

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

डॉ. एस.सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./IT(IT)A. No. 226/JP/2021  
निर्धारण वर्ष / Assessment Years : 2017-18

Mahendra Kumar Ward No. 08, VPO Sidhmukh Distt. Churu 331701.	बनाम Vs.	ITO, Circle (Intl Tax) Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: CGTPK 8476 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri R.S. Poonia (C.A.)  
राजस्व की ओर से / Revenue by : Shri A.S. Nehara (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 12/04/2022  
उदघोषणा की तारीख / Date of Pronouncement : 23/05/2022

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal of the assessee is directed against the order of Id. CIT(A),  
Delhi-42 dated 08.09.2021 for the AY 2017-18.

2. The assessee has raised the following grounds:-

- “1. That under the facts and in the circumstances of the case the Id CIT(Appeals), Delhi-42 has erred in law and facts in confirming the addition amounting to Rs.14,31,000/- under section 69A r.w.s. 115BBE of the I.T. Act, 1961 to the income of the appellant on this count is wrong, unwarranted and bad in law. Kindly delete the addition.*
- 2. That the appellant craves permission to add to or amend to any of the ground above grounds of appeal or to withdraw any of them.”*

3. Brief facts of the case are that the assessee had filed return of income on 22.11.2018 declaring a total income of Rs. 5,340/-. The case was taken up for scrutiny. The AO collected information u/s 133(6) from the Bank of Baroda and observed that the assessee, a non-resident, had deposited cash of Rs. 11,50,000/- in his bank account with Bank of Baroda on 28.11.2016. The AO also noted that the assessee had also deposited aggregate cash amounting to Rs. 2,81,000/- in his different bank accounts on multiple dates during the month of November, 2016 i.e. during the demonetization period. The assessee was asked to explain the source of the cash deposit. The AO was not satisfied with the reply of the assessee. He treated the entire cash deposit of Rs. 14,31,000/- an unexplained and added the same to the total income u/s 69A of the Act read with section 115BBE of the Act.

4. Being aggrieved by the order of the AO, the assessee carried the matter before the Id. CIT(A), who after considering the submissions of both the parties and material placed on record, upheld the action taken by the AO and confirmed the addition made U/s 69A of the Act. The AO has also invoked the provisions of Sec. 115BBE of the Act for charging tax on the income added.

5. The Ld CIT (A) observed that as under:

*"17. In ground no. 1, the appellant has alleged that the notice u/s 143(2) was without having jurisdiction and is bad in law. The AO has noted that the appellant was a non-resident during the year. His given address was that of District Churu, Rajasthan. Therefore, clearly the jurisdiction lied with the Circle (Int. Taxation), Jaipur. This ground of appeal is without any merit and is dismissed.*

*18. Through ground of appeal no. 2, the addition has been challenged on 'law and facts'. In view of the overall discussion made*

*above, it is concluded that the appellant has failed to explain the source of cash deposited in the bank account. In the facts and circumstances of the case, the addition of Rs. 14,31,000/- u/s 69A of the Act is confirmed. This ground of appeal is dismissed.*

*19. Ground No. 3 is general in nature requiring no adjudication.”*

6. Aggrieved by the CIT(A) order, the assessee is in appeal before us. before us the Ld AR for assessee submitted that all the grounds taken by the assessee are interrelated and interconnected and mainly relates to challenging the order of the Id. CIT(A) in confirming the addition of Rs. 14,31,000/- made by the AO U/S 69A of the Act. In this regard, the Id. AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A).

7. Further the Ld AR for assessee placed reliance on various cases:-

- ITO vs. Rajeev Suresh Ghai in ITA No. 6290/Mum/2019 dated 23.11.2021.
- Smt. Suraj Kanwar Devra vs. ITO in ITA No. 50/Jofh/2021 dated 23.11.2021
- Smt. Krishna Agarwal vs. ITO in ITA No. 53/Jodh/2021 dated 07.09.2021.
- CIT vs. K. Sreedharan 201 ITR 1010 (Ker)
- Sunanda Sanjay Chandaliya vs. ITO in ITA No. 1967/PUN/2018 dated 02.05.2019.
- Dhakeswari Cotton Mills Ltd. vs. CIT 1955 AIR 65, 1955 SCR (1) 941

8. The Ld. DR, on the other hand strongly supporting the order of the CIT(A) submitted that there is no merit in arguments taken by the Ld. AR of the assessee and the AO has rightly taken as a fit case .

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The Ld AR for assessee submitted documentary evidence in the compilation of Paper Book I and II containing of 95 pages .The AO has not disputed that the assessee is NRI and cash deposits were made during the demonetization period ie from 09.11.2016 to 30.12.2016 in Bank of Baroda account . we appreciate that the AO has taken all the submission made by the assessee during the assesement proceedings and passed a detailed findings which are from the pages 6 to 12 taking into consideration of the explanation of Sec 69A and relied upon various decisions of Honble SC for the explanation of definition of Income and source of Income. But we are hesitant to accept the findings of the AO that he has not considered that the assessee has arrived India and when he was departed, where his passport was a documentary evidence.

9.1 Secondly on perusing the Bank account statement pages 2 to 4 of the paper book I. The assessee has withdrawn Rs. 11,50,000/- on 28.11.2016 for the purchase of agricultural land. Moreover the assessee has earning of income from Savings bank interest also. The money so deposited was sourced as withdrawal from the bank account of the assessee. The assessee has explained that the money has not been used as they could not buy suitable agricultural land. Department has also not placed on record that these money has been utilized by the assessee on account of demonetization the same deposited into bank account.

The bank account of the relavant transcation as been reproduced from the paper book I

M Finacle		Universal Banking Solution from IN10.3.17		04 September, 2019   User VCD37497   0956   Menu Shortcut		Go	
Account Ledger Inquiry				Help			
A/c. ID		095601000092223 INR 0956 MAHENDER KUMAR SO CHANNANMAL		A/c. Status Date		06-10-2015	
A/c. Status		ACTIVE		A/c. Close Date			
A/c. Open Date		29-03-2008		A/c. Type		CUSTOMER ACCOUNT	
GL Subhead		13421		Available Amt.		1,72,939.07 CR	
Opening Bal.		INR		Effective Available Amt.		1,72,939.07 CR	
Closing Bal.		INR		Float Bal.		0.00 CR	
Funds In Clg.		INR					
Tran. Date	Value Date	Instr. No.	Particulars	CCY	Debit Amt.	Credit Amt.	Bal.
30-03-2017	30-03-2017		PRGR/M/S SHREE RAM PETROCARS/MIWANI	INR	1,500.00		12,353.57CR.
15-03-2017	15-03-2017		SMS Alert charges for Qtr-Mar-17	INR	17.25		13,953.57CR.
07-03-2017	07-03-2017		PGDR/CLEARTRIP.COM/07-03-2017 11:10:49/SWT	INR	5,735.00		13,870.82CR.
06-03-2017	06-03-2017		PGDR/RAIR INDIA CHARTERS LIM/06-03-2017 22:42:53/S	INR	7,589.85		19,809.82CR.
01-03-2017	01-03-2017		PRGR/M/S SHREE RAM PETROCARS/MIWANI	INR	2,247.00		27,195.67CR.
15-02-2017	15-02-2017		SHASTRI KRISHI YANTR UDHYOG	INR	25,000.00		29,442.67CR.
14-02-2017	14-02-2017		MO ABBAS	INR	33,000.00		54,442.67CR.
09-02-2017	09-02-2017		02/403	INR	1,50,000.00		90,442.67CR.
06-02-2017	06-02-2017		TO CASH	INR	24,000.00		2,40,442.67CR.
06-02-2017	06-02-2017		02/368	INR	1,00,000.00		2,64,442.67CR.
04-02-2017	04-02-2017		IMPS/PZA/7035154193216729XXXXX0892/two thousand	INR	2,000.00		3,64,442.67CR.
04-02-2017	04-02-2017		IMPS/PZA/7035096572336729XXXXX0369/thirteen thousa	INR	15,000.00		3,68,442.67CR.
02-02-2017	02-02-2017		TRILOK CHAND	INR	50,000.00		3,81,442.67CR.
01-02-2017	01-02-2017		BADO DEVI SIHAG	INR	4,00,000.00		4,31,442.67CR.
31-01-2017	31-01-2017		IMPS/PZA/703150257846112XXXXX7154/five hundred	INR	500.00		8,31,442.67CR.

File 2

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27-01-2017	27-01-2017	1466	TO CASH	INR	24,000.00		8,31,942.67CR.
27-01-2017	27-01-2017	1467	02/143 MAHENDER NRE AC	INR	1,00,000.00		8,55,942.67CR.
25-01-2017	25-01-2017		PRGRM/S SHREE RAM PETROCAR/SIWANI	INR	2,200.00		9,55,942.67CR.
24-01-2017	13-01-2017	539885	MICR INWD CLG. (CTS)	INR	59,450.00		9,58,142.67CR.
17-01-2017	17-01-2017	533886	SITARAM	INR	1,00,000.00		10,17,592.67CR.
12-01-2017	12-01-2017	533887	TO CASH	INR	24,000.00		11,17,592.67CR.
09-01-2017	06-01-2017		VCR ARN74332747005700482611555	INR		2,782.00	11,41,592.67CR.
02-01-2017	01-01-2017		Int:01-10-2016 To 31-12-2016	INR		4,447.00	11,38,810.67CR.
27-12-2016	27-12-2016		PGDR/CITRUS PAY GOIBIBO/27-12-2016 12:08:17/SWT	INR	8,089.00		11,34,363.67CR.
07-12-2016	07-12-2016		PRCR/GOYAL SERVICE/BHIWANI	INR	1,940.00		11,42,452.67CR.
05-12-2016	04-12-2016		PGDR/AIRTELMONEY/04-12-2016 20:05:07/SWT	INR	2,458.00		11,44,382.67CR.
05-12-2016	04-12-2016		PGDR/MAKEMYTRIP INDIA PVT L/04-12-2016 20:01:29/S	INR	12,459.00		11,46,850.67CR.
05-12-2016	04-12-2016		PGDR/MAKEMYTRIP INDIA PVT L/04-12-2016 19:49:02/S	INR	6,182.00		11,59,309.67CR.
05-12-2016	04-12-2016		PGDR/MAKEMYTRIP INDIA PVT L/04-12-2016 19:37:32/S	INR	12,459.00		11,65,491.67CR.
28-11-2016	28-11-2016		OHDEP-CD28116000014178848	INR		11,50,000.00	11,77,950.67CR.
16-11-2016	16-11-2016		SMS Alert charges for Qtr Dec-16	INR	17.25		27,950.67CR.
15-10-2016	15-10-2016		DCARDFEE/9841/OCT16 to SEP17	INR	145.00		27,967.92CR.
03-10-2016	01-10-2016		Int:01-07-2016 To 30-09-2016	INR		280.00	28,082.92CR.
05-07-2016	01-07-2016		Int:01-04-2016 To 30-06-2016	INR		274.00	27,802.92CR.
04-04-2016	01-04-2016		Int:01-11-2015 To 31-03-2016	INR		339.00	27,528.92CR.
24-12-2015	24-12-2015		PGDR/AIRASIA/DX(INR)/24-12-2015 21:13:34/SWT	INR	18,142.00		27,189.92CR.
21-12-2015	21-12-2015		Cash Handling Chgs at Outstation brnchs:21-12-2015	INR	29.00		45,331.92CR.
21-12-2015	21-12-2015		BY CASH	INR		40,000.00	45,360.92CR.
02-11-2015	01-11-2015		Int:01-05-2015 To 31-10-2015	INR		119.00	5,360.92CR.
19-10-2015	19-10-2015		DCARDFEE/9841/OCT15 to SEP16	INR	114.00		5,241.92CR.
06-10-2015	06-10-2015		STAMP CHARGES OF LOCKER NO.449	INR	100.00		5,355.92CR.

