

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JABALPUR BENCH, JABALPUR**  
*(through web-based video conferencing platform)*

BEFORE SHRI SANJAY ARORA, HON'BLE ACCOUNTANT MEMBER &  
SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER

I.T.A. No. 23/JAB/2022  
(Asst. Year: 2017-18)

Vijay Kumar Jain (HUF), 185, Gali No.7, Cantt, Sadar Bazar, Jabalpur.  [PAN : AAFHV 2793 C]	vs.	Principal CIT-1, Jabalpur.
(Appellant)		(Respondent)

Appellant by : Shri Rahul Bardia, FCA  
Respondent by : Shri Shravan Kumar Gotru, CIT-DR  
  
Date of hearing : 18/07/2022  
Date of pronouncement : 31/08/2022

**ORDER**

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed against the Order by the Principal Commissioner of Income Tax-1, Jabalpur ('Pr. CIT' for short) dated 11/02/2022, revising the assessee's assessment under section 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) dated 30/07/2019 for Assessment Year (AY) 2017-18.

2. The assessee's return of income was in the instant case selected for examining the cash deposits during the demonetisation period, i.e., from 09/11/2016 to 30/12/2016, at Rs. 30.35 lacs, in Canara Bank, Cantt., Jabalpur (in two instalments of Rs. 7.55 lacs and Rs. 22.80 lacs, on 11/11/2016 & 12/11/2016 respectively), as against a total cash deposit of Rs. 52.98 lacs during the relevant previous year, i.e., fy 2016-17. The assessee, in assessment, explained the same to

be from (opening) cash balance held on 09/11/2016, the beginning of the demonetisation period. Toward the same, he relied on the cash-book of his money lending business, claimed to be maintained in the normal course of the said business. The Assessing Officer (AO), on verification of the assessee's reply, accepted the returned income of Rs. 4,28,980. Subsequently, the Id. Pr. CIT called for and examined the assessment record, and observed the following:

- a) the cash deposit is not in agreement with the assessee's capital and the loans and advances as per his balance-sheet, which therefore would result in an addition u/s. 69A;
- b) the money advanced as well as accepted by the assessee is in contravention of the provisions of ss. 269SS & 269T of the Act.
- c). the AO ought to have verified the source of cash, making enquiries as to from whom the same is claimed to be accepted/received. In his view, there was sufficient ground to doubt the genuineness of the cash transactions as disclosed per the assessee's cash book.

3. We have heard the parties, and perused the material on record.

3.1 The assessee's principal explanation toward the impugned cash deposit is his cash-book (PB pgs.35-55), stated as maintained in the regular course of his business of money lending. Monthly data, as culled out from the same, is as under:

(Amount in Rs. lacs)

Month	Opening Balance	Cash received	Deposit	Closing balance
April'16	8.38	5.77	0.26	13.85
May	13.85	6.14	0.60	19.35
June	19.35	5.37	4.40	20.22
July	20.22	5.79	-	25.63
August	25.63	7.16	0.28	31.84
September	31.84	5.93	4.77	32.70
October	32.70	7.63	11.03	28.44
November	28.44	2.66	30.35	0.45
December	0.45	1.74	-	1.73
January'17	1.73	2.06	0.99	2.39
February	2.39	1.80	-	3.70
March	3.70	-	1.02	2.31

The observations by the Id. Pr. CIT with regard to the mismatch or disagreement between the cash deposit in the assessee's bank account vis-à-vis the assessee's capital and loan and advances, is surely not tenable inasmuch as the arithmetical accuracy thereof, in view of the maintenance of accounts, cannot be doubted. The issue, rather, as also pointed out by him, would be/is the genuineness of the transactions. *If the figures tabulated above do not prompt the AO to make further enquiry in the matter, what we wonder would?* What, for instance, is the cash being accumulated for? This becomes all that more quizzical considering that no amount is being advanced cash, so that the same is to be necessarily banked. Why, advancing in cash is proscribed by law, to which aspect reference stands also made by the Id. Pr. CIT, advertent to the violation of ss. 269SS/T. No purpose for cash accumulation stands explained at any stage inasmuch as the same could not possibly be – as the record exhibits, for being deposited in the bank on the demonetisation being declared by the Government! Why, a mere glance at the figures, i.e., even without going into details, shows a gross incongruence, with 57% of the total cash deposited during the year being so inside a few days in November, 2016. And which surely ought to have led the AO to make a proper enquiry in the matter, ascertaining of any change in the underlying facts and circumstances of the case that had led to the same, *with none being stated even before the Id. Pr. CIT*. The same, even otherwise abnormal, becomes, as afore-stated, all the more intriguing in the wake of the non-utilization of funds for advancing loans, which rather constitutes a default under the Act, liable for being penalized and prosecution, *so that the same had necessarily to be banked, both as a business imperative as well as a practical necessity*.

3.2 The opening balance, as disclosed, would also require being reasonably proved. We say so as inasmuch and to the extent the source of cash deposit in the bank has its genesis in the opening capital, the same shall have to be substantiated, and merely because it is ascribed to a carryover from a preceding year, would not absolve the assessee from being obliged to do so. The assessee maintaining regular

accounts of his business, this though should not pose any problem. Rather, we observe a change in the business profile during the year whereby loans, which were erstwhile given in cash, booked under the head account 'money lending', being discontinued from April, 2016, if not earlier. A total of Rs. 48.67 lacs gets released in cash under these account heads, i.e., 'money lending' (Rs. 42.60 lacs) and 'cash in hand' (Rs. 6.07 lacs), on the basis of the difference in the stated opening and closing values for the year, during the year. This has two aspects to it. *One, from whom is the cash realized? Two, this change in business modus operandi* being w.e.f. the beginning of year, or perhaps even earlier inasmuch as the accounts of the earlier year are not before us, why was the cash balance allowed to swell to rs. 32.70 lacs – the opening cash in hand itself being at Rs. 8.38 lacs (PB pgs.35-55), and not deposited regularly in the bank account. Demonetization apart, no prudent or reasonable person would do so, with, rather, the money in bank, i.e., the bank balance, being liable to be and, in any case, possibly utilized for money lending or any other business purpose. This transition (i.e., from cash loans to those only through bank) in business, the assessee's regular trade, which takes years to establish, is itself a matter to be looked into and inquired. It may well be that the assessee, who was erstwhile giving small personal loans, has, on account of restrictions u/s. 269SS/T, withdrawn himself from the money market. This, though, ought not to be the case inasmuch as provisions of ss. 269SS/T have been on the statute book for over three decades at the relevant time. How could then the same be said to have deterred the assessee from advancing cash loans from this year; the opening balance under money lending a/c being at Rs. 48.09 lacs (also see para 3.1). The irresistible inference one is led to, particularly in the absence of any explanation for this wholesale change, is the necessity to deposit cash in bank upon demonetization. It shall be noted that both the foregoing aspects being discussed are toward proving the genuineness of the stated figures, be it at the beginning of or during the year. Yes, there could though be pressing reasons for the same, but, then, the same would need to be explained –

not done up to now, and, cannot be a matter of presumption. Further, be that as it may, the same, as afore-stated, would not absolve the assessee from establishing his antecedents and claims. In short, the opening capital would need to be reasonably proved to preclude any adverse inference being drawn.

3.3 It is again apparent that the accounts furnished before the Revenue authorities are not complete, but only summary accounts; the assessee maintaining subsidiary ledgers of the individual persons to whom loans have been advanced, and which would also bear details as to the amount, period, and the rate of interest to be charged. The same, it may be appreciated, is relevant and toward satisfactorily explaining the opening balance. It may well be that the loans are in the nature of small loans, as appears to be the case, lent as personal financing at high rates of interest. The borrowers do not maintain accounts, and which explains the reason for the same being accounted by the assessee under a summary head of account, which though has to be necessarily supplemented by subsidiary ledgers. Whether the law (ss.269SS/T) provides any exception to where the loan or advance forms part of the assessee's stock-in-trade, would be a matter that the AO shall have to examine and consider, of course upon hearing the assessee.

4. We, in view of the foregoing, approve the impugned order, finding no reason to interfere. The AO is obliged to thoroughly examine the assessee's claims, and adjudicate afresh on the nature and source of the cash deposited by the assessee in the assessee's bank account in November, 2016, issuing definite findings of fact. We decide accordingly.

5. In the result, the assessee's appeal is dismissed.

*Order pronounced in open Court on August 31, 2022*

Sd/-  
(Manomohan Das)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Dated: 31/08/2022

*vr/-*

Copy to:

1. The Appellant: Vijay Kumar Jain, HUF, 185, Gali No.7, Cantt, Sadar Bazar, Jabalpur.
2. The Respondent: The Principal CIT-1. Jabalpur.
3. The CIT-DR, ITAT, Jabalpur.
4. Guard File.

By order

(VUKKEM RAMBABU)  
Sr. Private Secretary,  
ITAT, Jabalpur.