

**IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCHES, 'B', CHANDIGARH**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 665/Chd/2016
Assessment Year: 2013-14**

The ACIT, Circle, Patiala	Vs.	Sh. Mohinder Singh, S/o Sh. Ram Kishan, Vill. Deelwal, Patiala (Through L/H Smt. Jaswinder Kaur, Sh. Jasvir Singh, Shri Harmel Singh & Sh. Kulvir Singh through authroised Sh. Jasvir Singh, Vill Deelwal, Patiala PAN No. EVCPS 8961K
(Appellant)		(Respondent)

**ITA No. 666/Chd/2016
Assessment Year: 2013-14**

The ACIT, Circle, Patiala	Vs.	Sh. Mohinder Singh, S/o Sh. Ram Kishan, Vill. Deelwal, Patiala (Through L/H Smt. Jaswinder Kaur, Sh. Jasvir Singh, Shri Harmel Singh & Sh. Kulvir Singh through authroised Sh. Jasvir Singh, Vill Deelwal, Patiala PAN No. EVCPS 8961K
(Appellant)		(Respondent)

Appellant By : Shri Ravi Sarangal
Revenue by : Shri Deepak Aggarwal

**ITA No. 474/Chd/2017
Assessment Year: 2013-14**

Sh. Malkit Singh, S/o Sh Balwant Singh, VPO Deelwal, Distt. Patiala PAN No. DHQPS5112F	Vs.	The ITO, Ward-2, Patiala
(Appellant)		(Respondent)

Appellant By : Shri N.K. Shahi
Revenue by : Shri Ravi Sarangal

Date of Hearing : 17.10.2017
Date of Pronouncement : 16.01.2018

ORDER**Per Sanjay Garg, Judicial Member:**

The captioned appeals are relating to two different assessees. ITA Nos. 665 & 666/Chd/2016 have been preferred by the revenue against the orders of the Commissioner of Income Tax (Appeals) [in short CIT(A)] dated 30.3.2016 and 31.3.2016 respectively in the case of assessee Mohinder Singh, whereas ITA No. 474/Chd/2017 has been preferred by the assessee Malkiat Singh against the order of the CIT(A) dt 20.2. 2017. Since the matter involved in all the appeals is interlinked and the findings given in one case may have bearing on the other, hence, at the request of the ld. counsels for the respective parties, all the appeals have been heard together and are being disposed of with this common order. ITA Nos. 665 and 474 are in relation to quantum additions whereas ITA No.666 is relation to the penalty levied u/s 271(1) (c) of the Income Tax Act. First we take up the appeals relating to the quantum additions.

ITA No.665/Chd/2016 & 474/Chd/2017:

2. These appeals are interlinked as the impugned additions relate to the same transaction of sale and purchase of property. Assessee Mohinder Singh (since deceased through his legal heirs) was the seller of the property whereas assessee Malkiat Singh was the purchaser of the property.

3. The brief facts relevant to the issue under consideration are that during the election days, a police party intercepted the vehicle of Shri Mohinder Singh, assessee (since deceased, now represented through his legal heirs) and recovered the cash amount of Rs. 2,46,30,000/-. The

information was also given to the income tax authorities who reached the police station and recorded the statement of Shri Mohinder Singh u/s 131 (1A) of the Income Tax Act. In his statement, Shri Mohinder Singh stated that he was an agriculturist and that the source of the aforesaid cash was from the sale of his agricultural land at Village Deelwal to one Shri Malkiat Singh S/o Shri Balwant Singh (appellant in ITA No. 474/Chd/2017), who was a property dealer and was dealing in properties along with M/s J.P. Properties Dealers, having its office, opposite Punjabi University, Patiala. Shri Mohinder Singh also produced the photocopies of the three sale deeds dated 23.11.2012, 28.12.2012 and 4.2.2013, however, the total sale value mentioned in all the three sale deeds was Rs. 42,37,500/-. He was asked to explain the source of the remaining amount of Rs. 2,03,92,500/- but he insisted that the entire amount was relating to the aforesaid sale of land. He explained that the sale deed was executed at Govt./Circle rates which was less than the actual consideration received by him. But the income tax authorities were not satisfied with his explanation, hence, an authorization u/s 132 A of the Income Tax Act was issued by the DIT (Investigation) Ludhiana and cash amounting to Rs. 2,03,92,500/- was requisitioned and seized u/s 132A of the Income Tax Act. Statement of Shri Malkiat Singh was also recorded in which he denied of having paid any other money except the sale consideration depicted in the sale deeds. He also denied of having any relation with M/s J.P. Properties Dealers. However, he submitted that he runs his business of property dealer, opposite Punjabi University, Patiala, but he could not give complete address of his office. Income tax authorities made discreet inquiries but no such office could be found. Subsequently, a survey action was carried out

