

**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.22/Asr/2023
Assessment Year: 2014-15**

Gurbinder Singh Mahal Mahal Villa Opp. Bhai, Ashram Bhai Manj Road, VPO Sultanwind, Amritsar. [PAN:AIUPM6010E] (Appellant)	Vs.	ITO, Ward IV (2) Amritsar. (Respondent)
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Appellant by	Sh. Rohit Kapoor, CA.
Respondent by	Smt. Rajinder Kaur, CIT. DR

Date of Hearing	12.04.2023
Date of Pronouncement	24.04.2023

ORDER

Per: Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id.
Commissioner of Income Tax (Appeals), NFAC, Delhi,[in brevity the ‘CIT (A)’]

order passed u/s 250 of the Income Tax Act 1961, for A.Y. 2014-15. The impugned order was emanated from the order of the Income Tax Officer Ward -4(2), Amritsar order passed u/s 144 of the Act date of order 27.12.2016.

The assessee has taken the following grounds:-

- “1. That the Ld. CIT(A) has erred in dismissing the appeal by passing an ex-parte order u/s 250(6) and sustaining the addition made by the AO.*
- 2. That the ex-parte order passed u/s 250(6) of the Income Tax Act, is bad in law as the same has been disposed off without examining the merits of the case. That the order passed by the CIT(A) is bad in law as the same has been made without taking into account the remand report submitted by the jurisdictional assessing officer to the CIT(A) dated 08.10.2018. That the order u/s 250(6) has been passed in summary manner without considering the submissions made by the assessee during appellate proceedings.*
- 3. That the CIT(A) has erred in confirming the addition of Rs. 19547959/- on account of cash to the tune of Rs. 7490000/- deposited in Punjab & Sind Bank and Rs. 12368499/- deposited in HDFC Bank without giving the benefit of agriculture income earned by the assessee, rotation of funds and funds credited in the bank account on*

account of sale of property made on behalf of the father through registered POA dated 17.02.2012.

4. That the CIT(A) has erred in confirming the addition of Rs. 19547959/- on account of cash deposited ignoring the fact that the assessee's father was the owner of agriculture land and the said cash was deposited partly out proceeds from sale of agriculture land belonging to father. That the order has been passed without taking into consideration the affidavits filed by the father of the assessee before the CIT(A).

5. That the CIT(A) has erred in confirming the addition of Rs. 19547959/- on account of cash deposited ignoring the fact that all the saving bank accounts are joint bank accounts and as such, the cash deposited cannot be limited to the 1st account holder.

6. That the CIT(A) has ignored the fact that the assessee had regularly been filing return of income and showing business income and as such, both, the Ld. AO and the Ld. CIT(A) were duty bound to carry further investigation [u/s section 250(4)] through banks instead of disposing off the appeal for non-appearance without adjudicating on merits.

7. The appellant craves leave to add, amend, or alter any of the grounds of appeal.”

2. The case was called for hearing, first, the ld. DR filed an adjournment petition before the bench. But after the detailed discussion the ld. DR is ready for the hearing and withdraw the application. Both the parties Mr. Rohit Kapoor, CA for the assessee and Smt. Rajinder Kaur, CIT-DR for the respondent argued before the bench. The matter is taken for adjudication.

3. The ld. AR of the assessee filed a written submission which are kept in the record. In argument placed that the addition was made by the ld. AO for depositing of cash total amount of Rs.1,98,58,499/- in two bank accounts of the assessee. As per observation of the ld. AO amount to Rs.74,90,000/- was deposited in Punjab & Sind Bank and Rs.1,23,68,499/- cash was deposited in HDFC Bank. Considering the disclosed business income Rs.3,10,540/-, the addition was confirmed amount to Rs.1,95,47,959/- and the assessment was completed u/s 144 of the Act. The assessee prayed that the entire amount of deposit was not properly reconciled by the AO. The withdraw of cash was also not considered in the assessment order. Further, the source of the cash deposit was from sale of the immovable properties, loan from the father of the assessee. The assessee is power of attorney holder of the

property (land) which was owned by his father. So, the entire amount related to sale of land would not be taxed in the hands of the assessee. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of the Id. AO. Being aggrieved assessee filed an appeal before us.

4. The Id. AR first placed that the assessment order was passed u/s 144 of the Act. The assessee submitted all the relevant documents with application under Rule 46A of Income tax Rule, 1962 for filing the additional evidence before the appellate authority. The detail of submission before the appellate authority is extracted as below:

“6. That the appellant filed an appeal before the Hon’ble CIT(A) on 10.03.2017 against the said order of AO. The appellant has made submission before the CIT(A) explaining the source of cash deposited in bank and it was also highlighted that the total cash deposited was to the tune of Rs. 14842999/- and not Rs. 19858499/- as per the AO. It was explained that the cash was deposited out of sale proceeds of property belonging to father and also furnished all the sale deeds

belonging to father along with the affidavit of father Sh. Harjit Singh and copy of power of attorney. The summary of documents submitted by way of additional evidence before the CIT(A) is as under: -

S. No	Particular	Enclosures
1.	<i>Copy of letter filed before CIT Appeal</i>	14-15
2.	<i>Copy of sale deed in the name of Harjit Singh dated 08/04/2013 stamp duty document no.A394472</i>	55-58
3.	<i>Copy of sale deed in the name of Harjit Singh dated 17/04/2013 stamp duty document no.556124</i>	59-62
4.	<i>Copy of sale deed in the name of Harjit Singh dated 17/04/2013 stamp duty document no.A092041</i>	63-66
5.	<i>Copy of sale deed in the name of Harjit Singh dated 17/04/2013 stamp duty document no.55611</i>	67-70
6.	<i>Copy of sale deed in the name of Harjit Singh dated 17/04/2013 stamp duty document no.174706</i>	71-74
7.	<i>Copy of sale deed in the name of Harjit Singh dated 25/04/2013 stamp duty document no.556043</i>	75-78
8.	<i>Copy of sale deed in the name of Harjit Singh dated 25/04/2013 stamp duty document no.556236</i>	79-82
9.	<i>Copy of sale deed in the name of Harjit Singh dated 29/04/2013 stamp duty document no.A092694</i>	83-86

10.	<i>Copy of sale deed in the name of Harjit Singh dated 28/04/2013 stamp duty document no.556342</i>	87-90
11.	<i>Copy of sale deed in the name of Harjit Singh dated 29/04/2013 stamp duty document no.556315</i>	91-94
12.	<i>Copy of sale deed in the name of Harjit Singh dated 29/04/2013 stamp duty document no.A092727</i>	95-98
13.	<i>Copy of sale deed in the name of Harjit Singh dated 14/05/2013 stamp duty document no.A143188</i>	99-102
14.	<i>Copy of sale deed in the name of Harjit Singh dated 14/05/2013 stamp duty document no.A092041</i>	103-106
15.	<i>Copy of sale deed in the name of Harjit Singh dated 20/05/2013 stamp duty document no.A092041</i>	107-110
16.	<i>Copy of sale deed in the name of Harjit Singh dated 17/05/2013 stamp duty document no.A143301</i>	111-114
17.	<i>Copy of sale deed in the name of Harjit Singh dated 22/05/2013 stamp duty document no.556705</i>	115-116
18.	<i>Copy of sale deed in the name of Harjit Singh dated 27/05/2013 stamp duty document no.738531</i>	117-120
19.	<i>Copy of sale deed in the name of Harjit Singh dated 11/06/2013 stamp duty document no.A092041</i>	121-124
20.	<i>Copy of sale deed in the name of Harjit Singh dated 24/06/2013 stamp duty document no.A144443</i>	125-128
21.	<i>Copy of sale deed in the name of Harjit Singh dated 24/06/2013 stamp duty document no.A144282</i>	129-132
22.	<i>Copy of agreement to sell executed between Harjit Singh and Satnam Singh dated 17/10/13</i>	133-134

23.	<i>Copy of sale deed in the name of Harjit Singh dated 13/12/2013 stamp duty document no.A198507 along with English translation</i>	135-140
24.	<i>Copy of sale deed in the name of Harjit Singh dated 13/12/2013 stamp duty document no.C083408 along with English translation</i>	141-146
25.	<i>Copy of sale deed in the name of Harjit Singh dated 13/12/2013 stamp duty document no.794051 along with English translation</i>	147-152
26.	<i>Copy of sale deed in the name of Harjit Singh dated 13/12/2013 stamp duty document no.794052 along with English translation</i>	153-159
27.	<i>Copy of sale deed in the name of Harjit Singh dated 28/03/2014 stamp duty document no.A493818</i>	160-163
28.	<i>Copy of sale deed in the name of Harjit Singh dated 28/03/2014 stamp duty document no.A221692</i>	164-167
29.	<i>Copy of Power of Attorney executed on 17.02.2012 by Sh. Harjit Singh in favour of the appellant giving right- <u>'to make any arrangement regarding property, remove illegal possession, make demarcation, take possession, to appear on behalf of father, to use/ dispose properties, and to act as custodian, etc.'</u></i>	48-54
30.	<i>Copy of Affidavit before executive magistrate made by Gurbinder Singh Mahal dated 06.02.2018 that the money deposited in bank account was out of amount realized out of sale of father's property</i>	17-19
31.	<i>Copy of Affidavit before executive magistrate made by Harjit Singh dated 06.02.2018 that amount was deposited in bank</i>	20-23

	<i>account of son and later on, remitted back to him</i>	
32.	<i>Copy of Bank statements maintained with ICICI Bank 0477</i>	40-42
33.	<i>Copy of Bank statements maintained with Punjab & Sind Bank 13620</i>	28-29
34.	<i>Copy of Bank statements maintained with Punjab & Sind Bank 01881</i>	30-31
35.	<i>Copy of Bank statements maintained with HDFC Bank 08043</i>	32-39
36.	<i>The relevant entries evidencing the fact that cash/ cheque was deposited in the appellant's bank account out of sale proceeds from property owned by Harjit Singh taking into consideration the registered POA</i>	224-234

(Emphasis supplied)

5. The remand report was called for from the AO. The remand report of the AO is duly annexed in **APB page no. 11** which is reproduced as below:

AMRITSAR

P.No. ITO/Ward-4(2)/ASR/2018-19/6100

Dated: 28.09.2018

03/10

To

The Commissioner of Income Tax(A)-2,
Amritsar.

(Through proper channel)

Sir,

Sub:- Furnishing of report under Rule 46 A -reg. Admittance of addl. Evidence and comments on submission in A.N. 10426/2016-17 for A.Y. 2014-15 in the case of Sh. Gurbinder Singh Mahal, Amritsar (PAN-AIUPM6010E) Matter-Reg.

Kindly refer to your office letter no. 444 dated 11.09.2018 received in this office on 24.09.2018 on the subject captioned above.

02. In this regard, it is submitted that in this case scrutiny assessment was completed u/s 144 of the I.T. Act, 1961 vide order dated 27.12.2016. Notice u/s 143(2) was issued on 28.08.2015 and served upon the assessee on 04.09.2015. Further notice u/s 142(1) was issued on 28.09.2016 and case was fixed for hearing on 13.10.2016. Further fresh notice u/s 142(1) was issued on 02.12.2016 and was served upon the assessee by hand for fixing for hearing on 08.12.2016. Though the notices were served upon the assessee by hand, but he never made compliance to notices u/s 143(2)/142(1) personally or through his representative. Keeping in view, his non co-operative attitude assessment u/s 144 was completed vide order dated 27.12.2016.

03. Now the assessee has produced additional evidence before your goodself. From the perusal of general power of attorney dated 17.02.2012, it is found that Sh. Harjit Singh, S/o Sh. Joginder Singh R/o- Village-Sultanwind, Mahal villa, Bhai Manjh Road, Amritsar has given power of attorney to Sh. Gurninder Singh Mahal S/o- Sh. Harjit Singh in connection with all the immovable properties belonging to him in India without any money consideration for disposing of all the properties. Therefore, Sh. Gurbinder Singh Mahal, S/o- Sh. Harjit Singh is deemed assessee for Income Tax purpose, thus, the AO has rightly made assessment in the hand of Sh. Gurbinder Singh Mahal.

04. From the perusal of bank statements of Sh. Gurbinder Singh Mahal, it is seen that all the cash deposits amounting to Rs. 1,48,42,499/- are made in his accounts maintained with Punjab & Sind Bank, HDFC Bank and ICICI Bank. During the course

A 2 10/10/2018

of assessment proceedings, the assessee had failed to explain the source of cash deposit amounting to Rs. 1,95,47,959/-. Therefore, assessment was completed u/s 144 at income of Rs. 1,99,91,539/-.

05. However, after examining the papers it is found that the property in question was under ownership of Sh. Harjit Singh. The sale consideration from properties was deposited in the account of Sh. Gurbinder Singh Mahal. The assessee has made further investment out of money received from sale of properties belonging to his father ownership. The counsel of the assessee Sh. Daljit Marwaha, CA has stated in his submissions before your goodself that "if there is any capital gain on account of sale of properties, his father Sh. Harjit Singh (PAN- FPHPS8530E) is ready to pay taxes on the same."

Keeping in view of the above submissions, the case may be decided on merits.

Yours faithfully,


(Prem Bhagat)
Income Tax Officer,
Ward-4(2), Amritsar.

6. The Id. AR placed that all the payments are received from the persons related to sale of land and the details of the relevant instruments are annexed before the bench in **APB page 174 to 223**. The Id. AR further argued that the property belongs to father of the assessee, Mr. Harjit Singh and the father of the

assessee placed an affidavit before the Id. AO on 06.02.2018 duly filed before the AO with additional evidence and Id. CIT(A) **APB page nos. 17 to 19.**

6.1 In the affidavit the father accepted that the said amount was related with him and he is ready to pay the tax on the said amount. The PAN and Aadhaar was also submitted before the revenue authorities.

6.2 The Id. AR's submission in details placed before the bench that the Id. AO only had taken the amount for depositing cash in bank but not consider the withdraw of cash during assessment proceeding. So, the assessment order is itself perverse. The cash flow statement is duly annexed in **APB pages 2 to 4.** In the submission the Id. AR placed that:

"d) The only legal issue pending is whether the capital gains in respect of property sold by a power of attorney holder can be taxed in the hands of POA holder. It is a settled law that no capital gains can be taxed in the hands of POA holder and the same point has been discussed in subsequent paragraphs. It is very much necessary to identify the quantum of cash/ cheque deposit made on behalf of father Sh. Harjit Singh vis a vis sale deeds. In this regard, the copy of cash flow is enclosed at page no 224-234 for your ready reference. The summary of cash deposits in bank explaining the source of cash deposit is as under: -

Name of buyer	Cash	Cheque	Page
(1)AMIT KAUR W/O MANWINDER SINGH	577500.00		234
(1)MANPREET SINGH S/O HARBHAJAN	545000.00		225

SINGH			
(1)SHAMSHER SINGH S/O SULAKHAN SINGH	674000.00		234
ARJINDER KAUR W/O MANOHAR SINGH	660000.00		224
BALWINDERJIT KAUR W/O GURBAKSH SINGH	577500.00		226
BEANT KAUR W/O BALDEV SINGH S/O DIWAN S	578500.00		224
BHUPINDER KAUR W/O HARDEV SINGH	535500.00		224
HARJINDER SINGH S/O JAGIR SINGH	556500.00		226
HARPAL KAUR W/O HARBHEJ SINGH	578000.00		224
INDERJIT KAUR W/O KANWALJIT SINGH	600000.00		226
INDERJIT KAUR W/O SURJIT SINGH	78500.00	500000.00	225
JASBIR KAUR W/O KASHMIR SINGH	784000.00		226
KOMALDEEP KAUR W/O MANINDER SINGH	578500.00		225
MANDEEP KAUR W/O NARINDER SINGH	578500.00		224
NARINDERJIT KAUR W/O KULWARAN SINGH S/O	642500.00		226
NIDHI ARORA D/O SUBHAS CHANDER S/O KOTUM	578500.00		225
RAJWANT KAUR W/O RAJINDER SINGH	535500.00		224
SANGITA SADHAR W/O DALBIR SINGH	578500.00		224
SATNAM SINGH S/O SUKHDEV SINGH	795000.00		230
SHISHMA BALA KANDA W/O GURBACHAN SINGH	748000.00	1976000.00	231
SONAM W/O KAMALDEEP SINGH S/O GURBACHAN	578500.00		225
SONIA W/O SANJEEV KUMAR S/O KHARETI LAL	578500.00		225
SUKHJEET KAUR	557000.00		226
TEJINDER KAUR W/O HARDIP SINGH	417500.00	225000.00	226

	13911500.00	2701000.00	

Cash Realized from sale of property held as POA	Total Cash deposited in bank	Remarks
16612500	14842999	<i>In this regard we are enclosing herewith the cash book from which your Honor will find that there is no negative cash and the same has also been submitted before the AO for which no adverse inference has been pointed out in the remand report.</i>

d) That the Ld. AO and the CIT(A) has failed to provide the benefit of agriculture income realized in cash against the cash deposit. The Ld. AO while making the addition has not provided the agriculture income of Rs. 248150/- separately. From the above, your honor will find that the appellant was having ample cash in hand and the source of cash deposit duly stands explained out of funds received from father, rotation of funds in the form of cash withdrawal and returned income of the appellant. The summary of cash available after taking into account all the incomes and receipts from father is as under: -

Particulars	Notation	Amount	
<i>Opening cash in hand</i>	A	120000	
<i>Returned Business Income</i>		310540	
<i>Agriculture Income</i>		248150	
<i>Total Cash in hand as per return of income</i>		678690	678690
<i>Net Received from father in cash [Total amount received in cash 13911500- Amount returned 7000000]</i>	B		6911500
<i>Amount withdrawn from P&S Bank 13620</i>	C	3075000	
<i>Amount withdrawn from P&S Bank 01881</i>		2701000	
<i>Amount withdrawn from ICICI Bank</i>		224000	
<i>Amount withdrawn from HDFC Bank</i>		5074900	
		11074900	11074900
TOTAL FUNDS AVAILABLE WITH THE APPELLANT (A)	D=A+B+C		18665090
<i>Less: Cash Deposited in HDFC Bank</i>	E	-3932900	
<i>Less: Cash Deposited in ICICI Bank</i>		-1389999	
<i>Less: Cash Deposited in P&S Bank 13620</i>		-7490000	
<i>Less: Cash Deposited in P&S Bank 01881</i>		-2030000	

TOTAL CASH DEPOSITED IN BANK (A)		14842899	14842899
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e) Alternatively, that the assessing officer has failed to provide benefit of cash withdrawal made by the appellant during the year. That the amount deposited in bank was partly out of cash withdrawn from the bank and partly out of amount received on behalf of father as stated above. In this regard we are enclosing herewith affidavit from father placed at page no 20-23 of paper book. If the benefit of same is given, then there is no peak or negative cash. In this regard, the reliance is being placed on the following case laws in which it has been held that the benefit of cash withdrawals can't be denied to the assessee. It is a matter of record that the appellant has withdrawn a sum of Rs. 11074900/- in cash from bank account and the said cash was withdrawn out of opening bank balance available with the appellant. It is a matter of record that the total cash deposit was to the tune of Rs. 1482889/- as confirmed in remand report by the AO placed at page no 10-12 and not Rs. 19547959/- as confirmed by the AO in assessment order."

6.3 In the remand report the AO consider that the assessee is a 'deemed owner' in relation to sale of property of his father. But in the hearing the Id. AR explained that as per the section 159 of the Act, the assessee is not considered as deemed assessee. The details are submitted in the Submission which is extracted as below:

"c) Therefore, it is very much important to understand where the assessee is deemed an assessee as per the provisions of income tax act. The definition of assessee is given under section 2(7) of the income tax act which is being reproduced hereunder: -

Section	Remarks
2(7) " assessee" means a person by whom any tax] or any other sum of money is payable under this Act, and includes-	
(a) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or of the income of any other person in	1. In the present case, the appellant is not assessable for the income of his father Sh. Harjit Singh. That Sh. Harjit Singh is a separate assessee having PAN FPHPS8530E and the complete details were duly submitted before the CIT(A). Your Honor's kind attention is also drawn towards remand report in which the AO has admitted the said fact at para no 5 which is reproduced

respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person;	for your ready reference: - <i>'The counsel of the assessee Sh. Daljit Marwaha, CA has stated in his submissions before your goodself that if there is any capital gain on account of sale of properties, his father Sh. Harjit Singh (PAN: FPHPS8530E) is ready to pay taxes on the same.'</i>
(b) every person who is deemed to be an assessee under any provision of this Act;	The appellant is not deemed to the assessee on behalf of the father Sh. Harjit Singh. The provisions of deemed assessee are only applicable in a case where the assessee is acting as a 'representative assessee' as per section 160 or 'legal representative' as per section 159. The text of section 159 is reproduced hereunder: - <i>159. (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.</i> <i>(2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1),—</i> <i>(a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;</i> <i>(b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and</i> <i>(c) all the provisions of this Act shall apply accordingly.</i> <u>(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.</u> That section 159 is not applicable in the case of the appellant as the appellant's father Sh. Harjit Singh is alive. Furthermore, the provisions of section 160 are only applicable on agent of non-resident, minor, lunatic or idiot, the guardian or manager, Administrator- General, the Official Trustee or any receiver or manager or trustee appointed under a trust.
(c) every person who is deemed to be an assessee in default under any provision of this Act;	The clause 'c' refers to assessee in default which is not applicable in the case of the appellant.

7. During hearing, the Id. AR respectfully relied on the order of the Hon'ble Jurisdictional High Court and the order of the Tribunal the details are as follows:

7.1) Shivcharan Dass vs. CIT 126 ITR 263 [1980] (Punj. & Har.)

"Income from undisclosed sources—Unexplained investment—Amount disclosed by HUF under Voluntary Disclosure Scheme—

Thereafter kept lying in assessee's house with his wife till her death— ITO questioning its source after the same had subsequently been deposited with a bank in the names of assessee's then major daughters—In the absence of any evidence to the effect that the said sum was utilized by the assessee in any other manner, the Department was not justified in unreasonably rejecting a good explanation and adding the amount as income from undisclosed sources."

7.2) Late Sh. Parveen Kochhar, Legalheir Kamini Choudhary vs ITO, Wd-5 (4), Amritsar.2022 (9) TMI 924 - Itat Amritsar

"Unexplained Cash withdrawn out of bank account - Gap between withdrawal and deposit of the cash - withdrawn and deposit of cash with a gap of 70 days - HELD THAT:- The withdrawn and deposit of cash with a gap of 70 days which was considered by the Id. AO as seven months. The Id. Counsel clearly stated that the sufficient cash was withdrawn in same bank account and after part utilization of the same; the amount was deposited in same HDFC Bank account. Appellate authority without considering the proper fact and submission of the assessee had passed the order ex parte. CIT(A) was failed to dispose the appeal on merits and has not contended the explanation of the assessee.

As stated in the submission that the assessee was not able to present before the CIT(A) due to the fact that the appellant expired on 23.10.2020 thereafter her husband also expired on 03.11.2020. The copy of the death-certificate of the assessee and her husband are being enclosed - In these circumstances here the genuine cause for non-appearance before the CIT(A). We are in opinion that the assessee has sufficient cause during the depositing of cash in her bank account.

The hefty amount was withdrawn 70 days ago for utilising the same for the business of her son. Unused amount was deposited in the same bank account of the assessee. The source of deposit of cash was well explained before the revenue authorities by the assessee. Therefore, AO was indeed in error in adopting a wrong fact in his order. The grievance raised by the Id. Sr. Dr. in this appeal, is, therefore, devoid of any legally sustainable merits. We reject the addition amount of made by the Id. AO.."

7.3) PrincipalCIT, Belagavi vs Basetteppa B Badami, [2018] 93 taxmann.com 66 (Karnataka)

“Section 69A of the Income-tax Act, 1961 - Unexplained money (Cash deposits) - Assessment years 2006-07, 2008-09, 2010-11 and 2011-12 - For preceding assessment year, sufficient amount of cash in hand to be brought forward had reached finality - During current year, on basis of cash deposits in assessee's bank accounts, Assessing Authority made addition of unexplained money - Whether since brought forward cash in hand of preceding assessment year was sufficient, addition on account of unexplained cash deposit in bank account of assessee was unjustified ”

7.4) J'Jaspal Singh Sehgal v. ITO WD 21(2)(1), Mumbai, [2017] 83 taxmann.com 246 (Mumbai - Trib.)

“Section 68 of the Income-tax Act, 1961 - Cash credit (Cash) - Assessment year 2009-10 - Where assessee submitted detailed cash summary showing inflow and outflow of cash for relevant year, in absence of any materials to show that cash withdrawn was utilized elsewhere by assessee, benefit of cash withdrawn by assessee from bank account against amount of cash deposit into bank should be given”

7.5) IN THE HIGH COURT OF DELHI ITA NO 315/2005 JAYA AGGARWAL VS ITO

“Addition u/s 68 for cash withdrawn and cash deposited - Assessee withdrew Rs.2 lakhs to buy immovable property in cash from bank account and re-deposited cash of Rs. 1,60,000/- from the amount withdrawn after more than 7 months as the deal could not be finalized. HC held that addition u/s 68 of amount re-deposited was unjustified, noting that one should not consider and reject an explanation as concocted and contrived by applying the prudent man's behavior test; Principle of preponderance of probability as a test is to be applied and is sufficient to discharge the onus. Probability here means likelihood of anything to be true.”

7.6) CIT vs Veena Awasthi, TS-10298-ITAT-2018(LUCKNOW)

“ITAT: there is no law in the country which prevents citizens from frequently withdrawing and depositing his own money – ITAT dismisses revenue’s appeal, notes that entire transaction of withdrawals and deposits are duly reflected in the assessee’s bank account and even documentary evidences furnished before the Revenue clearly clarify that on each occasion at the time of deposit in her bank account, assessee had sufficient availability of cash, which is also not disputed by the Revenue; ITAT upholds Ld. CIT(A)’s order that the AO was not justified in treating the deposits as unexplained deposits, and the AO’s addition is unjustified and contrary to the provisions of the IT Act and was liable to be deleted.”

8. The ld. DR vehemently argued and placed that all the issues had not agitated before the ld. CIT(A). The ld. DR fully relied on the order of the revenue authorities.

8.1 In argument the ld. AR invited our attention in **APB pages 14 to 15** related to the assessee’s submission which were placed before the ld. CIT(A) and copy of the forwarding letter is annexed herewith.

9. We heard the rival submission and considered the documents available on the record. From the above discussion, it is very clear that the assessee filed the return for the impugned assessment year and the cash deposited from the well explained source for selling of the property of his father. The assessee is a power

of attorney holder of his father for selling the land, copy of the power of attorney dated 17.02.2012 along with English Translation are duly annexed in **APB page nos. 48 to 54**. The documents are duly filed before both the authorities. After considering the factual matrix the assessee cannot be deemed assessee as mentioned by the ld. AO in the remand report. In remand report the ld. AO accepted the fact that the properties are not related with the assessee and the cash was originated from the sale of property and the assessee's own source which is explained in cash account of assessee. Finally, the concept of the deemed assessee cannot be sustained as per the explanation of section 159 and 160 r.w.s 2(7) of the Act. We fully respectfully relied on the order of the apex court and the assessee is not liable for payment of tax related to sale of property which belong to his father. The source of cash deposited in bank accounts is well explained considering the cash trial of the assessee. The ld. AO had only considered the cash deposit. The deposit of cash was duly explained during the remand before the ld. AO. Entire issue was explained before both the lower authorities by the assessee. The ld. DR has not submitted any contrary fact or any judgment against the submission of the

ld. AR. So, the addition made by the ld. AO amount to Rs.1,95,47,959/- is quashed.

10. In the result, the appeal of the assessee bearing **ITA No. 22/Asr/2023** is allowed.

Order pronounced in the open court on 24.04.2023

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