

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

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

I.T.A. No. 213/Asr/2022
Assessment Year: 2019-20

Sh. Raman Gupta,
Prop. M/s. Raman & Co.,
Below Gumat, Jammu
180001

[PAN: AGHPG4512E]
(Appellant)

V. Deputy Commissioner of Income
Tax, Central Circle
Jammu

(Respondent)

Appellant by Sh. P. N. Arora, Adv.

Respondent by Sh. S. R. Kaushik, CIT- DR

Date of Hearing : 25.04.2023

Date of Pronouncement : 17.05.2023

ORDER

Per Dr. M. L. Meena, AM:

This appeal has been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-5, Ludhiana dated 07.09.2022 in respect of Assessment Year: 2019-20.

2. The assessee has raised the following grounds of appeal:

"1. That the assessment order passed by the Deputy Commissioner of Income Tax, Central Circle, Jammu and similarly the order passed by

the Commissioner of Income Tax (Appeals)-5, Ludhiana thereby confirming the addition made by the Assessing Officer are both against the facts of this case and are untenable under the law.

- 2. That no reasonable and proper opportunity of being heard was allowed before passing the said order. As such the order passed by the A.O. is bad in the eyes of law and the same is liable to be cancelled. Similarly the order passed by the CIT(A) thereby confirming the order of the AO is also liable to be cancelled.*
- 3. That the Ld CIT(A) has grossly erred in confirming the addition of Rs. 1,68,073/- on account of cash found at Hotel Samrat belonging to the assessee ignoring the fact that this cash was actually belonging to Guests staying in hotel on that date and the same was kept in Hotel for safe custody. This fact should have been accepted by the CIT(A) and the worthy CIT(A) also did not appreciate the nature of business carried on in the hotel and this practice which was prevailing in past as well as in subsequent years and the same was accepted.*
- 4. That the worthy CIT(A) did not appreciate that there was cash in hand of Rs.99319/- on 12/03/2019 and whereas the search took place on 14/03/2019. The authorities below did not allow time to complete the cash book of Hotel and the authorities below did not appreciate that the amount found related to customers who were staying in the hotel. This was only trust money and cannot be treated as a part of income.*
- 5. That the authorities below did not appreciate that copies of IOU vouchers were duly submitted before the authorities below. The hotel is situated near bus stand. The guests of hotel are business travelers and normally they used to carry cash with them out of business collections made by them. Whenever they take the amount back the same was given from the safe of hotel as and when they needed back.*
- 6. That the CIT(A) was not justified in confirming the addition of Rs. 168073/- on account of amount found in the hotel and the addition made may be deleted. Without prejudice the above the addition confirmed by the Ld. CIT(A) is very high & excessive.*
- 7. That again the AO has erred in making the addition of Rs.299250/- on account of cash found at the residence Gandhi Nagar at the time of search. The AO did not appreciate that the assessee family is constituted by 4 members and this amount represents their life time savings from time to time. The Ld. CIT(A) did not appreciate the status*

of family members and the returned income shown by the assessee. The CIT(A) further did not appreciate that even amount of Rs.2.5 Lakh was treated as a genuine pin money by Prime Minister of India during demonetization period.

8. *That the authorities below did not appreciate that there were total 4 members and out of which 2 were ladies members and the amount found was out of life time savings from time to time. Even the assessee family was showing handsome returned income from time to time. During the year under consideration the assessee himself has shown income of Rs.5079810/-. As such there was no justification for not accepting this explanation and ignoring the status of family and returned income. The addition was confirmed without any rhyme and reason and the addition confirmed at Rs.299250/- may be deleted. Alternatively the addition made is very high & excessive.*
9. *That any other ground of appeal which may be argued at the time of hearing of the appeal."*

3. Facts are that during the course of search/survey proceedings cash was found at residence and business premises amounting to Rs. 8,01,510/- and 2,67,600/- respectively and that Rs. 5,00,000/- was seized out of the cash of Rs. 8,01,510/- found from the residence. In response to query, assessee explained that the cash of Rs. 8,01,0510/- found at the residence pertains to all the family members out of their cash saving, pin money of his wife and savings of his son. Regarding the cash of Rs. 2,67,600/- found at business premises of the assessee, the AO noted that the cash-in-hand as per books was only Rs. 99,529/-, and there was a difference of excess cash of Rs. 1,60,071/-. The AO was not satisfied with the reply of the assessee assessee's son had cash-in- hand of Rs. 52,260/- and Imprest of Rs. 4,50,000/- with him and balance cash of Rs.

2,99,250/- was pertaining to the family members as in the normal course, the ladies do save and hold some money from the pin money given by their husband and part of the cash found was this pin money savings of the ladies. However, the AO was not satisfied regarding the balance amount of Rs. 2,99,250/- and Rs. 1,68,071/-, as the explanation furnished by the assessee was not supported by any verifiable documentary evidence. Accordingly, the cash aggregating to Rs. 4,67,321/- was treated as unexplained cash/unexplained money as deemed income chargeable to tax u/s 115BBE.

4. The assessee being aggrieved with the Assessment Order, went in appeal before the Ld. CIT(A) who has confirmed the addition vide para 5.2 as under:

“5.2 Ground of Appeal No. 2 relates to various additions made by the AO viz. Rs. 1,57,971/- on account of disallowance of 15% of the expenses; Rs. 1,68,071/- on account of unaccounted cash at hotel and Rs. 2,99,250/- on account of cash found at the residence. The AO has mentioned that a search u/s 132 was conducted in this case on 14.03.2019, being associated to Baniya Group of Cases. The assessee filed return declaring income of Rs. 50,79,260/-. It is further mentioned that the assessee is engaged in the business of running a hotel in the name of M/s. Hotel Samrat, Below Gumat, Jammu. The AO discussed the facts about cash found at residence and business premises of the assessee and mentioned that during the course of search/survey, cash of Rs. 8,01,510/- was found from the residence (out of which the cash amounting to Rs. 5,00,000/- was seized). Apart from this, cash of Rs. 2,67,600/- was found at Hotel Samrat and thus, the total cash of Rs. 10,69,110/- was found from the premises of the assessee and the assessee was asked to explain the source of the above cash during the search. In response, it was stated that the cash of Rs. 8,01,0510/- found at the residence pertains to all the family members and this amount reflects his cash saving, pin money of his wife and savings of his son, however as per

the AO, no evidence regarding the same was furnished by the assessee. In respect of Rs. 2,67,600/- found at business premises of the assessee at Hotel Samrat, the cash-in-hand as per books was only Rs. 99,529/-. As per the AO, there is a difference and excess cash of Rs. 1,60,071/- was found at business premises. It is further mentioned that as per Investigation finding, no evidence regarding personal savings of the family members was furnished by the assessee. During the assessment proceedings, the assessee was asked to furnish explanation regarding the source of cash found from residence & business premises and the reply filed is reproduced in the assessment order wherein it was submitted that the assessee and his son are carrying out their respective businesses. It was also submitted that assessee's son had cash-in-hand of Rs. 52,260/- and Imprest of Rs. 4,50,000/- with him. The balance cash of Rs. 2,99,250/- was claimed as pertaining to the family members and the assessee submitted that it was normal for the ladies to save and hold some money from the pin money given by their husband and part of the cash found was this pin money savings of the ladies. After considering the reply, the AO accepted the claim about the Imprest cash and cash-in-hand in the case of Sh. Raman Gupta, however regarding the balance amount of Rs. 2,99,250/-, the explanation furnished by the assessee was not supported by any verifiable documentary evidence. The AO concluded that the assessee has no explanation for the excess cash of Rs. 2,99,250/-. Regarding the cash at Hotel Samrat, the assessee submitted that the books were written upto 12.03.2019 and cash-in-hand on that day was Rs. 99,529/-. It was further submitted that the hotel doesn't have lockers in the rooms for the customers and it was a normal practice for the guests to keep the cash in the 'safe' of the hotel for safe custody by way of IOU vouchers. It was further submitted that few guests normally handover the surplus cash to hotel authorities for safe custody and then take it back when they check out from the hotel and such cash received from the guests is just kept in 'safe' and no entry for the same is made in the financial books and only IOU vouchers are there. As per the assessee, the hotel was holding a cash of Rs. 1,78,000/- for and on behalf of the guests on that day. The AO mentioned that the unaccounted cash at Hotel works out to be Rs. 1,68,071/- which the assessee claims as belonging to guests staying at Hotel, but no such statement was given by the assessee when the cash was found at the Hotel and therefore the explanation appeared to be an afterthought of the assessee to give such explanation. As per the AO, had this been the actual facts, the assessee should have clearly stated the same when the cash was found at the Hotel on the date of search/survey. Accordingly, the explanation furnished by the assessee was found without merit/supporting evidence and not satisfactory to justify the excess cash of Rs. 1,68,071/-. As per the AO, vide order sheet entry dated 19.04.2021, the assessee was show-cause as to why the cash aggregating to Rs. 4,67,321/-

should not be treated as unexplained cash/unexplained money as deemed income chargeable to tax u/s 115BBE. After considering the reply, this cash was treated as unexplained money u/s 69 of the Act and added to the income of the assessee chargeable u/s 115BBE.

Regarding addition on account of disallowance of expenses, the AO has mentioned that the assessee claimed an amount of Rs. 10,74,319/- under the head 'purchases' which were mostly incurred in cash and two of the expenses incurred on 05.07.2018 of Rs. 10,622/- and on 05.01.2019 for Rs. 10,555/- are in excess of limit prescribed limit u/s 40A(3) and the assessee has himself disallowed & added to the income. As per the AO, on verification, it was found that the expenditures were mostly in cash, supported with self-generated or unverifiable vouchers. The counsel of the assessee stated that the amount of purchases was routine business expense of the assessee in which bills for most of the items are not issued by the sellers. As per the AO, considering the magnitude of business, this expenditure appeared to be on higher side and not substantially supported by the documentary evidence. Therefore, after considering the facts & circumstances of the case, and the explanation given by the counsel, 15% of the expense was disallowed and addition of Rs. 1,57,971/- was made to the income of the assessee.

The facts of the case, the basis of additions/disallowance made by the AO and the arguments of the AR during the appellate proceedings have been considered. The AR has submitted that the AO made ad-hoc disallowance of Rs. 1,57,971/- and contended that all the expenses are duly supported by the vouchers. The AR further argued that the AO has not pointed out any specific expenditure which was not properly supported by bills/vouchers and no infirmity in the same has been pointed out by the AO and the AO has not proved any non-genuine expense or expense not incurred for the purpose of business. The AR filed copy of the purchase account along with the photocopy of the vouchers which were test checked. It is relevant to mention here that the AO has not pointed out as to which voucher or bill was not acceptable and merely proceeded to make ad-hoc disallowance @15% by simply mentioning that the expenditure appears to be on higher side, but without giving any comparative figures or a comparison and as to how much expenditure in his opinion was normal. It is relevant to mention here that in this case a search/survey was conducted by the department and the AO has not mentioned about any evidence or finding that during the survey any adverse evidence was recovered pointing out that the assessee was making bogus expense. Therefore, keeping in view the above, the ad-hoc disallowance of Rs. 1,57,971/- made by the AO,

especially in a case where survey was conducted by the department, is not found sustainable and hence deleted.

Regarding the addition of Rs. 1,68,071/- on account of cash at Hotel Samrat, the AR submitted that this cash was actually the cash of the guests staying on that day in the Hotel kept for safe custody. As per the AR, the AO ignored the IOU vouchers which were submitted during the assessment and this fact was explained that the Hotel is situated next to the General Bus Stand and does not have safe deposit box in each room but have 'General safe deposit' at the reception/office of the Hotel and the guests used to keep the surplus cash for the safety against the IOU slips/vouchers. Here it is relevant to mention here that as per the assessment order, no such explanation was given by the assessee when this excess cash was found during the survey proceedings at the Hotel premises and the AO was right in observing that it appears to be an afterthought of the assessee to give such an explanation. The assessee has not produced the persons in support of the claim that the cash belongs to the customers. During the appellate proceedings, the AR submitted a list claiming to be the amounts from five persons which were in the range of Rs. 20,000/- to Rs. 45,000/- which are not such big amounts that the customers will be hesitant to keep with themselves. Had the amounts been in big amounts of Rs. 40 lacs or Rs. 50 lacs, then the story about safe keeping could have some credential to believe, however it is unbelievable that the customers will keep the nominal amounts of Rs. 20,000/- to Rs. 45,000/- with the hotels for safe custody. Moreover, no such explanation was given by the assessee at the time of survey and the story of the assessee is just an afterthought which cannot be accepted and no relief can be given on the basis of the self-serving narratives or the self-made IOU slips which does not bear the signature of the person or identity proof of the person who are claimed to be the owner of these cash amounts ranging from Rs. 20,000/- to Rs. 45,000/-. If the assessee received any advance from the customers, the same should have been reflected in the books of accounts of the assessee, however it was not so and the cash as per the books was only Rs. 99,529/- as against cash of Rs. 2,67,600/- found from the business premises of the assessee. The AO was therefore justified in making the addition of Rs. 1,68,071/- after duly issuing a show-cause vide note sheet entry dated 19.04.2021 on account of excess cash. Hence, this addition is found sustainable and deserves to be confirmed.

Regarding the addition of Rs. 2,99,250/-, the AR submitted that the cash pertains to the four family members and reflect the savings of the family members. It was also submitted that it was a normal practice for the ladies to save and hold money out of pin money given to them by their husbands.

Here also, it is relevant to mention here that the AO give the benefit for the amount explained by the assessee for which evidence were filed during the assessment proceedings. However, the assessee could not give any evidence in support of the balance cash of Rs. 2,99,250/- found at the residence. The claim of the AR that a part was the personal savings out of pin money is also not of any help because the assessee could not give the details of the withdrawals to support that the pin money saved was out of explained sources of income. Accordingly, if the pin money savings were out of unaccounted cash, then the same also takes the character of unaccounted cash only and will not become explained cash in the hands of the ladies. The colour of the money will not change with the change of hands and it will remain unaccounted/unexplained cash, even if, saved by the ladies as pin money. Therefore, to conclude, since, the source of the savings etc. in the hands of the family members remains unexplained, the savings itself becomes unexplained money and the AO was right in making the addition of Rs. 2,99,250/- u/s 69A. In view of the above, the addition made by the AO is found sustainable and deserves to be confirmed.”

5. The counsel for the appellant submitted that the Ld CIT(A) has grossly erred in confirming the addition of Rs. 1,68,073/- on account of cash found at Hotel Samrat belonging to the assessee ignoring the fact that this cash was actually belonging to Guests staying in hotel on that date and the same was kept in Hotel for safe custody without appreciating the very nature of business carried on in the hotel and this practice was prevailing in past as well as in subsequent years and the same was accepted. The counsel further contended that the AO has erred in making the addition of Rs.299250/- on account of cash found at the appellant's residence at Gandhi Nagar. The AO did not appreciate that the assessee family is constituted by 4 members, including two lady members and this amount represents their life time savings ignoring the fact regarding the

status of family members and the returned income shown by the assessee. The CIT(A) further did not appreciate that even amount of Rs.2.5 Lakh was treated as a genuine pin money by Prime Minister of India during demonetization period. The Ld. AR argued that during the year under consideration, the assessee himself has shown income of Rs.5079810/-. As such, there was no justification for not accepting this explanation, by ignoring the status of family and returned income. He pleaded that such an addition confirmed without any rhyme and reason at Rs. 1,68,073/- and Rs.299250/- may be deleted with the support of following written submission:

“Addition of Rs.2,99,250/-

It was explained before the authorities that the cash pertains to 4 members of the family constituted by Raman Gupta (Assessee), his wife, son and daughter. It was also explained that it was a normal practice for ladies to save money out of pin money given to them by their husbands.

It may be pointed out that all these 4 persons were existing assessee paying handsome tax which is evident from the following:

(i)	<i>Raman Gupta (Appellant) Returned Income</i>	<i>Rs.50,79,260/-</i>
(ii)	<i>Son Kashish Gupta returned income</i>	<i>Rs. 14,81,840/-</i>
(iii)	<i>Wife Sheetal Gupta returned income</i>	<i>Rs. 1,71,840/-</i>

Thus looking to the income, status of the family and lifetime savings from time to time, the amount found at Rs.2,99,250/- was a very nominal and reasonable amount and no addition should have been made on these basis. In this connection, a detailed reply was filed before the AO, copy of which is available on Page No.3, 3A and 3B of the paper-book. After considering the same, your honour will find that this addition of Rs.2,99,250/- is not at all called for and the department has not been able to place any material on record to justify the addition.

Your valuable attention is invited to decision of ITAT, Delhi Bench in the case of Raj Kumar Kakrania vs. DCIT [**Refer Page No.15 to 19 and relevant Page No.19 of the paper-book**] in which it was held that a sum of Rs.225000/- may be treated as explained as her savings and the addition of Rs.225000/- was deleted.

Again, the ITAT, Agra Bench, (Constituted by Shri Lalit Kumar Judicial Member and Dr. Mitha Lai Meena, Accountant Member) in the case of Smt. Uma Aggarwal on Page No.20 to 43 and relevant Page No.42 & 43 held that a sum of Rs.250000/- is a genuine and reasonable saving.

Even the announcement by Hon'ble Prime Minister Shri Narendra Modi was made at the time of demonetization that ladies should not be taxed upto the amount of Rs.2,50,000/-.

Thus, the authorities below were not justified in confirming the addition looking to the status of the family and looking to various judgments as cited above.

Addition of Rs.1,68,071/- on account of cash found at Hotel Samrat

In this case, the written submissions were submitted before the CIT(A) which are available on **Page No.4 to 8 and relevant Page No.5 & 6 of the paper-book**. The statement of following staff was recorded at the time of survey which is available from **Page No.55 to 64 of the paper-book**.

1. Shri Khraitai Lai, Accountant. A copy of the statement is available on **Page No.55 of the paper-book**.
2. Shri Rohit Kaul, Receptionist. A copy of the statement is available on **Page No.61 & 62 of the paper-book**.
3. Shri Sanjay Kaul, Receptionist. A copy of the statement is available on **Page No.63 & 64 of the paper-book**.

From the perusal of these statements, it is clear that the department never raised any question about the source of cash found at Hotel Samrat. This point was fully explained before the AO. As such it is clear that no source was ever asked by the survey party in the Hotel premises. It was also explained before the AO as well as before the Ld. CIT(A) that this amount related to customers to whom this cash belongs and was lying in our custody.

It is pertinent to point out that the CIT(A) did not appreciate that the AO/Survey Party never raised any question about the cash found at hotel. As such the observation of the CIT(A) is inconsistent with the facts of this case.

The department has not been able to place any material on record against the assessee. As such there is no justification to doubt the genuineness of this amount and the addition of Rs. 1,68,071/- may kindly be deleted.

*During the course of assessment proceedings and before the CIT(A), it was explained that the guest of the hotel always handover the surplus cash to hotel staff to keep the cash in safe and take back while checking out of hotel and only IOU vouchers are there and which were produced before the authorities below and are available on **Page No.9 to 14 of the paper-book**. This fact has also not been appreciated by the worthy CIT(A).*

Furthermore, the authorities below have not been able to place any material on record for not accepting the explanation. As such both the additions confirmed by the CIT(A) may be deleted.”

6. Per contra, the Ld. DR supported the impugned order.

7. Heard rival contentions, perused the material on record, impugned order, written submission and case law cited before us. The Ld. AR contended that the disputed balance cash of Rs. 2,99,250/- found at the residence premises of the appellant pertains to the family members, particularly the lady members who do save and hold some money out of the pin money and past savings of these ladies. The Ld. CIT(A) discussed that the AO has given the benefit for the amount explained by the assessee for which evidence were filed during the assessment proceedings. However, the assessee could not give any evidence in support of the balance cash of Rs. 2,99,250/- found at the residence. The claim of the AR that a part was from the personal savings out of pin

money is also not of any help because the assessee could not give the details of the withdrawals to support that the pin money as claimed to be saved out of explained sources of income. Thus, Appellant failed to substantiate its explanation before the Ld. CIT(A) with corroborative evidence such as bank withdrawals, cash receipt by the lady members on ceremonial occasions if any to controvert the contention of the Assessing Officer. Again, the appellant failed to quantify the amount of pin money, cash gifts received by the lady members on religions festivals, celebration and family function etc. to explain the source of disputed balance cash of Rs. 2,99,250/- found at its residence premises.

8. The judgment of ITAT Agra Bench, in the case of Smt. Uma Aggarwal (Supra) and ITAT, Delhi Bench in the case of Raj Kumar Kakrania vs. DCIT (Supra) and the announcement by Hon'ble Prime Minister Shri Narendra Modi at the time of demonetization that ladies should not be taxed upto the amount of Rs.2,50,000/- are not applicable in the present case of the appellant. In the present case, there was a search conducted and the disputed unexplained cash of Rs. 2,99,250/- was out of the total cash of Rs. 8,01,0510/- found at the residence premises of the appellant assessee whereas the facts of the ITAT judgment and announcement by Hon'ble Prime Minister Shri Narendra Modi was categorically considered the 2,50,000/- limit for cash deposit in

bank during demonetization period. In our view, the Ld. AR contention that the appellant and its family member are tax payers and filing regular return of income would not substantiate the source of the unexplained cash of Rs. 2,99,250/- out of the total cash of Rs. 8,01,0510/- found at the residence premises of the appellant assessee and accordingly assessed u/s 69A of the Act by the AO and confirmed by the Ld. CIT(A), in the absence of material evidence to support the explanation offered before him.

9. The next issue is regarding the addition of Rs. 1,68,073/- on account of cash found at Hotel Samrat being explained that this cash was actually belonging to Guests staying in hotel on that date and the same was kept in Hotel for safe custody. The AR argued that the Ld. CIT(A) without appreciating the very nature of business carried on in the hotel and such practice is being prevailing in past as well as in subsequent years. He pleaded that such an addition confirmed without any rhyme and reason, the addition of Rs. 1,68,073/- may be deleted.

10. The Ld. AR contended that from perusal of statements of Hotel employees, it is apparently clear that the department never raised any question about the source of the disputed little cash of Rs. 1,68,073/- found at Hotel Samrat. The Ld. AR argued that it was fully explained before the AO and the CIT (A) that no question on source was ever

asked by the survey party in the Hotel premises. It was also explained before the AO as well as before the Ld. CIT(A) that this amount related to customers to whom this cash belongs and was lying in appellant's custody. He filed a paper book of 64 pages including the statement of the staff recorded at the time of survey (APB, Pgs.No.55 to 64) of the paper-book. The AR further contended that before the CIT(A), it was explained that the guest of the hotel always handover the surplus cash to hotel staff to keep the cash in safe custody and take back while checking out of hotel and only IOU vouchers are there and which were produced before the authorities below (APB, Pgs. 9 to 14), that fact has also not been appreciated by the worthy CIT(A). He pleaded that the authorities below have not been able to place any material on record for not accepting the explanation.

11. The Ld. CIT(A) has discussed that the AO stated in the assessment order that the unaccounted cash at Hotel was found to be Rs. 1,68,071/- which the assessee claimed as belonging to guests staying at Hotel. However, no such statement was given by the assessee when the cash was found at the Hotel and therefore the explanation appeared to be an afterthought of the assessee to give such explanation. The AO, formed the view that had this been the actual facts, the assessee should have clearly stated the same fact when the

cash was found at the Hotel on the date of search/survey. Accordingly, he rejected the explanation furnished by the assessee being without merit/supporting evidence and hence, the excess cash of Rs. 1,68,071/- was treated as unexplained income u/s 69A of the Act.

12. The Ld. CIT (A) has categorical mention that as per the assessment order, no such explanation was given by the assessee when this excess cash was found during the search proceedings at the Hotel premises and the AO was right in observing that it appears to be an afterthought of the assessee to give such an explanation. The assessee has neither produced any persons nor given name and address of the costumers, in support of its claim that the cash belongs to those customers. During the appellate proceedings, the AR submitted a list of persons who claimed that the amounts belonged to those five persons, in the range of Rs. 20,000/- to Rs. 45,000/-.The amount stated was not such big amounts that the customers will be hesitant to keep with themselves. Had the amounts been in big amounts of Rs. 40 lacs or Rs. 50 lacs, then the story about safe custody could have some credential to believe, however it is unbelievable that the customers will keep the nominal amounts of Rs. 20,000/- to Rs. 45,000/- with the hotels for safe custody. Moreover, no such explanation was given by the assessee at the time of survey and the story of the assessee is just an

afterthought which cannot be accepted and no relief can be given on the basis of the self-serving narratives or the self-made IOU slips and statement of the employees which does not bear the signature of the person or identity proof of the person who are claimed to be the owner of these cash amounts ranging from Rs. 20,000/- to Rs. 45,000/-. If the assessee received any advance from the customers, the same should have been reflected in the books of accounts of the assessee. However, it was not so and the cash as per the books was only Rs. 99,529/- as against cash of Rs. 2,67,600/- found from the business premises of the assessee. Therefore, the Ld. CIT (A) held that the AO was justified in making the addition of Rs. 1,68,071/- after duly issuing a show-cause vide note sheet entry dated 19.04.2021 on account of excess cash.

13. It is evident from the record that the CIT(A) has appreciated the facts and logically arrived at the decision by applying common man's prudence that the customers staying in the Hotel, carrying only cash to the tune of Rs. 20,000/- to 45,000/- do not require safe custody. Over and above, the appellant failed to explain the source during the course of search and furnish corroborative evidence to substantiate its source by furnishing name, address, PAN/identity proof of the costumers claimed to be stayed in the Hotel premises who kept cash in safe custody. It is factually incorrect to say that the AO never called for

details. Rather, the AO issued a show cause notice to the appellant assessee to substantiate, the source of the unexplained cash Rs. 1,68,071/- found at the Hotel Premises.

14. Next, the appellant challenged that no reasonable and proper opportunity of being heard was allowed before passing the said order. As such the order passed by the A.O. is bad in the eyes of law and the same is liable to be cancelled. Similarly, the order passed by the CIT(A) thereby confirming the order of the AO is also liable to be cancelled.

15. Having heard both the sides and perusal of record and the facts discussed as above, the appellant assessee has been granted adequate and sufficient opportunity of being heard to defend its case on the issue raised on account of the disputed unexplained cash of Rs. 2,99,250/- challenged vide ground nos. 7 and 8 and that another addition of unexplained cash 1,68,071/- u/s 69A of the Income Tax Act challenged vide Ground No, 3,4, 5,6 and 7 as above. However, we are of the view that let's take liberal stand and the appellant may be given one more opportunity to represent its matter before the Ld. CIT(A) to substantiate its claim and establish the source of disputed amount found at its residence and business premises during the course of search u/s 132 of the Act. Accordingly, we remand back the matter to the file of the Ld. CIT(A) to adjudicate the matter after granting one more opportunity of

being heard to the appellant assessee and pass an order as per law. No doubt, the appellant assessee shall co-operate in the fresh appellate proceedings.

16. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 17.05.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr./P.S.

Copy of the order forwarded to:

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

True Copy
By Order