

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

Balvir Singh, 225, Near Kishore Chand Oil Mills, Raman Mandi, Bathinda. [PAN: -FLLPS2091N] (Appellant)	Vs.	IncomeTaxOfficer, Ward-1(2), Bathinda. (Respondent)
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**I.T.A. No. 276/Asr/2016
Assessment Year: 2009-10**

Sukhdev Singh, 225, Near Kishore Chand Oil Mills, Raman Mandi, Bathinda. [PAN: -FLLPS2247N] (Appellant)	Vs.	Income Tax Officer, Ward-1(2), Bathinda. (Respondent)
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Appellant by	None
Respondent by	Sh. S. M. Surendranath, Sr.DR.

Date of Hearing	18.07.2023
Date of Pronouncement	07.08.2023

ORDER

Per: Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income-tax (Appeals) Bathinda, (in brevity 'the CIT(A)') order passed u/s 250 (6) of the Income-tax Act, 1961 (in brevity the Act) for

assessment year 2009-10. The impugned order was emanated from the order of the Id. Income Tax Officer, Ward-1(2), Bathinda,(in brevity the Id. AO) order passed u/s 143(3)/147 of the Act.

2. At the outset, both appeals are under the same factual backdrop and have a common issue. Both the appeals are taken together, heard together, and disposed of together. **ITA No. 275/Asr/2016** is taken as lead case.

ITA No. 275/Asr/2016

3. The assessee has taken the following grounds:

1. *That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding the re-opening the case of the assessee on vague information.*

2. *That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in rejecting the claim of the assessee that the agricultural land belongs to HUF of the assessee for which kursinama from patwari was filed before him. So, re-opening the case in individual status is liable to be quashed.*

3. *That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding the re-assessment as the copy of the reasons recorded to re-open the case was not supplied to the assessee after filing of the return on 18.02.2014 in response to notice u/s 148 of the Income tax Act, 1961 i.e. during the course of assessment proceedings.*

4. *That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in relying upon the agreement to sell Dated 01.10.2008 for deleting the whole addition on the basis that the same was not registered with the Revenue Authority but ignoring the fact that the same was attested by the Notary Public on the same date on 01.10.2008 and who confirmed the same during the remand proceedings before the AO.*

5. *That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in relying upon the remand report which was not only incomplete but also not according to the directions issued by the CIT(A) during the appellate proceedings.*

6. *That on the facts and in the circumstances of the case and in law, the learned CIT(A) should have deleted the addition of Rs, 2000000/-deposited in saving account in PNB, Raman on 30.12.2008 of the assessee as the same was deposited directly by the purchaser of the agricultural land from the assessee for which copy of bank vouchers were also filed before him. Accordingly, it is not of income nature.*

7. *That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in giving no relief on peak basis being the alternative plea before him.*

8. *That any other relief may kindly be granted to the assessee to whom he is found entitled at the time of hearing of appeal.”*

4. Brief fact of the case is that the assessee has deposited cash Rs.29,51,000/- during financial year 2008-09 in saving bank account maintained with Punjab National Bank, Raman Mandi, Distt. Bathinda. The information was received by the Id. AO. Accordingly, notice u/s 133(6) was issued and after the said verification the Id. AO issued notice u/s 148 of the Act. The assessee stated that the assessee sold the property at 11 kanals and 11 marlas @ 31 lacs per acre with Sh. Hukum Chand and Sh. Jagmohan Mittal advance was received Rs.15 lac against the sale of property. But the two registered deed was executed for 8 kanal and 5 kanal ½ marlas executed on 29.12.2008 and considering of each was Rs.5,69,000/- in the office of Sub Registrar, Talwandi Sabo. Accordingly, the total consideration was calculated amount of Rs.11,38,000/-. But the actual amount was received as per agreement dated 01.10.2008 was received Rs.64,13,125/-. The amount was deposited in assessee's own bank account while it was deposited in the bank account of his son namely Sh. Sukhdev Singh who is one of the Co-partner of assessee's HUF. During hearing, the assessee tried to prove that the amount was received from this agreement of sale and the excess amount was deposited in the bank during impugned assessment year. The Id. AO rejected the assessee's plea. Accordingly, the addition was made amount to Rs.18,12,000/- with the total income of the assessee. Being aggrieved assessee filed an appeal before the Id. CIT(A) by challenging both legal and on merit. The assessee challenged the jurisdictional of the Id. AO for reopening of

the assessment u/s 148. But the ld. CIT(A) upheld the assessment order. Being aggrieved assessee filed an appeal before us.

5. When the appeal was called for hearing, none was present on behalf of the assessee. The ld. AR filed an adjournment petition and mentioned that the assessee is interested to file the case law and the English Translation of the certain documents before the bench which is relevant to the appeal. The appeal was instituted on dated 11.07.2016. Moreover, 7 years was passed but ld. AR was not got time to submit the relevant documents. We rejected the adjournment petition of the ld. AR and proceed to dispose of the appeal *ex parte qua* for assessee after the hearing of ld. DR.

6. The ld. DR vehemently argued, first placed that the assessee challenged both the ground i.e. legal and on merit. The ld. AO has completed the 148 proceeding after completing the verification u/s 133(6). The ld. CIT(A) had passed the detailed order related to the assessee. Accordingly, he prayed for upholding the order of the revenue authorities.

7. We heard the rival submission, considered the documents available in the record and also relied the order of revenue authorities.

Ground Nos. 1 to 3

8. The ld. Counsel for the assessee filed written submissions which are kept in the record. The assessee challenged that the reopening is totally on vague

information, and the ld. AO had not supplied the recorded reason after filing the return u/s 148 on dated 18.02.2014. But on perusal of the record, we never find that the assessee has ever been called for the recorded reason from the assessee. The ld. AO is not bound to supply the recorded reason without demand of the assessee during proceeding u/s 148. We respectfully relied on the order of **Hon'ble Apex Court in the case of G.K. Driveshaft, 259 ITR 19 (SC)**. The relevant observation is inserted as below: -

“We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under section 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 and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the Assessing Officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years. In perusal of both the orders, we never find that the assessee never asked for the recorded reason from the ld. AO and not even challenged the reopening before the ld. AO during assessment proceeding. We consider the submission of the ld. DR and accordingly, the ground nos. 1 to 3 of the assessee is dismissed.”

Accordingly, appeal of assessee ground 1 to 3 are dismissed.

Ground Nos. 4 to 6

9. In these grounds, the assessee challenged on merit of the case related to addition of the cash deposited in bank account. The assessee took the plea that the assessee is uneducated and wrongfully the sale deed was executed in the value of Rs.11,38,000/-. But the actual consideration received amount of Rs.64,13,125/-. In the evidence the Id. AR submitted the affidavit and the agreement to sale which was not duly executed by any of the authorities. The observation of the Id. CIT(A), page nos. 4 to 7 of the appeal order are duly reproduced as below:

“3. During the assessment proceedings, the sources of the aforesaid deposit of cash in the savings bank account maintained with Punjab National Bank was sought to be explained as originating from the sale of agricultural land measuring 16 Kanals and 11 Marlas vide two registration deeds (numbered 3145 & 3146) each for 8 Kanals and 5 and half Marlas, executed on 29th of December, 2008, before the Sub Registrar, Talwandi Sabo. It was further stated by the appellant before the AO that, though the two registration deeds were for an ex-facie value of Rs. 11,38,000/- (Rs. 5,69,000/- each), the actual consideration received was Rs.64,13,125/-, a part of which was also deposited in the bank account of his son Shri Sukhdev Singh, who also happened to be a co-parcener in the appellant's HUF. Elaborating further, the

appellant averred that prior to the execution of the sale deed, a verbal agreement was made with the purchasers for sale of the said portion of agricultural land for which an amount of Rs. 9,50,000/- was received by the appellant on 26th of September, 2008, which was deposited in the savings account (S/B A/c No. 4055000100515781) opened on that very date. This was purported to be followed by an "Agreement to Sell" entered into with the purchasers, namely, Shri Jagmohan Mittal and Shri Hukum Chand on 1st of October 2008 with the stipulation that the said land shall be sold @31 lakhs per are to the purchasers named in the agreement or any of their nominees and that the process of registration of the sale deed should be completed by the purchasers at their cost before 30th of December, 2008, failing which the amount of advance (Rs. 15 lakhs) received pursuant to the aforesaid "Agreement to Sell", shall be forfeited. Out of the said advance of Rs. 15 lakhs, an amount of Rs.8,01,000/- was purportedly deposited in the savings bank account of the appellant's son Shri Sukhdev Singh maintained with Punjab national bank (S/BA c No. 4055000100515806) on the same date i.e. on 1st of October, 2008. The balance amount of Rs. 6,99,000/- was purported to have been utilised for construction of house in the village as well as for purchase of agricultural implements etc. On the execution of the sale deed on 29th of December, 2008, the appellant purportedly received the balance amount of Rs. 39,63,125/- which was deposited in the savings bank account of the appellant and his son on the very next day that is 30th of December, 2008. In the account of the appellant, Rs. 20 lakhs was purportedly deposited whereas Rs. 18 lakhs was stated to have

been deposited in the savings bank account of the appellant's son, Shri Sukhdev Singh. The small balance left with the appellant as cash in hand (Rs. 1,63,125/-) after such deposit in the bank, was utilised to pay commission of Rs. 65,000/- to Shri Krishan Kumar, who had brokered the land deal.

4. *The Assessing Officer rejected the aforesaid explanation of the appellant on the ground that the purported "agreement to sell" dated 1st of October, 2008 was not a reliable document in as much as the same was unregistered and what was produced before the AO was only a photocopy and not the original. The appellant '32 contended that as per the prevailing practice, the original of such "Agreement to Sell" remains with the purchaser and very often gets destroyed once the sale deed is registered. Besides, the AO also doubted the genuineness of the "Agreement to Sell" on account of the fact that such document bore the signature of only one of the intending purchasers, Shri Jagmohan Mittal and that the said agreement along with its stipulations of advance and the rates at which the land was to be sold did not find any mention in the recitals of the registration deed. The AO further noted that sale deeds were registered in the names of parties who were not the intending purchasers as per the "Agreement to Sell" and that their inter se relation was also not clearly established during the assessment proceedings. The cash flow provided by the appellant*-during the assessment proceedings to explain the sources of deposit also did not find favour with the AO on the premise that neither was there any evidence of the opening capital shown at Rs. 2,51,680/- nor the appellant could produce any evidence to show that some portion of land which was purportedly*

let out on "Theka" fetched an amount of Rs.1,32,000/-. The cash flow statement was further trashed on the ground that the appellant had not shown day-to-day house-hold and other expenses in the said statement. Considering the aforesaid grounds, the AO held that the "Agreement to Sell" was not a genuine document which was fabricated just to explain the sources of cash deposit in the savings bank account. Having held so, the AO give the appellant credit of Rs. 11,38,000/-(amount as per the registered sale deeds) and held the balance amount of Rs. 18,12,000/- as undisclosed income which was added to the below-taxable-limit income (Rs.60,000/-) returned in response to notice under section 148 of the Act.

5. *In the appellate proceedings, it was argued that the appellant is-an illiterate agriculturist, who only has some meagre agricultural income which is supplemented by sale of milk. The proceedings under section 147 was challenged on the ground that the AO had only a vague information about cash deposits in bank and without making any proper enquiry, notice under section 148 was issued. It was further stated that the land which was sold, sale proceeds of which was -deposited in the bank account, belonged to the HUF, making the assessment proceedings in the hands of the individual untenable. As proof of the land belonging to HUF, a photocopy of the Tehsildar's certificate ,(Kursinama) was adduced. It was also pointed out that since the AO was not sure about this fact, the HUF has been put to protective notice under section 148. Besides the aforesaid procedural grounds, the appellant also assailed the action of the AO in disregarding the contents of the "agreement to sell" and branding the same as a non-genuine*

document. It was averred that the documents adduced before the AO was admittedly not registered but was written on a stamp paper of Rs. 300/-and was duly notarised. The agreement was also witnessed by independent witnesses and was signed by Shri Jagmohan Mittal. During the course of the appellate proceedings, a certificate from the notary public, Shri Rajinder Singh Makkar, Advocate was filed to the effect that the original “Agreement to Sell” was inspected before attesting the photocopy of the same on 1st of October, 2008.”

9.1 The assessee further challenged that the cross verification was not allowed to assessee when the procedure was called for in through summon for make the deposition before the ld. AO. Here, the observation of the ld. CIT(A) in para 8 of the CIT(A)’s order is duly reproduced:

“8. The matter was again remanded to the AO with the directions to provide the appellant an opportunity of cross examination of Shri Jagmohan Mittal and Shri Hukam Chand alongwith the witness who chose to be non-compliant to the summons. The AO was also asked to examine the notary who is purported to have attested the copy of “agreement to sell” giving the same a status of legitimacy. The AO has since returned the remand vide his letter dated 22.02.2016, duly forwarded by the Joint Commissioner Range-1.'It would be felicitous to quote the subsequent remand report of the AO:

“kindly refer to your goodselves letter No. CIT (A)/BTI/15-16/916 dated 29.12.2015 on the above noted subject.

In this connection, it is submitted that as per your directions, the assessee was allowed an opportunity to cross examine Shri Jagmohan Mittal when Shri J.K. Gupta, advocate, counsel for the assessee appeared. The cross examination of Shri Jagmohan Mittal was continued near about 3 hours (exactly from 11.45 AM to 2.00 PM and from 3.00 PM to 3.45 PM). In the end, when some relevant questions were asked by the assessee's counsel, objection was raised by Shri Jagmohan Mittal and his counsels S/Sh. Ashwani Juneja, ITP and Nitish Garg, Advocate. Under the circumstances, the cross examination was discontinued. A photo copy of the conversation between both the parties is enclosed for ready reference. A photo copy of the objections raised by Shri Jagmohan Mittal and his counsels is also enclosed.”

9.2 Finally, the Id. CIT(A) had made the observation related to the addition made by the Id. AO in the assessment order. The relevant paragraph 14 of the assessment order is duly reproduced as below:

“14. The appellant has also challenged the assessment on the ground that the agricultural land which was sold and proceeds whereof was purported to have been deposited in the savings bank account of the appellant and his son, belonged to the HUF consisting of himself and his son. This argument was rightfully rejected by the AO on the ground that when notice under section 148 was issued to the appellant in his individual

capacity, the same was not agitated. Besides, there was no recital in the Registration Deeds to the effect that the land belonged to the HUF and that the seller acted in the capacity of 'Karta' or 'coparcener' of the said HUF. The bank account where the sale proceeds were deposited also stood in the individual names of the appellant and his son Shri Sukhdev Singh. The AO is seen to have correctly come to a conclusion that the argument of HUF land was only meant to explain the sources of cash deposit in the bank account of the appellant's son Shri Sukhdev Singh in whose case also, the assessment proceedings relating to the A.Y. 2009-10 was in progress. It has also been fairly recorded in the assessment order that substantive assessment has been made in the status of individual whereas only to safe-guard the interest of revenue, protective assessment would also be made in the status of HUF for which proceedings under section 147/148 of the Act stood initiated. This ground of appeal also does not detain this appellate authority any longer in deciding about its rejectability.

15. The grievance of the appellant against charging of interest under section 234A and 234B cannot be entertained as such levy of interest is both consequential and mandatory."

9.3 In the assessee's plea, we find that the assessee was denied cross verification of the witness, but the ld. CIT(A) had clearly mentioned that the assessee's counsel Mr. J. K. Gupta, Advocate was appeared and cross-examine the witness during the deposition before the assessing authority in the remand

proceeding. There is no such any concurrent evidence with the assessee to prove that the excess amount was generated from the transfer of property. The revenue has raised a valid question that the transaction was completed in the financial year 2008-09 and there is no such any valid proof or evidence that can taken cognisance the agreement to sale of land for the assessee's received the excess amount on transfer of the property. We find no merit in the evidence of the assessee. Accordingly, the ground nos. 4 to 6 are dismissed.

Ground Nos. 7 to 8

9.4 The Id. AR for the assessee prayed for peak credit before the Id.CIT(A) for depositing cash in the bank account. We find the merit that the assessee should get a reasonable relief related to the peak credit on deposited cash. Accordingly, the ground nos. 7 is duly remit back to the file of the Id. CIT(A) to consider the peak of deposited cash in the bank account.

9.5 Ground No. 8 is general in nature.

10. In the result, the ground nos. 1 to 6 of the assessee are dismissed. Ground No. 7 is allowed for statistical purposes.

11. The bench has noticed that the issues raised by the assesseees in the above appeals are 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.275/Asr/2016** shall apply *mutatis mutandis* in the **ITA No. 276/Asr/2016** also.

12. In the result, both the appeals of the assessee **ITA No. 275 & 276/ASR/2016** are partly allowed.

Order pronounced in the open court on 07.08.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

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

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By order