

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

HEARING THROUGH: PHYSICAL MODE

श्री कृणवन्त सहाय, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य

BEFORE: SHRI. KRINWANT SAHAY, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 825/Chd/2023

निर्धारण वर्ष / Assessment Year : 2012-13

|  |      |                             |
|--|------|-----------------------------|
| Bhupinder Singh<br>S/o Shri Gurmukh Singh<br>Vill: Doomcherri, PO: Morinda<br>Tehsil: Chamkaur Sahib, Dist: Ropar-<br>Punjab- 140001 | बनाम | The Pr. CIT<br>Chandigarh-1 |
| स्थायी लेखा सं. / PAN NO: CSEPS2191A   |      |                             |
| अपीलार्थी / Appellant  |      | प्रत्यर्थी / Respondent     |

निर्धारित की ओर से / Assessee by : Shri Sudhir Sehgal, Advocate

राजस्व की ओर से / Revenue by : Shri Rohit Sharma, CIT DR

सुनवाई की तारीख / Date of Hearing : 27/08/2024

उद्घोषणा की तारीख / Date of Pronouncement : 21/11/2024

### आदेश / Order

#### PER PARESH M. JOSHI, J.M. :

This is an appeal filed by the assessee under section 253 of the Income Tax Act, 1961. The relevant assessment year is 2012-13 and the corresponding previous year period is from 01/04/2011 to 31/03/2012. The assessee is aggrieved by order bearing No. ITBA/REV/F/REV5/2021-22/1041269023(1) dt. 22/03/2022 passed by the Ld. PCIT, Chandigarh -1 under section 263 of the Income Tax Act, 1961 which is hereinafter referred to as the "impugned order".

#### Factual Matrix

2. The Registry has pointed out delay of **586 days** and the assessee has preferred a condonation of delay application wherein it is interalia contended

that the assessee is a senior citizen aged **about 74 years old** and is suffering from **various ailments including heart problem since 2019** and have been regularly under treatment in various hospitals. It is also further contended that the assessee has three daughters who are all married and he has **no male child** and on several occasions he along with his wife **are staying** in the **hospitals** and **so also at the residences of his three daughters on various multiple occasions**. That the assessee had received certain notices for A.Y 2012-13 and that for the purposes of the assessment proceedings, had engaged Shri Rohit Vashishat Advocate from Ludhiana, Punjab for representing his case before Ld. AO, ward II (4) Ropar. That later on he came to know in first week of September 2023 that certain notices have been sent by **Ld. PCIT, Chandigarh -1** in March 2022 and certain order under section 263 was passed by the Ld. PCIT, Chandigarh -1 and that all such notices were found to be sent on the email of earlier counsel Shri Rohit Vashishat, Advocate and that it could not be brought to assessee's notice as the concerned counsel had no contact number of his and neither there was any occasion to visit the concerned counsel and as such, the said notices and order under section 263 **dt. 22/03/2022** did not come to his knowledge.

2.1 It is further contended that the proceedings in respect of "consequential order" pursuant to order under section 263 which were taken up in January 2023 and the order was passed in March 2023 came to his notice later on as the same were sent to email of previous counsel Shri Rohit Vashishat advocate and

neither there was any communication from earlier counsel nor there was any physical delivery of notices to the assessee by virtue of which assessee would have come to know about such order u/s 263 or u/s 144 dt. 21/03/2023.

2.2 It is averred further that certain notice in physical mode, dated 28/08/2023 was served upon the assessee's wife Smt. Kuljeet Kaur and that he came to know about it in September 2023 so assessee deputed one of his relative to contact his earlier advocate Shri Rohit Vashishat, who contacted him in the month of September 2023 and thereafter he contacted ITO, Ward II(4) Ropar and then downloaded all papers u/s 263 etc and handed over to the assessee.

2.3 That thereafter owing to assessee's poor health he could not contact a lawyer. Finally in the December 2023 he could contact present AR and handed over all the documents / papers to him who advised assessee to file an appeal against the order u/s 263 passed by Ld. PCIT Chandigarh-1 consequently present appeal was filed.

2.4 Delay in filing the present appeal against the impugned order under section 263 was **primarily** on account of the fact that no physical delivery of the notice was made to assessee and all such notices etc were received by assessee's previous counsel Shri Rohit Vashishat and which facts on notices(s) were not intimated to the assessee as he had no link with his previous counsel after the original assessment order u/s 144 dt. 03/06/2019 was passed.

2.5 It is contended that the delay of 586 days w.e.f 20.05.2022 was bonafide, just and same be condoned. Appeal was filed on 26/12/2023. Assessee regrets delays too. Affidavit of previous counsel Shri Rohit Vashishat is placed on record on page 105 and 106 of paper book. We have perused the same.

3. Delay sufficiently explained, cause shown is reasonable and sufficient. The Ld. DR too conquers with this fact, a letter dt. 23/08/2024 of Ld. AR perused by us too; in support of the condonation of delay filed on behalf of the assessee.

**Delay condoned. Appeal taken up for hearing.**

#### **The Facts**

4. The assessee is an individual who is an agriculturist and it is the only source of income of the assessee and agricultural income being exempt from tax, **he never filed his ITR.**

5. **The assessee owns approximately 15 acres of land which is used by him for the agricultural operations** and after meeting agricultural expenses, balance amount of cash is deposited in the bank account of the assessee.

6. **A notice u/s 148 of the Act** was issued to the assessee on 07.03.2019 on the **basis** of an information that the assessee had deposited cash amounting to **Rs. 32,41,000/-** in his bank account during the year under consideration. In response to the said notice, the assessee filed a return u/s 148 of the Act declaring an income of Rs. 6,710/- and an agricultural income of Rs. 7,80,000/-

on 25.04.019. The copy of return filed by the assessee in response to notice issued u/s 148 of the Act is forming part of paper book at Pg 1-2.

7. Thereafter, during the course of assessment proceedings, it was explained before the AO that the reasons recorded for reopening of the case were incorrect as the assessee had deposited cash of only Rs. 16,91,000/- in the Punjab National Bank and such cash deposit was also explained via filing of various replies along with necessary evidences that such cash deposit **is out of agricultural activities only**. The copies of these replies are forming part of paper book at Pg 5-26 and 27-42.

8. Thereafter, the assessment order dated 03.06.2019 was passed u/s 143(3) r.w.s. 147 of the Act (Pg 43-44 of PB) and it was concluded that **reasons for reopening of the case were incorrect and actual cash deposits** of the assessee were **Rs. 16,91,000/-** only which **are out of agricultural receipts** as well as opening cash in hand and the case was assessed at returned income.

9. Thereafter, a Show Cause Notice (SCN) dated 03.03.2022 was issued to the assessee (Pg 45-49 of PB) wherein various discrepancies were pointed in the assessment order passed by the AO and order dated 22.03.2022 was passed u/s 263 of the Act wherein order passed by the Ld. AO was held as erroneous as well prejudicial to the interest of the revenue on the issues listed as under:-

- The "Naib Tehsildar" is not a competent authority to issue income certificate to the assessee and the Ld. AO did not give a thought to it before accepting agricultural income of the assessee.
- The AO merely relied upon the Jambandi and Girdawri of land and did not make any further enquiries.
- Opening cash in hand of Rs. 8,59,800 is not substantiated with any evidence.
- There is no detail of Agricultural Expenses of Rs. 2,70,000/- as claimed by the assessee out of agricultural income.
- The assessee has made lump sum entry in the cash book of Rs. 5,28,500 and 5,21,500 on account of agricultural income at the end of each crop season.
- Agreement to sell dated 01.06.2011 for an amount of Rs. 4,50,000 is just a bogus documents to create cash in hand.

10. That due to service of notice to the previous counsel of the assessee, the same was not received by the assessee. Further, due to old age and medical record of the assessee, the assessee could not file the timely reply to the notice(s) issued u/s 263 of the Act. The copy of late reply filed against notice issued u/s 263 with evidence of filing it through E-Mail is forming part of paper book at Pg 50-53.

11. That the assessee being aggrieved by the impugned order has filed an appeal before us and has raised following grounds of appeal in form no. 36 which is form of appeal to this Tribunal.

1. *That the Ld. PCIT, Chandigarh-1 has erred in passing the order u/s 263 and thereby holding that the assessment as framed by the Assessing Officer vide order, dt. 03/06/2019 was erroneous and prejudicial to the interest of revenue.*

2. *That the Ld. PCIT, Chandigarh-1, has failed to appreciate that the assessment as framed by the Income Tax Officer, Ward-II(4), Ropar vide order, dated 3.6.2019 was with due to application of mind on the basis of various*

*documents/submissions filed by the assessee and, thus, the assumption of jurisdiction by the Ld. PCIT, Chandigarh -I is bad in law.*

3. *That the Order has been passed against the facts and circumstances of the case.*

4. *That the appellant craves lead to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*

### **Record of Hearing**

12. The hearing in the matter took place on 27/08/2024 when both the parties appeared before us and were heard on their respective submissions. The Ld. AR contended that Ld. PCIT has erred in law in passing the impugned order u/s 263 of the Income Tax Act, 1961 as the original assessment order dt. 03/06/2019 of Ld. AO i.e ITO Ward-2(4), Ropar passed in terms of section 143(3) r.w.s 147 of the Income Tax Act, **is not erroneous** and that same is **also not prejudicial to the interest of Revenue**. It is contended that the original assessment order dt. 03/06/2019 of Ld. AO which is a subject matter of proceedings under section 263 of Act, was with **due application of mind** on basis of various documents / submissions filed by the assessee during the course of the original assessment proceedings and consequently assumption of jurisdiction by the Ld. PCIT Chandigarh I is bad in law. It was further contended that case of the assessee was under section 143(3)/ 147/148 on issue of cash deposited in his bank accounts and while examining the case there was due application of mind by the Ld. AO. Quantum of cash deposit of Rs. 32,41,000/- in banks of the assessee was wrong. Only cash of Rs. 20,19,000/- has been deposited (Rs. 16,91,000/- with PNB & Rs. 3,28,000/- with Punjab Gramin Bank). Sources were opening cash in

hand, withdrawals made during the year consideration, agricultural receipts of the year under consideration. In actual, the assessee deposited cash of Rs. 16,91,000/- in PNB, out of which one FDR of Rs. 16,90,000/- was made by the assessee and then he took loan of Rs. 15,63,000/- against the said FDR. After few Days, the FDR was closed by the Assessee and out of closure proceeds, loan was repaid by the assessee. The said rotation of funds was counted as total cash deposits of Rs. 32,41,000/- by the AO which was factually incorrect.

12.1 It was further contended that during the course of the original assessment proceedings which finally culminated with passing of the order of assessment dt. 03/06/2019 all the material information alongwith the document were placed on record as and by way of letter which are pages 5 to 7 of paper book. Ld. AR then placed reliance on documents filed before Ld. AO which are on pages 8 to 26 of paper book. It was contended **basis documents** at pages 8 to 26 of paper book that following were submitted to Ld. AO before passing of the original assessment order dt. 03.06.2019:-

- A. Copy of Bank Account Statement of account number 4899000100020335 as maintained with Punjab National Bank (Pg 8)
- B. Copy of Bank Account Statement of account number 86020100002809 as maintained with Punjab Gramin Bank (Pg 9-10)
- C. Copy of statement of FDR No. 489900OR00000342 depicting FDR was made on 03.06.2011 and closure of the same on 18.06.2011 (Pg 11)
- D. Copy of Bank Statement of Account no. 489900PC00001314 depicting loan taken by assessee against the FDR (Pg 12)
- E. Copy of cash flow statement for the period 01.04.2011 to 31.03.2012. (Pg 13-14)

- F. Chart of agricultural income of Rs. 7,80,000 (Pg 15)
- G. Income certificate of assessee issued by Naib Tehsildaar, Morinda (Pg 16)
- H. Copy of Girdawri of the landholding of the assessee depicting agricultural operations conducted on the said land (Pg 17-22)
- I. Copy of agreement to sell dated 01.06.2011 for an amount of Rs. 4,50,000 along with its cancellation on the back side and copy of Jamabandi of the said land (Pg 23-26)

Note: (We have noted the letter of the Ld. AO which is on page 4 of paper and first reply of assessee on pages 5 to 7 of paper book.

12.2 The Ld. AR after **placing reliance on first reply during** the course of the original assessment proceedings in response to notice of Ld. AO wherein all material details like bank account statement of assessee for period 01/04/2011 to 31/03/2012; information on income of Rs. 6705/- under head income from other sources, sources of agricultural income of Rs. 7,80,000/-; source of cash deposit of Rs. 32,41,000/- with PNB & the Sale/ purchase of immovable property including sale deed of the agriculture land; then certificate from respective authority that whether the relevant land fall under any MC limit or how much away from MC limit (supra pages 4 to 26 of paper book) **next took us through second reply of the assessee** which are at Pages 27 to 28 of paper book wherein **replies to queries of Ld. AO** were duly complied with by the assessee which were in respect of documents in respect of cash flow statement for the F.Y 2010-11 and to explain the **opening balance of cash flow statement** of financial year 2011-12 i.e amount of rupees 8,59,800/-. **Basis the second reply** of the assessee in the original assessment proceeding It was contended by Ld. AR

that "cash amount" as shown in the cash flow statement, the amounts were received by the assessee from different sources i.e; Agricultural income, sale of agricultural land in F.Y 2010-11, also the assessee had cash amount in hand from previous years.

It was stated and emphatically contended before us that in F.Y 2010-11 assessee had cultivated the seasonal crops in approximately 10 kilas of agriculture land in two seasons in a F.Y 2010-11. After the sale of crops of the first seasons , assessee has received payment of rupees 3,61,000 in cash and out of this amount the assessee incurred expenses of Rs. 95,200/- for this crop season. IN second season the assessee received Rs. 3,39,000/- in cash and out of this the assessee incurred expenses of Rs. 89,500/-. That after deducting the expenses from the total receipts, the remaining cash amount was kept by the assessee with himself. It is fairly submitted that however there is no "J" Form as same was not preserved, which is a document for sale of crops. It was repeated and reiterated by him that the original copy of "Girdawari" for F.Y. 2010-11 & 2011-12 is sufficient enough to prove that crops are indeed cultivated by assessee for both the years which are already on record with the first reply(supra).

12.3 The Ld. AR then contended that the assessee had sold his agriculture land admeasuring 7 kanal to Darshan Singh and Maha Singh resident of Village Doomchheri, Tehsil: Chamkaur Sahib, Dist: Roop Nagar for amount of Rs. 7,00,000/- on 29/06/2010 . Reliance was placed on sale deed dt. 26/06/2010 and

another document issued by Patwari, on the directions of Tesildar Morinda which is outside Morinda Nagar Council.

12.4 In respect of cancellation of agreement to sell sworn affidavit of assessee and that of the buyer / purchaser S Sukhwinder Singh were relied upon including witnesses.

12.5 The Ld. AR emphasized that two reply along with documents and supporting have **met** all the **requisitions** of the Ld. AO and that Ld. AO upon being satisfied has accepted the return in the original assessment proceedings by passing order dt. 03/06/2019 **which cannot be called erroneous and prejudicial to the interest of the Revenue under section 263 of the Act**. It was further submitted that following documents were filed with **second reply** before Ld. AO.

- A. Copy of Bank Account Statement of account number 86020100002809 as maintained with Punjab Gramin Bank for the FY 2010-11 (AY 2011-12) to justify opening cash in hand as on 01.04.2011 (Pg 29)
- B. Copy of Cash Flow Statement for the period 01.04.2010 to 31.03.2011 for the availability of the opening cash in hand as on 01.04.2011. (Pg 30-31)
- C. Copy of Sale deed dated 28.06.2010 for an agricultural land sold by the assessee for Rs. 7,00,000 (Pg 32-39)
- D. Copy of duly sworn notarized affidavits of Assessee Sh. Bhupinder Singh along with his Aadhar card in connection with cash received of Rs. 4,50,000/- for agreement to sell dated 01.06.2011. (Pg 40-42)

Note(We have noted and perused above)

12.6 The Ld. AR has placed reliance on order of this Tribunal in case of Exotic Realtors & Developers Vs. PCIT reported in CTR (2024) 38 NYPTT 993(Chd) to

buttress his argument that if AO has issued successive notices and have raised queries and then has framed assessment order; basis reply filed which are in conformity then in law it cannot be said that order of AO is erroneous and prejudicial.

12.7 Reliance was placed on judgement of Hon'ble Supreme Court of India in case of PCIT Vs. SPML Infra Ltd. reported in (2024) 164 Taxman.com 505(SC) wherein SLP was dismissed against PCIT Vs. SPML Infra Ltd. (2024)(164) taxmann.com 504(Calcutta). In this case High Court had held that where Assessing Officer has computed capital gain on sale of an asset by raising queries and after considering submissions of assessee, PCIT was not justified in assuming jurisdiction u/s 263 by treating the order as erroneous. Reliance were placed on judgment of Hon'ble Delhi High Court in case of PCIT Vs. Clix Finance India (P) Ltd. reported in 2024 160 Taxmann.com 357(Delhi) in support to the effect that where assessing officer during assessment proceedings issued a questionnaire to assessee regarding deduction on account of provision for non performing assets and loss on interest rate swap and same was replied by assessee, it was not a case where no enquiry whatsoever had been conducted by assessing officer with respect to claims under consideration and thus revision order passed under section 263 was not sustainable. Reliance was further placed on judgement of Hon'ble Gujarat High Court reported in (2023) 155 taxmann.com 431 (Gujarat) where it has been held that where assessee in response to inquiries made by AO about purchases and commission paid to

parties had furnished bank statement, tax invoices and ledger accounts of contra parties and Principal Commissioner had not disputed existence of parties and purchases made or commission paid and no contrary evidence was placed on record to substantiate that purchases made or commission paid was bogus, assessment order could not have been set aside under section 263.

12.8 Reliance was further placed on order of this Bench in case of Pawan Kumar Vs. ITO reported in (2022)142 taxmann.com 13 (Chandigarh Tribunal) wherein it has been held – Income Tax inferences

*INCOME TAX : Where Principal Commissioner passed revision order under section 263 on ground that amount of cash deposit in account of assessee was unexplained cash deposit, however, same issue in assessee's case had been specifically looked into by Assessing Officer and source of deposit was fully enquired into and explanation offered by assessee was considered and accepted, impugned order was to be quashed as revisionary powers could not be permitted to be exercised on suspicions and inferences*

12.9 Reliance was further placed on Narain Singh Vs. PCIT reported in (2015) 62 taxmann.com 255 (Chandigarh Tribunal) wherein it has been held that if there was an enquiry, even inadequate that would not by itself, give occasion to Commissioner to pass order u/s 263, merely because he has a different opinion in the matter.

12.10 Reliance was placed on following judgement too:

*" Happy Forgings Ltd. Vs. JCIT as reported in (2015) 58 taxmann.com 65(Chandigarh-Trib)*

*Where Assessing Officer allowed depreciation on forging press after being satisfied with explanation of assessee which was supported by documents, Commissioner was not justified in invoking jurisdiction under section 263.*

*Ved Parkash Contractors Vs. PCIT as reported in (2017) 88 taxmann.com 393 (Chandigarh – Trib)*

*The order of the Assessing Officer may be brief and cryptic but that by itself is not a sufficient reason to brand the assessment order as erroneous and prejudicial to the interest of revenue. It is also true that if any enquiry is made by the Assessing Officer and then objection of the Commissioner is that such inquiry is not adequate, the Commissioner would have no jurisdiction under section 263 to revise the order of the Assessing Officer."*

12.11 It was extensively urged by AR that Ld. PCIT ought not to have invoked Explanation 2 to Section 263 as the same is not applicable in the facts and circumstances of the present case. The assessee case **does not fall in any of the limb of Explanation 2 to Section 263**. The Ld. AO has **made sufficient inquiries on the issues concerned** and that **there is no lack of inquiry on part of Ld. AO**. Even after the through application of mind by the Ld. AO, merely because it seems to the **PCIT that issue had remain unattended by the Ld. AO,, it is not just open for to set Section 263 in motion by dubbing the order of original assessment as erroneous and prejudicial**. The Ld. PCIT should have a reasonable faith in the assessee and not doubt everything coming to the Ld. AO notice in course of assessment proceedings **as lacking in bonafide as long as path adopted by Ld. AO is taken as one of bonafidee and in accordance with law**. Reliance was gainfully placed on following judgments:

(i) PCIT Vs. Shreeji Paints(P) Ltd reported in (2021) 130 Taxman.com 294(SC)

"Section 69, read with section 263, of the Income-tax Act, **1961** - Unexplained investments (Unsecured loans) - Assessment year **2013-14** - Assessee-company had received unsecured loans from two different companies - Commissioner noting that said loans were shown as investment in assessee's name in balance

sheet of respective companies exercised his revisionary powers and passed an order without giving an opportunity to assessee of being heard, invoking Explanation! to section 263 - High court by impugned order held that since Assessing Officer has made inquiries in details and accepted genuineness of loans received by assessee, such view of Assessing Officer was a plausible view and same cannot be considered erroneous or prejudicial to interest of revenue - Whether SLP against said impugned order was to be dismissed - Held, yes [Para 2]"

(ii) LOIL Continental Foods Ltd Vs. PCIT in ITA No. 577/Chd/2017(Chd Trib)

*"The Id. CIT made reference to the Explanation-2 to Section 263 and also decision of Hon'ble Supreme Court in the case of CIT Vs. Amitabhachan, 384 ITR 200. It is pertinent to note that Explanation-2 of section 263(1) would help the Id. Commissioner to take cognizance under section 263 of the Act, if no inquiry was conducted by the AO before finalizing the assessment order. No doubt the assessment orders are very brief, and did not have elaborate discussion on these issues, but it is pertinent to bear in mind that assesseees have no control over the AO and cannot persuade him to draft the assessment order in a particular manner. It is the discretion of the AO, how to pass an assessment order. Had an elaborate discussion available, then that would be an ideal situation for the higher appellate authorities to appreciate, what has operated in the mind of the AO while passing the assessment. But in the absence of such discussion, it has to be ascertained from the questionnaire and the replies submitted by the assessee. Explanation-2 can be invoked when no inquiry was conducted by the AO. In the present case, he has issued a questionnaire calling for details on 37 counts. Those details were submitted. Some of the issues raked up by the Id. Commissioner in the impugned order were between the group concerns, and their accounts were open before the AO in simultaneous proceedings. He was satisfied with these accounts. Thus, it is a case of inquiry and Explanation-2 cannot be invoked in the present case. In view of the above discussion, we are of the view that the Id. Commissioner is not justified in exercising powers under section 263, and setting aside the assessment orders. We allow all these appeals and quash the impugned orders passed under section 263 of the Income Tax Act in each case of the appellant."*

12.12 Per contra, the Ld. DR has then drawn our attention to para wise remarks to the allegation made by the Ld. PCIT which are as under:-

| Sr. No. | Relevant page no. of PCIT Order | Allegation of PCIT in order passed u/s 263 of the Act  | Our Remarks   |
|---------|---------------------------------|--|---|
| 1.      | Para 5, Page 2                  | The assessee had produced an "Income Certificate" dated 11.11.2014 showing income of Rs. 10,50,000/- from agricultural activities issued by "Naib Tehsildar" who is not a competent authority to issue such a certificate. The AO did not make any | ❖ At the outset, it is submitted that the assessee has filed various documents to prove the ownership of land (Jamabandi) as well agricultural activities carried on by him (Girdawri) on such land and both of these documents as obtained from "Revenue Authorities" is sufficient enough to prove the agricultural activities carried on by him. What else was required to be proved by the assessee |

|    |                  |  |   |
|----|------------------|--|---|
|    |                  | enquiry in respect of the authenticity of this document.   | has not been listed by the Ld. PCIT instead general remarks have been given.  |
|    |                  |  | <ul style="list-style-type: none"> <li>❖ Further, the assessee was not at all required to file any income certificate from "Naib Tehsildar" to prove his agricultural income and in fact the assessee has filed evidences over and above he was required to do.</li> <li>❖ Therefore, there is no lack of verification in the assessment order passed by the Ld. AO.</li> </ul>   |
| 2. | Para 6, Page 3   | The AO had simply placed Jambandi on record and not conducted any further enquiry about the cultivation of land like ownership of land, size of land, description of land, period of acquisition of land and agricultural activities carried on by the assessee, expenses incurred, quantum of agricultural yield, sale of agricultural receipt and receipt of income. | <ul style="list-style-type: none"> <li>❖ In this regard it is submitted that once the assessee has proved the ownership of agricultural land and evidence of agricultural activities carried on by him on such land and it is also evident on record that the agricultural income declared by the assessee commensurate with the land holding of the assessee, it is sufficient enough to prove the genuineness of agricultural income disclosed by the assessee.</li> <li>❖ Regarding J Form, it is submitted that there is a lag of approximately 10 years between the year of income and year of 263 proceedings and mere non-availability of J Form cannot be a ground for making addition in the hands of the assessee.</li> <li>❖ Reliance in this regard is placed on the judgment of Sh. Satbir Singh Bhullar Vs. ITO in ITA No. 258/Asr/2022 wherein it has been held that the assessee possess sufficient landholding which is evident from the Jamabandi submitted by him and the agricultural operations were also evident from the Khasra/Girdawri filed by him. Therefore, the agricultural income of the assessee is proved beyond doubts. The copy of the said judgment is forming part of Judgment set at page 1-4.</li> </ul> |
| 3. | Para 7.1, Page 4 | The source of opening cash in hand of Rs. 8,59,800/- claimed by the assessee in cash flow statement remains totally unverified   | <ul style="list-style-type: none"> <li>❖ It is submitted that the assessee is carrying agricultural activities from past many years and opening cash in hand of Rs. 8,59,800/- is generated partly out of agricultural activities (1,59,800) and balance of Rs. 7,00,000/- out of sale of agricultural land in the FY 2010-11.</li> <li>❖ The copy of sale deed of property sold in FY 2010-11 as filed with the AO is forming part of paper book at Pg 32-39</li> </ul>  |
| 4. | Para 7.2, Page 4 | The assessee had made lump sum credit entries of Rs. 5,28,500 and Rs. 5,21,500 on account of gross agricultural income on 27.04.2011 and 25.10.2011 and claimed the availability of cash in hand by making random entries of gross income on single dates.   | ❖ It is standard practice in agricultural sector that payment is received from Arhatias on sale of products to them. The assessee was cultivating seasonal crops in 2 seasons and the payment of first season was received in March-April 2011 and payments of second seasons were received in October 2011 which in turn was deposited in the bank accounts.   |
| 5. | Para 7.3, Page 4 | Small amounts of cash withdrawals from Punjab Gramin Bank have been counted for the heavy cash deposit made in the Punjab National Bank.   | ❖ Total withdrawals of Rs. 3,55,000 have been made from the said account out of which Rs. 2,28,000/- was deposited back in the same account, therefore, the withdrawals and deposits of this account have been used to the extent of balance amount only to substantiate the cash deposit of Rs. 16,90,000/- in the Punjab National Bank of the assessee.   |
| 6. | Para 7.4 Page 4  | Household Expenses of Rs. 3,60,000/- have been reduced in lump sum on 28.12.2011 instead of reducing the same on monthly basis.  | ❖ The assessee generally makes cash withdrawals from bank accounts in lump sum for house hold withdrawals and there is no restriction/prohibition in law to make lump sum withdrawals as against monthly withdrawals.   |
| 7. | Para 7.5 Page 4  | Receipt of advance of Rs. 4,50,000 on 01.06.2011 against agreement to sell and then cancellation of the said agreement is just a bogus entry to create cash in hand.   | ❖ The agreement to sell was made on stamp papers and it is signed by buyer, seller and two numbers of witnesses. The Ld. PCIT is merely making assumptions by treating the said agreement to sell as bogus and in this regard it is trite law that presumptions howsoever strong cannot take place of evidence.   |

12.13 The Ld. AR has also contended that Ld. PCIT in the impugned order has placed reliance on decisions which are not applicable to the facts of the present case. The Ld. AR contends that it is **not a case of no inquiry as queries raised were all answered**. It is case with application of mind by Ld. AO and not a case of non application of mind.

13. Per contra Ld. DR has relied upon the impugned order of Ld. PCIT in support of case of Revenue. Ld. DR contends that there is a lack of inquiry on part of Ld. AO. It is also a case of inadequate inquiry. The Ld. AO ought to have at least sent a letter to Naib Tehsildar on land issues and crops grown on it. There is no document in support of agriculture income like Mandi Fee, Kacha Adatiya, No Bill, No voucher for agri produce on record. Ld. DR has placed heavy reliance on para 5 of impugned order. Ld. AO ought to have written a letter to Mandi Board too. In which Mandi the Agri Produce was sold is not stated. No letter to rural broker / adatiya to seek evidence of agri produce is on record. No identity of such a person is disclosed by the assessee. The Ikramama produced is just a camouflage to cover up misdeeds. On para 7.1 of the impugned order the Ld. DR contended that market fee payment is an important piece of evidence to determine whether, agri produce were in fact sold or not. Creditworthiness of Shri Sukhwinder Singh as referred in Para 7.5 of the impugned order is not established nor verified. Ld. AO ought to have issued notice to Shri

Sukhwinder Singh. In brief Ld. DR contended that no independent inquiry was conducted in a manner known to law. The case therefore falls within the mischief of Section 263 Explanation 2 and impugned order should not be disturbed by this Tribunal and that same be upheld.

### **Findings & Conclusions**

14. We now have to decide, legality, validity and propriety of the impugned order in light of facts and circumstances as aforesaid.

15. At the outset and at the threshold we hold that the original assessment order dt. 03/06/2019 **basis which** present revisionary proceedings were initiated under section 263 culminating into the impugned order has accepted the return of income filed by the assessee. The said acceptance of returned income is arrived after a proper inquiry and that the due process of law was followed in an appropriate manner because prior to that 'Notices' as per law i.e 143(2), 142(1), 147/ 148 were duly served to the assessee. The notice(s) are suitably replied by way of two(2) replies with all documents papers accompanying it which had all the material information so that "Computation of Income" is done in just and proper way for purpose of levy of tax on it. We have minutely perused the notice(s) and its replies which are two in number and it contains and answers all the queries of Ld. AO. We have no hesitation to hold that all the "requisitions" as were sought were met by the assessee without any demur whatsoever. The original assessment was carried out in terms of Section 143(3) / 147 with due

process. The assessee has gone through the rigors of Assessment Proceedings on all fronts.

15.1 We notice that in response to Notice on page 4 of **PB"5 queries"** were made and certain documents were requisitioned. We further notice that said notice(supra) was duly replied vide reply which are at pgs 5, 6, & 7 of paper book. Return of Income is furnished in response to Notice u/s 148 on 30/04/2019 together with computation chart. It is made crystal clear to Ld. AO that the Assessee is an "Agriculturist" and use to cultivate his Agriculture land. The assessee **has no other source of income except from agriculture land / produce.** Other sources of Income are from FDR with bank and Saving Bank Account interest. **Form 26AS is placed on record.** Copy of agricultural income certificate for F.Y. 2011-12 issued by Naib Tehsildar, Morinda (Roopnagar) is too placed on record on page 16 of paper book. **It bears all the essentials of a valid certificate issued by a public authority who is a responsible Revenue officials in our considered view. Veracity or otherwise of such an certificate cannot be doubted. A public servant in India issues certificate subject to certain condition precedent which is required to have been presumed to have been discharged by the assessee prior to issue of such a certificate by Naib Tehsildar. Naib Tehsildar do not issue Certificate casually. They issue certificate basis revenue records i.e; basis Girdawari, reports of Block Development Officers, Revenue Inspectors, Patwari's and other Revenue Officials.** It is not the case of Revenue

u/s 263 that said certificate **is bogus** or was obtained by **playing fraud**. What is now contended by Ld. DR is that Tehsildar certificate perse is not a document to prove that what is with the assessee is agriculture income. In order to establish agriculture income 'J' Form should be produced which is not produced. No bills or vouchers of Mandi are placed on record by the assessee during the course of original assessment proceedings u/s 143(3) / 147; hence PCIT has rightly held AO order as erroneous and prejudicial. We notice that in addition to Naib Tehsildar Certificate, assessee has placed on record **his document of title to establish ownership of land** and has contended that crops were indeed grown in both the season's. It is not the case of **the Revenue** that the **assessee is not an agriculturist**. It is admittedly a position **basis** documents on record that the **assessee is an agriculturist**. It is also not the case of the Revenue that assessee **has not titled his land. Girdawari papers** are on **record which speaks for itself** together with **certificate of Naib Tehsildar** all these have not been expressly held to be not a documents in support of agriculture land or its produce. The impugned order u/s 263 has not stated expressly that the order of AO is erroneous and prejudicial as papers / documents produced are all improper, incorrect and wrong in support of agriculture income.

15.2 In impugned order the PCIT has erred in holding in para 5 that Naib Tehsildar has no legal authority or legal mechanism to issue income certificate. AO has made no enquiries whatsoever in respect of authenticity of given

document and locus standi of the Naib Tehsildar to issue the same and also “**in respect of the basis**” on which the said certificate was issued, by the Naib Tehsildar. We are of the considered view that Naib Tehsildar certificate on page 16 of paper book bears the photograph of the assessee, it bears the signature and official seal of Naib Tehsildar. The said certificate bears a number and date. The certificate of Naib Tehsildar who in the rural set up in any state of India enjoys official authority besides having powers under land Revenue code of each state and also discharges several functions as that of a Executive Magistrate. In an area of his jurisdiction he is the representative of state. We are therefore of the considered view when in rural set up all courts give credence to the certificate of Naib Tehsildar or Tehsildar there is just no basis to doubt the veracity of such certificate. Be it noted certificate of Naib Tehsildar is also accompanied by the copy of Girdawari of land holding of the assessee depicting agriculture operations conducted on the said land page 17-22; copy of Punjab Gramin Bank, statement for F.Y. 10-11 A.Y 2011-12 besides other papers and document. The Ld. AO while carrying out assessment particularly so under the provisions of Section 143(3) r.w.s 147/148 do not carry **out assessment of income blindly**. The Ld. AO **basis replies of assessee** and documents accompanying it and during the course of **hearing gages** and **swifts through the material on record**. The Ld. AO exercises his discretion carefully and cautiously and upon a slightest suspicion carries out a deeper probe. In the instant case records of the assessment proceedings shows no suspicion basis the documents

(supra). Under these circumstances it is far fetched to say that the Ld. AO ought to have made inquiries in respect of documents given by the assessee. Revenue must trust the assessee it is a crucial factor in administration of tax collection. Assessee credentials cannot be doubted at the tip of the nose. There must be a atmosphere of Mutual faith and trust between Revenue and Assessee. It is a very delicate relationship. **Needless to say there is presumption in law that official acts are regularly performed and discharged by public officials.** We therefore hold that in impugned order Ld. PCIT has erred in law by holding that Ld. AO ought to made inquiries. The finality reached to assessment proceedings u/s 143(3) r.w.s 147/148 after notices and replies with all queries answered by assessee with documents material to the facts of the case **should not be disturbed unnecessary u/s 263 unless and until there is a serious lacuna of such a nature that order is indeed erroneous and prejudice is caused to Revenue.**

15.3 The Ld. PCIT in the impugned order at para 6 ought not to have held that Ld. AO ought to have verified jamabandi produced and ought to have conducted enquiries to ascertain the identity of purchaser's, their credit worthiness and the genuineness of transaction; including on agriculture expenses of Rs. 2,70,000/-. We do not subscribe to the view of Ld. PCIT in the impugned order for more than one reason first of all documents placed on record from pages 17-22 which is copy of girdawari is in proper form wherein all material particulars are recorded. It's contents are not disputed by Revenue

before us. It is not a simple piece of papers with something written on it. It is a document in Gurumukhi script. The land related papers are in such format only as local land Revenue code prescribes it. The Ld. AO exercises local jurisdiction in his area of operation must be acquainted with such papers and formats of land related document. Normally judicial notice is taken that documents drawn up or produced is true and correct. To forge a document and produce it in the assessment proceedings before Ld. AO who has engaged an AR is a indeed difficult task. The Ld. AO already had a background of assessee being agriculturists and senior citizen and rightly have taken a plausible view on document produced. To expect that Ld. AO ought to have verified and conducted inquiries with respect to such girdawari is very high expectation Ld. PCIT has drawn as practical aspect of assessment in day to day manner being done in Income Tax Office, gravity and magnitude of evasion of tax etc are also factors which are required to be considered. At times judicial notice is required to be taken of public document, practical and day to day difficulties of the Assessing Officer's are far too many. To say in impugned order and to do it practice by Ld. AO there is a difference. Assessment is a quasi judicial process and not a judicial determination of income. In quasi judicial process unlike judicial process one has to go by some degree of preponderance of probabilities whereas in judicial process degree of proof required is beyond any reasonable doubt. This is a scuttle difference in our considered view. Revenue is required to take a call whether in all such cases enquiries are to be done as a

matter of rule or not or to leave it to the wisdom and good sense of AO. In our view later recourse is best option as what is required is fine tuning and balancing Act. Every loss of Revenue cannot be called prejudice to Revenue similarly in every case inquiries are not possible with regard to each and every document produced by the assessee.

15.4 We also hold that to conduct enquiries on agriculture expense of Rs. 2,70,000/- which assessee has claimed in computation of income is too far fetched. In agriculture sector and in rural areas of Punjab it is customary to pay such expenses in cash to all stakeholders particularly so in the agriculture sector. The Ld. PCIT in impugned order has grossly erred in law. **Rural accounting of a agriculturist in rural area is not a accounting practice as that of a corporate entity.** When fact is assessee is agriculturist with land holding and is growing crops – which is an admitted position throughout it is indeed very high expectation on part of Ld. PCIT to hold that even such meager expense should be verified when it is not possible in agriculture field which is highly fragmented and labour intensive sector. The Ld. PCIT cannot expect Ld. AO to do impossible act even if it is possible then the task is indeed difficult and time consuming particularly so in rural agriculture sector in India's Punjab province. Therefore no enquiries with regard to such expenses cannot amount to dubbing the assessment order as erroneous and prejudicial to the interest of Revenue. The

erroneous and prejudicial nature of assessment order under section 263 is to be tested on plank of reasonableness and not otherwise, in our considered view.

15.5 The Ld. PCIT erred in holding in para 7.5 of the impugned order that the credit worthiness of Sukhwinder Singh the buyer of land who had given advance of Rs. 4.5 lakh under an agreement of sell dt. 01/06/2011 ought to have been verified by the Ld. AO the same having not been done so; the assessment order is erroneous, as agreement to sell was cancelled on 11/06/2011 with advance money returned. We have examined and perused the document which is at pages 23 and 24 of paper book i.e agreement to sell dt. 01/06/2011 and receipt dt. 11/06/2011 while it is true that basis land mentioned therein transaction of Rs. 4.5 lakh took place on 01/06/2011 and later got cancelled on 11/06/2011 can be no basis to dub the amount of Rs. 4.5 lakh as bogus entry to manipulate the availability of funds in order to explain the cash deposit made by the assessee in his bank account on 09/06/2011. The Assessing Officer did not try to conduct any enquiries to ascertain the identity of Shri Sukhwinder Singh, his credit worthiness and genuineness of the given transaction; as the amount of Rs. 4.5 lakh was returned by the assessee. The need to conduct enquiries would have arisen had the amount of Rs. 4.5 lakh would not have been returned by the assessee. **The Ld. PCIT therefore has erred in law as in cash flow the result is NIL.**

16. In the premises after examining the record, papers and proceedings of the impugned order as well as the original assessment order dt. 03/06/2019

passed under section 143(3) r.w.s 147/148 we are of the considered view that there is no legal infirmities in the order of Ld. AO dt. 03/06/2019. We hold that due process of law with all rigorous were duly followed by the Ld. AO; appropriate notice(s) u/s 147/148, 143(2) and 142(1) were duly given and were received by the assessee. The return of income was filed as an agriculturist on 25/04/2019 declaring net income of Rs. 6710/- + Rs. 7,80,000/- as agriculture income. Detailed questionnaire were issued on 01/05/2019 for 15.05.2019 which were properly replied to by the assessee. The AR of the assessee attended the assessment proceedings and **it is recorded that AR furnished all requisite information / documents called for during the course of assessment proceedings** the Ld. AR furnished detailed reply alongwith documentary evidences of cash deposited in bank during the period under consideration which were duly examined and were placed on record (page 4 to 7 of paper book). Further upon many queries raised a yet another reply is on record dt. 22/05/2019 (page 27 to 28 of paper book) wherein it was highlighted that actual cash deposit is **Rs. 16,91,000/- not Rs. 32,41,000/-** as alleged in notice(s). It is expressly stated in the assessment order dt. 03/06/2019 that during the course of the assessment proceedings reply as well documents filed were examined. Queries were raised and were duly answered with supporting. The bank statement were verified and that after detailed examination of the case the income was assessed at returned income of Rs. 6710/- + Rs. 7,80,000/- as agriculture income. We see no infirmities with the assessment order of Ld. Ao dt. 03/06/2019 . The

order is well merited and all due process of law has been followed. We therefore hold that such an assessment order cannot be called erroneous and prejudicial within the meaning of Section 263 Explanation 2 as due process was followed and all necessary verification and examination of documents in plausible and reasonable manner were done so. We do not see any unreasonableness and arbitrariness in the original assessment order impugned under section 263 and that the same cannot be clothed with erroneous and prejudicial charge by Ld. PCIT.

**Order**

17. In view of aforesaid appeal of the assessee is allowed.

Order pronounced in the open Court on 21/11/2024

Sd/-

**कृणवन्त सहाय**

( KRINWANT SAHAY)

लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

**परेश म. जोशी**

( PARESH M. JOSHI)

न्यायिक सदस्य / JUDICIAL 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