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. 310/Asr/2019& ITA 11/Asr/2023
Assessment Year: 2010-11

Sh. Jashandeep Singh Sidhu Patti Janike, VPO Bhai Rupa, Bathinda. [PAN: -CBPPS9297F] **(Appellant)**	Vs.	ITO, Ward-1(3), Bathinda. **(Respondent)**

Appellant by	Sh.Sudhir Sehgal & Sh. P. N. Arora, Adv
Respondent by	Sh. Manoj Aggarwal, Sr. DR.

Date of Hearing	13.09.2023
Date of Pronouncement	20.09.2023

ORDER

Per: Anikesh Banerjee, JM:

These two appeals of the same assessee were filed against the order of the ld. 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 2010-11. The impugned order was emanated from the order of the ld. ITO, Ward-I (3), Bathinda, (in brevity 'the AO') order passed u/s 144and 271(1)(c) of the Act.

2. The assessee has taken the following grounds:

"1. The ld. CIT(A) erred on facts and law by upholding the validity of service of notice was neither received by the assessee (as he was living in Canada during the said period) nor by any person duly authorized by him.

2. The ld. CIT(A) erred on facts and law in confirmation the action of the AO regarding initiated of proceedings u/s.147 of the Act for verification of source of cash deposits in the saving bank account of the assessee which is not permissible under the law.

3. The proceedings u/s. 147/148 are void ab initio because the Pr.CIT did not record the satisfaction, as prescribed u/s.151 of the Income Tax, 1961 that the case of the assessee was fit for issue of notice u/s.148 on the reasons recorded by the AO.

4. The ld. CIT(A) erred on facts and law in confirming the action of the AO regarding initiation of proceedings u/s. 147/148 of the IT Act, 1961being founded on the reasons which are solely based on information of cash deposit in the bank account of the assessee which cannot confer valid jurisdiction u/s.148 of the Act to initiate the reopening proceedings and accordingly notice issued u/s.148 and all subsequent proceedings including orders of ld. AO and ld. CIT-A are void ab initio.

5. The ld. CIT(A) erred on facts and law in upholding the action of the AO regarding re-opening the present case because mere AIR information cannot be treated as giving rise to valid and adequate 'reasons to believe' that income has escaped assessment within the meaning of section 148 of the Act. Accordingly notice issued u/s. 148 and all subsequent proceedings including order of ld. AO and ld. CIT(A) are void ab initio.

6. That the ld. CIT(A) seriously erred on facts and law in confirming the arbitrary and unlawful income determined at Rs.15,17,500/- by the AO

without appreciating that source of cash deposits was not only fully explained with supporting evidence but also admitted by the close relatives of the assessee in their statements before the AO for financially helping the assessee, who wanted to leave India and settle in Canada.

7. That the ld. CIT(A) seriously erred on facts and law in confirming the arbitrary and unlawful ex-parte assessment at a total income of Rs.15,17,500/- without appreciating that section 68 of the Act cannot apply to bank statement etc. which makes the addition as bad in law.

8. That the ld. CIT(A) erred on facts and law in confirming the ex-parte assessment orders passed by the ld. AO u/s. 144 dated 27.12.2017 in violation of principles of natural justice because neither notice u/s. 148 nor any other statutory notice was ever received by the assessee nor his authorized representative which makes the entire proceedings nullity in eyes of law.

9. That the appellant craves leave to add add/alter any/all grounds of appeal before or at the time of hearing of the appeal."

3. The appeal of the assessee bearing ITA No. 310/Asr/2019 was duly heard and adjudicated by the ITAT, Amritsar Bench on dated 20.09.2022, the bench had already adjudicated from ground nos. 1 to 5 and remitted back to the ld. CIT(A). The assessee filed Miscellaneous Application, bearing MA No. 02/Asr/2023 and the grounds 6 to 8 are recall for further adjudication before the bench. So, the appeal bearing ITA No. 310/Asr/2019 is only related to ground no. 6 to 9. The ld. AR for the assessee withdrawn the ground no. 8 during the hearing. Only, the ground nos. 6, 7 and 9 are for adjudication.

Ground No. 6.

5. As per this ground, the assessee deposited cash Rs.15,17,500/-and for explanation of source, the assessee submitted the details of the relatives from whom the amounts were received and the affidavit as proof of their source of income and credentialism of thecreditors. The revenue had rejected theassessee's plea. But the assessee submitted the documents related to the identity of the parties, filing the affidavits as proof of their income from agricultural source which are annexed in **APB pages 57 to 81**. For the proof of agricultural income the assessee has submitted the proof related the possession of agricultural land like Khasra Girdawari and Jamabandi which are annexed in **APB pages 43 to 56**.

5.1 The ld. AR vehemently argued and respectfully relied on the order of the Hon'ble **Supreme Court** in the case of **Glass Lines Equipment Co. Ltd. vs. Commissioner of Income Tax, (2002) 253 ITR 0454 (GUJ)**. The relevant paragraphs 8 and 9 are duly reproduced as below:

> *"8. As laid down by the Supreme Court in the case of Mehta, Parikh & Co., (supra) none of the authorities considered it necessary to cross-examine the deponent with reference to the statement made in the affidavit, and hence, under these circumstances it was not open to the Revenue to challenge the*

correctness of the statement made by the deponent in the affidavit. In other words, consequently, the assessee was entitled to assume that the authorities were satisfied with the affidavit as sufficient proof on this point. In the present case, we find that CIT(A) while dealing with the affidavit has conveniently chosen to accept only one part of the statement which was in favour of the Revenue and against the assessee while ignoring the rest of the portion wherein specific averments were made in relation to the balance items of expenditure.

9. In view of the settled legal position, it was not open to either CIT(A) or Tribunal to ignore a part of the contents of the affidavit. We are conscious of the fact that the findings recorded by the CIT(A) and the Tribunal are concurrent as regards the facts and evidence on record and but for the averments made in the affidavit which have been ignored, we would not have interfered with the said findings. It is well settled canon of interpretation that a document has to be read as a whole it is not permissible to accept a part and ignore the rest of the document."

5.2 The ld.AR in argument placed that when the source of income is not able to proof through evidence, the affidavit is containing as a mother of evidence.

Further the assessee was not allowed for cross verification of the party. The ld. AR relied on following order of the ITAT-Amritsar bench.

ITAT Amritsar Bench, in the case of **Sh. Ramandeep Singh vs ITO, ITA No. 311/Asr/2019 date of pronouncement 20/02/2023**. Held that,

"13. From the above, it is evident that the Ld. CIT(A) has merely suspected the size of land holding used for cultivation of potato on the basis of joint ownership without rebuttal to the additional evidence admitted on record or contentions raised by the appellant. The Ld. CIT(A) ought to have brought on record corroborative documentary evidence by way of examining the issue of share of family member's in the income from the potato cultivation from the agricultural land held in joint ownership. The Ld.CIT (A) has failed to disprove the claim of the cash flow and agricultural income of the appellant. Thus, the Ld. CIT(A) has not appreciated the documentary evidences regarding, potato cultivation, computation of agriculture Income and cash flow filed by the appellant in the appellate proceedings before him. In our view, the amount of Rs.34,00,000/- shown as agricultural income by the assessee from sale consideration of potato is quite reasonable considering the size of land holding, calculation sheet, certificate from Horticulture Department etc., as above. 14. In view of above discussion, we hold that the order passed by the Ld. CIT(A) is

perverse to the facts on record. Accordingly, the amount of Rs. 40,06,360/- u/s 69 of the Income Tax Act 1961, confirmed by the CIT(A) is deleted."

ITAT Amritsar Bench, in the case of **Sh. Amarjeet Singh vs ITO 2(1) Bhatinda, ITA No. 14/Asr/2015 date of pronouncement 14/12/2015**. Held that,

6. In this regard, the facts are not disputed. The question is that when, AO has been held to be wrongly applied the provisions of section 69, whether the addition can be sustained by invoking, instead, the provisions of section 69 of the Act. It cannot be gainsaid that section 68 of the Act deals with the cash credits, whereas section 69 concerns the unexplained investments. At the outset, the area of both these sections are clear and distinct. Section 68 attracts where there are unexplained cash credits and section 69 applies in the case of unexplained investments. In the present case, the AO invoked the section 68, made an addition qua unexplained cash credit. Now whether the ld. CIT(A) has been correct in converting this charge of "unexplained cash credit" u/s 68 of the Act to that of "unexplained investment" u/s 69 of the Act. The ld. CIT(A). The ld. CIT(A) termed it as a mere irregularity curable under the provisions of section 292B of the Act. It is not a case of typographical or a mere wrong mention of the Section. However, I am not able to agree with this observation of the ld. CIT(A). Section 292B of the Act and notification of the particular provisions of the Act to make certain addition is none than the jurisdictional matter going to the very root of the matter. If the provisions invoked are held to be non applicable, the very charge for making the addition does not survive and it cannot be converted to that of another entirely different provision. Therefore,

the ld. CIT(A) has evidently erred in applying the provisions of section 69 of the Act, observing that the nature and source of cash deposit of Rs.12,00,000/- could not be satisfactorily explained with credible or cogent evidence and hence the section of deemed income created by section 69 comes into operation. Section 69 of the Act talks of clauses where the assessee had made investments which are not recorded in the books of account, if any, maintained by him for any source of income and the assessee offers no explanation about the nature and source of investments or the explanation offered by him is not, in the opinion of the AO, satisfactory. Section 68 of the Act, on the other hand, concernsthe instances where any sum is found credited in the books of the assessee and the source thereof remained unexplained. In the present case, the assessee is not shown to have made any "investment" and, therefore, the provisions of section 69 of the Act are entirely inapplicable."

6. The ld. DR vehemently argued and relied on the order of the revenue authorities.

Ground No. 7

7. In this ground no. 7, the ld. AR for the assessee specifically mentioned that the assessee was not maintaining any books of account. The addition was made on basis of the bank statement. So, the entire addition cannot be framed u/s 68 of the Act.

7.1 The ld. AR relied on the order of the **ITAT Amritsar Bench** in the case of **Sh. Satish Kumar vs ITO WD- IV (1) in ITA No. 105/Asr/2017, Date of**

pronouncement 15/01/2019 the observation of the said order is extracted as below:

> *"We are of the considered view that as the bank account of an assessee cannot be held to be the 'books' of an assessee maintained for any previous year, thus no addition under Sec. 68 of the I.T Act can be made in respect of a simpliciter deposit in the bank account. We thus respectfully following the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Bhaichand H. Gandhi (1983) 143 ITR 67 (Bom.) and being in agreement with the view taken by the coordinate bench of the Tribunal i.e. ITAT, Mumbai in case of Mehul V. Vyas Vs. ITO (2017) 764 ITD 296 (Mum), thus are of the considered view that the addition of Rs.l 1,47,660/- made by the A.O under Sec.68 cannot be sustained, and as such is liable to be * vacated. We thus set aside the order of the CIT(A) and delete the addition of Rs.l 1,47,660/-made by the A.O under Sec.68 of the Act.*
>
> *11. The appeal of the assessee is allowed."*

8. The ld. DR vehemently argued and relied on the order of the revenue authorities.

9. Ground No.9, this ground is general in nature.

10. We heard the rival submission and considered the documents available in the record. The ITAT Amritsar Bench, in earlier order in ITA 310/Asr/2019 had set aside, in the ground nos. 1 to 5 to the file of the ld. CIT(A). The assesseehas submitted documents and affidavits of creditors. The assessee had failed to comply before the ld. AO- and the order was passed U/s 144.The evidence relied by the assessee was not properly adjudicated by the ld. CIT(A). So, the factual grounds should be reconsidered by the ld. CIT(A). So, the ground nos. 6 and 7 are remitted back to the file of the ld. CIT(A) for further adjudication. We are, therefore, of the opinion that interest of justice would be sub served if the impugned order is set aside and the matters are remitted back to the ld. CIT(A) for consideration thereof afresh. We are not expressing any views on the merits of the case so as to limit the appellate procedure before the Ld. CIT(A). Needless to say, theassessee should get a reasonable opportunity of hearing for setting aside proceedings.

11. In the result, the appeal of the assessee bearing **ITA No. 310/Asr/2019**for ground no. 6 and 7 are allowed for statistical purposes.

ITA No. 11/Asr/2023

12. In this appeal, the issue is related to penalty u/s 271(1)(c). The quantum appeal of the assessee bearing ITA No. 310/Asr/2019 was remitted back to the

file of the ld. CIT(A). So, the penalty order is undecided. In this moment, the same is remitted back to the file of the ld. CIT(A) for further adjudication.

13. In the result, both the appeals bearing **ITA No. 310/Asr/2019 and ITA No. 11/Asr/2023** are allowed for statistical purposes.

Order pronounced in the open court on 20.09.2023

Sd/-	**Sd/-**
(Dr. M. L. Meena)	**(ANIKESH BANERJEE)**
Accountant Member	**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