

**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. 654/Asr/2024**  
Assessment Year: 2011-12

Sh. Nirvair Singh  
H. No. 14, Daburji G. T. Road,  
Vill. Bhagatupura, Amritsar

Vs.

Income Tax Officer,  
Ward 4(3), Amritsar

[PAN: CVBPS 0398R]

**(Appellant)**

**(Respondent)**

Appellant by : Sh. Nipun Khanna, C. A.  
Respondent by : Sh. Charan Dass, Sr. D. R.  
Date of Hearing : 07.07.2025  
Date of Pronouncement : 21.07.2025

**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 01.10.2024 passed u/s 250 of the Income Tax Act, 1961 which has emanated from the order of the ITO, Ward 4(3), Srinagar dated 27.12.2017 passed u/s 147 r.w.s 143(3) of the I.T. Act, 1961.

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

- “1. *That the order passed by the worthy CIT (Appeals) and the Ld. Assessing Officer is illegal and arbitrary and this ground of appeal pervades other grounds of appeal too.*
2. *That the worthy CIT (Appeals) has erred on law and facts by again passing order u/s 250 of the Income Tax Act, 1961 in case of assessee for AY 2011-12 without looking into the facts of the case that the order u/s 250 of the Income Tax Act, 1961 against the impugned assessment order u/s 147 w.r.s. 143(3) has already been passed dated 22.10.2019 in Appeal No. CIT (A) ASR-2/10420/2017-18 by the then Worthy CIT (Appeals)-2, Amritsar allowing partial relief to the assessee and even the said order of then Worthy CIT (Appeals)-2, Amritsar has been contested before the Hon'ble ITAT, Amritsar Bench and order has been passed dated 17.05.2023 by the Hon'ble ITAT Bench, Amritsar remanding back the case to the file of Ld. Assessing Officer which is pending with the Ld. Assessing officer as on date.*
3. *That the worthy CIT (Appeals) and Ld. AO has not given recognition to the judicially approved concept of working out peak credit and telescoping and further capriciously failed to uphold the accounting principle of working out and telescoping cash peak credit.*
4. *That the order passed by Ld. AO and further upheld by the worthy CIT (Appeals) is illegal and invalid as Ld. AO had erred on law and facts by making addition of Rs 1,76,13,822/-(one crore seventy six lacs thirteen thousand eight hundred twenty two) by adding only credit side of accounts maintained by assessee in his children's name and not giving any basic accounting treatment to cash outflows from the account The addition has been done without appreciation the accounting rationale of peak working and telescoping and it is arbitrary. That on facts and in law in the interest of equity and justice addition of Rs. 1,76,13,822/- needs to be deleted.*

5. *That the order passed by Ld. AO and further upheld by the worthy CIT (Appeals) is illegal and invalid as Ld. Assessing Officer had erred on law and facts in making addition of Rs. 12,00,000/- (Twelve Lacs only) on account of difference in pay order without appreciating the fact and application of mind that two different Demand drafts 21285 and 21286 of Rs. 15,00,000/- each are received and credited in bank accounts and are accounted for against two different sale registry. That on facts and in law in the interest of equity and justice addition of Rs. 12,00,000/- needs to be deleted.*
6. *That the order passed by Ld. AO and further upheld by the worthy CIT (Appeals) is illegal and invalid as the Ld. Assessing officer erred on law and facts in making addition of Rs 9,04,688/- (Nine lacs our thousand six hundred eighty eight) on account of unsubstantiated finding that cheque mentioned in registry is not deposited in any bank account without considering the facts that assessee had already booked same amount while calculating capital gains of sale proceeds of land and had duly recorded in return filed. That on facts and in law in the interest of equity and justice addition of Rs 9,04,688/- needs to be deleted.*
7. *That the order passed by Ld. AO and further upheld by the worthy CIT (Appeals) is illegal as the Ld. Assessing officer had erred on law by not issuing any show cause notice asking specific proposed disallowances along with necessary evidence /reasons for forming same which in contravention to CBDT Instruction Number 20/2015 Dated 29/12/2015.*
8. *That the order passed by Ld. AO and further upheld by the worthy CIT (Appeals) is infructuous in law as the Ld. Assessing Officer had erred on law and facts in making addition of Rs 27,866/- on account of saving bank interest without giving cognizance to fact that interest income is accrued in hands of children and not assessee.*
9. *That the appellant prays leave to add, amend or press new ground of appeal before the hearing of appeal.”*

3. Brief facts emerging from the record are that the appeal proceedings has been initiated against an assessment order passed by the *Assessing Officer, Ward 4(3), Amritsar dated 27.12.2017* passed u/s 147 r.w.s. 143(3) of the Act, 1961. It is seen that the assessee is an individual and a senior citizen and an agriculturist and has sold plots of land along with other co-owners and has received his share of consideration amounting to *Rs.3.85 crores during the financial year 2010-11 (relevant to the assessment year under appeal)*. In absence of any return on record enquiry was conducted and it has been revealed that the lands sold by the assessee is a capital asset and there was reasons to believe that income by way of capital gains as escaped assessment and re-assessment proceedings were initiated as per procedure and finally the assessment was completed on a total income of Rs.2,04,04,216/-.

4. The matter was carried in appeal before the first appellate authority and the Id. CIT(A)-2, Amritsar in *Appeal No. CIT(A) ASR-2/10420/2017-18*, has disposed of the appeal vide appeal *order dated 22.10.2019*. Subsequently, the matter was carried in second appeal by the assessee before the Hon'ble ITAT Amritsar Bench in *ITA No. 719/Asr/2019* for the assessment year 2011-12. The Hon'ble Tribunal disposed of the said appeal vide order dated 17.05.2023, remanding the matter back to the files of the Assessing Officer for fresh assessment, which has also been completed vide fresh

order *u/s 147 r.w.s. 254 dated 21.03.2025* (vide DIN: ITBA/COM/F/17/2024-25/1074841150(1)).

5. However, in between, due to inadvertence, the copy of the memorandum of appeal in Form No. 35 along with the grounds of appeal has been uploaded in the e-filing appeal portal (NFAC), by the department which has resulted in duplicate *Appeal No. ITBA/NFAC/S/250/2024-25/1069311760(1)* being created and the said appeal before the NFAC has been disposed of (*dismissed*) by the faceless appeal authority on the basis of materials available on record which is now before us.

6. However, during the faceless appeal proceedings, the appellant has specifically submitted before the *ld. CIT(A) NFAC*, that the case of the appellant for AY 2011-12 has already been decided by the *ld. CIT(A)-2, Amritsar vide order dated 22.10.2019 u/s 250 of the Act*, and the copy of the said order was also submitted (*uploaded before the ld. CIT(A) NFAC*).

7. The *ld. AR* of the assessee in course of hearing submitted, that in spite of repeated request that the appeal has already been decided by the jurisdictional *CIT(A)*, no cognizance to such information or submission made by the assessee has been given and the *ld. CIT(A) faceless* has proceeded to dispose off the case by dismissing the appeal on the basis of the submissions already existing physically in

appeal records, (*without giving cognizance to the appeal order dated 22.10.2019, already on record*).

8. The Id. AR further submitted that in the instant case, the Id. CIT(A), NFAC has passed an order u/s 250 of the Act dated 01.10.2024 in respect of the assessment year, concerning an assessment order dated 27.12.2017 which no more exists, because the said assessment has already merged in appeal order dated 22.10.2019 which has been set aside by the order of the *Hon'ble Tribunal dated 17.05.2023* and for all practical purpose, the original assessment order dated 27.12.2017 never existed on the date, the Id. CIT(A) NFAC passed the order. He further submitted that in spite of proper information being passed on to the Id. CIT(A) NFAC vide *Acknowledge No. 560495821191223* in the e-filing appeal portal along with a copy of the CIT(A) order dated 22.10.2019, the Id. CIT(A) NFAC was not legally justified in proceeding to pass an order, when for all practical purposes, the said appeal being a duplicate appeal, has become infructuous. As such, he prayed that this particular order passed by the Id. CIT(A) NFAC has got no legal existence and is *void ab-initio*.

9. The Id. DR relied on the order of the Id. CIT(A).

10. We have heard the rival submissions and considered the materials on record and we find that the assessment order dated 27.12.2017 passed u/s 147 r.w.s. 143(3) by the AO, Ward 4(3), Amritsar has already been decided by the Id. CIT(A)-2,

*Amritsar in physical mode vide order dated 22.10.2019 in Appeal No. CIT(A) ASR-2/10420/2017-18 (copy of which has been filed before us by the ld. AR of the assessee).* Thereafter, the matter has travelled to the Hon'ble Tribunal and the Hon'ble Tribunal vide its order dated 17.05.2023 has set aside the matter back to the files of the ld. AO for fresh adjudication.

11. Meanwhile, some communication gap has resulted in a duplicate appeal folder being created and the said appeal has also been re-decided by the ld. *CIT(A) NFAC vide order dated 01.10.2024.* However, this appeal was against the assessment order dated 27.12.2017, which on the date of this faceless appeal proceedings, does not legally exist because the assessment order dated 27.12.2017 has already merged in the earlier appeal order, which again was set aside by the *Hon'ble Tribunal* back to the files of the Assessing Officer for fresh adjudication.

12. Technically, speaking on the date of passing of this appeal order by the ld. *CIT(A) NFAC*, (dated 01.10.2024), no assessment order legally existed, and there cannot be any adjudication by any appellate authority, of any assessment order, which legally does not exist, on the said date.

13. As such, in our opinion, this appellate order passed by the ld. *CIT(A) NFAC dated 01.10.2024* does not survive and is legally void ab-initio. However, the factual aspect of the matter, needs to be verified by the ld. *CIT(A)* from its own records, and

as such we remand the matter back to file of the ld. first appellate authority, to decide as per provisions of law, after consulting its own records.

14. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 as on 21.07.2025.

**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