u/s 131A on the premises of Shri Jagdev Singh, Prop. M/s J.P. Property Dealer, Patiala on 23.4.2013 and his statement was recorded in which he stated that he knew Shri Malkiat Singh, who had paid a sum of Rs 2,46,30,000/- to Shri Mohinder Singh to purchase the property through three different sale deeds but all the sale deeds were executed at circle rate depicting total sale consideration at Rs 42,37,500/-. Subsequently, summons were sent by the Income Tax Authorities (Investigation Wing) to Shri Malkiat Singh, to appear on 29.4.2013 but he simply sent the copy of his income tax return and did not appear in person. From the statements of Shri Mohinder Singh, Shri Jagdev Singh and from the conduct of Shri Malkiat Singh it was inferred by the income tax authorities that Shri Malkiat Singh paid cash of Rs 2,46,30,000/- to Shri Mohinder Singh to purchase the properties. Hence, it was concluded that Shri Malkiat Singh could not satisfactorily explained the source of the aforesaid amount and that the same was required to be assessed as unaccounted income u/s 69 of the I.T. Act in the hands of Shri Malkiat Singh. In the case of Shri Mohinder Singh, it was observed that had the cash not been seized by the police and requisitioned by the income tax department, Shri Mohinder Singh would never had paid capital gains tax. The Dy. Director of Income Tax (Investigation), Patiala accordingly in his appraisal report suggested the assessing officer to go through the relevant statements and the evidences and assess the unaccounted income of Rs. 2,46,30,000/- in the hands of Shri Malkiat Singh and Shri Mohinder Singh. The assessment proceedings accordingly were carried out in the case of Shri Mohinder Singh u/s 143(3) read with section 153A of the Act, [though mentioned by

the AO as 153 B (1)(b)]. The assessment in the case of Shri Malkiat Singh was also reopened u/s 147 of the Act.

4. During the assessment proceedings in the case of Shri Mohinder Singh, the AO concluded that in the registered sale deeds the sale proceeds were mentioned at Rs. 42,37,500/- and the AO treated the same as capital gain. The rest of amount of Rs 2,03,92,500/- was considered as unexplained cash for which the assessee had failed to offer satisfactory explanation and he accordingly added the same into the income of the assessee u/s 69A of the Act.

5. In the case of Shri Malkiat Singh, the AO confronted him of with the statement of Shri Mohinder Singh recorded at the time of seizure of the amount from him, the reply dt. 5.11.2015 filed by Shri Jasvir Singh S/o Shri Mohinder Singh, wherein they have stated that the actual sale consideration for the land sold by them was Rs. 2,46,30,000/- and not Rs. 42,37,500/-. Shri Malkiat Singh was also confronted with the statement of Shri Jagdev Singh recorded by the DDIT (Investigation) to this effect. Further, the statement of Shri Jagdev Singh Prop. of M/s J.P Property Dealers was also recorded on 21.3.2016 during the assessment proceedings. When confronted with the above, the assessee Shri Malkiat Singh could explain the source of investment of 42,37,500/- only , the amount which he claimed to have paid to Shri Mohinder Singh as sale consideration of the property, The AO accordingly added the remaining amount of Rs.2,03,92,500/- into the income of the assessee Sh. Malkiat Singh as unexplained investment. Further, an amount of Rs. 27,45,500/- was added to the income of the assessee from the property dealing business of the

assessee. It is pertinent to mention here that both the assesseees namely Shri Mohinder Singh and Shri Malkiat Singh were assessed by different assessing officers.

6. Shri Malkiat Singh and Shri Mohinder Singh filed separate appeals before the Commissioner of Income Tax (Appeals).

7. The ld. CIT(A) in the case of Shri Mohinder Singh (seller) observed that he had received a sale consideration of Rs 2,46,30,000/- from the sale of his agricultural land from Shri Malkiat Singh, whereas, the sale deed was executed at much lesser rate. He further observed that purchaser had started selling land purchased from Shri Mohinder Singh immediately i.e. during the period from 26.11.2012 to 24.12.2012 at a much higher rate by carving residential / commercial plots out of the aforesaid land purchased from Shri Mohinder Singh. The rates varied from Rs. 3,000/- per square yard to Rs. 13,021/- per square yard as against the purchase cost ranging between Rs.600/- to Rs.800/- per sq. yard (as mentioned in the alleged sale deeds). He observed that the subsequent sales started immediately on the execution of the first sale deed and even prior to the execution of second sale deed by Shri Mohinder Singh (seller) to Shri Malkiat Singh (purchaser). He observed that such a huge profit was not possible in a short span of 3 days from the execution of first sale deed on 23.11.2012. The ld. CIT(A) observed that it could not be presumed that Mohinder Singh was unaware of the market rate of land sold to Shri Malkiat Singh. The Ld. CIT(A) further observed that even if, it is assumed that the assessee Sh. Mohinder Singh was not aware of the market price of his land at the time of execution of first sale deed but he could have refused the execution

of second sale deed on 28.12.2012 at the rate of Rs. 730/- per square yard whereas, the purchaser Sh. Malkiat Singh had sold the land measuring 1300 square yards at a price of Rs 3,899/- per square yard purchased by way of first sale deed at the rate of Rs 625/- per square yard. The Ld. CIT(A) further observed that it was a general practice prevalent in rural area to execute sale deed at the circle rate rather than at actual settled sale consideration to avoid stamp duty. The Ld. CIT(A), therefore considering the overall facts and circumstances, evidences and the statements recorded by the parties observed that the amount seized of Rs. 2,03,92,500/- seized from Shri Mohinder Singh was on account of sale consideration of his agricultural rural land and that no addition was warranted in the hands of Sh. Mohinder Singh u/s 69A of the Act.

8. In the appeal of Shri Malkiat Singh, the ld. CIT(A) held that the actual sale consideration paid by Shri Malkiat Singh was Rs. 2,46,30,000/- and further that he had failed to prove the source of the out of record cash payment of Rs.2,03,92,500/-. He, therefore, confirmed the aforesaid addition made by the AO in the hands of Shri Malkiat Singh as unexplained investment. In respect of the addition of Rs. 27,45,500/-, the ld. CIT(A) allowed the claim of expenses of Rs 3,45,657/- and confirmed the remaining addition.

9. Being aggrieved by the aforesaid separate orders of the CIT(A), the Revenue has come in appeal agitating the action of the CIT(A) in deleting the addition in the hands of Shri Mohinder Singh, whereas, the assessee Shri Malkiat Singh has come in appeal agitating the confirmation of the aforesaid additions made by the AO.

10. We have heard the rival contentions and have also gone through the records. Shri Deepak Aggarwal, the Ld. counsel for the seller Shri Mohinder Singh has submitted that from the aforesaid facts, it was established that the actual sale consideration received was at Rs. 2,46,30,000/- whereas at the instance of the purchaser Shri Malkiat Singh, to avoid stamp duty payable to the government, the sale deeds were executed at very low amount of Rs. 42,37,500/-. That it was a common practice to execute and register the sale deeds at lower/circle rates to avoid stamp duty. That the land sold by Shri Mohinder Singh was rural agricultural land and that the amount recovered from him was on account of consideration for the sale of land and, hence, no addition was warranted in the hands of Shri Mohinder Singh. He in this respect has relied upon the decisions of the Hon'ble Allahabad High Court in the case of 'CIT vs Intezar Ali' vide order dt 26.7.2013 in ITA No. 162 of 2013.

11. On the other hand, Shri N.K. Shahi, Advocate, Ld. counsel for the purchaser Shri Malkiat Singh, has submitted that the actual sale consideration paid was Rs. 42,37,500/- and that the same was correctly written in the sale deeds. That there was no evidence that any extra money has been paid by Shri Malkiat Singh. That when the terms of a deed are required to be reduced into writing and also the said writing is required to be registered under the law, then the oral evidence in relation to the terms of such registered sale deed was not admissible. That even the amount was recovered from Shri Mohinder Singh on 26.2.2013 i.e. after a gap of 94 days of the execution of the first sale deed and after a gap of 22 days from the execution of the last sale deed on 4.2.2013. That the addition, if any is warranted, that has to be made in the hands of the

persons from whom the cash was seized. The reliance of the lower authorities on the oral evidence of the seller and his son was misplaced as they were interested parties. That even during the assessment proceedings, Shri Mohinder Singh seller, did not appear before the AO rather a reply was filed by Shri Jasvir Singh, on his behalf, even that was not a sufficient or reliable evidence to assume that any consideration higher than that was depicted in the sale deed was paid by Shri Malkiat Singh to Shri Mohinder Singh. That Shri Jagdev Singh was neither a witness to the sale deeds nor he could bring any material on record of any extra payment by Shri Malkiat Singh. That the AO had failed to consider the affidavit of Shri Malkiat Singh declaring that he purchased the land for a sum of Rs 42,37,500/- only. Even the lower authorities ignored the statement made on oath by Shri Malkiat Singh before the Investigation Wing. He in this respect has relied upon the decision of Hon'ble Supreme Court in the case of 'K.P. Varghese Vs ITO' [1981] 131 ITR / 7 Taxman 13 (SC). He has further relied upon the following decisions:

