

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B' CHANDIGARH

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA Nos. 491, 493 & 494/CHD/2023

निर्धारण वर्ष / A.Y. : 2010-11, 2012-13 & 2013-14

The ACIT, Central Circle, Patiala.	Vs	M/s Satguru Foundation (Regd.), Desh Bhagat College & Hospital, Kotkapura Road, Muktsar.
स्थायी लेखा सं./PAN NO: AABAS1418A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

&

आयकर अपील सं./ ITA No. 492/CHD/2023

निर्धारण वर्ष / A.Y. : 2011-12

The ACIT, Patiala.	Vs	M/s Satguru Foundation (Regd.), Desh Bhagat College & Hospital, Kotkapura Road, Muktsar.
स्थायी लेखा सं./PAN NO: AABAS1418A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Assessee by : Shri Vineet Krishan, Advocate
Revenue by : Shri Abhishek Pal Garg, CIT DR

Date of Hearing : 27.10.2025

Date of Pronouncement : 15.01.2026

HYBRID HEARING

O R D E R

PER RAJPAL YADAV, VP

The present four appeals are directed at the instance of the Revenue against separate orders of the 1d.

Commissioner of Income Tax (Appeals) in short 'the CIT (A)' dated 29.05.2023 passed for assessment year 2010-11, 2011-12, 2012-13 and 2013-14.

2. The grievance of the Revenue is that 1d.CIT (Appeals) has erred in deleting the additions which was made in the hands of the assessee in respective years on protective basis by the 1d. AO.

3. The brief facts of the case are that a survey was conducted on the business premises of M/s Satguru Foundation on 18.02.2014. During the course of survey, number of documents were impounded. The 1d. AO has made additions on substantive basis in the hands of Shri Gurmail Singh and his son Shri Arshpreet Singh. However, on protective basis, he made additions in the hands of the assessee on the basis of "Diary No. SGF-XIV". The 1d.CIT (Appeals) has observed that since addition on substantive basis has been confirmed by the 1d.CIT (Appeals) in the hands of Shri Gurmail Singh and his son Shri Arshpreet Singh, therefore, it is not necessary to confirm the protective addition. The brief findings of 1d.CIT (Appeals) read as under:

“6.2 Grounds of Appeal Nos. 4, 5 & 6: The assessment in the case has been completed u/s 147 r.w.s. 143(3) of the Income Tax Act, 1961. The addition has been made on a protective basis in the hands of the assessee society amounting to Rs. 6,81,29,000/- . The said amount has been worked out on the basis of transactions mentioned in a diary impounded during the course of survey. Substantial addition of the same amount of transactions has been made in the hands of Sh. Gurmail Singh and Sh. Arshpreet Singh (half amount in hands of each of them). Sh. Gurmail Singh was the Administrator of the Society and Sh. Arshpreet Singh is the son of Sh. Gurmail Singh.

During the course of appellate proceedings, the AR was directed to provide the status of appeal proceedings in the case of Sh. Gurmail Singh and Sh. Arshpreet Singh on the issue of substantive additions made. The AR in his reply submitted that the said additions made on a substantive basis in the hands of Sh. Gurmail Singh and Sh. Arshpreet Singh have been confirmed by the order of the CIT(A), Bathinda in Appeals No. 152 to 159/2017-18 for AYs 2010-11 to 2013-14 dated 27.11.2018. In the said appeals, the ld.CIT (Appeals) has confirmed the additions made on substantive basis in the hands of Shri Arshpreet Singh and Shri Gurmail Singh.

It is established principle of law that the same money cannot be taxed twice. In the present case, the transactions mentioned in the diary for A.Y. 2010-11 have been added on a substantive basis in the hands of Shri Gurmail Singh and Shri Arshpreet Singh and the said addition has been confirmed by the CIT (Appeals) in his order quoted above. In above circumstances, the addition of the same amount made on a protective basis, in the hands of assessee society cannot be sustained and is deleted. Hence, the appeal is allowed.”

4. The ld. DR, while impugning the order of ld.CIT (Appeals) has submitted that ld.CIT (Appeals) has not adjudicated the issue on merit demonstrating the fact whether this diary belongs to the assessee or belongs to Shri Gurmail Singh and his son Arshpreet Singh.

4.1 On the other hand ld. counsel for the assessee pointed out that appeals of Shri Gurmail Singh and his son Shri Arshpreet Singh have travelled to ITAT Amritsar Bench

bearing ITA Nos. 55 to 59 and 60 & 61/ASR/2019. These appeals have been decided by the Tribunal vide its order dated 25.05.2023. The Tribunal has held that peak credit available in these diaries deserve to be taxed in the hands of both the individuals. After taxing that amount, Tribunal has set off these peak credit additions against Rs.3 Crores declared by both the individuals. Therefore, according to him, substantive additions have been confirmed partly in the hands of both the individuals and no addition deserves to be made in the case of the assessee.

5. The 1d. DR, on the other hand submitted that Tribunal failed to record the categoric finding whether diary belongs to Shri Gurmail Singh and his son Shri Arshpreet Singh. The Tribunal only assumed that at the most, if some addition is to be made, then that addition can be made only by calculating the peak credit available in these entries. After working out the peak credit of Rs.1,40,65,000/- in all the years, Tribunal has worked out that roughly addition of Rs.70,32,500/- each would come in the hands of both the individuals. The Tribunal further noted that Shri Gurmail Singh and his son have

already disclosed Rs.3 Crores in aggregate in their ITR for 2014-15 which could take care of all the entries in all three years, therefore, has set off this working of peak credit against income declared by both the individuals.

6. In this order, Tribunal has not recorded a categoric finding whether this diary belongs to M/s Satguru Foundation or to the individuals. Therefore, impugned order of the CIT (Appeals) deserves to be set aside and 1d.CIT (Appeals) ought to be directed to decide the issue on merit.

7. We have duly considered the rival contentions and gone through the record carefully. We deem it appropriate to take note of the facts noticed by ITAT, Amritsar in the case of Shri Gurmail Singh and Shri Arshpreet Singh. We also deem it appropriate to take note of the findings of the ITAT, which read as under :

5. Briefly, the facts as per record are taken from I.T.A. No. 55/Asr/2019 Assessment Years 2010-11 in the case of Late Sh. Gurmail Singh as a lead case. The appellant Sh. Gurmail Singh is now deceased person, hence, in his case, the four appeals are represented by his son as legal heir Sh. Arshpreet Singh in respect of Assessment Year 2010-11 to 2013- 14 besides the appeals of Sh. Arshpreet Singh in his own four cases for the same Assessment Year 2010-11 to 2013-14. A survey under section 133A of the Income Tax Act was conducted on the business premises of M/s Satguru Foundation on 18/02/2014 and during the course of this survey number of documents was impounded. It was stated that Sh. Gurmail

Singh now deceased who was working as in charge of administration of a dental college run by the aforesaid Satguru Foundation. On the basis of the impounded documents, the Assessing Officer initiated reassessment proceedings by issue of notice under section 148 of Income Tax Act after taking mandatory approval of the Ld. PCIT in respect of all the assessment 6 years by valid service of the notices issued u/s 148 of the Act, on 14/02/2017, upon the assessees.

5.1 In the case of both appellants for the above-mentioned assessment years under consideration the Assessment u/s 143(3)/147 of the Act, were completed on 14/12/2017. In the assessment proceedings, the Assessing Officer has considered one impounded document which was marked as "Dairy no. SGF XIV" said to be containing large amount of cash received during the period covering all the assessment years which are under appeal. The Assessing Officer made the total of cash received as depicted in this diary and one half of that amount has been assessed in the hands of each of the appellant as under:

Assessment year	Total amount of cash received as per diary	Assessed in the hands of Sh. Gurmail Singh	Assessed in the hands of Sh. Arshpreet Singh
2010-11	68129000	34064500	34064500
2011-12	77215100	38607550	38607550
2012-13	54476412	27238206	27238206
2013-14	28399830	14199915	14199915

6. The assessee being aggrieved with the Assessment Order, went in appeal before the Ld. CIT(A) who has confirmed the finding of AO by observing as under:

3.2 In the course of appellate proceedings, the following written submissions were filed in support of this ground of appeal in each of the above appeal:

The proceedings u/s 147/148 are void ab-initio because the notice u/s 148 was never served in accordance with the provisions of section 282 of the Income-tax Act, 1961.

The proceedings u/s 147/148 are void ab-initio because the reasons to believe recorded by the AO are infact reasons to suspect.

That no satisfaction was recorded by the Principle CIT which was mandatory under the provisions of Section 151(1) & reliance for the contention has been placed on the following judgments:-

- i. *Smt. Nirmal Kaur vs. Dy. CIT International Taxation, Chandigarh I.T.A No. 575/ASR/2016*
- ii. *United electrical Co. (P) Ltd. Vs. CIT [2002] 125 TAXMAN 775 (Delhi)*
- iii. *ITO vs. M/s Observer Investment & Finance Pvt. Ltd. ITA No. 1185 & 1186/Del/2009 (IT.AT Delhi E)*
- iv. *CIT vs. M/s Goyanka Lime and Chemical ITA No. 82 of 2012 (MP).*

*“3.3 I have given careful consideration to the contentions of the appellant and to begin with non-service of notice has not been established by the appellant whereas in the assessment order specific date has been mentioned on which the notice was served. The Assessing Officer as mentioned that notices were served on 14th February 2017. It is further noticeable from the assessment order that the appellant has participated in the assessment proceedings without raising any objection about service of notice, therefore section 292C of Income Tax Act would raise a presumption that notice has been served properly upon the appellant. In respect of reasons not been properly recorded, it is to be seen that in the course of the survey proceedings both the appellants were examined and the statements were recorded. In the statements, there has been categorical admission of having earned income which has escaped assessment. The material is available with the Assessing Officer which is sufficient for initiation of reassessment proceedings. At the stage of issue of notice only *prima facie* belief is required to the extent that income has escaped assessment which was clearly available from the statements of the appellant as recorded in the course of survey proceedings. No fault can be found so far as satisfaction and reasons to believe is concerned. Lastly, the appellant has not placed on record any material to show that competent authority has accorded approval without having been satisfied and in mechanical manner. In consideration of totality of circumstances, the grounds of appeal related to challenge to reassessment proceedings in each of the appeal are dismissed.*

5.2 The contention of the assessee that the copy of diary provided to him is not legible has also been considered. It is observed that the copy of diary was provided to the assessee on 11.07.2017 and thereafter many opportunities were provided to the assessee to explain the nature and source of the amounts recorded therein. However, the assessee failed to file any explanation. Now, the contention of the assessee on 11.12.2017 when the assessment proceedings are about to get time barred, suddenly the assessee realized that the copy of diary provided to him is not legible. This is surprising and is an attempt of the

assessee to avoid giving an explanation about the nature and source of the amounts recorded in the diary. Hence, the contention of the assessee is rejected being devoid of any merit. The contention of the assessee that only receipts have been considered but outgoings have not been considered has also been considered. However, it is observed that the assessee has failed to file explanation about the nature and source of the amounts recorded in the diary. Further, the assessee has failed to file nature of outgoings and it has not been established by the assessee that the amounts were rotated to be reintroduced as receipts in the diary. Under the circumstances, the contention of the assessee is devoid of any merit and is therefore rejected. As observed above, the assessee in his letter dated 25.02.2014 dearly stated that he was confronted with certain documents which related to him. The assessee, on the basis of such documents surrendered an amount of Rs 1,60,00,000/- for the A Y 2014-15 along with his son Sh. Arshpreet Singh, who surrendered an amount of Rs 1,40,00,000, - for the A Y 2014-15. The documents confronted to the assessee included diaries relevant for the A Y 2014-15 as well diary No SGF-XIV. The assessee, in his statement recorded on 25.02.2014, in reply to Q. No 5 stated that diaries marked as SGF-XII, SGF-XHI, SGF-IX, SGF-XVI and SGF-XV belonged to him and his son. Further, a copy of diary No SGF- XIV was again provided to the counsel of the assessee on 11.07.2017 and the assessee was required to explain the nature of entries recorded in the diary and source of the amount of Rs. 3,40,64,500/- but the assessee has failed to file any explanation in this regard. In view of the statements of the assessee and his son, the surrender letters dated 25.02.2014 and the fact that the assessee and his son owned up all the documents impounded during survey and on the basis of documents relating to A.Y. 2014-15, both of them surrendered an amount of Rs. 1,40,00,000/- and Rs. 1,60,00,000/- for the A.Y. 2014-15, it is held that the diary No SGF-XJ V related to unaccounted transactions of the assessee and his son. The assessee failed file any explanation regarding the nature of entries recorded in the diary and source of the amount of Rs. 3,40,64,500/- despite the fact that a copy of diary No SGF-XIV was provided to the counsel of the assessee on 11.07.2017.”

7. The Ld. counsel has submitted that the impugned order is contrary to law and facts; cryptic, and nonspeaking; surrender was made under coercion; incriminating document are not related to appellants and that surrender statement covers all discrepancies in the incriminating document whatsoever found during the course of survey u/s 133A of the

Act which was made to by peace of mind. He filed a brief synopsis, the relevant part of which reads as under:

11. The respondent has framed assessment and made addition on the basis of notings in the diary SGF XIV. A copy of this is at Pages 45 to 117 and English Translation thereof is at Pages 118 to 192.

12. It is apparent from a look at this diary, that it contains day-wise recording of receipt and payment. However, while making the impugned assessment, Ld. AO has only taken the receipt side and ignored the payment side. We carried out the day-wise tabulation of receipt and payment from this diary which is at Pages 2 to 21 of PB Vol. II. If the benefit of payments is given to arrive at correct picture of peak, the year-wise calculation from this diary comes to as under:

A.Y.	Receipt	Payments	Peak Credit
2010-11	6,61,54,600	6,66,13,700	14,00,000
2011-12	7,57,24,715	7,44,03,715	34,65,000
2012-13	5,84,55,112	5,96,76,112	54,50,000
2013-14	2,83,61,830	2,84,61,830	37,50,000

13. The above is without prejudice to our contention that this diary did not belong to the appellants. Further, the above calculation of peak is to be further divided in both the appellants:

A.Y.	Peak Credit	Arshpreet Singh share	Gurmail Singh Share
2010-11	14,00,000	7,00,000	7,00,000
2011-12	34,65,000	17,32,500	17,32,500
2012-13	54,50,000	27,25,000	27,25,000
2013-14	37,50,000	18,75,000	18,75,000
Total	1,40,65000	70,32,500	70,32,500

14. When above kind of noting or diary is found, debits and credits both are to be considered and peak is to be arrived at to compute the real income. For this proposition, we rely upon the ratio of decisions in:

• *Mr. Nadessan Sivapraqasam Vs. ACIT ITA No. 112-114 /Cheny/2021(ITAT Chennai) (Refer page no. 92-127 of compilation of judgement already on record)*

• *DCIT Vs. Shree Bhagwati Machines Pvt. Ltd. ITA No. 296-301 /Jp/20221 ITAT Jaipur/ (Refer page no. 128-172 of compilation of judgement already on record)*

15. It is further submitted that as against above aggregate peak of Rs. 1,40,65000/- from the diary in all the years, the appellants have already disclosed Rs. 3 crores in aggregate in their ITRs for AY 2014-15 based on that very survey. Therefore, benefit of that surrender deserves to be given and therefore, no further addition was warranted.

15.1. It has been laid down that if assessee makes disclosure in survey or search in different year or in different hand of the group and files ITR accordingly but subsequently the AO holds that this income pertains to different year or different group assessee, the assessee must be allowed credit of income surrendered and disclosed in other year or other group assessee. Otherwise it will amount to impermissible double taxation, for this proposition, we rely upon the ratio of decisions in:

- *Ashish Plastic Industries Vs. ACIT [373 ITR 451 fSCl (Refer page no. 173- 175 of compilation of judgement already on record)*
- *CIT Vs. Alankar Radio Equipments fITA NO. 926 of 2007 did. 15.12.2011] Del. HCfRefer page no. 176-183 of compilation of judgement already on record)*
- *Mehra Art Palace Vs. DCIT f114 Taxman 201] Del ITATfRefer page no. 184- 185 of compilation of judgement already on record)*

16. The above were the arguments in case of Arshpreet singh based on documents for AY 2010-11. Identical is the fact situation in other years and also in case of Gurmail Singh. The same arguments may, therefore, be considered in all appeals.

17. It is further submitted that the notices and documents appended in the PB were verified or taken during inspection of record of Ld. AO conducted by us. A copy of prayer for inspection alongwith challan paid for such exercise is appended on page no. 68 to 95.

18. The Worthy CIT(A) has confirmed the order of Ld. AO in a ritualistic manner without appreciating the above arguments. It is therefore prayed that the impugned orders may please be quashed and the additions made therein may please be ordered to be deleted. We shall be highly obliged."

8. Per contra, the Ld. DR strongly supported the order of the revenue authorities.

9. Heard rival contentions, perused the material on record, impugned order, written submission and case law cited before us. It is undisputed fact on record that Late Sh. Gurmail Singh who was one of the member and administrator of M/s Satguru Foundation, Muktsar and that he was running a College from its premises. A survey u/s 133A was carried out

at the premises of M/s Satguru Foundation on 18.02.2014 (AY 2014-15). The relevant document found during the course of survey, were diaries which were then marked as "SGF-XII", "SGF-XIII", "SGF-IX", "SGF-XII", "SGFXVI" and "SGF-XV" "SGF-XVI. On confronting, these diaries to Sh. Gurmail Singh, who was present at the time of survey, has admitted in his statement recorded on oath in answer to question no. 5 as above that "These diaries belong to me and my son Mr. Arshdeep Singh. These dairies have no relevance with the Satguru Foundation or Desh Bhaga Dental College.....". and in answer to question no. 6 that the dairies marked as "SGF-IX", "SGF-XV", "SGF-XIII" and "SGF-XIV" belongs to me and the balance diaries pertain to my son Mr. Arshpreet Singh. (APB, Pgs. 194" -204). While recording the statement on oath of the appellant (Sh. Arshpreet Singh) on the date of survey u/s 133A of the Act, in answer to specific question no.3, he admitted that the documents marked at "SGF- XII", "SGF-XVI (notebook green) loose papers as listed in the impounded order dtd. 18.02.2014, were belong to him (APB, Pgs. 205- 208) which is reproduced as under:

"Q.3 During the course of survey at the premises of Satguru Foundation (Regd.) carried out on 18.02.2014, certain documents and loose papers marked at "SGF- XII", "SGF-XVI (notebook green) loose papers as listed in the impounded order dtd. 18.02.2014, which are being shown to you. In his statement recorded on oath on 18.02.2014 your father Sh. Gurmail Singh has deposed that these dairies/documents pertain to you. Do you agree with his statement?"

Answer - Yes, I agree with the depositions made by my father in respect of these documents, as these documents belongs to me."

10. The Ld. AR argued that the diaries confronted to him Late Sh. Gurmail Singh do not include diary No. "SGF-XIV" in specific and contended that he has answered that those diaries specified in question did not belong either to his or its son's activities. He contended that it was only a typographical or a clerical mistake that SGF-XIV was mentioned in the question, hence, the appellants nowhere admitted of being the owner of diary no. "SGF-XIV" and that it may be considered as not belonging to either Sh. Arshpreet or Late Sh. Gurmail Singh. The Ld. AR further argued that during the assessment proceedings, the appellant categorically denied of being the owner of diary no. "SGF-XIV" (APB, Pgs) 43 to 44).

11. However, it is seen from the statement recorded during the course of survey that Sh. Gurmail Singh, who was present at the time of survey, has made plain admission in his statement recorded on oath in answer to question no. 5 as above that "These diaries belong to me and my son Mr. Arshdeep Singh. These dairies have no relevance with the Satguru Foundation or Desh Bhaga Dental College.....". and in answer to question no. 6, he has identified which diaries or documents belongs to

him and accordingly, after identification, he owned that the dairies marked as "SGFIX", "SGF-XV", "SGF-XIII" and "SGF- XIV" belongs to him and the balance diaries pertain to his son Mr. Arshpreet Singh (APB, Pgs. 194" -204). However, he has nowhere mentioned in his statement on oath that which are the diaries belongs to his son in specific and made a general admission that balance diaries belong to his son. Similarly, in the statement on oath of the appellant (Sh. Arshpreet Singh) on the date of survey u/s 133A of the Act, in answer to specific question no.3, he has plainly admitted in answer to question mentioning the documents marked at "SGF- XII", "SGF-XVI" ITA Nos. 55 to 59/Asr/2019 & Ors Late Sh. Gurmail Singh v. Dy. CIT & Ors 15 (notebook green) loose papers as listed in the impounded order dtd. 18.02.2014, and which he admitted were being belonging to him (APB, Pgs. 205-208) which is reproduced as under:

"Q.3 During the course of survey at the premises of Satguru Foundation (Regd.) carried out on 18.02.2014, certain documents and loose papers marked at "SGF- XII", "SGF-XVI (notebook green) loose papers as listed in the impounded order dtd. 18.02.2014, which are being shown to you. In his statement recorded on oath on 18.02.2014 your father Sh. Gurmail Singh has deposed that these dairies/documents pertain to you. Do you agree with his statement?

Answer - Yes, I agree with the depositions made by my father in respect of these documents, as these documents belongs to me."

12. Under the circumstances and considering the material facts, we are of the considered view that the Ld. AR contention that diary No. "SGF-XIV" in specific has never been confronted to the appellant during the survey is appears to be factually correct and this facts is also evident from the statement of the father and son as above wherein neither the survey party nor the AO has confronted any such document marked as Diary No. "SGFXIV" to Late Sh. Gurmail Singh (Father) or to the appellant Sh. Ashpreet Singh or admitted by either of them in specific denomination except mentioning that balance diaries. At this stage, the revenue authorities ought to have rebutted this particular Diary No. "SGF-XIV" and its content to the appellant Sh. Ashpreet Singh and corroborated by bringing on record documentary evidence to establish the chain of cash flow cycle and relevant transaction on the entry alleged to be unexplained investment in properties or cash transaction. Since, the AO/the Ld. CIT (A)and the Ld. DR failed to disprove the contention of the appellant and hence, the addition made merely relying on vague statement recorded during survey without substantiating the rough entries of the alleged diaries with corroborative supporting material evidence, is not justified.

13. The contention of the authorities below that there was not typing mistake in the statement and that the subsequent denial in the course of

reassessment proceeding by way of reply after a period of 4-5 years to survey and completion of regular assessments has been merely an afterthought when the appellant got seized with notice u/s 148 of the Act for initiating reassessment proceeding by the AO. In our view, it is merely assumption of the AO based on vague statement recorded during the course of survey u/s 133A without rebutting the alleged documents/diary No. "SGF-XIV" to the appellant either during the survey or assessment proceedings and bringing on record corroborative documentary evidence on record, has no material evidentiary value for presumption u/s section 292C of the Act. Meaning thereby, the AO or the Ld. CIT(A) failed to establish the disputed income based on corroborative documentary evidence in lieu of the alleged incriminating diary No. "SGF-XIV" although it may be impounded during the course of survey from the business premises. It is pertinent to mention the undisputed fact that the alleged transaction/entries in the diary No. "SGF-XIV" was never owned up in specific by either of the appellant in their statement recorded on oath, as above.

14. Since, the AO, the CIT(A) and the Ld. DR failed to establish before us, with supporting corroborative documentary evidence that the disputed diary No. "SGF-XIV" impounded from the business premises of the foundation, during the course of the Survey U/s 133A did belong to the appellants and that the transaction entered therein are unexplained investment being either made in the properties were out of books of accounts or other tangible or intangible Assets. In view of that matter we are of the considered opinion that the Ld. CIT(A) did not appreciate the facts on record and he was not furnished in confirming the addition.

15. Even if the notings in the diary SGF XIV (APB, Pgs. 45 to 117 with English version 118 to 192) presumed to be belonging to the appellant assesses, then the benefit of peak credit would be allowed to the appellants by considering the debits and credits entries of both sides written in the pages of the alleged diary no SGF XIV while computing the real income. If, the benefit of payments is given to the appellant to arrive at correct picture of peak, the year-wise calculation from this diary comes as under:

A.Y.	Receipt	Payments	Peak Credit
2010-11	6,61,54,600	6,66,13,700	14,00,000
2011-12	7,57,24,715	7,44,03,715	34,65,000
2012-13	5,84,55,112	5,96,76,112	54,50,000
2013-14	2,83,61,830	2,84,61,830	37,50,000

16. Without prejudice to the above, if this diary is presumed to be belong to them, the aforesaid calculation of peak has to be further divided in both the appellant assesee being 50% share of each in the business, as under:

A.Y.	Peak Credit	Arshpreet Singh Share	Gurmail Singh Share
2010-11	14,00,000	7,00,000	7,00,000
2011-12	34,65,000	17,32,500	17,32,500
2012-13	54,50,000	27,25,000	27,25,000
2013-14	37,50,000	18,75,000	18,75,000
<i>Total</i>	1,40,65000	70,32,500	70,32,500

17. The theory of working of peak credit based on noting's of the debits and credits entries of both sides written in the pages of the alleged diary no SGF XIV, to compute the real income of the appellant assesses get support from the decision rendered by the ITAT Chennai Bench in the case of "Mr. Nadessan Sivapraqasam Vs. ACIT", (supra) where it was held that: "

17. In light of above legal and factual background, if you examine case of the assessee, absolutely there is no evidence with the Assessing Officer to allege what is recorded in the seized document shows unaccounted income earned by the assessee from his business. As we have noted already in our order, document relied upon by the Assessing Officer is nothing but dumb document, which does not show any light on financial transactions of the assessee, be it income earned from undisclosed source or expenditure incurred outside regular books of account. The jottings recorded in the so called diary does not show anything about income from whom said income is earned or source from which said income is earned or expenditure incurred outside regular books of account. Therefore, on the basis of said document additions made by the Assessing Officer is highly incorrect. Further, the assessee has filed retraction immediately 15 days after date of search along with affidavit and stated that admission taken during the course of search is by coercion and undue influence, but not based on evidences gathered during the course of search. In the retraction letter dated 18.06.2016 and affidavit dated 04.08.2016, the assessee has explained manner in which statement was recorded u/s.132(4) of the Act, and said letter was filed before the investigation officer, however, the department has ignored retraction filed by the assessee. It is well established principle of law by the decision of the Hon'ble Allahabad High Court in the case of L. Sohan Lal Gupta Vs CIT (1958) 33 ITR 786 that an affidavit filed by the assessee cannot be discarded, unless an opportunity is given to the assessee to substantiate its case. In this case, the Assessing Officer as well as learned CIT(A) has discarded retraction letter filed by the assessee only on the basis of admission of undisclosed income recorded in the statement u/s.132(4) of the Income Tax Act, 1961. In our considered view,

the Assessing Officer as well as learned CIT(A) were completely erred in making additions towards only credit entries in the seized documents, disregarding explanation furnished by the assessee.

18. *Coming back to another important aspect of the issue. The ld. AR has made an alternative argument without prejudice to its first argument. The assessee contended that if at all, a credit entry in the seized documents is considered as sales made outside regular books of account, then entire sales cannot be added as income, but only net profit from the business should be treated as income of the assessee. The assessee has also made arguments for applying peak credit theory in light of debits and credits contained in very same seized documents and argued that if at all document is to be relied upon, then only peak credit recorded in the document should be considered as undisclosed income of the assessee.*

The peak credit theory is not a foreign to the income-tax proceedings. Various courts and tribunals time and again are batting for peak credit theory depending upon facts and circumstances of each case, more particularly, where large amount of cash transactions are involved, the courts observed that peak credit theory is best method to determine undisclosed income of the assessee to avoid duplication of additions towards income & expenditure. In this case, so called diary found during the course of search contains some credit and debit entries. Although, there is no narration in the entries to describe it as income, however, the Assessing Officer has considered entries as unaccounted income earned by the assessee from his business. The said incriminating diary found during the course of search also contains debit entries and the Assessing Officer has conveniently ignored those entries on the ground that said entries pertain to expenditure incurred outside regular books of account, although, there is no narration with regard to nature of entry and to whom said amount is paid. It is well established principle of law by the decisions of the courts and the tribunals that when something is recorded in the seized documents, be it income or expenditure, both needs to be considered for the purpose of taxation and this principle is supported by the decision of the ITAT., Mumbai in the case of Pooja Bhatt Vs. ACIT (supra), where the Tribunal held that expenses eligible for deduction in the seized document should be considered while arriving at net income.

19. *In this case, the Assessing Officer has admitted that what was recorded in the seized document towards debit side is expenditure outside regular books of account, although nature of said expenditure is not known to the assessee as well as the Assessing Officer. Therefore, we are of the considered view that when the Assessing Officer has taken credit entries as income of the*

assessee earned from undisclosed source of income, he ought to have considered debit side of entries as expenditure incurred for earning said income. If you consider same analogy, then the Assessing Officer should have considered income as well as expenditure. If you consider debit entry as expenditure, then only net income from said document needs to be taxed. Since, we have already stated in earlier part of this order, credit entry does not depict any income and debit entry does not show any light on expenditure, then the only possible method to determine undisclosed income for the above period is adoption of peak credit theory and in this case, particularly peak credit theory is best method to determine undisclosed income of the assessee. The assessee has filed working of peak credit, which is available in paper book filed for relevant period. The assessee has copied entries contained in seized documents relied upon by the Assessing Officer and recorded date-wise receipts and payments. For the financial year 2015-16 as on 23.03.2015, peak credit works out to Rs.36.25 lakhs, which is net of debit and credit entries recorded in seized document. Therefore, addition is required to be made to the extent of Rs.36.25 lakhs for the assessment year 2015- 16. Hence, we direct the Assessing Officer to sustain additions to the extent of Rs.36.25 lakhs for the assessment year 2015-16 towards undisclosed income. The assessee has worked out peak credit of Rs.73.13 lakhs as on 25.03.2016 which is relevant to the assessment year 2016- 17, on the basis of net of debit and credit entries from so called diary found during the course of search. Therefore, we direct the Assessing Officer to restrict addition to the extent of Rs.73.13 lakhs for the assessment year 2016-17. Similarly, the assessee has worked out peak credit of Rs.422.00 lakhs for the assessment year 2017-18 on 27.05.2016, which is on the date of search, which includes a sum of Rs.3.00 crores cash paid by the assessee to one Mr. Santosh of M/s.NAC Jewellers Pvt. Ltd. and confirmed by the party. Therefore, addition is required to be made to the extent of Rs.422.00 lakhs for the assessment year 2017-18 and thus, we direct the Assessing Officer to sustain addition to Rs.422 lakhs for the assessment year 2017-18.”

18. In another case of “DCIT Vs. Shree Bhagwati Machines Pvt. Ltd.”, (Supra) ITAT Jaipur Bench has held as under:

“14. As regards the ground number four we concur the arguments of the Id. AR of the assessee that the revenue cannot take a plea that in the AY 2017-18, 2018-19 & 2019-20 Shri Yashwant Sharma has not offered peak credit. A cash book was prepared and submitted before the Id. AO and Id CIT(A) which is not disputed even by the AO when he was present in the proceeding before the Id. CIT(A) he was fully satisfied with the peak worker out on the basis of the documents recovered during the search. During the AY 2017-18, 2018-19 & 2019-20 no peak was materialized and

thus question of offering the peak amount during these period does not arise and this fact is accepted by the Id. AO before the Id. CIT(A). Even in the submission made in this appellate proceeding the Id. AO not commented on the working of the peak. Not only that once a view has already been taken and accepted that the seized material is not related to the assessee and when the calculation of the peak is already accepted in case of Yashwant Sharma whether the peak is taxable in particular year cannot be ground that can be considered in the light of the facts discussed here above we see no merits on this ground no 4 of the revenue and the same is also stands dismissed.”

19. *In the instant case, the Assessing Officer has admitted that what was recorded in the impounded document towards debit side and credit side is investment outside regular books of account, although nature of said investment is not known to the assessee as well as the Assessing Officer. Therefore, we are of the considered view that either the Assessing Officer has to take one side credit entries and other side debit entries from the pages of the alleged Diary No. SGF XIV to compute real income of the appellant assesses by considering debit side of entries as expenditure incurred for earning said income or else he ought to have adopt peak credit theory to compute real income investment in properties from the receipts and payment sides of the dairy. Thus, in our view, the credit entry does not depict any income/receipt and debit entry does not show any light on expenditure/investment, then the only possible method to determine undisclosed income for the above period is adoption of peak credit theory and in this case, particularly peak credit theory is best method to determine undisclosed income of the assessee. The assessee has filed working of peak credit, as above which is available in paper book filed for relevant period. The assessee has copied date-wise of receipt and payments entries contained in impounded documents for washing of peak credit of Rs. 1,40,65,000/- and same is filed on record.*

20. *From the above, it is evident that as against aggregate peak of Rs. 1,40,65000/- (Rs. 70,32,500/- each) from the diary in all the years, the appellants have already disclosed income of Rs. 3 crores in aggregate in their ITRs for AY 2014-15 and paid taxes based on the alleged incriminating documents/diaries during the survey. Thus, in our view, the income computed on the basis of peak credit is covered by the surrendered income made during the survey and therefore, no further addition is required to be made in the previous assessment years of the appellants.*

21. *It is settled law that if assessee makes disclosure in survey or search in different year or in different hand of the group and files ITR accordingly but subsequently the AO holds that this income pertains to different year or different group assessee, the assessee must be allowed credit of income surrendered and disclosed in other year or*

other group assessee. If the credit of the disclosed income is not allowed, then it will amount to impermissible double taxation.

22. *In the case of "Ashish Plastic Industries Vs. ACIT", (Supra) the Hon'ble Apex Court has observed as under:*

Income-tax Act, 1961 - Section 133A - Course of survey operations – Dishonor of cheques - Sales and closing stock of finished products - It was admitted that the stock as per the books was around excess stock of was accordingly admitted - On this basis addition was made and assessment order was passed by assessing authority in respect of assessment - Before the Commissioner Appellant- sought to explain this difference by alleging that up to finished products was made by one of sister concerns of namely Agro Ltd. and same was wrongly shown to be that - On this plea taken by in support of which some documents/materials were also filed - Commissioner asked for remand report from assessing authority - Before assessing authority representatives of were asked to produce books of account of assessment - It was found that sales of finished product shown in sales register of sister concern tallies with impounded stock register - It was also found that sales proceeds was received by sister concern, namely through its bank account in Bank of Baroda – Held, learned Counsel for Appellant has brought to our notice a different aspect which was raised at time of admission of present special leave petition filed by Appellant - He drew our attention to orders dated February - Leave granted limited to question as to whether in respect of sales which are shown in stock register of. Ltd., there has been double taxation - It is clear from above that leave was granted limited to question as to whether addition made on account of aforesaid sale would amount to double taxation - To put it differently submission of learned Counsel for Appellant is that on the aforesaid sales, which are found in the accounts of Plastic Industries receipts are shown as income on which tax has been paid by During hearing of this appeal, learned Counsel submitted that he can bring satisfactory evidence in support of this plea - Court are of the view that order of authorities below should be sustained but if Appellant is able to prove that tax on income generated from sale of material has been paid by M/s. Ashish Agro P. Ltd. benefit thereof should be extended to Appellant.

23. *In the present cases, since the appellant-assesseees have made disclosure in survey in two hands of the group (Father and Son), paid taxes and accordingly, files ITR and hence, in our view, the assessee must be allowed credit of income surrendered in hands of both the assesses, otherwise it would amount to impermissible double taxation. The Ld. DR did not file any citation or rebuttal either on the fact of computation of real income by applying peak credit as above or*

impermissible double taxation on the disclosed income by the appellant assessee.

24. *Considering the factual matrix and the judicial pronouncements, we hold that the Ld. CIT (A)'s order is perverse to the facts on record as he has confirmed the order of Ld. AO in a routine manner without appreciating merits of the case. We, therefore, quash the impugned order in respect of the assessment year 2011-12 in ITA No. 55/Asr/2019.*

25. *The facts in ITA No. 55/Asr/2019 in respect of Asstt. Year 2011-12 to the facts in the bunch of the appeals are identical on parity of facts and therefore, our observation and finding given in the ITA No. 55/ASR/2019 in respect of the Assessment Year 2010-11 shall be applicable to the bunch of appeals in ITA Nos. 56 to 58/ASR/2019 and 60 to 63/ASR/2019 in respect of the Assessment Years 2010-11 to 2013-14, in mutatis mutandis.*

26. *The additional ground and the Ground No. 7,8 and 9 are legal ground, challenging the validity of assessment proceedings under section u/s 143(3)/147 of the Income Tax Act. 1961 on account of invalid reason being recorded by the AO to suspect and not to belief; non-service of notice issued u/s 148. Approval of the PCIT u/s 151(2) of the Act, and one additional legal ground that Notice u/s 143(2) issued on the same day of filing of ITR in response to notice u/s 148, has rendered the impugned assessment as invalid since issuance of such notice u/s 143(2) on same day is invalid.*

27. *Since, the appellant assessee gets relief on merits and hence, the legal issued rendered academic and not adjudicated."*

8. A perusal of the above order would indicate that in principle, Tribunal agreed that this diary deserves to be treated in the hands of both the individuals. The Tribunal has worked out the peak credit on the basis of credit and debit entries in this diary. Therefore, whatever has been written in the diary, that has been taken into consideration and an amount has been worked out. Thereafter, since both individuals have declared the income in their hands which was

sufficient to take care of such peak credit, Tribunal has given the set off but it is discernible that diary has been accounted and treated as belonging to both the individuals. Hence, in principle, Tribunal has confirmed the addition on substantive basis in the hands of individuals. Therefore, no protective addition deserves to be made in the case of the present assessee. We do not find any error in the order of 1d.CIT (Appeals). Accordingly, all the four appeals are dismissed.

9. In the result, all the four appeals are dismissed.

Order pronounced on 15.01.2026.

Sd/-

Sd/-

(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

(RAJPAL YADAV)
VICE PRESIDENT

“Poonam”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चंडीगढ़/ DR, ITAT, CHANDIGARH
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