

**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. 82/Asr/2016
Assessment Year: 2008-09**

DCIT, Circle-5, Amritsar. (Appellant)	Vs.	Sh. Jaimal Singh L/H Sh. Prem Chand, Amarkot, Teh. Patti, Distt. Tarn Taran. [PAN:-DABPS8982R] (Respondent)
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**C.O. No. 11/Asr/2016
(In I.T.A. No. 82/Asr/2016)
Assessment Year: 2008-09**

Sh. Jaimal Singh L/H Sh. Prem Chand, Amarkot, Teh. Patti, Distt. Tarn Taran. [PAN:-DABPS8982R] (Appellant)	Vs.	DCIT, Circle-5, Amritsar. (Respondent)
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Appellant by	Sh. Vinamar Gupta, CA.
Respondent by	Sh. Rajiv Wadhwa, Sr. DR.

Date of Hearing	05.10.2023
Date of Pronouncement	09.11.2023

ORDER

Per: Anikesh Banerjee, JM:

This is Department's appeal and assessee's Cross-objection for assessment year 2008-09. The appeal order is challenged by both revenue and

assessee which was passed by the Id. Commissioner of Income Tax (Appeal)-2, Amritsar {in brevity the CIT(A)}, order passed U/s 250(6) of the Income Tax Act, 1961 (in brevity the Act), for Assessment Year 2008-09. The impugned order is emanated from the order of the Id. ACIT, Cir-V, Amritsar (in brevity the AO), order passed U/s 147/143(3) of the Act.

2. The Grounds of revenue are as follows:

“i) On the facts and in the circumstances of the case, the Ld.CIT(A)-2, Amritsar erred in deleting addition of Rs. 1,61,43,719/- made by the assessing officer on account of unexplained credit entry dated 22.06.2007 in the bank account of Late Sh. Prem Chand with Standard Chartered Bank without appreciating the fact that the assessee’s legal heir had completely failed to explain the source of this credit.

ii) On the facts and in the circumstances of the case, the Ld.CIT(A)-2, Amritsar erred in deleting addition of Rs. 4,29,431 /- made by the assessing officer on account of unexplained credit entry dated 24.01.2008 in the bank account of Late Sh. Prem Chand with Standard Chartered Bank without appreciating the fact that the assessee’s legal heir had completely failed to explain the source of this credit.

iii) On the facts and in the circumstances of the case, the Ld.CIT(A)-2, Amritsar erred in granting the relief of Rs. 1,65,73,150/-(Rs. 1,61,43,719 + Rs.

4,29,431) by admitting additional evidence without giving a specific opportunity of being heard to the A O. to rebut the same, which is in contravention of Rule 46A(3).

iv) On the facts and in the circumstances of the case, the Ld.CIT(A)-2, Amritsar erred in holding that AO had wrongly mentioned the PAN of Late Shri Prem Chand instead of Shri Jaimal Singh L/H and thereby giving direction to the AO to mention the correct PAN of Shri Jaimal Singh L/ H on the revision order u/s 250 of the Act giving effect to appellate order. The Ld CIT(A) failed to appreciate the fact that the return for the year under consideration was filed by assessee before his death, and therefore, the assessment was validly completed on the PAN of deceased assessee who has been assessed through his legal heir Sh. Jaimal Singh.

The appellant craves leave to amend or add any or more ground(s) of appeal.”

2.1. The grounds in the Cross Objection of the assessee have also been raised the following grounds:

“1. The Learned CIT A has erred in law and facts and circumstances of the case in confirming the addition of Rs. 36,57,710/-.

2. The Learned CIT A has erred in law and facts and circumstances of the case in confirming the addition of Rs. 20,57, 170/- received through banking channels, as per information provided by the Bank to the assessing officer out of above addition of Rs. 36,57,710/-

3. *The Learned CIT A has erred in law and facts and circumstances of the case in confirming the addition of Rs. 16,00,000/- on account of cash deposit in the bank, out of above addition of Rs. 36,57,710/-, in spite of providing the cash flow explaining the source of deposit of cash.*

4. *The Learned CIT A has erred in law and facts and circumstances of the case in stating ^ that order passed against the appellant by the Assessing officer is not in pursuance of order passed by CIT u/s 263 and further that the vires of order of revision passed u/s 263 cannot be challenged in appeal against assessment order passed in consequence to such order of revision u/s 263.*

5. *The Learned CIT A has erred in law and facts and circumstances of the case by not declaring reassessment u/s 147 made on the basis of standalone AIR Information bad in law.*

6. *The Learned CIT A has erred in law and facts and circumstances of the case by upholding reassessment u/s 147 on the ground of AIR Information not being reflected in the return of Income, ignoring the clear position of the law that section 139(9) can only be used to rectify defects, if any in the return of income.*

7. *The Learned CIT(A) has erred in law and facts and circumstances of the case by not declaring assessment framed against Jaimal Singh treating him as legal representative of Prem Singh as null and void.*

8. That the appellant craves leave to add, alter, amend or vary the grounds of appeal here in above at or before hearing of appeal.”

3. Brief fact of the case is that the assessee filed the return u/s 139 by pursuing section 147 the notice was issued u/s 148 and case was reopened. Thereafter, the assessment was completed with addition amount of Rs.1,61,43,719/- and Rs.4,29,431/- which works out total amount of Rs.1,75,73,150/- related to deposit in bank from unexplained source. The addition was framed u/s 69C of the Act. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) allowed the assessee's appeal and delete the addition. Being aggrieved the revenue filed an appeal before the ITAT with the grievance that the Id. CIT(A) accepted the new documents which was not adjudicated by the Id. AO and the reasonable opportunity was denied there being heard to the Id. AO under Rule 46A(3) of the Act. The assessee also filed the Cross Objection for not considering the legal ground by the Id. CIT(A). The appeal of the Department and Cross Objection of the assessee are being disposed of by a composite order.

4. The Id. DR vehemently argued and placed that the assessee explained the source before the Id. CIT(A) but the reasonable opportunity to adjudicate the issue by the AO was denied. The fresh documents were filed before the Id. CIT(A). So, the appeal order was passed by contravening Rule 46A(3) of

Income Tax Rules 1962. The Id.DR further invited our attention in relevant paragraphs of the appeal order which is reproduced as below:

“From the said details/ documents filed by the appellant, it is evident that the property of Shri Prem Chand in U.K. was sold on 10th November, 2006 for £ 245,000/- and the net sale proceeds of £ 239,919.63 was transferred to his WOOLWICH account on 13-11-2006. The WOOLWICH account was finally closed on 15 June, 2007 and the amount of Rs 16,143,719/- was transferred to the account No. 71505008547 of Shri Prem Chand in India through SWIFT description 367IT07062200059 GBP 2000 on 22nd June, 2007. The income equivalent to Rs 16,143,719/- was received in India on 22-06-2007. Therefore in view of the said details/documents, the source of credit entries of Rs 16,143,719/- in the Bank a/c of late Prem Chand in Standard Chartered Bank on 22-06-2007 being the amount transferred in India from his WOOLWICH account in U.K through SWIFT stands verified.

In his written submissions the appellant had further stated that the said amount of Rs 429,717/- credited to his account has come from sale of his property at 22 Butts, Crescent, Hanworth, Fetham, London on 10-11-2006. £239,919.63 credited to his account with WOOLWICH had come from the proceeds and the account with WOOLWICH was closed on 15-06-2007 with closure amount of £ 265003/-, out of which £200000 @ Rs 80.72 were credited to the account no. 71505008547 on 22-06-2007 and £ 5588 @ Rs 79.90 were credited on 23-01-2008. The said amount of Rs 429,431/- was received in the account no.

71510143260 of Shri Prem Chand in India through SWIFT description GBPS588.00(3.76.9LSCHG (367IT08011800185) on 23-01-2008 . In view of the said details/ documents, the source of credit of Rs 429,431/- in S.B a/c no 71510143260 in Standard Chartered Bank of Late Sh Prem Chand on 23-01-2008 stands verified.

The appellant had not filed any evidence to show that the income of Sh Prem Chand earned in England, inter alia in respect of the above property sold in London, was brought to tax in England . The sale of the said property was completed on 10th Nov, 2006. Accordingly, since the residential status of late Prem Chand in India in FY 2006-07 was “Resident” in accordance with section 6(1) of the Act (as above), therefore the Capital gains tax in respect of the property at 22 Butts, Crescent, Hanworth, Fetham, London of late Prem Chand sold on 10-11-2006 was taxable in India in the assessment year 2007-08 since the transfer of the said property took place in FY 2006-07, and was not taxable in the assessment year under consideration.

Likewise, the other income earned by late Prem Chand in United Kingdom , credited in his WOOLWICH account in FY 2006-07 was £ (250+250+22.92+23.73+30.52+250+21.92+28.96+37.24+20.68+32.09+28.87+301.98+35.95+36.96) = £ 1371.82. Since the residential status of late Prem Chand in India in FY 2006-07 was “Resident” in accordance with section 6(1) of the Act, therefore the said credit entries totalling to £ 1371.82 were

taxable in India in AY 2007-08 under the head “ Income from other sources” as their exact source arc not known.

Accordingly, the source of credit of amounts of Rs 16,143,719/- and Rs 429,431.20 received in the account no. 71505008547 on 22-06-2007 and in account no. 71510143260 on 23-01-2008 respectively, was on account of transfer of closure amount of the WOOLWICH account of Late Shri Prem Chand on 15-06-2007, which interalia comprised of the sale proceeds of his property sold in United Kingdom and his other income. Therefore, the credits of Rs 16,143,719/- and of Rs 429,431/- were not unexplained credits, but were from a definite source, namely the sale of house property by Sh Prem Chand in United Kingdom and his other income earned in the United Kingdom, which were earned in the FY 2006-07 and were taxable in AY 2007-08. Therefore ,the addition on account of credit entries in the said bank accounts of Late Prem Chand in his Standard Chartered Bank of Rs 16,143,719/- and of Rs 429,431/- on 22-06-2007 and 23-01-2008 respectively is not called for in the assessment year under consideration, and hence these additions of Rs 16,143,719/- and of Rs 429,431/- are deleted.”

5. The Id. AR vehemently argued and placed that the entire documents were the clear cut source for the assessee related to entry in the bank account. The Id. AR mainly agitated the legal ground that the order related to section 263 on which was not considered by the Id. CIT(A) and the matter was remanded back as per the order of the section 263. Further, he agitated that the section 69 will

not be applicable to the legal heir for the assessee and also challenged the jurisdiction for reassessment u/s 147 without issuing the notice u/s 133(6) of the Act.

6. The Id. DR placed that the issue was already agitated before the Id. CIT(A) and the Id. CIT(A) had considered the issue. The relevant paragraphs are duly reproduced as below:

“(ii) The ground of appeal no. 5 & 6 are against the exercise of power of the CIT-II, Amritsar u/s 263 of the Act.

The impugned assessment order was not passed to give effect to the order of the CIT-2, Amritsar u/s 263 of the Act dated 28-09-2011 but was a reassessment order passed 147/143(3) of the Act after re-opening the assessment by drawing reasons to believe that income of Rs 513,17,594/-chargeable to tax had escaped assessment. Moreover, if the assessee had grievance against the order of CIT-2, Amritsar u/s 263 of the Act dated 28-09-2011, he was free to file appeal before the hon'ble ITAT, Amritsar against the order u/s 263 of the Act. Therefore, the grounds of appeal no. 4 and 5 raised by the appellant against the order u/s 263 of the Act dated 28-09-2011 cannot be entertained in the present appeal proceedings and hence dismissed.

(iii) The ground of appeal no. 4 was against framing the assessment on the deceased late Shri Prem Chand.

It is observed that the impugned order appealed against by the appellant was passed in the name of Shri Jaimal Singh L/H Shri Prem Chand u/s 147 read with section 143(3) of the Act and not in

the name of Late Shri Prem Chand. Since the ground of appeal is on wrong facts the same is dismissed.”

7. We heard the rival submission and considered the documents available in the record. Related to the grievance of the assessee in Cross Objection the entire issue was not getting the proper opportunity from the ld. CIT(A) but the ld. CIT(A) already dealt the ground nos. 5 and 6 of the assessee. Hence, in this ground, we are not intervening in the appeal order, therefore, ground nos. 5 and 6 are dismissed.

8. In the appeal of the revenue it is very clear that the ld. CIT(A) passed the order by contravening the Rule 46A of the Rule. The ld.AR for the assessee was unable to submit any evidence that the matter was previously dealt by the ld. AO during passing the assessment order. Further no evidence was submitted that the ld. AO got the opportunity for verifying the documents in any one stage during proceeding. Hence, we accept the said documents of the assessee are fresh and in nature of additional evidence. The ld. CIT(A) had contravened the Rule 46A, as per Income Tax Rule, 1962 by accepting the additional evidence with giving opportunity to the ld. AO. In our considered view, we remit back the matter to the file of the ld. CIT(A) and allow opportunity of both the parties by following the Rule 46A. We do not make any comment on the factual issue as our opinion should not influence the set aside appeal proceedings.

9. Related to the Cross Objection the rest of the grounds are remit back to the file of the file of the Id. CIT(A) as the assessee has agitated the ground first time before the Bench. 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, the assessee should get a reasonable opportunity of hearing for setting aside proceedings.

10. In the result, the appeal bearing **ITA No. 82/Asr/2016** of the revenue are allowed for statistical purposes and Cross Objection of the assessee bearing **C.O. No. 11/Asr/2016** is partly allowed for statistical purposes.

Order pronounced in the open court on 09.11.2023

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.

True Copy
By order