

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CHANDIGARH BENCH 'A', CHANDIGARH**  
**BEFORE SMT.DIVA SINGH, JUDICIAL MEMBER  
AND SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

**ITA No. 488/Chd/2022**

(Assessment Year: 2017-18)

|   |      |   |
|---|------|---|
| Sh. Gulshan Kumar<br>Prop. G. K. Resorts House NO. 3,<br>Agar Nagar Extension, Ferozpur<br>Road, Ludhiana 1410212, Punjab | बनाम | Deputy Commissioner of<br>Income Tax, Central Circle-2,<br>Ludhiana |
| स्थायी लेखा सं./PAN NO: AAQPK1200Q  |      |   |

निर्धारित की ओर से/Assessee by : Shri Sudhir Sehgal, Adv.  
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR  
सुनवाई की तारीख/Date of Hearing: 04/08/2022  
उदघोषणा की तारीख/Date of Pronouncement: 31/10/2022

**आदेश/ORDER**

**Per Vikram Singh Yadav, Accountant Member:**

This is an appeal filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-5, Ludhiana, dated 13.05.2022 pertaining to assessment year 2017-18 wherein the assessee through various grounds of appeal has effectively challenged sustenance of addition of Rs. 95,55,371/- by Id. CIT(A) as against the addition of Rs. 1,11,15,371/- made by the Assessing Officer u/s 68 of the Act.

2. Briefly stated, the facts of the case are that the assessee is an individual who has filed his return of income on 04.08.2017 declaring total income of Rs. 30,40,160/- under the head "income from salary", "income from house property", "income from business/profession" and "income from other sources". The case of the assessee was selected under CASS on account of large cash deposits made during the demonetization period for complete scrutiny, thereafter notices u/s 143(2) and 142(1) were issued calling for the information/documentation. Further, during the course of assessment proceedings, the assessee was also issued a show cause dated 19.12.2019 as to why the amount of cash deposits in the demonetization period amounting to Rs. 1,20,58,272/- should not be considered as unexplained cash credit and added to his income u/s 68 of the Act. In response to the show cause, the

assessee filed his submissions dated 24.12.2019 which were considered but not found acceptable to the Assessing Officer. As per the Assessing Officer, from the perusal of the cash book, it has been found that it was unaudited cash book having huge opening cash in hand as on 01.04.2016 amounting to Rs. 94,39,871/- which is unverifiable and without any documentary evidences. Further, no documentary evidences have been furnished regarding the rental receipts as well as receipt from agriculture income. Regarding cash gifts from his sons namely Rohit Kumar Punani and Sahil Kumar Punani, though the assessee has submitted the cash book of his two sons and gift deed dated 06.12.2019 and has also submitted that the cash book of his firm, the story of cash gift is an afterthought and the assessee had fabricated the cashbook to explain the cash deposits of his unaccounted money. Even the cashbook of A.Y 2015-16 has shown a balance of Rs. 11,17,667/- which remained unverifiable. Therefore, the benefit of the opening balance of Rs. 94,39,871/- and the cash gift receipts could not be given. The Assessing officer thereafter redrafted the cash book to find out the peak credit which was determined at Rs. 1,11,15,371/- on 01.01.2017 which was considered as unexplained cash credit u/s 68 of the Act and brought to tax in the hands of the assessee and the assessed income was determined at Rs.1,41,55,531/- as against the returned income of Rs. 30,40,160/-.

3. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A). The Id. CIT(A) has given part relief of Rs. 15,60,000/- and remaining addition of Rs. 95,55,371/- has been sustained. Against the said findings and order of the Id. CIT(A), the assessee is in appeal before us.

4. During the course of hearing, the Id. AR submitted that out of Rs 1.20 crores deposited during the demonetization period, there was opening cash in hand of Rs. 94.39 lacs and the details thereof are as under:-

| <i>Financial Year 2015-16</i>                         | <i>Amount (in Rs.)</i>           |
|---|----------------------------------|
| <i>Opening cash as on 01.04.2015 as per cash book</i> | <i>11,17,667/- (Page no. 59)</i> |
| <i>Add: Total Withdrawals (As per bank statement)</i> | <i>25,24,500/-</i>               |
| <i>Add: Rental Income (shown in ITR) (Page No.</i>    | <i>6,60,000/-</i>                |

|  |                            |
|--|----------------------------|
| 5 to 9)  |                            |
| Add: Agriculture Income (shown in ITR) (Page No. 6)  | 4,50,000/-                 |
| Add: Gift from sons  |                            |
| - Rohit Kumar  | 38,30,000/- (Page No. 83)  |
| - Sahil Kumar  | 8,94,500/- (Page No. 79)   |
| Add: Other Receipts on A/c of Loan Installments received from Rohit and Sahil Kumar Jointly deposited in ICICI Bank loan account | 2,77,824/-                 |
| Add: Cash from GK Resorts-Capital Account  | 12,00,000/- (Page no. 105) |
| Total  | 1,09,54,491/-              |
| Less: Other Deposits – 1,40,620/-  |                            |
| Less: Total Deposits- 13,74,000/- (As per bank statement)  | 15,14,619/-                |
| Closing Balance as on 31.03.2016   | 94,39,871/-                |

