

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA Nos. 1438 & 1439/Chd/2019
निर्धारण वर्ष / Assessment Year : 2010-11 & 2011-12

Shri Ajmer Singh House No. 85, Village Rai Pur Kalan Kharar, SAS Nagar, Mohali	बनाम	The ITO Ward 6(5), Mohali
स्थायी लेखा सं. / PAN NO: CWJPS6206H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं. / ITA Nos. 1448/Chd/2019
निर्धारण वर्ष / Assessment Year : 2010-11

The ITO Ward 6(5), Mohali	बनाम	Smt. Gurdev Kaur W/o Shri Ajmer Singh, House No. 85, Village Rai Pur Kalan Kharar, SAS Nagar, Mohali
स्थायी लेखा सं. / PAN NO: CWJPS6206H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Tej Mohan Singh, Advocate
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR

सुनवाई की तारीख/Date of Hearing : 06/02/2024
उद्घोषणा की तारीख/Date of Pronouncement : 03/05/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

Both the above appeals have been filed by the Assessee and cross appeal filed by the Revenue against the respective orders of the Ld. CIT(A)-2, Chandigarh dated 9.09.2019, 5.09.2019 and 5.08.2019.

2. Since common issues are involved, all these appeals were heard together and are being disposed off by this consolidated order.

3. With the consent of both the parties, the case of the assessee in ITA No. 1438/Chd/2019 pertaining to A.Y. 2010-11 was taken as a lead case wherein the Assessee has raised the following grounds of appeal:

"1. The learned CIT(A) has erred in law and facts in confirming an addition of Rs. 1,73,10,000/- made by the assessing officer on account of unexplained cash deposit in bank account.

2. The appellant craves leave for any addition, deletion or amendment in the grounds of appeal on or before disposal of appeal."

4. Briefly the facts of the case are that the case of the assessee was reopened basis information received from DIT(I&CI) that there were deposit of Rs. 2,08,00,000/- and Rs. 58,50,000/- in the bank account maintained by the assessee with State Bank of Patiala and as the assessee has not filed any return of income, the same were not verifiable, thereafter reasons were recorded and notice under section 148 was issued to the assessee.

5. In response to the notice, assessee filed his return of income declaring income under the head "agriculture income" and "income from other sources". Subsequently, notice under section 143(2) and 142(1) were issued and in absence of any compliance made by the assessee, the assessment was completed under section 144 r.w.s 147 of the Act wherein the AO referring to the assessment proceedings in the case of the wife of the assessee Smt. Baldev Kaur wherein she had stated in her affidavit that the deposit in her bank account pertained to her husband, Shri Ajmer Singh who has sold his agriculture land as per the registered sale deed on 22/05/2009 for an amount of Rs. 62,70,000/- and all the transactions in the bank account pertains to her husband, the AO made an addition of Rs. 1,73,10,000/- in the hands of the assessee.

6. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has since sustained the said addition.

7. Against the said findings and the directions of the Ld. CIT(A), the assessee is in appeal before us.

8. During the course of hearing, the Ld. AR submitted that Sh. Ajmer Singh is an agriculturist and do not have any other source of income except interest credited to his saving bank account. It was submitted that the assessee along with his two brothers had ancestral agriculture / land measuring 66 Kanal 15 marla in village Raipur Kalan Tehsil Mohali. This land was sold on 27/10/2005 for a sum of Rs. 5,00,62,500/- to Dove Promoters Pvt. Limited New Delhi and the 1/3 of the sale proceeds amounting to Rs. 1,66,87,500/- was received through Demand Drafts / Cheque and deposited in the joint bank account of Baldev Kaur and Ajmer Singh bearing account no. XXXXX and the details of payment received and credited to account are as below:

1. Bank draft no. 047407 dated 02.05.2005 of Rs. 27,00,000/- credited in account on 25.07.2005
2. Bank draft no. 048270 dated 22.07.2005 of Rs. 8,00,000/- credited in account on 01.08.2005
3. Rs. 5,00,000/- credited in account on 05.08.2005
4. Bank pay order no. 019931 dated 27.10.2005 of Rs. 1,26,87,500/- credited in account on 31.10.2015.

9. It was submitted that the assessee thereafter purchased following pieces of agriculture land as detailed below:

Sl. No.	Date	Details of land	Purchase price ,	Reference PB page no
1	19.12.2005	Agriculture Land measuring 7 Bigha 18 Biswa	7,66,655	PB Pages 45-47 (Eng ver. 111-113)
2	19.12.2005	Agriculture Land measuring 46 Bigha 15 Biswa & 4 Biswasi	44,72,600	PB Pages 48-50 (Eng ver. 114-116) .
3	29.12.2005	Agriculture Land measuring 1Bigha 13 Biswa & 6 Biswasi *	477000	PB Pages 51-53 (Eng ver. 117-119)
4	03.06.2009	Agriculture Land measuring 138 KanaT7 Maria of	72,64,000	PB Pages 54-57 (Eng ver. 120-123)
5	05.04.2010	Land measuring 8.67 Maria	5,40,000	PB Pages 57A-

				61 (Eng ver. 124-126)
6	14.07.2010	Agriculture Land measuring 10 Bigha 9 Biswa -	18,71,100	PB Pages 62-66 (Eng ver. 127-131)
7	14.07.2010	Agriculture Land measuring 20 Bigha 3 Biswa	34,02,000	PB Pages 67-71 (Eng ver. 132-135)
8	14.07.2010	Agriculture Land measuring 22 Bigha 15 Biswa	38,34,600	PB Pages 72-76 (Eng ver. 136-140)
9	09.12.2010	Agriculture Land measuring 16 Bigha 2 Biswa	32,76,000	PB Pages 77-81 (Eng ver. 141-145)

10. It was submitted that the assessee sold following pieces of agriculture land as per details below:

Sl.No.	Date	Details of land	Sale Price	Reference PB page no
1	27.10.2005	1/3 rd share in Agriculture land measuring 66 Kanal 15 Maria in Village Raipur Kalan Dist. Mohali	1,66,87,500	PB Pages 37-44 (Eng ver.107-110)
2	22.05.2009	Agriculture Land measuring 54 Bigha 13 Biswa 4 Biswasi	62,70,000	PB Pages 82-86 (Eng ver. 146-150)
3	22.05.2009	Agriculture Land measuring 9 Bigha 19 Biswasi	10,45,000	PB Pages 87-96 (Eng ver. 151-155)
4	11.06.2010	Agriculture Land measuring 138 Kanal 7 Maria	76,09,250	PB Pages 97-101 (Eng ver. 156-160)
5	08.09.2010	1/3 share in 1 Kanal 2 Maria land in Village Raipur Kalan (Ancestor land)	2,75,000	PB Pages 102-105 (Eng ver. 161-163)
6	11.03.2011	Sale of 8 2/3 marla of land	6,20,000	

11. It was submitted that after sale of his agriculture land on 27.10.2005 for a sum of Rs. 1,66,87,500/-, the assessee had purchased the following pieces of land measuring 53 Bigha and 13 Biswasi for a sum of Rs. 52,39,255/- as below:

Sl. No.	Date	Details of land	Purchase price	Reference PB page no
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1	19.12.2005	Agriculture Land measuring 7 Bigha 18 Biswa	7,66,655	PB Pages 45-47 (Eng ver. 111-113)
2	19.12.2005	Agriculture Land measuring 46 Bigha 15 Biswa & 4 Biswasi	44,72,600	PB Pages 48-50 (Eng ver. 114-116)

12. It was submitted that these two pieces of land measuring 54 Bigha and 13 Biswa of land and another piece of land measuring 9 Bigha 1 Biswa and 19 Biswasi were sold by him on 22.05.2009 for a sum of Rs.2,35,80,500/- but the sale deed were registered for a sum of Rs. 62,70,000/- and Rs. 10,45,000/- as detailed below:

Sl. No.	Date	Details of land	Sale Price	Reference PB page no
1	22.05.2009	Agriculture Land measuring 54 Bigha 13 Biswa 4 Biswasi	62,70,000	PB Pages 82-86 (Eng ver. 146-15011)
2	22.05.2009	Agriculture Land measuring 9 Bigha 1 Biswa 19 Biswasi	10,45,000	PB Pages 87-96 (Eng ver. 151-155)

13. It was submitted that the assessee deposited the entire cash received on account of sale of these pieces of agriculture land in State Bank of Patiala account no. 55030123698 which account was in the name of Baldev Kaur and Ajmer Singh. This amount was deposited in the account as below:

22.05.2009 Rs. 2,30,00,000

23.05.2009 Rs. 5,00,000

14. It was submitted that during assessment proceedings of Smt. Baldev Kaur, Assessing officer issued a show cause notice to vide no. ITO /W-6)4) / Mohali / 2015-16 /29568 dated 09.03.2016 that:

"it is hereby stated that as per affidavit furnished by you, your actual name is Gurdev Kaur and you are having PAN.DGDPK4O700, You further stated that notice u/s 142(1) of the I.T.Act, 1961 was issued by this office on the basis of name as appear in the bank account, which you were holding with your husband Sh. Ajmer Singh jointly. As per information

available with the department, you have made cash deposit of Rs.2,35,80,000/- in saving bank account No.55030123698 maintained by you jointly with your husband, with State Bank of Patiala, Kharar, during the year under reference. On being asked to explain the source of cash deposit of Rs.2,35,80,000/-, you have replied through your counsel that the transaction belongs to sale of agriculture land sold by your husband Sh. Ajmer Singh. In this connection, vide order sheet entry dt. 19.02.2016, your counsel has furnished the copy of sale deed duly registered on 16.5.2009 for Rs.62,70,000/-. To furnish the source of cash deposit of the remaining amount"

15. In response to the above, the Counsel to the assessee submitted as under:

"1. That I am illiterate and agriculturist and my profession is agriculture for the last many years.

2. That I sold out the agriculture land measuring 54 Bigha 13 Biswa and 4 Biswasi to Smt. Balbir Kaur W/o Jaspal Singh S/o Surjit Singh resident of Village Balioli, Tehsil and Dist. Mohali. This land was actually sold for 2,30,00,000/- which was the prevailing market price of the land. At the time of execution of sale deed, I received all the payments in cash and signed the registration papers prepared by the buyer and his property dealer. All the statutory works relating to registration was done by the buyer who had deposited the stamp duty charges also. I am illiterate and do not understand the office working. Since I was concerned with my payment, I did care only for receipt of the actual amount before executing the registration. Now I came to know that the registration of this land has been done by mentioning a consideration of Rs.62,70,000/- instead of Rs.2,30,00,000/-. The buyer might have get the registration done at circle rate instead of actual payment made to undersigned.

3. The land in question is purely agriculture land and does not attract any capital gain as the agricultural land is not a capital assets (I am enclosing a copy of certificate issued by revenue authority in this regard at "A "). The difference amount of registration does not matter as the whole sale proceed is non-taxable. Since I am agriculturist having no other income, there is no question of any source of income other than the sale of this land. Moreover the date of registration and date of deposit in the bank are same which clearly establish that this amount pertains to this land deal only. "

16. However, the Assessing officer did not accept the plea of the assessee and made addition of Rs. 1,73,10,000/- to the income of Baldev Kaur @ Gurdev Kaur. There after, similar addition was made to the income of Ajmer Singh relying upon the documents submitted before the Assessing officer in the case of Baldev Kaur as there is nothing on record to suggest that anybody attended the proceedings before the Assessing officer in the case of Ajmer Singh. While passing order in the case of Baldev Kaur, it was observed by the Assessing officer that:

"The reply of the assessee has been considered carefully and is not acceptable because the assessee has not submitted any documentary evidence in support of her contention, Moreover, the assessee has not submitted any cash flow from where any linkage of other deposits can be verified. There is nothing brought on record to explain the source of balance cash deposit of Rs.1,73,10,000/- (2,35,80,000 — 62,70,000). Therefore, the addition of Rs. 1,73,10,000/- is, therefore, made to the returned income of the assessee, treating it as unexplained cash deposits."

17. In appeal in the case of Baldev, Kaur, it was submitted that:

"In the subject appeal, the AO has erred in assessing the part cash deposit of Rs. 1,73,10,000/- out of 2,35,80,000/- deposit in the joint bank account of the assessee with her husband, in State Bank Of Patiala, Village . Raipur Kalan, Tehsil Kharar, Ropar. The AO did not appreciate the factual position explained during the assessment proceedings. It was explained that the deposit of Rs. 2,35,80,000/- in the joint bank account of the assessee and her husband were the sale proceeds of agriculture land of Sh. Ajmer Singh, husband of the assessee.

The AO's version that no documentary evidence was furnished it is fallacious as the copies of the sale deeds were produced during the proceeding which is mentioned in the assessment order itself by the AO.

The main grounds are revolving around the assessee's income on account of unexplained cash deposit. Our humble submissions in this case is that the AO passed the order against that assessee who does not own any moveable and immovable property in her name. It is a fact on record that the assessee is an illiterate housewife and has no source of income other than small interest on saving bank account under consideration during the F.Y. 2009-2010. In the assessment preceding under section 142(1) the assessee repeatedly said that the amount in the bank was the sale proceeds of agriculture land of her husband. Because the assessee's husband has no bank account and the amount is huge and not possible to carry to other place. Her husband deposited entire amount of sale of agriculture land in the bank. During the proceeding the AO has not found any other source of income in the hands of the assessee and relied upon the report of investigation wing. The AO also did not even try to apply her mind to find out the real source of deposit of Rs. 2,35,80,000/- dated 22.05.2009 in SBOP Bank, Kharar, and to find out whether the assessee had any other source of income either in past or in future. On the facts and circumstances of the case it is not possible for the illiterate assessee attaining age more than the 60 years to earn, the huge amount and deposit in the joint account.

There was also nothing on record to suggest either that assessee was having any other source of income which has been given more weightage by the AO ignoring the explanation of the assessee that the source of the deposit in question was sale proceeds of the agriculture land by her husband as the selling of the land and deposit made out of the sale receipts were made on the same day, when sale deed (was executed)."

18. During the course of appellate proceedings, it was submitted before the learned CIT(A) that:

"Sh. Ajmer Singh and assessee's spouse Baldev Kaur (Alias Gurdev Kaur) have a joint bank account in State Bank of Patiala with account no. 55030123698. Sh. Ajmer Singh has also an account in State Bank of Patiala Sunam with account no. 65056056240.

Sh. Aimer Singh is an agriculturist and do not have a n y other source o f income except interest credited to saving bank account. Assessee along with his two brothers had agriculture land measuring 66 Kanal 15 Maria in village Raipur Kalan Tehsil Mohali. This land was sold for a sum of Rs. 5,00,62,500/- to Dove Promoters Pvt. Limited New Delhi and the 1/3 of the sale proceeds amounting to Rs. 1,66,87,500/- was received through Demand Drafts / Cheque and deposited in the joint bank account of Sh. Ajmer Singh and Baldev Kaur. This piece of land was sold on 27.10.2005. The land sold was ancestral land.

Sh. Ajmer Singh, there after withdrew cash from his bank account on various dates for purchase of agriculture land.

Assessee over a period of time has purchased agriculture land on various dates and also sold part of the land during this period. (The details of purchase and sale of agriculture land are already submitted in earlier portion of reply).

19. It was submitted that since the assessee was not having any document to support his contention that he has sold agriculture land on 22.05.2010 for a sum of Rs. 2,30,00,000/- (Registered sale value of two sale deed is Rs. 73,15,000/-) except the circumstantial evidence of depositing the entire cash in SB account on 22.05.2010 (Rs. 2,30,00,000/-) and 23.05.2010 (Rs. 5,00,000/-). In the absence of any other evidence, assessee filed an alternative plea before the learned CIT(A) submitting therein that:

"Based on the purchase and sale of land and cash deposits and withdrawals from the bank account of Sh. Ajmer Singh and Baldev Kaur (Alias Gurdev Kaur), I am enclosing copy of the cash flow statement running in five pages from 19.05.2005 to 31.03.2011. Copies of the bank accounts, copies of the purchase deeds and sale deeds of land purchased and sold which are mentioned in the above table are also enclosed. This cash flow has been prepared without considering the agriculture income of the assessee which has been treated to have been utilized towards incurring his house hold expenses and no part of the same has been treated as deposited in the cash flow statement.

While completing assessment the learned assessing officer has allowed credit of only land sold at Rs. 62,70,000/- in the absence of cash flow statement. (In fact assessee had sold land for Rs. 2,30,00,000/- and registry was made for a sum o f Rs. 73,15,000/- as submitted in the chart earlier) It was in the above background that cash flow statement has been prepared and is being filed.

Perusal of the cash flow statement shall reveal that at the time of deposit of Rs. 2,30,00,000/- in cash on 22.05.2009 and Rs. 5,00,000/- on 23.05.2009, there was a

maximum negative cash balance of Rs.42,38,755/-(without considering the sale price of land at Rs. 2,30,00,000/- and taking the sale consideration of land at Rs. 62,70,000/- + 10,45,000/-). In fact this cash was available with the assessee only out of the sale proceeds of 54 Bigha 13 Biswa & 4 Biswasi and another piece of land of land for Rs.2,35,00,000/- as was submitted earlier. However in the absence of any documentary evidence, the sale proceeds of this land has been considered in cash flow at only Rs. 73,15,000/-. The assessing officer has failed to make any enquiry from the purchaser of land who has made the payment at Rs. 2,35,00,000/-.

However considering his earlier withdrawals made from bank account and also sale of another piece of land for Rs. 10,45,000/- on 22.05.2009, which was not considered by the assessing officer, unexplained cash deposit comes to Rs. 42,38,755/- during the financial year 2009-10 as on 23.05.2009.

In as far as deposit of Rs. 80,000 on 23.01.2010 is concerned; the same is covered in the cash flow statement out of the withdrawals made and available cash in hand.

Thus keeping in view the above position of availability of cash, unexplained deposit remains at Rs. 42,38,755/-, although this amount was available with the assess out of the sale proceeds of land at Rs. 2,30,00,000/- in respect of which the registry was made by purchaser.

However the addition of this amount can be made in either of the two persons Sh. Ajmer Singh or Baldev Kaur @ Smt. Gurdev Kaur w/o Ajmer Singh and not in both cases. Baldev Kaur @ Smt. Gurdev Kaur had already filed an affidavit before the assessing officer that all the transaction in the said bank account pertains to Ajmer Singh and she is an illiterate house wife and having no taxable income in AY 2010-11. However the AO made addition of Rs. 1,73,10,000/- in the hand of Baldev Kaur @ Gurdev Kaur vide order dated 23.03.2016. Similar addition of Rs. 1,73,10,000/- was made later on in the case of Ajmer Singh by issuing a notice u/s 148 and completing the assessment on 22.12.2017. Since the addition has been made in the case of Ajmer Singh as well as in the case of Gurdev Kaur, the addition could have been made only one case or alternatively 50% in both cases.

I shall therefore request you that addition may kindly be deleted in one of the cases and in the other case addition only to the extent of unexplained cash as explained may be retained."

20. During the appellate proceedings, the learned CIT(A) asked the assessee to show cause as to why jurisdictional ITAT Judgment in the case of Assistant Commissioner of Income Tax vs Mohinder Singh and others in ITA No. 665/Chd/2016, 666/Chd/2016, 474/Chd/2017 is not applicable in the case of the assessee. Assessee filed reply to the said show cause notice stating therein that:

"Brief facts in the case of above order passed by the IT AT Chandigarh bench are mentioned in para 3 of the order. Assessee Mohinder Singh has stated in his statement that he had sold his land to Malkiat Singh for a sum of Rs. 2,46,30,000/-.

However the same was registered for a sum of Rs. 42,37,500. During the assessment proceedings in the case of Shri Mohinder Singh, the AO concluded that in the registered sale deeds the sale proceeds were mentioned at Rs. 42,37,500/- and the AO treated the same as capital gain. The rest of amount of Rs 2,03,92,500/- was considered as unexplained cash for which the assessee had failed to offer satisfactory explanation and he accordingly added the same into the income of the assessee u/s 69A of the Act.

Assessee filed an appeal against the said order before CIT(A). The Ld. CIT(A) after considering the overall facts and circumstances, evidences and the statements recorded by the parties observed that the amount seized of Rs. 2,03,92,500/- seized from Shri Mohinder Singh was on account of sale consideration of his agricultural rural land and that no addition was warranted in the hands of Sh. Mohinder Singh u/s 69A of the Act.

Aggrieved against the order passed by CIT(A), revenue filed an appeal before ITAT.

It has been observed by the honorable ITAT in its order as under:

16. Now, coming to the question as to why the parties to the transactions chose to get it registered at a lower rate than actually agreed to? The answer, obviously, is to avoid payment of higher stamp duty, in other words, to defraud the state exchequer. The seller as well as the purchaser connived with each other to falsely represent to the concerned public authority / land revenue officer entrusted with the work of registration and collection of stamp duty about the sale consideration at a far less amount than that was actually agreed to. In our view, It is not fraud or misrepresentation to that that public officer in person, rather the same is with the 'State' as the said officers being its employee act on behalf of the 'State'. The aforesaid act of misrepresentation regarding the sale consideration has not caused any personal loss to the aforesaid official, but financial loss to the State Exchequer. The income tax authorities being revenue officials are also the public authorities appointed for the collection of income tax revenue for the state exchequer. The question before us is when a person commits fraud with the State or the Govt, at one stage misrepresenting to an employee/ public authority of one department of the 'State' and gets wrongful benefit, can he be allowed to take a different stand before another employee/public authority of the other department of the 'State' or the 'Govt' to say that he had falsely represented about the actual consideration of the transaction before the first public authority and that now the second public authority should not believe that false representation and whether can be allowed to take the benefit of his own wrong. Interestingly, both the authorities herein referred to are revenue authorities, the first being land revenue authority and the second income tax revenue authority. In our view, in such circumstances, both seller and purchaser are estopped from their act and conduct to take such a self-contradictory plea. Not only the earlier but the later authorities also are the public officers appointed for the collection of taxes contributing to the public exchequer (may be of the State or of the Union) and a person having represented the factum of the transaction in a particular manner at one stage to a public officer and getting a wrongful benefit, in our view, is estopped to deny the same to the subsequent public authority, both authorities being employee and representative of the government. The principle of estoppels in the light of the provisions of section 115 of the Evidence Act gets

attracted in such a case. Even otherwise, recognizing such a transaction will amount to overriding the provisions of Transfer of Property Act and Indian Registration Act. In view of the above discussion, it can be safely held that not only legally but also ethically and morally, the parties to a registered document are not allowed to deny the terms of the document until and unless the very validity or execution of such a document is disputed. Admittedly, the tax authorities are not bound by the technicalities of the Evidence Act, but, the general principles of evidence are applicable to income-tax proceedings. Reference can be made to the decision of the Hon 'ble Supreme Court in the case of *Chuharmal vs Commissioner Of Income-Tax*, 1988 AIR 1384, 1988 SCR (3) 788 : (1988) 172ITR 250 (SC). The Hon 'ble Supreme Court while holding so referred to and approved the observations made by the Hon'ble Bombay High Court in the case of *J.S.Parker v. V.B. Palekar*, 94 ITR 616 holding that what was meant by saying that the Evidence Act did not apply to proceedings under the Income Tax Act was that the rigor of the rules of evidence contained in the Evidence Act, was not applicable but that does not mean that when the taxing authorities were desirous in invoking the principles of the Evidence Act in proceedings before them, they were prevented from doing so. The Hon'ble Supreme Court further observed that salutary principle of common law jurisprudence embedded in the Evidence Act could be applied to the taxation proceedings.

The very basis of the passing of this order lies in the question "Now, coming to the question as to why the parties to the transactions chose to get it registered at a lower rate than actually agreed to ?

The honorable ITAT further opined that "the same is to avoid payment of higher stamp duty, in other words, to defraud the state exchequer. The seller as well as the purchaser connived with each other to falsely represent to the concerned public authority / land revenue officer entrusted with the work of registration and collection of stamp duty about the sale consideration at a far less amount than that was actually agreed to. "

The Honorable ITAT further observed that "In our view, It is not fraud or misrepresentation to that that public officer in person, rather the same is with the 'State' as the said officers being its employee act on behalf of the 'State'. The aforesaid act of misrepresentation regarding the sale consideration has not caused any personal loss to the aforesaid official, but financial loss to the State Exchequer"

The order passed by the honorable ITAT is thus based on presumptions and not on evidence. It is respectfully submitted that different motives operate on the minds of different persons in the making of unfounded accusations. Besides, human nature is too willing, when face with brutal realities, to spin stories out of strong suspicions.

Purchaser of the property may have a motive to save money in the shape of Stamp duty or any other charges levied by the state which are in the range of Six to eight percent of the consideration price. In this process purchaser of the property saves Six to eight percent of the excess amount paid over and above the registered value. The seller of the property who is selling his agriculture land, which is not a capital asset within the meaning of section 2(14) of Income Tax Act, shall have no implication of payment of any tax either under the stamp duty act or under Income tax act as the sale proceeds of such asset which is not a

capital asset is not taxable. There is thus no reason to draw an inference that he had gained something more than the actual sale price of the land.

Purchaser in such cases do save some money by underreporting the sale consideration.

The revenue authorities who are at the helms of the affair for the purpose of registration of such documents are always aware of the actual prevailing market rate of the land (whether agriculture or urban) and they are suppose to take action on purchaser of land by impounding the registry and charging the purchaser of the rightful amount of stamp papers*to save the state from loss of exchequer. However such action by the land revenue officers is rare as they are bound by the rules framed by the state where the collector rate is fixed, which at times is nowhere near the market price.

It is not out of way to submit that when land is acquired by government through land acquisition office from public, the stake holders whose land is acquired , demand price of more than four to five times or even more from government and is paid by the state. This also goes into prove that actual market value of land is much more that the registered value of land whenever a sale deed is registered. In most of the cases the revenue authorities are aware of this fact, but are helpless because of collector rates fixed by state.

Under the Income tax act there were provisions for acquisition of immovable property to counter evasion of taxes in the shape of chapter XX-A which was inserted by Taxation law (Amendment) Act 1972 w.e.f. 15.11.1972 and remained operative upto 30.06.2002. (Refer to section 269A to 269UP). Such provisions lost its utilities over a period of time as these provisions were misused in a number of case where properties of much lower value were acquired by Income Tax department at a much higher price and revenue suffered losses as such properties could not be sold at a price which were purchased by revenue department.

Another provisions in the shape of section 50C was inserted by finance act 2002 w.e.f 1.4.2003 in chapter IV of IT Act 1961 which relates to computation of capital gains. However this section was again applicable only in respect of capital asset.

It was only w.e.f 1.10.2009 that immovable property received without consideration, stamp duty value of which exceeded 50,000/- was brought to tax under section 56. However property received for a consideration which is less than market value of property was also brought to tax subject to provisions of section 56(2)(vii)(c). However the property was defined in explanation below second proviso to section 56(2) (vii)(c) as below:

Property means the following capitals assets of the assessee namely

- i. Immovable property being land or building or both
- ii. Shares & securities
- iii. Jewellery
- iv. Archeological collections
- v. Drawings
- vi. Paintings

- vii. Sculptures
- viii. Any work of art or
- ix. Bullion

Emphasis is again on the capital asset of the assessee. These provisions do not include in its ambit agriculture land which is not a capital asset within the meaning of section 2(14). Had there been an intention of the legislature to tax any amount received on sale of agriculture land which is either undervalued or overvalued, legislature is well within its rights to frame such laws. However the theory postulated by the Hon'ble ITAT to tax such receipts which are received over and above the declared value of the property registered with revenue authority has to be taxed as income from other sources and such an amount received partakes the character of taxable gift.

Although provisions of section 56(2) are without prejudice to the generality of provisions of section 56(1) of IT Act, but none the less these provisions specifically mentions about the chargeability of income under the head income from other sources so as to remove any ambiguity.

Section 45 of IT Act refer to capital gains as profit or gains arising from transfer of a capital asset.

Further for the purpose of computing computation of capital gains, provisions of section 48 defines it as " the income chargeable under the head Capital gains shall be computed by deducting from the full value of consideration received or accruing as a result of transfer of the capital asset" the following amounts—

Thus for the purpose of computing the capital gains, full value of consideration received is to be considered. No where this section refers to consideration mentioned in the documents "registered deed in respect of immovable property", although it is subject to section 50C where the property is registered at a price less than the collector rate. In respect of the higher value if received by the seller, in respect of the sale consideration over and above the registered value, as per this section has to be treated as full value of consideration received.

Assessee is required to prove that such consideration is received for sale of an asset / rights therein and such value of course is subject to provisions of section 50C. If the sale consideration received is declared higher than the registered value, the factum shall remain that consideration has been received on account of sale of capital asset and this consideration price is to be considered for the purpose of computing capital gains.

There are thus no provisions under the income tax act to treat the difference between the sales considerations received over and above the registered value as income from other sources, as such amount is considered as part of sale consideration. Had it been so then for the purpose of section 50C, the difference in consideration price as referred to therein would not be considered as part of deemed sale consideration, but would have been treated as income from other sources as per theory propounded by the honorable ITAT, and such a theory is thus against the provisions of section 48 read with 50C of the Income Tax act.

Thus the consideration price for the purpose of computing capital gains is the consideration price received in respect of sale of immovable property and it is not linked to sale consideration as recorded in the registration deed.

Intention of the legislature is thus very clear in this respect. Had there been the intention of the legislature to restrict it to registered value as per registered sale deed, the provisions would have been made accordingly.

In the process of computation of capital gains, the first item to be considered is "full value of consideration received or accruing to the assessee". It is from the amount representing full value of consideration received or accruing to the assessee that deductions specified in section 48 are to be made for ascertaining capital gains. Consideration as such in a given case may flow from third party. It may have been paid in the past or may be paid at the time of transfer or may be agreed to be paid in future. The date of payment of consideration is not material for accrual of liability for capital gains tax. It is the date of transfer which is material.

In the case of *CIT vs. Medical Trust Hospital & Ors.* (2008) 220 CTR (Ker) 166, it was held that Purchaser having admitted in his statement under s. 132(4) that he purchased the land and building from assessee for Rs. 71 lacs as against Rs. 30 lacs declared in sale document, having included the differential amount of Rs. 41 lacs in return and paid taxes thereon and the actual consideration of Rs. 71 lacs being also supported by subsequent valuation of Department as also purchaser, capital gains in the hands of assessee has to be computed by taking the sale consideration at Rs. 71 lacs notwithstanding the fact that the purchaser in cross-examination retracted from his earlier statement.

In the case of *Basheer Ahamed vs. CIT-II* (2013) 84 CCH 179 Chen HC : (2013) 352 ITR 157 (Mad), the assessee had sold his property under sale deed and obtained sale consideration from purchasers. Pursuant to survey in premises of purchasers, copy of sale agreement executed between assessee's wife and purchasers was seized by revenue which showed higher sale consideration than mentioned in sale deed. Purchasers had given confessional statement regarding higher payment as per sale agreement. AO had made addition on the basis of Sale agreement, which was confirmed by the AO. Assessee had claimed that sale agreement was signed by assessee's wife and not by him. The Chennai High Court held, though sale agreement was signed by assessee's wife, assessee being not present in India, assessee had honored Sale agreement entered into by his wife and hence agreement was valid. Sale deed also confirmed receipt of consideration prior to sale deed. Assessee had shown capital gains and thus factum of sale of property was accepted. Also income tax filings by purchasers had shown an investment in property as per sale agreement. Accordingly, it was held, consideration should be taken as the higher value of consideration mentioned in the sale deed.

While passing the order the honorable ITAT has not considered the above referred judgments of Kerala High Court and Madras High Court.

Thus the hypothesis that sale consideration is to be taken as per the registered document, is something beyond the scope of the words used as "full value of consideration received or accruing" in provisions of section 48 of IT Act.

Thus the hypothesis propounded by the Honorable ITAT is against the basic tenants of provisions of income tax law and is based on presumptions only and as such are not applicable in the case of assessee.

Assessee in the instant case has claimed that the land sold is an agricultural land and is not a capital asset within the meaning of section 2(14) of IT Act and full value of sale consideration received was Rs.2,30,00,000/- and it was registered for a sum of Rs. 62,70,0000/-. The total sale consideration was deposited in cash in the saving bank account at Kharar on 22.05.2009, immediately after sale of land. Assessee provided the address of the purchaser also while submitting reply to I T O Ward 6(4) Mohali. However no enquiry was made from the purchaser of the land in this regard. In the absence of any proper evidence other than oral statement or an affidavit filed before ITO in this regard, assessing officer considered the difference in the sale price declared by assessee and value as per sale deed as income from other sources.

In case your honor accepts the plea taken by assessee before assessing officer, the full value of consideration is Rs. 2,30,00,000/- then, considering the sale value as mentioned in sale deed as full value of consideration received and remaining amount received as income from other sources is an incorrect proposition. The assessing officer was required to consider the entire consideration of Rs. 2,30,00,000/- received, which is deposited in bank account on the day of registration of sale deed itself.

However in case assessee contention that the property was sold for Rs. 2,30,00,000/- is not accepted and it is treated to have been sold for 62,70,000/- only, then in that situation, assessee is required to show the source of cash deposit in his account. It is in this background that assessee has prepared the cash flow statement and filed it before your honor for your kind consideration.

Keeping in view the above, the proposition as laid down in the case of ACIT vs Mohinder Singh & others is not applicable in the case of assessee as the proposition laid down in the said case is not backed by provisions of income tax law as submitted in details in earlier paragraphs."

21. It was submitted that the Id. CIT(Appeal) while dismissing the appeal of the assessee has neither considered the plea raised by the assessee as stated above nor regarding the availability of cash as submitted in the cash flow statement on the following grounds:

"6.3 The submissions of the assessee have been considered alongwith the case laws. It is clear from the assessment order that there were cash deposits of Rs.2,35,80,000/- during the F.Y. 2009-10 relevant to A.Y. 2010-11 in the joint bank account with his wife Smt. Baldev Kaur bearing no. 55030123698 maintained with State Bank of Patiala which remains unexplained as per the verification report of DIT(I&CI), Chandigarh. When the assessee's wives case records are examined it is clear that it was admitted that the source of cash deposit of Rs.2,35,80,000/- was from the sale proceeds of the impugned agricultural land only. This fact is not assailed by the assessee during the present proceedings either. The. AO in his order held that the actual name of his wife is Smt. Gurdev Kaur but in the bank

statement (joint account maintained with State Bank of Patiala) the name of his wife appears as Smt. Baldev Kaur in which the entries have been found. It is unclear whether the two persons are the same or not. However, this is not the subject matter of the present appeal.

The counsel's insistence on canvassing cash flow statement arising out of cash sales in previous years are in stark contradiction with the plea taken by the assessee's wife during the course of her assessment proceedings that the assessee did not have a bank account of his own. Therefore, the claims of the assessee that the cash deposits in bank was of previous cash in hand is not acceptable. "

22. It was submitted that the issue raised with regard to applicability of the Jurisdictional ITAT judgment in the case of Assistant Commissioner of Income Tax vs Mohinder Singh and others in ITA No. 665/Chd/2016, 666/Chd/2016, 474/Chd/2017 to the case of the assessee, the learned CIT(A) has rejected the plea of the assessee without deliberating on the issues raised in the following words:

"The facts of the case at hand are similar to that decided by the ITAT in which it held that "the assessee has been a partner in the conspiracy to falsely represent about the sale consideration to the registration authorities and thereby resulting into payment of less stamp duty, of which the assessee has reaped the consequential benefits. Moreover, the question as to the nature of receipt and its taxability has not been gone into by the Hon'ble Allahabad High Court. Moreover, with all due respect, decision of the jurisdictional Pb. & Haryana High Court in the case Paramjit Singh holding the inadmissibility of oral evidence in the presence- of registered deed is binding on this Tribunal under the circumstances and in the light of the above referred to statutory provisions and case laws, the nature of receipt of the income over and above the registered sale consideration in the hands of seller Mohinder Singh, in our view, will not fall under the head 'Capital Gain' but 'income from other sources". The assessee's alternate plea that the entire sale proceeds would qualify as agricultural income does not hold in light of ITAT's clear cut finding that the proceeds, in excess of the amount considered for stamp duty valuation & consequent registration, shall partake the character of 'income from other sources' and assessed as such."

And with the above remarks assessee's appeal was dismissed."

23. It was submitted that there is no doubt that during the verification proceedings as well as before the Assessing officer and also before the learned CIT(A), it was stated that the deposit of Rs. 2,30,00,000/- had come out of sale proceeds of agriculture land for which registry was made for a sum of Rs. 62,70,000/- and there was another sale of a piece of land on 22.05.2009 for a

sum of Rs. 10,45,000/-. While deciding the appeal the learned CIT(A) had not considered the availability of 10,45,000/- as on 22.05.2009 for the purpose of allowing benefit of availability of cash as on 22.05.2009 besides Rs. 62,70,000/- for which the credit has been allowed to the assessee.

24. Coming to the issue of addition of 1,73,10,000/-, it was submitted that the Assessing officer has made the addition on the following grounds:

"The reply of the assessee has been considered carefully and is not acceptable because the assessee has not submitted any documentary evidence in support of her contention, Moreover, the assessee has not submitted any cash flow from where any linkage of other deposits can be verified. There is nothing brought on record to explain the source of balance cash deposit of Rs. 1,73,10,000/- (2,35,80,000 - 62,70,000). Therefore, the addition of Rs. 1,73,10,000/- is, therefore, made to the returned income of the assessee, treating it as unexplained cash deposits."

25. It was submitted that perusal of the above findings of the AO clearly reveals the following facts:

1. *The assessee has not submitted any documentary evidence in support of her contention,*
2. *The assessee has not submitted any cash flow from where any linkage of other deposits can be verified.*
3. *The addition of Rs. 1,73,10,000/- is, therefore, made to the returned income of the assessee, treating it as unexplained cash deposits.*

26. In respect of the above three issues, it was submitted that assessee had no evidence to the fact that land in question was sold for Rs. 2,30,00,000/- as was submitted. This fact was reiterated before the learned CIT(A).

27. With regard to cash flow statement, for which the reference was made by the Assessing officer that assessee has not submitted any cash flow statement from where any other linkage of other deposits can be verified, the same was submitted before the CIT(A) who summarily rejected the same without even going through the same. It is not out of place to mention here that assessee had withdrawn cash on various dates after sale of his land on 2005 for purchase of agriculture land. He had purchased land in Dec 2005. Before selling part of land

purchased in Dec 2005, in June 2009, the assessee had made the following withdrawals from his account no. No.55030123698 maintained by him jointly with his spouse, with State Bank of Patiala, Kharar. The details of cash withdrawals made and cash deposits are as below:

Date	Opening Balance	Receipts / withdrawals from Bank	Outgoing / deposits in bank	Closing Balance	Bank account no.
5-Aug-05	32000	30000		62000	a/c No.55030123698
10-Aug-05	62000	2700000		2762000	a/c No.55030123698
10-Aug-05	2762000	100000		2862000	a/c No.55030123698
11-Aug-05	2862000		850000	2012000	a/c No.55030123698
16-Aug-05	2012000	160000		2172000	a/c No.55030123698
5-Sep-05	2172000	11000		2183000	a/c No.55030123698
7-Sep-05	2183000		5000	2178000	a/c No.55030123698
6-Oct-05	2178000	100000		2278000	a/c No.55030123698
5-Nov-05	2278000	202000		2480000	a/c No.55030123698
7-Nov-05	2480000	110000		2590000	a/c No.55030123698
22-Nov-05	2590000	15000		2605000	a/c No.55030123698
23-Nov-05	2605000	150000		2755000	a/c No.55030123698
15-Dec-05	2755000	10900000		13655000	a/c No.55030123698
15-Dec-05	13655000		10900000	2755000	a/c No.55030123698
19-Dec-05	2755000	12500000		15255000	a/c No.55030123698
19-Dec-05	15255000		766655	14488345	a/c No.55030123698
19-Dec-05	14488345		4472600	10015745	a/c No.55030123698
21-Dec-05	10015745		1600000	8415745	a/c No.55030123698
22-Dec-05	8415745	2200000		10615745	a/c No.55030123698
28-Dec-05	10615745	600000		11215745	a/c No.55030123698
29-Dec-05	11215745		477000	10738745	a/c No.55030123698
10-Jan-06	10738745	550000		11288745	a/c No.55030123698
11-Jan-06	11288745		550000	10738745	a/c No.55030123698
12-Jan-06	10738745	220000		10958745	a/c No.55030123698
18-Jan-06	10958745	600000		11558745	a/c No.55030123698
21-Jan-06	11558745		600000	10958745	a/c No.55030123698
6-Feb-06	10958745	50000		11008745	a/c No.55030123698
3-Apr-06	11008745	100000		11108745	a/c No.55030123698
10-Apr-06	11108745		1500000	9608745	a/c No.55030123698
12-Apr-06	9608745		200000	9408745	a/c No.55030123698
3-May-06	9408745	40000		9448745	a/c No.55030123698
8-May-06	9448745	700000		10148745	a/c No.55030123698
9-May-06	10148745		80000	10068745	a/c No.55030123698
25-May-06	10068745		130000	9938745	a/c No.55030123698
5-Jun-06	9938745		15000	9923745	a/c No.55030123698
6-Jun-06	9923745	200000		10123745	a/c No.55030123698
12-Jun-06	10123745	85000		10208745	a/c No.55030123698

26-Jun-06	10208745	250000		10458745	a/c No.55030123698
10-Jul-06	10458745	300000		10758745	a/c No.55030123698
1-Aug-06	10758745		100000	10658745	a/c No.55030123698
26-Aug-06	10658745		200000	10458745	a/c No.55030123698
18-Oct-06	10458745		199500	10259245	a/c No.55030123698
4-Nov-06	10259245		100000	10159245	a/c No.55030123698
30-Nov-06	10159245		400000	9759245	a/c No.55030123698
13-Jan-07	9759245	15000		9774245	a/c No.55030123698
5-Feb-07	9774245	15000		9789245	a/c No.55030123698
24-Feb-07	9789245		30000	9759245	a/c No.55030123698
8-Mar-07	9759245	50000		9809245	a/c No.55030123698
19-Mar-07	9809245	100000		9909245	a/c No.55030123698
9-Apr-07	9909245	5000		9914245	a/c No.55030123698
16-Apr-07	9914245		5000	9909245	a/c No. 55030123698
17-May-07	9909245		100000	9809245	a/c No. 55030123698
19-May-07	9809245	50000		9859245	a/c No.55030123698
26-May-07	9859245		223000	9636245	a/c No.55030123698
8-Jun-07	9636245	100000		9736245	a/c No.55030123698
13-Jun-07	9736245	200000		9936245	a/c No.55030123698
18-Jul-07	9936245	200000		10136245	a/c No.55030123698
6-Aug-07	10136245	300000		10436245	a/c No.55030123698
16-Aug-07	10436245	100000		10536245	a/c No.55030123698
8-Sep-07	10536245	150000		10686245	a/c No.55030123698
20-Oct-07	10686245	10000		10696245	a/c No.55030123698
7-Nov-07	10696245	100000		10796245	a/c No.55030123698
13-Nov-07	10796245	30000		10826245	a/c No.55030123698
13-Dec-07	10826245		120000	10706245	a/c No.55030123698
18-Dec-07	10706245		2900000	7806245	a/c No.55030123698
19-Dec-07	7806245	100000		7906245	„a/c No.55030123698
22-Dec-07	7906245	2800000		10706245	a/c No.55030123698
27-Dec-07	10706245	150000		10856245	a/c No.55030123698
4-Jan-08	10856245	150000		11006245	a/c No.55030123698
5-Feb-08	11006245	150000		11156245	a/c No.55030123698
18-Feb-08	11156245	20000		11176245	a/c No.55030123698
11-Apr-08	11176245	200000		11376245	a/c No.55030123698
21-Apr-08	11376245		90000	11286245	a/c No.55030123698
5-May-08	11286245	100000		11386245	a/c No.55030123698
13-May-08	11386245	50000		11436245	a/c No.55030123698
27-May-08	11436245	100000		11536245	a/c No.55030123698
17-Jun-08	11536245	100000		11636245	a/c No.55030123698

3-Jul-08	11636245	100000		11736245	a/c No.55030123698
28-Jul-08	11736245	100000		11836245	a/c No.55030123698
3-Oct-08	11836245	10000		11846245	a/c No.55030123698
15-Oct-08	11846245	6000		11852245	a/c No.55030123698
4-Nov-08	11852245		130000	11722245	a/c No.55030123698
10-Dec-08	11722245	70000		11792245	a/c No.55030123698
6-Jan-09	11792245	10000		11802245	a/c No.55030123698

3-Mar-09	11802245	10000		11812245	a/c No.55030123698	
9-Mar-09	11812245	10000		11822245	a/c No.55030123698	
21-Mar-09	11822245		3880000	7942245	a/c No.55030123698	
2-Apr-09	7942245	30000		7972245	a/c No.55030123698	
13-Apr-09	7972245	3970000		11942245	a/c No.55030123698	
14-May-09	11942245	4000		11946245	a/c No.55030123698	
22-May-09	11946245	1045000		12991245	a/c No.55030123698	Sale of 3 Bigha 0 Biswa 13 Biswasi land
22-May-09	12991245	6270000		19261245	IWc No.55030123698	Sale of 54 Bigha 13 Biswa and 4 Biswasi Land

28. It was submitted that the assessee had not invested any amount during this period other than the land purchased in Dec. 2005. Assessee although had withdrawn money on various dates, but has not made any investment although he was looking for purchase of agricultural land all these times. It was on 22.05.2009, that assessee deposited a sum of Rs. 2,30,00,000/- in the Joint bank account and another Rs. 5,00,000/- on 23.05.2009. Assessee is an agriculturist and has no other source of Income. He has to support his family of self and wife Gurdev Kaur.

29. It was submitted that in the above background, the assessee prepared cash flow statement and submitted before the learned CIT(A) that addition of Rs. 42,38,755/- is warranted being the shortfall of cash available with assessee and deposited in account. It is not out of place to mention that assessing officer has made addition on account of unexplained deposit in the bank account which in legal parlance refer to addition made under section 69 of IT Act.

30. While making addition of Rs. 1,73,10,000/-, the Assessing officer had duly ignored the assessee's plea that land was sold for a sum of Rs. 2,30,00,000/- on the ground that assessee had not filed any evidence. However the learned CIT(A) had treated it as if assessee had sold the agriculture land for a sum of Rs. 2,30,00,000/- which the assessing officer has already not accepted in her order. It is the assessee who is in appeal before the learned CIT(A) and his grounds of

appeal is on account of "addition made of Rs. 1,73,10,000/- on account of undisclosed sources."

31. The Assessing officer while making addition in the hands of Baldev Kaur @ Gurdev Kaur and again in the hand of Ajmer Singh made the addition on account of unexplained cash deposit in his bank account and it was in respect of this addition that assessee has tried to explain the source to the best of his ability. However, the learned CIT(A) while passing the order has changed the character of addition from "Unexplained cash deposit in his bank account" (Addition u/s 69) to "Income from other sources"(Addition u/s 56) which is against the principal of natural justice as no opportunity was granted to assessee to show cause that why the head of income should not be changed. It is not denied that CIT(A) has no powers to do the same, but it was important to have granted an opportunity to the assessee for not resorting to such an exercise.

32. It was submitted that the learned CIT (A) had not adjudicated on the issue of unexplained cash deposit in the bank account of the assessee in respect of which the assessee has filed submissions. He has simply stated that assessee has changed his stand with the following narration:

"The counsel's insistence on canvassing cash flow statement arising out of cash sales in previous years are in stark contradiction with the plea taken by the assessee's wife during the course of her assessment proceedings that the assessee did not have a bank account of his own. Therefore, the claims of the assessee that the cash deposits in bank was of previous cash in hand is not acceptable."

33. Thus the issue of not accepting the assessee's plea in respect of Cash available as per cash flow statement was not considered on the ground that it is in contradiction to plea taken by the assessee's wife during the course of her assessment proceedings, and secondly, the assessee did not have a bank account of his own.

34. It was submitted that in respect of the issue regarding sale of land for a sum of Rs. 2,30,00,000/- by the assessee, the submissions are already made in detail in earlier paragraphs. It was submitted before the learned CIT(A) that:

"In case your honor accepts the plea taken by assessee before assessing officer, the full value of consideration is Rs. 2,30,00,000/- then, considering the sale value as mentioned in sale deed as full value of consideration received and remaining amount received as income from other sources is an incorrect proposition. The assessing officer was required to consider the entire consideration of Rs. 2,30,00,000/- received, which is deposited in bank account on the day of registration of sale deed itself.

However in case assessee contention that the property was sold for Rs. 2,30,00,000/- is not accepted and it is treated to have been sold for 62,70,000/- only, then in that situation, assessee is required to show the source of cash deposit in his account. It is in this background that assessee has prepared the cash flow statement and filed it before your honor for your kind consideration. "

35. It was submitted that the assessee's alternative plea was not accepted on the ground that "the assessee did not have a bank account of his own." Assessee has filed cash flow statement in respect of Joint Bank account held by him with his wife Baldev Kaur in which the deposits on account of sale of agriculture land earlier and also withdrawal made were considered for the purpose of cash flow without considering any other bank account (was not having other account upto that period) or any other source. This cash flow was applicable both in the case of Baldev Kaur as well as Ajmer Singh. Assessee had made only one submission in the case of Baldev Kaur and Ajmer Singh. While making submissions before the learned CIT(A), it was specifically submitted that:

" However the addition of this amount can be made in either of the two persons Sh. Ajmer Singh or Baldev Kaur @ Smt. Gurdev Kaur w/o Ajmer Singh and not in both cases. Baldev Kaur @ Smt. Gurdev Kaur had already filed an affidavit before the assessing officer that all the transaction in the said bank account pertains to Ajmer Singh and she is an illiterate house wife and having no taxable income in AY2010-11. However the AO made addition of Rs. 1,73,10,000/- in the hand of Baldev Kaur @ Gurdev Kaur vide order dated 23.03.2016. Similar addition of Rs. 1,73,10,000/- was made later on in the case of Ajmer Singh by issuing a notice u/s 148 and completing the assessment on 22.12.2017. Since the addition has been made in the case of Ajmer Singh as well as in the case of Gurdev Kaur, the addition could have been made only in one case or alternatively 50% in both cases."

36. It was submitted that it is beyond comprehension that assessee plea in respect of cash flow was not accepted merely on the ground that this account was not held by the assessee in his own name. If that was the reason then why entire addition was confirmed in the hand of Ajmer Singh by relying on the affidavits filed by Baldev Kaur and Ajmer Singh. If the deposits on account of sale of land belonged to Ajmer Singh, then why not the withdrawals made from this account by Ajmer Singh. The learned CIT(A) had failed to even go through the Cash flow statement before rejecting the same on merits. The learned CIT(A) even has failed to call for a remand report from the Assessing officer. The learned CIT(A) has also failed to make any enquiry with regard to sale consideration received by seller and paid by purchaser as was done in the case of Mohinder Singh in which case substantial enquiries were made by ADIT / DDIT and also by Assessing officer as is evident from the facts narrated by the ITAT in its order in the case of Mohinder Singh other (*supra*) before applying the judgment in the case of assessee.

37. It was submitted that in case your honor accepts the plea taken by assessee before Assessing officer, the full value of consideration is Rs. 2,30,00,000/- then, considering the sale value as mentioned in sale deed as full value of consideration received and remaining amount received as income from other sources is an incorrect proposition. The Assessing officer was required to consider the entire consideration of Rs. 2,30,00,000/- received, which is deposited in bank account on the day of registration of sale deed itself. Further ratio of the judgment in the case of Mohinder Singh and others is not applicable for the facts and legal issues stated in earlier part of the submissions.

38. It was further submitted that in case assessee contention that the property was sold for Rs. 2,30,00,000/- is not accepted and it is treated to have been sold for 62,70,000/- only, then in that situation, assessee is required to show the source of cash deposit in his account. It is in this background that assessee has prepared the cash flow statement and filed it before CIT(A) and also for your

honors kind consideration. A perusal of the cash flow statement shall reveal that at the time of deposit of Rs. 2,30,00,000/- in cash on 22.05.2009 and Rs. 5,00,000/- on 23.05.2009, there was a maximum negative cash balance of Rs.42,38,755/- (without considering the sale price of land of Rs. 2,30,00,000/- and taking the sale consideration of land at Rs. 62,70,000/- + 10,45,000/-). In fact this cash was available with the assessee only out of the sale proceeds of 54 Bigha 13 Biswa & 4 Biswasi and another piece of land of land for Rs.2,35,00,000/- as was submitted earlier. However in the absence of any documentary evidence, the sale proceeds of this land has been considered in cash flow at only Rs. 73,15,000/- (6270000+ 1045000). The assessing officer has failed to make any enquiry from the purchaser of land who has made the payment at Rs. 2,35,00,000/-. However considering his earlier withdrawals made from bank account and also sale of another piece of land for Rs. 10,45,000/- on 22.05.2009, which was not considered by the assessing officer, unexplained cash deposit comes to Rs. 42,38,755/- (2,35,00,000- 1,92,61,245) during the financial year 2009-10 as on 23.05.2009. In as far as deposit of Rs. 80,000 on 23.01.2010 is concerned, the same is covered in the cash flow statement out of the withdrawals made and available cash in hand. During the period 24.05.2009 to 23.01.2010 as below:

Date	Opening Balance	Receipts / withdrawals from Bank	Outgoing / deposits in bank	Closing Balance	Bank account reference
27-May-09	0	300000		300000	A/cno. 55030123698 of Baldev Kaur and Ajmer Singh in SBOP
28-May-09	300000	350000		650000	A/cno. 55030123698 of Baldev Kaur and Ajmer Singh in SBOP
29-May-09	650000	13700000		14350000	A/C no. 65056056240
2-Jun-09	14350000	1000000		15350000	A/C no. 65056056240
2-Jun-09	15350000	6000000		21350000	A/c no. 55030123698 of Baldev Kaur and Ajmer Singh in SBOP
3-Jun-09	21350000		7264000	14086000	Purchase of 138 Kanal 7 Mara land
18-Jun-09	14086000	100000		14186000	A/cno. 55030123698 of Baldev Kaur and Ajmer Singh in SBOP
26-Jun-09	14186000	100000		14286000	A/C no. 65056056240
27-Jun-09	14286000	100000		14386000	A/cno. 55030123698 of Baldev

					Kaur and Ajmer Singh in SBOP
6-Jul-09	14386000	50000		14436000	A/cno. 55030123698 of Baldev Kaur and Ajmer Singh in SBOP
17-Aug-09	14436000	30000		14466000	A/cno. 55030123698 of Baldev Kaur and Ajmer Singh in SBOP
9-Oct-09	14466000	15000		14481000	A/c no. 55030123698
19-Oct-09	14481000	15000		14496000	A/cno. 55030123698
23-Oct-09	14496000	100000		14596000	A/cno. 55030123698
30-Oct-09	14596000	20000		14616000	A/cno. 55030123698
23-Nov-09	14616000	10000		14626000	A/cno. 55030123698
4-Jan-10	14626000	50000		14676000	A/cno. 55030123698
14-Jan-10	14676000	250000		14926000	A/cno. 55030123698
18-Jan-10	14926000	180000		15106000	A/cno. 55030123698
23-Jan-10	15106000		80000	15026000	A/c no.55030123698
17-Feb-10	15026000		5850000	9176000	A/C no. 65056056240
19-Feb-10	9176000	10000		9186000	A/c no. 55030123698

39. It was submitted that it can be seen that there was substantial withdrawals from the bank account during the period 24.05.2009 to 23.01.2010 when a cash of Rs. 80,000/- was deposited in account. Thus keeping in view the above position of availability of cash, unexplained deposit remains at Rs. 42,38,755/-, although this amount was available with the assessee out of the sale proceeds of land at Rs. 2,30,00,000/- in respect of which the registry was made by purchaser.

40. It was further submitted that in case none of the above two pleas are accepted, it may be noted that assessee has withdrawn cash of Rs. 30000/- on 02.04.2009, Rs. 39,70,000/- on 13.04.2009 i.e. during the year itself and had availability of further sale proceeds of Rs. 10,45,000/- i.e. of Rs. 50,45,000/- for which assessee is entitled to benefit of cash deposit alongwith sale proceeds of land of Rs. 62,70,000/- in respect of which credit was allowed by Assessing officer out of total deposit of Rs. 2,35,00,000/- on 23.05.2009, In the above situation assessee is entitled to a further relief of Rs. 50,45,000/- and sustainable addition shall be Rs. 1,21,85,000/- (2,35,00,000 -62,70,000 - 50,45,000).

41. Per contra, the Ld. DR has relied on the orders of the lower authorities. It was submitted that it is an undisputed fact that there IS cash deposited in the joint bank account of the assessee along with his wife to the tune of Rs. 2,35,80,000/- and as per the documentary evidence submitted by the assessee. The assessee has only been able to establish the sales to the extent of Rs. 62,70,000/- and in respect of which the credit has already been allowed by the AO. Further our reference was drawn to the findings of the Ld. CIT(A) which are contained in para 6.3 and the contents thereof read as under:

“6.3 The submissions of the assessee have been considered alongwith the case laws. It is clear from the assessment order that there were cash deposits of Rs.2,35,80,000/- during the F.Y. 2009-10 relevant to A.Y. 2010-11 in the joint bank account with his wife Smt. Baldev Kaur bearing no. 55030123698 maintained with State Bank of Patiala which remains unexplained as per the verification report of DIT(I&CI), Chandigarh. When the assessee's wives case records are examined it is clear that it was admitted that the source of cash deposit of Rs.2,35,80,000/- was from the sale proceeds of the impugned agricultural land only. This fact is not assailed by the assessee during the present proceedings either. The AO in his order held that the actual name of his wife is Smt. Gurdev Kaur but in the bank statement (joint account maintained with State Bank of Patiala) the name of his wife appears as Smt. Baldev Kaur in which the entries have been found. It is unclear whether the two persons are the same or not. However, this is not the subject matter of the present appeal.

The counsel's insistence on canvassing cash flow statement arising out of cash sales in previous years are in start contradiction with the plea taken by the assessee's wife during the course of her assessment proceedings that the assessee did not have a bank account of his own. Therefore, the claims of the assessee that the cash deposits in bank was of previous cash in hand is not acceptable.

The case was reopened u/s 148 of the Act on the basis of information available with the department and the verification report received from the DIT(I&CI), Chandigarh not on any presumption. There is clear evidence from the bank statements which reveals that there were cash deposits and the Assessing Officer had sufficient reasons to believe for re-opening the case. It is pertinent that the assessee has not assailed the issue of reopening.

The cash flow statement and the bank statements submitted by the appellant clearly show that there were credit entries during the Financial Year 2009-10 relevant to A.Y. 2010-11. It's been already held above that the cash flow statement of the previous years doesn't help the assessee's case. Apart from not fitting into the concept of human probability the cash flow statement is further not reliable. That it doesn't square up is revealed from the end result of a negative balance of Rs.42.38 lakhs prior to the sale of the impugned land, (refer assessee's contention in para 6.2.3 above). This when seen with the affirmation (contained in the wife's assessment) that the entire sale proceeds related to a single sale transaction clearly involves invocation of the ITAT's decision averred above.

The counsel of the assessee, vide note-sheet entry dated 27.08.2019 was specifically asked about the applicability of the judgement of the case ACIT vs. Mohinder Singh & Ors. In ITA No. 665/Chd/2016, 666/Chd/2016 and 474/chd/2017 on the amounts deposited in cash and in excess of the registered value. The infliction of the same does not get mitigated by the assessee's allegations that the ITAT's order was based on presumptions and not on evidence. Clearly the remarks appended subsequently by the assessee are distasteful and not in the right spirit.

Further the reliance placed on case laws in the cases of Medical Trust Hospital and Basheer Ahmed are distinguishable to the extent that the issue concerned matters of capital gains and higher consideration discovered by the department, respectively.

The facts and the submissions on behalf of the assessee bear an uncanny resemblance to a group of cases decided together by ITAT, Chandigarh in ITA nos. 665, 666/CHD/2016 and ITA No. 474/CHD/2017 dated 28.01.2018, wherein the ITAT made following observations:

"Once both the parties to the transaction i.e. the seller and the purchaser had made to believe not only the public authority but the public at large that the transaction relating to purchase/sale of land between them was settled at a particular consideration, subsequently they are estopped from their act and conduct to plead that the actual consideration was at variance of the earlier representation. The plea on behalf of the seller that he had agreed to get the sale deed registered at a lower rate at the instance of the purchaser is of no help to him. He has been a party to the conspiracy resulting into revenue loss to the state exchequer. Even, it cannot be said that he had not got any benefit by falsely representing about the sale consideration. If, the purchaser had to pay higher stamp duty, then it accordingly will go on to reduce the sale consideration/amount payable to the seller as the purchaser takes into consideration the total amount which he would have to shell out of his pocket i.e. the sale consideration as well as stamp duty and the other charges.

Now, once it* is held that the sale consideration is to be taken as per the registered document, what will be the nature of the extra amount received? As discussed above, the same cannot be said to be the amount received towards sale consideration of the land, rather, the same will constitute the extra money paid as consideration for the execution of the registered deed of sale of land and not for the sale of land itself. The same under the circumstances, has to be taxed as income from other sources. Such an amount received over and above the sale consideration mentioned in the registered document, partakes the character of taxable gift. Our above view also find supports from the following para of the judgement of the Hon'ble Supreme Court in the case of K.P. Varghese (supra).

"16. This construction which we are placing on sub-section (2) also marches in step with the Gift Tax Act, 1958. If a capital asset is transferred for a consideration below its market value, the difference between the market value and the full value of the consideration received in respect of the transfer would amount to a gift liable to tax under the Gift Tax Act, 1958, but if the construction of sub-section (2) contended for on behalf of the Revenue were accepted, such difference would also be liable to be added as part of capital gains taxable under the provisions of the Income Tax Act, 1961. This would be an anomalous result which

could never have been contemplated by the legislature, since the Income Tax Act, 1961 and the Gift Tax Act, 1958 are parts of an integrated scheme of taxation and the same amount which is chargeable as gift could not be intended to be charged also as capital gains."

The facts of the case at hand are similar to that decided by the ITAT in which it held that "the assessee has been a partner in the conspiracy to falsely represent about the sale consideration to the registration authorities and thereby resulting into payment of less stamp duty, of which the assessee has reaped the consequential benefits. Moreover, the question as to the nature of receipt and its taxability has not been gone into by the Hon'ble Allahabad High Court. Moreover, with all due respect, decision of the Jurisdictional Pb. & Haryana High Court in the case Paramjit Singh holding the inadmissibility of oral evidence in the presence of registered deed is binding on this Tribunal. Under the circumstances and in the light of the above referred to statutory provisions and case laws, the nature of receipt of the income over and above the registered sale consideration in the hands of seller Mohinder Singh, in our view, will not fall under the head 'Capital Gain' but 'income from other sources'. The assessee's alternate plea that the entire sale proceeds would qualify as agricultural income does not hold in light of ITAT's clear cut finding that the proceeds, in excess of the amount considered for stamp duty valuation & consequent registration, shall partake the character of 'income from other sources' and assessed as such.

Grounds of appeal no. 1 & 2 are dismissed. The action of the AO to tax the cash received in excess of the amount recorded in the registered sale deed is upheld albeit on different grounds."

42. We have heard the rival contentions and perused the material available on record. The issue under consideration relates to nature and source of deposits of Rs 2.08 cr on 29/05/2009 and Rs 58.50 lacs on 17/02/2010 in the bank account maintained by the assessee with state Bank of Patiala. The assessment proceedings were completed u/s 144 r/w 147 of the Act, in absence of any explanation submitted by the assessee, whereby the AO, referring to the assessment proceedings in case of wife of the assessee, Smt. Baldev Kaur, brought Rs 1.73 cr to tax in the hands of the assessee on substantive basis. In the assessment proceedings in the case of the wife of the assessee, the AO noted that she had stated in her affidavit that the deposit in her bank account pertained to her husband, Shri Ajmer Singh who has sold his agriculture land as per the registered sale deed on 22/05/2009 for an amount of Rs. 62,70,000/- and all the transactions in the bank account pertains to her husband, at the same

time, the AO made an addition of Rs. 1,73,10,000/- stating that no documentary evidence has been submitted in support of her contention, further, no cash flow statement has been submitted whereby any linkage of other deposits can be verified.

43. During the appellate proceedings, we find that consolidated submissions were filed for A.Y 2010-11 and A.Y 2011-12 and the assessee has submitted that over a period of time, the assessee has purchased and sold agriculture land and a detailed cash flow statement, bank statements and copy of sale deeds were submitted. It was submitted by the assessee that the cash so deposited on 22/05/2010 and 23/05/2010 is out of cash in hand and from sale and purchase of agriculture land and the AO has allowed credit of land sold at Rs 62.70 lacs in absence of cash flow statement. It was submitted that considering the earlier withdrawals and sale of land, unexplained cash deposit comes to Rs 42,38,755/- as on 23/05/2009. The Id CIT(A) has however not considered the said explanation of the assessee and the cash flow statement and related documentation so submitted was not examined nor any remand report called from the Assessing officer. The Id CIT(A) has held that the Counsel's insistence on canvassing cash flow statement arising out of cash sales in previous years are in stark contradiction with the plea taken by the assessee's wife during the course of her assessment proceedings that the assessee did not have a bank account of his own and therefore, the plea of the assessee that cash deposits in bank account was of previous cash in hand was not accepted.

44. In our view, where the assessment proceedings have been completed u/s 144 of the Act in absence of any explanation forthcoming from the assessee, the plea and contention taken by the assessee during the appellate proceedings cannot be summarily rejected as has been done in the instant case. It is not a case where the assessee has not owned up the deposits in the joint bank account as belonging to him, the assessee has admitted that the

deposits so made belongs to him and at the same time, the nature and source of cash deposits has been explained as arising out of cash in hand and sale and purchase of agriculture land. In such a situation, it was essential for the Id CIT(A) to examine the explanation and supporting documentation so submitted by the assessee before him for the first time and basis examination thereof, should have decided the matter. The explanation so submitted by the assessee cannot be summarily rejected as can be seen in the instant case especially where the same is corroborated by cash flow statement and related documentation. In light of the same, we set-aside the matter to the file of the Id CIT(A) to decide the same afresh as per law taking into consideration the cash flow statement and related documentation/explanation so submitted by the assessee and after allowing reasonable opportunity to the assessee.

45. In the result, the appeal of the assessee is allowed for statistical purposes.

ITA No. 1439/Chd/2019

46. In this appeal, the assessee has raised the following grounds of appeal:

"1. The learned CIT(A) has erred in law and facts in confirming an addition of Rs. 1,14,90,750/- made by the assessing officer on account of unexplained cash deposit in bank account.

2. The appellant craves leave for any addition, deletion or amendment in the grounds of appeal on or before disposal of appeal."

47. In this case, again an addition of Rs. 1,14,90,750/- was made basis deposit in the bank account of the assessee in terms of order passed under section 144 r.w.s 147 of the Act dt. 22/12/2017 which has since been confirmed by the Ld. CIT(A) and against which, the assessee is in appeal before us.

48. During the course of hearing, the Ld. AR submitted that Sh. Ajmer Singh is an agriculturist and do not have any other source of income except interest credited to saving bank account. Assessee during the year sold the following pieces of agriculture land which were purchased in earlier year:

SI. No.	Date	Details of land	Sale Price	Reference PB page no
	11.06.2010	Agriculture Land measuring 138 Kanal 7 Maria	76,09,250	PB Pages 97-101 (Eng ver. 156-160)
	08.09.2010	1/3 share in 1 Kanal 2 Maria land in Village Raipur Kalan (Ancestor land)	2,75,000	PB Pages 102-105 (Eng ver. 161-163)
	11.03.2011	Sale of 8 2/3 marla of land	6,20,000	

49. It was submitted that the assessee on 11.06.2010 deposited a sum of Rs. 1,91,00,000/- in his saving bank account no. 65056056240. Since assessee / assessee counsel did not appeared before the Assessing officer during assessment proceedings, the Assessing officer relied upon the report of verification proceedings before DIT (I&C) and in his order dated 22.12.2017 has stated in Para 3.1 of the order as below:

"Unexplained Cash deposits: As per the table given in para 2 above, assessee has made the following transaction:

SI.No.	Description	Account no.	Date of Transaction	Amount of transaction
	Cash deposit (SBOP)	65056056240	11.06.2010	1,91,00,000/-

During assessment proceedings, no reply has been submitted. However during the earlier verification proceedings before DIT(I&C), the assessee has stated to have deposited the said cash deposit out of sale proceeds of agriculture land sold vide registration deed amounting to Rs. 76,09,250/- dated 11.06.2010 (Copy enclosed with verification report of DIT(I&C) placed in file). In the absence of any further explanation during assessment proceedings, after allowing the benefit of sale deed dated 11.06.2010, the balance amount of cash deposit i.e. 1,14,90,750/- (Rs. 1,91,00,000/- - 76,09,250/-) is added to the taxable income of the assessee and charged accordingly"

50. It was submitted that during the appellate proceedings, while making submissions before learned CIT(Appeals) it was submitted that:

"During this year addition of Rs. 1,14,90,750/- was made to the income of Ajmer Singh on the ground that there was a cash deposit of Rs. 1,91,00,000/- in the saving bank account no. 65056056240 on 11.06.2010. It was explained that assessee had sold his 138 Kanal 7 Maria of land for a sum of Rs. 1,91,00,000/- on 11.06.2010 and registry of land was made for Rs. 76,09,250/-. However learned assessing officer made an addition of Rs. 1,14,90,750/- after allowing benefit of sale of land at Rs. 76,09,250/-. Assessing officer had not accepted the plea of the assessee that assessee had sold his land for a sum of Rs 1,91,00,000/- in the absence of any documentary evidence as assessee did not maintain / kept the copy of agreement to sell. Assessee had filed an appeal against the above addition."

51. It was submitted that while making submissions before the learned CIT(A), it was inadvertently mentioned that:

"It was explained that assessee had sold his 138 Kanal 7 Maria of land for a sum of Rs. 1,91,00,000/- on 11.06.2010 and registry of land was made for Rs. 76.09,250/-."

"Assessing officer had not accepted the plea of the assessee that assessee had sold his land for a sum of Rs 1,91,00,000/- in the absence of any documentary evidence as assessee did not maintain / kept the copy of agreement to sell."

52. It was submitted that the Assessing officer in para 2 of the assessment order has categorically stated that "no compliance was made by the assessee and no explanation with regard to source of above mentioned cash deposit / credits in bank account of the assessee has been filed at any stage of the assessment proceedings" Assessment in this case was completed "under section 144 read with section 147 of IT Act". It is thus regretted that above inadvertently a mistake was committed and is sincerely regretted.

53. It was submitted that the assessee during the appeal proceedings filed a cash flow statement for the period 19.05.2005 to 11.03.2011. Cash flow statement for the period 27.05.2009 to 11.03.2011 is enclosed as below:

Date	Opening Balance	Receipts / withdrawals from Bank	Outgoing / deposits in bank	Closing Balance	Bank account reference
27-May-09	0	300000		300000	A/c no.55030123698 of Baldev Kaur and Ajmer Singh in SBOP
28-May-09	300000	350000		650000	A/c no. 55030123698
29-May-09	650000	13700000		14350000	A/C no. 65056056240
2-Jun-09	14350000	1000000		15350000	A/C no. 65056056240
2-Jun-09	15350000	6000000		21350000	A/c no. 55030123698
3-Jun-09	21350000		7264000	14086000	Purchase of 138 Kanal 7 Mara land (PB page no. 54-57, Eng ver. PB 120-123)
18-Jun-09	14086000	100000		14186000	A/c no. 55030123698 of Baldev Kaur and Ajmer Singh in SBOP
26-Jun-09	14186000	100000		14286000	A/C no. 65056056240
27-Jun-09	14286000	100000		14386000	A/c no. 55030123698
6-Jul-09	14386000	50000		14436000	A/c no. 55030123698

17-Aug-09	14436000	30000		14466000	A/c no. 55030123698
9-Oct-09	14466000	15000		14481000	A/c no. 55030123698
19-Oct-09	14481000	15000		14496000	A/c no.55030123698
23-Oct-09	14496000	100000		14596000	A/c no.55030123698
30-Oct-09	14596000	20000		14616000	A/c no.55030123698
23-Nov-09	14616000	10000		14626000	A/c no.55030123698
4-Jan-10	14626000	50000		14676000	A/c no.55030123698
14-Jan-10	14676000	250000		14926000	A/c no. 55030123698
18-Jan-10	14926000	180000		15106000	A/c no. 55030123698
23-Jan-10	15106000		80000	15026000	A/c no. 55030123698
17-Feb-10	15026000		5850000	9176000	A/C no. 65056056240
19-Feb-10	9176000	10000		9186000	A/c no. 55030123698
5-Apr-10	9186000		540000	8646000	Purchase of 8 and 2/3 marla of land (PB page no. 57A-61,Engver. PB 124-126)
5-Apr-10	8646000	1200000		9846000	A/c no.55030123698
4-May-10	9846000	5000000		14846000	A/c no.55030123698
15-May-10	14846000		130000	14716000	A/c no. 55030123698
19-May-10	14716000		50000	14666000	A/c no.55030123698
11-Jun-10	14666000	7609250		22275250	Sale of 138 Kanal 7 Maria land (PB pages 97-101, Eng ver. 156-160)
11-Jun-10	22275250		19100000	3175250	A/C no. 65056056240
15-Jun-10	3175250		800000	2375250	A/c no. 55030123698
13-Jul-10	2375250	500000		2875250	A/c no. 55030123698
14-Jul-10	2875250	16300000		19175250	A/c no. 55030123698
14-Jul-10	19175250		1871100	17304150	Purchase of 10 Bigha 9 Biswa land(PB page no. 62-66, Eng ver. 127-131)
14-Jul-10	17304150		3402000	13902150	Purchase of 20 Bigha 3 Biswa Land(PB page no. 67-71, Eng ver. 132-135)
14-Jul-10	13902150		3834600	10067550	Purchase of 22 Bigha 15 Biswa of land(PB page no. 72-76, Eng ver. 136-140)
8-Sep-10	10067550	275000		10342550	Sale of 1/3 share of land in 1 Kanal 2 Marla(PB page no. 102-105, Eng ver. 161-163)
9-Sep-10	10342550		600000	9742550	A/c no.55030123698
5-Oct-10	9742550	15000		9757550	A/c no. 55030123698
18-Oct-10	9757550	30000		9787550	A/c no. 55030123698
15-Nov-10	9787550	60000		9847550	A/c no. 55030123698
6-Dec-10	9847550	3500000		13347550	A/c no. 55030123698
9-Dec-10	13347550		3276000	10071550	Purchase of 16 Bigha 2 Biswa 5 Biswasi Land (PB page no. 77-81, Eng ver. 141-145)
11-Mar-11	10071550	620000		10691550	Sale of 8 2/3 Maria land
	10691550			10691550	

54. It was submitted that the above cash flow was submitted for the first time before CIT(Appeals). However the learned CIT(A) had not called for any report from the Assessing officer. It shall be noticed that cash in hand as on 27.05.2009 is Nil and thereafter number of withdrawals have been made by assessee from his bank accounts and there was sufficient cash in hand as on 11.06.2010 for making deposit in cash of Rs. 1,91,00,000/- in his bank account. It is not out of place to mention here that assessee had not invested any amount during this period other than the land purchased and shown in cash flow statement for the relevant period. Assessee is an agriculturist and has no other source of Income. He has to support his family of self and wife Gurdev Kaur. In view of the above position of availability of cash, no addition was required to be made.

55. It was submitted that during further proceedings, the learned CIT (A) asked the assessee to show cause as to why jurisdictional ITAT Judgment in the case of Assistant Commissioner of Income Tax vs Mohinder Singh and others in ITA No. 665/Chd/2016, 666/Chd/2016, 474/Chd/2017 is not applicable in the case of the assessee. This show cause notice was given for the reason that assessee while making submissions before the CIT(A) has stated that:

"It was explained that assessee had sold his 138 Kanal 7 Maria of land for a sum of Rs. 1,91,00,000/- on 11.06.2010 and registry of land was made for Rs. 76,09,250/-."

"Assessing officer had not accepted the plea of the assessee that assessee had sold his land for a sum of Rs 1,91,00,000/- in the absence of any documentary evidence as assessee did not maintain / kept the copy of agreement to sell."

56. It was submitted that as stated earlier, the above submissions were inadvertently made before CIT(A) and were not borne out of records as assessment in this case was completed under section 144 r.w.s.147 of the Act. It was submitted that the assessee although has filed a detailed reply in this regard as in AY 2010-11, but it shall have no repercussions for this year with respect to application of jurisdictional ITAT Judgment in the case of Assistant Commissioner of Income Tax vs Mohinder Singh and others in ITA No. 665/Chd/2016,

666/Chd/2016, 474/Chd/2017. Copy of the replies submitted before DIT(I&C) is also enclosed to the reply to substantiate his claim that assessee at no stage has submitted before the authorities that assessee has sold 138 Kanal 7 Maria of land for a sum of Rs. 1,91,00,000/- on 11.06.2010. Assessee had submitted that he had sold agriculture land for a sum of Rs. 76,09,250/- only. In view of the above factual position, it was requested that matter be set aside to the file of AO with the direction to verify the claim of the assessee regarding availability of cash as per cash flow submitted by assessee based on withdrawals and deposits made in his bank account.

57. Per contra the Ld. DR has relied on the order of the lower authorities. Further our reference was drawn to the findings of the Ld. CIT(A) which are contained in para 6.3 and the contents thereof read as under:

“6.3 The submissions of the assessee have been considered alongwith the case laws. It is clear from the assessment order that there were cash deposits of Rs. 1,91,00,000/-during the F.Y. 2010-11 relevant to A.Y. 2011-12; in the bank account bearing no. 65056056240 maintained with State Bank of Patiala which remains unexplained as per the verification report of DIT(I&C), Chandigarh.

6.3.1 The case was reopened u/s 148 of the Act on the basis of information available with the department and the verification report received from the DIT(I&C), Chandigarh not on any presumption. There is clear evidence from the bank statements which reveals that there were cash deposits and the Assessing Officer had sufficient reasons to believe for re-opening the case. It is pertinent that the assessee has not assailed the issue of reopening.

The cash flow statement and the bank statements submitted by the appellant clearly show that there were credit entries during the Financial Year 2010-11 relevant to A.Y. 2011-12. It's pertinent to flag that this attempt at explaining the availability of cash prior to deposit of Rs.1.91 Crores emanating from the land transaction was triggered by the specific query why the excess of cash received (in comparison to the amount stated in the registered deed) may not be treated as 'income from other sources' following the ratio laid down by the Chandigarh ITAT in the case of AC IT vs. Mohinder Singh. Right through the proceedings of the department, including that before the assessing officer, the plea that was constantly canvassed has been that the entire receipts were from the land transaction which fetched Rs.1.91 Crores (refer para 6.2.1 also). Having conceded the same the present attempts have to be labeled as indulgences into sophistry and may have separate consequences for the assessee including invocation of the provisions of Chapter XXII of the Act. Apart from not fitting into the concept of human probability the cash flow statement is because of reasons cited above further not reliable and deserves to be negated. This when seen with the earlier affirmations both during the assessment proceedings and appellate

proceedings that the entire sale proceeds related to a single sale transaction clearly involves invocation of the ITAT's decision averred above.

6.3.3 The counsel of the assessee, vide note-sheet entry dated 27.08.2019 was specifically asked about the applicability of the judgement of the case ACIT vs. Mohinder Singh & Ors. In ITA No. 665/Chd/2016, 666/Chd/2016 and 474/chd/2017 on the amounts deposited in cash and in excess of the registered value. The infliction of the same does not get mitigated by the assessee's allegations that the ITAT's order was based on presumptions and not on evidence. Clearly the remarks appended subsequently by the assessee are distasteful and not in the right spirit.

6.3.4 Further the reliance placed on case laws in the cases of Medical Trust Hospital and Basheer Ahmed are distinguishable to the extent that the issue concerned matters of capital gains and higher consideration discovered by the department, respectively. In both the instances also involved concessions on part of the purchaser that the sale proceeds were higher than what had been registered. Clearly in those instances because of the said confessions actual exigible taxes could be levied. Clearly the present case the arrangement to which the assessee was a party evidences short charges of both stamp duty and taxes.

The facts and the submissions on behalf of the assessee bear an uncanny resemblance to a group of cases decided together by ITAT, Chandigarh in ITA nos. 665, 666/CHD/2016 and ITA No. 474/CHD/2017 dated 28.01.2018, wherein the ITAT made following observations:

"Once both the parties to the transaction i.e. the seller and the purchaser had made to believe not only the public authority but the public at large that the transaction relating to purchase/sale of land between them was settled at a particular consideration, subsequently they are estopped from their act and conduct to plead that the actual consideration was at variance of the earlier representation. The plea on behalf of the seller that he had agreed to get the sale deed registered at a lower rate at the instance of the purchaser is of no help to him. He has been a party to the conspiracy resulting into revenue loss to the state exchequer. Even, it cannot be said that he had not got any benefit by falsely representing about the sale consideration. If, the purchaser had to pay higher stamp duty, then it accordingly will go on to reduce the sale consideration/amount payable to the seller as the purchaser takes into consideration the total amount which he would have to shell out of his pocket i.e. the sale consideration as well as stamp duty and the-other charges.

Now, once it is held that the sale consideration is to be taken as per the registered document, what will be the nature of the extra amount received? As discussed above, the same cannot be said to be the amount received towards sale consideration of the land, rather, the same will constitute the extra money paid as consideration for the execution of the registered deed of sale of land and not for the sale of land itself. The same under the circumstances, has to be taxed as income from other sources. Such an amount received over and above the sale consideration mentioned in the registered document, partakes the character of taxable gift. Our above view also find supports from the following para of the judgement of the Hon'ble Supreme Court in the case of K.P. Varghese (supra).

"16. This construction which we are placing on sub-section (2) also marches in step with the Gift Tax Act, 1958. If a capital asset is transferred for a consideration below its market value, the difference between the market value and the full value of the consideration received in respect of the transfer would amount to a gift liable to tax under the Gift Tax Act, 1958, but if the construction of sub-section (2) contended for on behalf of the Revenue were accepted, such difference would also be liable to be added as part of capital gains taxable under the provisions of the Income Tax Act, 1961. This would be an anomalous result which could never have been contemplated by the legislature, since the Income Tax Act, 1961 and the Gift Tax Act, 1958 are parts of an integrated scheme of taxation and the same amount which is chargeable as gift could not be intended to be charged also as capital gains."

6.3.5 The facts of the case at hand are similar to that decided by the ITAT in which it held that "the assessee has been a partner in the conspiracy for falsely represent about the sale consideration to the registration authorities and thereby resulting into payment of less stamp duty, of which the assessee has reaped the consequential benefits. Moreover, the question as to the nature of receipt and its taxability has not been gone into by the Hon'ble Allahabad High Court. Moreover, with all due respect, decision of the jurisdictional Pb. & Haryana High Court in the case Paramjit Singh holding the inadmissibility of oral evidence in the presence of registered deed is binding on this Tribunal. Under the circumstances and in the light of the above referred to statutory provisions and case laws, the nature of receipt of the income over and above the registered sale consideration in the hands of seller Mohinder Singh, in our view, will not fall under the head 'Capital Gain' but 'income from other sources". The assessee's possible alternate plea that the entire sale proceeds would qualify as agricultural income would also not hold in light of ITAT's clear cut finding that the proceeds, in excess of the amount considered for stamp duty valuation 6B consequent registration, shall partake the character of 'income from other sources' and assessed as such.

Grounds of appeal no. 1 & 2 are dismissed. The action of the AO to tax the cash received in excess of the amount recorded in the registered sale deed is upheld albeit also on additional reasonings."

58. We have heard the rival contentions and perused the material available on record. The issue under consideration relates to nature and source of cash deposit of Rs 1.91 cr on 11/06/2010 in the bank account maintained by the assessee with state Bank of Patiala. The assessment proceedings were completed u/s 144 r/w 147 of the Act, in absence of any explanation submitted by the assessee, whereby the AO, after allowing credit for Rs 76.09 lacs, brought Rs 1.14 cr to tax in the hands of the assessee. The AO reopened the case of the assessee basis information received from the DIT(I& C) and even while allowing credit for Rs 76.09 lacs has referred to the report received from DIT(I&C) and

copy of sale deed dated 11/06/2010 submitted before DIT(I&C) whereby the assessee has sold the agriculture land for consideration of Rs 76.09 lacs.

59. During the appellate proceedings, we find that consolidated submissions were filed for A.Y 2010-11 and A.Y 2011-12 and the assessee has submitted that over a period of time, the assessee has purchased and sold agriculture land and a detailed cash flow statement, bank statements and copy of sale deeds were submitted. It was submitted by the assessee that the cash so deposited on 11/06/2010 is out of earlier withdrawals being cash in hand and from sale of agriculture land for Rs 76.09 lacs. The Id CIT(A) has however not considered the said explanation of the assessee and the cash flow statement and related documentation so submitted was not examined nor any remand report called from the Assessing officer. The Id CIT(A) has held that right through the proceedings of the department including that before the Assessing officer, the plea that was constantly canvassed that entire receipts were from single land transaction that fetched Rs 1.91 Cr. As we have noted earlier, the said findings of the Id CIT(A) are not borne out of the records as the assessee didn't furnish any explanation before the AO resulting in passing of order u/s 144 of the Act.

60. We therefore find that where the assessment proceedings have been completed u/s 144 of the Act in absence of any explanation forthcoming from the assessee, it was essential for the Id CIT(A) to examine the explanation and supporting documentation so submitted by the assessee before him for the first time and basis examination thereof, should have decided the matter. The explanation so submitted by the assessee cannot be summarily rejected as can be seen in the instant case especially where the same is corroborated by documentation. In light of the same, we set-aside the matter to the file of the Id CIT(A) to decide the same afresh as per law taking into consideration the cash flow statement and related documentation/explanation so submitted by the assessee and after allowing reasonable opportunity to the assessee.

61. In the result, the appeal of the assessee is allowed for statistical purposes.

ITA No. 1448/Chd/2019

62. In this appeal, the Revenue has raised the following grounds of appeal:

“(i) Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) order is not perverse in allowing the appeal of the assessee without appreciating the facts of the case.

(ii) Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) has not erred in deleting the addition of Rs. 1,73,10,000/- made in case of the assessee, by observing that the addition could have been made only in the hands of the assessee, specially when husband of the assessee did not own the cash deposits during the assessment proceedings in his case.

(iii) Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) has not erred in deleting the addition of Rs. 1,73,10,000/- made in case of the assessee, when the account is in the name of both the assessee and her husband who failed to own up the cash deposits and the assessment has been completed u/s 144 of the I.T. Act, in his case.

(iv) It is prayed that the order of the Ld. CIT(A) be set aside and that of the Assessing Officer may be restored.

(v) The appellant craves leave to add or amend any grounds of appeal before the appeal is heard or disposed off.”

63. The relevant facts of the case and findings of the Ld. CIT(A) which are under challenge by the Revenue are as under:

7.1 *“As per information available with the department, there were cash deposits of Rs.2,35,80,000/- in the bank account no.55030123698 maintained with the State Bank of Patiala, Sunam, Kharar. The case was reopened u/s 148 of the Act by issuing notice dated 04.04.2014. In compliance to which the return of income was filed on 19.08.2014 for A.Y. 2010-11 declaring income of Rs. 18,388/-.*

7.2 *The AO held that from verification report of DIT(I&CI), it was noticed that there were cash deposits of Rs.2,35,80,000/- (Rs.2,30,00,000 on 22.05.2009 + Rs.5,00,000/-on 23.05.2009 + Rs.80,000/- on 23.01.20010) in the bank account no. 55030123698 with the State Bank of Patiala in Kharar during the F.Y. 2009-10 relevant to A.Y. 2010-11. After allowing the benefits of sale of Agricultural land of Rs.62,70,000/- being amount received on account of sale of land measuring 54 Bigha 13 Biswa & 4 Biswa of land on 22.05.2009, addition of Rs.1,73,10,000/- was made to assessee. A similar addition was also made in the hands of her husband Sh. Ajmer Singh (that's a matter of separate appellate proceedings).*

7.3 *It is clear from the assessment order that there were cash deposits of Rs.2,35,80,000/- during the F.Y. 2009-10 relevant to A.Y. 2010-11 in the joint bank account held by Sh. Ajmer Singh alongwith his wife Smt. Baldev Kaur bearing no. 55030123698 maintained with State Bank of Patiala which remain unexplained as*

per the verification report of DIT(I&CI), Chandigarh. The assessee's case records revealed that it was admitted that the source of cash deposit of Rs.2,35,80,000/- was from the sale proceeds of the agricultural land held in the name of her husband Sh. Ajmer Singh only. This fact is not assailed by the assessee during the present proceedings either. The AO in his order accepted that the actual name of his wife is Smt. Gurdev Kaur but in the bank statement (joint account maintained with State Bank of Patiala) the name of his wife appears as Smt. Baldev Kaur in which the entries have been found. In this regard it is further relevant to quote from the assessment order the contents of an affidavit filed by the assessee. The relevant extracts of the affidavit is reproduced as under :

"1. That I have received notice u/s 142 of the Income Tax Act in the name of Baldev Kaur. It appears that notice has been issued on the basis of name as appear in the bank account when I am holding with my husband Sh. Ajmer Singh.

2. That I am having PAN-DGDPK4070C

3. That all the transactions in the said bank accounts pertains to Ajmer Singh my husband as I am illiterate and housewife but no having any taxable income during the year 2010-11.

4. That the notice may be dealt in the name of my husband Ajmer Singh, however I will be responsible in the event, Sh. Ajmer Singh does not own any responsibility for the transactions.

5. That my correct name is Gurdev Kaur as per Voter Card and Aadhar Card as well as PAN Card.

(Signed)
(Deponent)

The AO had accepted this facet of the assessee's contention the assessments had been framed in the name of Sh. Baldev Kaur alias Smt. Gurdev Kaur, the same is accepted as such. It is revealed from the assessment records of the assessee's husband for the same year that the above submissions had been accepted by the AO and the assessment of the impugned amount had been done on a substantive basis in the hands of the husband which is a matter separately under appeal.

It's also pertinent to point that the assessment order in the present case also records an affidavit's contents given by her husband that all the transactions featuring in the joint bank account are his and not of the wife who is an illiterate housewife.

Her husband Sh. Ajmer Singh had furnished affidavit in this regard as under :

"1. That my wife Baldev Kaur have received notice u/s 142 of the income Tax Act. It appears that this notice has been issued to her on the basis of name as appear in the Bank account which I am holding with her jointly.

2. That I am having a PAN - CWJPS6206H.

3. *That all the transactions in the said bank account pertains to me.*

4. *That the notice may be dealt in the name of undersigned and will be responsible under the provisions of Income Tax Act for all the consequences.*

*(Signed)
(Deponent)*

7.4 During the course of assessment proceedings, it was contended on her behalf that the assessee was a housewife and having no source of income. She maintained a bank account with State Bank of Patiala, Kharar jointly with her husband Sh. Ajmer Singh. The assessee submitted that cash deposits in the account emanated from transactions in land undertaken by her husband Sh. Ajmer Singh Who had sold his agricultural land and furnished the c*opy of sale deed duly registered on 22.05.2009 for an amount of Rs.62,70,000/-.

8. The assessee made her submissions through her counsel. He submitted that assessment in the case of assessee's husband Sh. Ajmer Singh has also been made on the same deposits of Rs.1,73,10,000/- while completing assessment in his case. Sh. Ajmer Singh and assessee's wife Smt. Baldev Kaur (alias Smt. Gurdev Kaur) have a joint account in State Bank of Patiala having account no. 55030123698.

8.1 The assessee further submitted that the AO passed the order against the assessee who does not own any movable or immovable property in her name. It is a fact on record that the assessee is an illiterate housewife and has no source of income other than small interest on saving bank account under consideration during the F.Y. 2009-10. In the assessment proceedings under section 142(1) of the Act, the assessee repeatedly said that the amount in the bank was the sale proceeds of agricultural land of her husband. Because the assessee's husband has no bank account and the amount is huge and not possible to carry to other place. Her husband deposited entire amount of sale of agricultural land in the bank. During the proceedings, the AO has not found any other source of income in the hands of the assessee relied upon the report of investigation wing. The AO also did not even try to apply her mind to find out the real source of deposit of Rs.2,35,80,000/- dated 22.05.2009 in State Bank of Patiala, Kharar and to find out whether the assessee had any other source of income either in past or in future. On the facts and circumstances of the case, it is not possible for the illiterate assessee attaining more than the 60 years to earn the huge amount and deposit in the joint account.

9. It is clear in the case that additions had been made on the same transaction in the hands of both the assessee and her husband. It is seen that the AO had also gone to assess the income arising out of the impugned transaction in the hands of assessee's husband on a substantive basis. Clearly, the addition of this amount could have been made in the hands of either of the two persons, Sh. Aimer Singh or Smt. Gurdev Singh alias Baldev Kaur w/o Sh. Aimer Singh and not in both cases. Smt. Gurdev Kaur had already filed an affidavit before the AO that all the transaction in the said bank account pertains to Sh. Aimer Singh and she is an illiterate house wife and having no taxable income in the A.Y. ^010-11. The Ld. AO made an addition of Rs. 1,73,10,000/- in the hands of Smt. Gurdev Kaur vide order dated 23.03.2016 and similar addition of Rs.1,73,10,000/- was made later on in the case of Sh. Ajmer Singh on 22.12.2017. The addition could have been made

only in the hands of the husband who not only is the owner of land transacted but also owned up that all the transactions and consequent deposits are his. The AO having done that in the case of her husband (on a substantive basis) was not right in adding the same amount in the present case. The additions made require to be deleted. In light of the above it is held that Grounds of appeal 2, 3 and 4 require to be allowed in the case of the assessee."

64. We have heard the rival contentions and perused the material available on record. The undisputed facts emerging from the records are that there were cash deposits in the joint bank account maintained by the assessee alongwith her husband, Shri Ajmer Singh. During the course of assessment proceedings, the assessee in her affidavit submitted that all the transactions in the bank account pertain to her husband, Shri Ajmer Singh. The husband, Shri Ajmer Singh also owned up all the transactions and confirmed the said fact by way of an affidavit. The AO took cognizance of the said explanation and gave credit of sale consideration as recorded in the sale deed executed by her husband and remaining amount was brought to tax in the hands of the assessee and separately, in the hands of her husband on substantive basis. The Id CIT(A) has deleted the addition in the hands of the assessee holding that the addition of the same amount can be made in the hands of either of the two persons and where the land transaction was in the name of the husband and he has owned up all the transactions in the joint bank account, the addition has rightly been made in the hands of the husband on substantive basis.

65. We find that the Id CIT(A) has rightly examined the nature and ownership of land transaction and the affidavits so submitted by both the assessee and her husband and which are found to be consistent in terms of both the assessee and her husband stating clearly that the all transactions pertain to the husband and who has also owned up all the transactions. There is nothing contrary on record or has been brought to our notice during the course of hearing. We therefore donot see any legal or factual infirmity in the said findings of the Id CIT(A) and the same is hereby confirmed.

66. In the result, the appeal of the Revenue is dismissed.

67. In the result, both the appeals of the assessee are allowed for statistical purposes and appeal of the Revenue is dismissed.

Order pronounced in the open Court on 03/05/2024.

Sd/-

आकाश दीप जैन
(AAKASH DEEP JAIN)
उपाध्यक्ष / VICE PRESIDENT

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar