

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

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.722/Asr/2019
Assessment Year: 2011-12**

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| Sh. Hari Chand, S/o Sh. Raju Ram, Vill. Katpalon, Tehsil Phillaur. [PAN:-APBPC3671B] (Appellant) | Vs. | ITO, Ward-2, Phagwara. (Respondent) |
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| Appellant by | Sh. Tarun Bansal, Adv. |
| Respondent by | Sh. Vedanshu Tripathi, Sr. DR |

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| Date of Hearing | 24.05.2023 |
| Date of Pronouncement | 07.06.2023 |

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals) -2, Jalandhar,[in brevity the 'CIT (A)'] order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity 'the Act'] for

A.Y. 2011-12. The impugned order was emanated from the order of the Id. Income Tax Officer, Ward-2, Phagwara, [in brevity 'the AO'] order passed u/s 144/147 of the Act.

2. The assessee has taken the following grounds:

“1. That the re-opening of case is bad-in-law being re-opening merely on the basis of Cash Deposits is invalid, void-ab initio, bad-in-law and is a borrowed satisfaction.

2. That issue of notice by A.O u/s 148 is bad-in-law being it is without recording any independent satisfaction, application of his own mind to the information & does not lead to valid justification.

3. That the Id. A.O has not issued notice u/s 143(2) before framing assessment, which leads to assessment void abnatio.

4. That sanction of Principal CIT for re-opening u/s 147/148 is mechanical in nature, invalid & bad-in-law and is a borrowed satisfaction.

5. That the Id. A.O and CIT (A) wrongly confirmed addition of cash deposit and denied all the facts, corroborating evidence and explanations on record, indicating that cash relates to sale of agriculture land and cash is deposited by all the other relevant family members too and further the revenue has not

brought on record any evidence or proved that cash deposit relates to some other source.

6. *That the assessment framed u/s 144 by A.O is null & void being no legal/set procedure is followed for the same, resulting the order of CIT(A) too, null & void.”*

3. The assessee has also filed the following amended ground no-4, U/R 11 of the Income Tax(Appellate Tribunal) Rules, 1963 :-

“Amended Ground No. 4

That the Ld. A.O and CIT (A) wrongly confirmed addition being made/ confirmed merely on the basis of simple letter of buyer sent to AO, without issuing notice u/s 131 or recording statement of buyer and further ignored all the facts , affidavits, explanations and bank statements of rest of the sellers, who also deposited same cash, who also sold same share of land and all agreement were execute same day and further the revenue has not brought any evidence on record , indicating the source of "undisclosed cash" and further no addition is made in case of rest of the sellers of same land by revenue which is vice-versa a corroborative and addition is bad-in-law.”

4. Brief fact of the case is that the assessee deposited cash in the bank account amount to Rs.90,17,000/-. The assessee claimed that the amount was received from

sale of the property. The said amount, which was deposited in PNB, Phillaur Branch, bearing a/c no. 0384000105228751. The ld. AO had assessed the said amount as unexplained cash deposit and addition was confirmed u/s 69A of the Act. During the assessment, further the addition was made on undisclosed interest income amount to Rs.60,996/- with the total income of the assessee. Aggrieved assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) after considering the submission of the assessee upheld the order of the ld. AO. Being aggrieved, the assessee filed the appeal before us.

5. The ld. AR first placed the amended ground no-4 which is duly accepted by the bench after discussion with the ld. DR. The ld. AR further submitted the affidavit of the assessee and the other members which are annexed in **APB page 4 to 28**. The ld. AR claimed that the reasonable opportunity was denied, and no personal appearance was taken u/s 131 related to the buyer. So, the entire proceeding is lack of verification. The ld. AR invited our attention in **APB page 25** where it is reflected that the assessee appeared before the ld. AO on 13.12.2018. But the assessment was completed u/s 144 on dated 25.12.2018. So, as per the ld. AR the framing of assessment under section 144 is uncalled for.

6. The Id. DR vehemently argued and fully relied on the order of the revenue authorities and invited our attention in para 4 of page 17 of the appeal order which is annexed as below:

“3. Mr. Ravish J3god_Jeared Counsel for the appellant has vehemently submitted that the arrangement made between the father of the assessee-appellant and both his uncles should have been given due credence as was rightly done by the CIT(A) and once his uncles have stated on oath that no consideration has passed to them then it should not be imagined that the amount has passed hands which is hidden income of the assessee-appellant and therefore liable to be added. The learned Counsel has pointed out that in the account of the assessee-appellant the amount remained deposited is not more than few thousands at any time and such a huge amount of over 24 Lacs could not have been paid by him.

4. We have thoughtfully considered the submissions made by the learned Counsel and are of the view that they do not warrant acceptance. There is well known principle that no oral evidence is admissible once the document contains all the terms and conditions. Sections 91 and 92 of the Indian Evidence Act, 1872 (for brevity 'the 1872 Act') incorporate the aforesaid principle. According to Section 91 of the Act when terms of a

contracts, grants or other dispositions of property has been reduced to the form of a documents then no evidence is permissible to be given in proof of any such terms of such grant or disposition of the property except the document itself or the secondary evidence thereof. According to Section 92 of the 1872 Act once the document is tendered in evidence and proved as per the requirements of Section 91 then no evidence of any oral agreement or statement would be admissible as between the parties to any such instrument for the purposes of contradicting, varying, adding to or subtracting from its terms. According to illustration 'b' to Section 92 if there is absolute agreement in writing between the parties where one has to pay the other a principal sum by specified date then the oral agreement that the money was not to be paid till the specified date cannot be proved. Therefore, it follows that no oral agreement contradicting/varying the terms of a document could be offered. Once the aforesaid principal is clear then ostensible sale consideration disclosed in the sale deed dated 24.9.2002 (A.7) has to be accepted and it cannot be contradicted by adducing any oral evidence. Therefore, the order of the Tribunal does not suffer from any legal infirmity in reaching to the conclusion that the amount shown in the registered sale

deed was received by the vendors and deserves to be added to the gross income of the assessee-appellant.

5. For the reasons afore mentioned this appeal fails and the same is dismissed.

In view of the above, the assessee cannot claim having received excess sale consideration on sale of agriculture land other than as mentioned in the registered sale deed. No secondary evidence in the form of affidavit or statement can counter the evidence of registered sale deed. Thus the plea of the assessee that cash deposits represent sale consideration received over and above the registered sale deed is dismissed. The addition made by the assessing officer is confirmed. Grounds of appeal of the assessee are dismissed.”

7. We heard the rival submission and relied on the documents available in the record. The issue was grabbed up such a way that the revenue is claiming that the registered deed is duly showing the consideration Rs.24,65,000/- related to sale of property. Whereas the assessee deposited cash in the bank account amount to Rs.90,17,000/-. The addition of interest amount to Rs.60,996/- was agitated by the assessee before the bench. The ld. AR argued that the addition of cash deposit is lack of verification by the revenue authorities, before the appeal and assessment stages. In fact, the said appeal is lack of verification from end of revenue. With

consent of both the parties, the matter is remitted back to the Id. AO for further adjudication *de novo*. Needless to say, the assessee should get a reasonable opportunity of hearing in the setting aside proceeding. We adjudicate the Amended Ground No-4 first. The rest of the grounds are remained only for academic purposes.

8. In the result, the appeal of the assessee bearing ITA No. 722/Asr/2019 is allowed for statistical purposes.

Order pronounced in the open court on 07.06.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order