

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

(HYBRID COURT)

**BEFORE SH. MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND SH. UDAYAN DASGUPTA, JUDICIAL MEMBER**

I.T.A. No. 630/Asr/2024
Assessment Year: 2012-13

Anbhao Parkash S/o Darshan Lal,
Vill. Veere Wala Kalan, Faridkot
Punjab 151203

Vs.

Income Tax Officer, Ward-3(4),
Faridkot, Jurisdictional Assessing
Officer, ITO Ward 1, Faridkot

[PAN: BEMPP7626G]

(Appellant)

(Respondent)

Appellant by : Sh. Sudhir Sehgal, A.R.
Respondent by : Sh. Rajiv Wadhwa, Sr. D. R.
Date of Hearing : 23.04.2025
Date of Pronouncement : 30.06.2025

ORDER

Per Udayan Dasgupta, J.M.:

This appeal is filed by the assessee against the order of Id. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 09.10.2024 passed u/s 250 of the Income Tax Act, 1961 which has emanated from the order of the ITO, Ward-3(4), Faridkot dated 20.12.2019 passed u/s 144/147 of the I.T. Act, 1961.

2. Grounds of appeal taken by the assessee in Form No. 36 are as follows:

- “1. That the Ld. CIT(A) has erred in confirming the action of the Assessing Officer in re-opening the case u/s 148 and also confirming the addition as made by the AO on account of deposit of cash in the bank Account to the tune of Rs. 16,75,000/-
2. That the re-opening has made by the AO by issuance of notice u/s 148 is devoid any valid reasoning and, therefore, was no reason to believe that the income of the assessee have escaped assessment merely on account of deposit on cash in the Bank Account of the assessee.
3. That the re-opening of the case is bad in law, because of the Ld. AO have only relied upon the AIR information and without any independent application of mind, or by making any inquiries and, thus, the re-opening of the case is bad in law.
4. Notwithstanding the above said ground of appeal, the Ld. CIT(A) has erred In confirming the addition of Rs. 10,00,000/- out of the amount received as advance from the agreement to sell, for which, the documentary evidence had been furnished and the same have been ignored without assigning any valid reasons.
5. That the Ld. CIT(A) and having confirmed the addition only on the basis of doubt and suspicion, and by ignoring the documentary evidences is against the facts and circumstances of the case.
6. That the Ld. CIT(A) has erred in confirming the addition of Rs.6,75,000/-, which was derived from the agricultural activity on 12 acres of land, both of self and taken on lease, cultivated by the assessee and his father jointly valid reasons.
7. That the Ld. CIT(A) has erred in not accepting the 'J Form' in the name of the father of assessee, where the name of the assessee also appears and rejection of that evidence is merely on the suspicion/doubt.
8. That the Ld. CIT(A) has also erred in not accepting the lease deed in the name of the assessee and his father jointly.

9. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.”*

3. Brief facts emerging from the record are that the assessee is an agriculturist whose main source of income is earnings from agricultural activity. On information received by the AO regarding cash deposited in bank account (*OBC*) by the assessee amounting to Rs.16,75,000/- and earning of commission income (*as reflected in Form 26AS*) and in absence of any return of income on record, proceedings were initiated by issue of notices *u/s 148 dated 29/03/2019*. Thereafter , return submitted on 12/11/2019 , was followed by notice issued *u/s 143(2)* and in absence of any proper explanation to notices issued *u/s 142(1)*, thereby , failing to satisfactorily explain the source of cash deposit, the assessment was completed on a total income of Rs.16,85,430/- (*including an addition of Rs.16,75,000/- u/s 69 of the Act, being the amount of cash, deposited in bank by the assessee*).

4. In course of first appeal proceedings, the assessee has filed submissions with evidences explaining the source of cash deposit in details and remand report was obtained from the AO, and in response to the same the assessee has filed a *rejoinder to the remand*, but the *Id. CIT(A)* after consideration of all documentary evidences has dismissed the appeal and has sustained the addition of Rs.16,75,000/- *u/s 69 of the Act* .

5. Now, the assessee is in appeal before the Tribunal on the grounds contained in the memorandum of appeal.

6. In course of hearing, the assessee has filed a paper book (*containing 89 pages*) which consist of the copy of the written submission filed before the Id. CIT(A), copy of remand report, copy of reply to remand, copy of agreement of sale of agricultural land against which advance of Rs. Ten lakhs received by assessee , along with affidavits furnished by two witness to the said agreement (*a*) *Mr. Baldev Singh and (b) Mr. Ram Kishan*, copy of bank statement, lease agreements as evidence of taking agricultural lands on lease , supported by *J-Forms* as evidence of sale of agricultural produce , copy of *Jamabandi*, as proof of ownership of agricultural land by the father of the assessee.

7. The first three grounds of appeal (*Grounds 1 to 3*) relates to the reopening of the case u/s 148, where the assessee has raised objections regarding independent application of mind of the AO for the purpose of reopening .

8. ***Ground nos. 4 to 8*** relates to the merits of the case regarding the addition of Rs.10 lacs (*Ten Lakhs*) which the assessee has explained to have sourced out of advances against proposed sale of agricultural land , and Rs.6.75 lacs (*Six Lakhs Seventy Five Thousand*) being sourced out of *agricultural activity* carried out by the

assessee on agricultural lands owned by the father of the assessee and also on lease lands.

9. In course of hearing, the assessee has filed a summary regarding date-wise deposit of cash in the bank which is reproduced as under:

<i>Sr. No.</i>	<i>Date</i>	<i>Amount of Cash Deposit</i>	<i>Remarks</i>
1.	11.05.2011	10,00,000/-	Amount received on the basis of Agreement to sell (PB Page 18-22)
2.	11.05.2011	1,25,000/-	Agricultural Income
3.	25.08.2011	1,00,000/-	Agricultural Income
4.	27.08.2011	1,00,000/-	From cash withdrawn on 24.05.2011 Bank Statement on Page 23 of PB
5.	14.12.2011	2,00,000/-	Agricultural Income J-form attached Pg.29-33
6.	12.03.2012	1,00,000/-	Agricultural Income J-form attached Pg.29-33
7.	19.03.2012	50,000/-	Agricultural Income J-form attached Pg.29-33

10. A written submission filed by the assessee is also reproduced as under:

Regarding the addition of 10 lakhs it is submitted that during the year under consideration the assessee has entered into an agreement with one Mr. S. Najam Singh S/o Nidhan Singh for the sale of property for Rs.21,75,000/-. As per the agreement for sale , out of total agreement value of Rs.21,75,000/-, cash amounting to Rs.10 lakhs was received on 09.05.2011 (balance amount being receivable at the

time of registration), the assessee has deposited the same cash of Rs.10 lakh received from *S. Najam Singh* in his bank account.

11. The agreement to sell was executed on official *stamp paper of Rs.500/-*, and the same has been duly drafted, dictated and stamped by *an advocate S. Balhar Singh Gill, Faridkot*. The agreement was executed & signed in the presence of two independent witness namely *S. Baldev Singh S/o Sh. Gurdial Singh & Sh. Ram Krishan S/o S. Gurpreet Singh* both being resident of *veerewalakalan*. Both the witness had provided the duly *notarized affidavit* to witness that the same agreement was made in their presence and the copy of both affidavits are forming part of paper book at ***page 62-67***.

12. As per Section 17 of Registration Act, 1908 the registration of agreement to prove the transaction genuine, is not mandatory. (Copy of the same is enclosed at *page 68-71 of Paper Book*.)

13. In this regard, it is hereby submitted that Ld. CIT-(A) has not considered the source as explained by the assessee only on account that the agreement to sell executed by the assessee is an unregistered agreement.

14. Reliance is being placed on the *judgment of Hon'ble Chandigarh "SMC", Chandigarh Bench in the case of Narinder Kumar Vs. The Income Tax officer dated 20.02.2025 having ITA No. 812/CHD/2024* wherein in Para 5 of the order, it is

clearly mentioned in the order that the unregistered agreement is a valid document for tendering as an evidence in a civil suit filed for specific performance of the contract and the Ld. CIT(A) followed an erroneous approach for just ignoring the agreement to sell.(The copy of the order is enclosed in paperbook at **page 72-77**).

15. Further reliance is also placed on the judgement of Kolkata Bench of ITAT in the case of *Gautam Jhunjhunwala in ITA NO. 1356/KOL/2017* wherein, the Hon'ble Bench has held as under:

*“9. In the light of the discussion, we are of the opinion that though the agreement to sell is not registered, the vendee can seek decree of specific performance on the basis of unregistered agreement to sell in accordance to law as laid by the Hon'ble Delhi High Court in *Devinder Singh Vs. Hari Singh* (decision on 26.04.2017) and Hon'ble M.P. High Court in *Akshay Doogad Vs. Dr. Laxmanrao Dhole* (decision on 18.08.2015). So as discussed in para 5 & 6 supra, in the facts and circumstances of the case, we allow the appeal of the assessee and direct grant of exemption u/s. 54 of the Act.*

10. In the result, the appeal of assessee is allowed”.

16. Hence, it is hereby submitted that although the said agreement is an unregistered but a valid document as in the above judgment, the Hon'ble Bench has allowed the exemption u/s 54 of the Act on the basis of only an agreement to sell. In the case of the assessee also, *Rs. 10,00,000/- received on account of agreement to sell* is the source of cash deposit by the assessee in the bank account and no adverse opinion in this regard is called for.

17. Moreover, to prove the authenticity of the agreement the assessee has also submitted the affidavits of both the witnesses duly attested by Notary Public. Copy of same is enclosed at **page 62-67** of Paper Book. It is clearly mentioned in the affidavits that “the said agreement to sell was written in my presence and I am the witness to this agreement. At the time of writing the said agreement, Gurdarshan Mall & Anbhao Parkash had collected Rs.10 lakh in cash & the remaining amount was to be collected at the time of registration.”

18. It is also submitted that if the assessee once submitted an affidavit and the contents of the affidavit have not been disproved by cross examination from the deponent then it would not be opened to the revenue authorities to disagree the facts mentioned in the affidavit.

19. Reliance is being placed on the decision laid down by the *Supreme Court in the case of Mehta Parikh & Co. v. CIT [1956] 30 ITR 181*(copy enclosed at page 78-84 of paper book), none of the authorities considered it necessary to *cross-examine the deponent* with reference to the statement made in the affidavit, and, hence, under these circumstances it was not open to the revenue to challenge the correctness of the statement made by the deponent in the affidavit. In other words, consequently, the assessee was entitled to assume that the authorities were satisfied with the affidavit as sufficient proof on this point.

20. The same view is also taken in the judgement laid down by the *High Court of Gujarat in the case of Glass Lines Equipment Co. Ltd Vs Commissioner of Income Tax (2001) 119 Taxman 813(Guj).*(Copy enclosed at page 85-89 of paper book).

Regarding the addition of Rs. 6,75,000/-:

21. During the year under consideration the assessee has cultivated approx. 12 Acres of land jointly with his father. From the total of 12 acre of the land approx. 10.6 acres of land was taken on lease and the balance 1.5 acres is in the name of the appellant's father. The CIT(A) has dismissed the ground of appeal by the assessee regarding the claim that the cash deposit of 6,75,000/- was made out of the *sale proceeds from agricultural produce* which was cultivated from the same land.

22. The contentions of the Ld. CIT(A) for rejection of claim of the appellant and the submission of the appellant against the same are summarized as under:

22.1 *Land belongs to the Assessee's Father as the name of Appellant's father is mentioned in the Jamabandi records.*

- i. During the year under consideration, the appellant cultivated approximately 12 acres of land jointly with his father and generated agricultural income from the same, which is exempt from tax.
- ii. From the total land of 12 acres, approx. 10.6 acres of land was taken on lease from *Amrik Kaur wife of Rajwant Singh (31 Kanal 14 Marla), Baldev Raj S/o Balwant Rai (9 Kanal 18*

Marla)&*Hukum Chand S/o Nirmal Kumar (45 Kanal)* the copy of Lease deeds along with English translation is enclosed in paper book at **page 24-28**.

It is clearly mentioned in the lease deed that the land was leased to the appellant. The assessee and his father jointly cultivated the same land besides this leased land they also *cultivates approx. 1.5 acres of self-owned land*.

iii. It is a common practice in joint families that properties specially land to be held in the name of the senior member of the family and operations are being conducted in his name.

iv. In support of the above, the assessee submitted various documents, including a *copy of the lease agreement, J-Forms, and Jamabandi*, which serve as sufficient proof to establish the genuineness of the agricultural receipts.

v. Rejecting the assessee's claim merely on the ground that the documents were in the name of the assessee's father is unjustified and contrary to settled law, as it is a common practice conducted in majority of the agriculturist families and major chunk of the agricultural land leased in the name of the appellant but the Ld. CIT(A) has not considered the same.

vi. The contention of the CIT(A) that Land belongs to the Appellant's father as the name of Appellant's father is mentioned in the *Jamabandi records* is not justified because the Ld. CIT (A) at the time of passing the order ignored the fact that major portion of land was on lease and the same was in the name of the appellant. So, the addition made on the above ground deserved to be deleted.

23. As the Assessee' fathers name is mentioned on the *J-Forms* this obstructs the appellant to claim that appellant has earned agricultural income on the basis of those *J-Forms*.

i. During the appellate proceedings, the assessee submitted J-Forms as evidence of agricultural income, J-Forms were in the name of the appellant's father which was questioned by the CIT(A),

But as the assessee lives in a joint family and it is a common practice in joint families that the major operations are being conducted in senior member's name.

ii. Even though the J-Forms are in the name of the appellant's father, the appellant has signed them. Therefore, the contention of the Ld. CIT(A.)—merely stating that *the J-Forms were in the name of the assessee's father* is unjustified and contrary to the law, as the appellant has the authority to sign the *J-Forms*.

24. *The documents submitted by the appellant, including the J-form, Jamabandi etc. serve as valid evidence of the transactions. The rejection of these documents solely on the ground that they are in the name of the assessee's father is unjustified, as both the assessee and his father jointly manage the agricultural activities. Therefore, the addition of ₹6,75,000/- should be deleted.*

25. Moreover it is also submitted that, the assessee provided necessary details and thus, the onus shifted on the revenue to bring contrary material, but the *learned CIT-A* merely doubting the agreement to sell and agricultural income without pointing out any specific defect in the documents submitted by the assessee.

26. Reliance in this regard is also placed on the following judgments, wherein it has been held that when the source of the impugned addition made u/s 69 of the Act has been proved, it depicts that the assessee has discharged his onus and accordingly, addition made u/s 69 of the Act deserves to be deleted:

27. *ITO vs. Daya Chand Jain Vaidya (1975) 98 ITR 280 Allahabad High Court*

“When a particular explanation furnished by the assessee and evidence in support thereof is adduced, the onus shifts on the Assessing Officer to falsify the said material or bring new material on record. Mere rejection of good explanation does not convert good proof into no proof”.

28. In light of the above submissions, it is hereby submitted that in the case of the assessee, the source of the investment has duly been explained with the help of relevant and corroborating documents proving the identity, creditworthiness and genuineness of the transaction wherein. Hence, it is hereby requested that the explanation of the assessee regarding the cash deposit of Rs. 16,75,000/- should be kindly accepted and assessment order passed by the Ld. AO may kindly be quashed and the additions made by the Ld. AO kindly be deleted.

29. The Ld DR relied on the order of the Ld CIT (A), and submitted that *since the J forms* are in the name of the father of the assessee, benefit of such agricultural income should only be allowed to the father (*and not his son*), and since the *agreement for sale* is not a registered document, the legal validity is doubted.

29.1 Secondly, he submits that the lease lands taken for cultivation for period of three years, by the assessee himself, from which the agricultural income is being generated (*supported by Form J*) is not registered under the Act 1908. In support of his contention he referred to *section 17(d)* of the ‘*The Registration Act 1908*’, to state

that in case of lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, registration is compulsory, and in the instant case he submits that the deed of lease of agricultural lands, executed in favour of the assessee himself, by the respective owners of such land, parties for cultivation (as placed in pb 24 to 28) has not been registered. However, he has not disputed the authenticity or genuineness of the contents of form – J, regarding income generated from sale of agricultural produce.

30. He has also not controverted the argument of the assessee that in case of doubt regarding the contents of the sworn affidavit, examination of witness was required to have been done, as laid down by the *Hon'ble Apex court in the case of Metha Parikh & Co (supra)*, and in absence of any such examination, in this case, neither by the AO nor the CIT(A), to rebut the contents of the affidavit, the sworn declaration contained therein cannot be disbelieved. He however, prays for upholding of the appeal order.

31. We have heard the rival submissions and considered the materials on record and we find that there is no compulsion of registration of an *agreement for sale of agricultural land*, however, registration under Act 1908, is compulsory in case of transfer, lease or mortgage of immovable property. As such the legal validity of the agreement of sale cannot be doubted, more so, considering the fact that the affidavit

of both the witness confirming the financial advance, of *Rs. Ten lakhs*, in their presence, has not been challenged by the AO or the CIT(A) and no examination of witness has been done and as such the averments or affirmation in the sworn affidavit cannot be disputed at this stage. As such we accept the explanation of the assessee that cash of *Rs. Ten lakhs*, has been deposited in bank out of such advance received, which is a reasonably acceptable explanation in absence of any materials to the contrary.

32. Regarding the issue of compulsory registration of lease deed raised by the Id DR, it is our opinion, that an unregistered lease deed may not be admissible as evidence in court to prove the terms of the lease or to claim any rights based on those terms, but it is still relevant to establish the existence of a *landlord – tenant relationship*.

33. In the instant case lease deeds, covering the agricultural lands from where the agricultural income is arising to the assessee (*lands being leased in his favour*), gives a right to the assessee to cultivate the same and the said right is in between the owner and the assessee (*which is not disputed by any of the parties*) and for the purpose of the revenue the genuineness of actual RECEIPT of agricultural sale proceeds, evidenced by *form – J* has never been doubted, which means funds were available as per Form – J, with the assessee (*and his father*) for making deposit in

banks even after incurring expenses for agricultural activity. As such since availability of funds are accepted out of sales of agricultural produce (*with the assessee and his father*) both belonging to the same agricultural family, earning their livelihood from cultivation from the same plot of land owned by the father and leased plot of land taken on lease by the son (*with no other source of income other than agriculture*), the cash deposit of Rs. 6,75,000/- in bank is accepted as explained.

34. Since we have allowed the appeal on merits of the case, the legal grounds contained in ground 1 to 3 of Form 36, are not taken up for adjudication.

35. In the result, the appeal filed by the assessee is allowed.

Order pronounced in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 as on 30.06.2025

Sd/-
(Manoj Kumar Aggarwal)
Accountant Member

Sd/-
(Udayan Dasgupta)
Judicial Member

GP/Sr.PS

Copy of the order forwarded to:

- (1)The Appellant:
- (2) The Respondent:
- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T

True Copy
By Order