5. It was submitted that the Assessing Officer has stated that the opening balance of Rs. 94.39 lacs as on 01.04.2016 is unverifiable and without any documentary evidences. It was submitted that regarding the opening balance as on 01.04.2016, the source along with all the evidences were duly submitted and explained before the Assessing Officer during the course of assessment proceedings. However, Assessing Officer without any finding of fact against the assessee made the addition. It was submitted that the assessee, in addition to the books of accounts related to his business, also maintain the personal books of accounts. Further during assessment proceedings, personal cash book of the assessee was duly submitted before the Assessing Officer. It was submitted that the personal books of accounts are never subject to audit and neither there is any requirement in law to get the personal books of accounts audited. It was accordingly submitted that the action of the Assessing Officer is highly unjustified for rejecting the personal cash book merely on the ground that the same is not audited and that too, when the law does not impose any compulsory audit of the personal books of accounts. It was submitted that the cash deposits were made out of the cash balance in the cash book. It was further submitted that the cash balance is being carried forward from the preceding year but the Assessing Officer without properly analyzing the cash deposits made the addition. It was submitted that the assessee is regularly assessed to tax and

filing his return of income and opening cash is duly reflected in the cash flow statement submitted before the Assessing Officer. Therefore, the source of cash deposit in the bank cannot be rejected by the Id. Assessing Officer without rejecting or pinpointing any defect in the cash flow statement submitted by the assessee. It was submitted that where the claim of the assessee was not acceptable then the proper course of action was to make the addition of this cash in the relevant assessment year in which the said cash was found in the books and not in the year under consideration when it is shown as opening cash balance. In support, reliance was placed on the Co-ordinate Jaipur Benches decision in case of Pinki Devi Aggarwal vs. ITO (*ITA No. 515/JP/2018 dated 16.01.2019*).

6. Further with respect to the each of the individual entries in the cash flow statement so submitted by the assessee, it was submitted that the cash deposits and withdrawals as per cash book are from the regular bank account mainly HDFC A/c number 5520 which is already disclosed in the income tax return. Further, the deposits in the HDFC bank account are from the regular source of income already disclosed in the income tax return and it is clearly noticeable that the credit entries in the bank account are mainly from M/s GKS Infrastructure and the maturity of fixed deposits. Further, it is submitted that assessee is a Director in M/s GKS Infrastructure Ltd and receives salary from the company. Further, there are transactions of loan taken and repayment thereof. It was accordingly submitted that all the transactions are routed through banking channel and it is not a case where the assessee has unexplained credits and the source of the credit entries in the bank accounts are not available. Regarding rental income, it was submitted that the assessee has let out various properties from where assessee earns monthly rental income of Rs. 55000/- which has been duly reflected in the return filed for F.Y 2015-16 and the Assessing Officer has merely rejected the explanation of the assessee on the ground that no TDS has been deducted on the rental income. It was submitted that the TDS is not applicable since rent from one property does not exceed the threshold limit

of Rs. 1,80,000/-. However, Assessing Officer without reason rejected the explanation offered by the assessee.

7. It was further submitted that assessee has received the agricultural income in the captioned year i.e 2016-17 and in the preceding year i.e. F.Y 2015-16. In addition, a confirmation from the cultivating tenant has also been filed by the appellant during the assessment proceedings indicating the amounts paid by him to the assessee during the captioned year involved in this appeal. It was submitted that amount has already been taken as income by the assessee in his return of income as agricultural income and the Assessing Officer has no authority in law to change the source of income as income from undisclosed sources, unless something to the contrary is established by him. It is submitted that when the assessee has furnished evidence to support his claim of agricultural income during the years in question and further, the same has not been controverted by the Assessing Officer by bringing any adverse material on record, the explanation of the assessee cannot be rejected.

8. Regarding gifts from two sons, it was submitted that Assessing Officer treated the cash gifts as an afterthought story merely on the basis of sequential stamp paper and held that the assessee has fabricated the cashbook to explain the cash deposits of his unaccounted money. It was submitted that the during course of assessment proceedings, sufficient documentary evidence in the form of gift deed, returns of income filed by the donors of the gift along with their cash book were furnished and the same have never been denied by the Assessing Officer. Further, on perusal of cash book of the donors of the gift, it is clear that there was enough balance with the donors to make the gifts. Further, the gift has been made by the donors from their regular source of his income which is duly reflected in the cash book submitted with the authorities. Further, furnishing of PAN no. along with the copy of ITR's clearly established that the donors are genuine and regular income tax assessee and subject to the assessment. It was submitted that in

the instant case, all these ingredients were duly discharged by the assessee. Filing of copy of gift deed, affidavit of the donor confirming the giving of gift, furnishing PAN, cash book and copy of return form etc. constituted sufficient evidence relevant for the purpose of proving the gift. It was submitted that the Assessing Officer has treated the gift as unexplained cash credit only on conjectures and surmises without bringing any material on record to controvert/contradict the evidences produced.

9. It was further submitted that assessee is a sole Proprietor of M/s G. K. Resorts which is into the business of renting of halls for marriages and other activities. During the F.Y 2015-16, assessee withdraws Rs. 12 lacs from his capital account and the same is clearly evident from the capital account of the assessee which has been duly submitted before the Assessing Officer. Further, it was submitted that assessee is regularly assessed to tax on income from house property, income from business and agriculture income in previous assessment years also and during the course of appellate proceedings, it was submitted that in the year under appeal, nothing new has been brought on record by the assessee during the course of appellate proceedings which creates doubt or suspicion in the mind of the Assessing Officer. The Assessment Order for the A.Y 2011-12, A.Y 12-13 & A.Y 13-14 are placed on record. It was submitted that the assessment has been done by the same Assessing Officer as for the year under appeal and further, the income has been declared under the same sources by the assessee and well accepted by the Assessing Officer. But in the year under appeal, the same sources have been denied by the Assessing Officer without any material evidence on record. It was accordingly submitted that the opening cash in hand amounting to Rs. 94.39 lacs represents the declared source of income and the said cash has been deposited during the demonetization period.

10. Further, our reference was drawn to the cash book prepared for F.Y 2016-17 and contents thereof as below.

| <b>Financial Year 2016-17</b>  | <b>Amount (in Rs.)</b>                        |
|--|---|
| <b>Opening cash as on 01.04.2016<br/>(as verified above)</b>   | <b>94,39,871/- (Page 52-56 of<br/>the PB)</b> |
| Add: Total Withdrawals<br>(01.04.2016 to 07.11.2016)<br>(As per bank statement)  | 40,00,500/-                                   |
| Add: Rental Income<br>(01.04.2016 to 07.11.2016)<br>(shown in ITR)   | 1,65,000/-                                    |
| Add: Agriculture Income<br>(01.04.2016 to 07.11.2016)<br>(shown in ITR)  | 5,45,000/-                                    |
| Add: Gift from wife (SmtAshu)  | 2,20,000/-                                    |
| Add: Other Receipts on A/c of Loan<br>Instalments received from Rohit,<br>Sahil Kumar and Smt. AshuPuniani<br>W/o of the Assessee deposited in<br>ICICI Bank | 5,25,000/-                                    |
| <b>Total</b>   | <b>1,48,95,371/-</b>                          |
| Less: Total Deposits<br>- 50,26,000/-<br>(01.04.2016 to 07.11.2016)<br>(As per bank statement)   |   |
| Less: other withdrawals<br>- 11,000/-  | <b>50,37,000/-</b>                            |
| <b>Closing Balance as on 07.11.2016</b>  | <b>98,58,371/-</b>                            |

11. In this regard, it was submitted that the item wise explanation of the entries reflected in the cash book were duly submitted before the Assessing Officer. It was submitted that the cash deposits and withdrawals are from the regular bank account which is already disclosed in the income tax return. It was submitted that the assessee has let out various properties from where assessee earns monthly rental income of Rs. 55000/-. Similarly the agricultural income of Rs. 5.45 lacs which has already declared in the return of income, further, the assessee has received cash gift from his wife amounting to Rs. 2.20 lacs and in support of the gift transaction, sufficient documentary evidence was filed by the assessee in the form of valid return of income of the donor along with the cash book but the same was never confronted or denied by the Assessing Officer. It was accordingly submitted that the closing balance as on 07.11.2016 amounting to Rs. 98.58 lacs therefore stand duly verified.

12. It was submitted that the assessee has duly explained cash deposits in the regular bank account with all the supporting evidence. It was submitted that it is not a case where the assessee has any unrecorded money outside

the books of accounts and therefore, the Assessing Officer has made the addition by applying the provisions of section 68 of the Act in an incorrect manner. When the credit entry in the books of accounts are from the sources which has actually been shown by the assessee as his income in the computation of income and assessed to tax, then treating the same entry as the income from unexplained sources would result in double taxation of the same income which is not permissible in law. In support, the reliance was placed on Coordinate Chandigarh Benches decision in case of The ACIT, Circle-2, Ludhiana vs. Shri. Pardeep Kumar Aggarwal 70 taxmann.com 154 (CHD).

13. It was further submitted that the Assessing Officer without pointing out any defect in the above cash flow chart and other supporting evidences/ documentation so furnished by the assessee has rejected the explanation so furnished and has made the addition in the hands of the assessee which is totally unwarranted. It was submitted that even before the Id. CIT(A) each and every entry of the cash withdrawal and sources of rental income, agriculture income, gifts from sons and other evidences were furnished along with capital account in the proprietorship concern as submitted before the Assessing Officer. It was further submitted that the Id. CIT(A) thereafter in his wisdom deputed the Inspector working in his office for detailed verification of documents as submitted by the assessee and a report was submitted by the Inspector at page 19 of the impugned order and no defects have been pointed out in various entries of the cash flow for the F.Y 2015-16 and 2016-17 viz a viz bank accounts for both the years and have repeated the same observations to the Id CIT(A) as made by the AO and for which again, a detailed submission was filed before the Id CIT(A) which also find mention in at pages 19-25 of the impugned order.

14. It was submitted before the Id CIT(A) that the assessee had relied upon the cash flow for the financial year 2015-16 and 2016-17 and all the bank accounts and even the income declared by the assessee for A.Y 2013-14 to

2015-16 where the total income for these three years was Rs. 86,37,670/- for which the relevant proofs in the shape of acknowledgement had been submitted. It was further submitted before the Id CIT(A) that the fact that the assessee was always having substantial cash is proved from the fact that the case of assessee for A.Y 2011-12 was subject matter of reopening u/s 147 of the Income Tax Act, 1961 for a cash deposit of Rs.3,91,87,878/- and no adverse view have been taken by the department. Further, all such submissions which were made earlier were reiterated, along with the affidavits filed by the two sons of the assessee with regard to the gifts and the judgment of Mehta Parikh vs. CIT reported in 30 ITR 181 was relied upon and which have been followed in the case of Glass Lime Equipment Co. Ltd. vs. CIT reported in 253 ITR 454 for the proposition that where the affidavits were filed, then no adverse view can be taken and same arguments were repeated.

15. It was submitted that the submission so filed by the assessee however did not fully find favour with the Id. CIT(A) and he has sustained part addition made by the AO. Regarding the findings of the Id. CIT(A), our reference was drawn to the assessee's written submission and the contents thereof read as under:

**13. The finding of the Ld. CIT(A) at page 28 and, for which, our submissions are as under:**

| <b>Observations of the Ld. CIT(A)</b>   | <b>Reply of the assessee</b>   |
|---|--|
| It has been stated that nothing specific has been stated in relation to withdrawals/ cash generation during the year under consideration and, therefore had stated that the opening cash is not reliable figure and further stated that, this is an arbitrary figure and not reflected in the regular books of accounts of the assessee or declared or intimated to the Department. | It is very strange that having not been able to find any fault in the detailed submissions with narrations of each & every entry, we vehemently object to this remark of the Ld. CIT(A), especially, when the Senior Official of the CIT(A) (Inspector) had verified each & every entry as is evident from page 19 of the order of the Ld. CIT(A) and having not found any fault, how the figures of opening cash-in-hand as on 01.04.2016 be said to be arbitrary and regular books of accounts of M/s. GK Resorts (Proprietary concern) had been |

|  |   |
|--|---|
| <p>maintained and for salary income, rental income, agriculture income, though no books of accounts have been maintained and neither, it is mandatory, but the income declared in the returns of income had been taken for the purposes of explaining the cash –in-hand and other gifts received and, for which, the documentary evidences have been filed and which have not been considered without any evidence and the reliance has been placed on the judgment of the Apex Court in the case of CIT vs. Daulat Ram Rawat Mal reported in 87 ITR 349 that, if the documentary evidences are pitted against the oral statements, then the cause of documentary evidence will prevail. Further, there is no column in the Income Tax Return for declaration of cash-in-hand etc.</p> <p>2. The Ld. CIT(A) has stated that, so called cashbook prepared by the assessee having huge cash inflows were never got audited and hence it is a self-serving document and then has stated that there is a closing cash of Rs. 3,92,099/- against the opening cash of Rs. 94,39,871/-.</p> <p>3. The Ld. CIT(A) has submitted the AR has not filed any document substantiating the opening cash-in-hand before the Department.</p> <p>4. The Ld. CIT(A) at page 29 first paragraph, had submitted that the assessee had declared rental income of Rs. 55000/- per month in</p> | <p>maintained and for salary income, rental income, agriculture income, though no books of accounts have been maintained and neither, it is mandatory, but the income declared in the returns of income had been taken for the purposes of explaining the cash –in-hand and other gifts received and, for which, the documentary evidences have been filed and which have not been considered without any evidence and the reliance has been placed on the judgment of the Apex Court in the case of CIT vs. Daulat Ram Rawat Mal reported in 87 ITR 349 that, if the documentary evidences are pitted against the oral statements, then the cause of documentary evidence will prevail. Further, there is no column in the Income Tax Return for declaration of cash-in-hand etc.</p> <p>2. The Income Tax Act, 1961 by way of Section 44AB has laid down very clearly that under what circumstances, the books of accounts shall be audited and the fact that no penalty u/s 271B has been initiated proves the fact, that assessee's case was not eligible for Audit. As regards, closing balance of Rs. 3,92,099/-, it is submitted that, the Ld. CIT(A) has failed to take notice of the fact that as per the Scheme of Demonetization, all the old currency was required to be deposited within the stipulated time and that is why the cash as on 31.03.2017 was Rs. 3,92,099/- and, such a remark cannot be expected from the Senior Officer Department.</p> <p>3. It is very strange that the Ld. CIT(A) has overlooked the detailed evidences as discussed above and as such this remark is highly objectionable.</p> <p>4. It is submitted that, the rental income has been accepted and if the TDS has not been deducted by the other party, it cannot be said that the rental income is not earned and the</p> |
|--|---|

the Financial Year 2015-16 but no TDS had been deducted, hence, it is not acceptable and further stated that, certain repayment of housing loan have not been explained and hence the source of cash is doubtful.

5. It has been stated by the Ld. CIT(A) that, the agriculture income has not been shown in the ITR in the earlier assessment years and, further, the calculation of agriculture income has not been filed and also that the benefit of agriculture income cannot be given.

6. It has been stated that, since the gift deeds are dated 06.12.2019 and having sequential stamp paper and thus, is it an afterthought and fabricated cashbook and even opening balance of Rs. 11,17,667/- as on 01.04.2015 is also unverifiable and these are self-serving.

7. The Ld. CIT(A) at page 30 had mentioned about the summary of our facts & figures and then has stated they are not supported by independent evidence and further stated that, explanation of agriculture income in AY 2013-14 &

same has been assessed by the AO on substantive basis. Further, there is no provision that, if the TDS has not been deducted, then rental income cannot be accepted. Further, the repayment of the Housing Loan is from the bank accounts and which have neither been doubted by the AO or by the official of the Ld. CIT(A) as stated above.

5. We have filed the copies of the returns for the earlier assessment years and for the current years at pages 140 to 160 for AY 2012-13 to 2015-16 and for the year under consideration and ignoring that documentary evidence is devoid of any valid reason and we had also filed the necessary proof of the same as submitted in the paper book at pages 104 to 105 and pages 149 to 149A of the paper book. Hence, this remark of Ld. CIT(A) be rejected.

6. About the two gifts from the sons, relevant cash flow of his sons along with ITR had been submitted and no defect had been pointed in that and further about the affidavit, it is submitted that the event, which had happened in the Financial Year 2015-16 was asked to be explained/confirmed. at the time of assessment proceedings and, therefore the same was explained/confirmed by way of duly attested affidavits, which had been mentioned as gift deed. Further, having not found any fault/defect in any of the entries, this remark of the Ld. CIT(A) is not acceptable.

7. Having not been able to find any omission in the entries either by the AO/CIT(A) or even by official of CIT(A), this is only a general remark and further, this remark of the Ld. CIT(A) that, the explanation of the agriculture income in the returns for AY 2013-14 & 2014-15 is found to be false is vehemently denied

|   |  |
|---|--|
| <p>2014-15 is found to be false and no personal or household expenses have been debited in the cash flow and further, since the same were not audited and therefore, the contention cannot be accepted.</p>   | <p>and documentary evidence has been brushed-aside and we take strong objections to the same. Further, no doubt has been made by the Ld. AO about the household expenses etc. and this is only a doubt &amp; suspicion which cannot be taken as a evidence and no addition can be made on such doubt &amp; suspicion.</p>  |
| <p>8. It has been stated at page 30, the assessee has so many bank accounts and why cash which was lying idle was kept and he could have erred interest income and, further, if the cash was available, he could have repaid the loans.</p>   | <p>8. The assessee's is the sole judge to manage his affairs and department official cannot dictate the assessee to carry on the business in the manner in which they like as per the binding judgment of the Apex Court in the case of SA Builders reported in 288 ITR 1</p>  |
| <p>9. The CIT has stated at page 31 that the assessee has made cashbook with huge opening cash which was not declared/disclosed to the department and the cashbook was never subject to Audit.</p>  | <p>9. We have already given the comments above, that this observations of the Ld. CIT(A) is totally biased and against the documentary evidences. There is no column in the return of income, for declaration of the cash-in-hand if the assessee is not maintaining any books of accounts and even the availability of cash in hand can be explained.</p>   |
| <p>10. The CIT(A) has stated at page 31 that the capital account balance as on 31.03.2016 in M/s. GK Resort was Rs. 1,69,29,898/- and in the balance sheet as on 31.03.2016 it is Rs. 1,80,73,360/- and thus these figures has been enhanced and different figures have been reported to increase the cash-in-hand.</p> | <p>10. Kindly see page 99 to 100 of the paper book which is a profit &amp; loss account and balance sheet, where the profit figure has been taken separately and return of income for 31.03.2016, copy placed at page 137 of the paper book where the total of opening capital as on 01.04.2015 and the profit for the Financial Year 2015-16, total upto Rs. 1,80,73,360/- and, thus, no wrong figures have been given.</p> |
| <p>11. Again the CIT(A) has stated at page 32 that opening cash-in-hand is not correct and not substantiated and no corroborative evidence has been filed.</p>  | <p>11. Having not found any defect in any of the entries in the detailed cash flows for different years and other documentary evidences such remark of the Ld. CIT(A) is not borne out.</p>  |
| <p>12. The Ld. CIT(A) has not giving</p>  | <p>12. This contention of the Ld. CIT(A) is not</p>  |

|  |   |
|--|---|
| any benefit for the agriculture income of AY 2015-16, 2016-17 and again has stated that no agriculture income has been declared in AY 2013-14 & 2014-15. | correct, the agriculture income for AY 2013-14, 2014-15 had been given and, thus, in totality the cash flow should have been accepted and the of the confirmation of addition is on surmises & conjectures which cannot be sustained. |
|--|---|

16. It was accordingly submitted that the confirmation of the addition by the Id. CIT(A) is arbitrary and against the principle of natural justice because the documentary evidences have been brushed aside without assigning any reasons and especially after having verified in detail, each & every narrative entry in the cash flow for the F.Ys 2015-16 & 2016-17 by the Inspector working under his charge, the whole basis for confirmation of addition, deserves to be deleted.

17. Further, reliance was placed the Co-ordinate Jaipur Benches decision in the case of Sh. Sunil Mathur (*ITA No. 660/JP/2019 dated 01.11.2021*), wherein under the similar facts & circumstances, where the assessee was not maintaining any books of accounts and all transactions were made in the cash were duly reflected in the cash flow for which a detailed cash flow statement was maintained, a finding has been given by the Tribunal and it had been held that where the cash flow statement for previous financial year depicting individual transactions of receipts & payments/withdrawal having been given, no addition is liable to be made. Reliance was placed on another decision of Coordinate Jaipur Benches in the case of Smt. Pinki Devi (*ITA No. 515/JP/2018 dated 16.01.2019*), where certain gifts were given by the family members and in support of such cash deposit received by way of gifts, documentary evidences were found and basis thereof, the addition was deleted. Further, reliance was placed on the decision of Lucknow Benches of the Tribunal in the case of Satish Chandra Pandey (*ITA No. 525/LKW/2010 dated 30.03.2011*), wherein assessee was regularly filing the return of income and the amount has been reflected in the cash flow statement and which did not pertain to the year under consideration, the addition was deleted. It

was accordingly submitted in light of aforesaid submissions, the addition so sustained by the Id. CIT(A) deserve to be deleted.

18. The Id. DR in her submissions supported the order and the findings of the Assessing Officer as well as Id. CIT(A). Regarding the contention of the Id. AR that the addition on account of opening cash in hand cannot be made in the year under consideration, it was submitted that the same cannot be accepted for the reason that it is the assessee claim that cash deposited during the year under consideration was out of opening cash in hand and given that where the said claim of the assessee regarding reopening cash in hand was not found substantiated and rejected by the Assessing Officer, the addition was made by him. It was further submitted that the assessee has made a cashbook with huge opening cash of Rs. 94.39 lacs which is an arbitrarily figure of cash in hand which cannot be accepted until and unless, these are reflected in the regular books of accounts of the assessee or declared/intimated to the Department before selection of case for scrutiny. It was submitted that such cash in hand is not substantiated by any documentary evidence in the form of withdrawals from the bank account or withdrawals from regularly maintained books of accounts which were never got audited and its authenticity which is thus not established. It was submitted that the cash book/cash flow produced by the assessee during the assessment proceedings is only a self-serving document and the assessee has not filed any documentary evidence to substantiate opening in cash in hand which was any way declared in any documents filed before the Department from which this figure can be independently verified.

19. Coming to the rental income which has been claimed as one of the sources of cash deposits by the assessee, it was submitted that the assessee has contended that the TDS provisions are not applicable. However, the same is not factually correct as the assessee in his computation of income for A.Y 2016-17 has shown income from various properties which varies from Rs 1.8 lacs to Rs 6.95 lacs where the TDS provisions are clearly applicable.

Regarding agricultural income, it was submitted that the assessee has shown agricultural income in ITR for A.Y 2015-16 and for A.Ys 2013-14 and 2014-15, neither any agricultural income has been shown in ITR nor has been mentioned anything about agricultural income by the Assessing Officer while passing the assessment order for A.Ys 2012-13 and 2013-14. Regarding cash gift from his sons, the Assessing Officer had examined this issue and has found the same to be an afterthought and the said observation of the Assessing Officer have not been successfully rebutted by the AR and the documents so filed in support thereof are self-serving documents. Regarding withdrawal of Rs. 12 lacs from his proprietary concern, it was submitted that the figures of capital account balance as on 31<sup>st</sup> March 2016 are not matching and different figures have been declared in the balance-sheet submitted before the AO and the return filed online which has been rightly disputed by the Assessing Officer. It was further submitted that the assessee has already been granted relief of Rs. 15,60,000/- by the Id CIT(A) and therefore, in the facts and circumstances of the case, the assessee does not deserve any further relief and the order so passed by the Id. CIT(A) should be sustained and the appeal of the assessee be dismissed.

20. We have heard the rival contentions and perused the material available on record. The issue under consideration relates to source of cash deposits in the bank accounts maintained by the assessee during the demonetization period and the reasonableness of the explanation so submitted by the assessee explaining the source of such cash deposits. For the purposes, it is relevant to note the nature of activities being undertaken by the assessee, the books of accounts being maintained by him, if any and the status of disclosure thereof by way of tax filings and acceptance or otherwise by the tax department. In this regard, it is noted that the assessee is in the business of renting of halls for marriages and other functions which he runs in his capacity as sole proprietor in the name and style of M/s G.K Resorts and for which he maintains his separate books of accounts and separate bank accounts. The assessee is also a director in M/s GKS Infrastructure Ltd

wherefrom he draws remuneration. Besides, the assessee has rental income, interest income and agriculture income and for the purposes, the assessee maintains personal cash book and operates separate bank accounts. The assessee has been regular in his tax filings where the income from above sources have been disclosed as evident from his tax filings for A.Y 2011-12 to A.Y 2016-17 and his tax returns have been subject to scrutiny and assessment as evident from the assessment orders passed for A.Y 2011-12 to A.Y 2013-14. We therefore find that the assessee has an established history of tax filings and disclosure of his sources of income in the past assessment years and which have been subject to scrutiny by the Revenue as well. In the aforesaid background, the explanation of the assessee has to be understood and appreciated as regards the source of cash deposits during the year under consideration. It has been submitted by the assessee that given his nature of business and other financial dealings, he was having sufficient cash-in-hand at the beginning of the year and also during the year which was later on deposited by him in his bank accounts. To substantiate his statement, the assessee has submitted the copies of annual financial statements and books of accounts maintained in respect of M/s G.K Resorts where the business of renting of halls for marriages and other functions have been carried on in his sole proprietor capacity and copies of separate bank accounts maintained for the said business. Further, in respect of non-business sources of income, the assessee has submitted his personal cash book which has been separately maintained and copies of bank statements showing the deposits and withdrawals. And to give a holistic picture across his business and other sources, the assessee has prepared a cash flow statement identifying and highlighting various withdrawals and deposits from bank, rental income, agriculture income, gifts and income from other sources with opening and closing cash-in-hand. The details of these and other documentation running in over 160 pages so submitted during assessment and appellate stage can be gauged from the following compilation of documents which has been filed before the Bench as under:

| Sl. No.   | PARTICULARS  | PAGES            |
|-----------|--|------------------|
| <b>1.</b> | Copy of the first reply as filed before the Assessing Officer along with following Enclosures:-  | <b>1-4</b>       |
|           | i. Copy of the acknowledgement of return for asstt. Year 2016-17 alongwith computation of Income.  | <b>5-11</b>      |
|           | ii. Copy of the acknowledgement of return for asstt. Year 2017-18 alongwith computation of Income.   | <b>12-15</b>     |
|           | iii. Balance Sheet and Income & Expenditure Account of M/s G.K. Resorts Prop. Sh.Gulshan Kumar alongwith 26AS for the Asstt.Year 2017-18.  | <b>16-19</b>     |
|           | iv. Copy of Account of Sh. Gulshan Kumar in the books of M/s G.K.S. Infrastructure, in which, he is director.  | <b>20</b>        |
|           | v. Copy of Director Remuneration Account of Sh. Gulshan Kumar.   | <b>21</b>        |
|           | vi. Detail of Bank Accounts as held by the Assessee in Asstt. Year 2017-18 mentioning Opening & Closing Balance.   | <b>22</b>        |
|           | vii. Copy of the HDFC Bank Account of the Assessee for the F.Y. 2016-17.   | <b>23-33</b>     |
|           | viii. Copy of Account of Bank of India of the assessee.  | <b>34</b>        |
|           | ix. Copy of Account of Corporation Bank of assessee  | <b>35-36</b>     |
|           | X. Copy of HDFC Bank Account in the personal books of accounts of Sh. Gulshan Kumar for Asstt. Year 2016-17,   | <b>37-45</b>     |
|           | xi. Copy of Corporation Bank Account in the personal books of accounts of Sh. Gulshan Kumar for Asstt. Year 2016-17,   | <b>46</b>        |
|           | xii. Copy of ICICI Bank Account in the personal books of accounts of Sh. Gulshan Kumar for Asstt. Year 2016-17,  | <b>47</b>        |
|           | xiii. Copy of Loan Accounts of ICICI Bank in the books of accounts of assessee.  | <b>48-49</b>     |
|           | xiv. Detail of the properties owned by the assessee during Asstt. Year 2017-18 with address.   | <b>50</b>        |
|           | XV. List of Secured loans during Financial Year 2016-17,   | <b>51</b>        |
|           | xvi. Copy of the personal Cash book of the assessee from 1.4.2016 to 31.03.2017.   | <b>52-56</b>     |
| <b>2.</b> | Copy of the second reply as filed before the Assessing Officer along with following 1 enclosures:-.  | <b>57-58</b>     |
|           | i. Copy of the Personal Cash Book of assessee for financial year 2015-16.  | <b>59-62</b>     |
|           | ii. Copy of Bank Account of the assessee with HDFC Bank for F.Y. 2015-16.  | <b>63-70</b>     |
|           | iii. Copy of Another Bank Account with HDFC Bank for F.Y. 2015-16 of the assessee.   | <b>71-72</b>     |
|           | iv. Copy of the Personal Cash Book of Sh. Sahil Kumar Puniani S/o Sh. Gulshan Kumar, who had gifted the amount to father.  | <b>73-77</b>     |
|           | v. Copy of the Personal Qash Book of Sh. Rohit Kumaf Puniani S/o Sh. Gulshan Kumar, who had gifted the amount to father.   | <b>78-81</b>     |
|           | vi. Gift deed of Sh. Sahil Kumar Punani duly attested confirming the gift given to father during F.Y. 2015-16.   | <b>82-83</b>     |
|           | vii. Gift deed of Sh. Rohit Kumar duly attested confirming the gift given to father during F.Y. 2015-16.   | <b>84-85</b>     |
|           | viii. Copy of ITR return of Sh.Rohit Kumar for Asstt. Year 2016-17   | <b>86</b>        |
|           | ix. Copy of ITR return of Sh.Sahil Kumar for Asstt. Year 2016-17   | <b>87</b>        |
|           | X. Copy of Cash Book of M/s. G.K. Resorts Prop. Sh. Gulshan Kumar for Asstt. Year 2016-17.   | <b>88-98</b>     |
|           | xi. Copy of the Balance Sheet of G.K. Resorts alongwith Profit & Loss Account, Capital Account and other details for financial year 2015-16.   | <b>99-103</b>    |
|           | xii. Copy of Account of Agricultural Income for Asstt. Year 2016-17 in the books of accounts of Sh. Gulshan Kumar alongwith affidavit of Sh. Chamkaur Singh confirming that the agricultural land Jias been given on lease to him alongwith English translation. | <b>104-105-A</b> |
|           | xiii. Copy of Account of Repair & Maintenance in the books of accounts of G.K. Resorts for F.Y. 2016-17,   | <b>106-107</b>   |
|           | xiv. Copy of the Assessment orders u/s 143(3) in the case of assessee for Asstt. Year 2011 -12, 2012-13 and 2013-14.   | <b>108-117</b>   |
|           | XV. Copy of Assessment Order of Sh. Sahil Kumar for Asstt. Year 2012-13.   | <b>118-120</b>   |
|           | xvi. Copy of the order of Hon'ble ITAT, Chandigarh Bench, Chandigarh in the case of Sh. Rohit Kumar for Asstt. Year 2010-11 to prove that he is a man of mean.   | <b>121-127</b>   |

|           |   |                  |
|-----------|---|------------------|
| <b>3.</b> | <i>Copy of the Additional Submission as per Order Sheet entry dated 11.04.2022 along with all Enclosures.</i>   | <b>128-139</b>   |
|           | i. <i>Copy of ITR return for Asstt. Year 2012-13 alongwith relevant page showing substantial agricultural income.</i>                                       | <b>140-141</b>   |
|           | ii. <i>Copy of Acknowledge of return for Asstt. Year 2013-14 alongwith relevant page showing substantial agricultural income.</i>                           | <b>142-144</b>   |
|           | iii. <i>Copy of Acknowledge of return for Asstt. Year 2014-15 alongwith relevant page showing substantial agricultural income.</i>                          | <b>145-147</b>   |
|           | iv. <i>Copy of Acknowledge of return for Asstt. Year 2015-16, showing substantial agricultural income.</i>  | <b>148</b>       |
|           | v. <i>Copy of the affidavit of Sh. Chamkaur Singh, from which, it proves that the income has been earned by the assessee alongwith English translation.</i> | <b>149-149 A</b> |
|           | vi. <i>Copy of returns of Income of Sh. Rohit Kumar for Asstt. Year 2013-2014, 2014-2015 &amp; 2015-2016 alongwith computations of income.</i>              | <b>150-157</b>   |
|           | vii. <i>Copy of returns of Income of Sh.Sahil Kumar for A§stt. Year 2013-2014, 2014-2015 &amp; 2015-2016.</i>   | <b>158-160</b>   |

21. Further, it has been submitted by the Id AR that these documentation have been examined by the AO where each and every entry has been duly explained, thereafter, he has asked certain queries and which were duly responded, however, the AO without pointing out any defect in the documentation and other evidences so submitted has summarily rejected the explanation so submitted by the assessee. It has been further submitted that during the appellate proceedings, the documentation so submitted by the assessee were again subject to examination and verification by the Inspector deputed by the Id CIT(A) who after examination has submitted his report where no defects have been pointed out by him. However, without taking into consideration the report submitted by his own Inspector, the Id CIT(A) has sustained the majority of the addition so made by the AO allowing only a partial relief.

22. In our view, the test of reasonableness of the explanation has to be examined in the context of nature of business and other financial dealings of the assessee and how the assessee has maintained documentation in that regard. There cannot be a uniform test which can be applied in each and every situation. Where there is no statutory mandate to get the books of accounts audited, insisting that the books of accounts or for that matter, the cash book is not audited and consequent cash flow statement is not reliable, we find that it is a case where the authorities have not been reasonable in their expectation rather than the case where the assessee has not provided

a reasonable explanation. At the same time, where the books of accounts, cash book and other documentation so exist and produced for verification, the authorities are well within their right and jurisdiction to examine the same and point out the defects and inaccuracies which may come to their notice. Therefore, as far as non-reliance on books of accounts and other documentation so submitted by the assessee, we are of the considered view that the action of the lower authorities cannot be sustained. We find that similar view has been taken by the Coordinate Jaipur Benches in case of Sh Sunil Mathur vs ITO (*supra*) where it was held as under:

*15. We have heard the rival contentions and perused the material available on record. The issue under consideration relates to source of cash deposits during the year in the two bank accounts maintained by the assessee amounting to Rs 13.5 lacs. In this regard, firstly, it is noted that during the year under consideration, the assessee has sold a property and consideration thereof amounting to Rs 43.50 lacs has been received through banking channels and there is no allegation by the AO in terms of any on-money received by the assessee in cash over and above the declared sale consideration. It has been explained by the assessee that the source of cash deposits during the year is out of earlier two years withdrawals and cash in hand at the beginning of the year. In support of his contention, the assessee has submitted cash book and cash flow statement for previous two financial years depicting the individual transactions of receipts and payments/withdrawals. We have gone through these cash flow statements and find that the assessee has sufficiently explained the source of deposits in form of salary and other retirement benefits which have been duly declared and withdrawals towards household expenses which are partly funded by him and partly by his wife and therefore, availability of cash in hand at the beginning of the year has been sufficiently explained. In the result, considering the entirety of facts and circumstances of the present case, we hereby direct the Assessing officer to delete the addition so made in the hands of the assessee towards unexplained cash deposits and ground no. 2 of assessee's appeal is allowed.*

23. Now coming to the specific explanation regarding various sources of income constituting the opening cash in hand and availability thereof as on 1.04.2016, it has been submitted by the assessee that the same relates to opening cash in hand as on 1.04.2015, rental income, agricultural income, gifts from his two sons, cash received from M/s GK Resorts besides net of withdrawals and deposits from his bank accounts and it needs to be seen

whether the said explanation meet the test of reasonableness in the facts and circumstances of the present case.

24. Regarding opening cash in hand as on 1.04.2016, the assessee has submitted that as per his return of income for three years namely, A.Y 2013-14 to A.Y 2015-16, he has shown cumulative income of Rs 86,37,670/- and out of which, cash-in-hand is of Rs 11,17,667/- which constitute 12% of his past earnings which has been kept to take care of any unforeseen contingencies. The tax filings are matter of record and savings as a percentage of earnings seems reasonable to us in absence of anything contrary on record. The rental and agriculture income has been accepted by the Id CIT(A) and the same are not in dispute. Regarding gifts received from his two sons, it is noted that documentation in form of personal cash book maintained by both the sons, their bank statements, copies of their tax returns, assessment orders and gift deed by way of duly attested affidavits have been submitted and on perusal thereof, we find that the assessee has duly discharged the onus cast upon him in terms of identity, genuineness of the gift transaction and the creditworthiness of his two sons, and the explanation regarding receipt of gift from the sons to the father out of love and affection deserve to be accepted. Regarding cash received from M/s GK Resorts, the assessee has submitted copies of balance sheet and profit/loss account of M/s G K Resorts as well as copy of capital account in name of the assessee which is maintained in the books of M/s G K Resorts and we find that the entries therein demonstrate withdrawal of capital by the assessee and the explanation regarding receipt of cash by way of withdrawal from his capital account therefore deserve to be accepted. Besides the above, there are other regular withdrawals and deposits transactions from the bank accounts maintained by the assessee which have been duly disclosed and reflected in the cash book and cash flow statement and have not been disputed by the authorities. We therefore find that the assessee has not just provided a reasonable explanation to explain the source of cash deposits but the said explanation has been adequately supported by adequate documentation

and in the entirety of facts and circumstances of the case, the addition so sustained by the Id CIT(A) are hereby deleted and the order of the Id CIT(A) is set-aside and the matter is decided in favour of the assessee.

25. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open court on 31/10/2022.

**Sd/-**  
**(DIVA SINGH)**  
**न्यायकि सदस्य/Judicial Member**

**Dated: 31/10/2022**

**Ganesh Kr**

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

**Sd/-**  
**(VIKRAM SINGH YADAV)**  
**लेखा सदस्य/Accountant Member**

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar