

**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. 10/Asr/2020
Assessment Year: 2014-15

Deputy Commissioner of
Income Tax, Circle-3,
Amritsar

(Appellant)

V. Smt. Raj Rani Arora
Prop. Raj Trading Co.,
Near Old Octroi, VPO
Gilwali, Tarn Taran Road,
Amritsar
[PAN: AFTPA 8624A]

(Respondent)

Appellant by Sh. Ashwani Kalia, CA

Respondent by Dr. Vedanshu Tripathi, Sr. DR

Date of Hearing : 24.05.2023
Date of Pronouncement : 16.06.2023

ORDER

Per Dr. M. L. Meena, AM:

The captioned appeal has been filed by the Revenue against the order dated 17.10.2019 passed by the Ld. Commissioner of Income Tax (Appeals)-1, Amritsar in respect of AY 2014-15, arising out of the

assessment order passed by the Dy. Commissioner of Income Tax, Circle-3, Amritsar.

2. The Revenue has raised the following grounds of appeal:

- “1. *Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A)-1, Amritsar was justified in deleting the addition of Rs. 1,75,00,000/- made by the Assessing Officer on account of on account of unexplained cash credits without appreciating the detailed reasons recorded by him in the assessment order.*
2. *Whether on the facts and circumstances of the case and in law, the Ld CIT(A)-1, Amritsar was correct in deleting the addition of Rs. 1,75,00,000/- made by the Assessing Officer on account of unexplained cash credit without appreciating the facts that the assessee has failed to prove creditworthiness of creditors namely Shri Amandeep Singh and Shri Sukhdeep Singh and also failed to prove genuineness of the transaction.*
3. *Whether on the facts and circumstances of the case, the Ld CIT(A)-1, Amritsar was justified in deleting the addition of Rs. 1,75,00,000/- without appreciating the facts that in the course of assessment proceedings the creditors could not produce necessary documentary evidences to prove their creditworthiness and sources of huge cash deposits in their bank account just before advancing loan to the assessee.*
4. *Whether on the facts and circumstances of the case, the Ld CIT(A)-1, Amritsar was correct in deleting the addition of Rs. 1,75,00,000/- by admitting the cash flow statements of the loan submitted before the Assessing Officer; by recording the statements of the loan creditors during appellate proceedings and by estimating the agricultural income of the creditors suo-motto, without affording opportunity to the Assessing Officer to examine the new facts and arguments put before him.*
5. *Whether on the facts and circumstances of the case, the Ld CIT(A)-1, Amritsar was correct in estimating the agricultural income of the loan creditors on lease hold land whereas there was no evidence that the loan creditors had taken land on lease for the agricultural activities.*

6. *Whether on the facts and circumstances of the case, the Ld CIT(A)-1, Amritsar was correct in admitting and estimating the agricultural income as a source of cash deposits without considering the facts that there was no evidence of types of crops grown, quantity of agricultural produce and value of such agricultural produce and also the fact that the loan creditors have not shown any agricultural income in their return of income.*
7. *Whether on the facts and circumstances of the case, the Ld CIT(A)-1, Amritsar was justified in deleting the disallowance of Rs. 11,82,945/- made by the Assessing Officer on account of claim of payment of interest on the unexplained cash credits.*
8. *Appellant craves leave to add, amend or alter any grounds of appeal.”*

3. The department has raised a sole major issue spread over into 4 grounds of appeal regarding deletion of addition of Rs.1,75,00,000/- made by AO on account of unexplained cash credit without appreciating the facts of the case.

4. Briefly the facts as per record are that during the scrutiny assessment proceeding, the AO noted that assessee is misusing its account of KCC premium (cash credit) ltd for money laundering by depositing the unexplained cash into that account and further issuing cheques from that account to other persons. AO considered the net income of all lands (25 acre as owner and other 25 acre on contract), income of Rs 12,50,000/- @ Rs 50000/- per acre as stated by his brother Sh. Sukhdeep Singh (although Amandeep stated to have hardly any income) was worked out on own land

and Rs 2,00,000/- from entire land on contract of 25 acre @ maximum stated at Rs 8000/- acre and thus total net income was worked out at Rs 14,50,000/- When Sh. Amandeep Singh had deposited Rs 2.07 crore in his account (Rs 1.07 crore extra loan given to the assessee) and which is not explained, therefore the AO concluded that amount of cash of Rs 1 crore converted into loan is remained unexplained.

4.1 Similarly, in the case of Sh Sukhdeep Singh, Ajnala, the AO observed that the assessee has failed to prove the genuineness of the transaction, and creditworthiness of the payee. The assessee only submitted the bank statement of the person without any sources of the deposits in the bank. The amount has been paid out of cash of Rs.75,00,000/- was deposited immediately in the cash credit (KCC Premium) account no. 617044008339 and transferred the same to his saving account from where cheques were issued to the assessee. The cash of Rs. 50,00,000/- and Rs.25,00,000/- was deposited in the KCC account on 28/06/2013 and 02/07/2013 respectively. Therefore, the AO concluded that the assessee was misusing the said account of KCC premium (cash credit limit) for money- laundering by depositing unexplained cash into the account and further issuing cheques from that account to the assessee whom he does not know. Accordingly, the AO held

that the entire amounts of cash of Rs. 75,00,000/- deposited in the account and converted into loan is totally unexplained.

4.2 In compliance to show cause notice of the AO, the AR of the assessee replied that assessee had to raise loan as he needed funds to make payment to purchase parties for supply of Bardana. The loans were taken by account payee cheques; the depositors are income tax assessee; both the depositors appeared before the AO and confirmed the loans transaction and therefore their identity is established. The fact of giving loans to the assessee is admitted by Sh Amandeep Singh and Sh Sukhdeep Singh and they admitted to have signed the cheques even though business affairs were looked after by his brother. Both depositors are men of means and have KCC limit from bank. That the cash withdrawn from these CC limit was redeposited and utilized to give loans to creditors. These depositors have stated in their statements that they have not received any cash from any person. The depositors are frequently withdrawing cash from KCC account and depositing the same- in KCC limit and this cash in hand was available with them for making loans to the assessee. That Sh. Amandeep Singh had withdrawn cash from HDFC KCC limit which was later deposited by him in his KCC limit with Kotak Mahindra Bank. Thus the assessee had established the identity of depositors,

genuineness of loans and creditworthiness of the depositors. Therefore, the loans are genuine.

4.3 Being not satisfied with the reply of the assessee, the AO held that both the assessee and relevant persons failed to prove the genuineness of transaction and creditworthiness of the payee. Further, the AO stated that in their statements the depositors have not given any reason for withdrawing cash and redepositing the same. It is a fact that cash available with the depositors being withdrawn by them from their KCC limit was used by them to give advance. The AO held that assessee has failed to prove creditworthiness and genuineness of transaction and source of deposit of cash in lump sum before issuing cheques to the assessee. Accordingly, the AO added back Rs. 1,75,00,000/- to the total income of the assessee.

5. The assessee being aggrieved with the Assessment Order, went in appeal before the Ld. CIT(A) who has granted relief to the assessee by observing as under:

“Decision:- In the year under consideration the appellant had received unsecured loans of Rs. 1,00,00,000/- from Sh Amandeep Singh, Amritsar and Rs. 75,00,000/- from Sh Sukhdeep Singh, Amritsar. For the reasons discussed by the AO in the assessment order and whose salient points are stated above, the AO held that the said unsecured loans were unexplained credits and added back to the total income.

After considering the assessment order, the written submissions of the appellant, the said unsecured loans are examined and the grounds of appeal are adjudicated here under:-

(i) Unsecured loans of Rs. 1,00,00,000/- from Sh Amandeep Singh:-

In the assessment order the AO observed that the amount has been paid out of ash deposited in the cash credit (KCC Premium) account no. 617044010848 of Rs.98,00,000/- and transferring the same into his saving account from where cheques were issued to the assessee. **The cash deposited in the KCC account was Rs.50,00,000/- and Rs. 50,00,000/- deposited on 27/06/2013 and 29/06/2013 respectively.** From his saving bank account Sh. Amandeep Singh issued cheques to the assessee of Rs. 40,00,000/-, Rs 30,00,000/- and Rs. 30,00,000/- on 28/06/2013, 04/07/2013 and-05/07/2013 respectively.

It is observed by AO that cash of Rs. 1,00,00,000/- has been deposited within two days @ Rs 50,00,000/- each. Sh Amandeep Singh had filed return of income for AY 2014-15 at an income of Rs 4,79,520/- mainly on account of commission income of Aharatiya and interest income. No agriculture income was declared in his return of income. Likewise no agriculture income has been shown by Sh. Amandeep Singh in his returns of income for AY 2012-13 to 2015-16. In his statement on oath recorded by the AO in reply to the query about the source of cash deposited in the said KCC premium account he replied that it is the money of the bank returned to the bank and on account of produce of agriculture land. In reply to question no 6 he had stated that he has not received any cash from any person during the year. Sh Amandeep Singh had stated before the AO vide written submission that agriculture land was inherited by him in HUF capacity and that he had taken 25 acres land on contract from Sh Harpal Singh but he failed to produce Sh Harpal Singh before the AO. It was stated that contract from Sh Harpal Singh was taken for 2 years either in 2012-13 and 2013-14 and thereafter no land was taken on contract. No return of income was filed by Sh Amandeep Singh in his HUF capacity.

It was observed by AO that vide statement recorded in local Punjabi Language on 07/10/2016 , Sh Amandeep Singh has stated that during FY 2013-14 he had withdrawn cash from KCC account for agricultural purposes and after using deposited in the bank.

The AO had considered the net agriculture income of Sh Amandeep Singh from the all the lands namely 25 acres as owner and 25 acres on contract and computed the net agriculture income @ 50,000/- per acre as stated by his brother Sh. Sukhdeep Singh at Rs 12,50,000/- and added Rs. 2,00,000/- from entire land on contract of 25 acres @ Rs 8,000/- per acre. Therefore, the AO concluded that Sh Amandeep Singh and his brother are misusing the said KCC premium account for money laundering by depositing unexplained cash into the KCC premium account and issuing cheques from that account to the assessee.

In support of his ground of appeal the contention of the appellant is that both the depositors are primarily agriculturist and were having Kissan Credit Card Limit of Rs. 98,00,000/- and Rs. 75,00,000/- respectively with Kotak Mahindra Bank. It was explained that balance in the saving account of Sh Amandeep Singh was by way of transfer from his Kissan Credit Card Premium Account. As regards availability of cash for deposit in the KCC premium account, it was explained that cash was available with

the depositors out of cash withdrawals from KCC account earlier and from the sale of produce of agriculture land. Sh. Amandeep Singh was the owner of 25 acre agriculture land and had taken 25 acre on lease from Sh. Harpal Singh.

Sh. Amandeep Singh deposited Rs. 50,00,000/- in his KCC premium cash credit account on 27.06.2013 and immediately transferred an amount of Rs. 50,00,000/- on 28.06.2013 to his saving bank account in Kota Mahindra Bank. Likewise while Sh. Amandeep Singh deposited Rs. 50,00,000/- in his KCC premium cash credit account in Kotak Mahindra Bank on 29.06.2013 and transferred Rs. 25,00,000/- and Rs. 25,00,000/- on 01.07.2013 and 02.07.2013 respectively therefrom to his savings bank account in the same bank. Sh. Amandeep Singh then transferred amounts of Rs. 40,00,000/-, Rs. 30,00,000/- and Rs. 30,00,000/- on 28.06.2013, 04.07.2013 and 05.07.2013 respectively to Smt. Raj Rani Arora from his said savings bank account in Kotak Mahindra Bank.

The gross receipts of the Sh. Amandeep Singh from sale of agriculture produce during F.Y. 2013-14 in view of the above facts of the case and the statement of Sh. Amandeep Singh are **recomputed** as under-

(a). Net agriculture income from own land from main crops wheat & paddy has been estimated @ Rs. 50,000/- per acre on the basis of statement of Sh. Sukhdeep Singh, the brother of Sh. Amandeep Singh recorded by the AO in assessment proceedings and the decisions of Hon'ble ITAT, Amritsar in several cases. Therefore, net income from 25 acre of own land of Sh. Amandeep Singh comes to Rs. 12,50,000/-. The gross receipts work out to Rs. 17,85,714/-.

2. As explained by Sh. Amandeep Singh, on the agriculture land taken on lease by him he had the same income as from own lands. Therefore, the gross receipts on sale of crops grown on leased agriculture land would be the same as from the agriculture land owned by Sh. Amandeep Singh. Therefore, the gross receipts of Sh. Amandeep Singh from sale of major crops (wheat and paddy) grown on leased land works out to Rs. 17,85,714/- also.

The gross agriculture receipts of Sh. Amandeep Singh during the F.Y. 2013-14 are therefore accepted at Rs. 17,85,714 X 2 = **Rs. 35,71,428/-**. Sh. Amandeep Singh had shown his gross agriculture receipts of the F.Y. 2013-14 at Rs. 55,35,649/- which is therefore not accepted since the same is not supported with any J form or any other evidence.

(b) Further the source of cash deposits of Rs. 50,00,000/- and Rs. 50,00,000/- on 27.06.2013 and 29.06.2013 respectively were stated to be from cash withdrawn from KCC cash credit account of Sh. Amandeep Singh in Kotak Mahindra Bank. The copy of the KCC premium account of Sh. Amandeep Singh in Kotak Mahindra Bank as above reveals the following cash[^] withdrawals and cash deposits upto 17.06.2013.

Date	Transaction	Withdrawal (Dr)	Deposits(Cr)
02/05/2013	Self	30,00,000/-	
06/05/2013	Self	37,00,000/-	
08/05/2013	Self	2,00,000/-	
10/05/2013	Cash deposit		37,00,000/-
11/05/2013	Cash deposit		13,00,000/-
14/05/2013	Cash self	15,00,000/-	
15/05/2013	Self	7,00,000/-	
17/05/2013	Cash deposit		7,00,000/-

27/05/2013	Self	.2,00,000/-	
30/05/2013	Self	6,00,000/-	
04/06/2013	Self	3,00,000/-	
05/06/2013	Self	10,00,000/-	
17/06/2013	Self	14,40,000/-	
	Total	1,26,40,000/-	57,00,000/-

It was stated by Sh. Amandeep Singh in his statement recorded by the AO in the assessment proceedings that he had withdrawn cash from his KCC premium -cash credit account during F.Y. 2013-14 for agriculture purposes and after utilizing the same, he had deposited the unused amount back in the same KCC premium cash credit account.

In this regard statement of Sh. Amandeep Singh was recorded by the undersigned on 13.09.2019 and he was confronted on this statement. He was asked to explain the purpose of cash withdrawals of Rs. 126,40,000/- between 01.04.2013 to 17.06.2013 from the said KCC premium cash credit account and he replied that there was hardly any expenditure on cultivating the land during this period except for preparing the land for the next crops as well as sowing of the next crop. He stated that these withdrawals were basically with the intention to purchase land which was re-deposited in the KCC premium as no deal could materialize. Obviously, **such huge withdrawals by no stretch of imagination was for agriculture operations in this period.** The expenditure in this period from 01.04.2013 to 15.06.2013 on agriculture was at best between Rs. 3500/- to Rs. 4000/- per acre on leveling of land, watering, sowing and some manuring. However Sh. Amandeep Singh has failed to furnish any evidence in

the form of bills/ vouchers of agriculture expenses since the matter is more than 6 years old.

Be that it may, it has been held by Hon'ble High Courts and Hon'ble ITATs that roughly the agriculture expenses are about 30% of the gross receipts. Therefore, out of the cash withdrawals from the KCC premium cash credit account of the assessee in Kotak Mahindra Bank during the period 01.04.2013 to 15.06.2013 as above, Sh. Amandeep Singh would have utilized about 30% of his gross agriculture receipts of the year for agriculture expenses i.e. the gross agriculture expenses of Sh. Amandeep Singh during the year under consideration would be 30% of Rs. 35,71,428/- or Rs. 10,71,428/-.

The yearly agriculture expenditure would be Rs. 10,71,428/- for earning gross receipts of Rs. 35,71,428/-. **However the agriculture expenditure of Sh. Amandeep Singh during 01.04.2013 to 15.06.2013 i.e. for 2 ½ months of the year would have been Rs. 2,23,214/- only.**

In the cash flow statement of Sh. Amandeep Singh during the period 01.04.2013 to 20.02.2014 submitted during appeal proceedings has shown agriculture receipts of Rs. 18,35,907/- in the period 01.04.2013 to 17.06.2013 out of gross agriculture receipts during the said period from 01.04.2013 to 20.02.2014 of Rs. 55,35,649/- i.e. 33% percent of gross receipts.

In the same ratio, the agriculture receipts of Sh. Amandeep Singh in the period 01.04.2013 to 17.06.2013 is upheld at 33% of Rs. 35,71,428/- or **Rs. 11,78,571/-**, which amount was available with him for deposit in the KCC premium cash credit account during the year under consideration.

Now coming to the cash available with Sh. Amandeep Singh out of cash withdrawals from the KCC premium cash credit account for re-deposit in the same account. Obviously, Sh. Amandeep Singh had not withdrawn the cash from his KCC premium cash credit account only for meeting the agriculture expenses of agriculture operations performed by him during the year under consideration. In his statement recorded -by the undersigned in appeal proceedings Sh. Amandeep Singh had stated that these withdrawals were basically with the intention to purchase land and when the deal did not materialize, he re-deposited the amount of unused cash withdrawal in the KCC premium cash credit account. I agree with this explanation of Sh. Amandeep Singh for reasons given above that such huge withdrawals by no stretch of imagination was for agriculture operations in this period. In the period 01.04.2013 to 17.06.2013 the net cash available with Sh. Amandeep Singh after deducting Rs. 2,23,214/- on account of expenditure incurred for agriculture operation during this period as discussed above was only Rs. (1,26,40,000 - 57,00,000 - 2,23,214) = **Rs. 67,16,786/-**.

In the cash flow statement of Sh. Amandeep Singh for the F.Y. 2013-14 he has shown opening cash balance as on 01.04.2013 was of Rs. **31,01,679/-**. The appellant has explained the generation of opening cashing hand as under-

1.	12-12-2012	Agriculture receipts	Rs	164,864/-
2.	18.12.2012	Agriculture receipts	Rs	226,902/-
3.	28-12-2012	Agriculture receipts	Rs	263,318/-
4.		KOTAK MAHINDRA BANK (CASH WITHDRAWAL)	Rs	22,50,000/-
5.	2-01-2013	Agriculture receipts	Rs	60,676/-
6.	16-1-2012	Agriculture receipts	<u>Rs</u>	<u>135,919/-</u>
			Rs	31,01,679/-

It was submitted by the appellant in written submission and discussion during the course of hearing that the sum of Rs 22,50,000/- was withdrawn from HDFC bank. That he had a KCC limit account with HDFC bank" earlier from where he had withdrawn this amount. The said loan amount of Rs 22,50,000/- was taken over by Kotak bank by paying to HDFC bank amount of Rs 22,50,000/- on 30.1.2013. This is apparent from the narration of the entry on 30.1.2013 in the bank statement of Kotak Mahindra Bank KCC account under consideration, filed with his written submissions. This amount of Rs 22,50,000/- was thus available with the appellant and therefore the same has been included in the opening cash balance as on 1.4.2013. In addition there were also agriculture receipts in respect of sale of paddy crop of the season which was also available as cash in hand. Thus opening cash in hand of Rs 31,01,679/- is fully justified.

The above explanation of the appellant of the opening cash in hand as on 1.4.2013 was considered. The copy of statement of KCC premium cash credit account of Sh. Amandeep Singh in Kotak Mahindra Bank available on record was perused which revealed a debit entry of Rs 22,50,000/- on 30.1.2013 with narration "*take over payment to HDFC bank manimajra branch, Manimajra*". This payment was therefore the takeover of the loan amount of Sh. Amandeep Singh of Rs 22,50,000/- by paying to HDFC bank by Kotak Mahindra bank.

Therefore there is merit in the explanation of Sh. Amandeep Singh that he had withdrawn Rs 22,50,000/- from his KCC Limit account with HDFC bank earlier. However it cannot be said that the whole amount of cash withdrawn by Sh. Amandeep Singh of Rs 22,50,000/- from his KCC account in HDFC bank in FY 2012-13 was available with him as on 1.4.2013 because Sh. Amandeep Singh had been making withdrawals from his KCC premium accounts for agriculture purposes. In absence of any evidence to the contrary, and considering the pattern of cash withdrawals and cash deposits in his KCC premium account in Kotak bank by Sh. Amandeep Singh in FY 2013-14 as discussed above, and considering his gross agriculture receipts and gross

agriculture expenses in FY 2012-13 to be the same as in FY 2013-14, it is held that the agriculture expenditure incurred by Sh. Amandeep Singh during FY 2012-13 out of cash withdrawals from his KCC account in HDFC bank was Rs 10,71,428/-.

In absence of copy of bank statement of his KCC account in HDFC bank during FY 2012-13 and in absence of any evidence of investment/expenses incurred out of cash withdrawals therefrom in FY 2012-13 (except agriculture expenses of Rs 10,71,428/-), on conservative basis it is estimated that at least 50% of the said cash withdrawal of Rs 22,50,000/- in FY 2012-13 from KCC account in HDFC bank i.e. Rs 11,25,000/-, was available with him as on 1.4.2013 as cash in hand out of cash withdrawals of Rs 2,50,000/- from his KCC account in HDFC bank during FY 2012-13.

Further, since Sh. Amandeep Singh is an agriculturist who was cultivating 25 acre of his own land and 25 acre land taken on lease from Sh. Harpal Singh in FY 2012-13 and whose gross agriculture receipts in FY 2012-13 has been taken at Rs 35,71,428/- as in FY 2013-14 (above),, therefore the cash receipts of Rs 164,864/- , Rs 226,902/-, Rs 263,318/-, Rs 60,676/- and Rs 135,919/- during December 2012 and January 2013 respectively as given in the details of opening cash balance as on 1.4.2013 is accepted.

Therefore the opening cash balance in the hands of Sh. Amandeep Singh as on 1.4.2013 is upheld only to the extent of Rs (11,25,000 +164,864/- + 226,902/-+ 263,318/-+ 60,676/- + 135,919/-) = Rs 19,76,679/- only.

Therefore, in view of the above discussion, it is held that the cash available with Sh. Amandeep Singh as on, 17.06.2013 i.e. immediately before depositing cash of Rs. 50,00,000/- and Rs. 50,00,000/- in his KCC premium cash credit account in Kotak Mahindra Bank on 26.06.2013 & 29.06.2013 respectively was as under-

i.	Opening cash in hand	Rs.	19,76,679/-	*
ii.	Receipts of agriculture	Rs.	11,78,571/-	
iii.	Receipts of vegetables & animal fodder	Rs	5,00,000/-	
iv.	Cash withdrawals from KCC premium CC a/c	Rs.	67,16,786/-	
	Total cash available =	Rs.	103,72,036 /-	as on 17.06.2013^

Therefore, Sh. Amandeep Singh had cash in hand available at more than Rs. 1 crore as on 17.06.2013 immediately before depositing cash of Rs. 50,00,000/- and Rs. 50,00,000/- in his KCC premium cash credit account in Kotak Mahindra Bank on 26.06.2013 & 29.06.2013 respectively. Therefore it is held that Sh. Amandeep Singh is creditworthy to deposit Rs 50,00,000/- and Rs. 50,00,000/- in his KCC premium cash credit account in Kotak Mahindra Bank on 26.06.2013 & 29.06.2013 respectively.

Moreover it has been explained by the appellant in written submissions that the assessee has paid interest @12 percent to Sh. Amandeep Singh and had also deducted tax at source thereon. The appellant had submitted the copy of account of the loan creditor Sh. Amandeep Singh in his books of account for F.Y. 2014-15, 2015-16, 2016-17 & 2017-18 to show that the assessee has repaid the entire borrowed amount to the loan creditor Sh. Amandeep Singh by 01.12.2017 with interest and the balance in his account as on 31.03.2018 is Nil. In support the appellant has also submitted the copies of TDS returns filed by the assessee showing the amount of tax deducted at source on interest paid to the loan creditors. This also proves the genuineness of the loan advanced by Sh. Amandeep Singh to the appellant in the year under consideration.

Moreover, the identity of Sh. Amandeep Singh is established as he attended before the AO and in the appeal proceedings and he is income tax return filer; his credit worthiness to advance Rs. 1 Crore to the appellant is established as discussed above, and the genuineness of transaction of giving loan through banking channel is also established. Therefore all the ingredients of section 68 of the act are satisfied with regard to loan*of Rs 1,00,00,000/- received by the appellant from Sh. Amandeep Singh in the year under consideration and no addition of Rs. 1,00,00,000/- is called for u/s 68 of the act in respect of loan from Sh. Amandeep Singh and the same is hereby **deleted**.

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The gross receipts of Sh. Sukhdeep singh from sale of agriculture produce during F.Y. 2013-14 in view of the above facts of the case are **recomputed** as under-

(a). Net agriculture income from own land has been estimated @ Rs. 50,000/- per acre on the basis of statement of Sh. Sukhdeep Singh, recorded by the AO in assessment proceedings and the decisions of Hon'ble ITAT, Amritsar in several cases. Therefore, net income from 23 acre of own land of Sh. Sukhdeep Singh comes to Rs. 11,50,000/-. The gross receipts work out to Rs. 16,42,857/-.

2. It was stated by Sh. Sukhdeep Singh in his statement on oath recorded by the AO that he earned net yearly income from lands taken on lease were nearly Rs 7000 to Rs 8000/- per acre during FY 2013-14. However he also stated that he was cultivating and managing the land and his brother Sh. Amandeep singh was dealing with the accounts. Therefore Sh. Amandeep Singh was in a better position to explain the actual income derived from the lands taken on lease by him and his brother jointly of 35 acre from Sh. Baljit Singh.

As explained by Sh. Amandeep Singh in his statement recorded by the undersigned on 13.9.2019 that he looked after the financial matters and his brother Sh. Sukhdeep

Singh was not aware at all of the financial matters and accounting. And that it was unbelievable that the income from leased lands was only Rs 8000/- per acre.

Sh. Amandeep singh had also stated in his statement recorded by the undersigned and 13.9.2019 that on the agriculture land taken on lease the income is the same as in the case of own lands which to his mind was between Rs 65000/- to Rs 70000/- per acre out of which Rs 18000/- to Rs 20000/- per acre was paid as leased charges and the balance was their income. The land taken on lease is not barren land but fully irrigated with power connection and having tubewell and also having canal water facilities. Therefore he implied that he had grown the same main crops as on the agriculture lands owned by him namely paddy & wheat, grass for fodder etc. whereas in between after the harvesting of wheat and growing paddy there was ample time to grow cash crops like animal fodder, and vegetables which are not shown in the cash flow statement. With these the income from agriculture was much more than Rs 50000/- per acre.

It is usual practice of farmers of Punjab to grow vegetables and animal fodder in months of April to June i.e. after harvesting wheat. Therefore sale of vegetables and *animal* fodder cannot be denied. Considering the total agricultural land area of 23 acres own *land* and 35 acres of leased land, the net income from sale of vegetables and animal fodder is accepted at **Rs 550,000/-** in view of the statement of Sh. Amandeep Singh recorded by undersigned in appeal proceedings in the present case on 13.9.2019 as above.

The gross receipts on sale of crops grown on leased agriculture land would-be- the same as from the agriculture land owned by Sh. Sukhdeep Singh, also the **net** income from own land and net income from leased land (before payment of lease rent) is considered the same @ Rs 50,000/- per acre in view of above facts. The net income (before payment of lease rent) of Sh. Sukhdeep Singh on leased land also works out to Rs (50000 x 35) = Rs 17,50,000/-. Therefore the gross receipts of Sh. Sukhdeep Singh in FY 2013-14 from term leased lands works out to Rs 25,00,000/-

The gross agriculture receipts of Sh. Sukhdeep Singh during the F.Y. 2013-14 were therefore Rs. (16,42,857 + 25,00,000) = **Rs. 41,42,857/-**. Sh. Sukhdeep Singh had shown his gross agriculture receipts of the F.Y. 2013-14 at Rs. 31,92,872/- in the cash flow statement which is less than the gross receipts computed above at Rs 41,42,857/- and therefore the gross receipts from agriculture as shown in the cash flow statement of Sh sukdeep singh for FY 2013-14 at Rs 31.92,872/- is accepted.

(b) Further the source of cash deposits of Rs. 50,00,000/- and Rs. 25,00,000/- on 28.06.2013 and 2.7.2013 respectively were stated to be from cash withdrawn from KCC cash credit account of Sh. Sukhdeep Singh in Kotak Mahindra Bank.

The copy of the KCC premium account of Sh Sukhdeep Singh in Kotak Mahindra Bank as above reveals the following cash withdrawals and cash deposits upto 02.07.2013.

Date	Transaction	Withdrawal (Dr)	Deposits(Cr)
6.5.2013	Cash deposit		37,00,000
7.5.2013	Cash deposit		6,00,000
10.5.2013	Cash withdrawal	37,00,000	
17.6.2013	Cash withdrawal	30000/-	

It was stated by Sh. Amandeep Singh in his statement recorded by the AO in the assessment proceedings that he had withdrawn cash from his KCC premium -cash credit account during F.Y. 2013-14 for agriculture purposes and after utilizing the same, he had deposited the unused amount back in the same KCC premium cash credit account.

In this regard statement of Sh. Amandeep Singh was recorded by the undersigned on 13.09.2019 and he was confronted on this statement. He was asked to explain the purpose of cash withdrawals of Rs. 126,40,000/- between 01.04.2013 to 17.06.2013 from the said KCC premium cash credit account and he replied that there was hardly any expenditure on cultivating the land during this period except for preparing the land for the next crops as well as sowing of the next crop. He stated that these withdrawals were basically with the intention to purchase land which was re-deposited in the KCC premium account as no deal could materialize. Obviously, **such huge withdrawals by no stretch of imagination was for agriculture operations in this period.** The expenditure in this period from 01.04.2013 to 15.06.2013 on agriculture was at best between Rs. 3500/- to Rs. 4000/- per acre on leveling of land, watering, sowing and some manuring. However Sh. Amandeep Singh has *failed* to furnish any evidence in the form of bills/ vouchers of agriculture expenses since the matter is more than 6 years old.

Be that it may, it has been held by Hon'ble High Courts and Hon hie ITATs that roughly the agriculture expenses are about 30% of the gross Receipts. Therefore, out of the cash withdrawals from the KCC premipm cash credit account of the assessee in Kotak Mahindra Bank during the period QL04.2013 to 02.07.2013 as above, Sh. Sukhdeep Singh would have utilized about 30% of his gross agriculture receipts of the year for agriculture expenses i.e. the gross

agriculture expenses of Sh. Sukhdeep Singh during the year under consideration would be 30% of Rs 31,92,872/- or Rs. 957,861/-.

The yearly agriculture expenditure would be Rs. 957,861/- for earning gross receipts of Rs. 31,92,872/-. **Therefore the agriculture expenditure of Sh. Sukhdeep Singh during 01.04.2013 to 2.7.2013 i.e. for 3 months of the year would have been Rs. 239,465/- only.**

In the cash flow statement of Sh. Sukhdeep Singh during the period 01.04.2013 to 7.12.2013 submitted during appeal proceedings has shown agriculture receipts of Rs. 15,31,192/- in the period 01.04.2013 to 17.06.2013 out of gross agriculture receipts during the said period from 01.04.2013 to 7.12.2013 of Rs. 31,92,872/- which have been accepted as above. **Therefore the gross agriculture receipts of Rs 15,31,192/- during the period 1.4.2013 to 17.6.2013 shown in the cash flow statement is upheld.**

(c) Now coming to the cash available with Sh. Sukhdeep Singh out of cash withdrawals from the KCC premium cash credit account for re-deposit in the same account. Obviously, Sh. Sukhdeep Singh had not withdrawn the cash from his KCC premium cash credit account **only** for meeting the agriculture expenses of agriculture operations performed by him during the year under consideration. In his statement recorded by the undersigned in appeal proceedings Sh. Amandeep Singh had stated that these withdrawals were basically with the intention to purchase land and when the deal did not materialize, he re-deposited the amount of unused cash withdrawal in the KCC premium cash credit account. I agree with this explanation of Sh. Amandeep Singh for reasons given above that such huge cash withdrawals by no stretch of imagination was for agriculture operations in this period. In the period 01.04.2013 to 17.06.2013 the net cash available with Sh. Sukhdeep Singh after deducting Rs. **239,465***/- on account of expenditure incurred for agriculture operation during this period' „as discussed above was only Rs. (37,00,000 + 30000 - 239,465)- **Rs. 34,90,535/-**.

The above cash flow statement reveals cash deposits of Rs 37,00,000/- and Rs 6,00,000/- on 6.5.2013 and 7.5.2013 respectively whose source as per cash flow statement is the opening cash in hand of Rs 93,67,697/- as on 1.4.2013 and the agriculture receipts of Rs 15,31,192/-. The source of cash in hand as on 1.4.2013 is discussed below.

(d) In the cash flow statement of Sh. Sukhdeep Singh for the F.Y. 2013-14 he has shown opening cash balance as on 01.04.2013 was of Rs. **93,67,697/-**. The appellant has explained the generation of opening cashing hand as under-

5.10.2013	agriculture receipts	Rs 146,845/-
8.10.2013	agriculture receipts	Rs 223,170/-
14.10.2013	agriculture receipts	Rs 212,243/-
8.11.2013	agriculture receipts	Rs 150,919/-
11.11.2013	agriculture receipts	Rs 269,922/-
12.11.2013	agriculture receipts	Rs 144,146/-
18.11.2013	agriculture receipts	Rs 354,593/-
07.01.2013	Kotak Mahindra Bank	Rs 80,47,253/-
	(cash withdrawal)	Rs 95,49,091/-

In the written submission filed by the appellant in the appeal proceeding it was stated that details of opening cash in hand has been filed with written submission. The statement of KCC bank account with Kotak bank has also been filed and the perusal of bank statement reveals that Sh. Sukhdeep singh had sufficient withdrawals from the bank which was re-deposited for advance to the appellant. In addition Sh. Sukhdeep singh also had agriculture receipts from sale of paddy which has been included in the opening cash in hand available with sh. Sukhdeep singh.

The copy of the said KCC premium account of Sh. Sukhdeep Singh in Kotak Mahindra bank was perused. It is observed therefrom that there were the following cash withdrawals and cash deposits therein during the period 9.8.2012 to 31.3.2013 and the net cash available as on 1.4.2013 out of cash withdrawals therefrom was as under-

Date	Cash withdrawal (self)	Cash deposit	Cash in hand
9.3.2012	5,00,000/-		5,00,000
13.8.2012	3,00,000/-		8,00,000
14.8.2012	5,00,000/-		13,00,000
16.8.2012	11,00,000/-		24,00,000
24.8.2012		8,00,000	16,00,000
27.8.2012	2,00,000/-		18,00,000
29.8.2012	6,50,000/-		24,50,000
27.9.2012	25000		24,75,000
29.11.2012	20,00,000/-		44,75,000
5.12.2012		18,00,000	26,75,000
6.12.2012	16,50,000		43,25,000
6.12.2012	1,30,000/-		44,55,000
7.01.2013	20,000		44,75,000

Therefore Sh. Sukhdeep singh had at best availability of cash in hand of Rs 44,75,000/- as on 1.4.2013 out of cash withdrawals from his KCC cash credit account in Kotak Mahindra Bank according to the above cash flow statement by considering only the cash withdrawals and cAsh deposits therein.

However, Sh. Sukhdeep singh had also met his agriculture expenses out of cash withdrawals from the said KCC account in FY 201*2-13. (on the basis of the statement of his brother Sh. Amandeep Singh recorded by th§ AO in assessment proceedings discussed above). Therefore considering the gross agriculture receipts of sale of agriculture produce by Sh. Sukhdeep Singh in FY 2012-13 to be the same as in FY 2013-14 at Rs 31,92,872/-, his agriculture expenses of FY 2012-13 are estimated at 30% of Rs 31,92,872/- or Rs 957,861/-for the whole year, which were met out of cash withdrawals from the said KCC account of Sh. Sukhdeep Singh in Kotak Mahindra bank. The agriculture expenses of 5 months from 8th August 2012 to 7th Januray 2013 in same proportion comes to **Rs 399,108/-**.

Therefore the cash in hand of Sh. Sukhdeep Singh as on 7.1.2013/1.4.2013 out of cash withdrawals from his said KCC account from 9.8.2012 to 7.1.2013 as worked out in cash flow statement above after excluding the agriculture expenses comes to Rs (44,75,000 - 399,108) = **Rs 40,75,892/-**.

Further, since Sh. Sukhdeep Singh is an agriculturist who was cultivating 23 acre of his own land and 35 acre land taken on lease from Sh. Baljit Singh in FY 2012- 13 and whose gross agriculture receipts in FY 2012-13 has been taken at Rs 31,92,872/- as in FY 2013-14 (above), therefore the cash receipts of Rs 146,845/-, Rs 223,170/-, Rs 212,243/-, Rs 150,919/-, Rs 269,922/-, Rs 144,146/-and Rs 354,593/- respectively shown during October 2012 to November 2012 as given in the details of opening cash balance as on 1.4.2013 is accepted.

Therefore the opening cash balance in the hands of Sh. Sukhdeep Singh as on 1.4.2013 **out of said cash withdrawals and agriculture receipts** during August 2012 to January 2013 is upheld only to the extent of Rs (40,75,892 + 146,845 +223,170 + 212,243 + 150,919 + 269,922 + 144, 146 + 354,593)= **Rs 55,77,730/-**

Therefore, in view of the above discussion, it is held that the cash available with Sh. Sukhdeep Singh as on 17.06.2013 i.e. immediately before depositing cash of Rs. 50,00,000/- and Rs. 25,00,000/- in his KCC premium cash credit account in Kotak Mahindra Bank on 28.06.2013 & 02.07.2013 respectively as per recast cash flow statement of Sh. Sukhdeep Singh for FY 2013-14 was as under-

Date	Particulars	debit	credit	Balance
1.4.2013	Opening balance	55,77,730		55,77,730
20.4.2013	Agriculture receipt	335,415		5913145

24.4.2013	Agriculture receipt	402,498		6315643
26.4.2013	Agriculture receipt	457,864		6773507
1.5.2013	Agriculture receipt	335,415		7108922
6.5.2013	Kotak Mahindra bank		37,00,000	3408922
7.5.2013	Kotak Mahindra bank		6,00,000	2808922

10.5.2013	Kotak Mahindra bank	37,00,000		6508922
30.5.2013	Agriculture receipt	87,847		6596769
17.6.2013	Kotak Mahindra bank	30000		66,26,769
28.6.2013	Kotak Mahindra bank		50,00,000/-	
2.7.2013	Kotak Mahindra bank		25,00,000- ¹	

Therefore as per **recast cash flow statement** of Sh. Sukhdeep Singh for FY 2013- 14 as above, Sh. Sukhdeep singh had cash availability of only Rs **66,26,769/-** as on 30.5.2013, out of which he had deposited cash of Rs 50,00,000/- as on 28.6.2013 in his KCC account in Kotak Mahindra bank. Therefore, it is held that Sh. Sukhdeep singh was creditworthy to deposit cash of Rs 50,00,000/- in his KCC account in Kotak Mahindra bank on 28.6.2013 and the addition of Rs 50,00,000/- is deleted.

Sh. Sukhdeep singh had further deposited cash of Rs 25,00,000/- in his said KCC account in Kotak Mahindra bank on 2.7.2013 which was met to the extent of Rs 16,26,769/- out of cash in hand as per recast cash flow statement of FY 2013-14 / as above. Therefore it is held that Sh. Sukhdeep singh was also creditworthy to deposit cash of Rs 16,26,769/- in his KCC account in Kotak Mahindra bank on and the addition of Rs 16,26,769/- is also deleted.

Further, it has been held as above that the net income of Sh. Sukhdeep Singh from the sale of animal fodder and vegetables grown between April 2013 to June 2013 after harvest of wheat was accepted to the tune of Rs 5,50,000/- (on the basis of the statement of Sh. Amandeep Singh recorded by the undersigned). Therefore Sh. Sukhdeep singh was also creditworthy to the extent of **Rs 5,50,000/-** therefrom to deposit in his KCC account in Kotak Mahindra bank on 02.07.2013 and the addition of Rs 5,50,000/- is also deleted.

Therefore in view of the above discussion the addition of Rs (50,00,000 + 16,26,769 + 5,50,000) = Rs 71,76,769/- is deleted.

Further, the appellant have also submitted that Sh. Sukhdeep Singh had cash in hand of Rs 49,99,800/- as on 8.8.2012 (which was not considered while computing cash in hand as on 1.4.2013). In the written submission filed in appeal proceeding, the

appellant had submitted on, the query to explain the source of Rs 50,00,000/- in the fund flow statement 0^8,8.2012 in the case of Sh. Sukhdeep Singh, that Sh. Sukhdeep Singh had withdrawn Rs 49,99,800/- from his Kisan Credit Card Account in Kotak Mahindra bank on the internal foreclosure of his Kisan Credit Card account. The bank had debited this amount^ to the account of Sh. Sukhdeep singh as payment of this amount. The amount so withdrawn from the bank was also available with Sh. Sukhdeep singh which has been shown in the fund flow statement. The copy of bank account of Sh. Sukhdeep Singh with Kotak bank starting from 6.8.2012 has already been filed on the basis of which fund flow statement was prepared.

Considering the above explanation of the appellant and in absence of any evidence that the said cash was not available with Sh. Sukhdeep singh on 1.4.2013, it is considered that Sh. Sukhdeep Singh had availability of cash of at least Rs (75,00,000 - 71,76,769) = Rs 3,23,231/- out of cash withdrawn on 6.8.2012 on internal foreclosure to re-deposit cash to this extent in his KCC account on 28.6.2013 and the addition of Rs 323,231/- is also deleted.”

6. The Addl. CIT(DR) submitted that the Ld CIT(A)-1, Amritsar was not justified in deleting the addition of Rs. 1,75,00,000/- made by the Assessing Officer on account of on account of unexplained cash credits without appreciating the facts of the case; that the assessee has failed to prove creditworthiness of creditors namely Shri Amandeep Singh and Shri Sukhdeep Singh and also failed to prove genuineness of the transaction; that in the course of assessment proceedings the creditors could not produce necessary documentary evidences to prove their creditworthiness and sources of cash deposits in their bank account just before advancing loan to the assessee; that the Ld CIT(A)-1, Amritsar was not correct in deleting the addition by admitting the cash flow statements of the loan submitted before the Assessing Officer; by recording the statements of the

loan creditors during appellate proceedings and by estimating the agricultural income of the creditors; that the Ld CIT(A)-1, Amritsar was not correct in estimating the agricultural income of the loan creditors on lease hold land whereas there was no evidence that the loan creditors had taken land on lease for the agricultural activities and that estimating the agricultural income as a source of cash deposits without considering the facts that there was no evidence of types of crops grown, quantity of agricultural produce and value of such agricultural produce and also the fact that the loan creditors have not shown any agricultural income in their return of income. The Ld. DR also contended that the Ld CIT(A)-1, Amritsar was not justified in deleting the disallowance of Rs. 11,82,945/- made by the Assessing Officer on account of claim of payment of interest on the unexplained cash credits. He relied on the assessment order.

7. Per contra, the Ld. Counsel for the appellant heavily relied on the impugned order. In support, he filed a written synopsis which reads as under:

- “3. The facts of the above two deposits are submitted hereunder:-*
- (i) The assessee had received unsecured loan of Rs.1,00,00,000 from Sh. Amandeep Singh and Rs.75,00,000 from Sukhdeep Singh by payee’s a/c cheque.*
 - (ii) Both the depositors are primarily agriculturists and were having Kissan credit card limit of Rs.98 lacs and Rs.75 lacs respectively with Kotak Mahindra Bank.*

- (iii) *The land holding in the hands of above two depositors is 25 acres and 23 acres (approx) respectively. In addition to above they were cultivating 25 acres and 35 acres respectively on lease.*
- (iv) *The AO required the assessee to explain the source of money in the hands of the above two depositors which was given to the appellant.*
- (v) *It was explained to the AO that Amandeep Singh and Sukhdeep Singh had advanced the amount out of their saving a/c with Kotak Bank. It was further explained to the AO that balance in the saving a/c of above creditors had arisen was by way of transfer from their Kissan Credit Card premium A/c. Copies of their saving bank accounts and Kissan Cash Credit A/c are enclosed.*
- (vi) *The AO further required the assessee to explain the source of balance in KCC A/cs of the two depositors. It was explained to the AO that cash was available with the depositors out of cash withdrawals from KCC A/cs earlier. Copies of the KCC limit A/cs of the two depositors were submitted before the AO. The loan creditors were also having huge agriculture income.*
- (vii) *The confirmations of the above two depositors were filed with the AO along with the copies of their bank accounts from where they had advanced the deposits to the appellant.*
- (viii) *Not satisfied the AO issued summons to the two depositors for their personal appearance. They duly appeared before the AO who recorded their statement on oath.*
- (ix) *During the course of their examination the depositors duly confirmed the amount of deposits given to the appellant. Copies of the statement of loan creditors recorded by the AO are enclosed.*
- (x) *It was confirmed by both the loan creditors that advance was made out of their Kissan Credit Card limit Accounts by redepositing the amounts which were withdrawn earlier.*
- (xi) *Copies of Premium KCC Cash Credit A/c of Amandeep Singh & Sukhdeep Singh with Kotak Mahindra Bank are enclosed for your honor's ready reference along with copy of saving a/c of Sh.Amandeep Singh.*
- (xii) *It was further submitted by the appellant that the assessee had paid interest @12% to the depositors and had also deducted tax at source thereon.*
- (xiii) *Rejecting all the above submissions the Id.AO made the addition of deposit of Rs.one crore and seventy five lacs received from Amandeep Singh and his brother Sh.Sukhdev Singh respectively on the following grounds as per para 3.1 of page 11 of the assessment orders:*

- a) Assessee failed to prove the genuineness of the loan transactions.
- b) Credit worthiness of the loan creditors was not proved.
- c) Cash was deposited by the creditors in their KCC A/c immediately before the issue of cheques to the appellant which leads to the conclusion that the cash deposited in the bank accounts of the loan creditors was assessee's own money.
- d) Finally the Id.AO relied upon the judgement of Delhi High Court in the case of CIT V. Navodaya Castles Pvt Ltd Appeal No.320/2012 while making the addition.

REBUTTAL:

In rebuttal to the decision of the AO we submit as under:-

1 The assessee u/s 68 is required to prove following three facts in respect of unsecured loans:-

- i) *Identity of depositors*
- ii) *Genuineness of transaction*
- iii) *Credit worthiness of depositors*

Identity of the Depositors:

The identity of both the depositors stand duly established. Both of them personally appeared before the AO and their statements were recorded on oath. Copies of their bank statements were filed. The assessee had deducted tax at source on interest paid to them. The AO had absolutely no doubt as to the identity of the depositors.

Genuineness of the transaction

The main objection of the AO is that the transaction of deposit from the two parties is not genuine on the ground that both the depositors had deposited cash in their KCC accounts far in excess of their KCC limit and secondly they had deposited cash in their KCC A/c just two days before the issue of cheques to the assessee. In rebuttal to the same we submit as under:-

As regards the excess deposit of cash in the their KCC A/c by the depositors it is submitted that each and every deposit in the KCC limit a/c is fully justified as they had sufficient cash balance in hand out of withdrawals made from the KCC limit A/c. It was the rotation of the same amount as they had huge KCC limit. The loan

creditors also had huge cash earnings from agriculture available with them for making the deposit in the bank.

The AO while making the above observation has conveniently ignored the withdrawals made from the KCC Limit A/c by the two depositors. He has tried to project in a way that the total deposits by the depositors in their KCC limit A/c are all fresh deposits whose source is unexplained. After giving the telescopic effect to the cash withdrawals all the deposits in the bank account get fully explained.

As regards AO's contention that the depositors had deposited cash in their KCC limit A/c just two days before giving the deposit to the assessee it is submitted that before the deposits of cash in the KCC limit A/cs the depositors had enough cash balance out of cash withdrawals as explained earlier.

Creditworthiness of the depositors:

This is an incontrovertible fact that both the depositors are of high net worth means as their combined agriculture land holding is approx 50 acres and in addition to same they were cultivating another 25 acres and 35 acre of land respectively on lease basis. Their annual income from agriculture itself was more than 40 lacs per annum. Moreover, they had huge KCC agriculture limit of Rs.98 lacs and Rs.75 lacs respectively with Kotak Mahindra Bank.

The assessee has proved all the three parameters laid down u/s 68 to prove the genuineness of the deposits u/s 68 of the Act. The AO has not brought even an iota of evidence to prove that the amount advanced to her by the two depositors was provided by her.

In view of the above submissions it will be appreciated that the doubts of the AO as to the genuineness of the transactions of deposit are purely on surmises and conjectures conveniently ignoring the fact that amount deposited in KCC limit A/c was the same which was earlier withdrawn by them from this very bank account.

The AO has not given even an iota of evidence to rebut the submissions made by the assessee. Nor the AO has brought any evidence on record to justify his contention that the deposits received from the two depositors were assessee's own money which he got rotated through the above depositors.

The AO has disbelieved the contentions of the assessee simply on the basis of suspicion and conjectures and surmises.

Decision of the Delhi High Court

Further, reliance placed by the AO on the decision of Delhi High Court is absolutely misplaced as the facts of that case are totally distinguishable. That was a case of investment in the share capital of an assessee company which was held as not genuine by the Hon'ble high Court on the ground that the investor had deposited cash in his bank a/c for issuing cheques for investment in the share capital of appellant company and the investor did not have its own profit making apparatus and it simply rotated money through bank and the bank did not reflect their credit worthiness or genuineness of the transaction. The High Court has further observed that the appellant company did not pay any dividend or interest to the investors and the profit motive normal in the case of investment was entirely absent. The High Court further observed that any person who would invest or give loan would certainly seek return or income as consideration.

From the reading of the above judgement it will be appreciated that the same is distinguishable from the present case. Here the creditworthiness and genuineness of transactions stand proved beyond any doubt. The source of deposit of cash by the depositors in their bank account stand proved beyond any reasonable doubt as the depositors had sufficient cash in hand which was withdrawn from the bank. Moreover, the depositors had been paid interest by the assessee @12% and tax was duly deducted therefrom. So the criteria of return on investment laid by the Hon'ble High Court stand fully satisfied as well as that of creditworthiness.

Further, in the case decided by the Hon'ble Delhi High Court the investor could not prove the source of cash deposited by it in the bank before issuing the cheques. However, in the case of the appellant the source of cash deposit by the depositors stand fully explained. The cash deposited by them in their bank a/cs was earlier withdraw from the bank a/c itself.

Repayments of loans by the assessee:

We are submitting herewith copies of account of the above two depositions as appearing in the books of the appellant for the year under appeal and for the subsequent years till date.

From the perusal of the account of Sukhdeep Singh it will be observed that Rs.65 lacs was repaid during the immediately next year i.e. year ending 31.3.2015 and balance amount of Rs.10 lacs was repaid during the year ending 31.3.2017 and

the loan got squared up. Interest was also paid during all these years to him and tax was deducted at source.

In the case of Amandeep Singh the assessee had paid interest on year to year basis after deduction of tax at source. Further, Rs.31 lacs was repaid during the year ending 31.3.2017 and Rs.3500000 was repaid during the current year out of principal amount.

Assessee is not required to prove the source of source and origin of origin.

Further, it is submitted that it is a settled law that the assessee is not required to explain the source of source in respect of deposits accepted by the assessee. However, inspite of the above proposition the assessee has duly explained even the source of the source.

8. Heard rival contentions, perused the material on record, impugned order, written submission and case law cited before us. Admittedly, it is fact on record that the appellant assessee had received unsecured loan of Rs.1,00,00,000 from Sh. Amandeep Singh and Rs.75,00,000 from Sukhdeep Singh by account payee's cheque and that both the depositors are primarily agriculturists and were having Kissan Credit Card premium limit of Rs.98 lacs and Rs.75 lacs respectively with Kotak Mahindra Bank. As regards to availability of cash for deposit in the KCC premium account, it was explained that cash was available with the depositors out of cash withdrawals from KCC account earlier and from the sale produce of agriculture land as Sh. Amandeep Singh was the owner of 25 acres of agriculture land and had taken 25 acre on lease from Sh. Harpal Singh.

9. It is seen that Sh. Amandeep Singh deposited Rs. 50,00,000/- in his KCC premium cash credit account on 27.06.2013 and immediately transferred an amount of Rs. 50,00,000/- on 28.06.2013 to his saving bank account in Kota Mahindra Bank. Likewise, Sh. Amandeep Singh deposited Rs. 50,00,000/- in his KCC premium cash credit account in Kotak Mahindra Bank on 29.06.2013 and transferred Rs. 25,00,000/- and Rs. 25,00,000/- on 01.07.2013 and 02.07.2013 respectively therefrom to his savings bank account in the same bank. Thereafter, Sh. Amandeep Singh transferred amounts of Rs. 40,00,000/-, Rs. 30,00,000/- and Rs. 30,00,000/- on 28.06.2013, 04.07.2013 and 05.07.2013 respectively to Smt. Raj Rani Arora from his said savings bank account in Kotak Mahindra Bank. The LD. CIT (A) has discussed at length the gross receipts of the Sh. Amandeep Singh from sale of agriculture produce during F.Y. 2013-14 and cash flow statement to substantiate its source as above. Accordingly, the CIT(A) has observed that Sh. Amandeep Singh had cash in hand available at more than Rs. 1 crore as on 17.06.2013 immediately before depositing cash of Rs. 50,00,000/- and Rs. 50,00,000/- in his KCC premium cash credit account in Kotak Mahindra Bank on 26.06.2013 and 29.06.2013 respectively. Therefore it is held that Sh. Amandeep Singh has creditworthiness to deposit Rs 50,00,000/- and Rs. 50,00,000/- in his KCC

premium cash credit account in Kotak Mahindra Bank on 26.06.2013 & 29.06.2013 respectively.

10. The Ld. AR argued that appellant had submitted the copy of account of the loan creditor Sh. Amandeep Singh in his books of account for F.Y. 2014-15, 2015-16, 2016-17 & 2017-18 to show that the assessee has repaid the entire borrowed amount to the loan creditor Sh. Amandeep Singh by 01.12.2017 with interest and the balance in his account as on 31.03.2018 is Nil. In support, the appellant has also submitted the copies of TDS returns filed, showing the amount of tax deducted at source on interest paid to the loan creditors. This further proves the genuineness of the loan advanced by Sh. Amandeep Singh to the appellant in the year under consideration.

11. Thus, the identity of Sh. Amandeep Singh stands established as he attended proceedings before the AO and the appeal proceedings as well and he is regular assessee filing income tax return; the genuineness of transaction is established as the loan was given through banking channel and that credit worthiness to pay advance of Rs. 1 Crore to the appellant is established as discussed above. In our view, all the ingredients of section 68 of the act are satisfied with regard to loan of Rs 1,00,00,000/- received

by the appellant from Sh. Amandeep Singh in the year under consideration and no addition of Rs. 1,00,00,000/- is called for u/s 68 of the act in respect of loan from Sh. Amandeep Singh. Therefore, we find no perversity to the facts on record in the impugned order and hence, no interference is required in the finding of the CIT(A) deleting the addition made u/s 68 of the act, in respect of loan from Sh. Amandeep Singh.

12. In the case of Sh. Sukhdev Singh, the Ld. CIT(A) has discussed that there was cash available with Sh. Sukhdeep Singh as on 17.06.2013 i.e. immediately before depositing cash of Rs. 50,00,000/- and Rs. 25,00,000/- in his KCC premium cash credit account in Kotak Mahindra Bank as on 28.06.2013 and 02.07.2013 respectively as per the recasted cash flow statement of Sh. Sukhdeep Singh for FY 2013-14 as above. Therefore, as per recast cash flow statement of Sh. Sukbdeep Singh for FY 2013- 14 as above, Sh. Sukhdeep singh had cash availability of Rs 66,26,769/- as on 30.5.2013, out of which he had deposited cash of Rs 50,00,000/- as on 28.6.2013 in his KCC account in Kotak Mahindra bank. Therefore, it is held that Sh. Sukhdeep singh has creditworthy to deposit cash of Rs 50,00,000/- in his KCC account in Kotak Mahindra bank on 28.6.2013 and thus, the CIT(A) is justified in deleting the addition of Rs 50,00,000/-. Sh. Sukhdeep singh had also deposited cash of Rs 25,00,000/- in his said KCC account in

Kotak Mahindra bank on 2.7.2013 which was met to the extent of Rs 16,26,769/- out of cash in hand as per recast cash flow statement of FY 2013-14 / as above and the net income of Sh. Sukhdeep Singh from the sale of animal fodder and vegetables grown between April 2013 to June 2013 after harvest of wheat was accepted to the tune of Rs 5,50,000/-; cash withdrawn of Rs 323,231/- on 6.8.2012 on internal foreclosure and thus Rs (50,00,000 + 16,26,769 + 5,50,000 + Rs 323,231/-) = Rs 75,00,000/- stands explained. Since, the identity of Sh. Sukhdev Singh stands established as he attended proceedings before the AO and the appeal proceedings as well and the genuineness of transaction is established as the loan was given through banking channel and that credit worthiness to pay advance of Rs. 75,00,000/- to the appellant is established as discussed above and hence the addition has been rightly deleted by the Ld. CIT(A). In our view, the decision of the Ld. CIT(A) in deleting the addition of Rs. 1,75,00,000/- is justified.

13. It is noted that the reliance placed by the AO on the decision of Delhi High Court is absolutely misplaced as the facts of that case are distinguishable to the present case. Firstly, that was a case of investment in the share capital of an assessee company which was held as not genuine by the Hon'ble high Court on the ground that the investor had deposited

cash in his bank a/c for issuing cheques for investment in the share capital of appellant company and the investor did not have its own profit making apparatus and it simply rotated money through bank and the bank did not reflect their credit worthiness or genuineness of the transaction. The High Court has further observed that the appellant company did not pay any dividend or interest to the investors and the profit motive normal in the case of investment was entirely absent. The High Court further observed that any person who would invest or give loan would certainly seek return or income as consideration. In the present case, the creditworthiness and genuineness of transactions stand proved beyond any doubt. The source of deposit of cash by the depositors in their bank account stand proved beyond any reasonable doubt as the depositors had sufficient cash in hand which was withdrawn from the bank. Moreover, the depositors had been paid interest by the assessee @12% and tax was duly deducted therefrom and the principle amount with interest has been paid back in the succeeding year. So the criteria of return on investment laid by the Hon'ble High Court stand fully satisfied alongwith creditworthiness. Further, it is settled law that the Assessee is not required to prove the source of source and origin of origin.

14. In the above view, we find no infirmity or adversity in the finding of the Ld. CIT(A) to the facts on record and accordingly, the impugned order of the Ld. CIT(A) is sustained on the issue of loan cash creditors.

15. In the next issue, the department has challenged deletion of disallowance of interest of Rs. 1182945 paid to these two loan creditors on account of unexplained credits.

16. The AO observed that assessee had claimed excessive interest of Rs 11,82,945/- payable on capital borrowed from Sh. Amandeep Singh and Sh. Sukhdeep Singh. Thus, the Assessing Officer added back the amount of Rs 11,82,945/- on account of interest claimed against unsecured loans creditors. The Ld. CIT(A) has observed that while adjudicating the ground of appeal no. 1 the addition of Rs. 1,75,00,000/- on account of credits from Sh. Amandeep Singh and Sh. Sukhdeep Singh have been allowed by holding these loan creditors as stands explained genuine and the decision of the Ld. CIT(A) is deleting the said addition on merits is sustained by us. It is evident from the record that the appellant was paying interest to the loan creditors @ 12% PA on the borrowings and since the interest amount was paid to them after deducting TDS, therefore the addition of Rs 11,82,945/- on account of interest paid/payable to the said creditors is also

required to be deleted. Since, the interest expenses paid to the loan creditors are subject to TDS and hence, interest paid/payable to the said creditors is genuine and stands explained accordingly. We hold that the CIT(A) was justified in deleting the addition of Rs 11,82,945/- on account of interest paid by the assessee to the loan creditors. Thus, 2nd issue of department is also rejected.

17. In the result, the appeal of the department is dismissed.

Order pronounced in the open court on 16.06.2023

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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By Order