*ASX*

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20-08-2015	17-08-2015	Discard Loyalty Pts Redemption	INR		132.25	5,455.92CR.
19-08-2015	19-08-2015	RENT REVRSD BCUSE ALREADY PAID UPTO 24/8/17 LQCC49	INR		787.00	5,323.87CR.
19-08-2015	19-08-2015	Rent Of Locker No 00449	INR		787.00	4,536.87CR.
30-06-2015	30-06-2015	PGDR/Yatra online Pvt. Ltd./30-06-2015:10:47:46/S	INR		7,456.00	5,323.87CR.
30-06-2015	30-06-2015	01/7657	INR		10,000.00	12,759.67CR.
01-06-2015	01-06-2015	To ISL Txn Chgs: 05-2015	INR		11.00	2,759.67CR.
01-06-2015	01-06-2015	SLIP	INR		30,000.00	2,770.67CR.
05-05-2015	05-05-2015	PGDR/WW GOIBIBO COM/05-05-2015 21:23:47/SWT	INR		10,594.00	43,364.67CR.
01-05-2015	01-05-2015	To ISL Txn Chgs: 04-2015	INR		56.00	43,420.67CR.
01-05-2015	01-05-2015	Int:01-11-2014 To 30-04-2015	INR		22,279.00	21,141.67CR.
25-04-2015	25-04-2015	BNG/C/DAR/09660100009223/25-04-2015 10:33:24/SWT	INR		20,000.00	1,141.67CR.
22-04-2015	22-04-2015	PGDR/CLEARTRIP TRAVEL.SERV/22-04-2015 14:13:16/S	INR		6,895.00	8,036.67CR.
13-04-2015	13-04-2015	TO CASH	INR		12,00,000.00	12,08,036.67CR.
09-04-2015	09-04-2015	SELF	INR		50,000.00	12,58,036.67CR.
09-04-2015	09-04-2015	ATM/CASH/1966/XXXXXXXXXXXX9841	INR		10,000.00	12,68,036.67CR.
09-04-2015	09-04-2015	ATM/CASH/1964/XXXXXXXXXXXX9841	INR		10,000.00	12,78,036.67CR.
04-04-2015	04-04-2015	BY CASH	INR		50,000.00	12,78,036.67CR.

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9.2 Thirdly on pursuing the documents that there was agricultural Income during the year and where the agricultural produce were sold in the local market .The documents are more sufficient evidence to prove the agricultural income .

The Jamabandi and Khasara Giridhawari of land are the relavant proof as been reproduced from the paper book I pages 5 to 7:

प्रपत्र पी-26(सी)  
(देखिये नियम 153 ए)  
पृष्ठ संख्या :- 1 of 1

**जमाबन्दी (खेत्र/खतोनी) (प्रतिलिपि)**

ग्राम का नाम :- सिद्धमुख  
पटवार हल्का :- सिद्धमुख  
भू.अभि.नि.क्षेत्र :- सिद्धमुख  
तहसील :- राजगढ़  
जिला :- चुरू  
काश्तकार का नाम :-

सम्बत :- 2073 - 2076  
भूमि धारक का नाम :- राज.सरकार  
क्षेत्रफल की ईकाई :- हेक्टेयर  
खाता संख्या नया :- 255  
खाता संख्या पुराना :-

1. चानणमल पुत्र पूर्णाराम हिस्सा- पूर्ण जाति- कुम्हार(प्रजापति) निवासी सिद्धमुख खानेदार,

खसरा संख्या	क्षेत्रफल	भूमि वर्गीकरण	कृषक द्वारा संचित लगान	सिंचाई के साधन	अन्तरण के क्रम में प्रमाणित नामान्तरकरण संख्या व दिनांक	टिप्पणी
1009	0.5700	बा.तृतीय	0.5700	1.14		
1140	3.4400	बा.तृतीय	3.4400	6.88		
1241	4.4100	बा.द्वितीय	4.4100	13.23		
967	1.6200	बा.पृथीय	1.6200	3.24		
कुल खसरे -4	10.0400		10.0400	24.4900		

**आवेदक की सूचना :-**  
आवेदक का नाम - MAHENDRA KUMAR पता - SIDHUKH  
प्रतिलिपि सं. - 4362 शुल्क - 30 Rs/-  
आई. पी. - 103.203.137.123 दिनांक व समय - 14/Oct/2019 06:18:00 PM  
नक़ल जारी करने का स्थान - कियोस्क कोड :- K102127865, पता :- SRI BALAJI E-MITRA MAIN BUS STAND SIDHUKH SIWAN  
यू.एस.एन. - 323857992550 http://apnakhata.raj.nic.in/qr.aspx?usn=3238579925501  
**ई-हस्ताक्षर की सूचना :-**  
हस्ताक्षरकर्ता - KISHANMURARI.MEENA पद - तहसीलदार  
हस्ताक्षर दिनांक व समय - 19/Jul/2019 02:29:00 PM

पद - तहसीलदार

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he could not find the agriculture land and consequence of demonetization the withdrawn cash was deposited compulsory and forcefully during the demonetization period, the valid reasons stated by the assessee was much satisfied that the assessee was at abroad and his father was old aged and his father was residing in village where he cannot frequently go to bank for depositing and withdrawing cash. Further submitted the ledger cash account which are self-explanatory of cash transactions made by the assessee during the year .

The ledger cash account are the relevant proof as been reproduced from the paper book I page 8:

MAHENDER KUMAR / CHANAN MAL								
SIDHMUKH CHURU								
LEDGER								
( From 1-4-2015 to 31-3-2017 )								
Account : Cash								
Date	Type	Vch No.	Particulars	Narration	Debit ( ₹ )	Credit ( ₹ )	Balance	
01-04-2015			Opening Balance		1,95,000.00		1,95,000.00	
04-04-2015	Jrnl		Dr BOB AC 9223 (REGULAR A/C)			50,000.00	1,45,000.00	
09-04-2015	Jrnl		Cr BOB AC 9223 (REGULAR A/C)		10,000.00		1,55,000.00	
09-04-2015	Jrnl		Cr BOB AC 9223 (REGULAR A/C)		10,000.00		1,65,000.00	
09-04-2015	Jrnl		Cr BOB AC 9223 (REGULAR A/C)		50,000.00		2,15,000.00	
13-04-2015	Jrnl		Cr BOB AC 9223 (REGULAR A/C)		12,00,000.00		14,15,000.00	
08-05-2015	Jrnl		Cr BOB AC 9223 (REGULAR A/C)		30,000.00		14,45,000.00	
21-12-2015	Jrnl		Dr BOB AC 9223 (REGULAR A/C)			40,000.00	14,05,000.00	
19-09-2016	Jrnl		Dr Sbi 7154			2,842.00	14,02,158.00	
30-09-2016	Jrnl		Cr Churu Cen Dist Co-op Bank 292		100.00		14,02,258.00	
01-10-2016	Jrnl		Dr Churu Cen Dist Co-op Bank 292			6,600.00	13,95,658.00	
10-11-2016	Jrnl		Dr Sbi 7154			49,000.00	13,46,658.00	
12-11-2016	Jrnl		Dr Churu Cen Dist Co-op Bank 292			49,000.00	12,97,658.00	
12-11-2016	Jrnl		Cr Churu Cen Dist Co-op Bank 292		10,000.00		13,07,658.00	
15-11-2016	Jrnl		Cr Churu Cen Dist Co-op Bank 292		10,000.00		13,17,658.00	
15-11-2016	Jrnl		Dr Bob Kandriya Sahari 3680			42,000.00	12,75,658.00	
21-11-2016	Jrnl		Cr Churu Cen Dist Co-op Bank 292		14,000.00		12,89,658.00	
22-11-2016	Jrnl		Dr Bob Kandriya Sahari 3680			45,000.00	12,44,658.00	
25-11-2016	Jrnl		Dr Bob Kandriya Sahari 3680			48,000.00	11,96,658.00	
25-11-2016	Jrnl		Dr Sbi 7154			48,000.00	11,48,658.00	
25-11-2016	Jrnl		Cr Sbi 7154		2,000.00		11,50,658.00	
28-11-2016	Jrnl		Dr BOB AC 9223 (REGULAR A/C)			11,50,000.00	658.00	
02-12-2016	Jrnl		Cr Sbi 7154		20,000.00		20,658.00	
10-01-2017	Jrnl		Cr Sbi 7154		24,000.00		44,658.00	
12-01-2017	Jrnl		Cr BOB AC 9223 (REGULAR A/C)		24,000.00		68,658.00	
12-01-2017	Jrnl		Cr Bob Kandriya Sahari 3680		4,000.00		72,658.00	
17-01-2017	Jrnl		Cr Bob Kandriya Sahari 3680		20,000.00		92,658.00	
17-01-2017	Jrnl		Cr Bob Kandriya Sahari 3680		16,000.00		1,08,658.00	
01-02-2017	Jrnl		Cr Sbi 7154		24,000.00		1,32,658.00	
25-01-2017	Jrnl		Cr Churu Cen Dist Co-op Bank 292		10,000.00		1,42,658.00	
25-01-2017	Jrnl		Cr Churu Cen Dist Co-op Bank 292		10,000.00		1,52,658.00	
27-01-2017	Jrnl		Cr BOB AC 9223 (REGULAR A/C)		24,000.00		1,76,658.00	
27-01-2017	Jrnl		Cr Sbi 7154		24,000.00		2,00,658.00	
01-02-2017	Jrnl		Cr Bob Kandriya Sahari 3680		20,000.00		2,20,658.00	
06-02-2017	Jrnl		Cr BOB AC 9223 (REGULAR A/C)		1,00,000.00		3,20,658.00	
06-02-2017	Jrnl		Cr BOB AC 9223 (REGULAR A/C)		24,000.00		3,44,658.00	
06-02-2017	Jrnl		Cr Churu Cen Dist Co-op Bank 292		24,000.00		3,68,658.00	
18-02-2017	Jrnl		Cr Churu Cen Dist Co-op Bank 292		24,000.00		3,92,658.00	
20-02-2017	Jrnl		Cr Sbi 7154		24,000.00		4,16,658.00	
					Total	19,47,100.00	15,30,442.00	
					Debit Balance		4,16,658.00	
					Grand Total	19,47,100.00	19,47,100.00	

9.4 Fifthly we observed that the AO has relied upon two SC decisions , which are not relevant to the present case, these two decisions has explained the nature of income as used in Section 69A of the Act had a wide meaning and in the second case referred by the AO are not relevant to the present case , where the source of money has not properly proved the department can hold the assessable income as undisclosed income. But in the present case the assesee taken all efforts to prove the derived income from Bank interest and sale of agricultural produce. The amount withdrawn from purchase agricultural land Rs 11,50,000/- and the same was deposited by him during the demonetization period has a valid ground for deleting the addition amounting to Rs. u/s 69A r.w.s 115BBE of the I.T Act ,1961.

9.5 Sixthly, the reply statement to the Deputy commissioner of Income Tax, letter dated 10.12.2019 and the reply statement to the Deputy commissioner of Income Tax, letter dated 16.12.2019 are more elaborately explained the nature of income and the source of Income , The reasons of withdrawing and depositing the cash .

The Reply statement are the relevant proof as been reproduced from the paper book II page 85 to 86:

Dated: 10.12.2019

**The Deputy Commissioner of Income Tax,**  
Circle - International Taxation,  
Jaipur.

Respected Madam,

**Re: Shri Mahendra Kumar**  
**-PAN: CGTPK-8467-J**

Kindly refer to the assessment proceedings in progress in the case of our captioned client.

Under instructions and as desired by your goodself the following information / documents are submitted herein below for your kind perusal and record:

1. As desired, the copy of Passport is attached herewith duly containing the stamps of Immigration Department as to when the assessee has arrived in India and when he has departed.
2. During the year under consideration the assessee was earning income from Savings bank interest and agriculture income and copy of Jamabandi in support of holding of agriculture land is enclosed herewith. Regarding income at Dubai, as already submitted, assessee had not any income since he was searching for work.
3. With regard to the deposit of cash of Rs. 11,50,000/- in Bank of Baroda, it is submitted that the assessee has withdrawn the said amount from his bank account for purchase of agriculture land, however the assessee could not find the agriculture land and as a consequence the funds was re-deposited in Bank of Baroda during demonetisation. The copy of bank account as maintained by assessee during the year under consideration are enclosed herewith in support of the withdrawals so made and deposited in bank during demonetisation.

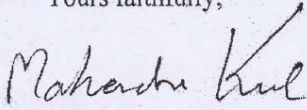
It is further submitted that the amount so withdrawn from bank was not deposited immediately for the main reason that assessee's father being old aged was not capable of going to bank now and then for depositing the amount and thereafter withdrawing the same whenever the land deal was proposed by various brokers and for his convenience he kept the amount with him, however, during demonetisation since the currency no longer remained a legal tender, was deposited in bank.

4. The details of agriculture income earned by the assessee has already been submitted.
5. During the year under consideration the assessee has withdrawn sufficient amount from his bank account for meeting out the day-to-day expenditure and since the assessee is living in a village and is from a family with moderate standard of living and being tetolar the drawings so made deserve to be accepted.
6. With regard to the purpose of cash withdrawals the same has already been submitted above.

Hope you find the same in order.

Thanking you,

Yours faithfully,

  
(Mahendra Kumar)

Encl: As above.

The Reply statement are the relavant proof as been reproduced from the paper book II page 87 to 88:

Dated: 16.12.2019

**The Deputy Commissioner of Income Tax,**  
Circle - International Taxation,  
Jaipur.

Respected Madam,

**Re: Shri Mahendra Kumar**  
**-PAN: CGTPK-8467-J**  
**- Assessment Year: 2017-18**

Kindly refer to the assessment proceedings in progress in the case of our captioned client.

Under instructions and as desired by your goodself the following information / documents are submitted herein below for your kind perusal and record;

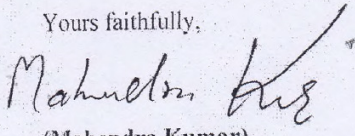
1. During the year under consideration the assessee was having agriculture income and the agriculture produce as produced by the assessee were sold in the local market and the copy of Jamabandi and Girdabari in support of the agriculture produce has already been submitted before your goodself. It is further submitted that since the produce was sold in the local market therefore, the mandi receipt are not available.
2. The cash so deposited during the demonetisation period was withdrawn from the bank account for purchase of agriculture land however, as has been mentioned earlier the assessee's family could not find any agriculture land at a location convenient to them and accordingly, the agreement with any proposed seller could not be done. Had it been executed the copy would have been submitted and as has been submitted in the previous reply that the assessee was in search of agriculture land near to his existing land and since he was living abroad accordingly, the fund was withdrawn and kept with the father of the assessee as it was not convenient with him to visit the bank now and then to deposit the money and withdraw it again for purchase of agriculture land however, during demonetisation period it was a compulsion to deposit the SBN. Besides this cash was also withdrawn from time to time for personal expenses of the parents and was available with, when the demonetisation was announced, thus it was under compulsion, that assessee had deposited in the bank.
3. During the year under consideration the assessee has neither purchased nor sold any immovable property hence, the information sought in this point may be treated as NIL.

4. During the year under consideration the assessee has withdrawn as well as deposit amount in the bank and in support of it the bank statement are enclosed herewith.
5. During the year under consideration assessee has deposited Rs. 2,81,000/- in various banks as has been mentioned in your show cause notice and the amount so deposited was withdrawn from the bank accounts at an earlier point of time and being available with the assessee during the demonetisation period was deposited in bank.

Hope you find the same in order.

Thanking you,

Yours faithfully,

  
(Mahendra Kumar)

Encl: As above.

9.6 Seventhly , the Ld AR for assessee placed reliance on various cases of Supreme Court, High Courts and co ordinate Benches of ITAT, which are applicable for the present case .We noticed that exactly similar issue had been decided by the Coordinate bench of this Tribunal in

**Smt. Suraj Kanwar Devra vs. ITO in ITA No. 50/Jofh/2021 dated 23.11.2021** by holding as under:

14. We noticed that the assessee in support of the submissions made had filed detailed written submissions, supporting papers/ documents, copy of bank account, statement of availability of cash in hand during the A.Y. under consideration to prove the genuineness and correctness of the deposits made in her bank account on said date. On occasion at the time of deposit in her bank account she had sufficient availability of cash with her during the A.Y. under consideration. The availability of cash represented from the earlier withdrawals made from her bank accounts. The transactions of withdrawal are duly reflected in her said bank account and the

*transaction is verifiable from the relevant records. On the other hand, the AO has not filed any evidence in his support except in his own assumption, presumption, guess work and suspicion and blindly ignored these very vital facts or evidences of the case and proceeded on their own guess work, assumption, presumption and suspicion and it is the settled legal position that no addition can be the basis of suspicion, assumptions' and presumption. An allegation remains a mere allegation unless proved. Suspicion may be strong however cannot take the place of reality, are the settled principles and the addition merely on suspicion which was not desirable in the eye of law. The assessee had discharged her duty to explain the deposits made in her bank account by furnishing the written explanation along with supporting evidences as above and her creditworthiness is never doubted as she is regular IT assessee from so many years. Entire transaction of withdrawal and deposit are duly reflected in the bank account of the assessee and are verifiable from relevant records. The AO has not brought on record the evidence that the assessee has utilized these cash any other assets or any other mode. The Coordinate Bench of Delhi ITAT in the case of **Pradeep Jain vs. ITO (2019) 56 CCH 0111 Del Trib** wherein it has been held as under:*

*“Business income—Special provision for computing profits and gains of business on presumptive basis—Cash credits—Assessee filed return of income which was selected for scrutiny—AO received information revealing that during demonetization period, assessee had deposited cash in his bank accounts—Assessee explained source of an amount out of earlier years income and remaining cash were explained to be retail sales made during year—Assessee showed cash in hand in balance sheet—Assessee contended that he was engaged in business of trading of cloth at a small level—Assessee submitted that he sold goods during FY 2014-15 and filed his ITR u/s 44AD—According to assessee, he did not maintain bills of purchase as same were done in cash. All transactions were done in cash—Assessee submitted a list of suppliers giving their names and addresses, but, no confirmations were filed—Therefore, AO was of view that assessee's cloth business was totally bogus and does not exist at all—AO treated same as unexplained cash credit in shape of bogus sales and addition was*

*accordingly made—CIT(A) restricted addition made by AO—Held, assessee filed details of sales and purchase before AO giving names of parties, their telephone number and address—If AO had any doubt about same, AO could have made direct inquiry from them—Since assessee declared return of income u/s 44AD, therefore, there was no necessity for assessee to maintain books of account or bills and vouchers of sales and purchase—At most, AO could have doubted quantum of sales and could have enhanced same, but, there was no justification to hold that sales were bogus—**Since copy of balance-sheet was provided at assessment stage**, it would not prove that assessee maintained books of account—AO made addition u/s 68 on account of bogus sales—It was admitted by AO that there was no creditor in assessee's books of account—If there was no creditor in books of account of assessee and that no books of account was maintained, there was no question of considering it to be cash credit—The CIT(A) did not accept view of AO and on basis of copy of balance-sheet filed at assessment stage, taken amount of cash in hand and made addition—No evidence was brought on record as to how assessee maintained books of account in AY under appeal—AO had specifically noted that case was selected for scrutiny because assessee had deposited cash in his three Bank Accounts, but, no addition have been made on account of such amount deposited in Bank Accounts—There was thus, no basis for lower authorities to make any addition against assessee—Explanation of assessee was not found to be false—Since assessee was involved in small business activity and filed return of income under presumptive provisions u/s 44AD, there was no justification to consider sales of assessee to be bogus or to make addition of cash in hand as per details submitted by assessee because AO did not bring any sufficient evidence on record to justify addition—Assessee's appeal allowed.*

15. We observed that the AO has made wrongly invalid addition during the years as per A.O. himself, opening capital shown in the capital account and balance sheet of the assessee. Once having admitted that this amount was an opening amount. i.e

*standing as on 01.04.2016 i.e. coming from the earlier years, no addition can be made. S.69A says-*

*“69A. Where in any financial year the assessee is found to be owner of any money, bullion, jewelry or other valuable article and such money, bullion, jewelry or other valuable article is not recorded, in the books of account, if any maintained for any source of income and assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewelry or other valuable article or the explanation offered by him is not, in the opinion of the <sup>75</sup>[Assessing] Officer, satisfactory, the money and the value of bullion, jewelry or other valuable article may be deemed to be the income of the assessee of for such financial year.”*

*The law is settled that u/s. 69A, the AO is supposed to deem “a money found credited during the preceding year”, as income, in case the assessee fails to prove the nature and source of the money so found. Once the amount itself is not found in the year under consideration, it need not be discussed even that such an amount can't be a subject matter of any sort of investigation, inquiry u/s. 69A or for any addition for that reason. On perusal of the record or balance sheet of earlier years and this year it is admitted facts that there were opening balance as on 01.04.2016. The amount of opening credit can never be added u/s 69A in the year under consideration, which is a settled law. The AO has not given any credit of the income shown by the assessee from dairy receipts and agriculture income. Whether it is possible a person shall not keep single cash in hand when he/she is a regular IT assessee from last so many years and having regular income, which is being accumulated year to year. And it is also notable that a lady in India also having cash gifts or saving in hands and no house hold and social expenses is incurred by them, the same is bear by the male members.*

16. *We observed that when the cash was deposited out of disclosed sources, then in that eventuality, neither addition can be made nor provisions of Sec. 115BBE can be invoked because it is not unaccounted income u/s 68/69 rather it is the business receipts and the AO has never brought on record any evidence that the assessee is having others sources of unaccounted income other than to income or sources*

*disclosed. The AO has not issued any show cause notice before invoking the provision of Sec. 115BBE for taxing the income on higher rate. It was mandatory on the part of the AO to issue the specific show cause notice to this effect asking to the assessee as to why the income should not be taxed under sec. 115BBE before doing so. It is very settled legal position that a person (assessee) is entitled to opportunity to show cause as to why not the income of the assessee is determined and charged or taxed in the manner as proposed by the A.O. but in the instant case no such type of opportunity had been provided but the AO has failed to do so, which is against the principal of natural justice and against the law. This sec. 115BBE is charging of tax at the higher rate and it cannot be applied directly without giving any show cause notice when the issue are disputed that whether the higher rate of tax applicable or not on the alleged income or the nature of income falls u/s 68/69 and 115BBE. Hence it was mandatory on the part of the AO to issue show cause before invoking the provisions u/s 115BBE, in absence of the same the rate cannot be charged more than to normal rate of tax, if the addition if any sustained.*

17. *Considering the totality of facts and circumstances of the case, case laws relied by the parties and the decision passed by the Coordinate Bench of this Tribunal in the case of Smt. Krishna Agarwal Vs ITO in ITA No. 53/Jodh/2021 order dated 07/09/2021 wherein exactly similar issued had been decided in favour of the assessee, therefore, we direct to delete the addition made by the A.O. and confirmed by the ld. CIT(A). We order accordingly.*

**In ITO vs. Rajeev Suresh Ghai in ITA No. 6290/Mum/2019 dated 23.11.2021, Honble Court held :**

*“15. Given our findings as above, however, it is not really necessary to deal with these aspects on merits. The assessee before us is a tax resident of the United Arab Emirates and is thus entitled to the benefits of the Indo UAE tax treaty. When the rights to tax the income in question, under the applicable tax treaty provisions, are allocated to the residence jurisdiction, it is wholly*

*immaterial whether or not the source jurisdiction has the right to tax that income, and, in any event, India is not even a source jurisdiction for the income in question as no economic activities have been carried out in India- it is at best the jurisdiction in which earnings are invested. That cannot anyway have any bearing on the taxation of income. In our considered view, therefore, since, under the terms of the Indo UAE tax treaty, the right to tax the amounts in question, even if that be of income nature in the hands of the present assessee, does not belong to India, all these issues being raised by the learned counsel are wholly academic as of now, and do not call for our adjudication. Having said that, however, in due deference to the legitimate rights of the assessee, we make it clear that, if so necessary in future, the assessee will be at liberty to raise these issues.*

*16. In view of these discussions, and bearing in mind the entirety of the case, we approve the well-reasoned conclusions arrived at by the learned CIT(A) and decline to interfere in the matter.”*

**In CIT, Earnakulam Vs P.K.Noorjahan (Smt), (1997) 11 SCC 198, Honble Court held :**

*“3. Shri Ranbir Chandra, the learned Counsel appearing for the Revenue, has urged that the Tribunal as well as the High Court were in error in their interpretation of Section 69 of the Act. The submission is that once the explanation offered by the assessee for the sources of the investments found to be non-acceptable the only course open to the Income-tax Officer was to treat the value of the investments to be the income of the assessee. The submission is that the word 'may' in Section 69 should be read as 'shall'. We are unable to agree. As pointed out by the Tribunal, in the corresponding clause in the Bill which was introduced in Parliament, the word 'shall' had been used but during the course of consideration of the Bill and on the recommendation of the Select Committee, the*

*said word was substituted by the word 'may'. This clearly indicates that the intention of Parliament in enacting Section 69 was to confer a discretion on the Income-tax Officer in the matter of treating the source of investment which has not been satisfactorily explained by the assessee as the income of the assessee and the Income-tax Officer is not obliged to treat such source of investment as income in every case where the explanation offered by the assessee is found to be not satisfactory. The question whether the source of the investment should be treated as income or not under Section 69 has to be considered in the light of the facts of each case. In other words a discretion has been conferred on the Income-tax Officer under Section 69 of the Act to treat the source of investment as the income of the assessee if the explanation offered by the assessee is not found satisfactory and the said discretion has to be exercised keeping in view the facts and circumstances of the particular case.*

4. *In the instant case, the Tribunal has held that the discretion had not been properly exercised by the Income-tax Officer and the Appellate Assistant Commissioner in taking into account the circumstances in which the assessee was placed and the Tribunal has found that the sources of investments could not be treated as income of the assessee. The High Court has agreed with the said view of the Tribunal. We also do not find any error in the said finding recorded by the Tribunal. There is thus no merit in these appeals and the same are accordingly dismissed. No order as to costs.”*

**In Smt. Krishna Agarwal vs. ITO in ITA No. 53/Jodh/2021 dated 07.09.2021. Honble Court held :**

“14. *In this regard, it is noted that the assessee has explained that out of earlier year’s cash withdrawals from her bank account which were available as cash balance as on 01/04/2016, the assessee had deposited a sum of Rs. 68,95,000/- in her bank account during the year under consideration. It has been submitted that the assessee has sold a property, transferred in her name after the death of her husband, for a consideration of Rs 1,31,45,200/- during the financial year 2015-16 and the sale*

*consideration has been received in installments during the financial year 2014-15 and financial 2015-16 directly in her bank account which has been subsequently withdrawn from time to time and due to non-fulfillment of purpose for which the cash was withdrawn, it was again re-deposited in the bank account during the year under consideration. In this regard, it is noted that the assessee in her return of income for A.Y 2016-17 has disclosed sale consideration on sale of plot of land for Rs 1,31,45,200/- and offered capital gains to tax. The plot has been sold through a registered deed and the valuation has been determined at Rs 1,31,45,200/- by the stamp duty authority. Thus, the sale consideration equivalent to stamp duty value has been duly disclosed by the assessee and there is no finding that the assessee has received any amount over and above the declared sale consideration. Therefore, given that the sale consideration has been received directly in the assessee's bank account, the source of cash withdrawals in the earlier two years has been clearly demonstrated by the assessee and we see no reason but to accept the said explanation which is clearly demonstrated through the sale documentation and tax filings by the assessee.*

15. *We further note that the cash withdrawals in the earlier two years have not been disputed by the Revenue and only reason why the explanation of the assessee that cash deposits in the year under consideration is out of earlier years withdrawals has not been accepted is that keeping huge cash at home for such a long period is beyond any imagination. In this regard, we believe that there cannot be any standard yardstick which can be applied and what needs to be examined is the reasonability of the explanation so furnished by the assessee on the touchstone of facts and circumstances of each case. In the instant case, it has been submitted that the cash was withdrawn for the purposes of purchase of another property by the assessee for her son however, the transaction couldn't fructify and as a result, the assessee decided to re-deposit the amount in the bank account. In an ideal situation, such an explanation is expected to be supported by some documentary evidence however, mere absence of supporting documentation cannot be a reason enough to allege any malafide in the explanation so submitted especially where the assessee has explained*

*and duly disclosed the source of deposits in the bank account out of which the withdrawals have been made and has thus established the necessary linkage and availability of cash in hand. The various decisions of the Coordinate Benches cited at the Bar by the ld AR also lays down a broad proposition that mere time gap between withdrawals and deposits cannot be a sole basis for rejecting the explanation of the assessee regarding availability of cash in hand where there is no material that amount so withdrawn has been utilized somewhere else and thus supports the case of the assessee. In the entirety of facts and circumstances of the case, we believe that there is no justifiable basis to hold that the explanation so furnished by the assessee cannot be accepted and find the explanation so furnished is reasonable, appropriate and satisfactory in the facts and circumstances of the present case and hereby direct the addition so made be deleted.”*

**In Sunanda Sanjay Chandaliya vs. ITO in ITA No. 1967/PUN/2018 dated 02.05.2019**

*“4. Having heard both the sides and gone through the relevant material on record, it is seen that the assessee is a regular Income-tax assessee. A copy of her Income-tax return for the A.Y. 2006-07 has been placed at page 11 of the paper book. This return was filed declaring, inter alia, interest amounting to Rs.1,46,904/- on FDRs with banks. Further, there is a balance sheet drawn as on 31-03-2006 in which FDRs of different amounts have been shown, total of which is more than Rs.15.00 lakh. She furnished her return for the A.Y. 2007-08 showing inter alia, interest income from FDRs to the tune of Rs.1,60,812/-. This return was also accompanied by balance sheet showing FDRs with still a larger amount. Similarly for the A.Y. 2008-09, the assessee filed return declaring, inter alia, interest income from FDRs at Rs.1,80,291/-. During the financial year relevant to this assessment year, the assessee got the FDRs encashed and the amount was declared as cash in hand with closing cash in hand standing at Rs.17,72,617/-. A copy of her return for the A.Y. 2009-10 has been placed at page 23 of the paper book. In the accompanying balance sheet, cash in hand of*

*Rs.18,33,155/- has been shown. It is this cash balance available with her as on 31-03-2009, out of which she deposited a sum of Rs.14,84,500/- in her Savings Bank account which has been included by the AO in her total income. I fail to comprehend as to how any such addition could have been made, more so when the assessee had already filed returns for the preceding years accompanied by balance sheets. Since cash in hand was admittedly available as per her balance sheet as on 31-03-2009 at Rs.18.33 lakh, the explanation of the assessee that she deposited Rs.14.84 lakh in her bank account out of such cash in hand, cannot be faulted with. It is further relevant to note that the source of cash in the balance sheet is not without any foundation. The assessee was investing in FDRs from time to time in earlier years and also regularly showing the interest income thereon in her income-tax returns. It was because of encashment of such FDRs that she realized the amount and kept the same with her in the form of cash and then deposited it in the bank account. The view point of the AO in not accepting the genuineness of the source of deposits in the bank account on the ground that the cash was allegedly kept in hand for a long period of two years, in my considered view is not tenable. Once a particular amount has seen the light of the day, its later utilization has to be accepted unless it is proved by the Revenue that such amount was spent elsewhere. The Hon'ble Kerala High Court in CIT Vs. K. Sreedharan (1993) 201 ITR 1010 (Kerala) has held that : 'The period of four years between 1976-77 and 1980-81 is not so long a period as to rebut the presumption regarding the continued availability of the amount'.*

*5. Adverting to the facts of the instant case, it is seen that the assessee was regularly filing returns and balance sheets on year to year basis. The availability of cash in hand from maturity of FDRs in past and re-depositing of proceeds in the bank account in the instant year, cannot be doubted as the factum of maturity of FDRs has not been disputed by the AO. When the Hon'ble Kerala High Court in the aforementioned case has accepted the availability of unutilized cash for four years as reasonable, there is no reason to doubt such availability for two years in the instant case. In view of the foregoing*

*discussion, I am satisfied that the addition was wrongly sustained. I, therefore, order to delete the addition.*

6. *Ground No.1 challenging the re-assessment proceedings was not pressed by the ld. AR. The same is, therefore, dismissed.*

7. *In the result, the appeal is partly allowed.”*

**In Dhakeswari Cotton Mills Ltd. vs. CIT 1955 AIR 65, 1955 SCR (1) 941**

*“In this case we are of the opinion that the Tribunal violated certain fundamental rules of justice in reaching its conclusions. Firstly, it did not disclose to the assessee what information had been supplied to it by the departmental representative. Next, it did not give any opportunity to the company to rebut the material furnished to it by him, and, lastly, it declined to take all the material that the assessee wanted to produce in support of its case. The result is that the assessee had not had a fair hearing. The estimate of the gross rate of profit on sales, both by the Income-tax Officer and the Tribunal seems to be based on surmises, suspicions and conjectures. It is somewhat surprising that the Tribunal took from the representative of the department a statement of gross profit rates of other cotton mills without showing that statement to the assessee and without giving him an opportunity to show that statement had no relevancy whatsoever to the case of the mill in question. It is not known whether the mills which had disclosed these rates were situate in Bengal or elsewhere, and whether these mills were similarly situated and circumstances. Not only did the Tribunal not show the information given by the representative of the department to the appellant, but it refused even to look at the trunk load of books and papers which Mr. Banerjee produced before the Accountant-Member in his chamber. No harm would have been done if after notice to the department the trunk had been opened and some time devoted to see what it contained. The assessment in this case and in the connected appeal,\* we are told, was above the figure of Rs. 55 lakhs and it was meet and proper when dealing with a matter of this magnitude not to employ \*civil Appeal NO- 218 Of 1953, not reported, unnecessary haste and show*

*impatience, particularly when it was known to the department that the books of the assessee were in the custody of, the Sub-Divisional Officer, Narayanganj. We think that both the Income-tax Officer and the Tribunal in estimating the gross profit rate on sales did not act on any material but acted on pure guess and suspicion. It is thus a fit case for the exercise of our power under article 136.*

*In the result we allow this appeal, set aside the order of the Tribunal and remand the case to it with directions that in arriving at its estimate of gross profits and sales it should give full opportunity to the assessee to place any relevant material on the point that it has before the Tribunal, whether it is found in the books of account or elsewhere and it should also disclose to the assessee the material on which the Tribunal is going to found its estimate and then afford him full opportunity to meet the substance of any private inquiries made by the Income-tax Officer if it is intended to make the estimate on the foot of those enquiries. It will also be open to the department to place any evidence or material on the record to support the estimate made by the Income-tax Officer or by the Tribunal in its judgment. The Tribunal if it thinks fit may remit the case to the Income-tax Officer for making a fresh assessment after taking such further evidence as is furnished by the assessee or by the department. The coats; of these proceedings will abide the result. Case remitted.”*

10. We are of the Considered view taking entire facts and circumstances of the case, the case citations relied by the Ld AR for the assessee and the decision passed by the Coordinate Bench of this Tribunal in the case of Smt. Krishna Agarwal Vs ITO in ITA No. 53/Jodh/2021 order dated 07/09/2021, wherein identical issue had been decided in favour of the assessee, therefore, we direct to delete the addition made by the A.O. and confirmed by the Id. CIT(A) for an amount of Rs. 14,31,000/-. We order accordingly.

18. In the result, this appeal of the assessee stands allowed.

Order pronounced in the open Court on 23/05/2022.

Sd/-

( राठोड कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

Sd/-

(एस.सीतालक्ष्मी)  
(Dr. S. Seethalashmi)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 23/05/2022.

\*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Mahendra Kumar, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO Circle (Intl Tax), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 226/JP/2021 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar