

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH**  
**BENCH 'A' CHANDIGARH**

**BEFORE: SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**  
**AND SHRI PARESH M. JOSHI, JUDICIAL MEMBER,**

**आयकर अपील सं. / ITA No. 261/CHD/2024**  
निर्धारण वर्ष / Assessment Year : 2011-12

Smt. Bimla Devi, Jai Swami Ji Trading Co., Jind.	बनाम VS	The ITO, Ward-1, Jind.
स्थायी लेखा सं./PAN /TAN No: ANUPD0932D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Nikhil Goyal, Advocate &  
Shri Ashok Goyal, CA  
राजस्व की ओर से/ Revenue by : Shri Danish Abdullah, JCIT, Sr.  
DR  
तारीख/Date of Hearing : 19.09.2024  
उदघोषणा की तारीख/Date of Pronouncement : 30/10/2024

**PHYSICAL HEARING**

**आदेश/ORDER**

**PER PARESH M. JOSHI, JM**

This is an appeal filed by the assessee under Section 253 of the Income Tax Act, 1961 before this Tribunal as and by way of a second appeal as provided for in the Income Tax Act, 1961. The relevant assessment year is the assessment year 2011-12 and the corresponding previous year period is from 01.04.2010 to 31.03.2011. The assessee is aggrieved by the order of the Id. CIT(A) bearing No. ITBA/NFAC/S/250/2023-24/1060056660(1) dated 24.01.2024 passed in first the appeal which is hereinafter referred to as the "**impugned order**" under Section 250(6) of the Income Tax Act, 1961.

**Factual Matrix**

2. The assessee alongwith her husband Shri Bhupender Singh are involved in agriculture operations. No return of income was filed by her for the assessment year 2011-12 as the income was below the taxable limit of the relevant assessment year.

3. The assessee was issued a notice under Section 148 of the Income Tax Act, 1961 on 25.03.2018.

4. That various notices under Section 142(1) were issued which were left unanswered by the assessee as the assessee was suffering through a family tragedy.

5. That the Id. AO passed an order under Section 144 wherein the addition of Rs.4,81,14,500/- has been made on the account of cash deposits made in the bank accounts and the purchase of immovable property. The order of Id. AO is dated 04.12.2018 under Section 144 r.w.s. 147 of the Income Tax Act, 1961; wherein the total income of the assessee is determined as Rs.4,81,14,500/-. The following are “**salient features**” of the aforesaid assessment order of the Id. AO dated 04.12.2018 :-

1) The assessee has not filed any ITR for the assessment year 2011-12.

2) On basis of the information available which is in possession of the Department, it was noticed that during the year under consideration the assessee has made cash deposit of Rs.1,06,64,500/- in Axis Bank Ltd., cash deposit of Rs.87,00,000/- in State Bank of Patiala, Mini Secretariat area, Jind, purchased immovable property of Rs.1,08,00,000/- on **14.10.2010** , purchased immovable property of Rs.1,06,00,000/- on **07.05.2010** and also purchased immovable property of Rs.73,50,000/- on **02.07.2010**. [**Purchased immovable property of Rs.73,50,000/- in the joint name with her husband Shri**

**Bhupinder Singh i.e. during Financial Year 2010-11 relevant to the assessment year 2011-12.]**

3) That in view of above facts, notice under Section 148 was issued to the assessee on 25.03.2018. In response to the notice, the assessee has not filed any ITR.

4) That the notice under Section 142(1) was issued on 30.05.2018, 02.05.2018, 18.07.2018, 01.08.2018, 28.08.2018, 11.09.2018, 01.10.2018, 18.10.2018 and 05.11.2018 to the address(s) available on records, calling for relevant information.

5) That an Inspector of Income Tax was deputed to serve the notice under Section 142(1) dated 01.10.2018, the assessee has refused to accept the notice on 04.10.2018.

6) That the assessee has also refused to receive the notices from the Postal official.

7) Thus assessee has willfully and intentionally has avoided to receive notices so as to avoid tax incidence.

8) Assessee in response to notices has neither attended the assessment proceedings nor furnished any information as were sought under Section 142(1) of the Income Tax Act, 1961.

9) That the assessee maintained bank account with Axis Bank Ltd. and State Bank of Patiala now State Bank of India.

10) That the copy of Bank Account of Axis Bank Ltd. A/c No.725010100006842 which was obtained is on record. The assessee has made cash deposit of Rs.1,06,64,500/- in Axis Bank Ltd. Cash deposit of Rs.87,00,000/- in SBOP Mini Secretariat Area, Jind.

11) (a) Purchase of immovable property of Rs.1,08,00,000/- on 14.10.2010.

(b) Purchase of immovable property of Rs.1,06,00,000/- on 07.05.2010.

(c) Purchase of immovable property of Rs.73,50,000/- on 02.07.2010.

12) Copy of Purchase Deeds of properties purchased for Rs.1,08,00,000/-, 1,06,00,000/- and of Rs.73,50,000/- are on records.

13) A perusal of copy of bank account statement of **Axis Bank Ltd.** reveals that during the year the assessee has made cash deposits from time to time and transferred the amount through banking channel to Shri Jagat Singh Redhe, Shri Ravinder, Shri Prem Malik, Smt. Klamlia Devi, Bharpai Devi, Subhbir Dhandra, Jai Prakash Yadav, Rakesh, Ashwani Bansal, Shivam Builders and Ashwani Kumar and also transferred amount by demand draft. The assessee has failed to explain the sources of cash deposits and the purpose of transfer of amount to these persons. The assessee has made cash deposit of Rs.1,06,64,500/- and failed to explain the source of these cash deposits.

14. A perusal of copy of bank account statement of State Bank of India reveals that during the year the assessee has made cash deposits from time to time also made cash withdrawals from time to time. The assessee has failed to explain the sources of cash deposit and purpose of cash withdrawals. The assessee has made cash deposit of Rs.87,00,000/- and failed to explain the sources of these cash deposits.

15. The assessee has purchased immovable properties of Rs.1,08,00,000/- and Rs.1,06,00,000/- and Rs.73,50,000/- on 14.10.2010 and 07.05.2010 and 02.07.2010 respectively and the assessee has failed to explain the sources of investment in purchase of immovable properties. The assessee has also purchased immovable property of Rs.73,50,000/- in the joint name of her husband Shri Bhupinder Singh and the assessee has failed to explain the sources of investment made in purchase of immovable properties of Rs.2,87,50,000/-. Thus, the assessee has failed to discharge his onus.

16. The silence on the part of the assessee goes to suggest that the assessee has nothing to say and he has admitted the fact that cash deposits of Rs.1,93,64,500/- (10664500+8700000) were made from undisclosed sources and investment made in purchase of immovable properties of Rs. 2,87,50,000/- were also made from undisclosed sources, totaling to Rs.4,81,14,500/-. The aforesaid circumstances show that the assessee is not interested to pursue its assessment proceedings. In the

absence of any reply from the assessee, the matter is being decided ex-parte. The maxim 'vigilantibus non-determinentibus jura subvenunt' i.e. the law assists those who are vigilant and not those who sleep over their rights' is applicable in this case.

17. Hence, addition of Rs.4,84,14,500/- (supra) by aforesaid order of Id. AO. There is thus, cash deposit of Rs.1,93,64,000/- (1,06,64,500+87,00,000/-) and investment of Rs.2,87,50,000/- . Total comes to Rs.4,81,14,500/-.

6. The assessee being aggrieved by the aforesaid order of the Id. AO challenges the same by filing the first appeal before Id. CIT(A) who by the "**impugned order**" reduces the addition to Rs.59,90,000/- **basis the remand report of Id. AO.**

7. The Form 35 is not placed on record which is the form of appeal to the Id. CIT(A).

8. The assessee being aggrieved by the impugned assessment order has raised the following grounds of appeal before this Tribunal which are as under :

1. *That the reopening of the assessment under Section 147 of the Income Tax Act, 1961 is bad in law and liable to be quashed.*
2. *Reopening of the assessment is on the basis of borrowed satisfaction and liable to be quashed.*
3. *That the Learned CIT(A) has erred in upholding the addition to the extent of Rs. 59,90,000 under Section 69A of the Income Tax Act, 1961, being arbitrary and contrary to the facts and circumstances of the case.*
4. *That the appellant craves to add, amend, or alter grounds of appeal before the appeal is finally heard or disposed off.*

**Record of Hearing**

9. The hearing in the matter took place on 21.08.2024 / 10/09/2024 when both the parties appeared before us. The Id. AR has placed on record of this Tribunal a brief synopsis from pages 1 to 12, a Paper Book from pages 1 to 69. The reason why the assessment proceedings were held under Section 144 are not explained to us. It was contended before us straightaway that during the first appellate proceedings, certain transfer documents were placed on record of file of CIT(A) alongwith Cash Flow Statement and copies of bank accounts. The Id. CIT(A) was kind enough to examine the case on merit and sought remand report from AO **basis** these documents and papers filed. A Remand Report from AO was received which was confronted to the assessee. In sum and substance, it was contended before us that the assessee's husband **sold** agriculture land of **Rs.3,57,60,000/-** as per Sale Agreement and also made **investment** in immovable property totaling to **Rs.2,87,50,000/-**. The difference between the amount of sale and purchase of land comes to **Rs.70,10,000/-**. The 'by bank balance' was of Rs.1.30 Cr at the closing of previous year. Hence **addition of Rs. 59,90,000/- arrived by deducting Rs.70,10,000/- from Rs.1.30 Cr comes to Rs.59,90,000/- as income from undisclosed sources**. The Id. AR pleads that this addition of Rs.59,90,000/- is erroneous and based on mere conjectures and surmises. The AR has contended before us that figure of Rs.1.30 Cr **is an imaginary one basis** which income of Rs.59,90,000/- is determined. It is vehemently contended that the assessee never had a bank balance of Rs.1.30 Cr as is claimed in the impugned order of Id. CIT(A). **Basis bank statement of three banks**, it is contended before this Tribunal that 'by bank balance' is Rs.20,55,694.07 and said figure is nowhere close to Rs.1.30 Cr. Hence, the addition made by the CIT(A) is baseless and without any proof.

10. Per contra, Id. DR has contended that there are in total two Cash Flow Statements on Remand Report and in addition fresh material in form of Bank Certificate at page 68 and 69 of Paper Book are produced for the first time before this Tribunal. The AO while preparing Remand Report, did not have these certificates and consequently the figure of these two certificates of banks i.e., C.B.I. and Axis Bank remained unverifiable. Further, full and complete statements of C.B.I. is not on record. The Id. AR is attempting hard to justify that addition of Rs.59,90,000/- ought not to have been made as figure of Rs.1.30 Cr is imaginary. In hard reality, a careful perusal of page 9 which is explanation given by the assessee dated 17.10.2023 to Id. AO in Remand Proceeding figure of Rs.1.30 Cr is given by assessee themselves basis which amount of Rs.59,90,000/- is calculated. The confused way of giving Cash Flow Statement speaks volume about intention of assessee. further, in original assessment proceedings, all notices and questionnaire ought to have been answered instead that is willfully avoided and for the first time, explanations were furnished before the CIT(A) as if it is original assessment proceedings and further case is being improved by assessee by giving suitable explanation with additional material in form of Bank Certificates of few banks evidencing 'by balance status of the amount'. Cases cannot be improved in piece meal fashion and hence, matter should be remanded back to the file of CIT(A).

### **Observations, Findings and Conclusions**

11. In the premises set out hereinabove, we hold and observe that basis material placed before us (i) in form of separate certificate of Axis Bank at page 68 of Paper Book showing 'by balance' amount as Rs. 34391.57 which gets corroborated by

Bank Statement of Axis Bank at page 50 of paper book which too shows the 'by balance' amount of Rs. 34391.57 (ii) there is another separate certificate of Central Bank of India dt. 27/03/2024 (post CIT(A)'s order) at page 69 of paper book showing 'by balance' amount as Rs. 20,07,185.50 which amount is not getting corroborated by the bank statement of Central Bank of India at page 45 of paper book which is showing 'by balance' amount of Rs. 16,971.50 (iii) at page 44 of paper book State Bank of India Bank statement is showing the 'by balance' amount of Rs. 14117.00. However, no separate certificate like the previous two of two banks (supra) is not filed of State Bank of India.

11.1 Both these figures(supra) of three banks does not come anywhere near the figure of 1.30 crores which figure admittedly has been given by the assessee which we notice at page 9 of PB which reads as " out of sale of land and balance cash amount near about 1.30 crores deposited in my such bank accounts"**(letter of assessee dt. 17/10/2023)**.

11.2 We also notice this figure of Rs. 1.30 Crores on page 5 and page 6 as "by balances". We hold that despite holding clarificatory hearing on 10/09/2024 the explanation on remainder 1.30 crores as "by bank balance amount in bank" is not clarified to us by Ld. AR save and except that the said figure is an "imaginary one". The Ld. DR has contended during the clarificatory hearing that figure of Rs. 1.30 crores is in writing (supra) by assessee themselves.

11.3 In view of the abovesaid we hold that income of Rs. 59,90,000/- has been quantified by the Ld. CIT(A) as per Assessee's own showing (supra). However before us, a new stand is taken that by balance amounts are (supra) in 3 bank

statements. It is also contended that income computed is not unexplained within the meaning of 69A as assessee is not owner of Rs. 1.30 Crores. Under these circumstances, we deem it fit & proper to hold that the sum total of all the three bank statements is just not matching the figures / amount of Rs. 1.30 crore. The aggregate total amount works out to Rs. 65,480.07 by taking into consideration the bank statement of three banks (supra) and if Central Bank of India certificate dt. 27/03/2024 (post CIT(A)'s order) is taken into consideration then the figures / amounts comes to Rs. 20,55,694.07. We hold that as per own admission of assessee on page 9 of Paper Book (letter dated 17.10.2023) balance cash amount was Rs.1.30 Cr.

12. Per contra bank statements and certificates shows two separate amounts (supra).

13. In brief the assessee has made vain attempt in the hearings before us to set at naught addition of Rs.59,90,000/- by relying on above certificates / statements and by taking plea under Section 69A.

14. We, therefore, are of the considered view that this controversy can be set at rest more appropriately by Id. CIT(A) by examining the matter afresh on denovo basis. The assessee is at full and complete liberty to place correct Cash Flow Statements bearing her signature and that of her Chartered Accountant. All certified true copies of Sale Deeds and Purchase Deed be produced before CIT(A) together with all statement of accounts of all the banks both of assessee as well as of her husband duly certified by banker's concerned. A justifiable and plausible explanation be furnished in such a manner that the income of the assessee is computed in accordance with law. With these

directions, we set aside the impugned order as and by way of remand on denovo basis.

**ORDER**

15. Appeal of the assessee is allowed as and by way of remand back to the file of Id. CIT(A).

16. Appeal allowed for statistical purposes.

Order pronounced on 30/10/2024.

**Sd/-**

**(VIKRAM SINGH YADAV)  
ACCOUNTANT MEMBER**

**Sd/-**

**( PARESH M. JOSHI)  
JUDICIAL MEMBER**

“Poonam”

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

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

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar