

**IN THE INCOME TAX APPELLATE TRIBUNAL  
CIRCUIT BENCH, VARANASI**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No. 138/VNS/2020  
Assessment Year: 2017-18

The Deputy Commissioner of Income - tax, Circle-1, AayakarBhawan, MaqboolAlam Road Varanasi-221002, U.P.	v.	Mr. Ganesh Prasad, S-6/108, Golghar Katchhari, Varanasi-221002, U.P.
		<b>PAN:ADZPP4070B</b>
(Appellant)		(Respondent)
Assessee by:	Shri Subash Chand Adv. & Sh. Ashutosh Bhardwaj, Adv.	
Revenue by:	Shri A.K. Singh, Sr. DR	
Date of hearing:	12.01.2023	
Date of pronouncement:	07 .02.2023	

**ORDER**

**PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:**

This appeal, filed by Revenue, being ITA No.138/VNS/2020, is directed against the appellate order dated 08.09.2020 passed by learned Commissioner of Income Tax(Appeals), Varanasi(hereinafter called "the CIT(A)") in Appeal No. CIT(A), Varanasi/10401/2019-20/71, for assessment year (ay): 2017-18, the appellate proceedings had arisen before Learned CIT(A) from assessment order dated 26.12.2019 passed by learned Assessing Officer (hereinafter called "the AO") under Section 143(3)of the Income-tax Act, 1961 (hereinafter called "the Act")(DIN & Order No. ITBA/AST/S/143(3)/2019-20/1023153898(1)).We have heard both the parties in Open Court proceedings through physical hearing mode.

2. The grounds of appeal raised by Revenue in memo of appeal filed with Income Tax Appellate Tribunal, Varanasi (hereinafter called “the tribunal”), reads as under:

*“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,63,28,547/- and also failed to appreciate the facts that the aforesaid addition made by the AO u/s 69A of the I.T. Act, 1961 because the assessee was failed to substantiate the same during the course of assessment proceeding after allowing many opportunities.*

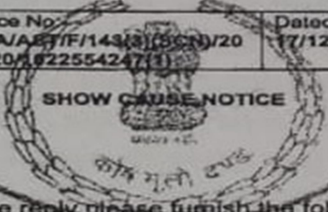
*2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in accepting the submission of the assessee without appreciating the fact that the AO has allowed maximum average sales for the month.*

*3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in accepting the submission of the assessee **without calling for any remand report from the AO whereas the assessee has made wrong submission before him.***

*4. Right is reserve to alter, modify and to file any fresh ground of appeal.”*

3. The brief facts of the case are that the assessee filed his return of income for impugned assessment year:2017-18, on 14.10.2017 declaring total income of Rs. 92,18,080/-. The assessee is engaged in the business of manufacturing of sweets and namkeen by use of Khoa, Chhena , milk, dry fruits , besan, maida, spices and vegetable as gas for cooking varieties of sweets. The case of the assessee was selected for framing scrutiny assessment, and accordingly notice under Section 143(2) of the 1961 Act was issued by AO on 20.08.2018 , which was claimed by AO to have been duly served upon the assessee. Thereafter, notices under Section 142(1) were issued by AO from time to time, and claimed to be served upon the assessee. As the assessment proceedings

in the case of the assessee was getting time barred on 31.12.2019, a show cause notice(SCN) dated 17.12.2019 was issued by AO for compliance on 19.12.2019 , which is reproduced hereunder:

GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX DC/ACIT-R3, VARANASI				
To, GANESH PRASAD S. 6/108 ,GOLGHAR KATCHHARI VARANASI 221002 ,Uttar Pradesh India				
PAN: ADZPP4070B	AY: 2017-18	Notice No. ITBA/AS/TF/143(S/SCN)/20 19-20/2225542473	Dated: 17/12/2019	Hearing Date and Time: 19/12/2019 11:00 AM
 <b>SHOW CAUSE NOTICE</b>				
With reference to your online reply please furnish the following details:				
<ol style="list-style-type: none"><li>1. Please explain why the consumption of packaging material is not commensurate with the growth in sale of sweets. The consumption of packing material has declined drastically from 10.07% in 2015-16 to 7.03% in 2016-17. More specifically whereas sale of sweets has increased from Rs.46222064.00 in FY2015-16 to Rs.96115517.00 in FY2016-17 however the packing material consumption has increased only from Rs.465663.00 in FY2015-16 to Rs.6759628.00 in FY 2016-17. Please explain this in clear and specific terms. Please note in absence of your reply in this regard we will not be able to verify aforesaid and shall be compelled not to accept your submission based on vague and unverifiable arguments and such disallowance shall be taxed according to provisions of IT Act 1961.</li><li>2. The firm has made payment under head "commission to others" amounting to Rs.8838077.00 but it has not provided any detail or any register or the basis by which we can verify the payments made under this head. Please provide the above detail in a tabular format clearly mentioning on what basis such huge payment is made in this year. Please note in absence of any reply in this regard we will be compelled to disallow the payment made in this regard and the same amount will be added back to firm's income and shall be taxed accordingly.</li><li>3. Furthermore the Firm has deposited Rs.20250000.00 in your Punjab National Bank account (A/C 2988002100015734) during demonetization period (from</li></ol>				
<small>Note: If digitally signed, the date of digital signature may be taken as date of document. AAYAKAR BHAWAN, Magdool Alam Road, VARANASI, VARANASI, Uttar Pradesh, 221002 Email: VARANASIDCIT3@INCOMETAX.GOV.IN.</small>				
<small>* The Notice/Letter/Order No. mentioned above is the Document Identification No. (DIN) of this Notice/Letter/Order.</small>				

9.11.2016 to 30.12.2016).while going through the cash deposit pattern of your firm we observe that during whole year in various months the maximum cash deposit is never crossed Rs.2000000.00 in any of the months. However just at the first instance of opening of Banks after demonetization is announced you have made whopping deposit of Rs.20000000.00 in your PNB bank account. Your argument in this regard lack any financial merit when the same bank branch is located in vicinity of your shop. Further more you have not replied so far to the question asked in earlier notice regarding the "HOME CASH BOOK". Please reply in clear and specific terms explaining this otherwise it will be deemed that you have nothing to say in this regard and appropriate action as per the provisions of IT Act will be made applicable to your case.

4. Your attention is drawn towards the provisions of section 115BBE of the IT act as substituted by the Taxation Laws(second amendment)Act,2016 which is applicable from 01.04.2017.as per this section, where the total income includes any income referred to in section 68,69,69A,69B,69C or section 69D of the IT Act, the Income tax shall be payable shall be charged@50%.

Please reply on or before 19-12-2019 through online facility of e-proceeding. Please note that no personal interaction is required in this regard and all the replies shall be given either through online or by postal service.

3b. The assessee in response thereof filed reply in which assessee duly explained before the AO with respect to commission paid and the basis on which such commission was paid by the assessee, which was found acceptable by the AO and matter rested there. **However, the AO observed that assessee has not provided any reply on the issue of evidence of "Home Cash". The AO further observed that so far as the consummation of packing material is concerned, the assessee submitted reply based on unverifiable facts, and that consumption of packing material is not commensurate with the total sales.** The AO observed that the assessee has deposited total cash amounting of Rs. 2,02,50,000/- in the bank account No. 2988002100015734

held with Punjab National Bank during demonetization period. The assessee submitted his reply with respect to cash deposit exceeding Rs. One lakh in cash in the bank account during the year under consideration, as under:

b) Details of Cash deposits (above Rs. 1 Lacs) in bank accounts during the year

Date of Cash Deposit	Amount of Cash deposit	BANK	A/C NO.	Cash in hand as per cash Book before depositing cash in bank.	
				CASH BOOK	HOME CASH
06/05/2016	600000	HDFC	20282560000780	67512	3467896
01/06/2016	700000	HDFC	20282560000780	35368	3657896
17/06/2016	900000	HDFC	20282560000780	50660	3557896
18/06/2016	200000	HDFC	20282560000780	118066	2657896
04/07/2016	900000	HDFC	20282560000780	174720	2757896
05/07/2016	500000	HDFC	20282560000780	219369	1857896
03/10/2016	100000	HDFC	20282560000780	123004	4807896
11/11/2016	5000000	PNB	2988002100015730	391866	20107896
	5000000	PNB	2988002100015730	391866	20107896
	5000000	PNB	2988002100015730	391866	20107896
	5000000	PNB	2988002100015730	391866	20107896
15/12/2016	250000	PNB	2988002100015730	447275	750000
04/01/2017	1200000	PNB	2988002100015730	1037456	1337500
31/03/2017	1500000	PNB	2988002100015730	5289566	137500

4 It is seen that the assessee had deposited cash amounting to Rs. 1,00,000/- 19,00,000/- in the bank account regularly, however there has been drastic increase cash deposit during the period of demonetization period that is has deposited cash amounting to Rs.2,02,50,000/- during the demonetisation period as under:

11/11/2016	5000000	PNB	2988002100015730	391866	20107896
	5000000	PNB	2988002100015730	391866	20107896
	5000000	PNB	2988002100015730	391866	20107896
	5000000	PNB	2988002100015730	391866	20107896
15/12/2016	250000	PNB	2988002100015730	447275	750000

The AO observed that the assessee has shown opening cash balance of Rs. 27,68,557/- as on 01.04.2016. On analyzing the reply of the assessee and the financial data available on record, the AO observed as under:

1. While perusing the cash deposit profile of the assessee it is found that the assessee deposit cash after making payment for purchase (which also happen mostly in cash) in

bank and these cash deposit in bank in general: sales purchases. But just at the announcement of demonetization assessee deposited nearly Rs. 2,02,50,000/- claiming it as total sale without factoring purchase which is completely against the cash deposit profile of the assessee in past.

2. That assessee had shown receipts of ranging from Rs. 26,08,137/- to 39,21,453/- from monthly cash sales throughout the year. Based on that it is seen assessee had maintained average cash balance amounting to Rs. 26 lakhs to 48 lakhs.

3. The consumption of packing material is not commensurate with the growth in sale of sweets. The consumption of packing material has declined drastically from 10.07% in 2015-16 to 7.03% in 2016-17. More specifically whereas sale of sweets has increased from Rs. 4,62,22,064/- in FY 2015-16 to Rs. 9,61,15,517/- in F.Y. 2016-17 however the packing material consumption has increased only from Rs. 4,65,663/- (sic. Rs. 46,56,653/-) in F.Y. 2015-16 to Rs. 67,59,628/- in F.Y. 2016-17.

4. However, balance is seen to have increased suddenly during the end of the month of October-2016 and particularly from 1st November 2016 to 8 November 2016 (i.e. just before demonetization). The end of October month there was cash balance Rs. 1,99,26,887/- and during period of 01.11.2016 to 08.11.2016 assessee had shown sudden increase in cash sales; i.e. within a period of 7 days the cash in hand was increased from average of 26 Lakhs to 1,99,26,887/- by end of the day on 08.11.2016 This increase was in the tune of more than 7.6 times.

5. On analyzing the reply of assessee it is seen that assessee had shown brought forward cash balance as on 01.04.2016 amounting to Rs.27,68,557. However at the end of month of April-2016 it was Rs.34,63,700/-. Further cash balance at the end of May-2016 it was Rs. 36,91,264/-. The cash balance starts increasing from the month of October-2016 and at the end of month it was Rs.1,99,26,887/-.

6. Hence, it is clear that the cash book and sales book for F.Y. 2016-17 was manipulated to bring in unaccounted money which was with the assessee. The assessee had credited bogus sales to bring in that money. The assessee was forced to do this because the

government of India undertook the task of demonetization to unearth the unaccounted black money. So the assessee had no other way but to bring in the unaccounted money into the books of account and the assessee chose the way of bogus sales. Therefore this historical sales started appearing between 1st November 2016 to 8th November 2016 due to crediting of bogus sales.

7. So the assessee has brought in unaccounted money which was lying with him into the books of account by booking or crediting bogus cash sales. The assessee was forced to do this due to demonetization. Yes, it is worthwhile to acknowledge here that by booking bogus sale he has offered the said amount to taxation (unlike crediting bogus sundry creditors or bogus unsecured loan). The assessee by doing so has escaped the higher taxation and penalty which would have otherwise levied u/s. 69A of the Act. Further by booking/crediting bogus sale the assessee has not only enjoyed lower taxation but also took contra debit entry of purchases and expenses.

8 It is seen that assessee has deposited cash of Rs. 2,02,50,000/- during the demonetization period. Thus, it is clear that in order to bring in unaccounted cash in hand as on 08.11.2016 assessee has booked bogus sales and manipulated books of accounts. Assessee has not made those sales but has credited to P and L account to bring in Cash which was unaccounted. Assessee was forced to undertake this entry because the Govt. undertook the process of demonetization. Therefore by not only back dated bogus cash sales entries but also not factoring in purchases usually made in cash during the same period. The assessee builtup the cash in hand as on 08.11.2019(sic.08.11.2016) amounting to Rs. 2,02,50,000 by backdated bogus cash sales entries.

9. Though the assessee had credited it as sales which through bogus sales, was offered to taxation. The assessee by doing so has escaped higher taxation and penalty as per section 69A of the Act and penalty thereof. The assessee has further enjoyed the advantage of debiting the purchases and expenses against the bogus sale. The assessee has declared cash sale during the F.Y. 2016-17 as under:

<i>Month</i>	<i>Cash Sales</i>
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April ,2016	3280522
May,2016	3058628
June ,2016	2884982
July ,2016	3808270
August ,2016	3921453
September ,2016	2673140

Thus, the AO observed that the maximum sales declared by the assessee in the month of August, 2016 is Rs. 39,21,453/- which was taken as sales done during the month of October, 2016 and remaining Rs. 1,63,28,547/- (Rs. 2,02,50,000/- - Rs. 39,21,453/-) is the unaccounted money brought into books of account of the assessee as the credit entry which remains unexplained regarding nature and source , and hence is to be taxed as per section 69A of the Act read with Section 115BBE of the 1961 Act Thus, the AO made the addition to the income of the assessee to the tune of Rs. 1,63,28,547/-, vide assessment order dated 26.12.2019 passed by AO u/s 143(3) of the 1961 Act, wherein income of the assessee was assessed at Rs. 2,55,46,630/- as against returned income of Rs. 92,18,080/-.

4. Aggrieved by assessment framed by AO u/s 143(3) vide assessment order dated 26.12.2019, the assessee filed first appeal before Ld. CIT(A) , and the assessee made following submissions before ld. CIT(A):

*"The appellant is an "Individual" by status carrying on the business of manufacture of Sweets and Namkeen by use of Khoa, Chhena, Milk, dry fruits, besan, maida, spices and vegetable as well as gas for cooking verity of sweets are produced and sales thereof in the name and style of "M/s New Rajshree Sweets" thereof since 2007 besides this, the Appellant is a partners in the firm M/s Sri Ram Sweets and derives only share income there from. The Appellant has some FDRs and therefore have interest income. The*

Appellant has his principle place of business at "S 6/117, Golghar, Kachhari, Varanasi-221002" which is rented property and Karkhana of the Appellant is situated at "S 6/109, 110, Golghar, Kachhari, Varanasi 221002" which is owned by the him. The Appellant maintains the books of accounts at S-6/117 Golghar, Kachhari, Varanasi, as per section 2(12A) of the IT act, 1961 and each and every entry therein clearly indicate the day today position of the goods and sales and receipt of cash as well as the payment for purchases. The case of the Appellant was selected for scrutiny by issue of notice u/s 143(2) of the Income Tax Act, 1961 dated 20.08.2018 and subsequent notices issued u/s 142(1) of the Income Tax Act, 1961.

The Copies of all the replies submitted by the Appellant alongwith supporting attachments are being attached herewith **vide Annexure-II** for your kind perusal.

**WITHOUT PREJUDICE TO THE SUBMISSIONS MADE HEREINABOVE**, It is contended that the addition as has been made in the impugned assessment order which are listed herein below:-

**Unexplained money u/s 69A of the Act Rs. 1,63,28,547/- suffer from inherent infirmities, as per discussion made hereinafter.**

**Unexplained money under section 69A of the Act**

From a bare perusal of the assessment order itself, it would be seen that such an addition had been made within the following premises:-

".....The maximum sales declared by the assessee in the month of August 2016 is Rs. 39,21,453/- is taken as sales done during the month of October, 2016 and remaining Rs.1,63,28,547/- (i.e.Rs.20250000-3921453) is the unaccounted money brought money into the books of account as credit entry remains unexplained regarding nature and source and hence is to be taxed as per section u/s 69A of the Act. The penalty u/s. 271AAC of the Act is to be initiated

Addition Rs. 1,63,28,547/-

which is **factually wrong**.

The aforesaid (page 7 of the impugned assessment order) shows that the Assessing Officer has made the said addition of Rs.1,63,28,547/- owing to addition u/s 69A of the Act and tax has been levied by wrongly applying the provision of section 115BBE of I.T. Act 1961. However, in this respect the Appellant begs to submit as under:-

**WRONGFUL APPLICATION OF SECTION 69A OF THE INCOME TAX ACT, 1961**

Kind attention of your goodself is being invited to the provision of section 69A, which reads as under:-

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

could not have been applied. Apart from relying upon express language of section 69A of the Act (as reproduced above) the appellant begs to refer and rely upon a decision of Hon'ble Bombay High Court in the case of **J.S. Parkar Vs. V.B. Palekar reported in (1973) 94 ITR 616** wherein at page 650 the Hon'ble court observed and held as under:-

"Now, it is significant that section 69A speaks of "found to be the owner of.....bullion.....". It does not say "found to be in possession, of bullion....." If the legislature had intended that mere possession of gold, etc., would cast an obligation on the possessor to explain its source it could have very well said so without bringing in the concept of ownership and insisting that the assessee must be found to be the owner. Found by whom? Obviously by the Income-tax Officer and it follows that the finding must be on the basis of proper evidence or

material proving such ownership. Again, take the case of "investment" under section 69. Could it be validly contended that the department has merely to allege that an assessee has made an investment, say, in house property or in shares or in bonds, without proving the factual existence of such an investment? There must be some starting point. It would be all too easy (and oppressive (sic) for an Income-tax Officer to say to an assessee that "your background shows that you have a lot of money. You must have invested it. Now tell us where you have made the investment and then explain its source. After all this is a matter within your knowledge."

That the Appellant has vide his reply dated 12.03.2019 submitted that the almost sales of his business are in cash therefore the deposits in the banks accounts is always cash. The Assessing Officer vide his assessment order under reference has raised question in the matter of cash deposit of Rs. 2,02,50,000/- in the bank account during demonetization period. In this respect the Appellant begs to submit that so far as the source of amount of Rs. 2 Crore or more deposited in bank is concern, it has already been clearly mentioned by the him that it is the part of the sale of the week of Diwali 2016 duly recorded in books of account supported by vouchers i.e. cash memo which has been generated by computer as well as handmade. It is not the first time that huge sale has been effected in the week of Diwall. Therefore it is important to mention that the maximum sale in one month of the Appellant is that month when Dussehra and Diwali festival is celebrated and it either in October or November of every year. The total sales account during the period of Dussehra and Diwali has been mentioned in the chart hereunder:-

**The comparative chart of sales on occasion of Dussehra and Diwali in three consecutive years are hereunder:**

A.Y.	Relevant Period	Total Sales Amount (Rs.)
2015-16	01.10.2014 to 31.10.2014	13154229
2016-17	01.11.2015 to 30.11.2015	18381467

2017-18	01.10.2016 to 31.10.2016	26491790
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*In this way it is proved that it is the nature of business and general phenomena and also the local custom that the Appellant achieves substantial sales during festive season as mentioned above. This fact was duly brought to the notice of Assessing Officer during assessment proceedings which has been overlooked by him by wrongfully treating sales for the month of August as average sales just to inflate the quantum of addition. To further substantiate these sales, copies of Sales Register and ledger accounts of the sales for the F.Y, 2016-17 for the period 01/10/2016 to 30/11/2016 have already submitted to the Assessing Officer during the course of assessment proceedings which is being attached herewith for your kind perusal. The Assessing Officer has vide para 4 page no. 5 of his assessment order under reference has stated as under:-*

*"However, balance is seen to have increased suddenly during the end of the month of October-2016 and particularly from 1<sup>st</sup> November 2016 to 8 November 2016 (i.e. just before demonetization). The end of October month there was cash balance Rs. 1,99,26,887/- and during period of 01.11.2016 to 08.11.2016 assessee had shown sudden increase in cash sales; i.e. within a period of 7 days the cash in hand was increased from average of 26 Lakhs to 1,99,26,887/- by end of the day on 08.11.2016. This increase was in the tune of more than 7.6 times"*

*The contention of the Assessing Officer as above in itself is contradictory as cash balance as on 31/10/2016 being Rs.1,99,26,887/- (as per Assessment Order and also as per the books of accounts of the Appellant) and cash balance as on 08/11/2016 was Rs. 20543396/-. Thus the cash collection on account of sales/debtors of Diwali sales from 01/11/2016 to 08/11/2016 was Rs. 21,11,363/- only, whereas the Assessing Officer has mentioned that the cash in hand in first 7 days of November 2016 from average of 26 Lakhs to Rs. 1,99,26,887/- by end of the day on 08.11.2016. This itself shows ambiguity in basis of calculation of addition in the Assessment Order. That a chart showing the*

monthly sales during the month of October and November for last 3 years is further being produced as under:-

A.Y.	TOTAL SALES			ANNUAL SALES
	OCTOBER	NOVEMBER	TOTAL	
2015-16	1,31,54,229	22,26,812	1,53,81,041	3,45,36,772
2016-17	28,63,880	1,83,81,467	2,12,45,347	4,62,22,064
2017-18	2,64,91,769	1,30,51,475	3,95,43,244	9,61,15,517

From the above chart it is established that the sale in the month of October and November has been in increasing trend. The Assessing Officer has vide para 9 of his assessment order intentionally ignored the sales of October and November months. Whereas it is the trend in our Indian culture and according to the nature of Appellant's business that generally the sales in festive month i.e. October and November months remain abnormal/substantially higher in this line of activity as compared to other months.. Therefore the contention made by the Assessing Officer vide para 4 hereinabove and addition made is not valid on this score.

It will not be out of place to mention here that all the above sales was cross verifiable from the copies of VAT returns duly furnished during assessment proceedings. The Assessing Officer has also not pointed out any defect in the VAT returns furnished during assessment proceedings by the Appellant. Thus VAT at applicable rate has also been duly paid by the Appellant on the self- disclosed sales and accounted for by him which is a fact on record. Thus treating the taxable turnover of the Appellant as per VAT Act as undisclosed turnover/unaccounted income of the Appellant is totally based on presumptions and surmises of the Assessing Officer.

The shop of the Appellant was also surveyed on 14.10.2009 near Diwali and it is a tested work by department that sale of the Appellant on Diwall is more than the sale effected any month of F.Y. That due to demonetisation of currency, the Appellant was enquired about the deposit of cash in bank more than Rs. 2 Crore. The Appellant has explained the

same to the Ld. Addl. Director of Income Tax Investigation, Varanasi in compliance to the notice dated 09.12.2016 u/s 131(1A) of the Act. That kindly refer the para-4 of the said letter sent to Addl. Director of Income and quoted hereunder:-

"...4. That the Balance Sheet for F.Y. 2013-14, 2014-15 & 2015-16 are attached along with the detail of sales of the month when the festival Deepawall was during these year. It is important to mention that the fourth son of the assessee Ravi Kumar severely suffered from Jaundice and his position become almost precarious as told by Dr. Shalabh Gupta and Dr. Hemant Gupta and examination on 25.10.2016 and as per their advice the family members along with him rushed to Medanta Hospital on 7th November, 2016 and therefore the cash collection of the Deepawall sales were deposited in the bank account on 11.11.2016."

The Appellant vide his reply dated 12.03.2019 has stated as under:-"

".....d.. That to effect such a high sale, and to collect the cash itself a tedious task and anybody of the family members i.e. son of the assessee could not get time to deposit the amount in the bank. The sales of sweets is not a trading commodity, It is sold when manufacture and it is possible when raw materials are collected. To collect raw material, to produce the same to make the arrangement of utensils, fuel, variety of raw material like dry fruits, khoa, chhena and to watch the production can only be experienced and in case, your honour have a time, the assessee is ready to display the manufacturing work during the Diwall season or even today. The cash memo issued by the assessee for sale of the sweets clearly justify that atleast 200 persons were supplied the goods in a day.

e. That all the sale proceeds during the period of Diwali was kept at home. So far as the modus operandi of the receipt is concerned, the assessee has received the amounts in cash and in the evening the amount has been transferred to the locker of the home. The assessee has also maintained a ledger account in the books of the account regarding home cash balance, same quoted here under..."

*In order to substantiate his claim, the Appellant has already attached the copy of Balance Sheet & P/L Account for last years, copy of cash book for A.Y. 2017- 18 (the copy of cashbook for the month of Oct-14, Nov-15 and Oct & Nov-16 are separately attached), copy of ledger account of Sales and copy of Stock register for A.Y. 2017-18 before the Assessing Officer during the course of assessment proceedings before him which is being attached herewith before your good-self for your kind perusal.*

*That there is no provision of Law of the country either in the Notification or Circular issued for demonetization of currency that SBN or i.e. old currency prior to 08.11.2016 will be an amount to be taxed under the provision of Income Tax Law Including the Chapter-VI i.e. section 68, 69, 69A, 698, 69C and 69D of the IT Act, 1961 and thereby the provision of section 1158BE is also inapplicable. The Appellant is unable to understand that under which notification or circular or any other publication the Ld. Assessing Officer has treated the currency deposited in the bank is liable to tax u/s 69/69A of the Act.*

*That the additions u/s 69A cannot be made on estimated basis. The Assessing Officer has made the additions on estimated basis on his own presumptions and surmises.*

*Therefore the Ld. Assessing Officer has erred in :-*

- (i) not taking into account this aspect of fact and erred and acted illegally adding back the difference of sales of November and sales of August and October 2016.*
- (ii) adding back Rs.1,63,28,547/- as unexplained money u/s 69A of the Income Tax Act, 1961.*

*That kind attention of your goodself is invited to the various judicial pronouncements which reads as under:-*

*Decision of Hon'ble Income Tax Appellate Tribunal, Agra Bench in Appeal Number: ITA No. 287/Agr/2017 in case of "Sh. Amit Jain Vs ITO(ITAT Agra)" A.Y. 2013-14 pronounced on 22.03.2019 whereby Hon'ble ITAT has been kind enough to hold as under:*

*"Conclusion: Since the cash deposit made by assessee was from the business activities of glass bangle trading business, therefore, no addition under section 69 over and above the returned income would be warranted."*

*Therefore, the Assessing Officer has erred in invoking the provisions of section 69A of the Act in respect of the transactions recorded in the books of the appellant as the Appellant is maintaining proper books of accounts and other records of source of income and the amount deposited in bank account and the same is fully explainable hence, consequently the additions made on this count are liable to be deleted under the facts and circumstances of the case.*

**NON INVOKATION OF SECTION 145(3) OF THE INCOME TAX ACT, 1961** *The Appellant during the course of assessment proceedings already fully explained to the Assessing Officer that the books of accounts were duly maintained by him and the Appellant also submitted the books of accounts containing copies of Balance Sheets, P/L Account, copy of bank statements, various ledgers accounts, copy of cash book for FY 2015-16 and 2016-17 and the said accounts were duly audited u/s 44AB of the Income Tax Act, 1961 by an Independent Auditor but without pointing out specific defects in the books of accounts so maintained and/or and the audit report u/s 44AB of the Income Tax Act, 1961, the additions have been made to the Returned Income on estimated basis which needs to be quashed accepting the Income Returned by the Appellant. Even the Assessing Officer neither questioned further nor any queries relating thereto were raised by the Assessing Officer which is evident from the fact that no further notice u/s 142(1)/Show Cause Notice challenging the above submissions of the Appellant were issued by the Assessing Officer. And the auditor was also never confronted by the Assessing Officer nor were the books of accounts rejected by him by invoking the provisions of section 145(3) of the Income Tax Act, 1961.*

*The Appellant has during the course of assessment proceedings submitted the copy of ledger account of "Home Cash Book" to the Assessing Officer which forms part of the books of accounts being maintained on day to day basis by the Appellant. Therefore*

*without rejecting the books of accounts and invoking the provisions of section 145(3) of the Income Tax Act, 1961, no adverse inference is liable to be drawn in the matter.*

*The Appellant has during the course of assessment proceedings vide his reply dated 03.12.2019 submitted the comparative chart of consumption of packing materials for 3 years alongwith copy of ledger account of packing goods for A.Y. 2017-18 which has been duly accepted by the Assessing Officer but on the other hand the Assessing Officer has tried to establish a link of packing material consumed with the sales of the Appellant on wrongful footing. It is a local custom that the bulk purchasers of sweets on festive season are in the practice of getting their own packing boxes printed with their firm's names and logo etc. which are supplied to the Appellant for packing of sweets. Since the Appellant does not incur any cost on such packing material, there cannot be any relation between the packing expenses vis-à-vis sales of the Appellant on this account. Hence this aspect is irrelevant and based on flimsy grounds while making addition u/s 69A of the Income Tax Act, 1961 and invocation of the provisions of section 115BBE of the Income Tax Act, 1961.*

*Otherwise also, the 1st Appellate Authority has got coterminous power with that of the Assessing Officer and the appellate authority can consider what the Assessing Officer has failed to consider (owing to non-availability of such information with him during the course of assessment proceedings) so that justice is done to the appellant.*

#### **PRAYER**

*In view of the submissions made herein fore, it is respectfully prayed that*

*Firstly: your honour be pleased to quash the order dated **21.12.2019**; and*

*Secondly: In any case delete the addition/disallowance for sums aggregating*

**Rs.1,63,28,547/-**

*so that the demand created over and above the same is cancelled.”*

4b. The Ld. CIT(A) deleted the entire additions as were made by AO, vide appellate order dated 08.09.2020, by holding as under:

**“Decision:**

*Appellant filed return of income for the AY. 2017-18 on 14.10.2017 declaring total income of Rs. 92,18,080/- from the business of manufacture of sweets and namkeen and sales thereof in the name and style of M/s New Rajshree Sweets. Appellant is maintaining regular books of accounts, which are subject to statutory audit. AO has not invoked the provision of S. 144 of the Act while making the assessment and has also not rejected the books U/s 145(3). Appellant admittedly deposited Rs. 2,00,00,000/- in his bank account during the time of demonetisation. Appellant explained the source of it to be from the regular business turnover during the sale on Diwali of 2016. It is also seen that such huge sale has been affected prior to Diwali every year.*

*AO contended that appellant had deposited cash amounting to Rs. 1,00,000/- to 19,00,000/- in the bank account regularly, but there was increase in cash deposit during the period of demonetization period. Appellant deposited Rs. 2,00,00,000/- on 11.11.2016 & Rs. 2,50,000/- on 15.12.2016. AO analysed the financial data and gave a finding that the appellant deposited cash only after making payments, in cash for purchases, in bank and this cash was generated from sales of the regular business. However AO held that Rs. 2,02,50,000/- claimed to part of total sale, without factoring purchase, is against the general cash deposit profile of the assessee in the past. As per AO appellant had maintained average cash balance amounting to Rs. 26 lakhs to 48 lakhs.*

*AO observed that the sale of sweets has increased from Rs. 4,62,22,064/- in F.Y. 2015-16 to Rs. 9,61,15,517/- in F.Y. 2016-17 and also the packing material consumption has increased from Rs. 4,65,663/- in F.Y. 2015-16 to Rs. 67,59,628/- in F.Y. 2016-17. On analyzing the cash movement trend AO observed that the cash balance starts increasing from the month of October- 2016 and at the end of month it was Rs. 1,99,26,887/- and therefore held that the cash book and sales book for F.Y. 2016-17 of appellant are*

*manipulated to bring in unaccounted money of the assessee by showing bogus sales. On the basis of the maximum sales declared by the appellant for the month of August 2016 of Rs. 39,21,453/-, AO estimated the sales done during the month of October, 2016 as Rs. 39,21,453/- and taxed the remaining Rs. 1,63,28,547/- u/s 69A of the Act.*

*Appellant has submitted that complete details of month wise cash sales and cash deposits, monthly sales/purchase, Stock register, cash book, ledger account of Home Cash Book from A.Y. 2015-16 to A.Y. 2017-18 and copy of VAT returns form F.Y. 2015-16 to June, 2017 were furnished to AO in prescribed tabular format given in the notice. AO has made the said addition u/s 69A of the Act which could not have been applied, legally. Appellant has submitted that all the sales of his business are in cash therefore the deposits in the banks accounts is always cash. Rs. 2,02,50,000/- that was deposited in the bank account is the part of the sale of the week of Diwali 2016 duly recorded in books of account supported by Sale and corresponding Purchase vouchers. Dussehra and Diwali festival are celebrated either in October or November of every year. The total sales account during the period of Dussehra and Diwali has been mentioned in the chart hereunder shows consistent increase in sales every year.*

A.Y.	Relevant Period	Total Sales Amount (Rs.)
2015-16	01.10.2014 to 31.10.2014	13154229
2016-17	01.11.2015 to 30.11.2015	18381467
2017-18	01.10.2016 to 31.10.2016	26491790

*This fact was brought to the notice of AO during assessment proceedings which has been overlooked by him by wrongfully treating sales for the month of August as average sales just to inflate the quantum of addition.*

*AO has admitted that cash balance as on 31/10/2016 was Rs. 1,99,26,887/- and cash balance as on 08/11/2016 was Rs. 2,05,43,396/-. Thus the cash collection on account of sales/debtors of Diwali sales from 01/11/2016 to 08/11/2016 was Rs. 21,11,363/- only. AO has in para 9 of his assessment order intentionally ignored the sales of October and*

November months which are consistently increasing every year for the last three years. These sales are verifiable from the copies of VAT returns duly furnished during assessment proceedings. The Assessing Officer has also not pointed out any defect in the VAT returns furnished during assessment proceedings by the Appellant. Regarding Home Cash Account appellant submitted that to manage such a high sale during the festival time, appellant does not get time to deposit the amount in the bank hence the cash is taken to home for deposit later as per convenience and after making payments for purchases. All these transactions are duly accounted for by opening a separate Ledger in the name of 'Home Cash' showing the genuineness of the entries in the books of accounts vis.-a-vis. submissions being made by appellant. The Assessing Officer has made the additions on estimated basis on his own presumptions and surmises. So the additions u/s 69A cannot be made on estimated basis.

I have gone through the facts and the written submissions filed along with the details enclosed therewith by the AR of the appellant. The entire additions have been made only on the basis of adding back the figure of sales arrived on the basis of sales of a particular month, purely on estimate basis. AO has not rejected books of accounts of the assessee u/s 145(3) and not invoked the S. 144 of the Act. Appellant uploaded details of complete cash books, complete purchase & sales, details of expenses, VAT returns, along with other documents on ITBA module. Appellant produce purchase, sales register, expenses register, stock register and cash book before the AO. AO has not asked for any further details from the appellant. It is also not disputed by AO that the appellant has filed its Monthly VAT Returns within due time. AO failed to treat them as good proof without making any enquiry from VAT authorities. It is clear from the above that the assessment has been made without giving any weightage on the audited books of accounts and VAT returns produced before AO. It is trite law now that AO cannot make any assessment on guess work without reference to any evidence or material brought on record. It is prima facie evident that the AO is purely conjecturing while making the said addition by adopting the figure of sales of August 2016 as the figure for sales of October 2016 and

DCIT, Circle-1, Varanasi v. Mr. Ganesh Prasad, Varanasi  
taxing remaining Rs. 1,63,28,547/- i.e. Rs. 2,02,50,000- 39,21,453/- as the unaccounted money of the appellant, without bringing any adverse evidence on record.

AO has taxed this amount u/s 69A which can be invoked only if the assessee is found to be owner of any money, bullion, jewellery or other valuable article and such money etc. that is not recorded in the books of account, if any, maintained by the assessee for any source of income, which in this case is not so as all the transactions are recorded in the regular books of accounts, and once the first limb is not satisfied then the question of the assessee offering any explanation about the nature and source of acquisition of such money, etc. or the reaching the satisfaction level by AO does not arise. The appellant has properly recorded such cash in the books of accounts maintained by the appellant. Therefore, the provisions of section 69A r.w.s. 115BBE cannot be invoked in the case of the appellant.

It is true that the addition has been made without invoking S. 144 or Sec. 145(3) of the Act. Still where the Assessing Authority proposes to proceed to make an order of assessment to the best of his judgment, the basis for the proposed assessment should be put to the assessee and an opportunity should be given to the assessee to show cause as to why assessment should not be made on the basis proposed. That, before the Assessing Officer can assume jurisdiction U/S 144 of 1.T. Act, he must record the finding in the first instance that there has been a non-compliance with any of the various defaults mentioned in that section.

That, as regards the correctness and completeness of accounts of appellant is concerned, the AO has not brought any specific defect on records to challenge the correctness of the books of account. In assessment order AO has admitted that the appellant has filed statement of bank accounts, acknowledgments of monthly VAT returns, Monthly details of Purchases and Sales, Monthly Stock Register, Cash Book.

AO's calculation of the final available cash-in-hand is a matter of pure guess work. Without commenting on the veracity of the claim of the appellant, it is a fact that the appellant did furnish comparative detail of cash sales/ cash deposits for financial year

*DCIT, Circle-1, Varanasi v. Mr. Ganesh Prasad, Varanasi 2015-16 and 2016-17 and submitted details of purchase, sale for the year under consideration along with the stock register and cash book. No discrepancies were pointed out by AO in those books of accounts or in the details filed. Once, AO has accepted the availability of physical stock on all the dates when sales are being made then how can cash generated out of such sales in the above months on those dates, be held as unexplained.*

*It is therefore clear that appellant explained the availability of cash with the sale of existing available stock proving the factum of sales resulting into the availability of cash that was deposited into the bank accounts. Books of accounts have been audited and cash-in-hand on 08.11.2016 is also certified by the auditors. No adverse finding has been given by the auditors in the stock position on the date of sales. From the analysis of data for FY 2015-16 and 2016-17, it is clear that increase in cash deposits is parallel with increase in purchases and sale as comparison to preceding year.*

*Appellant has discharged the initial onus that lay upon him by the statute. Now the AO has to establish that the stock sold on the day of demonetization was either not existing or the bills of purchases of those stock are bogus then only the cash sales made on that evening can be challenged. AO's analysis of cash flow mentioned in the assessment order at best can be a starting point for doubt but the assessment has to be made on the basis of material collected during the assessment proceedings. Doubt however strong cannot take the place for evidence, is a well settled legal proposition. Appellant sold the material that was purchased earlier than the demonetization announcement happened and same was duly existing in the existing stock tally physically. AO has also not factored the purchases made out this available cash before making the addition. AO has not brought any adverse material on records to prove that the amount received from sales or their corresponding purchases are bogus so the addition made by AO is totally based on assumptions. These sales have been accepted by the VAT authorities.*

*AO accepts these deposits to be from the business of the appellant and part of them as undisclosed on the basis of a self-generated formula without any adverse material on*

record. It is clear that the same has been done on the basis of pure guess work not according to any accounting principles or under any statutory provisions. AO disregarded and failed to take into account the relevant material on record and has based its findings on mere conjectures and surmises.

Decision of Hon'ble Income Tax Appellate Tribunal, New Delhi Bench in ITA No. 6628/DEL/2013 in case of "Smt. Kanika Rathi, New Delhi vs Ito, New Delhi held as under:-

"8.1 Therefore, it is clear that all the above details were filed before the AO, which clearly show that the assessee had sufficient cash-in-hand generated out of her trading business, which was further deposited in the bank account.

8.2 We further note that Id. CIT(A) has upheld the impugned addition made by the AO by completely disregarding the submissions and explanations of the assessee, and by further alleging that the documentary evidences submitted by the assessee are sham and have been created just to prove the source of cash deposit. We further observe that Ld. CIT(A) has sustained the addition by completely deviating from the issue under consideration and by indulging into mere surmises and conjectures. The allegation of the Ld. CIT(A) that if the business of the assessee would have been genuine, there would have been some purchase or sale transactions through banking channels as well is completely misplaced, so much so that the business income of the assessee has been duly accepted by the AO as well which is evident from the fact that the addition has been made to the returned income of the assessee.

Keeping in view of the facts and circumstances of the case as explained above, we are of the considered view that since the assessee has duly explained the source of complete cash deposit made during the year, the addition made by the AO and sustained by the Ld. CIT(A) is bad in law and liable to be deleted. Therefore, we delete the addition in dispute and allow the ground raised by the assessee.

*In the result, the Appeal filed by the Assessee stands allowed."*

*In view of the above judgment it is necessary that every fact for and against the appellant must be considered with due care and the AO must give its finding in a manner which would clearly indicate what was the evidence pro and contra in regard to each one of them and what were the findings reached on the evidence on record before it. The conclusions reached by the AO should not be coloured by any irrelevant considerations and if there are any circumstances which required to be explained by the appellant, the appellant should be given an opportunity of doing so. On no account whatever should the AO base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures or surmises and if it does anything of the sort, its findings will be liable to be set aside. In view of these facts and circumstances, the addition made by AO is held to be not sustainable.*

*Hence, the addition made by the AO is deleted.*

*These grounds are allowed.*

*Ground no. 14 to 17 are general."*

5. Being aggrieved by the appellate order passed by Id. CIT(A) , Revenue has now filed an appeal before the tribunal. The Ld. Sr. DR submitted that the assessee has introduced concept of 'Home Cash Book' which is claimed to be a separate cash book apart from regular cash book, but no details were submitted before the AO and it is not known whether any such cash book actually existed or not . Our attention was drawn to para 2/para 3 of assessment order. It was submitted by Id. Sr. DR that huge amount of cash sales were shown just before announcement of demonetization by Government of India on 08.11.2016, and cash of Rs. 2.00 crores were deposited by assessee in his bank account on 11.11.2016 i.e. immediately after

announcement of demonetization . It was submitted by ld. Sr. DR that during demonetization period, the assessee deposited cash of Rs. 2,02,50,000/- in his bank account, out of which cash of Rs. 2.00 crores were deposited on 11.11.2016 while cash of Rs. 2,50,000/- was deposited in his bank account on 15.12.2016. It was submitted that the assessee was having cash of Rs. 27.68 lacs on 01.04.2016 ,and average cash balance was from Rs. 26 lacs to Rs. 48 lacs. The assessee is in the business of manufacturing of sweets and namkeen. It was submitted that there was a sudden increase in cash just before demonetization, and our attention was drawn to para 3-9 of assessment order passed by the AO. It was submitted that net addition of Rs. 1.63 crores were made after giving benefit of cash sales. The ld. Sr. DR would rely on assessment order passed by the AO. The ld. Sr. DR drew our attention to grounds of appeal raised by Revenue and prayers were made to uphold the assessment order.

5b. The ld. Counsel for the assessee submitted that during demonetization period, the assessee deposited cash in his bank account with PNB, aggregating to Rs. 2,02,50,000/- out of which Rs. 2.00 crores were deposited on 11.11.2016 just after announcement of demonetization by GOI. Our attention was drawn to para 4 of assessment order . It was submitted that the assessee was having cash in hand of Rs. 1.99 crores on 31.10.2016 and Rs. 2.01 crores on 03.11.2016 just prior to announcement of demonetization, which was deposited in his bank account. Our attention was drawn to page 23-36 of the paper book, where regular cash book from 01.11.2016 to 08.11.2016 is placed. Our attention was also drawn to page 21-22 of paper book filed by assessee with tribunal, where Home Cash book from 29.10.2016 till 15.12.2016 is placed. Our attention was drawn to page 127/paper book-II

filed by the assessee , to contend that the assessee had cash balance of Rs. 1.99 crores as on 31.10.2016 and further amount of Rs. 2.00 lacs was transferred on 3.11.2016 to home cash book, which was used to deposit cash of Rs. 2.00 crores in his bank account. Our attention was drawn by ld. Counsel for the assessee to page 7 and 9 of PB, which is part of statement of fact filed before ld. CIT(A), and submitted that during festival seasons of Diwali and Dushera in October-November , there are always increase in cash sales, and such high cash generated from sales during festival seasons is deposited every year in the bank. It is submitted that the assessee has offered higher sales to taxation by including in gross sales and then claim for deduction for purchases and other expenses are made. It was submitted that these are normal business receipts which have suffered taxation and no case is made out for making additions u/s 69A read with Section 115BBE of the 1961 Act. The ld. Counsel for the assessee relied upon the appellate order passed by ld. CIT(A) and submitted that there is no infirmity in the appellate order passed by ld. CIT(A). The ld. Counsel fro the assessee relied upon appellate order passed by ITAT, Bangalore in ITA No. 541/Bang/2021, vide order dated 13.12.2021. The ld. Sr. counsel for the assessee prayed that the appellate order passed by ld. CIT(A) be affirmed.

5c. The Ld. Sr. DR in rejoinder relied upon the judgment and order(s) of Hon'ble Supreme Court in the case of McDowell and Company Limited v. Commercial Tax Officer, 1986 AIR 649, 1985 SCR(3) 791, Judgment and order of Hon'ble Supreme Court in the case of Sumati Dayal v. CIT , 1995 AIR 2109, 1995 SCC Supl. (2) 453 , Judgment and order of Hon'ble Supreme Court in the case of Durga Prasad Maurya.

6. We have considered rival contentions and perused the material on record including cited case laws. We have observed that the assessee is engaged in the business of manufacturing of sweets and namkeen by use of khoa, chhena, milk, dry fruits , besan , maida spices and vegetable as well as gas for cooking variety of sweets. The assessee filed return of income for ay: 2017-18 on 14.10.2017 declaring total income of Rs. 92,18,080/- . The case was selected by Revenue for framing scrutiny assessment and accordingly statutory notices u/s 143(2) and 142(1), were issued by the AO (as mentioned in assessment order), which were claimed to have been duly served on the assessee. There is no dispute as to the issuance and service of notices between rival parties. The assessee participated in assessment proceedings, which culminated into an assessment order dated 26.12.2019 passed by the AO u/s 143(3) , wherein income of the assessee assessed by the AO was Rs. 2,55,46,630/- as against returned income of Rs. 92,18,080/-, by invoking provisions of Section 69A read with Section 115BBE . The assessee filed first appeal with Id. CIT(A) who allowed the appeal and deleted the solitary addition of Rs. 1,63,28,547/- made by the AO, vide appellate order dated 08.09.2020. The AO during the course of assessment proceedings observed that there are cash deposits of Rs. 2,02,50,000/- during the demonetization period ( from 09.11.2016 to 30.12.2016) by the assessee in his PNB account number 2988002100015734. The Government of India demonetized bank notes of Rs. 500 and Rs. 1000(referred to as Specified Bank Notes(SBNs)) , which stood demonetized vide GOI , Gazette notification no. 2652 dated 8.11.2016 issued by Department of Economic Affairs, Ministry of Finance , GOI in SO 3407E, effective from 09.11.2016. The effect of demonetization of existing bank notes of denomination of Rs. 1,000 and Rs. 500 which were in circulation until 08th November, 2016 , were that they

were withdrawn from circulation effective from 09.11.2016 and cease to be legal tender, post announcement of demonetization . As per FAQ issued by RBI, the reasons for demonetization and scheme , were given as under:

**“1. Why was the Scheme of Withdrawal of Legal Tender Character of the old Bank Notes in the denominations of ₹ 500 and ₹ 1000 introduced?”**

The incidence of fake Indian currency notes in higher denomination has increased. For ordinary persons, the fake notes look similar to genuine notes, even though no security feature has been copied. The fake notes are used for antinational and illegal activities. High denomination notes have been misused by terrorists and for hoarding black money. India remains a cash based economy hence the circulation of Fake Indian Currency Notes continues to be a menace. In order to contain the rising incidence of fake notes and black money, the scheme to withdraw legal tender character of the old Bank Notes in the denominations of ₹ 500 and ₹ 1000 was introduced.

**2. What is this scheme?**

The legal tender character of the bank notes in denominations of ₹ 500 and ₹ 1000 issued by the Reserve Bank of India till November 8, 2016 (hereinafter referred to as Specified Bank Notes) stands withdrawn. In consequence thereof these Bank Notes cannot be used for transacting business and/or store of value for future usage. The Specified Bank Notes (SBNs) were allowed to be exchanged for value at RBI Offices till December 30, 2016 and till November 25, 2016 at bank branches/Post Offices and deposited at any of the bank branches of commercial banks/Regional Rural Banks/Co-operative banks (only Urban Co-operative Banks and State Co-operative Banks) or at

any Head Post Office or Sub-Post Office during the period from November 10, 2016 to December 30, 2016”

The purpose of demonetization of old bank notes of denomination of Rs. 500 and Rs. 1000 by withdrawing its legal tender character , was to curb the menace of fake notes and black money. However , to allow genuine and bonafide people not to suffer due to the sudden demonetization of these old bank notes of denomination of Rs. 500 and Rs. 1000 wherein they ceased to be legal tender, government allowed a window to exchange for value such demonetized old bank notes notes of denomination of Rs. 500 and Rs. 1000 as well allowed deposit of such demonetized bank notes in bank accounts, during specified period.

While reviewing deposit of cash pattern followed by the assessee in the past, the AO observed that there was never a cash deposit of more than Rs. 20,00,000/- in the bank every month, but the assessee has deposited Rs. 2,00,00,000/- in cash in his bank account on 11.11.2016 which is just after announcement of demonetization by GOI on 08.11.2016. The assessee sought to explain that there was a separate ‘Home Cash Book’ maintained by assessee apart from regular cash book, **but the assessee did not file any evidence before AO as to maintenance of Home Cash book.** The AO was also not satisfied about reduction in consumption of packing material vis-à-vis increased sales shown during the year under consideration, which has fallen from 10.07% in financial year 2015-16 to 7.03% in financial year 2016-17. The AO observed that sales have increased from Rs. 4.62 crores in financial year 2015-16 to Rs. 9.61 crores in financial year 2016-17, however, the packing material consumption has only increased from Rs. 46,56,653/- in financial year 2015-16 to Rs. 67,59,628/- in financial year 2016-17. The AO

observed that the assessee regularly deposits cash in the bank account w.r.t. cash received from sale proceeds after paying for purchases , but during the demonetization period , the assessee deposited cash of Rs. 2.00 crores on 11.11.2016 claimed to be from sale proceeds without factoring for purchases, which is against the regular cash deposit profile of the assessee. The details of cash deposits by assessee in his bank accounts, are reproduced by the AO in assessment order at page 4, which is reproduced hereunder:

b) Details of Cash deposits (above Rs. 1 Lacs) in bank accounts during the year

Date of Cash Deposit	Amount of Cash deposit	BANK	A/C NO.	Cash in hand as per cash Book before depositing cash in bank.	
				CASH BOOK	HOME CASH
06/05/2016	800000	HDFC	20282560000780	67512	3467896
01/06/2016	700000	HDFC	20282560000780	35368	3657896
17/06/2016	900000	HDFC	20282560000780	50660	3557896
18/06/2016	200000	HDFC	20282560000780	118066	2657896
04/07/2016	900000	HDFC	20282560000780	174720	2757896
05/07/2016	500000	HDFC	20282580000780	219369	1857896
03/10/2016	100000	HDFC	20282560000780	123004	4807896
11/11/2016	5000000	PNB	2988002100015730	391866	20107896
	5000000	PNB	2988002100015730	391866	20107896
	5000000	PNB	2988002100015730	391866	20107896
	5000000	PNB	2988002100015730	391866	20107896
15/12/2016	250000	PNB	2988002100015730	447275	750000
04/01/2017	1200000	PNB	2988002100015730	1037456	1337500
31/03/2017	1500000	PNB	2988002100015730	5289566	137500

4 It is seen that the assessee had deposited cash amounting to Rs. 1,00,000/- 19,00,000/- in the bank account regularly, however there has been drastic increase cash deposit during the period of demonetization period that is has deposited cash amounting to Rs.2,02,50,000/- during the demonetisation period as under:

11/11/2016	5000000	PNB	2988002100015730	391866	20107896
	5000000	PNB	2988002100015730	391866	20107896
	5000000	PNB	2988002100015730	391866	20107896
	5000000	PNB	2988002100015730	391866	20107896
15/12/2016	250000	PNB	2988002100015730	447275	750000

The AO also observed that the assessee had shown receipts of ranging from Rs. 26,08,137/- to Rs. 39,21,453/- from monthly cash sales throughout the year. The AO observed that the assessee has maintained cash balance amounting to Rs. 26 lacs to Rs. 48 lacs , during the year, but suddenly cash increased in the month of October, 2016 which reached to Rs. 1,99,26,887/- by 31.10.2016 . The cash balance as on 03.10.2016 as per above chart was Rs. 49.30 lacs, which increased to Rs. 1.99 crores as at 31.10.2016 and further to Rs. 2.01 crores as at 11.11.2016 . The cash sales of the assessee for the month

April, 2016 to September, 2016 are reproduced by the AO in its assessment order at page 6, as under:

<i>Month</i>	<i>Cash Sales</i>
<i>April, 2016</i>	<i>3280522</i>
<i>May, 2016</i>	<i>3058628</i>
<i>June, 2016</i>	<i>2884982</i>
<i>July, 2016</i>	<i>3808270</i>
<i>August, 2016</i>	<i>3921453</i>
<i>September, 2016</i>	<i>2673140</i>

The assessee claimed sale of Rs. 2,52,30,256/- for October, 2016. The AO concluded that the assessee has manipulated cash sales and sales book for financial year 2016-17 to introduced unaccounted money, by crediting bogus sales owing to demonetization introduced by GOI to unearth unaccounted/black money. The Id. CIT(A) accepted the contentions of the assessee, in the first appeal filed by the assessee, and deleted the entire additions. The Revenue has specifically raised ground of appeal that wrong contentions were raised by the assessee before Id. CIT(A) which were accepted by Id. CIT(A) without verification and also without calling for remand report from the AO. We have observed that there are merits in the grounds of appeal raised by Revenue. We have observed that there is specific finding of the AO in the assessment proceedings that the assessee has failed to provide any reply on the issue of evidence of 'Home Cash Book'. It is observed that the assessee has claimed to have cash balance of Rs. 2,01,07,896/- in 'Home Cash Book' on 11.11.2016, which was claimed by the assessee to have been deposited to the tune of Rs. 2.0 crores in the assessee's PNB bank account on 11.11.2016. The Id. CIT(A) accepted this 'Home Cash Book' and balance claimed to be available in it which was utilized by the assessee to



*(2) The following shall have the right to be heard at the hearing of the appeal-*

*(a) the appellant, either in person or by an authorized representative ;*

*(b) **The Assessing Officer , either in person or by a representative.***

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Fair hearing and adherence of principles of natural justice are the most important pillars of the judicial proceedings , and proceedings before Id. CIT(A) are quasi judicial in nature. The Ld. CIT(A) never issued notice of hearing to the AO nor called for AO's comments/remand report with respect to the details/evidence filed with respect to the 'Home Cash Book'. Further, the Id. CIT(A) failed to see that the tax auditors have certified in Form No. 3CD that only one cash book is maintained by the assessee at the address : S-6/117, Golghar, Katchhari, which is the principal place of business of the assessee, and no such 'Home Cash Book' is maintained by the assessee as certified by the tax-auditors. The relevant portion of the copy for Form No. 3CD certified by tax-auditor , is reproduced hereunder:

FORM NO. 3CD  
[See rule 6G(2)]

Statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961

1	Name of the assessee	GANESH PRASAD ( PROPRIETOR NEW RAJ SHREE SW EETS)				
2	Address	S-6/117, GOLGHAR, KATCHHARI, , VARANASI, UTTAR PR ADESH, 221002				
3	Permanent Account Number (PAN)	ADZPP4070B				
4	Whether the assessee is liable to pay indirect tax like excise duty, service tax, sales tax, customs duty,etc. if yes, please furnish the registration number or any other identification number allotted for the same	Yes				
	Sl No.	Type	Registration Number			
	1	Sales VAT/Tax UTTAR PRADESH	09883801374			
5	Status	Individual				
6	Previous year from	2016-04-01 to 2017-03-31				
7	Assessment Year	2017-18				
8	Indicate the relevant clause of section 44AB under which the audit has been conducted					
	Sl No.	Relevant clause of section 44AB under which the audit has been conducted				
	1	Clause 44AB(a)-Total sales/turnover/gross receipts in business exceeding Rs. 1 crore				
9 a	If firm or Association of Persons, indicate names of partners/members and their profit sharing ratios. In case of AOP, whether shares of members are indeterminate or unknown ?					
	Name				Profit Sharing Ratio (%)	
	Nil					
9 b	If there is any change in the partners or members or in their profit sharing ratio since the last date of the preceding year, the particulars of such change.				No	
	Date of change	Name of Partner/Member	Type of change	Old profit sharing ratio	New profit Sharing Ratio	
					Remarks	
10 a	Nature of business or profession (if more than one business or profession is carried on during the previous year, nature of every business or profession).					
	Sector	Sub Sector		Code		
	Manufacturing Industry	Others		0124		
	Trading	Retailers		0202		
10 b	If there is any change in the nature of business or profession, the particulars of such change				No	
	Business	Sector	SubSector	Code		
	Nil					
11 a	Whether books of accounts are prescribed under section 44AA, if yes list of books so prescribed				Yes	
	Books prescribed					
	Cash Book					
	Ledger					
	Journal Book					
11 b	List of books of account maintained and the address at which the books of accounts are kept. (In case books of account are maintained in a computer system, mention the books of account generated by such computer system. If the books of accounts are not kept at one location, please furnish the addresses of locations along with the details of books of accounts maintained at each location.) Same as 11(a) above					
	Books maintained	Address Line 1	Address Line 2	City or Town or District	State	PinCode
	Cash Book	S-6/117, GOLGHAR, KATCHHARI		VARANASI	UTTAR P RADESH	221002
	Ledger	S-6/117, GOLGHAR, KATCHHARI		VARANASI	UTTAR P RADESH	221002
	Journal Book	S-6/117, GOLGHAR, KATCHHARI		VARANASI	UTTAR P RADESH	221002
11 c	List of books of account and nature of relevant documents examined. Same as 11(b) above					
	Books Examined					
	Cash Book					
	Ledger					
	Journal Book					

The assessee has filed copy of details of sale and purchase for the entire year, claimed to be file with VAT department , as under:

NEW RAISHREE SWEETS KUTCHAHERY, VARANASI											
YEAR 2016-2017											
DETAILS OF PURCHASE, SALE & COMM. TAX											
Month Name	Tax Invoice	Unregtd	Purchase Taxfree	Ex-U.P.	Sale Invoice	Total Purchase	Input VAT	Purchase Tax	Sales	Vat Tax	Net Tax Deposit
April	9,73,592.20	10,60,881.00	2,81,602.00	-	39,235.00	23,55,310.20	50,249.00	54,184.00	31,24,307.00	1,56,215.00	1,02,285.00
May	9,67,437.45	8,99,530.00	1,90,567.00	-	17,130.00	20,74,664.45	47,214.00	47,708.00	29,12,979.00	1,45,649.00	1,09,118.00
June	2,32,689.39	9,54,792.00	1,93,020.00	-	53,027.50	14,33,528.89	18,658.00	47,740.00	28,29,282.00	1,41,464.00	91,945.00
July	5,37,944.59	14,15,514.00	2,96,987.00	-	23,300.00	22,73,745.59	26,177.00	75,108.00	38,88,920.00	1,94,446.00	1,69,866.00
Aug.	13,67,105.86	12,55,075.00	2,33,210.00	1,96,350.00	50,031.50	31,01,772.36	68,687.00	65,034.00	39,20,286.00	1,96,014.00	1,34,130.00
Sep.	13,89,343.77	6,89,081.00	2,60,396.00	-	20,570.00	23,59,390.77	69,408.00	37,076.00	29,82,969.00	1,49,148.00	1,11,340.00
Oct.	50,29,887.64	79,27,798.00	6,58,797.00	14,54,479.00	1,48,850.50	1,52,19,812.14	2,55,050.00	4,36,290.00	2,52,30,256.00	12,61,513.00	10,27,883.00
Nov	27,10,506.18	41,90,903.00	4,48,886.00	-	81,620.00	74,31,915.18	1,32,282.00	2,26,788.00	1,24,29,976.00	6,21,499.00	4,27,797.00
Dec	29,27,274.56	28,19,556.00	5,54,895.00	5,96,700.00	56,700.00	69,55,125.56	1,41,917.00	1,46,345.00	1,09,37,428.00	5,46,871.00	4,06,875.00
Jan	37,26,146.20	30,66,615.00	5,34,655.00	-	56,723.00	73,84,139.20	1,83,879.00	1,64,446.00	1,07,16,430.00	5,35,821.00	3,50,021.00
Feb	29,67,303.92	25,61,690.00	6,58,388.00	-	88,725.00	62,76,106.92	1,51,330.00	1,28,085.00	83,35,502.00	4,16,775.00	2,65,445.00
March	38,06,361.24	33,35,884.00	6,33,281.00	8,30,280.00	1,21,136.88	87,26,943.12	2,01,707.00	1,74,095.00	88,07,182.00	4,40,359.00	2,38,973.00
<b>Total</b>	<b>2,66,35,593.00</b>	<b>3,01,77,319.00</b>	<b>49,44,684.00</b>	<b>30,77,809.00</b>	<b>7,57,049.38</b>	<b>6,55,92,454.38</b>	<b>13,46,558.00</b>	<b>16,02,899.00</b>	<b>9,61,15,517.00</b>	<b>48,05,774.00</b>	<b>34,35,679.00</b>
									Sales as per Balance Sheet		9,61,15,517.00

The Id. CIT(A) also failed to appreciate that the assessee has shown sales of Rs. 2,52,30,256/- in the month of October, 2016 vis-à-vis sale of Rs. 29,82,969/- in the month of September, 2016 , and the normal and regular behavior pattern of the assessee suggested that cash is normally and regularly deposited in Bank by assessee after paying for purchases in cash, but it is only in November, 2016 the assessee claimed to have deposited huge cash in bank account without paying for purchases, which is against the normal and regular business conduct of the assessee. The assessee is dealing in perishable items mainly sweets and namkeen, which have a limited shelf life, and regular purchases are required to be made . The Id. CIT(A) failed to see and analyse that the closing sundry creditors in the audited accounts are to the tune of Rs.

1,45,84,818/-, as at 31.03.2017. The ld. CIT(A) failed to see as to how such a huge sundry creditors for purchases to the tune of Rs. 1.46 crores were built up as at year end , when purchases are normally paid regularly from the sales proceeds itself , before depositing in the bank. The ld. CIT(A) failed to see that the cash amount of Rs. 2.00 crores which stood deposited in PNB on 11.11.2016 , continued to remain in the said bank account until 15.12.2016, when one payment of Rs. 41,08,233/- to Mr. Ram Lal Kishore . The assessee took FDR of Rs. 1.60 crores on 02.03.2017 from the same bank account , which was mainly the remaining amount of deposit of cash during demonetization period. Thus, the ld. CIT(A) ought to have investigated as to why and on what account payment to Mr Ram Lal Kishore was made and whether the same was paid to clear regular liabilities for purchases for business purposes or not, and further why the alleged sale proceeds to the tune of Rs. 2.00 crores so deposited in PNB on 11.11.2016 was not utilized for payment of normal creditors for purchases made. Perusal of the above chart of monthly sales and purchases would reveal that the Gross Profit ratio was 20.89% in August 2016 as well in September, 2016 and ld. CIT(A) ought to have investigated as to how it increased to 39.68% in October , 2016. The ld. CIT(A) also ought to have investigated whether it was feasible and viable to have more than 100% jump in turnover during the year under consideration, which jumped from Rs. 4.62 crores in financial year 2015-16 to Rs. 9.61 crores in financial year 2016-17 , in the backdrop of allegation of introducing bogus sales during demonetization , while the consumption of packing material fell from 10.07% in preceding year to 7.03% in the impugned assessment year, the assessee having submitted before ld. CIT(A) that during festival season , the customers bring their own packing material/boxes and hence the cost is lower, and the

ld. CIT(A) accepted this contentions of the assessee without verification of the pattern of consumption of packing material during preceding years, and more so when there is a specific allegations of booking of bogus sales by assessee to deposit cash in bank during demonetization period to introduce unaccounted money by the assessee. The ld. CIT(A) was also required to analyse as to how sales more than doubled during the year and whether the assessee is introducing unaccounted/undisclosed cash in its books of accounts/bank account under the garb of sales, and bogus purchases are allegedly booked to inflate expenses and reduce profits. It is also observed that ld. CIT(A) has referred to in its appellate order(page 13) that the assessee has contended that complete details of month wise cash sales and cash deposits, monthly sale/purchase, stock register , cash book, ledger account of Home Cash Book from A.Y. 2015-16 to A.Y.2017-18 and copy of VAT returns from F.Y. 2015-16 to June, 2017 before the AO which contention of the assessee were accepted by ld. CIT(A) and it is stated by ld. CIT(A) that the AO admitted that these documents were filed, but however, the paper book certified by the assessee did not contain the aforesaid documents in entirety to have been filed by assessee before the AO nor factum of submission of all the document by the assessee before the AO is discernible from the assessment order. Thus, there is perversity in the order passed by ld. CIT(A) to that effect. The ld. CIT(A) in its order has stated that the AO admitted cash of Rs. 1,99,26,887 on 31.10.2016 and cash balance of Rs. 2,05,43,396/- on 08.11.2016, this finding recorded by ld. CIT(A) is perverse rather the AO has specifically averred in his assessment order that the assessee has manipulated cash book by introducing bogus sales. It is also averred by ld. CIT(A) in his order that the AO made addition on the basis of guess work and estimates, We

are afraid that this finding is again perverse finding recorded by ld. CIT(A) as the AO made additions based on the cash deposit of Rs. 2,02,50,000/- during demonetization , which as per AO , the assessee could not give satisfactory explanations. The Revenue has raised specific ground that ld. CIT(A) erred in accepting submissions of the assessee without asking for remand report from the AO and infact wrong submissions were made by assessee before ld. CIT(A), which ld. CIT(A) accepted without verification and without calling for remand report from the AO. We find merit in the ground raised by Revenue, and we are of the considered view that this appellate order of ld. CIT(A) is not sustainable in the eyes of law , and is liable to be quashed, and the matter need to be set aside and restored to the file of the ld. CIT(A) for fresh adjudication after giving proper and adequate opportunity of being heard to both the assessee as well the AO . We clarify that we have not commented on the merits of the issue in this appeal.The appeal of the Revenue is allowed for statistical purposes. We order accordingly.

7. Thus, the appeal filed by Revenue in ITA no. 138/Vns/2020 for ay: 2017-18 is allowed for statistical purposes .

Order pronounced on 07.02.2023 at Varanasi, U.P , in Open Court.

Sd/-

**[VIJAY PAL RAO]**  
**JUDICIAL MEMBER**  
DATED: 07/02/2023  
Place: Varanasi, U.P.  
KD Azmi  
Copy forwarded to:

Sd/-

**[RAMIT KOCHAR]**  
**ACCOUNTANT MEMBER**

1. Appellant –Mr. Ganesh Prasad, S-6/108, Dhithori Mahal, Katchhari Golghar, Ordaly Bazar, Varanasi, 221001 U.P.
2. Respondent –The Deputy Commissioner of Income Tax, Circle-1, Varanasi, U.P.
3. The ld. Sr.DR, ITAT, Varanasi, U.P.
4. The ld. CIT, Varanasi,U.P.
5. The CIT(A), Varanasi, U.P.
6. The Guard File.

Sr. P.S.