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

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

आयकर अपील सं./ITA. No. 410/JPR/2022
निर्धारण वर्ष/Assessment Years : 2017-18

Pawan Meena 91, Ashok Pura, New Sanganer Road, Sodala, Jaipur.	बनाम Vs.	ITO, Ward-2(3), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AQTPM 5388 G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Ashish Khandelwal (C.A.)
राजस्व की ओर से/ Revenue by : Ms Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing 02/03/2023
उदघोषणा की तारीख/Date of Pronouncement : 17/03/2023

आदेश/ ORDER

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

This appeal is filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi [herein after referred as ld. "NFAC/CIT(A)"] for the assessment year 2017-18 dated 23.09.2022, which in turn arises from the order passed by the Income Tax Officer, Ward-2(3), Jaipur under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 24.12.2019.

2. The assessee has marched the present appeal on the following ground of appeals:

> *"1. That the ld. CIT(A) have grossly erred in law as well as in facts of the case in committing apparent miscarriage of justice by causally adjudicating the case on this basis of hypothetical facts not pertaining to the appellant and thereby dismissing the appeal without any just & valid reasons.*
> *2. That both the lower authorities have erred in law as well as in fact of the case in making/confirming addition to the returned income to the tune of Rs. 6297000/- u/s 69A without bothering to even controvert the detailed and apparent justification & evidences put forth by the appellant in the respective proceedings.*
> *3. That the appellant reserves his right to add, amend, alter or withdraw any ground of appeal on or before hearing of this appeal."*

3. The fact as culled out from the records is that the assessee is an individual and filed its return of income for assessment year 2017-18 on 20.03.2018 declaring a total income of Rs. 15,46,250/-. During the year under consideration the assessee was having income from salary. The case was selected for scrutiny assessment through CASS category under complete scrutiny and accordingly notice u/s 143(2) of the Act dated 10.08.2018 was issued and served upon the assessee. The ld. AO passed the impugned assessment order u/s 143(3) of the Act, after making

addition of Rs. 62,97,000/- on account of cash deposits u/s 69A of the Act.

4 The assessee has filed the appeal before the ld. CIT(A) who after hearing the contention of the assessee dismissed the appeal of the assessee by giving his following relevant findings on the issue:-

> "5.1.3 All the facts and circumstances related to the impugned addition of Rs. 62,97,000 are fully considered. Some very interesting and relevant facts are noted from the impugned Asset. Order about the cash deposits in bank account of the appellant which I find have just not been countered by the appellant in the written uploaded (/submitted) in these appeal proceedings and remain unanswered and which go to prove that the amount of cash found deposited in demonetization period fail the test of human probabilities and AO had to treat the cash so deposited as income assessable u/s 69A of the Act.
>
> "5.1.4 it was, on an analysis of the bank account for year under consideration and earlier year found by ld. AO and mentioned in his assessment order that

1. Total cash deposit in the bank in F.Y. 2016-17 was Rs. 9,29,000 whereas total cash deposit in the bank in F.Y. 2016-17 was Rs. 30,60,000.
2. Total cash deposit in the bank from 01/04/2016 to 08/11/2016 Rs. 1,50,000 whereas total cash deposit in bank from 09.11.2016 to 31.12.2016 (i.e. demonetization period) was Rs. 29,10,000.
3. a) Total cash sales/cash receipts in F.Y. 2015-16 was Rs.27,00,000 and total cash sales/cash receipts in F.Y. 2016-17 was Rs.31,15,114. Therefore, percentage increase between the two items above was found to be only 15.37%.

   b) On the other hand, total cash sales/cash receipts from 1.04.15 to 08.11.15 was Rs. 18,68,239 and from 01.04.16 to

08.11.16 was Rs.31,15,114. So the percentage increase between the two items above came to 66.74%.

c) Total cash deposit in bank from 09/11/2015 to 31/12/2015 was Rs.1,00,000 and Total cash deposit in bank from 09/11/2016 to 31/12/2016 was Rs.29,10,000 and the Percentage increase between these two items is 2810%.

5.1.5 Thus the Ld. A.O had to and rightly so inferred in para 10 of his asst. order as below:

"10. From the above facts, it is clear from the pattern of cash deposit during 01/04/2015 to 08/11/2015 that the total cash deposit are Rs. 8,29,000, whereas from 01/04/2016 to 08/11/2016 cash deposits are 1,50,000 only. However during demonetisation period the cash deposit increased to Rs. 29,10,000 from Rs.1,00,000 in the corresponding period in the previous year. The assessee claimed sales in cash but could not produce sale bills or details of parties to whom sales were made. This explanation of assessee gives rise to suspicion. The assessee has tried to accommodate his unexplained money as unusual increase in cash deposit in the guise of cash sales. This give rise to doubt in correctness of the books of accounts of the assessee.

11. Due to the reasons stated above I am not satisfied with the completeness and correctness of the account of the assessee. S. 145(3) of the Income-tax Act, 1961stipulates that-

(a) Where AO is not satisfied about the correctness or completeness of the accounts; or

(b) Where method of accounting cash or mercantile has not been regularly followed by the assessee; or

(c) Accounting Standards as notified by the Central Goverment have not been regularly followed by the assessee; The Assessing Officer may make an assessment in the manner provided in the s.144.

In the instant case it is clear that assessee has failed to cast his statutory obligation. Thus, I am not satisfied with the completeness and correctness of the details submitted by the assessee, hence, submission of the assessee is hereby rejected. However income already declared by the assessee is not disturbed.

It is hard to imagine that the assessee sold stock and kept on accumulating cash in hand and it was never used for

repayments of creditors or reinvested elsewhere even if the assessee has intention to close down the business.

"Human Probability Test" is one of the important tests laid down the highest Court of India in order to check the genuineness of the transactions entered into the books of account of the assessees. The "Human Probability Tests were laid down for the first time in the case of CIT vs. Durga Prasad More (1971) 82 ITR 540 (SC) and followed in the case of Sumati Dayal vs.CIT (1995) 214 ITR 801 (SC). The Human Probability test was also applied in the following cases:

1. A. Rajendran &Ors, vs. ACIT (2006) 204 CTR (Mad) 9

2 Hacienda Farms (P) LTD. vs. CIT (2011) 239 CTR (Del) 212

3. Major Metals Ltd. vs. UOIAND ORS (2012) 251 CTR (Bom) 385

4. Pradip Kumar Loyalka vs. ITO (1997) 59 TTJ (Pat)(TM) 655

5. ACIT vs. Sampat Raj Ranka (2001) 73 TTJ (Jd) 642

Hon'ble Supreme court in the case of Ms. Durga Prasad More reported in 82 ITR 540, was held that "Science has not yet invented any instrument to test the reliability of the evidences placed before a court or tribunal, therefore the courts and tribunals have to judge the evidences before them by applying the test of human probability." Simlar views were taken by the Hon'ble Supreme Court in The case of Sumati Dayal reported in 214 ITR 801. The submission of the assessee fails of the best of human reasonableness and probability.

The Hon'ble Supreme Court has held that "The cases involving the encashment of high denomination note sare quite numerous in some of them the explanation tendered by the tax-payer has been accepted and in some it has been rejected. Where the assessee was unable to prove that in his normal business or otherwise, he was possessed of so much cash, it was held that the assessee started under a cloud and must dispel that cloud to the reasonable satisfaction of the assessing authorities, and that if he did not, then, the Department was free to reject his explanation and to hold that the amount represented income from some undisclosed source."

Hon'ble Supreme Court in the case of Smt. Srilekha Banerjee and others Vs CIT, Bihar & Orissa, reported in 1964 AIR 697, dated 27/03/1963, the Hon'ble Court held that the source of money not having been satisfactorily proved, the Department

was justified in holding it to be assessable income of the assessee from some undisclosed source.

The fact of the case are that the assessee had encashed 51 high denomination notes of Rs.1,000 each in January. 1946 The assessee's explanation in his application for encashment of the notes was that he was a colliery proprietor and contractor, that for conducting the business and for payment to labour which came to about Rs. 30,000 to 40,000 every week he had to keep large sums of money to meet emergency and that the sum of Rs. 50,000 realised by encashment of the notes was neither profit nor part of profit but was floating capital for the purpose of conducting business.

Hence, in the facts of this case a legitimate inference can be drawn that the assessee had income which he had deposited in Bank accounts and, as such, that income was subject to tax.

The Hon'ble Supreme Court in the case of Chuharmal Vs CIT (1988) 172 ITR 250 while affirming the view of the Madhya Pradesh High Court has held that "the expression 'INCOME' as used in Section 69A of the Act, 1961 had a wide meaning which meant anything which came in or resulted in gain and on this basis, concluded that the assessee had income which he had invested in purchasing article and he could be held to be owner and the value could be deemed to be his income by virtue of Section 69A of the Act."

(Emphasis supplied)

5.1.6 In light of the above discussion, it is found that the action of ld. AO in making the impugned addition of Rs. 29,10,000/- is sustainable in the facts of the case and in law. The action of ld. AO is, therefore, confirmed and ground no. 1 to 6 except ground no. 5 is, thus, dismissed."

5. Before reiterating to the submission so made to support the arguments against the grounds so raised by the ld. AR of the assessee, he expressed his mental torture that the assessee is facing on account of the causal approach

adopted by National Faceless Appellate Center in dealing with the fact of the case. He cited the fact stated in para 5.1.3 and the final finding given at para 5.1.6 the same is complete against the set of facts of the case of the assessee.

5.1 Per contra, the ld. DR accepted the factual error while delivering the finding and fairly accepted that there is error of cut past of other case and the considering this aspect the matter may be sent back to the file of the ld. CIT(A) with a direction to deal the merits of the case.

5.2 The ld. AR of the assessee expressed his objection and submitted that based on the set of facts why the same cannot be heard by the bench as the assessee is relying on the documents already available on the records of the assessing officer. He has also submitted that his rectification application has not been dealt by the ld. CIT(A) and therefore, if the matter sent back, it will be delay in justice and as the matter is very simple on the basis of the facts placed on record.

5.3 Considering the rival contentions and facts of the case as persuaded by us the issue is factual in nature and the same are already placed on record and has not been disputed by the revenue that the same were not filed. Based on these observation bench is considering the appeal be decided based on the facts on record.

6. The ld. AR of the assessee has submitted following written submission to support the various grounds raised by the assessee and the same is reiterated here in below:-

"The Appellant is an individual and is engaged in business of renting of marriage garden. The appellant filed his original return of income u/s 139(1) of the Act on 20.03.2018 declaring total income to the tune of Rs.15,46,250/-. During the demonetization period i.e. 08.11.2016 to 31.12.2016 , the appellant deposited SBN (Specified Bank Notes) of Rs. 2,70,500/-in SBI Bank (A/c No. 20012551172), Rs. 2,50,000/- in Bank of India (A/c No. 662910110003275), Rs. 2,10,000/- in Axis Bank (A/c No. 91401003871487) and Rs. 62,97,000/- in Axis Bank (A/c No. 915010049484870). Thus , in total Cash (SBN) of Rs. 70,27,500/- was deposited during demonetization period .

The notice u/s 143(2) of the Income tax Act was served upon the appellant , thereafter notices u/s 142(1)& questionnaires were issued and in response to same , the appellant submitted relevant & called for information through various letters filed on e-filing portal . The ldA.O., in haste & without understanding geography of the case & without examining and appreciating evidences , arbitrarily finalized the assessment by considering cash deposited into Axis Bank account no. 915010049484870 to the tune of Rs,. 62,97,000/- as unexplained money with in the realm of section 69A and thereby made addition of Rs. 62,97,000/- to the returned Income .

Aggrieved by the order of ld A.O., the appellant preferred an appeal before your honour to seek justice. With this background, the individual grounds of appeal & brief submission of appellant is as under:-

GOA 1:- That the ld A.O. has erred in law as well as in facts of the case in making addition to the tune of Rs. 62,97,000/- to the returned income on account of unexplained cash credit u/s 69A of the I.T. Act, 1961 even when all the requisite information/documents called for were duly submitted during assessment proceedings.

Brief Submission:-

The appellant, during demonetization period, deposited cash(SBN) into Axis bank account to the tune of Rs. 62,97,000/-. The source of cash deposit was well explained to be emanated from preceding cash withdrawal from same axis bank account to the tune of Rs. 50 lakhs in June 2016 (i.e. almost 4 -5 months prior to redeposit) , Cash Gift of Rs. 10 lakh from father and rest from past savings . With this background , the facts & submission , to this ground of appeal is encapsulated as under :-

Brief Facts:-

The appellant made cash deposit (SBN) of Rs. 62,97,000/- into axis bank account. The said amount was deposited on dates as mentioned under:-

Date	Cash deposit
18.11.2016	61,97,000.00
07.12.2016	1,00,000.00

The appellant made cash withdrawal of Rs. 50.00 lakhs from Axis Bank A/c No. during June , 2016 for prospective purchase of Property which does not fructify , and ultimately cash withdrawn was re-deposited , the details of same is as under :-

Date	Cash withdrawal amount
06.06.2016	25,00,000.00
16.06.2016	25,00,000.00

The appellant received cash gift of Rs. 10,00,000/- from father in June ,2016 . The impugned gift was duly confirmed by the father and even source of same was duly explained with tangible material .Out of total cash deposit , cash deposit to

the extent of Rs. 10,00,000/- emanated out of gift received from father which remained unconsumed.

The rest of cash deposit to the extent of Rs. 2,97,000/- was explained to be emanated out of past savings .

2. As per Assessing Officer

2.1 The reply of the assessee was considered carefully and it is seen from the details that the source of cash deposit of RS. 62,97,000/- at axis bank was mainly a loan of Rs. 60,50,000/- taken from Arjun Yadav through cheque dated 06.06.2016 and an amount of Rs. 50,00,000/- was withdrawn in cash out of above loan and purpose of withdrawn was stated to be for purchase of a marriage garden . In this regard , an affidavit from shri Arjun yadav was also filed . (Para 4 Pg 4 of impugned order)

2.2 Hence it is clear that there is contradiction in both the submission filed regarding the purpose for taking amount of Rs. 60,50,000/- by cheque. (Para 4 Pg 4 of impugned order)

2.3 In the present case , the assessee has deposited cash in her bank account , appearing in the bank account but such credits are not recorded in the books of accounts of the assessee.(Para 9 Pg 5 of impugned order)

2.4 It is amply proved beyond doubt that the assessee has deposited cash appearing in bank account stands unexplained , and the sum of Rs. 62,97,000/- are identifiable unexplained asset..(Para 9 Pg 5 of impugned order)

2.5 The assesseehas not respond to notices u/s 142(1) issued during assessment proceedings .(Para 11 Pg 6 of impugned order)[Emphasis supplied]

2.6 The assesseefailed to give any explanation about the nature and source of cash deposit , hence value of cash deposit of RS. 6297000/- appearing in axis bank account is deemed as unexplained money u/s 69A of the Income tax act ,1961 and added to total Income .(Para 11 Pg 6 of impugned order)[Emphasis supplied]

3. SUBMISSION :-

The action of ld A.O. in considering the cash deposit (SBN) of Rs. 62,97,000/- into Axis bank account during demonetization period as unexplained money u/s 69A and making addition to the returned income is devoid of any merit, based upon conjectures &surmises and unreasonable ,

in light of our detailed submission on merits & legal position , encapsulated point wise as under:-

SUBMISSION ON MERITS

3.1 That the AO failed to appreciate that out of total cash deposit of Rs. 62,97,000/- into bank account , the deposit to the extent of Rs. 50,00,000/- was backed by preceding cash withdrawal fromsame bank account , which was available with the appellant for making re-deposit into bank account . The whopping withdrawal of Rs. 50 lakhs was for purpose of making investment in purchase of immovable property but the prospective deal could not fructify and the appellant retained the cash in hand for using as and when new deal gets materialize. However , to add to misfortune , demonetization was announced and the appellant left with no option except to deposit the same cash into bank account .

3.2 That the AO misdirected himself &also the assessment proceedings by observing that amount of Rs. 60,50,000/- received from Arjun Yadav through banking channel was for purpose other than as stated by the appellant .The purpose for which loan was taken was extraneous to the issue under consideration .The ld AO turned blind eye on the " Gospel Truth" that cash was withdrawn from bank account and that the same was available for making redeposit .The ld AO lost sight of the fact that immediate source of cash deposit claimed by the appellant was preceding cash withdrawal from bank and same has nothing to do with purpose of receipt from Mr. Yadav.

3.3 That it is fact on record that the appellant received an amount of Rs. 60,50,000/- from Shri Arjun Yadav on 31.05.2016 through bank account maintained with Axis bank (A/c No.915010049484870). The fact was duly stated by the appellant before ld A.O. during the course of assessment proceedings and was confirmed by Shri Arjun Yadav i.e. lender through swornin affidavit.The question which deserves to be answered by AO is that "Why he did not bothered to make verification of identity , credit worthiness of loan giver and why he did not made addition u/s 68 of the Act and also why there is no whisper in entire assessment order that credit was sham or fabricated ? Your good self will appreciate that without proving the credit into bank account from Shri Arjun Yadav to be sham & unexplained cash credit ,the AO could not have made addition of cash redeposit as withdrawal from bank account was gospel truth and formed immediate source of cash deposited during demonetization period .The AO has blown hot & cold at the same time , which is not acceptable under law . On one side he is accepting the credit but on the other side he is denying availability of cash generated out of bank withdrawal.

3.4 The appellant while making submission stated that the said amount was taken as loan and on the contrary Shri Arjun Yadav stated the same as advance for property .Thus, the undisputed & uncontroverted fact that emanated from record of the AO is that the alleged funds was received from Shri Arjun Yadav and even same was paid only through banking channels.The purpose for which amount was given whether for purchase of property or for borrowing becomes all together irrelevant and becomes extraneous to the issue so long till the AO puts material on record to indicate that cash withdrawal of Rs. 50 lakhs was consumed else where.(The copy of affidavit along with bank statement submitted during assessment proceedings is enclosed).

3.5 That it is completely superficial and mysterious that on the one side AO is himself confirming the receipt of funds from Shri Arjun YAdav as there is no adverse observation regarding the identity, credit worthiness and genuineness of the transaction and on the other side , he is not accepting the cash withdrawal from bank which was subsequently used for making cash deposit . The same is glaring example of double standards & arbitrary conclusion of assessment proceedings .

3.6 That out of the total amount so received, the appellant made withdrawal of Rs.50,00,000/- from bank account on 06.06.2016 and 16.06.2016 (Rs. 25,00,000/- each) for materializing a business deal but due to some issue,the deal could not materialized and the cashso withdrawn remained available with the appellant for re-deposit and hence was deposited into bank account on 18.11.2016 & 07.12.2016 respectively. The AO lost sight of the vital fact that once the demonetization was declared , the appellant had no choice except to deposit the cash (SBN) in hand into bank account.

3.7 That there is no whisper in entire assessment order regarding huge cash withdrawal of Rs. 50,00,000/- from bank account as well as cash received amounting to Rs. 10,00,000/- from father i.e. Shri Sedu Ram Meena, was consumed elsewhere. The appellant gave detailed justification regarding source of cash deposited into bank account, thus the appellant duly discharged the burden of proof casted upon him. Now the onus to prove that the apparent is not real lied on the shoulder of ld A.O., and without discharging the same, addition made is not valid in the eyes of law. There was no whisper in the entire assessment order that the huge cash withdrawal & cash received from father was consumed elsewhere.The mysterious question which emerges is that “Where such huge cash withdrawn from bank account evaporated if not available for redeposit and why there is no single observation of the AO that said cash was consumed elsewhere and

not available for redeposit ? It was onerous duty of ld A.O. to discharge the onus casted upon him and then proceeded to make any addition but instead the ld A.O. , in his whims & surmises , conjectures went on to make addition to returned income of appellant, which is invalid and thus deserves to be deleted.The assessee cannot be asked to prove the negative . There are plethora's of judgment on the subject, reliance is placed on some of them , as under:-

Hon'ble Supreme Court in the case of CIT vs. Sati Oil Udyog Ltd ({(Sc) 2015 ITL 232 (2015) 230 Taxmann 521(2015)} held that:-

The burden of proving that the assessee has so attempted to evade tax is on the revenue which may be discharged by the revenue by establishing facts and circumstances from which a reasonable inference can be drawn that the assessee has, in fact, attempted to evade tax lawfully payable by it.

The Jaipur ITAT in the case of Shree Bhagwati Concast Pvt. Ltd. vs. ITO{ITA. No. 33/JP/2015} held that:-

4.11 Where the assessee has discharged the initial burden placed upon him under sec. 68 to prove and establish the identity and creditworthiness of the share applicant and the genuineness of the transaction, the burden of proof shifts on the Assessing officer. In such a case, the Assessing Officer cannot sit back with folded hands till the assessee exhausts all the evidence or material in his possession and then come forward to merely reject the same, without carrying out any verification or enquiry into the material placed before him. If the Assessing Officer harbours any doubts of the legitimacy of any subscription, he is empowered, nay duty-bound, to carry out thorough investigations. But if the Assessing Officer fails to unearth any wrong or illegal dealings or has no material in his possession, he cannot obdurately adhere to his suspicions and treat the subscribed capital as the undisclosed income of the Company."

In concluding part of our submission on merits , It is reiterated that ld AO overlooked the vital factum that proceedings u/s 143(3) were initiated for cash deposit into bank account during demonetization , which has no direct relation with receipt of advance from Shri Arjun Yadav . The source of cash deposit emanated out of preceding cash withdrawal from bank to the tune of Rs. 50 Lakhs , Cash Gift from father Rs. 10 Lakhs and rest from past savings .In case AO was not satisfied with credit from Shri Arjun Yadav , he should have made addition u/s 68 for unexplained cash credit . The ld AO went off the track while making assessment of Income , for the reason best known to him alone , in as much , the entire source of cash deposit was well explained and there is no adverse inference neither

about consumption of cash withdrawal elsewhere nor about receipt of cash gift from father of Rs. 10 lakhs in the body of assessment order which clearly evident that AO was satisfied about availability of cash in hand for making cash deposit during depotentiation.

4. Submission on Legal Position, Burden of Proof u/s 69A & Lack of Enquiry by AO

Although the factual matrix of the case , apparently connotes , without any iota of doubt , that appellant had sufficient cash in hand generated out of preceding withdrawal& cash gift for making redeposit during demonetization period , in spite that , even on legal front , the appellant has duly discharged the Onus casted u/s 69A of the Income Tax Act and therefore there was no occasion or justification for the AO to bring cash deposit into bank account under the realm of section 69A , in view of our submission as under :-

4.1 The appellant has duly discharged the burden casted upon him by the law u/s 69A of the IT Act by explaining in writing that source of cash deposit into bank account during demonetization period emanated out of cash withdrawal made from the same bank before 5 months . In support of same , the appellant filed copy of bank statement , Affidavit from Party who made the deposit/advance (i.e. Arjun Yadav) into bank account which was withdrawal .The appellant was required to prove immediate source of cash , which was well explained . The deposit into bank account was completely extraneous to the matter under consideration .The appellant cannot be penalized for lack of verification undertaken at his end.

4.2 Appellant discharged the onus by explaining in writing the reasons for cash withdrawals & redeposit of cash back into account , which has not been controverted in the assessment order . There is no whisper in assessment order that cash withdrawn from bank to the tune of Rs. 50 lakhs & cash gist from father to the tune of Rs. 10 lakh was consumed elsewhere and was not available for redeposit into bank account .

Thus ,your good self will appreciate that the appellant duly discharged the initial onus casted upon him, .It is trite law that once the assessee discharges the initial onus , it was on the AO to show by bringingclinching evidence on record that cash so withdrawn was consumed elsewhere for some unaccounted purpose . However , in present factual matrix of the case , the AO has miserably failed to bring any evidence to controvert the explanation & evidence furnished by the asssessee , therefore the addition made by him, on mere surmises , assumptions & presumptions are not sustainable in the eyes of law . The AO merely disbelieved the evidence & explanation of the

assessee without any efforts to unravel the truth .The mysterious question which arises is & deserves to be answer by the AO is that "Where cash withdrawal of Rs. 50 Lakhs made in June 16 evaporated & where cash receipt of Rs. 10 Lakh from father consumed , if same was not used for making redeposit of cash during demonetization period ? The appellant cannot be penalized for lack of enquiry & verification by the AO .Moreover , the appellant cannot be asked to prove the negative .

Further to buttress the contention of the appellant ,Reliance is placed upon Judgement of Hon'ble Punjab & Haryana High Court in in the case of CIT vs Jawaharlal Oswal and Others (I.T.A. No. 49 of 1999, Judgment delivered on 29.01.2016) dismissed the Department's appeal by holding that suspicion and doubt may be the starting point of an investigation but cannot, at the final stage of assessment, take the place of relevant facts, particularly when deeming provision is sought to be invoked. The Hon'ble Court has observed ,

"…The principle that governs a deeming provision is that the initial onus lies upon the revenue to raise a prima facie doubt on the basis of credible material. The onus, thereafter, shifts to the assessee to prove that the gift is genuine and if the assessee is unable to proffer a credible explanation, the Assessing Officer may legitimately raise an inference against the assessee. If, however, the assessee furnishes all relevant facts within his knowledge and offers a credible explanation, the onus reverts to the revenue to prove that these facts are not correct. The revenue cannot draw an inference based upon suspicion or doubt or perceptions of culpability or on the quantum of the amount, involved particularly when the question is one of taxation, under a deeming provision. Thus, neither suspicion/doubt, nor the quantum shall determine the exercise of jurisdiction by the Assessing Officer….Further a deeming provision requires the Assessing Officer to collect relevant facts and then confront the assessee, who is thereafter, required to explain incriminating facts and in case he fails to proffer a credible information, the Assessing Officer may validly raise an inference of deemed income under section 69-A. *As already held, if the assessee proffers an explanation and discloses all relevant facts within his knowledge, the onus reverts to the revenue to adduce evidence and only thereafter, may an inference be raised, based upon relevant facts, by invoking the deeming provisions of Section 69-A of the Act. 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."

4.3 The ld AO lost sight of the fact that there is no law which prevents assessee from keeping cash and also re-depositing the cash , withdrawal earlier from bank account .Even , there is no provision in Income Tax Act requiring that cash once withdrawn has to be re-deposited immediately. On the contrary , even there is no no observation of the AO that cash so withdrawn from bank account was consumed elsewhere .

4.4 Although , there is no observation of the AO that the cash withdrawal earlier was not available for re-deposit still the appellant do not wish to leave single stone unturned &to clear air over the matter , therefore draw your kind reference on judicial precedents on the subject , which without any ambiguity supports & lays credence to version of the appellant :-

In ACIT vs Baldev Raj Charla 121 TTJ 366 (Delhi) , Hon'ble Delhi ITAT Bench held that:-

"Merely because there was a time gap between withdrawal of cash and cash deposits explanation of the assessee could not be rejected and addition on account of cash deposit could not be made particularly when there was no finding recorded by the assessing officer or the Commissioner that apart from depositing this cash into bank as explained by the assessee, there was any other purposes it is used by the assessee of these amounts. In view of above facts, the ground number 1 of the appeal of the assessee is allowed and orders of lower authorities are reversed.[Emphasis Supplied]

In CIT vs Kulwant rai [291 ITR 36] , the Hon'ble Delhi High Court held as under :-

" This cash flow statement furnished by the assessee was rejected by the AO which is on the basis of suspicion that the assessee must have spent the amount for some other purposes. The orders of AO as well as CIT(A) are completely silent as to for what purpose the earlier withdrawals would have been spent. As per the cash book maintained by the assessee, a sum of Rs. 10,000 was being spent for household expenses every month and the assessee has withdrawn from bank a sum of Rs. 2 lacs on 4th Dec., 2000 and there was no material with the Department that this money was not available with the assessee. It has been held by the Tribunal that in the instant case the withdrawals shown by the assessee are far in excess of the cash found during the course of search proceedings. No material has been relied upon by the AO or CIT(A) to support their view that the entire cash withdrawals must have been spent by the assessee and accordingly, the Tribunal rightly held that the assessment of Rs. 2.5 lacs is legally not

sustainable under s. 158BC of the Act and the same was rightly ordered to be deleted."

In Gordhan, Delhi v/s DCIT [ITA No. 811/Del/2015], Delhi ITAT vide their judgement dated 19/10/2019 held that:-

" No addition can be made u/s 68 on the sole reason that there is a time gap of 5 months between the date of withdrawals from bank account and redeposit the same in the bank account , Unless the AO demonstrate that the amount in question has been used by the assesse for any other purpose. In my view addition is made on inferences and presumptions which is bad in law."

Thus , the rule of law that is culled out from the catena of judegments relied upon by the appellant is that the AO cannot reject the claim of the appellant regarding cash availability from preceding withdrawals which is apparent from evidences filed on records unless he proves that the cash withdrawal earlier was not available for redeposit & was consumed elsewhere . Adverting to the present case , there is even no observation relating to cash being consumed elsewhere .

4.5 Furthermore, the remaining amount i.e. Rs. 2,97,000/- was deposited out of past savings and cash in hand available with the appellant. The appellant is assessed to income tax and is filing return of income since last many years.therefore, no adverse inference is warranted in this regard looking to the age & return filing history of the appellant.

4.6 The alleged observation of the AO that assessee failed to give any explanation about nature & source of cash deposit and also failed to comply to notice issued u/s 142(1) is non-existent & itself contrary to documents on record , in as much , the AO himself in body of the order had accepted that assessed claimed cash deposit to be out of preceding cash withdrawal & gift from father . (Para 4 Page 4 of Impugned order). The contrary observation of the AO itself speaks that order is stereo typed & arbitrary and finalized without application of mind to the evidence filed by the appellant .

Uncontroverted Facts & Settled preposition of Law

There are series of undisputed facts emanating from records which have neither been controverted by the assessing officer nor there are any evidences on record to prove them contrary .Besides that , the assessment has been concluded contrary to settled preposition of law enunciated by the Apex court . The gist of same are asunder :-

5.1 It remained undisputed fact that the appellant withdraw Rs.50,00,000/- from bank account maintained with Axis Bank ,in June 2016& also accepted gift from father of Rs. 10,00,000/- and there are

no contrary finding or observation of the AO as to it's non availability for making deposit into bank during demonetization period .

5.2 That the nature &nomenclature of the amount received from Mr. Arjun Yadav ,has no relevance in as much , there is not a single observation of the AO on credit worthiness of Mr. Yadav or genuineness of the transaction as otherwise the AO would have made addition u/s 68 of the Act.

5.3 That apart from passing remarks by AO there was no examination of Mr. Arjun Yadav by the AO which exhibits that AO was satisfied as to credits in bank account .

5.4 That it is undisputed fact that thereis no evidences with the department that such a huge amount was consumed elsewhere and was not available for making redeposit of cash .Even , there is no whisper in entire assessment order that the amount so withdrawn from Bank Account in cash and cash gift received from Father was consumed elsewhere .

5.5 That the Preponderance of probability weighs in favour of the appellant . The appellant has made huge cash withdrawal in 2 tranches which lays credence to version that withdrawal was for some purpose .

5.6 That the Apparent is real unless provedother wiseby the other party who alleges not to be so .Reliance placed upon celebrated judgement of Apex Court in CIT versus Daulat Ram Rawat Mull, (1973) 87 ITR 349, the Supreme Court held that onus of proving what was apparent is not real is on the party who claims it to be so. There should be some direct nexus between the conclusions of fact arrived at by the authorities concerned and the primary facts upon which the conclusion is based. Use of extraneous or irrelevant material in arriving at the conclusion would vitiate the conclusion of fact, because it is difficult to predicate to what extent, the extraneous and irrelevant material has influenced the authority in arriving at the conclusion of fact.

5.7 That the Suspicion how strong cannot take the place of evidence & No addition can be made on surmises , conjectures & suspicion . Reliance is placed upon OmarSalav Mohamed Sait v CIT (1959) 37 ITR 151 , Uma Charan Shaw & Bros V CIT (1959) 37 ITR 251 (SC)

5.8 That the assessee cannot be asked to prove the negative .The onus to prove that huge cash withdrawal of Rs. 50 lakh was consumed elsewhere rested entirety upon the AO but the AO without making any

observation about same made addition which clearly connotes that good proof has been converted into no proof by the AO.

5.9 There is no observation of ld AO about time lag of redeposit of cash after withdrawal which without any iota of doubt shows that AO was satisfied with the version of the appellant .

Thus , in concluding part of our submission to Ground No. 1 , it is most humbly submitted that on perusal of entire assessment order , your good self will appreciate that there is no rationale of addition & AO misdirected himself as it is not the case of the AO that the cash deposited into bank account during demonetization was not out of cash withdrawal made from the bank account on earlier occasion or from gift from father .

Without prejudice to above & merely for the sake of academic purposes , it is submitted that the ld AO merely on the basis of affidavit of the creditor considered the amount received from Mr. Yadav as advance against property as against Loan claimed by the appellant , without appreciating that any advance against property is exchanged on the basis of agreement to sale and also law mandates deduction of TDS @1% u/s 194IA on the advance for immovable property .The question deserved to be answer by the AO is that "Why he accepted the claim of the Mr. Yadav without raising query about TDS non deduction and why reference to TDS unit was not made for alleged TDS non deduction on advance ? The ld AO without examining the creditor & appreciating the TDS provision , went on wrong track & misdirected himself , which is illegal & baseless .Even the AO did not examine the father of the assessee , who sworn in affidavit to the effect that he gave cash gift to son of RS. 10,00,000/- by making withdrawal from his SB A/c . The same shows that AO was satisfied with the factum of cash gift and if same was the case , then how can AO can hold source of same for re-deposit into bank account . The AO is precluded from blowing hot & cold at the same time .

GOA 2: That the ld A.O. has erred in law as well as in facts of the case in not appreciating the information/documents submitted in true spirit.

SUBMISSION :-

The ld A.O. has erred in law as well in facts of the case in not appreciating the information/submitted during assessment proceedings viz affidavits and bank statements proving the source of cash deposited in bank account.

The ld A.O. is of the view that there is a contradiction in the submission made by appellant through reply and affidavit of Shri Arjun Yadav regarding the purpose of such transfer, which is immaterial for the facts of the case. The ld

AO considered receipt of Rs. 60.50 lakh in bank from Arjun Yadav as focal point of assessment but in fact the same was extraneous to the issue in hand . The undisputed fact was that there was withdrawal from bank account 5 months back & there was cash gift from fatherwhich remained unconsumed and same was re deposited into bank account during demonetization .The affidavit so submitted by the appellant during the assessment proceedings clearly confirms that the amount was received from Shri Arjun Yadav and the purpose for which the amount was credited is immaterial and irrelevant since the source of same is duly explained and subsequently has been confirmed by the deponent, but the ld AO took the wrong direction but it was the fact that cheque of Rs. 60,50,000 was received from Shri Arjun Yadav. (Copy of affidavit submitted during assessment proceedings enclosed).

Moreover, the appellant also submitted the affidavit and bank statement of his father Shri Sedu Ram Meena explaining the source of Rs. 10Lakhs deposited by him but the ld AO without making any exercise viz. verification & examination of facts by way of issuing notice u/s 133(6) to the appellant, his father or any other parties from whom amount was received, jumped to the conclusion that deposits represented the income. Your goodself will appreciate that in present case , the appellant has been penalized for lack of enquiry or verification by the AO which is contrary to settled cannon of taxation .

GOA 3: That the appellant reserves his right to add, amend, alter or withdraw any ground of appeal on or before hearing of this appeal.

SUBMISSION :-Ground of general nature, hence not pressed.

Prayer:- In light of the above factual matrix of the case along with submission made and binding judicial precedents from higher authorities on the subject, it is requested before your honour to kindly delete the additions made to the returned income in toto and oblige. “

7. In addition to the written submission so made the ld. AR of the assessee argued that the department has not denied the fact that the assessee has sufficient source of cash deposited in the bank account of the assessee. The revenue has also not brought anything contrary on record

that the cash so withdrawn by the assessee has been utilized in buying or acquiring any other asset or expenditure. The assessee has already explained the purpose of the withdrawal and submitted that the investment was not made and on account of demonetization he has deposited the cash of Rs. 61,97,000/- on 18.11.2019 and Rs. 1,00,000/- on 07.12.2016. The action of the assessee itself suggest that the assessee is having the cash on hand the assessee has also supported the purpose of withdrawal the assessee has also filed the bank statement to support the withdrawal so made from his bank account. He has also filed an affidavit of his father and bank statement of his father justifying the date of withdrawal and source of withdrawal made by his father. The father has declared on oath of having given the gift to his son and the person who has withdrawn the money from his bank account. Based on these evidences revenue has not made any enquiry so as to question the source of cash deposit. Therefore, on account of demonetization the assessee has no option but to deposit the cash available on hand into his bank account. The same

has been done at once for the substantial amount. The ld. AR of the assessee expressed his agony while dealing with the facts of the case. Even the ld. CIT(A) has taken a causal approach and has not dealt the facts of the case and has decided against the set of facts of the case of the assessee. He further demonstrated that how ld. CIT(A) has jumbled the fact of other case for which the ld. AR of the assessee has relied upon the findings of the ld. CIT(A) as reproduce here in below.

"5.1.4 it was, on an analysis of the bank account for year under consideration and earlier year found by ld. AO and mentioned in his assessment order that

4. Total cash deposit in the bank in F.Y. 2016-17 was Rs. 9,29,000 whereas total cash deposit in the bank in F.Y. 2016-17 was Rs. 30,60,000.

5. Total cash deposit in the bank from 01/04/2016 to 08/11/2016 Rs. 1,50,000 whereas total cash deposit in bank from 09.11.2016 to 31.12.2016 (i.e. demonetization period) was Rs. 29,10,000.

6. a) Total cash sales/cash receipts in F.Y. 2015-16 was Rs.27,00,000 and total cash sales/cash receipts in F.Y. 2016-17 was Rs.31,15,114. Therefore, percentage increase between the two items above was found to be only 15.37%.

   b) On the other hand, total cash sales/cash receipts from 1.04.15 to 08.11.15 was Rs. 18,68,239 and from 01.04.16 to 08.11.16 was Rs.31,15,114. So the percentage increase between the two items above came to 66.74%.

   c) Total cash deposit in bank from 09/11/2015 to 31/12/2015 was Rs.1,00,000 and Total cash deposit in bank from

09/11/2016 to 31/12/2016 was Rs.29,10,000 and the Percentage increase between these two items is 2810%."

The fact reiterated is no way the fact of the case and the ld. AR of the assessee submitted that the ld. CIT(A) was correct in recording the fact till in para 5.1.3 but thereafter he started mentioned the fact of some other case. The assessee has disputed the addition before the ld. CIT(A) for amount of Rs. 62,97,000/- but while giving the finding ld. CIT(A) has confirmed the addition to the extent of Rs. 29,10,000/-. This shows that the assessee was not given justice by the lower authorities and has not adjudicated the assessee's facts correctly and has not appreciated the evidence placed on record. The assessee is suffering from the pain and agony on account of the demand raised. The ld. CIT(A) therefore, even though the ld. DR insisted to set aside this matter to the file of the ld. CIT(A) therefore, based on the evidence already discussed and filed before the ld. AR requested the Bench that justice should not only be granted but seen to have been granted as no new evidence

is placed on record and instead of sending to file back to the ld. CIT(A) the same should be decided by the Bench as the assessee is relied upon no new documents and whatever the arguments and source of money is deposited in the bank account is duly explained and based on these evidence that the assessee placed on record at the time of assessment proceedings.

8. Per contra, the ld. DR supported the order of the ld. Assessing Officer and fairly accepted that due to over sight in para 5.1.4 the findings against the set of fact available on record, therefore, she insisted that the matter should be restored to the file of the ld. CIT(A). Without prejudice she argued that the addition is made u/s 69A of the Act as the assessee could not explain the use of cash withdrawal and therefore she has vehemently argued the various findings recorded in the order of the Assessing Officer.

9. In the rejoinder ld. AR of the assessee submitted that there is no whisper in the order of the ld. Assessing Officer about the utilization of the money so available with the assessee and there is also no finding recorded about the source of the cash withdrawal explained by the assessee. No question was asked by the ld. Assessing Officer in the matter. Therefore, the deposit of cash made by the assessee is not unexplained money but is very well explained money and therefore the addition may be deleted.

10. We have considered the rival contentions and submission placed on record by both the parties and we have also gone through the various judgments relied upon. The Bench noted that it is not disputed by the ld. DR that the finding recorded by the ld. CIT(A) is no way related to the fact of the case of the assessee. He has simply stated the facts of some other case from para 5.1.4 onwards. Even the amount disputed by the assessee is not matching. Therefore, we are of the considered view that the ld. CIT(A) has not rendered to the justice to the assessee. The Bench

also noted that whatever supporting documents filed by the assessee in his paper book is not disputed by the revenue stating that same were not placed on record. We have also observed that there is no comment about the source of cash withdrawal made by the assessee and the same is also clearly explained by the assessee. The ld. AO has also not recorded his finding that the cash available with the assessee is utilized by him. Based on this non-disputed fact placed before us we are of the considered view that the cash deposited by the assessee is nothing but the explained money sourced from the withdrawal of the bank account of the assessee to the extent of Rs. 50 lac and Rs. 10 lac sourced as gift received from his father. To support the gift the assessee has placed on record the affidavit of his father and the bank account of this father. The revenue has not recorded any finding about the explanation given by the assessee. From the paper book filed by the assessee we have observed that there is withdrawal of Rs. 25,00,000/- on 06.06.2016 and Rs. 25,00,000/- 16.06.2016. The Revenue has not disputed the source of the cash withdrawal. There is no whisper in the order about the utilization of the cash so withdrawn. The ld. AR of the assessee further

submitted that the gift deed received from the father of the assessee clarified when the gift was made what is the source of the fund and in support of the contention the ld. AR of the assessee also filed the bank statement of the father of the assessee justifying the date of withdrawal. Therefore, we are of the considered view that the assessee has substantiated the source of cash deposited in the bank account as it is apparently evident from the set of evidence placed on record justifying the availability of cash out of withdrawal by him. Therefore, in the absence of contrary finding of utilization of this cash which is nothing but the re-deposit of the withdrawal made in the same financial year in the bank account to the extent of Rs. 60 lakhs are clearly explained by the set of evidence placed on record.

11. Now the issue remains for a balance of Rs. 2,97,000/- of cash for which we belief that considering the status of the assessee being regular tax payer and even for the year under consideration the assessee has shown income of Rs. 15,46,254/- considering the social status of the assessee cash of Rs.

2,97,000/- considered as explained and no separate addition is called for. In terms of these observation, we vacate the addition made u/s 69A of the Act to the extent of Rs. 62,97,000/-. Thus, the appeal of the assessee is allowed.

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

Order pronounced in the open Court on 17/03/2023.

Sd/-	Sd/-
(राठोड कमलेश जयन्तभाई)	(डॉ.एस.सीतालक्ष्मी)
(RATHOD KAMLESH JAYANTBHAI)	(Dr. S. Seethalakshmi)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 17/03/2023.
*Santosh
आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Pawan Meena, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(3), Jaipur.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्ड फाईल / Guard File { ITA No. 410/JPR/2022}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar