

**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. 90/Asr/2017
Assessment Year: 2009-10

M/s Blue City Township &
Colonizers SCF 10-C Ranjit
Avenue, Amritsar

[PAN: AACCB 8256C]

(Appellant)

V. Income Tax Officer,
Ward -5(1), Amritsar

(Respondent)

Appellant by Sh. Salil Kapoor, Adv.

Respondent by Sh. Amit Jain, Sr. DR

Date of Hearing : 30.05.2023
Date of Pronouncement : 14.07.2023

ORDER

Per Dr. M. L. Meena, AM:

The captioned appeal has been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-2, Amritsar dated 26.10.2016 in respect of Assessment Year 2009-10.

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

- “1. That the notice issued u/s 148 and the Assessment Order passed u/s 147/143(3) on 27.03.2015 of the Income Tax Act, 1961 are illegal, bad in law, without jurisdiction.
2. That on the facts and in the circumstances of the case, reassessment proceeding cannot be initiated under section 147 for the purpose of enquiry and verification.
3. That on the facts and in the circumstances of the case, CIT did not recorded satisfaction under Section 151 for issuing notice under Section 147.
4. Without prejudice, no approval has been obtained from the component authority as required u/s 151. Hence the notice issued is illegal, bad in law and without jurisdiction.
5. That on the facts and in the circumstances of the case, the CIT(A) has grossly erred in law and on facts in confirming the addition of Rs. 1,53,98,000/- on account of unexplained investment as per the provisions of section 69 of the I. T. Act.
6. That on the facts and circumstances of the case, no addition for undisclosed investment can be made merely relying on the third party statement and evidence which has been retracted.
7. That the evidences relied upon by the AO for framing assessment were never confronted to the appellant and hence the assessment order and CIT(A) order are illegal and bad in law.
8. That the statements made are inherently contradictory and unreliable.
9. That on the facts and circumstances of the case, the statement recorded ex-parte cannot be relied upon in the absence of cross examination.
10. That on the facts and circumstances of the case, the CIT(A) has grossly erred in law and on facts in not admitting the additional evidence as the said evidence was necessary to decide the issue and the appellant was prevented by reasonable cause for not filing it during the assessment proceeding.
11. That the evidence filed and materials available on record have not been properly construed and judiciously interpreted, hence the addition/disallowance made are uncalled for.

12. *That the onus to prove the investment made by the assessee for purchase of a plot is allegedly on the Department. The additions cannot be made on surmises and conjecture. Therefore, no additions to the assessee's income could be made based on the conflicting statements and in the absence of an independent inquiry by the AO.*
13. *The evidence filed and materials available on record have not been properly construed and judiciously interpreted, hence the addition/disallowance made are uncalled for.*
14. *That the observation and the additions made are unjust, illegal, arbitrary, bad in law, highly excessive and based on surmise conjecture.*
15. *That interest U/s 234A, 234B and 234C of the Income Tax Act, 1961 has been wrongly and illegally charged and has been wrongly worked out.*
16. *That the applicant craves leave to add, amend, alter and/or delete any of the above grounds of appeal at or before the time of hearing."*

3. In Ground No. 1 and 2, the assessee has challenged the validity of the notice issued u/s 148 of the Act and the reassessment proceedings u/s 147 cannot be done for the purpose of enquiry or verification is bad in law and without jurisdiction.

4. The appellant assessee company's case was reopened by issuing notice u/s 148 of the Income Tax Act, 1961 on the basis of information available with the department that the assessee company had invested an amount of Rs.30,44,550/- by cheque, Rs.1,0000000/- by cash for the purpose of purchase of land from Sh. Baldev Singh R/o Village Heir, Palah Sahib Road, Amritsar and also invested an amount of Rs.53,98,000/- in cash for the purchase of land from Sh. Malook Singh during financial year 2008-09 relevant to assessment year under consideration.

5. During the course of reassessment proceedings copy of reasons were supplied to Ms. Priti Prasar Joshi, CA the counsel of the appellant who attended on behalf of the assessee company. The assessee company has not raised any objection to the reasons recorded either before the AO or before the CIT(A), however, it is for the first time, the assessee has raised objection before the Tribunal taking the legal issue. In order to analyze and adjudicate the reason to belief, it is pertinent to refer the reasons recorded by the AO which reads as under:

“11. Detailed Reasons for the belief that income has escaped assessment. Dated 11.03.2014

As per the information available with the Department, the assessee had invested an amount of Rs.30,44,500/- by Cheque, Rs. 1,00,00,000/- by cash for the purchase of land from Sh. Baldev Singh, Heir, Palah Sahib Road, Opp. Central Jail, Amritsar and also invested an amount of Rs.53,98,000/- by cash for the purchase of land from Sh. Malook Singh during the F.Y.2 008-09 relevant to A.Y.2009-10. The said payments were made to Sh. Baldev Singh and Shri Malook Singh on 4/4/2008. In order to verify the source of investment in the purchase of the said land and also capital gain arise, scrutiny is necessary. The information available on record in the case of assessee as above have been considered and after careful consideration, I am of the considered view and have therefore reasons to believe that income to the extent of Rs.30,44,500/- Rs. 100,00,000/- & Rs.53,98,000/-being investment from undisclosed, sources' chargeable to tax has escaped assessment for the A.Y. 2009-10 within meaning of section 147 of the I.T. Act, 1961 and also other income chargeable to tax in respect of which assessee is assessable which has escaped assessment and which comes to notice subsequently in the course of the proceedings under this section for the assessment year under consideration.”

6. The AO has issued detailed questionnaire along with the notice issued u/s 142(1) and 143(2) on 12.11.2014 served upon the assessee on

13.11.2014 fixing the case for hearing on 20.11.2014. The case of the appellant company was adjourned on different dates at the request of the Id. counsel for the assessee company during the course of assessment proceedings by granting adjournment to 29.12.2014, 08.01.2015 and 16.01.2015. The AO has finally issued a show cause letter in compliance to that Sh. Sanjay Kapoor, CA attended the office and filed part reply by seeking again adjournment to 30.01.2015. The AO has discussed that on the subsequent dates, the Id. counsel for the assessee Sh. Sanjay Kapoor, CA attended the Office from time to time and filed replies placed on record as per order sheet.

7. The Id. counsel for the assessee submitted that the reasons recoded by the Assessing Officer are in the shape of seeking approval for the purpose of verification and not for the purpose of reopening assessment. The AO has not recorded the specific reasons to believe and the case was only reopened by the AO because scrutiny was not done in the case of the assessee. The Id. counsel argued that the reassessment proceedings cannot be initiated u/s 147 for the purpose of enquiry or verification. The counsel placed reliance on the following judgments as per Case Law index reproduced here under:

**Before the Hon'ble Income Tax Appellate Tribunal
"Amritsar" Bench at Amritsar****IN THE MATTER OF:-**

Blue City Township & Colonizers

ITA No. 90/Asr/2017 [A.Y. 2009-10]

Fixed for: 30.05.2023**INDEX OF COMPILATION OF CASE LAWS**

S. No.	Particulars	Citation	Page No.	Relevant Paras/ Page No.
1.	Yum! Restaurants Asia Pte Ltd. vs. DDIT	(2017) 397 ITR 665 (Delhi)	1-5	Para 6, 7 and 12
2.	Principal Commissioner of Income-tax vs. N.C. Cables Ltd.	[2017] 391 ITR 11 (Delhi)	6-9	Para 11
3.	Central India Electric Supply Co. Ltd. v. ITO, Company Circle-X, New Delhi	[2011] 333 ITR 237 (Delhi)	10-17	Para 19
4.	CIT vs. M/s. S. Goyanka Lime and Chemicals Ltd.	231 Taxman 73 (MP)	18-19	Para No. 8
5.	CIT Jabalpur vs. S. Goyanka Lime & Chemicals Ltd. (Dismissed SLP of the Department in the aforesaid case)	237 Taxman 378 (SC)	20	Para 1 & 2
6.	Chhugamal Rajpal v. S.P. Chaliha	[1971] 79 ITR 603 (SC)	21-25	Page No. 8
7.	Johri Lal (H.U.F.) v. Commissioner of Income-tax	[1973] 88 ITR 439 (SC)	26-29	Page No. 11 - 2 nd Last Para
8.	Commissioner of Income-tax, Delhi-XI v. Batra Bhatta Company	[2010] 321 ITR 526 (Delhi)	30-34	
9.	Paramjit Singh v. Income-tax Officer	[2010] 323 ITR 588 (Punjab & Haryana)	35-37	

Place: New Delhi

Date: 27.05.2023

*Chanana***Counsels for Respondent
(SALIL KAPOOR/ TARUN CHANANA)**

8. Per contra, the defendant Id. DR has raised strong objection, to the legal ground raised by the assessee as being not justified and that the ground was not raised either during the assessment proceedings or the appellate proceedings before the CIT(A). The Ld. DR argued that since, the assessee has not raised any objection to the reasons recorded either during the course of the assessment proceedings or even before the CIT(A) in appellate proceedings, hence the ground raised for the first time before the Tribunal without any sufficient cause is not justified. The Id. DR placed reliance on the Hon'ble Apex Court in the case of G.KN Driveshafts (India) Ltd. v. Income Tax Officer and Ors dated 25th November, 2022 wherein the Hon'ble Apex Court held that *"when a notice u/s 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice."* The Id. DR has contended that the law is well settled on the issue of validity of the reasons recorded by the Assessing Officer that the Assessing Officer is required to have relevant material/information at the time of initiation/reopening of the assessment proceedings by recording reasons. In the present case, the reasons are not only recorded based on

the relevant material but it was rather based on specific information of investment in purchase of land worth one crore investment in cash. He contended that at the initial stage, what is required is reason to believe, and the AO is not required to establish or compute the escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the information of belief by the Assessing Officer is within the realm of subjective satisfaction. In this regard, he placed reliance on the judgment of Hon'ble Apex Court *ACIT v. Rajesh Jaweri Stock Brokers (P) Ltd.* [2007] 291 ITR 500 (SC) and *Rakesh Gupta v. CIT* 27th April, 2018 (P&H). The Id. DR also relied on the decision of ITAT Amritsar Bench in the case of *Sh. Shiv Raj Singh v. ITO, Ward-2, Bathinda* in ITA No. 446/Asr/2019 dated 08.07.2022.

9. We have heard the rival contention, and perused the material on record, the reasons recorded by the AO and case law cited before us. Admittedly, the Assessing Officer has recorded the reasons u/s 147 of the Income Tax Act, dated 11.03.2014, properly stating therein that there were transactions involving investment in purchase of land amounting to

Rs.30,44,550/- by cheque, Rs.1,00,00,000/- by cash from Sh. Baldev Singh R/o Village Heir, Palah Sahib Road, Amritsar and Rs.53,98,000/- from Sh. Malook Singh during financial year 2008-09, relevant to Assessment Year 2009-10.

10. The Citation relied upon by the Ld. AR are distinguishable on peculiar fact of the present case. Case laws at s. no 1 to 8 are on approval u/s 151 and 9 to 10 is on reasons of deep scrutiny and transfer of ancestral property whereas in the present case facts are that the undisclosed investment in land purchase on cash and cheque deposit in the bank account by the appellant company has been based on specific information for reason to belief by the AO under section 147 of the Act. Thus, the Citation relied by the Ld. AR would not be of any help to the appellant assessee.

