Satguru Foundation, Muktsar. The present appeals are of Sh. Arshpreet Singh (Son) & Late Sh. Gurmail Singh (Father). Identical facts and issues are involved in the appeals of all years of both the appellants and therefore, a single consolidated synopsis is being filed herewith.*
- 2. A survey u/s 133A was carried out at the premises of M/s Satguru Foundation on 18.02.2014 (AY 2014-15) who was running a College at its premise. Sh. Gurmail Singh was an ordinary member of the Foundation and was not a key member.*
- 3. During the above survey, Arshpreet agreed to disclose additional income of Rs. 1.40 crores and Gurmail Singh agreed to disclose additional income of Rs. 1.60 crores.*
- 4. Subsequently, both declared the above income in their respective ITRs filed for survey year i.e. AY 2014-15. This was disclosed under the Head Other sources. In assessment framed u/s 147 for that year, Ld. AO assessed it u/s 68 r.w.s. 115 BBE but taxed it at same rate of 30% as was paid by the assessee under the Head other sources. The higher tax rate of 60% u/s 115BBE was introduced from AY 2017-18. On this exercise carried out by the Ld. AO of replacement of head of income, he imposed penalty for “furnishing of inaccurate particulars of income”. This was confirmed by Worthy CIT(A) against which we are in appeal before the Hon'ble Bench.*
- 5. Another addition of Rs. 66,000/- (In case of Arshpreet Singh) and Rs. 64,000/- (in case of Gurmail Singh) regarding the alleged unexplained source of cash deposit in the bank account was also made. On this addition, penalty u/s 271(1)(c) for concealment of particulars of income was imposed and confirmed by Worthy CIT(A) against which also we are in appeal before the Hon'ble Bench.*

6. *It is a matter of record that the appellant gracefully accepted the quantum assessment order for the year in question and no appeal there-against was filed. It is only the imposition of impugned penalty u/s 271(1)(c) that the appellant got aggrieved and is in appeal before the Hon'ble Bench."*

31. In support, the Ld. AR placed reliance on ITAT Mumbai Bench in the case of ACIT vs Krishna C. Tandon (HUF) [ITA No. 2048/Mum/2016 (Mum Trib.)]. The relevant part of the order is reproduced as under:

"Heard and perused relevant material on record. We find that penalty has been imposed for merely change of head of income whereas there is no change in the loss figures offered by the assessee in the return of income. The assessee offered the loss under the head capital gains which, in the opinion of Ld. AO, was assessable under the head business income. However, the basic condition viz. furnishing of inaccurate particulars / concealment of particulars of income so as to attract the provisions of Section 271(l)(c) have remained unfulfilled in the present case. Therefore, penalty was not justified and the stand of Ld. CIT(A) was quite fair & logical and hence, the same do not require any interference on our part. "

*7.2.5 The fact that the assessee was carrying on business and the surrender is in respect of his business notings is part of reasons recorded by Ld. AO for the year in question. **A copy of these reasons are at Pages 09 to 10 of this synopsis.***

Therefore, it was not a situation of addition u/s 115BBE. Since there was no tax effect involved, the assessee did not prefer appeal for this academic exercise. But for that error on the part of Ld. AO penalty should not have been imposed.

*7.2.6 When income is surrendered in survey and subsequently declared in ITR u/s 148, penalty u/s 271(l)(c) is not imposable as held in **CIT vs. Rajiv Garg, 313 ITR 256 (P&H).***

7.2.7 The assessee had already declared income during survey on 18.02.2014. He did not have enough funds to pay tax and file ITR at that time. The time to file ITR u/s 139 expired on 31.03.2014 i.e. almost 1.5 months after survey.

Thereafter, the assessee could not have file the ITR since no provision permitted him to file it. Thereafter when the AO issued notice u/s 148, he filed the ITR declaring additional income. Therefore, the assessee never intended to conceal income. It was only due to non-payment of tax that he could not file the ITR in time. For non-filing of ITR in time, penalty u/s 271F is prescribed. For non-payment of tax in time, interest u/s 234A, 234B & 234C can be charged and penalty u/s 140A can be imposed. However, for the same offences, penalty u/s 271(l)(c) cannot be imposed.

32. The Ld. AR argued as regards to the addition of Rs. 66,000/- on account of alleged unexplained source of cash deposit in bank, that when the assessee had declared additional income of Rs. 1.40 crores during survey and that was not recorded in books, that explained the source of such small cash deposit. On this petty amount, therefore, penalty u/s 271(l)(c) was not imposable.

33. The Ld. DR on the other side relied on the impugned order.

34. We have heard both the sides, perused facts on record, and citations placed before us. Admittedly, during the survey, Arshpreet agreed to disclose additional income of Rs. 1.40 crores and Gurmail Singh agreed to disclose additional income of Rs. 1.60 crores and subsequently, both declared these incomes in their respective ITRs under the Head Other sources, filed for survey year i.e. AY 2014-15, in compliance to notice u/s 148 as the time limit for filling revised return was expired. In assessment

framed u/s 147 for that year, Ld. AO assessed it u/s 68 r.w.s. 115 BBE but taxed it at same rate of 30% as was paid by the assessee under the Head other sources because the higher tax rate of 60% u/s 115BBE was introduced from AY 2017-18. In view of amendment, this exercise carried out by the Ld. AO for replacement of head of income, he imposed penalty for “furnishing of inaccurate particulars of income” and this was confirmed by Worthy CIT(A). Another addition of Rs. 66,000/- (In case of Arshpreet Singh) and Rs. 64,000/- (in case of Gurmail Singh) regarding the alleged unexplained source of cash deposit in the bank account without appreciating the facts of availability of cash out of the surrendered income as above.

35. It is seen from the record that the appellant accepted the quantum assessment order for the year in question and no appeal there-against was filed. Thus, the AO levied penalty on the income which was though disclosed in the course of survey on 18/02/2014 but return was filed on 31/03/2016 in compliance to notice u/s 148 of the act. The AO and CIT relied upon decided cases of Hon'ble jurisdictional High Court.

36. In the present cases, the quantum addition stands deleted on the principle of peak theory and double taxation of same income by

assessment in different years, as above and hence consequential penalty levied would not survive. Further, we are of the considered view that the petty additions of Rs. 66,000/- in case of Arshpreet Singh and Rs. 64,000/- in case of Gurmail Singh regarding the alleged unexplained source of cash deposit in the bank account stands explained out of the surrender income of 3 crores. The citations relied by the AO and the CIT(A) are distinguished on peculiar facts of the instant case.

37. Accordingly, we hold that the Ld. CIT(A)'s order confirming the levy of penalty u/s 271(1)(c) is infirm and perverse to the facts on record. We, therefore, set aside the impugned order and thus, delete the levy of penalty u/s 271(1)(c) of the Act.

38. On parity of facts, our observation and finding given in ITA No. 59/Asr/2019 shall be quarly applicable to the matter in ITA No. 64/Asr/2019, in *mutatis mutandis*.

39. In the backdrop of the aforesaid discussion, the captioned bunch of appeals are disposed of in the terms and observation made as above.

Order pronounced in the open court on 25.05.2023

Sd//-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
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.

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