

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

BEFORE SH. T. S. KAPOOR, ACCOUNTANT MEMBER  
AND SH. N.K. CHOUDHRY, JUDICIAL MEMBER

**I.T.A No. 576/(Asr)/2013**  
Assessment Year: 2009-10  
PAN: ABJPB2286M



Harpreet Singh Bhinder (Prop) Vs.  
M/s Bhinder & Sons,  
Bathinda.  
**(Appellant)**

A. C. I. T.,  
Circle-1  
Bathinda.  
**(Respondent)**

Appellant by : Sh. Tarun Bansal (Adv.)  
Respondent by: Sh. Rahul Dhawan (D. R.)

Date of Hearing: 10.08.2017  
Date of Pronouncement: 20.09.2017

**ORDER**

**PER T. S. KAPOOR (AM):**

This is an appeal filed by assessee against the order of Ld. CIT(A), Bathinda dated 27.06.2013 for Asst. Year: 2009-10.

2. The assessee has taken amended grounds of appeal, vide application dated 08.04.2016, however vide application dated 18.07.2016, the Ld. AR has withdrawn ground no. 2 and instead vide letter dated 18.07.2016, the assessee has requested to accept additional grounds of appeal, therefore the original ground no. 1 and additional ground of appeal are reproduced below:

*"1. That the Ld. AO has wrongly made addition of Rs.91,568, ignoring the fact that it includes conditional security, Service-tax etc in it and which is not part of taxable income.*



2. That AO has wrongly accepted deposit of three persons as surrendered amount, by treating the same, as received from two persons, further ignoring that amount is received through three payee's account Draft / cheques during the year as under and assessee was unable to explain the same during assessment being seriously ill:-

S. No.	Name and address of depositor	Amount of deposit	Mode of payment	Date of entry in passbook	PAN no. and Ward of assessment
A)	Prof. Jasreen Kaur Layalpur Khalsa College, Jalandhar	Rs. 1,00,000/- + bank charges Rs.275/- = Rs. 1,00,275/-	By P/A bank draft issued from Punjab National Bank, Jalandhar	04.11.2008	ABNPK1866G Ward-3 (1), Jalandhar
B)	Harkamal Singh S/o Kuldeep Singh #1119, Sector-70, Mohali	Rs.50,000/-	By P/A cheque no.209632 dated 1.6.2008 on ICICI Bank Mohali	19.06.2008	ALHPM5317L Ward-6(3), Chandigarh
C)	Kuljeet Singh alias Arvinder S/o Moti Singh Multania Road, Bathinda	Rs. 1,75,000/-	By P/A cheque no.78605 on HDFC Bank, Bathinda	30.12.2008	AXFPS6944R Ward-1(2), Bathinda
	Total	3,25,000			

3. At the outset, the Ld. AR invited our attention to an application dated 08.04.2016 for admission of additional evidence under rule 29 with respect to ground no. 2. The Ld. AR explaining the facts of the case submitted that assessee was a contractor and he had filed return of income after getting books of account audited. During assessment proceedings, the Assessing Officer required assessee to explain cash credits to the extent of Rs.3,25,000/-. It was submitted that at point of time, the assessee was seriously ill and was having suicidal thoughts and therefore the Ld. AR of the assessee contacted the wife of assessee and advised her to surrender these amounts, and therefore the Ld. AR surrendered these amounts. The Ld. AR submitted that assessee could



not agitate this addition before Ld. CIT(A) as he was seriously ill and in this respect our attention was invited to various medical prescriptions placed in the file. The Ld. AR submitted that in fact these payments were received from 3 persons and the amounts were received through cheques and the depositor was having PAN nos. and depositors has also filed affidavits alongwith copy of banks statements which are in the form of additional evidences. It was submitted that Hon'ble Punjab & Haryana High Court in the case of Vijay Kumar Jain Vs. CIT (1975) 99 ITR 349 has held that an appellatant who did not press an issue before the authorities below can still agitate the same before ITAT. Therefore it was prayed that in the interest of substantial justice, the matter may be sent back to the Assessing Officer for examination.

As regards, the first ground of amended grounds of appeal, the Ld. AR submitted that the amount of contract receipt was received in the subsequent year and therefore was included in the income of subsequent year. He further pointed out that the amounts of Rs.91,568/- was inclusive of service tax , Draft/ Charges, conditional security etc. and if at all the additions were to be made, it was to be restricted to the extent of Rs.83,043/-.

4 The Ld. DR on the other hand submitted that before Ld. CIT(A), the grounds of appeal relating to cash credit was not taken and the grievance of the assessee is not coming out of the order of Ld. CIT(A). He further submitted that during assessment proceedings, the assessee had



surrendered the amount of Rs.3,25,000/- being unexplained cash credit and therefore Assessing Officer has rightly made the addition.

5. We have heard the rival parties and have gone through the material placed on record. As regards the issue of cash credits amounting to Rs.3,25,000/-, we find that the Assessing Officer had made addition of this amount as the assessee had surrendered the same. Before Ld. CIT(A), this grievance was not agitated, however before us, the assessee has taken this grievance of assessee as an additional ground of appeal. From the additional evidences filed by assessee, we find that the amount of Rs.3,25,000/- represented amounts received from 3 persons which were received through banking channels. The depositor has filed their affidavits and has also filed the copy of bank statement from where the amounts were given to assessee. Such evidences are placed in the application for additional evidence at pages 51 to 57. The examination of the affidavits and a copy of bank accounts clearly establish that assessee had received these amounts from 3 persons who were having their PAN nos. and who has also filed affidavits stating therein the fact of having given cheques to the assessee. During assessment proceedings the assessee had surrendered the amounts being unexplainable but as per the evidence on record these deposits seem to be explained but which were surrendered as the assessee was not having good health and the wife of assessee, therefore instead of disturbing his husband offered to pay tax. However it is a fact that tax cannot be levied on ignorance of law and income has to be computed in accordance with the provisions of law.



In view of the peculiar facts and circumstances we accept additional ground of appeal alongwith additional evidences and the case is sent back to Assessing Officer to consider these evidences.

As regards the other addition of Rs.91568/-, we find that assessee was required to include this income in the total income as he had claimed tax deducted at source on this receipt during this year and therefore we hold that the authorities below has rightly made the addition, however the taxable amount should be restricted to Rs.83043/- being the amount received by assessee + TDS deducted. The rest of amount which include draft/ charges, service tax etc. is not taxable.

6. In view of the above, the appeal filed by assessee is partly allowed, and partly allowed for statistical purposes.

Order pronounced in the open court on 20.09.2017

Sd/-  
(N. K. CHOUDHRY)  
JUDICIAL MEMBER

Dated: 20.09.2017.  
/GP/Sr. Ps.

Copy of the order forwarded to:

- (1) The Assessee: *mm*
- (2) The
- (3) The CIT(A),
- (4) The CIT,
- (5) The SR DR, I.T.A.T.,

Sd/-  
(T. S. KAPOOR)  
ACCOUNTANT MEMBER

True copy

By Order *Seem Parbasi*

वरिष्ठ निजी सचिव  
Sr. Private Secretary  
आयकर अपीलिय अधिकरण  
Income-Tax Appellate Tribunal  
अमृतसर  
Amritsar