11. From the above, it is evident that the AO has recorded specific reasons to believe and submitted for statutory approval before the competent authority on 11.03.2014, for grant of statutory permission who accorded the requisite permission on 12.03.2014 after satisfying itself with the reasons recorded by the AO that it is a fit case for issue of notice u/s 148 of the Act, in writing that *"Yes, it is a fit case"*, and on receipt of the permission, the Assessing Officer issued notice under section 148 of

Income Tax Act on 14/03/2014 through registered post which was duly served upon the Appellant company as the receipt is being acknowledged under the Appellant Company stamp. In a series of decided cases of ACIT Vs Rajesh Jhaveri Stock Brokers P. Limited. 291 ITR 500 SC, A.L.A. Firm v. CIT [1991] 189 ITR 285 (SC), Raymond Woollen Mills Limited. Vs ITO 236 ITR 34 SC, Gurera Gas Cylinders Pvt. Ltd. vs CIT 258 ITR 170 P&H, Jawand Sons Vs. CIT 326 ITR 39 P&H, Sewak Ram Vs ITO 236 CTR 462 (P&H), Aditya and Co. Vs CIT 279 ITR 47 P&H, Tilak Raj Bedi Vs. JCIT 319 ITR 385 P&H, Pb. State Cooperative Agriculture Dev Bank Vs. CIT 207 CTR 352 P&H, Grover Nursing Home 248 ITR 493 P&H, Consolidated Photo & Finvest Ltd. Vs. ACIT 281 ITR 394 Del the principle is laid down that the Assessing Officer is expected to possess information which should make a prima facie belief of income having escaped assessment. Since, the Assessing Officer has specific information in his possession about the transaction in the purchase of land and duly corroborated with advance payments in Bank Account of the sellers by the appellant assessee and hence, the AO has specific reasons to believe that income has escaped assessment in the present case of the appellant. Further, the appellant has not availed opportunity of filing objections to the reasons, therefore no fault can be found in the procedure adopted by the Assessing Officer in initiating

the reassessment proceedings u/s 147 of the Act. Accordingly, ground No. 1 and 2 of appeal challenging therein validity of reasons and reassessment are held to be devoid of any merits and substance and therefore, same are as such rejected.

12. In ground no. 3 & 4, the assessee has challenged approval granted by the CIT u/s 151 for issuing notice u/s 147 as bad in law. This issue of approval granted u/s 151 of the Income Tax Act by the Id. CIT(A) has also been raised for the first time before the Tribunal as legal ground. The appellant challenged that the Id. Addl. CIT did not record the satisfaction u/s 151 for issuing notice u/s 147 of the Act and no approval has been obtained from the competent authority as required u/s 151 and therefore, the proceedings initiated u/s 147 are bad in law and without jurisdiction. In support he placed the reliance on the judgment delivered by the Hon'ble Delhi High Court in the case of Central India Electric Supply Co. Ltd. v. ITO [2011] 333 ITR 237 (Delhi). The relevant part is reproduced as under:

"7. Being aggrieved by the notice under section 148 dated 15-12-1981 for re-assessment as well as the Order of the ITO dated 24-3-1986, the assessee filed appeal before the Commissioner of Income-tax (Appeals) [for short, 'the CIT(A)], which was partly allowed. The assessee contended that since it received a sum of Rs.11,57,965 only on 28-9-1978 from the Government of Madhya Pradesh, which was deposited in the nationalized bank, it would be exempt from assessment for the assessment year 1979-80 as per the provisions of section 54E. It was submitted by the assessee before the CIT(A) that the Assessing Officer had observed that as per section 45(1), any profit or gain arising from

transfer of capital assets affected in a previous year was chargeable to tax under the head of 'Capital Gains' as income of the previous year when the transfer took place, i.e., 1964. Therefore, the assessee was liable to pay additional tax on the income that escaped assessment."

13. Per contra, the Id. Addl. CIT-DR submitted that it was a case of deemed escapement of income as per clause (b) to (Explanation (2) u/s 147) and the satisfaction of the Joint Commissioner u/s 151 of the Act and not of the Commissioner was required for the relevant year under consideration. The Id. DR contended that the Addl. CIT has granted approval with proper application of mind after going through the reasons recorded as evident from its satisfaction recorded in column 12 of the proposal form in compliance to whether it is a fit case for issue of notice u/s 148 of the Act, by way of writing that "Yes, it is a fit case", and on receipt of the permission, the Assessing Officer issued notice under section 148 of Income Tax Act on 14/03/2014 through registered post which was duly served upon the Appellant company as the receipt is being acknowledged under the Appellant Company stamp as discussed in above. Thus, the Addl. JCIT has accorded the necessary statutory approval as per mandate on being satisfied on the reasons recorded by the AO that is a fit case for the issuance of notice u/s 148 (APB pg. no. 34). The Id. DR placed reliance

on the judgment delivered by the Punjab & Haryana High Court in the case of Rakesh Gupta v. CIT, Panchkula [2018] 93 taxmann.com 271.

14. The Id. DR also relied the Hon'ble High Court of Gujarat in the case of Baldevbhai Bhikhabhai Patel v. Dy. CIT [2018] 94 taxmann.com 428 (Gujarat) wherein direct decision on the issue of approval by Addl./Joint CIT u/s 151 r.w.s. 148 of the Act is delivered vide para 10, 12 and 13 as under:

10. We now come to the petitioner's second argument, namely, of the validity of the sanction. The respondent has produced a bunch of documents along with the said affidavit, which contains the sanction order. We have also perused the original file produced before us by the counsel for the Revenue. The materials on record would suggest that the proposal for issuance of notice mooted by the Assessing Officer along with the reasons recorded was placed before the Dy. Commissioner of Income-tax, Circle-3, Surat in a printed proforma. The Dy. Commissioner of Income-tax placed the same before the Addl. Commissioner of Income-tax to ascertain his satisfaction whether it was a fit case for issuing Notice u/s.148 of the Act, on which, the Addl. Commissioner of Income-tax, in his own hands, put the following remarks;

"I am satisfied that it is a fit case to issue Notice u/s.148 of the Income-tax Act, 1961 ?"

12. It can, thus, be seen that the entire proposal along with necessary details and the reasons recorded by the Assessing Officer were placed before the Addl. Commissioner of Income- tax, who, upon perusal of the same, in his own hands, recorded his satisfaction that it was a fit case for issuance of notice u/s.148 of the Act. In the forwarding letter, he reiterated that he had perused the reasons recorded by the Assessing Officer and upon perusal, he was satisfied and was of the considered opinion that it was a fit case for issuance of notice u/s.148 of the Act. He further stated that "therefore, your proposal for reopening the assessment u/s.147 is hereby approved u/s. 151(1) of the Act...."

13. It can, thus, be seen that the Addl. Commissioner of Income-tax had not only put his remarks on the proforma presented before him by the Assessing Officer but also separately conveyed his satisfaction to the Assessing Officer in a separate letter. The application of mind and grant of sanction was, thus, one integrated exercise. Even independently, we have no reason to believe or hold that this was a case of non-application of mind. The Addl. Commissioner of Income-tax had perused the materials on record, which included the reasons recorded by the Assessing Officer. He had recorded his satisfaction and opinion that it was a fit case for issuance of Notice u/s. 148(1) of the Act.

15. The Hon'ble Jurisdictional High Court of Punjab & Haryana judgement in the case of "Rakesh Gupta vs. Commissioner of Income-tax, Panchkula", [2018] 93 taxmann.com 271, on the question of recording satisfaction by the competent authority u/s 151 of the Income Tax Act has held that-

".....the case before us is entirely different. We have found that the reasons recorded by the AO justify the initiation of proceedings under Sections 147 and 148. As the Principal Commissioner agreed with these reasons, it was not necessary for him in his order according sanction to reiterate the reasons furnished by the AO. There is nothing that indicates that he did not apply his mind to the reasons furnished by the AO.

45. Reasons to believe are there. The reasons are based on tangible material. The return and account books of assessee had not undergone scrutiny at the time of assessment. The information is specific and not vague. A reasonable person can form an opinion on the basis of the material. The information received could form the basis of reason to believe that income has escaped assessment and

the re-opening is not on mere suspicion. Hence, the assumption of jurisdiction is in accordance with law.

16. In the present case, the AO has reasons to believe based on tangible material. The return and books of account of the assessee had not undergone scrutiny at the time of assessment and the information is specific with the AO and not vague. In our view, a reasonable person can form an opinion on the basis of this tangible material and therefore, the information received on transaction on investment of worth crores in purchase of Land by the appellant company, as above could form the basis of valid reason to believe that income has escaped assessment and approval has been granted being satisfied by the competent authority. The Ld. AR for the appellant failed to rebut the contention of the department by way of filing any citation of subsequent date to the judgment of the jurisdiction High Court or any other Higher Judicial Forums applicable directly or indirectly to the peculiar facts of the present case.

17. Considering the factual matrix, Judicial pronouncement, following the Hon'ble Jurisdictional High Court in case of "Rakesh Gupta vs. Commissioner of Income-tax", we uphold the validity of reopening of assessment on both the counts that valid reasons recorded by the assessing officer and valid sanction accorded by the Id. Addl. CIT under

section 151 of the act by way of writing “Yes, It is a fit case”, in the approval form, as we understand that the Addl./Joint CIT was not required to reiterate the reasons recorded by the assessing officer under section 147 of the act. Thus ground number 3 and 4 of the appellant are rejected.

Adjudication on merits of the case:

In ground nos. 5 to 15, the quantum addition is challenged by spreading in multiple grounds with consequential interest to addition u/s 234A, 234B and 234C of the Act, and hence adjudicated simultaneously in the following paras.

18. The Ld. CIT(A) has confirmed the addition made by the AO by appreciating the merits of the case. The relevant part of the decision of the Ld. CIT(A) order is reproduced as under:

“DECISION- The case was reopened on the basis of information that assessee company had invested an amount of Rs 30,44,550/- by cheque, Rs 1 Crore by cash to purchase land from Baldev Singh R/O Village Heir, Palah Sahib Road, Amritsar and also invested an amount of Rs 53,98,000/- in cash for the purchase of land from Sh Malook Singh during F Y 2008-09 relevant to A Y 2009-10. The said payments were made on 04-04-2008.

To verify the source of investment by the assessee as above the AO called for information from Syndicate bank, Amritsar and the statement of accounts of the following sellers of land to the assessee were obtained for F Y 2008-09-

Name	S B A/c No.
Sh Baldev Singh	81002010052180
Sh Gursharn Singh	81002200011499
Sh Gurmukh Singh	8100220011484
Sh Malook Singh	81002200011470

The perusal of account statement of Sh Baldev Singh revealed the credit of Rs 1 Crore on 04-04-2008 by transfer. Likewise, the account of Sh Malook Singh was credited with an amount of Rs 53,98,000/- on 04-04-2008 through transfer.

The AO called for information from the Syndicate Bank, Amritsar, with respect to the said transfer of amount on 04-04- 2008, and the chief manager informed that amount of Rs 2,16,23,000/- was deposited in cash in the GLA/sundry a/c no. 170560100 on 04-04-2008 by the representative of M/s Blue city township & colonizers Pvt Ltd, Amritsar and from this account, certain amounts were transferred on 04-04-2008 as per detail given below-

Whose account credited	Amount credited (Rs.)
In S. B. A/c No. 81002010052180 of Sh. Baldev Singh	1 Crore on 04.04.2008
In S B A/c No. 8100220011499 of Sh Gursharn Singh	27 lakh on 04-04- 2008
In S B A/c No. 81002200011484 of Sh Gurmukh Singh	35,25,000/- on 04- 04-2008
In S B A/c No. 81002200011470 of Sh Malook Singh	53,98,000/- on 04- 04-2008

Therefore, the sum of Rs 216,23,000/- was the cash deposited by M/s Blue City Township & Colonizers Pvt. Ltd, Amritsar on 4-4-2016 in account number 170560100 for the purposes of making/ transferring the

predetermined amounts in the accounts of persons from whom lands had been purchased on 4-4-2008 and other dates during FY 2008-09 . The AO held that these were the amounts which the Assessee paid over and above the prices mentioned in the registries of purchase of the assessee company during FY 2008-09.

The Chief Bank Manager of Syndicate Bank . Amritsar vide certificate dated **15-12-2011** informed the AO that on 4- 04-2008. Rs 100,00.000/-was deposited¹ in SB account no. 81002010052180 on 4-4-2008 of Sh Baldev Singh Heir. But in the account statement is reflected as “by Transfer” for the reason that due to technical fault the above amount deposited in cash in Sundry account of the Bank was transferred to the above SB a/c of Sh Baldev Singh Sandhu heir.

The present Chief Manager of Syndicate Bank, Amritsar had also certified **in writing vide letter dated 12-03-2015 and in his statement on oath u/s 131(1) of 1 T Act** that the then cashier of the Bank has given in writing that the above cash deposits were made by M/s Blue City Township &, Colonizers Pvt Ltd . Amritsar on 4-4-2008 in the Sundry/ GLA account No. 170560100.

Accordingly, the AO rightly concluded that the amounts of Rs 100,00,000/- and Rs 53,98,000/- were paid by the appellant to the sellers of lands Sh Baldev Singh and Sh Malook Singh respectively by the assessee on 4-4-2008 in cash over and above the price's mentioned in the registered sale deeds.

Therefore the amounts of Rs 100,00,000/- and Rs 53,98,000/- were added back to the income of the Assessee / 69 of the Act as unexplained Investment.

In the written submissions filed in appeal proceedings, the appellant has filed the copy of statement given by the retired cashier Sh Raj Kumar Gupta 09-04-2015 for the first time in the appeal proceedings. The copy of the said letter was not filed before the AO in the assessment proceedings and is a fresh evidence filed for the first time in appeal proceedings under rule 46A of I T Rules. No reason was given by the appellant for non submission of this evidence before the AO in the assessment proceedings, therefore the said copy of letter of the retired cashier Sh Raj Kumar Gupta dated 09-04-2015 is refused to be admitted as additional evidence under rule 46A of I T Rules and is dismissed.

Moreover, the said letter of the retired cashier Sh Raj Kumar Gupta is an afterthought as nothing is mentioned in the said letter dated 09.04.2015 of the retired cashier of what prompted him to write his letter in respect of a banking event which took place in the F Y 2008-09 and was clearly an afterthought, unreliable and dismissed.

The appellant also submitted the letter dated 10-04-2015 of the Chief Manager, Syndicate Bank, Amritsar in appeal proceedings on the basis of the statement of the retired cashier Sh Raj Kumar Gupta 09-04-2015, which was not filed before the AO in the assessment proceedings and is a fresh evidence filed for the first time in appeal proceedings under rule 46A of I T Rules. No reason was given by the appellant for non submission of this evidence before the AO in the assessment proceedings, therefore the said copy of the said letter of the Chief Manager, Syndicate Bank, Amritsar dated 10-04-2015 is refused to be admitted as additional evidence under rule 46A of I T Rules and is dismissed.

In the written submissions filed by the appellant in the appeal proceedings it was contended that the AO had given reference to the letter dated 15-11-2011 of Chief Manager, Syndicate Bank, Amritsar wherein he clearly stated that cash had been deposited in the account of Sh. Baldev Singh which due to technical fault had been reflected as transfer in his account. Further again, in his statement given on 12-03- 2015, the Chief Manager, Syndicate Bank, Amritsar gave a statement on the basis of the statement of the retired cashier Sh. Raj Kumar Gupta that cash was deposited in the head no. 170560100 by representatives of the assessee Company but no documentary evidence in support of cash deposit of cash by the assessee company was produced by the Bank authorities.

The next objection of the appellant was that the AO had referred to the letter dated 15.11.2011 of the Chief Manager, Syndicate Bank, Court Road, Amritsar wherein he had informed the AO that on 04-04-2008 Rs 1 Crore was deposited by cash in S B Account no. 81002010052180 of Mr. Baldev Singh, Heir which due to technical fault was reflected as transfer in his account. Further again the Chief Manager on 12-03-2015 the Chief Manager, Syndicate Bank, Amritsar gave a statement on the basis of the statement of the retired cashier Raj Kumar Gupta that cash was deposited in the head no. 170560100 by the representative of the assessee company but no documentary evidence in support of this claim was produced by the bank authorities. Therefore the appellant alleged that this statement was contradictory to the statement given by the earlier Chief Manager, Syndicate bank, Amritsar on 15-11-2011. The submissions of appellant are considered.

There was no contradiction in the statements given by the Chief Manager, Syndicate bank, Court Road, Amritsar in his letter dated 15-11-2011 and 12-03-2015. What emerges from the plain reading of the two letters of the Chief Manager. Syndicate bank. Court Road. Amritsar is that the then cashier of the bank had given in writing that the above cash deposit of Rs 216.23,000/- was made by M/s Blue City Township & Colonizers Pvt Ltd. Amritsar on 04-04-2008 in the sundry /GLA account no. 170560100 and from this account, certain amounts were transferred on 04-04-2008 as under-

Whose account credited	Amount credited (Rs)
In S B A/c No-. 81002010052180 of Sh Baldev Singh	1 Crore on 04-04-2008
In S B A/c No. 8100220011499 of Sh Gursharn Singh	27 lakh on 04-04-2008
In S B A/C 81002200011484 of Sh Gurmukh Singh	
In S B A/c No. 81002200011470 of Sh Malook Singh	53,98,000/- on 04-04-2008

It was only in the account statements of the above persons that the above entries were reflected as by transfer due to technical fault. The appellant had read and picked out only part of the statement of the Chief Manager, Syndicate Bank dated 15-11-2011 and omitted to read the last sentence of the said letter “**hence actually it is cash entry in the above account**”.

Moreover, the statements of the bank Manager dated 15-11-2011 and 12-03-2015 are reliable pieces of evidence which are expected to be given after verification of record of the bank by the Chief Manager who is the senior most authority of the concerned Branch of the bank and therefore their authenticity cannot be doubted. Therefore the AO rightly did not consider it necessary to seek documentary evidence in support of the deposit of cash of Rs 216,23,000/- by assessee company in the bank.

The next objection of the appellant was- that no purchase deed amounting to Rs 153,98,000/- has been shown to the Assessee company. The Appellant argued that the addition of Rs 1,53,98,000/- considered as unexplained investment does not belong to the Assessed company. That the Assessee Company had never claimed that this money, belongs to the

Assessee. There is no document on record to show that the money belongs to the assessee company.

All the above objections of the appellant are baseless. The AO correctly stated that the assessee company had paid cash (directly or indirectly through sundry account) of Rs 1 crore to Sh Baldev Singh heir and Rs 53.98.0000/- to Sh Malook Singh **over and above the registry prices on 04-04-2008 for the purchase of pieces of land from the concerned persons. Obviously there would be no purchase deed amounting to Rs 153.98,000/-.**

Since the cash of Rs 216.23,000/- was deposited in the GLA / sundry account no. 170560100 by M/s Blue City Township and Colonizers Pvt Ltd and then transferred to the accounts of Sh Baldev Singh and Sh Malook Singh even if by technical default in the bank, the source of cash deposit of Rs 153.98,000/- in the bank accounts had remained unexplained by the appellant and therefore the addition of Rs 153,98,000/- as unexplained investment u/s 69 of the Act was justified and upheld. The grounds of appeal no. 1, 2,4 and 5 against the addition of Rs 1,53,98,000/- are dismissed."

19. The Ld. AR for the appellant assessee submitted that the Ld. CIT(A) has grossly erred in law and on facts in confirming the addition of Rs. 1,53,98,000/- on account of unexplained investment as per the provisions of section 69 of the I. T. Act. He argued that no addition for undisclosed investment can be made merely relying on the third party statement and evidence which has been retracted as recorded in the back of the assessee; that the evidences relied upon by the AO for framing assessment were never confronted to the appellant and hence the assessment order and CIT(A)'s order are illegal and bad in law. The Ld. AR contended that the statements made are inherently contradictory and

unreliable and on the facts and circumstances of the case, the statement recorded ex-parte cannot be relied upon in the absence of cross examination. The Ld. AR argued that the CIT(A) has grossly erred in law and on facts in not admitting the additional evidence as the said evidence was necessary to decide the issue and the appellant was prevented by reasonable cause for not filing it during the assessment proceeding as the evidence filed and materials available on record have not been properly construed and judiciously interpreted, hence the addition/disallowance made are uncalled for. The AR further contended that the onus to prove the investment made by the assessee for purchase of a plot is allegedly on the Department. The additions cannot be made on surmises and conjecture. Therefore, no additions to the assessee's income could be made based on the conflicting statements and in the absence of an independent inquiry by the AO. The counsel argued that the evidence filed and materials available on record have not been properly construed and judiciously interpreted, hence the addition/disallowance made are uncalled for and that the observation and the additions made are unjust, illegal, arbitrary, bad in law, highly excessive and based on surmise conjecture. He filed a paper book index of documents as under:

**BEFORE THE INCOME TAX APPELLATE TRIBUNAL,
AMRITSAR BENCH, AMRITSAR**

IN THE MATTER OF:

**BLUE CITY TOWNSHIP & COLONIZERS
ACF 10-C, RANJIT AVENUE, AMRITSAR**I.T.A No. 90/Asr/2017
Assessment Year: 2009-10

Sr. No.	Particulars	pages
1.	Copy of Form No. 36 with grounds of Appeal	1-6
2.	Copy of the CIT (A) Order dated 26.10.2016.	7-20
3.	Copy of the Form 35, along with Ground of Appeal filed dated 21.04.2015	21-26
4.	Copy of the Assessment Order U/s. 143(3) dated 27.03.2015	27-31
5.	Copy of the Notice U/s 148 of the I.T.Act dated 14.03.2014.	32
6.	Form for recording reason for initiating proceedings u/s 148 for obtaining approval of the ACIT, Range-V, Amritsar dated 11.03.2014.	33-35
7.	Copy of the Letter to the CIT(Appeals)-II, Amritsar dated 21.06.2016	36-37
8.	Copy of the Audit Report, Balance Sheet, Trading & Profit & loss account.	38-77
9.	Copy of statement of Chief Manager, Syndicate Bank, Court Road, Amritsar dated 10-04-2015 alongwith copy of statement of cashier	78-79
10.	Copy of statement of Chief Manager, Syndicate Bank, Court Road, Amritsar dated 12-03-2015	80

As informed by the assessee, it is hereby certified that this Paper Book contains only those documents which are drawn from the record of lower authorities and no fresh evidence is being filed before the Hon'ble Tribunal.

Place: Amritsar

Date: 21.08.2017

Shalinder Pansotra
(Director)

Blue City Town. & Col. Pvt.
Ltd.

The relevant case law referred from the case law Index filed by Ld. AR is reproduced here under:

(i) The Hon. Hon'ble High Court of Delhi in the case of Pr. CIT v. N.C. Cables Ltd. [2017] 391 ITR 11 (Delhi)

Section 68 of the Income-tax Act, 1961 - Cash credit (Share Application money) - assessment year 2001-02 - Where assessee had furnished large amount of materials in form of documents to evidence genuineness of identity and transactions as well as creditworthiness of share applicants and other creditors and Assessing Officer did not conduct appropriate enquiry to conclude that share infusion and advances received were from bogus entities, no addition could be made on that account by invoking section 68.

20. Per contra, the Ld. DR supported the impugned order. He contended that the AO observed that the amounts which the assessee paid over and above the prices mentioned in the registries of purchase of land by the assessee company during FY 2008-09 were amounting to a sum of Rs 216,23,000/-, being the cash deposited by M/s Blue City Township & Colonizers Pvt. Ltd, Amritsar on 4-4-2016 in account number 170560100 for the purposes of making/transferring the predetermined amounts in the accounts of persons from whom lands had been purchased on 4-4-2008 and other dates during Financial Year 2008-09. He argued that the Chief Bank Manager of Syndicate Bank, Amritsar vide certificate dated 15.12.2011 informed the AO that on 04.04.2008, Rs. 10,00,000/- was deposited on 4-4-2008 in SB account no. 81002010052180 of Sh Baldev

Singh Heir, though in the account statement it was reflected as “by Transfer” for the reason of technical fault, actually the above said amount being deposited in cash in Sundry account of the Bank was transferred to the above SB a/c of Sh Baldev Singh Sandhu heir. Further, the present Chief Manager of Syndicate Bank, Amritsar had also certified in writing vide letter dated 12-03-2015 and that the then cashier of the Bank has given in writing that the above cash were deposited by M/s Blue City Township & Colonizers Put Ltd, Amritsar on 4-4-2008 in the Sundry/ GLA account No. 170560100. Accordingly, the AO held that the amounts of Rs 100,00,000/- and Rs 53,98,000/- were paid by the appellant company to the sellers of lands Sh Baldev Singh and Sh Malook Singh respectively on 4-4-2008 over and above the prices mentioned in the registered sale deeds. The case law relied by the Ld AR are distinguishable on the peculiar facts of the present case. Therefore, the Ld. CIT(A) was justified in confirming the addition of Rs. 100,00,000/- and Rs 53,98,000/- to the income of the Assessee u/s 69 of the Act as unexplained Investment.

21. We have heard the rival contentions, perused the material on record, impugned order, written submission/ statement on record before the AO and case law cited before us. Admittedly, the appellant company has purchased land on 04.04.2008 from Baldev Singh R/o Village Heir, Palah

Sahib Road, Amritsar and Sh Malook Singh during Financial Year 2008-09 relevant to Assessment Year 2009-10 under consideration. During the course of scrutiny, the AO called for information from the Syndicate Bank, regarding the amount deposited in the account of the above two persons which reveals that an amount of Rs 1,00,00,000/- and Rs. 53,98,000/- was deposited to the bank account of Sh. Baldev Singh and Malook Singh on 04-04-2008 respectively. In compliance to AO's quarry, the chief Manager of Syndicate Bank, Amritsar explained the deposits being made in cash by the representative of M/s Blue city township & colonizers Pvt Ltd, Amritsar, on 04-04-2008 as per detail given below-

Whose account credited	Amount credited (Rs.)
In S. B. A/c No. 81002010052180 of Sh. Baldev Singh	1,00,00,000/- on 04.04.2008
In S B A/c No. 8100220011499 of Sh Gursharn Singh	27,00,000/- lakh on 04-04-2008
In S B A/c No. 81002200011484 of Sh Gurmukh Singh	35,25,000/- on 04-04-2008
In S B A/c No. 81002200011470 of Sh Malook Singh	53,98,000/- on 04-04-2008

Thus, the sum of Rs 2,16,23,000/- cash was deposited by M/s Blue City Township & Colonizers Pvt. Ltd, Amritsar on 4-4-2016 in account number 170560100 for the purposes of making/transferring the predetermined amounts in the accounts of persons from whom lands had

been purchased on 4-4-2008 and other dates during FY 2008-09 as per the AO.

22. From the record it is revealed that the Chief Bank Manager of Syndicate Bank, Amritsar vide certificate dated 15-12-2011 informed the AO that on 04-04-2008 cash of Rs 100,00,000/- was deposited in SB account no. 81002010052180 of Sh Baldev Singh Heir. However, in the account statement it was reflected as "by Transfer" for the technical fault as the above amount deposited in cash was accounted for in Sundry account of the Bank and thereafter it was transferred to the above SB a/c of Sh Baldev Singh Sandhu heir. The present Chief Manager of Syndicate Bank, Amritsar had also certified in writing vide letter dated 12-03-2015 that the then cashier of the Bank has given in writing that the above cash deposits were made by M/s Blue City Township & Colonizers Pvt Ltd, Amritsar on 4-4-2008 in the Sundry/GLA account No. 170560100. In our view, the CIT(A) has rightly observed that the AO has rightly concluded that the amounts of Rs 100,00,000/- and Rs 53,98,000/- were paid by the appellant to the sellers of lands Sh Baldev Singh and Sh Malook Singh respectively by the assessee on 4-4-2008 in cash, over and above the price's mentioned in the registered sale deeds and therefore, the addition of the

amounts of Rs 100,00,000/- and Rs 53,98,000/- made u/s 69 of the Act confirmed by Id. CIT(A) as unexplained investment was justified.

23. It is seen that the appellant submitted the letter dated 10-04-2015 of the Chief Manager, Syndicate Bank, Amritsar in appeal proceedings before the CIT (A) on the basis of the statement of the retired cashier Sh. Raj Kumar Gupta 09-04-2015, which was never rebutted before the AO in the assessment proceedings though the then Id. AR has accepted the fact regarding statements of cashier duly certified by Chief Manager in the course of assessment proceedings, either furnishing the letter/statements of the representative of the company who has deposited the cash the account of the sellers of the land or made a request to produce him for examination before either of the lower authorities. Since, the appellant has failed a fresh evidence for the first time in appeal proceedings before the Id. CIT(A) under rule 46A of IT Rules without assigning bonafide reason that prevented it from submission of this evidence before the AO in the assessment proceedings. In view of that matter, we are of the considered view that the copy of the said letter of the Chief Manager, Syndicate Bank, Amritsar dated 10-04-2015 is rightly rejected to be admitted as additional evidence under rule 46A of IT Rules as per mandate as non- admissible

evidence under any of the four exceptions provided under Rule 46 of the IT Rules as per law.

24. The Ld. CIT(A) has discussed the fact that in the written submissions filed, the appellant has contended before him that the AO had given reference to the letter dated 15-11-2011 of Chief Manager, Syndicate Bank, Amritsar wherein he clearly stated that cash had been deposited in the account of Sh. Baldev Singh which had been reflected as transfer in his account due to bulk posting. Again, the Chief Manager, Syndicate Bank, Amritsar gave a statement on the basis of the statement of the retired cashier Sh. Raj Kumar Gupta who has admitted in his written statement dated 12-03- 2015 that cash was deposited in the head no. 170560100 by representatives of the assessee Company. However, the appellant has failed to rebut the contentions of the Department that the disputed cash was not deposited in the seller's saving Bank Account by the representative of the company with the support of documentary evidences. Meaning thereby, the appellant company claim of production additional evidence of subsequent letter of retired Chief Manager dated 10.04.2015 in rebuttal no evidentiary value as being after though to give column to cash transaction which can no override the material evidence on record in the form of letter

of cashier of the bank, and the two Chief Managers, duly certified by latest functional Chief Manager on 09.04.2015.

25. The Ld. counsel's next objection was that the AO had referred to the letter dated 15.11.2011 of the Chief Manager, Syndicate Bank, Court Road, Amritsar wherein he had informed the AO that on 04-04-2008 Rs 1 Crore was deposited by cash in S B Account no. 81002010052180 of Mr. Baldev Singh, Heir which due to technical fault was reflected as transfer in his account. Further again the Chief Manager on 12-03-2015 the Chief Manager, Syndicate Bank, Amritsar gave a statement on the basis of the statement of the retired cashier Raj Kumar Gupta that cash was deposited in the head no. 170560100 by the representative of the assessee company but no documentary evidence in support of this claim was produced by the bank authorities. The objection of the appellant is factually incorrect, because this statement was in conformity to the statement given by the earlier Chief Manager, Syndicate bank, Amritsar on 15-11-2011, and written letter of the bank cashier during that period as per Bank records.

26. From the above, it evident that there was no contradiction in the statements given by the Chief Manager, Syndicate bank, Court Road, Amritsar in his letter dated 15-11-2011 and 12-03-2015. What emerges

from the plain reading of the two letters of the Chief Manager, Syndicate bank, Court Road, Amritsar is that the then cashier of the bank had given in writing that the above cash deposit of Rs 216.23,000/- was made by M/s Blue City Township & Colonizers Pvt Ltd. Amritsar on 04-04-2008 in the sundry/GLA account no. 170560100 and from this account, certain amounts were transferred on 04-04-2008 as under-

Whose account credited	Amount credited (Rs)
In S B A/c No-. 81002010052180 of Sh Baldev Singh	1 Crore on 04-04-2008
In S B A/c No. 8100220011499 of Sh Gursharn Singh	27 lakh on 04-04-2008
In S B A/C 81002200011484 of Sh Gurmukh Singh	
In S B A/c No. 81002200011470 of Sh Malook Singh	53,98,000/- on 04-04-2008

27. Thus, it is apparently clear that it was only in the account statements of the above persons that the above entries were reflected by transfer from the said sundry/GLA account no. 170560100 due to technical fault no to any other account then the person whose land was purchased by the appellant company. The Ld. AR for the appellant had referred on choose and pick basis only part of the statement of the Chief Manager, Syndicate Bank dated 15-11-2011 at to its convenience and omitted to read the

important part of the said letter that **“hence actually it is cash entry in the above account”**. In our considered view, the statements of the bank Chief Manager dated 15-11-2011 and 12-03-2015 are reliable pieces of evidence which are given after verification of record of the bank by the Chief Manager who and written letter of the cashier of the Bank is the senior most authority of the concerned Branch of the bank and therefore their authenticity cannot be doubted. Therefore, in our view, the AO was not required to further corroborate with additional necessary documentary evidence to further corroborate the deposit of cash of Rs 216,23,000/- by assessee company in the bank as the primary and initial onus lies on the assessee . Without prejudice to the above, neither the appellant nor its Ld. AR took any objection to the decision of the AO based on the said statement of the cashier and chief manager of the Syndicate Bank confronted to them in the course of the assessment proceedings.

28. Yet another objection of the Ld. AR was that the disputed amount of Rs. 153,98,000/- did not belongs to the Assessed company as no purchase deed amounting to Rs. 153,98,000/- has been shown to the Assessee company while making the addition of Rs 1,53,98,000/- considering as unexplained investment. This objection is without any basis as it is established by the AO that the assessee company had paid cash directly or

indirectly through sundry account of Rs 1,00,00,000/- to Sh Baldev Singh heir and Rs 53,98,000/- to Sh Malook Singh over and above the registry prices on 04-04-2008 for the purchase of pieces of land by way of cash deposit in companies account of Syndicate Bank through its representative. It is quite strange that the AR took such contention knowingly the facts that obviously there would be no purchase deed amounting to Rs 153.98,000/- would be existed for the on money paid over and above the registered value of the sale deed by the appellant company as proved with the corroborative material evidence brought on record by the AO in the form of bank statement of the sellers, certificate of Chief Managers of Syndicate Bank, Statement of cashier etc. wherein the amount received in cash from the appellant company is duly stands proved.

29. Alternatively, since the cash of Rs 216.23,000/- was deposited in the GLA/sundry account no. 170560100 by M/s Blue City Township and Colonizers Pvt Ltd and then transferred to the accounts of Sh Baldev Singh and Sh Malook Singh even if by technical default in the bank, the source of cash deposit of Rs 153.98,000/- in the bank accounts had remained unexplained by the appellant and therefore, the Ld. CIT(A) has been justified in confirming the addition of Rs 153,98,000/- as unexplained investment u/s 69 of the Act.

30. In the backdrop of the aforesaid discussion, we find no infirmity or perversity in the impugned order of the Id. CIT(A) to the facts on record. Accordingly, we find no merit and substance in the ground raised by the appellant company and therefore, we hold the legal issue and the quantum challenged being devoid of merits. As such, the finding of the Id. CIT(A) is sustained in the manner discussed as above.

Order pronounced in the open court on 14.07.2023

**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.

True Copy
By Order