

**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.434/Asr/2016
Assessment Year: 2009-10**

IncomeTax Officer, Ward-5(5), Amritsar. (Appellant)	Vs.	Sh. Surjit Singh, 29-D, Guru Amar Dass Avenue, Ajnala Road, Amritsar. [PAN:ALNPS4128D] (Respondent)
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**I.T.A. No.440/Asr/2016
Assessment Year: 2009-10**

Income Tax Officer, Ward-4(1), Amritsar. (Appellant)	Vs.	Sh. Baljinder Singh Chahal, S/o Sh. Natha Singh, Vill. Ramana Chak, Distt. Amritsar. [PAN:AHLPC4755E] (Respondent)
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Appellant by	Smt. Rajinder Kaur, CIT. DR
Respondent by	Sh. P. N. Arora, Adv.

Date of Hearing	08.06.2023
Date of Pronouncement	20.06.2023

ORDER

Per:Anikesh Banerjee, J.M.:

Both the appeals of the revenue are filed against the order of the Id. Commissioner of Income Tax (Appeals)-2,Amritsar,[in brevity the ‘CIT (A)’] order passed u/s 250(6) of the Income Tax Act 1961[in brevity the ‘Act’], for A.Y. 2009-10.The impugned order was emanated from the order of Income Tax Officer, Ward-5(4), Amritsar [in brevity the AO], order passed u/s 147/143(3) of the Act.

2. At the outset both the appeals are related to common factual grounds and have a similar issue. We heard together and disposed of together for the sake of convenience. The ITA 434/Asr/2016 is taken as lead case.

3. The revenue has taken the following grounds:

“1. Whether the Ld.CIT(A) is right in deleting the addition of Rs. 10,83,75,750/- made by the assessing officer on account of unexplained investment by the assessee from his undisclosed sources made in purchase of land from various persons/farmers by holding that “the AO has not brought any evidence on record to show that the appellant had purchased the land from various persons/ farmers on agreements/ikrarnamas or power of attorney in his name and later transferred the same to M/s Horizon Buildcon Pvt Ltd., on power of attorney of the original

owners”, ignoring the detailed discussion of the same in the assessment order.

2. Whether the Ld.CIT(A) is right to hold that “the AO has also not brought any evidence on record to show that the appellant had received any payment from M/s Horizon Buildcon (P) Ltd towards sale consideration of the lands in question in the capacity of owners of land”, ignoring the facts on record that M/s Horizon Buildcon (P) Ltd has made payments through cheques and in cash to Sh. Surjit Singh and all of these payments have been found recorded in the books of accounts of M/s Horizon Buildcon (P) Ltd as discussed in the assessment order by the AO as well confirmed by the Ld. CIT(A)-1, Ludhiana in his order dated 12.08.2014 in Appeal No. 1/ROT/IT/ CIT(A)-1/Ldh/2014-15 in the case of M/s Horizon Buildcon (P) Ltd.

3. Whether the Ld.CIT(A) is right to hold that “hypedikrarnamas were executed by them to impress the company appears to be justified and is upheld”, ignoring the facts that events have been happened further on the basis of these ikrarnamas as discussed in details in the assessment order and it is also against the human probability that a person

transfer his right of property to someone else without taking any consideration.

4. *Whether the Ld.CIT(A) is right to hold that “the MOU dated 22.01.2008 and supplementary MOU dated 18.03.2008 were remained unsigned and the said unsigned documents were of no evidentiary value in the eyes of law” when the assessing officer has discussed in detail in his assessment order that the same reflect the actual state of affairs of business transactions carried out by the assessee as compared to what is reflected in books of accounts of the buyer company M/s Horizon Buildcon (P) Ltd.*

5. *Whether the Ld.CIT(A) is right in deleting the addition of Rs.85,90,000/- made by the assessing officer on account of short term capital gain by holding that “the assessee had not purchased any land in his name and had not transferred/sold the same in the capacity of owner of land, therefore the question of charging capital gain thereon does not arise”, ignoring the facts on record that M/s Horizon Buildcon (P) Ltd has made payments through cheques and in cash to Sh. Surjit Singh against purchase of land and all of these payments have been found recorded in the books of accounts of M/s Horizon Buildcon (P) Ltd as discussed in the assessment order by the*

AO as well confirmed by the Ld. CTT(A)-1, Ludhiana in his order dated 12.08.2014 in Appeal No. 1/ROT/IT/ Cl f(A)-l/Ldh/2014-15 in the case of M/s Horizon Buildcon (P) Ltd.

The Appellant craves leave to add or amend the grounds of appeal on or before the appeal is heard and disposed off.

It is prayed that the order of the Commissioner of Income Tax (Appeals), be set-aside and that of the AO be restored on merits.”

4. Brief fact of the case is that the search was conducted on 07.04.2011 at the premises of M/s Horizon Buildcon P. Ltd. During search, various documents were found in the shape of unsigned and unregistered memorandum of understanding (in short MOU) supplementary MOU, various unregistered agreement/ Ikrarnama, power of attorney and other documents. The assessee is real-estate agent. The addition was made amount to Rs.10,83,75,750/- on account of suspected investment in purchase of land from various persons depending on unregistered and unsigned agreement to sell. The notice was issued u/s 148 and proceeding were initiated mistakenly on two names basis of 1st MOU dated 22.01.2008 with M/s Horizon Buildcon P. Ltd and 2nd copy of various unregistered and undated

agreement/ikrarnama. The assessee claimed that both documents were not signed by them. Finally, the assessment was completed, and addition was made Rs.10,83,75,750/- on account of investment made by the assessee for purchase of land and the capital gain calculated by the revenue related to transaction amounting to Rs.85,90,000/-. The revenue claimed that both the amounts are not declared by the assessee in the total income during filing of return. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) dismissed the order of the Id. AO. Accordingly, the revenue being aggrieved filed an appeal before us.

5. The Id. AR first pointed out that the entire addition was made on basis of the unsigned, unauthenticated documents. The assessee has no relevancy with these documents. The Id. AR placed that the same issue was duly agitated before the ITAT, Amritsar Bench in the case of **M/s Horizon Buildcon P. Ltd. ITA Nos. 671 to 673/Asr/2014 date of order 22.03.2023**. The relevant paragraph of the order of ITAT is duly extracted as below:

“11. The Ld. CIT(A) has stated that the Assessing Officer has further relied upon documents A-9 DNB-1 which reproduced various ikrarnamas, photo copies of which had been found and seized. Ikrarnams are between the intermediaries' i.e Sh. Surjit Singh & others and the original owners of the land. However,

the Assessing Officer in his assessment order has erroneously recorded as sale deed where these are photocopies of ikrarnamas/agreement to sale. While arriving at the decision to delete the addition made based on presumption by the AO, the Ld. CIT(A) has relied on the various judgement of the Tribunals, Hon'ble High Courts and Apex Court as above.

12. It is evident from the above that the entire case has proceeded on the assumption that there was understatement of the investment based on unsigned and uncorroborated MOUs and supplementary MOUs, without a finding that the assessee invested more than what was recorded in the books of account with supporting corroborative material evidence and such decision of the AO cannot be approved. In our view, Section 69B was wrongly invoked. The Section 69B cannot be invoked on the assumption that there was understatement of the investment, without a finding that the assessee invested more than what was recorded in the books of account.

13. The Hon'ble High Court of Punjab & Haryana in the case of "Commissioner of Income Tax Vs. Harpal Singh", (2008) 3 DTR 254, held as under: -

"..... Further, it is also undisputed position that before the Assessing Officer said 'S' did not appear and made

any statement nor an opportunity was granted to the assessee to confront the sale deed and cross-examine 'S' on the statement which he had made before the Asstt. Director of IT (Inv.). In spite of all this evidence, the Assessing Officer made the addition under section 69B only on the basis of conjectures while observing that it is a well known practice that the sale deeds of immovable properties are being registered at the much lower rates than the prevailing in the markets. It is also a disputed fact that after selling of the land, 'S' was assessed under the Act and at that time the sale value of the said land was taken as indicated in the registered sale deed and that assessment had become final. The Tribunal has duly appreciated the evidence/material available on the record and various contentions raised by the parties, and then came to the aforesaid conclusion, which is a pure finding of fact which does not require any interference by the Court. Therefore, in these appeals no substantial question of law is arising from the impugned order for consideration of the court."

14. In the above view, factual matrix of the case and evidence on record, we find no infirmity or perversity in the finding of the Ld. CIT(A) to the facts on record in deleting the addition made by the Assessing Officer on presuming the sale

consideration. Accordingly, the impugned order of the CIT (A) is sustained.

15. On identical facts, our observation and finding given in I.T. A. Nos. 671 /Asr/2014 shall apply to I.T. A. Nos. 672 and 673/Asr/2014 in mutatus mutandis.

16. In the result, the appeals of the Revenue in I.T. A. Nos. 671, 672 and 673/Asr/2014 are dismissed.”

5.1 The Id. AR further relied on the order of the Id. CIT(A); the relevant part of the CIT(A)'s order is extracted as below:

“Decision

The appeal of the assessee on the issue of suspected investment in purchase of land was decided in his favour while deciding the ground of appeal no. 1 above and the addition of Rs 10,83,75,750/- as his unaccounted investment in purchase of land from various persons on agreement to sell or power of attorney, which was later on transferred to company M/s Horizon Buildcon Pvt Ltd as POA, was deleted.

Since it has been held above that the appellant had not purchased any land in Sultanwind, District Amritsar from the farmers/ persons on agreements/ikrarnamas or power of attorney in his name and had not transferred/sold the same to M/s Horizon Buildcon Pvt Ltd during the year under consideration in the capacity of owner of land, therefore the

question of charging capital gain thereon does not arise. Accordingly, the addition of Rs 85,90,000/- on account of short-term capital gain is deleted.”

6. The Id. DR fully relied on the order of Hon’ble Apex Court in the case of **CIT vs. Durga Prasad More (1971) 82 ITR 540** the relevant para 11 of the order of Apex court which is extracted as below:

“11. Now we shall proceed to examine the validity of those grounds that appealed to the learned judges. It is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real. In a case of the present kind a party who relies on a recital in a deed has to establish the truth of those recitals otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour, then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the

surrounding circumstances to find out the reality of the recitals made in those documents.”

7. We heard the rival submission and relied on the documents available in the record. The issue is already well settled in the case of M/s Horizon Buildcon P. Ltd. (supra), the addition cannot be sustained on basis of the unsigned agreement or MOU. The assessee himself is not purchaser but to work as agent of real estate. As per the ld. AR the assessee is real estate commission agent. The ld. AR claimed the assessee is power of attorney holders of different properties. The ld. DR respectfully relied on the order of Hon’ble Apex Court. We respectfully considered the order of Hon’ble Apex Court. The relied up on documents of revenue are not proper evidence. Unsigned, undated documents cannot be the part of the evidence on that basis the addition was made. No circumstantial evidence was there in support of seized documents. The ld. DR was not able to submit any contrary fact before the bench. Accordingly, the addition made by the revenue amount to Rs.10,83,75,750/- and 85,90,000/- are quashed.

8. In the result, the appeal of revenue ITA No. **434/Asr/2016** is dismissed. The bench has noticed that the issues raised by the assessee in the above appeal is equally similar on set of facts and grounds. Therefore, it is not imperative to repeat

the facts and various grounds raised by the assessee. Hence, the bench feels that the decision taken by us in ITA No. **434/Asr/2016** for the Assessment Year 2009-10 shall apply *mutatis mutandis* in the ITA No.**440/Asr/2016** and follows accordingly.

9. In the result, the appeal of the revenue bearing **ITA Nos. 434/Asr/2016&440/Asr/2016** are dismissed.

Order pronounced in the open court on 20.06.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member
AKV

Sd/-

(ANIKESH BANERJEE)
Judicial Member

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order