

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

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.150/Asr/2021  
Assessment Year: 2017-18**

Asstt. Commissioner of Income Tax Central Circle-Jammu.  (Appellant)	<b>Vs.</b>	M/s HN Agri Serve P. Ltd. New Fruits Complex, Parimpora, Qamerwari, Srinagar. [PAN: AADCH1531R] (Respondent)
---	------------	---

**I.T.A. No.94/Asr/2021  
Assessment Year: 2017-18**

M/s HN Agri Serve P. Ltd. New Fruits Complex, Parimpora, Qamerwari, Srinagar. [PAN: AADCH1531R] (Appellant)	<b>Vs.</b>	Asstt. Commissioner of Income Tax Central Circle-Jammu.  (Respondent)
---	------------	---

<b>Appellant by</b>	<b>Sh. HitendraBhauraojiNinawe, CIT. DR</b>
<b>Respondent by</b>	<b>Sh. R. K. Gupta, CA.</b>

<b>Date of Hearing</b>	<b>22.12.2022</b>
<b>Date of Pronouncement</b>	<b>31.01.2023</b>

**ORDER**

**Per:Anikesh Banerjee, JM:**

The instant appeal of the revenue was filed against the order of the Id.  
Commissioner of Income Tax (Appeals)-5,Ludhiana, [in brevity the 'CIT

(A)]bearing appeal No. 10342/ROT/IT/CIT(A)-5/2019-20, date of order 02.09.2021, the order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity the Act] for A.Y. 2017-18 bearing ITA No. 150/Asr/2021. The assessee has filed cross appeal by challenging the impugned order of the ld. CIT(A) bearing ITA. 94/Asr/2021. The impugned order was emanated from the order of the ld. Asstt. Commissioner of Income Tax, Central Circle, Jammu, (in brevity the AO) order passed u/s 143(3) of the Act date of order 28.12.2019. The revenue has taken the following grounds:

*“1. Whether upon facts and circumstances of the case, the Ld.CIT(A) was justified in restricting the addition of Rs.5,03,336/-, on account of cash deposits during the demonetization period on one particular day in Delhi, by various debtors residing in J&K State?”*

*2. The appellant craves leave to add, amend, modify, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.”*

2. The assessee has taken the following grounds:

*“1. That the worthy CIT(A) is not justified in partly allowing the appeal by confirming addition of Rs.5,03,336/- in respect of one grower/debtor out of total addition of Rs.6,33,46,052/- made by the ld. AO.*

*That the appellant craves, leaves to alter, amend and add to substitute any ground of appeal before or at the time of hearing.”*

3. Brief fact of the case is that the assessee is a dealer of fresh fruits and commission agent besides under a cold storage plant. In the preceding year for A.Y. 2016-17, the sundry debtors amount of Rs.6,14,67,226/- was reflected in the books of account of the assessee which is finally reflected in the final accounts. The assessee had paid advanced to the farmer for purchasing of fresh fruit. For the impugned assessment year, the advance was returned back by the farmers after the declaration of demonetisation. The advance amount was returned back to the assessee. The assessee had deposited the cash in bank account in Jammu & Kashmir Bank, Branch Lassipora Pulwama, Kashmir and Azadpur, New Delhi Branch. The total amount was deposited in bank account to Rs.6,45,50,000/- out of that in Pulwama Branch amount to Rs. 42,50,000/- & in New Delhi Branch amount to Rs. 6,03,00,000/-. As per the information from bankers Rs.32,50,000/- was demonetised currency (SBN) and rest amount was deposited on normal currency. To consider the demand of the parties, the cash was immediately received from the total 156 farmers to maintain the business liaison. During the assessment, the details of transactions were submitted before the ld. AO. The notice u/s 133(6) was issued to 60 debtors. out of 60 notices, 16 notices were returned back

undelivered with the remark that “*incomplete address or no person received here*”. Only denial of transaction from one party was happened during assessment. Perusal of assessment record the appellate authority confirmed that many of the confirmations from parties were received after assessment. All parties had confirmed the cash transaction. One of the debtors Mohd. Ahmed and Sons, Molu Chitragam, Sopian, was alleged returned an amount of Rs.5,03,336/- denied having made any such payment to assessee. But the assessee had made an objection that the verification was not proper and incomplete one. Later the confirmation from party was filed & reason was well explained. But both the authorities have not accepted the argument of assessee & confirmed the amount of Rs. 5,03,336/-. The total addition was made U/s 68 of the Act by the ld. AO amount of Rs.6,33,46,052/- & the tax was charged U/s 115BBE of the Act. Aggrieved assessee had challenged the assessment order before the ld. CIT(A). In order of appeal the amount of Rs.5,03,336/- was only confirmed by the ld. CIT(A). The rest amount of addition of Rs.6,28,42,716/- was deleted by the appellate authority. Being aggrieved, the assessee and the revenue both have filed appeal and cross appeal before the ITAT by challenging the order of the ld. CIT(A).

4. During hearing the ld. CIT DR had filed a written submission the relevant part of the written submission is extracted as below:-

*“The fact of the case gives rise to following queries -*

- 1. The demonetization was announced at 8.00 p.m. on 08.11.2016. It is unbelievable to accept as to how the news spread so fast so that the illiterate fruit growers got panic and came to the office from different places to return the advances taken by them within a period of 4 hours since all the amounts received from the debtors is shown to have received on 08.11.2016.*
- 2. It is surprising to note how the debtors from various places in Kashmir could reach at the assessee’s office at Pulwama or the Bank Branch at Azadpur, New Delhi for depositing their advances taken from assessee.*
- 3. There were 156 debtors who returned the advances taken from the assessee on 08.11.2016. There are only 10 deposit entries from 11.11.2016 to 30.11.2016. It is the moot question that as per the directions of the assessee, how 156 debtors can deposit the amounts in only 10 entries.*
- 4. It is the question as to who collected the money and deposited the same in the bank account of the assessee since either the pay slips are unsigned or they are only initialled (not having complete signature) due to which depositor cannot be identified easily. (Refer - 24 of the assessment order)*
- 5. When the amount was deposited in 10 instalments on various dates, then why the total amount of Rs.6,33,46,052/-was shown to have received on 08.11.2016 i.e. on single date.*

6. *How the assessee came to know that the total amount of Rs.6,33,46,052/- was received from all 156 debtors on 08.11.2016 when the amounts were deposited on various dates in 10 instalments on subsequent dates.*

7. *Amongst the debtors who returned their advances are (i) Mohd. Maqbul and Sons, Check Keeham, Chowgal, Kupwara who returned its outstanding amount of Rs.208.85 and (ii) Irshad Ahmed Lone, Chitragam, Awenura, Anantnag who returned his outstanding amount of Rs.779.20. It is the question as to why such persons will run here and there for such a miniscule amount and return the said amount on 08.11.2016 within 4 hours of the announcement of demonetization.”*

4. The Id. CIT DR further relied on the order of the Id. AO the relevant **para no. 11 page 31** is extracted as follows: -

*“11. Therefore, in view of the above discussion, the cash credits aggregating to Rs. 6,33,46,052/- in respect of 156 persons as per para “4.1” credited in the books of accounts of the assessee as on 08-11-2016, which have been allegedly received back from debtors remained unexplained. The explanations offered by the assessee are not satisfactory with regard to the nature and source of these credits. Earlier assessee had stated that the cash was received by them from their debtors to whom advances were given by them. As per them, the cash received from the debtors on 08-11-2016 was deposited in bank*

*account during the period of demonetization and out of all the cash deposited during demonetization period, only Rs. 32.50 Lakhs was in SBN currency. However, when the assessee was confronted with the fact that out of total cash deposited, Rs. 6.03 crores was deposited in New Delhi and that too in SBN currency, assessee changed his version and thereafter stated that the cash was accepted from the debtors but with the instructions to deposit the same directly in the bank account. This changed version of the assessee is also not acceptable in view of the discussion in the foregoing paras. It is a clear case of surplus unexplained cash lying in old, demonetized currency with the assessee has been deposited in the bank account under the colour of realization from the debtors. It is pertinent to note here that three directors of the assessee company, who are holding around 67% of shares and having control over the affairs of the assessee company are located in Delhi. It was thus most likely that major cash in SBN deposited in the Delhi Branch was actually the unaccounted cash of the assessee lying in possession and control of directors. As such, an amount of Rs, 6,33,46,052/- is being added to the total income of the assessee u/s 68 of the I. T. Act, 1961 as unexplained cash credits as deemed income of the assessee, since the assessee has failed to furnish any satisfactory explanation regarding nature and source of such credits. The tax shall be charged u/s 115BBE of the I. T.Act, 1961. Since the addition has been made u/s 68 of the I. T. Act, 1961 as deemed income penalty proceedings u/s 271AAC of the I. T. Act, 1961 are initiated.”*

4.2 The Id. counsel in his argument submitted a paper book containing page 1 to 30 which is kept in record. In argument, the Id. counsel categorically stated that the assessment in preceding assessment year 2016-17 was completed for assessee u/s 143(3) of the Act. The copy of the assessment order u/s 143(3) is enclosed in **APB page 1 to 4**. The assessee had declared the in account of “Advance to Grower” in the return of income which was assessed during the time of assessment in preceding year. The amount of “Advance to Grower” was reflected in Balance Sheet for AY 2016-17 amount to Rs.6,46,70,127.23, **APB-Page-11**. The copy of the submission before the Id.DCIT, CC, Jammu for A.Y. 2016-17 is enclosed in **APB pages 10 to 17**.

4.3 The Id. Counsel for assessee further mentioned that during assessment proceeding for assessment year 2017-18, he submitted the list of details of 156 sundry debtors, to whom the assessee paid the advance and copy of the submission is enclosed in **APB pages 18 to 27**. In his argument, he further mentioned that the notice issued for Mohd. Abdul & Sons, the address was wrongly mentioned by revenue and the confirmation letter of Mr. Mohd. Abdulla is submitted who had confirmed the transaction amount of Rs.5,03,336/- with assessee. The copy of the letter and the confirmation is also enclosed in **APB pages 28 to 29**.

4.4 In his argument the Id. Counsel mentioned that the disallowance of Rs.5,03,336/- of M/s Mohd. Abdulla and Sons was not allowed for any cross examination by the revenue authority.

The Id. Counsel for assessee respectfully on the following judgments which are as follows:-

1. **Income Tax Officer Vs. Atul Kumar Mittal, ITAT Delhi, ITA No. 885/Del/2012 Asstt. Year 2007-08:-** *When The debtor was considered genuine at the end of preceding year, the receipt from the said debtor during the year under consideration cannot be treated as bogus.*

The observation of the Bench is extracted as follows: -

*“8. We have heard both the parties and carefully gone through the material available on record. In the present case it is noticed that a sum of Rs.4,55,990/-was outstanding in the name of M/s Pankaj International and the said amount was received by the assessee during the year under consideration. However, the AO was of the view that the account in the name of M/s Pankaj International belonged to Shri Pankaj Mittal in whose account, no such entry was appearing.*

*However, the AO did not bring any material on record to substantiate that the debtor M/s Pankaj International was not outstanding in the earlier year. On the contrary the claim of the assessee was that the amount was outstanding in the name of*

*said party since 31.3.2005 and the amount was received during the year under consideration. In our opinion when the debtor was considered genuine at the end of the preceding year, the receipt from the said debtor during the year under consideration cannot be treated as bogus. We, therefore, are of the view that the ld. CIT(A) has rightly deleted the addition.*

**3.Racmann Springs (P) Ltd Vs. DCIT (1995) 55 ITD0159.**The ITAT Delhi Bench has observed that realisation from Sundry Debtors cannot be treated as cash credits. The observation of the Bench is reproduced as below: -

*“35. The CIT (Appeals) proceeds on the basis that the impugned addition of Rs. 15,59,845 is made as the assessee was not able to prove the cash credits. This is evident from para 29 of his order. He speaks of identity and creditworthiness of the creditors. The Assessing Officer never held that the said amount represents unproved credits. The Assessing Officer only held that it represents "undisclosed sales of the assessee". This shows the utter confusion in the mind of the CIT (Appeals) which led to the dismissal of the assessee's appeal.*

*36. Besides the total of the amounts of drafts as per list-I reproduced in the assessment order dated 13-1-1992 comes only to Rs. 15,09,845. But the Assessing Officer had made an addition of Rs. 50,000 more by taking the figure to be added at Rs. 15,59,845. Neither the assessee's counsel nor the Departmental Representative have noticed this. This shows the light attitude taken by the Assessing Officer.*

*37. In the above facts and circumstances of the case, we hold that the Assessing Officer is not at all justified in adding Rs. 15,59,845 towards undisclosed sales of the assessee and in applying section 68 of the Income-tax Act, 1961 to the same. We delete the sustained addition of Rs. 15,42,000.”*

**4. Lalchand Bhagat AmbicaRamVs. CIT (1959) 37 ITR 288 (SC)**

The relevant paragraph of the Hon’able Apex Court respectfully is reproduced as follows: -

*“A decision of the Allahabad High Court reported in Kanpur Steel Co. Ltd. v. Commissioner of Income-tax [1957] 32 ITR 56 may also be noted in this context. The assessee there encashed 32 currency notes of Rs. 1,000 each on January 12, 1946, when the High Denomination Bank Notes (Demonetization) Ordinance, 1946, came into force, and when the Income-tax Officer called upon it to explain how these currency notes came into its possession, the assessee claimed that the notes represented part of its cash balance which, on that date, stood at Rs. 34,313.*

*The Income-tax Officer rejected the explanation and assessed the amount of Rs. 32,000 represented by these currency notes as suppressed income of the assessee from some undisclosed source. The Tribunal took into account the statement of sales relating to a few days preceding the date of encashment and*

*found that the highest amount of any one single transaction was only Rs. 399. The Tribunal also referred to another statement of the daily cash balances of the assessee from December 20, 1945, to January 12, 1946, and noted that the cash balance of the assessee was steadily increasing. The Tribunal, however, estimated that high denomination currency notes to the value of Rs. 7,000 only could form part of the cash balance of the assessee. It therefore upheld the assessment to the extent of Rs. 25,000. On a reference to the High Court it was held (i) that the burden of proof lay upon the Department to prove that the sum of Rs. 32,000 represented suppressed income of the assessee from undisclosed sources, and the burden was not on the assessee to prove how it had received these high denomination currency notes; for, until the Demonetisation Ordinance came into force high denomination currency notes could be used as freely as notes of any lower denomination and no one had any idea that it should be necessary for him to explain the possession of high denomination currency notes, the assessee had naturally not kept any statement regarding the receipt of these currency notes, and it was for the first time on January 12, 1946, when the Ordinance came into force, that it became necessary for the assessee to explain its possession of these currency notes; and (ii) that the explanation given by the assessee that the notes formed part of the cash balance of Rs. 34,000 and odd was fairly satisfactory and was not found by the*

*Tribunal to be false; the statement of sales was hardly relevant to the question; the Department, in relying on the entries relating to the bills of each day, committed an error and no inference should have been drawn from them ; that any one single transaction did not exceed Rs. 399 did not preclude the possibility of payment in high denomination notes for such transaction ; therefore, the Tribunal rejected the explanation of the assessee on surmises, and there was no material for the Tribunal to hold that the sum of Rs. 25,000 represented suppressed income of the assessee from undisclosed sources.*

*In arriving at the above decision the High Court referred to the cases of Mehta Parikh & Co.'s case (supra) and ChunilalTicamchand Coal Co. Ltd.'s case (supra)*

*It is, therefore, clear that the Tribunal in arriving at the conclusion it did in the present case indulged in suspicions, conjectures and surmises and acted without any evidence or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law could have found, or the finding was, in other words, perverse and this court is entitled to interfere.*

*We are, therefore, of opinion that the High Court was clearly in error in answering the referred question in the affirmative. The proper answer should have been in the negative having regard*

*to all the circumstances of the case which we have adverted to above.*

*The appeals will accordingly be allowed, the judgment and order passed by the High Court will be set aside and the referred question will be answered in the negative. The appellant will be entitled to its costs of the reference in the High Court and of these appeals in this court as against the respondent.”*

4.5 The ld. counsel further argued and relied on the order of the ld. CIT(A) the relevant part of the order is extracted as below:-

2. During the course of appellate proceedings, the AR of the appellant submitted his arguments as under:

**“Subject: Written submissions In the case of M/s. H N Agri Serve Private Limited, for Asstt. Year 2017-18, PAN AADCH1531R, DIN: ITBA/APL/F/APL\_1/ 2020-21/1029551802(1) dated 07/01/21 in Appeal Reference CIT(A)Jammu/ 10342/2019-20**

1. **Brief Facts :**

The appellant company is carrying on the business of trading of fresh fruits and is also operating cold storage. It had filed its return of income for the assessment year 2017-18 nil income after claiming set off of brought forward unabsorbed losses of Rs 1,90,41,545/-. The case was selected for scrutiny and the assessment order u/s 143(3) of the Income Tax Act,1961 was passed on 28.12.2019 by DCIT, Central Circle, Jammu. The ld. A.O. while passing the order imposed additions of Rs.6,33,46,052/- u/s 68 of the Income Tax Act 1961 on account of cash deposited during demonetization after treating it as deemed income. Hence, this appeal.

2. **Ground of Appeal**

**The ld. A.O. is unjustified on facts and circumstances of the case in imposing addition of Rs.63346052/- on account of cash deposits in the bank account.**

The ld. A.O. is unjustified in imposing addition of 6,33,46,052/- after treating the cash deposited in bank accounts as deemed income under sec. 68 and thereafter applying the provisions of sec.115BBE of the Income Tax Act,1961 for taxing it.

It is a fact that an amount of Rs.6,33,46,052/- has been recovered from growers/debtors and deposited in J&K Bank, during demonetization period.

The cash has been deposited in bank account maintained with Lassipora branch of J&K Bank. The detail of cash deposited is as under:

<u>Date</u>	<u>Amount(Rs.)</u>
11.11.2016	1000000.00 (but Non Demonetized)
16.11.2016	9000000.00
16.11.2016	7300000.00
17.11.2016	17000000.00
22.11.2016	7000000.00
22.11.2016	1350000.00
29.11.2016	900000.00
30.11.2016	<u>1000000.00</u>
Total	Rs. <u>6,45,50,000.00</u>



On the announcement of demonetization, growers/debtors came to the store of the appellant company at night itself to repay their amount payable by them. Accordingly, receipts were issued to them for their debts but with the

commitment that due to unrest in the valley, it shall be their responsibility to handover the respective amounts to the appellant company's Directors at Delhi, as the other Director Mr. Khuram Shafi, who is resident of Sringar was not in the country.

After demonetization, the appellant company received a notice from the ADIT Investigation, Srinagar to explain the source of cash deposited in bank account during demonetization. It was explained to him with evidences that the source of deposit was on account of available cash in hand on receipt of amount due from various debtors of the firm on 08.11.2016. The ld. ADIT after calling and verifying all the relevant details filed the proceedings initiated by him. The copy of reply filed before him is enclosed for your immediate reference as an **annexure "A"**.

Thereafter, after filing of the return of income, the case was selected for scrutiny under "CASS". During the course of assessment proceedings, it was submitted before the ld. A.O. that the cash deposited in bank account during demonetization period is on account of cash received from growers/sundry debtors on 08.11.2016 amounting to Rs.6,33,46,052 /- and balance out of available cash in hand as on 07.11.2016. The total demonetized currency was Rs 6,35,50,000/-. The list of the growers/debtors as well as ledger accounts of these parties were furnished to the ld. A.O. The cash book for the year was also filed before the ld. A.O. The appellant furnished all the information desired by the ld. A.O. from time to time during the course of assessment proceedings.

The appellant has discharged its primary onus by providing all the requisite details to justify the genuineness of source of cash deposited. An analysis of audited accounts of the appellant shows that the advances to growers and receivable from sundry debtors of the company as at 31.03.2017 amounts to Rs.9,97,68,893.19 as against Rs.14,15,15,328.15 as at 31.03.2016. Further, the sales of the appellant for the year under consideration amounts to Rs.12,21,99,278.04 and its other income on account of store rent, crate rent etc. amounts to Rs.10,38,70,845.14. The copies of audited accounts of assessment year 2016-17 & 2017-18 are enclosed as an **annexure "B"**. The list of growers/sundry debtors alongwith ledger accounts of these parties from whom cash has been received is enclosed as an **annexure "C"**

The growers/debtors from whom cash has been received were duly recorded in the books and there is no question of treating cash received from them as unexplained money of the Income Tax Act, 1961. The receipt of cash from various parties was against the debit balances appearing in the name of the said parties. It has wrongly been interpreted by the ld. AO so as to hold that the undisclosed income is introduced by the appellant in the books of account. The appellant has duly explained that the debit balance in the name of various parties during assessment proceedings vide details filed before ld. AO, which is not in dispute. In any case the encashment of already declared asset cannot be treated as the introduction of undisclosed income in the books of account as no unexplained credit is made in the books of the appellant. Whatever transactions were conducted in earlier year were not subject matter of dispute in assessment year under appeal. Since there were grower/debtors in earlier years, who paid the amount to assessee in

assessment year under appeal, there should not be any reason to disbelieve the explanation of appellant. The Hon'ble Delhi "A" Bench of ITAT (ITA 885/Del/2012 dated 04.03.2015) observed in **Income Tax Officer Vs. Atul Kumar Mittal** as under "In our opinion when the debtor was considered genuine at the end of the preceding year, the receipt from the said debtor during the year under consideration cannot be treated as bogus. We therefore, are of the view that the Ld.CIT (A) has rightly deleted the addition." The copy of the case law is enclosed as an **annexure "D"**.

Now, when it is fact beyond doubt that the growers/sundry debtors stands reduced by the appellant on receipt of dues from them then amount received from them in SBN or non SBN currency and depositing that amount at Lassipora or Azadpur Dehli branches of J&K Bank should not be a matter of dispute. Cash deposited in the bank account is a business receipts and is not an undisclosed income.

The ld. A.O. has imposed the addition on the plea that the parties from whom the appellant has received amounts are bogus and the same has been deposited in bank out of own sources. The ld. A.O. has stated that during the course of assessment proceedings notices under sec.133(6) of the Income Tax were issued to 60 parties for their confirmations of giving cash to the appellant company. He has further stated that out of which one person has refuted having paid any amount to the appellant Company and 16 letters have been received as unserved. In this regard it is stated that merely on denial by one party it cannot be presumed that other growers/debtors are not genuine. During the course of our inspection of the assessment records on 28.01.2021, it is found that many confirmations have been received after the assessment was over. These parties have confirmed that they have repaid the amount in cash to the appellant. The detail of these parties alongwith two parties whose confirmations have been received before passing of assessment order is given as under :-

<u>S.no.</u>	<u>Name of the Party</u>	<u>Amount repaid (Rs.)</u>	<u>Date of receipt</u>
1.	EmmEmm Traders	248469/-	27.12.19
2.	Tariq Ahmad Wagay	791775/-	27.12.19
3.	Mohd. Ashraf Rather	491920/-	03.01.20
4.	Abdul Qayoom Bhat	302257/-	03.01.20
5.	Mohd. Shabir Rather	478400/-	06.01.20
6.	A.R.Bhat	129302/-	06.01.20
7.	Tanveer Ahmad	478802/-	08.01.20
8.	Kabir Bhat	852000/-	28.01.20
9.	Abdul Rashid	891890/-	28.01.20
10.	Bashir Ahmad	852691/-	07.02.20
11.	Mubarak Ahmad	495151/-	12.02.20
12.	Abdul Rashid Naik	173347/-	13.02.20
13.	Ab. Rahem Mureed	109352/-	17.02.20
14.	Mohd. Ashraf Wani	720249/-	20.02.20
15.	Shabir Ahmad Dar	477045/-	08.06.20



In view of above confirmations available on record, the ld. A.O. is unjustified in presuming that the parties from whom amount has been received back are not genuine parties.

The notices under section 133(6) of the Income Tax Act,1961 were issued by the Id. A.O. on 14.12.2019.It is evident from the reply of the one party namely Mohd. Abdullah & Sons which has been refuted having repaid any amount reproduced at last para of page 14 of the order "*In reference to your notice no.ITBA/AST/S/133(6)/2019-20/1021657753(1),dated 14.12.2019.....*" . There were hardly 14 days in between receiving letters and giving replies by the parties who are residing in Kashmir as the assessment order was passed on 28.12.2019. The Id. A.O. has ignored the fact that Valley remain cut off from other parts of the country due to snowfall/bad weather in Dec.2019.The evidence regarding closure of road and air connectivity in month of Dec.2019 is enclosed as an **annexure "E"**.Therefore,connection of the Id. A.O. that out of 60 letters issued confirmations of only three parties were received during assessment proceedings is not valid.

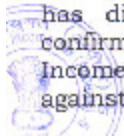
Further,regarding 16 notices stated to have been received back as undelivered for want of complete address etc., it is stated that addresses provided during the course of assessment proceedings were as per the available record with the appellant and it might be due to some inadvertant mistake that PIN code or name or address might not have properly mentioned in the addresses given and letter posted to different parties .The genuineness of parties from whom amount has been received back mostly against opening balances should not have been doubted by the Id. A.O. when the case of the assessee was under scrutiny before the Id. A.O. in the immediate preceding year.

Regarding depositing of cash from Azapur Branch of J&K Bank in the bank account maintained at Lassipora Branch, it is stated that when the balances of growers/sundry debtors stands reduced by the appellant on receipt of dues from them then amount received from them in SBN or non SBN currency and depositing this amount at Lassipora or Azadpur Dehli should not be a matter of dispute.The authorities of the bank have issued a certificate that Rs.32,50,000/- demonetized(SBN) currency was deposited and on this basis the counsel of the appellant being unaware argued the case on the basis of the certificate.The appellant had never denied the fact that cash amounting to Rs.6,45,50,000/- had been deposited in bank accounts during demonization. The appellant company has received cash back from growers/debtors against the amount due to them and the same stands deposited in the bank account.

**Finally**, addition u/s 68 of the Act cannot be made as all the entries for which addition has been made are duly recorded in books and have duly been explained.These are all genuine businesscredits.The provisions of section 68 of the Act are reproduced hereunder:-

*"Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income- tax as the income of the assessee of that previous year."*

The appellant has offered proper explanation regarding source of credits and has discharged his onus by filing various documents and even the confirmations received in response to notices issued under sec.133(6) of the Income Tax Act,1961 also proves this fact that the amount has been received against in respect of amount receivables against business transactions.



**Hon'ble Rajasthan High Court in the case of Smt. Harshila Chordi Vs. ITO(2007) 208CTR208** has held that '*Cash credit - Cash received from customers - Tribunal has found as a fact that the assessee was receiving money from the customers against which delivery of vehicles was made - Such cash deposits are self-explanatory and would not attract sec. 68 - Therefore, no addition could be made.*'

The copy of the case law is enclosed **as an annexure "F"**.

The appellant had been received cash from growers/debtors which were duly recorded in books and the details of the growers/debtors as well as their ledger account copies had also been filed before the ld. AO. Thus, under such circumstances, it is clear that the addition made by the ld. AO by applying the provisions of section 68 of the Act is bad in law.

In view of aforesaid, it is requested that since the addition made by the ld. A.O. after treating the cash deposited in the bank account amounting to Rs.6,33,46,052/- as unexplained credit under sec.68 is bad on facts as well as on law, as such, may please be deleted."

**2.1** The AR made further submission as under:-

**"Sub: Written submission in the case of M/s H. N. Agri Serve Private Ltd., PAN AADCH1531R for Asstt. Year 2017-18 in Appeal reference in appeal No. CIT(A) Jammu/10342/2019-20**

Apart from our submissions up loaded on system, a brief synopsis of case is as under for your immediate reference:

- Impugned Addition by Ld. A.O. of Rs.63346052/- u/s 68 of the income Tax Act, 1961 alleged to be taxed u/s 115 BBE.
- Demand of I.Tax : Rs.62429055/-
- Appeal stands fixed twice on 07.01.2021; 09.04.2021; submissions uploaded on 07.02.2021 & 03.05.2021 respectively.
- Another appeal of the group numbered 5/10138/2019-20 (demand Rs.241141) pertaining to Assessment year 2016-17 stands disposed off. This appeal has been inadvertently some how left over. Request for hearing this appeal filed on 09.06.2021.
- Stand of Ld. A.O.: Cash in SBN deposited in Bank most likely the unaccounted cash of the assessee lying in possession and control of directors. Addition made of Rs.6,33,46,052/- u/s 68 of the I.Tax Act, 1961 as unexplained cash credits that the assessee has failed to furnish any satisfactory explanation regarding nature and source of such credits.
- A.O. ignored that nature and source of such credits stands given and placed on records.

Kindly refer page 2 last para of A.O.'s order "In this case the cash has been received from Growers exclusively under the panic of demonetization. All these parties have returned the advance lying with them".



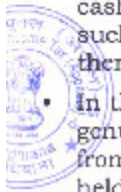
- Kindly refer page 3 first para of A.O.'s order "That this outstanding from growers is the same which is outstanding as at 31.03.2016. It is pertinent to state that preceding assessment year has been scrutinized by your goodself and advance to growers is the same figures without any change....."
- Confusion created by Ld. A.O. in having deposited SBN cash of Rs.63346052/- in bank is not controversial. The controversy lies that bank has issued a certificate that SBN currency deposited in bank is Rs.32,50,000/-. Otherwise, since one director was in Delhi and another in USA and cash was in crores which was returned under the panic of demonetization as such it was also deposited by fruit growers in Delhi branch of bank. Dragging this issue that it is change of stance by appellant company is meaningless when it has been accepted that cash deposited in bank is not controversial at all.
  - Total cash deposited in bank is Rs.64548900/- and Annexure-1 of A.Os order do explain and satisfy that it is the bank which has certified that this information is correct as per its office records:  
SBN: Rs.3250000/- & Total cash otherwise Rs.64548900/-
  - Para 4.1 of A.O's order running from page 4 to 11 do explain that growers who have returned the advance have been duly identified:  
Name; address; source the cash given to them advance and lying with them and genuineness of transaction. So all ingredients of sec 68 stands satisfied.
  - It is pertinent to state that return of income for the assessment year 2016-17 stands scrutinized and order u/s 143(3) stands passed on 04.12.2018 (copy enclosed). It may please be noted that this case was selected to look "advances" to growers also and detail of advance to grower of Rs.64670127.23 stands examined before passing the order. Copy of reply filed in assessment proceedings is enclosed and order of Ld. A.O. at page 2, para first, last lines do mention that "the required details and information were filed by assessee through his counsel. The filed information/documents were examined with respect to the issues in question". Since return for assessment year 2016-17 stands filed on 17.10.2016 and demonetization shall happen was not even in dreams at that time as such one cannot connote it to be a case of window dressing also.
- Confirmation from growers were also placed on record of Ld. A.O. on 20.12.2019. The Ld. A.O. in order to have cross certified from 60 growers have sent letters u/s 133(6) dated 14.12.2019. As per Ld. A.O., two growers have confirmed having repaid and one grower has denied that it is not so as found in his books of accounts. Further he stated that 16 letters have been received undelivered that addresses are incomplete. Sir, the denial of one grower is contradictory to his confirmation. Grower is not maintaining books of accounts. He must under panic have written that as per his books of accounts he has not paid a single penny of cash to H.N.Aagri Serve Pvt. Ltd. in F.Y. 2016-17". And Ld. A.O. assumed it to be contradictory statement. He should have confronted with assessee. Further



**Appeal No. 10342/ROT/IT/CIT (A)-5/LDH/2019-20**  
**Assessment Year 2017-18, u/s 143(3)**

having issued 60 letters u/s 133(6) on 14.12.2019 and the order passed on 28.12.2019 means only 14-days' time. Kindly see Annexure 'E' of the written submissions which are a news item dated 15.12.2019 that Kashmir Valley remained cut off. All the flights remained suspended for the last seven days. High way was closed. The Ld. A.O. knows as per page 4 of his order that these 156 growers are spread across the Kashmir valley ranging from Distt. Kupwara, Baramulla, Bandipora, Srinagar, Budgam, Anantnag and Pulwama etc. and he expected confirmations in 14 days when roads, air route were closed.

- Inspection of assessment records on 28.01.2021 after depositing fee do reveal that 15 more confirmations are lying on records. Kindly see page 4 of our written submissions.
- Now what is the onus of appellant company to be discharged u/s 68.
  - Name and addresses from whom money has been recovered. All placed on records of A.O.
  - Credit worthiness of growers to pay and return this cash. This is the amount lying with growers as on 31.03.2016 which stands scrutinized by the same A.O. in A.Y. 2016-17.
  - Genuiness of transaction: growers being agriculturist falls in exemptions of Rule 6DD. Advance was returned under panic of demonetization and appellant cannot refuse not to receive it back. Thus, there is genuiness of transactions.
- Hon'ble Bench A of ITAT Delhi in the case of ITO Bhagwan Mahavir Marg, Baraut Baghpat UP.  
VS.  
Atul Kumar Mittal  
S/o Sh. Baleshwar Dayal Mittal,  
Prop. M/s Atul International Mandi  
Gandhi Ganj Khakra, Bhagpat UP  
In ITA NO -885/Del/2012 (Assessment 2007-08) has held that "when the debtor was considered genuine at the end of the preceding year, the receipt from said debtor during the year under consideration cannot be treated as bogus".
- In the case of Smt. Harshila Chordia vs. Income Tax Officer reported in (2008) 298 ITR 0349, the Hon'ble High Court of Rajasthan has held that cash received from customers against which delivery of vehicle was made, such deposits are self-explanatory and would not attract section 68, therefore, no addition can be made.
- In this case cash received is from advance to growers which are held to be genuine in preceding assessment year by Ld. A.O. therefore this receipt from growers during the year under consideration should not have been held as bogus nor such cash deposits can be held as non-explanatory in terms of sec. 68.
- The controversy created by Bank Certificate earlier that SBN currency deposited is only Rs.3250000/- and other currency deposited is not of 500+1000 stands removed by another certificate from J&K Bank Azadpur



Mandi that Rs.60300000/- is again the demonetized SBN currency (page 16 of AO's order). Further the reply given to Ld. A.O. reproduced at page 19 & 20 of AO's order is self-explanatory to put rest to the issue that having explained and clarified each and every doubt of Ld. A.O., the addition made on presumption is unjustified on facts.

- Needless to state that advance to growers which got nullified on 08.11.2016 was an advance because of routine business practice. That growers usually take advance in non-season & it get nullified in season. That is why advance again to the growers as at 31.03.2017 stands at Rs.37496718.39 and remained uncontroversial during scrutiny.
- Therefore, presumption of Ld. A.O. that most likely that major cash in SBN is that of directors and hence unexplained. Sir, presumption ignoring facts cannot lead to addition. Thus, action of Ld. A.O. is unjustified, unlawful and against the facts of the case. Therefore, this impugned addition may kindly be deleted. It shall not be out of place that even assessment order was returned undelivered and served upon by hand to counsel on 15.01.2020."

**2.2** It was decided to call for & examine the assessment record for the year under consideration along with the record for immediately preceding year to verify the claims made by the AR regarding receipt back of advances from the parties who are claimed to be verified by the AO during the immediately preceding year. The AR was also asked to file the ledger account of the parties for the financial year 2015-16, from whom the advance is claimed to have been received back during financial year 2016-17. In response, the AR made further submission as under:-

**"Sub: Written submission in the case of M/S H N Agri Serve Pvt. Ltd. PAN AADCH1531R, in Appeal Reference in appeal No. CIT(A) Jammu/10342/ 2019-20**

Please refer to order sheet of entries of 24-08-2021. As directed by your kind self the ledger accounts of 156 growers pertaining to F Year 2015-16 relevant to assessment year 2016-17 are enclosed as an Annexure A. This is in support of our contention that the money in question has been recovered from earlier advance to growers outstanding as on 31/3/2016 which stands scrutinized in order of AY 2016-17 under section 143(3) of the I Tax Act 1961. All these accounts are from the books of accounts verified by Ld. A O to check short-term loans and advances as per reasons of CASS that year. Here we repeat the case law as relied upon in our first written submission - "Income Tax Officer vs. Atul Kumar Mittal" of Hon'ble ITAT Delhi A Bench that when the debtor was considered genuine at the end of preceding year, the receipt from the said debtor during the year under consideration cannot be treated as bogus. The contention gets further support from case law; S. B. Steel Industries Hyderabad Vs. Income Tax Officer in ITA No 264/Hyd/2011 (copy enclosed as an Annexure B and relevant page is 3 last para and page 4 foremost lines) in which Hon'ble ITAT Hyderabad has held that:

"It is an established fact that only cash credits can only be considered u/s 68, but not trade receipts The coordinate bench of ITAT in the case of ITO

आवेदन संख्या 150/अस/2021, 4/8/2021

Vs. Rajendra Kumar Taparia, 106 TTJ 712 (jodh) has held that "cash credits standing in the names of trade creditors, all income tax assessees, could not be treated as non-genuine when they have confirmed the transactions by filing affidavits and deposing before the AO, and the addition could not be made in respect of cash credits or interest paid thereon." In the present case, the amounts received by assessee are not cash credits but the same were recovery of debtors and also the entries made in the books of account, we are of the opinion that both the AO and the CIT(A) have erred in considering recoveries from debtors as cash credits. The corresponding sales in earlier years have been accepted, as there is no dispute with reference to the entries in the books of account in any earlier years. Therefore, we are of the view that the principles laid down for invoking provisions of section 68 cannot be applied to the trade recoveries made by assessee during the year"

The Hon'ble ITAT Delhi A Bench in case of Racmann Springs (p) Ltd Vs. Deputy Commissioner of Income Tax reported in (1995) 55 ITD 0159 (copy enclosed as an annexure C relevant page 2 second para of held portion 9th line onward) has held that

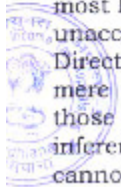
"... Further, the realizations from the sundry debtors cannot be treated as cash credits. Cash Credits always appear as a liability in the Balance Sheet of the assessee. Realization from the sundry debtors would reduce the sundry debtors appearing on the "assets' side of the balance sheet....."

2. The receipt of amount due from growers is under panic of demonetization announced on 8/11/2016, which, of course, is an extraordinary incident. As evident from above ledger accounts, cash received as advance from the appellant company along with dues of storage charges/grading charges in some accounts have been returned by growers as they do not have bank account to deposit and only option to give this money from whom they have received/dealt with. So these are not cash credits in terms of section 68 of I tax Act 1961 but trade receipts.

3. Confirmation from all these 156 growers stands placed on record of Ld. AO and a non-controversial issue duly discussed in his order.

4. Investigation wing has also looked into this issue and statement of one of the Directors is placed on records in paper book. Ld. AO have also discussed that Investigation wing have examined the issue.

5. Ld. AO have concluded at page 32 of his assessment order "it was thus most likely that major cash in SBN deposited in Delhi Branch was actually the unaccounted cash of the assessee lying in possession and control of Directors." Your Honour, word "Most likely" tantamount to presumption and mere suspicion of Ld. A O cannot overrule the facts stated above read with those placed on your records in our earlier two submissions. "It is true that inferences and presumptions are integral to an adjudicatory process but cannot by themselves be raised to the status of substantial evidence or evidence sufficient to raise an inference. A deeming provision, thus enables the revenue to raise an inference against an assessee on the basis of tangible material and not on mere suspicion, conjectures or perceptions." Hon'ble High Court of Punjab and Haryana in the case of Commissioner of Income Tax & Ors.Vs. Jawahar Lal Oswal & Ors have held this. (Copy of case law enclosed



-----  
as an annexure D and relevant page 2 held part, relevant lines 10-15). In assessment year 2016-17 the Ld. A O himself have assessed a brought forward loss of Rs 496542859/- and after adjusting profit of Rs 38793887/- the loss carried forward to next year is Rs 457748972/-. Under such facts and circumstances, the finding of Ld. A O is in contradiction of this fact that on one side the loss assessed to be carried forward is Rs 457748972/- and on another side the Directors of company are hoarding Appellant Company's cash to the tune of Rs 63346052/-. In absence of profits, question of cash hoarding cannot sustain at all.

6. Confirmation action of AO u/s 133(6) taken on 14/12/19 and concluded on 28/12/2019 is unreasonable when Srinagar remained cut off during that period due to bad weather. Evidence is already placed on your records. Further, Independent Confirmations on record of AO after the date of assessment order supports that action of Ld. AO is bad and unjustified.

7. It is pertinent to state that Burhan Wani's death on 8/7/2016 has resulted in protests with 53 days continue curfew and shutting down of Valley till Feb 2017. (Burhan Wani clipping from Wikipedia is enclosed as an annexure E relevant para Reaction para first and second) The devastation of apple orchard of one of the Directors, Mr. Khuram Mir, looking after the business affairs of appellant company at Srinagar (news clip from Google attached as an Annexure F) created panic and therefore Director remained in USA when demonetization happened. So the growers due to turmoil in valley were directed to deposit money in Delhi where other three Directors of appellant company were sitting. Based on receipts issued by staff at Lassipora the cash was accumulated and deposited four times in Delhi branch of same bank in same account of appellant company. Evidences already placed on your records. Continuous turmoil in valley with curfew for 53 days, shutting down of valley till February 2017, devastation and attacks on orchard of Director of appellant Company all these points and circumstances put together compelled appellant company to receive and get cash deposited in Delhi.

8. Audited Books of account constitute a big reason to delete this unjustified addition of trade receipts in books of accounts. The outstanding from 156 growers stands nullified in to-to on 8/11/2016. If money is treated as unexplained money of appellant company then where goes the money, which was due from growers, and which is no more in books as at 8-11-2016?

9. The submissions uploaded and placed on records earlier, read with case laws as relied upon in submissions and one more case law of Hon'ble ITAT Vishakhapatnam in the case of ACIT Vs. Heerapanna Jewellers ITA Number 253/Viz/ 2020 (also placed on records) support that addition made by Ld. AO u/s 68 of the Income Tax Act 1961 is bad in law and is unjustified on facts when both the nature and source of the amount of money deposited in bank of Rs 63346052/- was fully explained by appellant company. Thus having discharged its onus to prove the identity and genuineness of this money, these factors, when stand verified in preceding year by same Ld. AO, then receipt from that growers of that money under the extraordinary happening of announcement of demonetization on 8-11-2016 cannot be held to be bogus.

In the light of the facts summarized above, it is prayed that impugned addition of Rs 63346052/- may please be deleted."

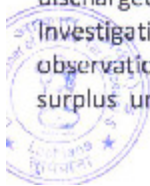
3. The assessment record for the assessment year 2016-17 & 2017-18 were received from the AO. In the light of the above submissions filed by the AR and after perusal of the assessment records sent by the AO, the various grounds of appeal are adjudicated as below:

**3.1 Ground of Appeal No. 1** relates to addition of Rs. 6,33,46,052/-. The AO has mentioned that the assessee company deals in the business of trading of fresh fruits and commission agents besides owing a cold store. The assessee filed return declaring nil income, after claiming set-off of brought forward unabsorbed loss of Rs. 1,90,41,545/- and the case was selected for scrutiny and notice u/s 143(2) was issued. The assessee was asked to furnish the copies of receipt accounts, cash book, details of cash sales & receipts, details of cash deposits in the bank account during the demonetization period and detail of disallowance u/s 40A(ia) of the Act. As per the AO, the assessee furnished audited balance sheet and copy of the cashbook etc. It is also mentioned that the assessee received huge sum of cash in its books of accounts from various persons amounting to Rs. 6.33 crore on 08.11.2016 i.e. date of announcement of demonetization and therefore, it was asked to explain the source of cash received. The reply dated 24.05.2019 is reproduced in the assessment order where it was stated that this case is not of cash sales but in this case the cash has been received from the growers under the panic of demonetization and all these parties have returned the advance lying with them. As per the assessee, this is outstanding amounts from the growers as on 31.03.2016. It was also mentioned that preceding assessment year was scrutinized by the AO and the advance to grower is the same figure without any change and argued that under such facts, it is not worthwhile to compare the cash sales of the corresponding previous three years with this period. As per the AO, in view of the explanation, the assessee was asked to furnish the complete names and addresses of all the growers who have returned the cash as claimed by the assessee, along with the copies of their ledger account. It is mentioned by the AO that the assessee furnished the names & addresses of 156 growers from whom an aggregate amount of Rs. 6,33,46,052/- in cash has been shown to have been received on 08.11.2016 as per the cash book for the financial year 2016-17 along with the copies of ledger account of the growers. It is further mentioned that the assessee submitted that only Rs. 32,50,000/- was deposited in demonetized currency notes and rest was non-SBN currency. It is also mentioned that as per the assessee, there was a panic among the depositor on 08.11.2016 that all the currency notes will get changed and out of that panic, they deposited cash which was due from them on 08.11.2016 and the reply of the assessee is reproduced in the assessment order. The AO tabulated the date-wise amount deposited in assessee's bank account number 549020100000155 with J & K Bank, Lassipora, Pulwama during the demonetization period. The AO has also summarized the details of 156 debtors with their names and addresses along with the amount due from them as on 01.04.2016 and the amount received from them

on 08.11.2016. The AO then reproduced the query made to the assessee vide notice dated 02.12.2019 along with the reply dated 06.12.2019 where it was stated that the fruit growers are illiterate class and under panic they have returned the whole amount due to them and since the assessee is dealing with the fruit growers, who are the source of business income, the assessee could not say no to receive the funds lying as an advance with them. The AO observed that the assessee has not given any reply on the practical aspect as to how 156 growers spread across Kashmir Valley reached their office at Lassipora, Pulwama Srinagar on late hours and also that if advances were received back how the purchases during the year in respect of fruits were made. Therefore, as per the AO, further query was raised vide notice dated 12.12.2019 asking how all of them got panicked and came to assessee's office and deliver the exact amount and how the office was open late during the night. The assessee was asked to furnish the confirmation from the growers regarding the payment of cash or alternatively produce them on 17.12.2019. As per the AO, no response was received on 16.12.2019. It is also mentioned that vide reply dated 08.11.2016, the assessee claimed that only Rs. 32,50,000/- has been deposited in SBN Currency. From the list of the growers, it was found that these are from all across Kashmir Valley spread across North and South of Kashmir Valley. As per the AO, the perusal of the copies of the ledger accounts of these growers revealed that all the dues from them have been shown to have squared-up on 08.11.2016. It is further mentioned that notice u/s 133(6) were issued to 60 growers at the addresses provided by the assessee in order to verify the claim of the assessee regarding receipt of cash. As per the AO, 16 letters were received back undelivered with the remarks 'incomplete address' or 'no such person reside here' etc. In the reply received from Mohd. Abdullah & Sons, the said party has denied having given any cash back to the assessee and the AO reproduced the reply in relation to the amount of Rs. 5,03,336/-. As per the AO, the fact was confronted to the assessee vide notice dated 26.12.2019 for comment by 27.12.2019. The AO mentioned that two more replies have been received from the debtors to whom notices were sent u/s 133(6) and as per these replies, the parties have confirmed that they have delivered the cash to the assessee and one has mentioned that the cash was handed over to the official of the company at their office, however both of them have not mentioned the denomination of the currency. The AO mentioned that notice u/s 133(6) was issued to the Branch Manager to call for the details of currency deposited in the bank account number 549020100000155 of the assessee on the date other than those in which SBN were deposited and the details of date-wise amount deposited is tabulated totaling Rs. 6,12,98,900/-. It was intimated by the Branch Manager that out of the above, only an amount of Rs. 10,00,000/- on 11.11.2019 has been deposited in their branch at Lassipora Pulwama in non-SBN currency and rest of cash was deposited in J & K Bank Azadpur, New Delhi Branch and expressed his inability to furnish the details of

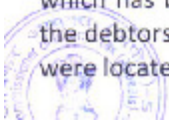
Assessment Year 2017-18, u/s 143(3)

the currency notes. It is mentioned that thereafter the details were called from Azadpur Branch, New Delhi and date-wise deposit amount and currency notes are tabulated in the assessment order and it is mentioned by the AO that an amount of Rs. 6,03,00,000/- in SBN Currency was also deposited in account number 549020100000155 at Azadpur New Delhi and the total SBN currency deposited was Rs. 6,35,50,000/- out of total amount of Rs. 6,45,48,900/- deposited in cash during the period of demonetization. The assessee was confronted with the above fact vide notice dated 20.12.2019 which is reproduced in the assessment order. The reply dated 20.12.2019 is also reproduced in the assessment order. It is mentioned that a copy of the above reply was marked to the JCIT Central Range, Jalandhar with the request to treat the same as their representation to issue directions under section 144A of the Income Tax Act, 1961. As per the AO, from the reply, it is clearly revealed that the assessee has changed its earlier stand and now they accept the amount from their debtors but with the directions that this amount is deposited directly to their bank account number 549020100000155. As per the assessee the debtors may have deposited the amount in the Azadpur Branch and the assessee also contended that they were not aware of the denomination of the currency deposited by the debtors. As per the AO, the stand of the assessee was not plausible for the reason that if the debtors were instructed to deposit the amount directly in the bank account of the assessee then why all the accounts were squared-up on 08.11.2016 when no bank was opened. Further, as per the AO, if there was any initial confusion among the debtors regarding the currency note, it would have been clear to them that only currency note of 500 & 1000 denomination have been demonetized and the assessee had no authority to allow anyone to deposit any currency in their bank account. Further, the debtors are spread to the entire length & breath of the Kashmir Valley and there was no compulsion to deposit the cash in New Delhi Branch and a huge amount of Rs. 6,03,00,000/- has been deposited in New Delhi on just 4 occasion on three days. As per the AO, this exercise cannot be done and it requires a planned or organized exercise to carry this much cash from Kashmir to New Delhi. As per the AO, the identity of the depositor in respect of all the pay-in slip is not identifiable and there is no signature of the depositor on the pay-in slip on three occasions and on two slips there are only initials. It is also mentioned that small amounts have also been squared-up. The AO mentioned that the assessee has tried to put the onus on its debtors and bank authorities regarding the deposit of SBNs and therefore, the onus remains on the assessee to explain the source of cash of Rs. 6,03,00,000/- deposited in New Delhi and Rs. 32,50,000/- deposited in Lassipora, Pulwama which it has not discharged. The contention of the assessee regarding verification also done by Investigation Wing was not found acceptable and the AO has reproduced the observations of the ADIT in the assessment order wherein it was mentioned that surplus undisclosed cash in old currency lying with the assessee was deposited



-----

during the demonetization period under the guise of debt realization. The AO further mentioned that the assessee has enclosed copies of confirmation from various debtors regarding payment of cash by them to the assessee but these are not reliable because in all the confirmation, it has been stated that the cash of due amount has been returned on 08.11.2016 to the company but as per the version of the assessee, they instructed the debtors to deposit the amount in the bank account and the cash in different amounts was deposited till 30.11.2016. Further as per the AO, in the earlier version, the cash was actually received on 08.11.2016 but it cannot be accepted that all the 156 debtors located all across the Valley came to the assessee under the misconception that all currency notes have been changed. Further, the AO has mentioned that notice u/s 133(6) were sent to the 60 debtors on the addresses in order to verify the claim and so far, 16 notices have been received back and one party has denied having paid any cash to the assessee although two other parties have confirmed having paid their due amount to the assessee at their office. Thus as per the AO, it is in contradiction to version of the assessee that they had instructed the debtors to deposit the amount directly in the bank account and have not mentioned the denomination of the currency. As per the AO, the confirmation also contained a copy from Mohd. Abdulla & Sons where he allegedly confirmed to have returned cash of Rs. 5,03,336/- to the assessee on 08.11.2016 however the same party in response to notice u/s 133(6) has denied having made any payment to the assessee. As per the AO, the assessee has placed reliance on certificate issue by Branch Manager J & K Bank Lassipora Pulwama wherein, it has been certified that only cash amounting to Rs. 32.50 lacs in SBN was deposited whereas the branch of Azadpur have certified now that the cash of Rs. 6,03,00,000/- has also been deposited in the SBNs at their branch and the AO reproduced the letter sent and the replies received from the Bank Authorities where they have clarified about the amounts deposited with their branch. The AO then reproduced the letter dated 23.12.2019 of the JCIT, Central Range, Jalandhar disposing off the representation of the assessee u/s 144A of the Income Tax Act, 1961 stating that there is no need of any directions to be issued u/s 144A in this case and the assessee was requested to submit reply/explanation to the queries raised by the AO. The AO concluded that in view of the above discussion cash credit amounting to Rs. 6,33,46,052/- in respect of 156 persons credited in the books of accounts of the assessee as on 08.11.2016, which has been allegedly received back from the debtors, remained unexplained. The AO mentioned that the explanation offered by the assessee was not satisfactorily with regard to the nature & source of these credits as the assessee changed the stand. As per the AO, it is a case of surplus unexplained cash lying in old demonetization currency with the assessee which has been deposited in the bank account under the color of realization from the debtors. As per the AO, the three Directors of the company holding 67% shares were located in the Delhi and it was most likely that major cash in SBNs deposited in



the Delhi was actually the unaccounted cash of the assessee lying in the possession and control of the Directors. As such an amount of Rs. 6,33,46,052/- was added to the total income of the assessee u/s 68 of the Income Tax Act, 1961 as unexplained cash credit as deemed income of the assessee, to be charged to tax u/s 115BBE of the Income Tax Act, 1961.

The facts of the case, basis of addition made by the AO and the arguments of the AR during the course of appellate proceedings have been considered. The AR has submitted that the AO was not justified to make addition of Rs. 6,33,46,052/- after treating the cash deposit in the bank account as deemed income u/s 68 because as per the AR, it is a fact that this amount has been recovered from growers/debtors and deposited in the J & K Bank during the demonetization period. The AR gave date-wise amount deposited and submitted that on announcement of demonetization, the grower/debtors came to the store of the appellant company at night itself to repay the amounts payable by them and accordingly, receipts were issued to them but with the commitment that due to unrest in Valley, it was their responsibility to handover the respective amount to the company's Director at Delhi as the Director residing in Srinagar was not in the country. As per the AR, after demonetization, the appellant company received notice from ADIT (Inv.) and it was explained with evidence that source of deposit was on account of receipts of amount due from various debtors of the assessee on 08.11.2016. Thereafter, the case was selected for scrutiny and as per the AR, during the assessment proceedings, it was submitted before the AO that the cash deposit in the bank during the demonetization period is on account of cash received from growers/sundry debtors on 08.11.2016 amounting to Rs. 6,33,46,052/- and balance out of available cash as on 07.11.2016. As per the submission, the total demonetized currency deposited was Rs. 6,35,50,000/-. As per the AR, the list of growers/sundry debtors as well as ledger accounts of these parties were furnished to the AO and the cashbook for the year was also filed. It is mentioned that the appellant furnished all the information desired by the AO during the course of assessment and the appellant has discharged its primary onus by providing all requisite details to justify the genuineness of the source of cash deposits. As per the AR, analysis of audited account shows that the combined total of 'advances to the growers' and 'receivables from sundry debtors' of the company as on 31.03.2017 were at Rs. 9,97,68,893/- as against Rs. 14,15,15,328/- as on 31.03.2016 which as per the AR shows that there were recoveries from debtors during the year. The AR submitted that the sale of the appellant for the year under consideration were Rs. 12,21,99,278/- and other incomes were Rs. 10,38,70,845/- and furnished copies of audited accounts for the assessment year 2016-17 & 2017-18 along with the list of growers/sundry debtors and the ledger accounts of the parties from whom the cash has been received. As per the AR, growers/sundry debtors from whom cash has been received are duly recorded in the books and argued that there is no question

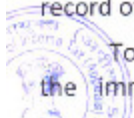


of treating cash received from them as unexplained money under the Income Tax Act, 1961, as the receipt of cash was against debit balance appearing in the name of those parties. The AR argued that the AO wrongly interpreted and held that unaccounted income is introduced by the appellant in the books of accounts as the appellant has duly explained the debit balance in the name of various parties which is not in dispute. The AR further argued that in any case encashment of already declared asset cannot be treated as the introduction of undisclosed money in the books as no unexplained credit is made in the books of the appellant and argued that whatever transactions were conducted in earlier year were not subject matter of dispute in the assessment year under appeal. The AR pleaded that since these were growers/sundry debtors in earlier year who paid the amount to the assessee in the assessment year under appeal, there should not be any reason to disbelieve the explanation of the assessee and referred to the judgment of Delhi ITAT Bench in ITO vs. Atul Kumar Mittal in his support. As per the AR, it is a fact beyond doubt that the growers/sundry debtors stand reduced by the appellant on receipt of dues from them, then the amount received from them in SBN or non-SBN currency and depositing that amount at Lassipora or Azadpur Branch of J & K should not be a matter of dispute and the cash deposit in the bank is a business receipt and not an undisclosed income. It is further argued by the AR that the AO made addition on the plea that the parties from whom the appellant has shown receipt of amount are bogus and that the cash has been deposited in the bank out of own sources. As per the AR, the AO issued letters u/s 133(6) and mere on denial by one party it cannot be presumed that other growers/sundry debtors are not genuine and submitted that during the course of inspection of the assessment record on 28.01.2021, it was found that many confirmation have been received after the assessment was over, where these parties have confirmed that they have repaid the amount in cash to the appellant. The AR has reproduced the names of the parties along with the date of receipt and the amount repaid who have confirmed repayment of amount. As per the AR, in view of above confirmation available on record the AO is not justified in presuming that the parties from whom the amount have been received back are not genuine parties. As per the AR, the notices u/s 133(6) were issued on 14.12.2019 and there were hardly 14 days between this and passing of assessment order on 28.12.2019. As per the AR, the AO ignored the fact that the Valley (Kashmir valley) remained cut-off from the other part of the country due to snowfall/bad weather in December, 2019. Regarding the receiving back of notices, it is submitted by the AR that this might be due to inadvertent mistake like Pin code, Name and addresses. As per the AR, the genuineness of the parties from whom the amounts have been received back against the opening balance should not have been doubted by the AO when the case of the assessee was under scrutiny in the immediate preceding year. As per the AR, the bank authorities issued certificate that Rs. 32,50,000/- demonetized/ SBNs currency was deposited and on that basis, the counsel of the

appellant, being unaware argued the case but the appellant has never denied the fact that the cash amounting to Rs. 6,45,50,000/- has been deposited in the bank accounts during the demonetization. Further, the AR argued that the addition u/s 68 cannot be made as all the entries for which the addition has been made are duly recorded in the books and have been explained, which were all genuine business credits. As per the AR, the appellant has offered proper explanation regarding the source of credit and discharge its onus by filing various documents and the confirmations received in response to notice u/s 133(6) also proves this fact that the amount has been received against the receivables which were business transactions. The AR relied upon the judgment of Hon'ble Rajasthan High Court in the case of Smt. Harshila Chordi vs. ITO (2007) 208 CTR 208 and submitted that the appellant has received cash from grower/debtors who were duly recorded in the books and the details of growers/debtors as well as their ledger account copies have been duly filed before the AO. As per the AR, under these circumstances the addition made by the AO by applying the provision of section 68 was bad in law.

The AR was asked to file the ledger accounts of the grower for the financial year 2015-16 to show that the advances were paid in cash and there were outstanding balance as on 31.03.2016. In response, the AR filed the relevant ledger account and submitted that the money in question have been recovered from earlier advance given to the growers and outstanding as on 31.03.2016 which stands scrutinized in the assessment order of assessment year 2016-17 passed u/s 143(3) of the Income Tax Act, 1961 by the same AO. The AR further submitted that all these accounts are part of books of accounts verified by the AO to check the short term loan & advances as per the reason of CASS for that year. The AR referred to the judgment of the Hon'ble ITAT Delhi Bench Delhi in the case of Atul Mittal for the contention that when the debtors are considered genuine at the end of preceding year, the receipt from the said debtors during the year under consideration cannot be treated as bogus. The AR further referred to the judgment of the ITAT Hyderabad in the case of ITO vs. Rajender Kumar Taparia where it was held that the amount received as recovery of debts and the entries in the books of accounts cannot be considered as cash credits and provision of Section 68 cannot be applied to trade recoveries made by the assessee during the year. The AR also referred to the observation of the AO where the AO had mentioned that "most likely major cash deposited in SBNs at Delhi branch was actually the unaccounted cash of the assessee" and argued that the word 'most likely' tantamount to presumption and referred to the judgment of the Hon'ble Punjab & Haryana High Court in the case of Jawahar Oswal. The AR further argued that the independent confirmations were received by the AO after the assessment which is placed on the record of the AO.

To verify the claim of the appellant regarding the outstanding debtors during the immediately preceding year which continued during the year under



consideration and from whom the advances have been claimed to have been received back, the assessment records for assessment year 2016-17 & 2017-18 were called from the AO. There appears merit in the argument of the AR that the opening balance of the growers/debtors as on 01.04.2016 should not have been doubted by the AO because the immediate preceding assessment year i.e. A. Y. 2016-17 was completed u/s 143(3) vide order dated 04.12.2018 by the same AO. In the assessment order dated 04.12.2018 passed u/s 143(3) for assessment year 2016-17, it is mentioned that apart from other issues, the case was selected for the reason "(a) Whether tax aspects related to investments /advances/ loans have been considered in the return of income" and in the second para, the AO mentioned that "The required details and information were filed by the assessee through his counsel. The filed information/documents were examined with respect to the issues in question". No addition was made neither any doubt raised about the investment/ advance/loans. The relevant part of the assessment order for the assessment year 2016-17 is reproduced below:

**ASSESSMENT YEAR 2016-17**

"2. The case was selected for limited scrutiny to examine the following issues:-

- (a) Whether tax aspects related to investments /advances/loans have been considered in the return of income
- (b) Whether deduction claimed on account of depreciation is admissible.
- (c) Whether disallowance on account of non-deduction, short deduction or nonpayment of TDS has been correctly shown in the return of income.

2. Subsequently, the assessee was asked to furnish the requisite information from time to time by issuing notice u/s 142(1) of the Income Tax Act, 1961. The required details and information were filed by the assessee through his counsel. The filed information / documents were examined with respect to the issues in question.

3. During the course of assessment proceedings, it has been observed from the documents furnished by the assessee that the assessee has claimed expenditure on account of depreciation of Rs. 7,80,392/- and Rs. 7,80,390/- while filing his return of income. Assessee was asked to justify the same. In response to this, assessee in his reply dated 16/04/2018 submitted that :

*"A sum of Rs. 780392/- has been reduced twice as admissible item on account of depreciation from the income under the head "Income from business", whereby the income under the head "Income from Business" which should have been Rs. 37233103/- resulted to Rs. 38793887/-. Thus, the carry forward loss of the assessee company should have been Rs. 457748972/- as against the Rs. 458529364/- shown in the return of Income. The copies of original as well as revised computation statements of Income are enclosed for your perusal. It is pertinent to state tax liability as per the provisions of Sec. 115JB of the Income Tax Act is not effected."*

It has been observed from the documents as well as admitted by the assessee himself that the depreciation was claimed twice in the return of income, thereby, carry forward loss was inflated to Rs. 7,80,392/- during the year. No revised return was filed by the assessee. It is clear from the above that assessee inflated his



depreciation to avoid the due taxes. Therefore, an addition of Rs. 7,80,392/- is made on this account to the taxable income of the assessee. The assessee has not furnished any plausible reason for claim of depreciation by an amount which is double the due amount. This has resulted in excess claim of carry forward of loss. In my opinion this is a fit case for initiation of penalty proceedings for filing inaccurate particulars of income. Penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 are initiated for furnishing inaccurate particulars of such income.

4. Keeping in view the above, the assessed income and Tax are computed as below:

Income from business and Profession	Rs. 3,80,13,495
Addition as per para 3 above	Rs. 7,90,392/-
Total Income from Business & Profession	Rs. 3,87,93,887/-
Less: Brought forward loss	Rs. (49,65,42,859)
set off	Rs. 3,87,93,887/-
<b>Loss c/f to next Year</b>	<b>Rs. (45,77,48,972/-)"</b>

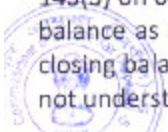
From the above, it is clear that no addition on the issue related to investments/advances/loans were made during the assessment for assessment year 2016-17. Also, during the assessment proceedings for assessment year 2017-18, the appellant filed details of the growers/debtors along with their ledger account, on the basis of which the AO issued letter u/s 133(6) of the Income Tax Act, 1961. The accounts of these parties were appearing in the books of accounts of the assessee and in most of the cases there were opening balances which have been returned back. Such balances were not doubted while completing the assessment for the assessment year 2016-17, meaning thereby that the closing balance as on 31.03.2016 was properly examined because as mentioned above, the case for that year was selected for limited scrutiny for three reasons, one of them being tax aspects related to investments/advances/loans. It is also a matter of record that on the basis of details filed by the assessee, the AO issued notices u/s 133(6) in 60 cases out of which letters in 16 cases were received back till passing of the assessment order and one person replied denying any payment to the assessee while two parties have confirmed payment to the assessee. Further, as per the AR confirmation from 13 other parties were also received after passing the assessment order. The assessment record of the case was called for verifying the above claim of the AR and on perusal of the record it was seen that in 15 cases letters have been received confirming the payments to the assessee and one letter has been received denying the payment. From this, it is clear that the story of the assessee is not totally unbelievable. Letters were not sent to all the parties and out of the letters sent, 15 parties have confirmed the returning of advances to the assessee in cash. This shows that the assessee has infact received back advances from the growers/debtors which were already appearing in the books of accounts of the assessee and such books of accounts have neither been doubted nor rejected during the assessment proceedings. Rather this specific issue of loans & advances by

the assessee was specifically examined during the assessment for the assessment year 2016-17 and no adverse inference was drawn by the AO, since nothing has been mentioned on this issue in the assessment order dated 04.12.2018 passed by the same AO after the demonetization period and the AO in the 'Office Note' for assessment year 2016-17 has mentioned as under on this issue:

*"2. The second issue was to examine the tax aspect related to the advance/loan/ investment considered in the return of income. In this regard, it has been observed from the documents of the assessee has not invested to earn tax free income. Assessee vide his reply dated 14/11/2018 has confirmed the same. Further, assessee furnished the details of the persons whom the advanced Rs. 64670127/-. On being enquired, it has been observed that this amount was extended as advance to crop growers of the area in order to purchase the crop in the harvesting seasons. This type of practice is normal in the Kashmir region."*

There is further merit in the argument of the AR that in this case, the cash is received back from advances given to growers which are held to be genuine in the preceding assessment year by the AO and therefore, this receipt from the grower during the period under consideration should not have been held as bogus nor such receipts can be held as non-explanatory in terms of section 68. The AR further argued that it was a normal practice to give advance to the growers in the Kashmir region in order to purchase of crop in the harvesting season. This argument is also found acceptable as the AO has also mentioned the same as reproduced above.

This is not a case of creation of new asset by the assessee, rather the loan & advances were appearing on the asset side of the balance sheet and it has changed the shape as cash returned from the debtors without affecting the overall figure of assets. One form of assets has changed to another from i.e. from the debtors/loan & advances to cash/bank balance. The assessee has not introduced any new asset in the books of accounts. Independent verification was done by the AO through notices issued u/s 133(6) on test check basis when some of the parties have confirmed the giving back/return of advance to assessee. During the appellant proceedings, the AR has argued that receiving back of letter from postal authorities is not a conclusive proof that the parties does not exist because even the impugned assessment order dated 28.12.2019 passed by the AO for the assessment year 2017-18 sent to the assessee through post has also been returned back and lying on the assessment folder which does not mean that the assessee does not exist (because assessment has been done by the AO which is sufficient for its existence). And thus mere returning back of notice by postal authorities is not sufficient especially when the parties were verified by the AO during the assessment for immediately preceding assessment year and assessment order was passed u/s 143(3) on 04.12.2018. Therefore to doubt the existence of parties and their opening balance as on 01.04.2016, when the advance given during the preceding year and closing balance outstanding as on 31.03.2016 has been accepted by the same AO, is not understood & is totally illogical.



Therefore to conclude, it is observed that from the very beginning, the assessee has explained the source of cash as realization of advance from debtors/growers and constantly maintained this stand and even before the ADIT (Inv.), the same explanation was given. The existence of the loan & advances is not in doubt as these were one of the bases for selection of case for Assessment Year 2016-17 and were examined during the assessment for the year ended on 31.03.2016. The assessee has provided the complete details like name & addresses of the parties and their confirmation and ledger accounts. The AO has also issued letters u/s 133(6) to some parties and response has been received confirming the return of cash to the assessee except by one party namely Mohd. Abdullah & Sons (relate amount of Rs. 5,03,336/-). Therefore this amount needs to be added as unexplained. Hence, the addition to the extent of Rs. 5,03,336/- is confirmed and the appellant gets relief of the balance amount.

Accordingly, this ground of appeal is partly allowed.

**3.3 Ground of Appeal No. 2** has not been invoked during the appellate proceedings and hence no comments are required.

5. We consider the rival submission and perused the documents available in the record. In our factual matrix, the assessee has “Advance to Grower” in other sense Sundry Debtors which were carry forwarded from preceding years. There is no doubt, that the assessee has a sundry debtor in sufficient amount to liquidate the amount for depositing in the bank. Only, the question is the mode of receiving of cash by the assessee and deposited it in Kashmir and in Delhi. In argument, the Id. CIT DR only pointed out the mode of receiving of cash or returned of cash by the Growers during demonetisation. The Id.CIT(A) had clearly verified that the amount was duly deposited by the farmers and most of the Growers are verified and accepted the facts.

5.1 The Id. Counsel has relied on catena of judgments. In summary the assessee has enough amount to advance to party/ grower. In preceding assessment year there, the assessee was maintain more than 6 crore in “Advance to Grower” account. The full amount was disclosed in books and assessed U/s 143(3). In the impugned assessment year, the verification was initiated& the part response was in favour of assessee. Pending verifications were accepted by the appellate authority. But total addition was made U/s 68 of the Act by the Id. AO.

We relied on the order of ITAT Delhi bench that Sundry Debtor cannot be added back U/s 68 as it is not creditor. The assessing authority has doubt on transaction of assessee with the party. The Hon’able Apex court, *supra* in observation that assessment cannot be done on suspicion. The Id. CIT-DR was not able to submit any contrary judgment against the submission of assessee. In the submission of CIT-DR reiterated by demurring on the mode of transaction of assessee with parties to whom the advance was given. This can not be negated only on basis of suspicion.

In our considered view, that there is no infirmity in the order of the Id. CIT(A). So, we are not interfering in the order of Id. CIT(A) related allowing of assessee’s appeal amount to Rs.6,33,46,052/-. We respectfully relied on the order of Apex Court, *supra*. Section 68 is not empowered to allow addition of sundry debtors/

advance to growers. The Id. CIT(A) without any cross verification had disallowed the amount of Rs.5,03,336/-. The rest amount was accepted which was also not verified & Section 68 is not proper for entertaining the addition. So, we find that the disallowance of Rs.5,03,336/- is erroneous and liable to be dismissed.

6. In the result, the appeal of the revenue bearing **ITA No. 150/Asr/2021** is dismissed and the appeal of the assessee bearing **ITA No. 94/Asr/2021** is allowed.

**Order pronounced in the open court on 31.01.2023**

**Sd/-**

**(Dr. M. L. Meena)**  
**Accountant Member**

**Sd/-**

**(ANIKESH BANERJEE)**  
**Judicial Member**

**AKV**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By Order