- (i) *Rajdeep Builders Vs. ACIT, Shimla* [2012] 21 taxmann.com 254 (Chd.)
- (ii) *Paramjit Singh v ITO* [2010] 323 ITR 588 / 195 Taxman 273 (P&H)
- (iii) *Subhash Chand v ACIT* [2012] 49 SOT 732/18 taxmannn.com
- (iv) *CIT Vs. Satinder Kumar* [2011] 250 ITR 484 / [2002] 120 Taxman 470 of Punjab & Haryana High Court.
- (v) *Motors & General Stores (P) Ltd* [1967] 66 ITR 692 of Punjab & Haryana High Court
- (vi) *CIT Vs. P.V. Kalyansundaram* [2006] 202 ITR 259 / 155 Taxman 454 of Madras High Court
- (vii) *Ram Chandra Construction (P) Ltd v ACIT* [2011] 131 ITD 71/11 taxman.com 415 (Agra)(TM)

(viii) CIT Vs. Smt. K.C. Agnes [2003] 262 ITR 354 / 128 Taxman 848

12. Shri Ravi Sarangal, the Ld. DR, appearing in both the appeals on behalf of the department has strongly pressed for confirmation of addition in the hands of purchaser Shri Malkiat Singh. His main argument was that it is a common practice that the sale deeds in respect of agricultural lands are registered showing passing of less consideration as compared to the actual consideration paid so as to avoid the stamp duty. That this illegal practice is being adopted at the instance of the purchaser of the land who is required to pay the stamp duty. That the seller is a victim and if the addition is made in the hands of the seller, he would suffer double loss as he has not only parted with his land but would have to pay a part of consideration towards taxes on account of unexplained income u/s 69 of the Act, whereas the sale consideration received by the seller is on account of sale of agricultural land exempt from taxation.

13. We have considered the rival contentions. The following facts have emerged and been established from the rival pleadings and evidences on the file:

- i) An amount of Rs. 2,46,30,000/- was seized u/s 132 A from the person of Shri Mohinder Singh (seller). He explained that the entire amount was received as consideration on the sale of his agricultural land to Shri Malkiat Singh, however, the sale deed was executed at circle rate i.e. at Rs. 42,37,500/-. Further that the deal was settled in the office of Sh. Jagdev Singh, Prop. J.P. Property dealer. That prior to the execution of sale deed,

an agreement to sell was also entered into and that Sh. Jagdev Singh was also witness to that agreement.

- ii) Statement of Sh. Mohinder Singh was instant and he had been consistent throughout on his aforesaid statement / explanation.
- iii) The aforesaid contention of Shri Mohinder Singh, the seller was further corroborated with the statement of Shri Jagdev Singh, Prop. of M/s J.P. Property Dealer. Even Shri Jasvir Singh S/o Shri Mohinder Singh, who was also a witness to the aforesaid sale deeds, reaffirmed the aforesaid averments in his reply to the assessing officer during the assessment proceedings in the case of Shri Malkiat Singh.
- iv) Shri Malkiat Singh, Seller, though purchased the land at a low rate of Rs. 600 to Rs. 800/- per square yard, but immediately sold it at a much higher rate ranging between Rs. 3,000/- to Rs. 13,000/- per square yard that too immediately after the execution of the first sale deed and prior to the execution of second sale deed by Shri Mohinder Singh in favour of Shri Malkiat Singh.
- v) Very small parts of the land were sold vide three sale deeds. Though the land was purchased by Sh. Malkiat Singh as agricultural land but the same was sold in the form of residential/commercial plots without carrying out any further development activity.
- vi) Though Shri Malkiat Singh claimed himself to be in the business of property dealer, however, he could not give the exact address of his office. Further, the address mentioned by his is of the same locality in which the office of Sh. Jagdev Singh of M/s J.P. Property Dealer exists. Shri Jagdev Singh had also admitted that he had received commission out of the aforesaid transactions.

- vii) The statement of Shri Mohinder Singh (Seller), Shri Jagdev Singh of J.P. Property Dealers and reply of Shri Jasveer Singh S/o Sh Mohinder Singh was confronted to the purchaser Shri Malkiat Singh but he could not bring any dent in the same. Even Shri Malkiat Singh did not choose to cross examine the aforesaid persons / witnesses.
- viii) Sh. Mohinder Singh (seller) was an agriculturist and he had no other known source of income.
- ix) It is highly improbable that Sh. Mohinder Singh was not aware of the market/ saleable price of his land. Even it is so assumed, he got the knowledge about it on the execution of first sale deed by Sh Malkiat Singh to third parties and could have resisted for the execution of next sale deed at a much lower price to Sh. Malkiat Singh.

The facts and evidences as summed up above are sufficient to hold that the amount seized from Sh. Mohinder Singh was received by him from Sh. Malkiat Singh in respect of the sale transaction of his land which included the amount received over and above the consideration mentioned in the sale deed. The time gap of a few days, as mentioned above, between the execution of different sale deeds and the seizure of money, in our view, does not remain so material to deter the aforesaid established facts. So far as the contention that during the assessment proceeding of Sh. Malkiat Singh, Sh. Shri Mohinder Singh seller himself did not appear before the AO rather a reply was filed by his son Shri Jasvir Singh, on his behalf is concerned, we find that the Sh. Jasvir Singh in his letter filed on 5.11.2015 (copy placed at pages 26 & 27) of the paper book) has mentioned that his father Sh. Mohinder Singh was critically ill and hospitalized in Sadhbhawna Hospital and that no

adverse view in this respect be taken. Further a perusal of the impugned order of CIT(A) in the case of Sh. Mohinder Singh reveals that Sh. Mohinder Singh got expired on 10.11.2015 that is within next five days. Under the circumstances, no adverse inference is called for in this respect. Moreover Sh. Jasvir singh s/o Mohinder Singh was also a witness to all the three sale deeds in question, but the assessee Malkiat Singh did not choose to confront him in this respect. Except his own statement, Sh Malkiat Singh failed to produce any other plausible evidence to rebut the circumstantial evidences on the file that he had paid the amount over and above the sale consideration mentioned in the registered deed. From the above discussion, it can be concluded that an amount of Rs. 20392500/- was paid by Sh. Malkiat Singh to Sh. Mohinder Singh which was over and above the amount of Rs.4237500/- depicted in the sale deed.

14. Now we have to examine the legality of the additions made in the hands of the both the parties to the transactions.

The sale of land and the execution of the sale deeds has been admitted by both the seller Shri Mohinder Singh and purchaser Shri Malkiat Singh. The sale deed was entered into between the parties at their free will and at their choice. There is no averment of any party that the sale deed was executed and registered by way of or with the result of any fraud or coercion or against the consent of the parties. As per the relevant provisions of the transfer of property Act, and Indian Registration Act, the sale transaction of an immovable property above the value of Rs. 100/- and above is required to be reduced into writing and registered. As per Section 17 of the Registration Act, 1908, all

transactions that involve the sale of an immovable property for a value exceeding Rs.100, should be registered. Any document that is mandatorily required to be registered but is not registered, cannot be admitted as evidence in any court of law. As per section 54 of the transfer of Property Act (IV of 1982), transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards can be made only by a registered instrument. Generally speaking, in a sale, the three requirements of law are that transfer of property by sale must take place with the help of a validly executed sale deed, by the transferor in writing, is properly attested, and registered. Unless, the all three conditions are complied with, no right passes from the seller to the buyer or in other words, there can be no sale. Further, as per section 91 of the Indian Evidence Act 1872, when terms of contract, grants for other dispositions of property have been reduced to the form of documents then no evidence is permissible to be given in proof of any such terms of such grant of disposition of the property except the document itself or the secondary evidence thereof. What the aforesaid section 91 provides is that if the document itself creates a contract or a grant or any other disposition of property, then the terms of that contract or grant or disposition of property, cannot be proved by oral evidence. This section applies when the entire contract is in writing. According to section 92 of the evidence Act, once the documents 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 contracting, varying, adding to or subtracting from its

terms. Whereas in section 92 of the evidence Act, the oral evidence is prevented for the purpose of varying the terms of the contract as between the parties to the contract, however, no such limitations are imposed under section 91 of the Act. Hence, even if a third party wants to establish a particular contract between certain others which has been reduced into writing or is required by law to be reduced into writing, can prove such contract only by production of such writing. (Meenakshisundram Pillai v. S.T. Chenchu Mudaliar and another AIR, 1928 M 459:109 IC 18). Further, it is settled law that unstamped or insufficiently stamped document cannot be used for any purpose. Section 35 of the Indian Stamp Act prohibits the use of any instrument chargeable with duty unless it is duly stamped.

Even the Ld. counsel for the assessee Shri Malkiat Singh has placed reliance on the decision of Hon'ble Punjab & Haryana High Court in the case of 'Paramjit Singh Vs ITO' (supra). The Hon'ble High Court has held that the consideration mentioned in the sale deed has to be considered as sale consideration passed between the two parties. The Hon'ble High Court rejected the contention that no sale consideration was passed between the parties as both the parties to the transactions were brothers and that two brothers had relinquished their right in favour of son of the one of their third brother without accepting any consideration. The Hon'ble Punjab & Haryana High Court while placing reliance on sections 91 & 92 of the Indian Evidence Act, held that no oral evidence or agreement contradicting / varying the terms of a documents could be offered. That the sale consideration disclosed in the sale deed has to be accepted and it cannot be contradicted by adducing

any oral evidence. The reliance of the Ld. counsel on the above referred to other decisions is also in support of the above contention.

15. Now, in view of the above referred to various provisions of different statutes relating to the transfer of immovable property as well as in the light of the decision of Jurisdictional High Court in the case of Paramjit Singh (supra) and other decisions as referred to above, the question before us is as to whether any evidence can be admitted to prove that any amount was paid or received relating to the transfer of immovable property outside the written and registered sale deed of that property?; The answer will be 'No' as the same will constitute an evidence varying the terms of the written and registered contract. Suppose, the alleged sale deeds are cancelled for any reason or by the intervention of the Court, whether the purchaser will be entitled to refund of any other amount except that has been depicted in the sale deed itself ?; then again, the answer will be in 'negative' as any oral evidence in this respect will be inadmissible. Now, under the circumstances, any amount received or paid by a person in excess or out of the terms of written and registered contract whether can be said to be the consideration for the property which is the subject of the contract, the answer will be again 'No'. Even such a plea, if admitted, would render the instrument as insufficiently stamped making it as inadmissible in evidence and cannot be acted upon. Even allowing the parties to take such pleas will be against the public policy.

16. Now, coming to the question as to why the parties to the transactions chose to get it registered at a lower rate than actually agreed to? The answer, obviously, is to avoid payment of higher stamp

duty, in other words, to defraud the state exchequer. The seller as well as the purchaser connived with each other to falsely represent to the concerned public authority / land revenue officer entrusted with the work of registration and collection of stamp duty about the sale consideration at a far less amount than that was actually agreed to. In our view, It is not fraud or misrepresentation to that that public officer in person, rather the same is with the 'State' as the said officers being its employee act on behalf of the 'State'. The aforesaid act of misrepresentation regarding the sale consideration has not caused any personal loss to the aforesaid official, but financial loss to the State Exchequer. The income tax authorities being revenue officials are also the public authorities appointed for the collection of income tax revenue for the state exchequer. The question before us is when a person commits fraud with the State or the Govt. at one stage misrepresenting to an employee/ public authority of one department of the 'State' and gets wrongful benefit, can he be allowed to take a different stand before another employee/public authority of the other department of the 'State' or the 'Govt.' to say that he had falsely represented about the actual consideration of the transaction before the first public authority and that now the second public authority should not believe that false representation and whether can be allowed to take the benefit of his own wrong. Interestingly, both the authorities herein referred to are revenue authorities, the first being land revenue authority and the second income tax revenue authority. In our view, in such circumstances, both seller and purchaser are estopped from their act and conduct to take such a self-contradictory plea. Not only the earlier but the later authorities

also are the public officers appointed for the collection of taxes contributing to the public exchequer (may be of the State or of the Union) and a person having represented the factum of the transaction in a particular manner at one stage to a public officer and getting a wrongful benefit, in our view, is estopped to deny the same to the subsequent public authority, both authorities being employee and representative of the government. The principle of estoppel in the light of the provisions of section 115 of the Evidence Act gets attracted in such a case. Even otherwise, recognizing such a transaction will amount to overriding the provisions of Transfer of Property Act and Indian Registration Act. In view of the above discussion, it can be safely held that not only legally but also ethically and morally, the parties to a registered document are not allowed to deny the terms of the document until and unless the very validity or execution of such a document is disputed. Admittedly, the tax authorities are not bound by the technicalities of the Evidence Act, but, the general principles of evidence are applicable to income-tax proceedings. Reference can be made to the decision of the Hon'ble Supreme Court in the case of *Chuharmal vs Commissioner Of Income-Tax*, 1988 AIR 1384, 1988 SCR (3) 788 : (1988) 172 ITR 250 (SC). The Hon'ble Supreme Court while holding so referred to and approved the observations made by the Hon'ble Bombay High Court in the case of *J.S.Parker v. V.B. Palekar*, 94 ITR 616 holding that what was meant by saying that the Evidence Act did not apply to proceedings under the Income Tax Act was that the rigour of the rules of evidence contained in the Evidence Act, was not applicable but that does not mean that when the taxing authorities were

desirous in invoking the principles of the Evidence Act in proceedings before them, they were prevented from doing so. The Hon'ble Supreme Court further observed that salutary principle of common law jurisprudence embedded in the Evidence Act could be applied to the taxation proceedings.

17. As discussed above, the provisions of sections 91, 92 and 115 of the Evidence Act are based on the principles of public policy, morality and ethics. Sections 91 and 92 are based on the "Best Evidence Rule" preventing the admission of inferior evidence when the superior evidence is available so as to prevent the fraud, future controversy, bad faith or treacherous memory. Similarly section 115 of the evidence Act enshrines in it the principle of 'estoppel' which is again based on public policy, equity, justice, morality and faith. Hence the principles laid down in sections 91,92 and 115 of the Evidence Act, in our view, can be well applied to the case in hand.

18. Even the contention of the seller that it is general practice to register the sale deeds at a lesser consideration can not be accepted in the light of recognized principles of law as discussed above and even such a contention being opposed to public policy. The Hon'ble Madras High Court in the case of Coimbatore Spinning & Weaving Co. Ltd. (1974) 95 ITR 375 has observed that the Tribunal is not expected to take judicial notice of such substandard morality on the part of the assessee so as to enable them to go back on their own sworn statements.

In the case in hand, once both the parties to the transaction i.e. the seller and the purchaser had made to believe not only the public authority but the public at large that the transaction relating to purchase

/ sale of land between them was settled at a particular consideration, subsequently they are estopped from their act and conduct to plead that the actual consideration was at variance of the earlier representation. The plea on behalf of the seller that he had agreed to get the sale deed registered at a lower rate at the instance of the purchaser is of no help to him. He has been a party to the conspiracy resulting into revenue loss to the state exchequer. Even, it cannot be said that he had not got any benefit by falsely representing about the sale consideration. If, the purchaser had to pay higher stamp duty, then it accordingly will go on to reduce the sale consideration / amount payable to the seller as the purchaser takes into consideration the total amount which he would have to shell out of his pocket i.e. the sale consideration as well as stamp duty and the other charges.

19. Now, once it is held that the sale consideration is to be taken as per the registered document, what will be the nature of the extra amount received? As discussed above, the same cannot be said to be the amount received towards sale consideration of the land, rather, the same will constitute the extra money paid as consideration for the execution of the registered deed of sale of land and not for the sale of land itself. The same under the circumstances, has to be taxed as income from other sources. Such an amount received over and above the sale consideration mentioned in the registered document, partakes the character of taxable gift. Our above view also find supports from the following para of the judgement of the Hon'ble Supreme Court in the case of K.P. Varghese reported in (1981) 7 taxman 13 (SC):

“16. This construction which we are placing on sub-section (2) also marches in step with the Gift Tax Act, 1958. If a capital asset is transferred for a consideration below its market value, the difference between the market value and the full value of the consideration received in respect of the transfer would amount to a gift liable to tax under the Gift Tax Act, 1958, but if the construction of sub-section (2) contended for on behalf of the Revenue were accepted, such difference would also be liable to be added as part of capital gains taxable under the provisions of the Income Tax Act, 1961. This would be an anomalous result which could never have been contemplated by the legislature, since the Income Tax Act, 1961 and the Gift Tax Act, 1958 are parts of an integrated scheme of taxation and the same amount which is chargeable as gift could not be intended to be charged also as capital gains.”

20. Though section 52 of the Income Tax Act referred to by the hon'ble Supreme court stood omitted and even the Gift Tax Act also stood repealed, but the above proposition laid down by the hon'ble Supreme Court can be well applied in the facts and circumstances of this case.

21. So far as the reliance of the Ld. counsel for the assessee Mohinder Singh on the decision dated 26.7.2013 of the Hon'ble Allahabad High Court in the case of 'CIT vs Intezar Ali' (ITA No. 162 of 2013) is concerned, in that case the seller had taken a like stand that the amount found deposited in his bank account was out of the money received over and above the sale consideration written in the registered deed. He, proved the above factum by leading cozying and convincing

evidences. Apart from that, he not only made a complaint to the registering authority that the sale deed has been registered at a value much below the amount, which he actually received, he deposited the entire amount in the bank and voluntarily filed return. The Tribunal under the circumstances held that the seller had explained the source of the deposits which was upheld by the Hon'ble High Court. In the case in hand also, as observed above, the assessee has been able to prove the source of the amount found in his possession. However, the other facts like that the assessee in that case as an honest citizen had made a complaint to the registering authority to register the sale deed at actual price and deposited the entire amount in the bank, are missing. In the case in hand, the amount was recovered from the possession of Shri Mohinder Singh, assessee by the Police authorities. The assessee has been a partner in the conspiracy to falsely represent about the sale consideration to the registration authorities and thereby resulting into payment of less stamp duty, of which the assessee, as discussed above, has also reaped the consequential benefits. Moreover, the question as to the nature of receipt and its taxability has not been gone into by the Hon'ble Allahabad High Court. Moreover, with all the due respect, decision of the jurisdictional Pb. & Hry. High Court in the case Paramjit Singh(supra) holding the inadmissibility of oral evidence in the presence of registered deed is binding on this Tribunal. Under the circumstances and in the light of the above referred to statutory provisions and case laws, the nature of receipt of the income over and above the registered sale consideration in the hands of seller Mohinder Singh, in our view, will not fall under the head 'Capital Gains' but

‘income from other sources’. In view of the discussion made above, the amount received by Sh. Mohinder Singh, over and above the sale consideration mentioned in the registered document, is ordered to be assessed as income from other sources. The order of the CIT(A), in the case of Shri Mohinder Singh is hereby set aside. The appeal of the revenue is accordingly treated as allowed.

22. Now coming to the quantum of additions liable to be made into the income of the purchaser Shri Malkiat Singh, we have already held that it has been established that he had paid amount over and above the consideration mentioned in the registered sale deed. As discussed above, the said amount paid over and above the consideration mentioned in the registered deed cannot be considered as consideration paid for the purchase of land in question from Sh. Mohinder Singh. The assessee, Sh. Malkiat Singh will also be not entitled to claim the said amount paid over and above the consideration mentioned in the deed as cost of acquisition of land or otherwise.

Though the AO has observed that Shri Malkiat Singh has failed to disclose the source of the entire amount paid over and above the sale consideration mentioned in the sale deeds, however, a fact on the file that cannot be ignored is that Sh. Malkiat Singh, after purchasing the part of the land through first sale deed, sold the same at a higher rate to other persons. The amount received by Sh. Malkiat Singh on such a further sale can be well assumed to be source of the amount paid by him on the occasion of subsequent purchase of land from Shri Mohinder Singh, unless it is established that he had spent the said amount for some other purpose. Hence, the amount received by Sh. Malkiat Singh

on resale of land can be assumed to be source of amount paid by him to Shri Mohinder Singh (seller) on a later date. However, this fact has been ignored by the lower authorities. We, therefore, remand the matter to the file of the AO to examine this limited aspect of quantifying the additions required to be made to the income of Sh. Malkiat Singh. It is made clear that no other issue or aspect will be looked into at the end of the AO.

23. The other grounds taken in his appeal by Sh. Malkiat Singh regarding the confirmation of addition of Rs. 23,99,343/- has not been pressed, the same is accordingly dismissed as not pressed. Subject to above observations, the appeal of the assessee Malkiat Singh is treated as partly allowed for statistical purposes.

Now coming to the penalty appeal,

ITA No.666/Chd/2016:

24. The revenue in this appeal has agitated against the action of the Ld. CIT(A) in deleting the penalty levied by the Assessing officer on the assessee Mohinder Singh (seller) u/s 271(1)(c) of the Income Tax Act.

25. Pursuant to the additions made by the Assessing officer into the income of the assessee Mohinder Singh, holding that he had failed to disclose the source of the amount seized from him which was over and above the sale consideration mentioned in the sale deeds. He observed that the assessee had furnished inaccurate particulars of his income and thereby concealed his income amounting to Rs.2,03,92,500/-. He accordingly levied penalty of Rs.61,26183/- at the rate of 100% of the tax sought to be evaded.

26. The Ld. CIT(A), in appeal, deleted the penalty so levied by the Assessing officer observing that the assessee had disclosed the particulars of his income in the return of income and further that he had also disclosed the source of income being the sale consideration from the sale of land. He further observed that even in quantum proceedings, the addition made by the Assessing officer has been deleted by him vide his order dated 30.03.2016, hence he deleted the penalty so levied by the Assessing officer.

27. Now the revenue before us has agitated the above said action of the Ld. CIT(A) in deleting the penalty.

28. We have heard the rival contentions. Though, as per our findings given above, we have held that the amount received by the assessee Mohinder Singh, over and above the sale consideration mentioned in the sale deed, is liable to be assessed as income from other sources; however, we are of the view that this is not a fit case for levy of penalty u/s 271(1)(c) of the Act. The assessee had disclosed the source of income being the amount received from Sh. Malkiat Singh on account of sale of his land. The assessee was under bona-fide belief that since the entire amount received by him was on account of consideration for the sale of land, the land being an agriculture rural land falling outside the purview of the definition of a capital asset, the income from the sale of land was exempt from taxation, hence, non-offering of the said income for taxation cannot be said to be a deliberate act on the part of assessee Mohinder Singh of furnishing of inaccurate particulars of income or concealment of income.

29. In view of the above, facts and circumstances of the case, we are not inclined to accept this appeal of the revenue, the order of the Ld. CIT(A) deleting the penalty is affirmed but on different footings. The present appeal of the revenue is, therefore, stands dismissed.

30. In the result, the appeal of the Revenue relating to the assessee Mohinder Singh, bearing ITA No. 665/Chd/2016, is treated as allowed but on different footing, whereas ITA No. 666/chd/2016 is hereby dismissed. The appeal of the assessee Shri Malkiat Singh bearing ITA No.474/chd/2017 is treated as partly allowed for statistical purposes.

Order pronounced in the Open Court on 16.01.2018

Sd/-
(Dr. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Dated : 16. 01.2018

Rkk

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT*
4. *The CIT(A)*
5. *The DR*

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER