

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,  
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 2270/DEL/2022 [A.Y. 2017-18]

L R Builders Pvt. Ltd.  
8233, LR Complex, Rani Jhansi  
Road, Near Filmistan Cinema  
Delhi - 110 006

Vs. The A.C.I.T  
Central Circle - 25  
New Delhi

PAN: AAACL 1446 Q

(Applicant)

(Respondent)

Assessee By : Shri R. S. Singhvi, C.A.  
Shri Satyajeet Goel, C.A.

Department By : Shri M. K. Pandey, Sr. DR

Date of Hearing : 06.07.2023

Date of Pronouncement : 10.07.2023

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order of the  
ld. CIT(A) -29 dated 21.07.2022 by the CIT(A)-29, New Delhi pertaining  
to Assessment Year 2017-18.

2. The grievances of the assessee read as under:

"1. Whether on the facts and in the circumstances of the case and in law, the Id. CIT (A) was justified in passing the order ignoring the provisions of section 250(6) of the Act which require him to dispose of the appeal stating points for determination, decision thereon and reasons for reaching the decision.

2. Whether on the facts and in the circumstances of the case and in law, the Id. CIT (A) was justified in passing an order without considering the material on record and in either ignoring or completely brushing aside the detailed written submissions filed by the appellant before the Assessing Officer.

3. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) is justified in confirming the addition made by the AO u/s 68 of the Act, invoking provisions of section 69 C without assigning any reasons.

4. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) is justified in upholding the addition made by the AO u/s 68 of the I.T. Act, 1961, even though the appellant has fully discharged the burden which lay upon it u/s 68 of the Act.

5. Whether on the fact and circumstances of the case and in law, the Id. CIT(A) was justified in upholding the contradictory findings of the AO wherein he has accepted source of cash deposit of

Rs. 1,00,000/-and rejected the explanation in respect of balance Rs.64,00,000/- even though the explanation in respect of all the deposits is identical i.e. the deposits have been made out of available cash balance and the appellant has produced the books of accounts in support thereof before the AO.

6. Whether on the fact and circumstances of the case and in law, the Id. CIT(A) was justifying in upholding the addition of Rs.64,00,000/- ignoring the fact that the books of account of the appellant company are duly audited, no defects have been found in the audited accounts and the book results based on the same transactions have been accepted by the Id. AO.

7. Whether on the facts and in the circumstances of the case and in law, the Id. CIT (A) has erred in upholding the addition of Rs. 64,00,000/- as it results in double taxation, since the amount of Rs 64,00,000 has been already included in the previous years computation of taxable income. The amount has been withdrawn and re- deposited during the demonetisation period.

8. That the order of the CIT (A) being erroneous in law and on facts needs to be vacated.

9. That the appellant craves to add or amend any one or more of the grounds of appeal as stated above as and when the need for doing so may arise."

3. The sum and substance of the grievance of the assessee is that the Id. CIT(A) erred in upholding the addition of Rs. 64 lakhs.

4. The representatives of both the sides were heard at length, the case records carefully perused and with the assistance of the Id. Counsel, we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules and have also perused the judicial decisions relied upon by both the sides.

5. Briefly stated, the facts of the case are that during the course of scrutiny assessment proceedings and as per the AIR information available on the systems of the department, the Assessing Officer came to know that the assessee has deposited specified bank notes [SBN] amounting to Rs. 65 lakhs during the demonetization period.

6. The assessee was asked to explain the source of cash deposits.

7. In its reply, the assessee explained that cash deposits of Rs. 65 lakhs made in SBN were out of cash in hand available with the assessee on the dates of deposit. It was further explained that cash was available because of constant withdrawals from bank, as is evident from the books of account.

8. The explanation of the assessee was dismissed by the Assessing Officer who was of the firm belief that no person will make high withdrawals unless there is need to incur expenditure of the matching volume.

9. The Assessing Officer further observed that the assessee has built up cash balance by way of showing quite low expenses in comparison to the withdrawals just to carry on maximum cash balance till 08.11.2016.

10. These observations of the Assessing Officer are not only baseless but also illogical. According to the Assessing Officer, it appears that the assessee was well aware of the announcement to be made by the

Hon'ble Prime Minister on the night of 8<sup>th</sup> of November and, therefore, according to the Assessing Officer, was making withdrawals from the bank to deposit cash in SBN subsequently.

11. In our considered opinion, the entire exercise of the Assessing Officer is based on an illogical assumption. It is not understandable how the Assessing Officer has remarked "Perusal of the cash book reveals that since the beginning of the year 2016, the assessee was making high value withdrawals.

12. In the wildest of its dreams, it could not be accepted that the assessee was knowing the demonetization date and time. A careful perusal of the factual matrix shows that nowhere the Assessing Officer has pointed out any error or defect in the books of account of the assessee. In fact, the Assessing Officer himself has accepted the fact that since the assessee is a real estate dealer, where involvement of cash is normal and yet without questioning the cash book, the Assessing Officer has made the impugned observations.

13. We find that the cash withdrawals have been duly reflected in the cash book vis a vis bank statement for the year under consideration and no defect has been pointed out in the cash books and cash flow statement.

14. In our considered opinion, once cash book has not been rejected by the Assessing Officer/ld. CIT(A) and cash deposits are duly reflected in the regular books of account maintained by the assessee, additions cannot be made on the basis of surmises and conjectures. We, therefore, set aside the findings of the ld. CIT(A) and direct the Assessing Officer to delete the impugned addition.

15. In the result, the appeal of the assessee in ITA No. 2270/DEL/2022 is allowed.

The order is pronounced in the open court on .07.2023.

Sd/-

**[ASTHA CHANDRA]**  
**JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

Dated: 10<sup>th</sup> JULY, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	