IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA Nos.193 to 195/SRT/2022

Assessment Years: (2015-16 to 2017-18)

(Physical Hearing)

Ravi Mahexa, 14/55, Dilipnagar Near Dilip Nagar Ground, Daman, Daman – 396210, Daman and Diu (UT) Ravi Mahexa 14/55, Dilipnagar Near Dilip Nagar Ground, Daman, Daman & Diu (UT) - 396210	**Vs.**	Income Tax Officer, Ward-5, Vapi, Fortune Square, 7th Floor, 8th Floor & 9th Floor, II, Chala Road, Vapi-396191 Income Tax Officer, Daman Ward, Daman Jevanji Apartment, Kavi Khabardar Road, Daman-396210 Vapi
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **APKPM1888H**		
(Assessee)		**(Respondent)**

Assessee by	Shri P. M. Jagasheth, CA
Respondent by	Shri Minal Kamble, Sr. DR
Date of Hearing	19/07/2023
Date of Pronouncement	31/07/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned three appeals filed by the assessee, pertaining to Assessment Years (AYs) 2015-16 to 2017-18, are directed against the separate orders passed by the National Faceless Appeal Centre, Delhi [in short "the 'NFAC'/ld. CIT(A)"], which in turn arise out of separate assessment orders passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. Since, the issues involved in all these appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the

grounds as well as the facts narrated in ITA No.195/SRT/2022 for assessment year 2017-18, have been taken into consideration for deciding the above appeals *en masse*.

3. Although, these three appeals filed by the assessee, for assessment years 2015-16 to 2017-18, contain multiple ground of appeals. However, at the time of hearing we have carefully perused all the grounds raised by the assessee. We find that most of the grounds raised by the assessee, are either academic in nature or contentious in nature. However, to meet the end of justice, we confine ourselves to the core of the controversy and main grievances of the assessee. With this background, we summarize and concise the grounds raised by the assessee, in these three appeals, as follows:

(A) Summarized and concise Grounds of appeal raised by the assessee, in lead case in ITA No.195/SRT/2022, where books of accounts of assessee were rejected by the assessing officer under section 145(3) of the Act, are as follows:

(i) Ground No.1 raised by the assessee, in ITA No. 195/SRT/2022, are as follows:

"1. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in making addition of Rs.1,51,54,990/- on account of cash deposited in the bank accounts in the period of demonetization remained unexplained treated as alleged unexplained cash credit u/s 68 of the Income Tax Act, 1961.

(ii) Ground No.2 raised by the assessee, in ITA No. 195/SRT/2022, are as follows:

"2. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in making addition of Rs.29,81,883/- on account of estimation of gross profit after rejecting the book result of the assessee."

(iii) Ground No.3 raised by the assessee, in ITA No. 195/SRT/2022, is as follows:

3. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in making addition of Rs.15,60,000/- on account of disallowance of salary and bonus expenses.

(iv) Ground No.4 raised by the assessee, in ITA No. 195/SRT/2022, is as follows:

4. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in making addition of Rs.1,53,862/- on account of disallowance of deduction claimed under Chapter VI-A.

(v) Ground No.5 raised by the assessee, in ITA No. 195/SRT/2022, is as follows:

"5. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in making addition of Rs.2,00,005/- on account of cash payment of purchases as per provisions of section 40A(3A) of the Act, 1961.

(vi) Ground No.6 raised by the assessee, in ITA No. 195/SRT/2022, are as follows:

"*6. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in calculating tax rate as per the rate specified u/s. 115BBE of the Act."*

(B) Summarised and concise Grounds of appeal raised by the assessee, in ITA No.193/SRT/2022, and in ITA No.194/SRT/2022, where books of accounts of assessee were not rejected by the Assessing Officer under section 145(2) of the Act, are as follows:

(i) Ground No.2 raised by the assessee in ITA No.194/SRT/22 and Ground No.4 raised by the assessee in ITA No.193/SRT/22, are as follows:

On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in making addition on account of disallowance of salary and bonus expenses. (disallowance in ITA

No.193/SRT/22 at Rs.10,10,630/- and disallowance in ITA No194/SRT/22 at Rs.9,88,000/-)

(ii) Ground No.3 raised by the assessee in ITA No.194/SRT/22, are as follows:

On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in making addition of Rs.1,54,950/- on account of disallowance of deduction claimed under Chapter VI-A.

(iii) Ground No.7 raised by the assessee in ITA No.194/SRT/22, and Ground No.3 raised by assessee in ITA No.193/SRT/22 are as follows:

On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in making addition on account of cash payment of purchases as per provisions of section 40A(3A) of the Act, 1961. (disallowance in ground no.7 in ITA No.194/SRT/22 at Rs.38,000/- and Ground No.3 in ITA No.193/SRT/22 at Rs.11,88,236/-)

(iv) Ground No.1 raised by the assessee, in ITA No. 194/SRT/2022, and ground No. 2 raised by the assessee, in ITA No.193/SRT/2022, are as follows:

"On the facts on the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax(Appeals) has erred in confirming the action of assessing officer in making the addition of Rs.3,60,152/- on account of alleged bogus purchases. (Similar disallowance in ITA No.193/SRT/2022 at Rs.1,62,163/-)

(v) Ground No.1 raised by the assessee, in ITA No. 193/SRT/2022, is as follows:

"On the facts on the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs.49,302/- on account of alleged unexplained creditor."

(iv) Ground No.4 raised by the assessee, in ITA No. 194/SRT/2022, is as follows:

"On the facts on the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in

confirming the action of assessing officer in making the addition of Rs.4,31,479/- on account of alleged unexplained investment to the fixed assets."

(v) Ground No.5 raised by the assessee, in ITA No. 194/SRT/2022, is as follows:

"On the facts on the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in making the addition of Rs.32,361/- on account of disallowance of depreciation."

(vi) Ground No.6 raised by the assessee, in ITA No. 194/SRT/2022, is as follows:

"On the facts on the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in making the addition of Rs.51,460/- on account of disallowance of various expenses claimed in profit and loss account"

(vii) Grounds raised by the assessee, which do not require adjudication:

"Ground No.7 raised by the assessee, in ITA No. 195/SRT/2022, in respect of initiating of penalty proceedings u/s.271AAC(1) of the Act, and ground No.8 in ITA No. 195/SRT/2022, in respect of initiating penalty proceedings u/s 270A of the Act and Ground No.8 in ITA No. 194/SRT/2022, in respect of initiating penalty proceedings u/s 271(1)(c) of the Act."

4. **First, we shall adjudicate the Summarized and concise grounds of appeal raised by the assessee, in lead case in ITA No.195/SRT/2022, where books of accounts of assessee were rejected by the Assessing Officer u/s 145(3) of the Act. The summarized and concise ground No.1 is reproduced below for ready reference:**

(i) Ground No.1 raised by the assessee, in ITA No. 195/SRT/2022, are as follows:

"1. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in making addition of Rs.1,51,54,990/- on account of cash deposited in the bank accounts in the

period of demonetization remained unexplained treated as alleged unexplained cash credit u/s 68 of the Income Tax Act, 1961.

5. Brief facts of the issue in dispute are stated as under. The assessee before us is an Individual and filed his return of income for assessment year (A.Y.) 2017-18, on 05.03.2018, declaring total income to the tune of Rs.10,04,840/-. The assessee`s case was selected for scrutiny through CASS with a tag "Limited scrutiny". Accordingly, notice u/s 143(2) of the Act, was issued on 23.08.2018 which was duly served upon the assessee and subsequently notice u/s 142(1) of the Act, was issued on 13.09.2019. In response to the notice of the Assessing Officer, the assessee furnished before the Assessing Officer, copy of profit and Loss account, copy of balance sheet, copy of ledger account and copy of confirmation of purchaser's parties from their books of accounts.

6. During the assessment proceedings, the Assessing Officer noticed that assessee has made substantial cash deposit in his various bank Accounts held by the him in the Union Bank of India, Dena Bank and HDFC bank. In connection with the same, letter u/s 133(6) of the Act was issued to the concerned bank, requiring to submits the details of the all Bank accounts held by the assessee. In the response, the Bank has provided the details. On perusal of details available on record in the bank statement, it was noted that there are substantial cash deposit made in the below mentioned bank accounts during the period of demonetization in the year under consideration. The details of such cash deposit in the bank accounts in the period of demonetization are summarized as under:

Name of the Bank, Branch	Account No.	Cash deposits made during demonetization period (i.e. from 09.11.2016 to 30.12.2016) *as* reported by assessee in his return of income
Union Bank of India	528101010036255	Rs.59,65,850/-

Dena Bank	45611000154	Rs.3,07,00,000/-
HDFC Bank	50200007106402	Rs.27,16,490/-
Total		**Rs.3,93,82,340/-**

As evident from the above chart, the Assessing Officer noted that assessee has made total cash deposit of Rs.3,93,82,340/- in the above-mentioned bank accounts during the period of demonetization in the year under consideration. Out of Rs.3,93,82,340/-, the specified bank notes (of Rs.500/1000) were to the tune of Rs.1,51,54,990/- and the remaining cash deposit of Rs.2,42,27,350/- (Rs. 3,93,82,340 - Rs.1,51,54,990) in the bank accounts, in the period of demonetization were in the other legal currency (Rs.2000/Rs.100/Rs.50 etc.) in the period of demonetization, hence considered by the Assessing Officer, as part of the business turnover of the assessee.

7. However, Assessing Officer held that since the assessee failed to furnish proper explanation, regarding cash deposit made in specified bank notes in the above bank accounts, in the period of demonetization. Therefore, in view of above facts, cash deposited of Rs.1,51,54,990/- (Rs.29,38,500 + Rs.95,00,000 + Rs.27,16,490/-) in the specified bank notes (of Rs.500/1000) in the above three bank accounts of the assessee in the period of demonetization were considered by the Assessing Officer, as unexplained in the hand of the assessee, therefore, Assessing Officer made addition u/s 68 of the Act.

8. On appeal, by the assessee, the ld CIT(A) has confirmed the action of the Assessing Officer, therefore, assessee is in further appeal before us.

9. Shri P. M. Jagasheth, Learned Counsel for the assessee, begins by pointing out that during the assessment stage the assessee furnished before the Assessing Officer, copy of profit and loss account, copy of

balance sheet, copy of ledger account and copy of confirmation of purchaser's parties from their books of accounts, bank statements etc. The ld Counsel stated that Assessing Officer did not find any defect in these documents and evidences except to say that assessee`s explanation is not acceptable. In addition to this, Ld. Counsel also submitted before us the following documents to explain the concept Legal Tender Money and Non-Legal Tender Money.

(i) Distinguished between Legal Tender Money and Non-Legal Tender Money (vide Pb. 1)
(ii) Part of Coinage Act, 2011 (vide Pb.2)
(iii) Part of RBI Act, 1934 (vide Pb.3 to 4)
(iv) Section 2(75) – Definition of "money" under CGST Act (vide Pb.5 to 6)
(v) Internet and Mobile Association vs. Reserve Bank of India, Writ Petition (Civil) No. 528 of 2018 (SC) (vide Pb.7 to 9)
(vi) Part of Indian Penal Code (vide Pb.10 to 11)
(vii) Part of the specified bank notes (Cessation of Liabilities) Bill, 2017 (vide Pb.12 to 14)

10. The ld Counsel, thus stated that provisions of section 69A of the Act are not applicable on deposits made post-demonetization since currency`s value guaranteed till December 31, 2016. For that ld Counsel relied on the Judgment of Coordinate Bench of ITAT Visakhapatnam, in ITA No.76/Viz/ 2021 in the case of Sri Tatiparti Satyanarayana, order dated 16.03.2022, wherein the Co-ordinate Bench held as follows:

> *"9. We have heard both the parties and perused all the documents on record. We find that though sufficient cash balance with the assessee as detailed in page No.30 of the paper book. The Specified Bank Notes (Cessation of Liabilities) Act,2017, defines "appointed day" vide Section 2(1)(a). AS per Section 2(1)(a) "appointed assessment year" means the 31st Day of December 2016. Section 5 of the Specified Bank Notes (Cessation of Liabilities) Act,2017 also deals with prohibition on holding transferring or receiving specified bank notes. Section 5 states that "On and from the*

appointed day, no person shall knowingly or voluntarily, hold, transfer or receive any specified bank note". We therefore, find that the specified bank notes can be measured in monetary terms since the guarantee of the Central Government and the liability of Reserve Bank of India does not cease to exist till31.12.2016. In view of the above, the contention of the Ld. DR, treating the receipt of SBNS from cash sales as illegal and thereby invoking the provisions of section 69A is not valid in law. Therefore, we dismiss this ground of the Revenue."

11. The ld Counsel also argued that during demonetization period, the purchase and sale of the assessee was normal. During demonetization period the assessee`s sales was less as compared to previous month`s sales and all expenses of the assessee were normal. The assessee`s liquor business is subject to strict control of excise authorities and State Government Rules, and assessee is maintaining day to day stock register, hence there is no chances of manipulation. Therefore considering these facts, the addition made by the Assessing Officer is not justified.

12. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

13. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials brought on record. Though facts have been discussed in detail in the foregoing paragraphs, however in the succinct manner, the relevant facts and background are reiterated in order to appreciate the controversy and the issue for adjudication. The summarized ground No.1 pertains to addition of Rs.1,51,54,990/- as unexplained cash credit u/s 68 of the Act. During the year under consideration, the Assessing Officer observed that the

assessee has made substantial cash deposit in its various bank accounts held by them. In connection with the same, notice u/s 133(6) of the Act was issued by Assessing Officer to the concerned bank, requiring submission of details of all bank accounts held by the assessee. In the response, the bank has provided the details. On perusal of details available on record, the Assessing Officer noticed that there was substantial cash deposit made in the below mentioned bank accounts during the period of demonetization period. The details of such cash deposit in the Bank Accounts in the period of demonetization are summarized in the assessment order as under:

Name of the Bank	Account No.	Cash deposits made during demonetization period (i.e. from 09.11.2016 to 30.12.2016) as reported by assessee in his return of income	Cash deposits in specified demonetized currency notes
Union Bank of India	528101010036255	Rs.59,65,850/-	Rs 29,38,500/-
Dena Bank	45611000154	Rs.3,07,00,000/-	Rs 95,00,000/-
HDFC Bank	50200007106402	Rs.27,16,490/-	Rs 27,16,490/-
Total		Rs.3,93,82,340/-	Rs 1,51,54,990

14. The Assessing Officer observed that the assessee has made total cash deposit of Rs.3,93,82,340/- in the above mentioned bank accounts during the period of demonetization. After due verification, the Assessing Officer reached the conclusion that amount of cash deposit by the assessee to the tune of Rs.2,42,27,350/- (Rs.3,93,82,340-Rs.1,51,54,990) is genuine money of the assessee, therefore Assessing Officer did not make addition in respect of the cash deposited in these bank accounts to the tune of Rs.2,42,27,350/-. However, the part amount of cash deposit to the tune of Rs.1,51,54,990/- was considered by the

Assessing Officer, as ingenuine money of the assessee, that is, Assessing Officer was of the view that a part cash deposit in bank account, at Rs.1,51,54,990/- is an unaccounted (not genuine) money of the assessee. The solitary base and main reason in the mind of the Assessing Officer to make addition of Rs.1,51,54,990/- was that said cash deposit was made by the assessee, out of the specified demonetized currency notes. The cash deposited by the assessee in the bank account, during the demonetization period, to the tune of Rs.2,42,27,350/-, was considered by the Assessing Officer, as a genuine money earned by the assessee, because the currency so deposited by the assessee in the bank account was not specified demonetized currency notes, however, we note that after all, it is also a cash deposited by the assessee in its bank accounts, during the demonetization period, which was not subject to addition u/s 68 of the Act. The acceptance of cash deposit by Assessing Officer in the bank account to the tune of Rs.2,42,27,350/-, as a genuine money, earned by the assessee, during the course of doing business, clearly shows that assessee's sales are genuine, and it also shows that in assessee`s business the cash transactions are allowed.

However, the cash deposit of Rs.1,51,54,990/-, was considered by the Assessing Officer, as if, it was not earned by the assessee by way of doing business just because the said cash deposited was made by the assessee, out of specified demonetized currency notes. We note that during the period of demonetization, the assessee`s business was going on (it was not stopped), and as informed by ld Counsel that assessee is still doing the same business, therefore the assessee supposed to accept specified demonetized currency notes and the same notes were deposited by the assessee in his bank account, therefore, considering the above narrated facts, the cash deposit of Rs.1,51,54,990/-, should be considered, as

genuine money of the assessee, earned out of assessee's business activities.

15. As rightly pointed out by the ld Counsel that to prove the cash deposit of Rs.1,51,54,990/-, as genuine money earned out of business activities, the assessee, submitted before the Assessing Officer, the copy of profit and Loss account, copy of balance sheet, copy of ledger account, copy of confirmation of purchaser's parties from their books of accounts and copy of bank statement etc, and these documents and evidences were on the record of the Assessing Officer. The Assessing Officer did not find any defect in these documents and evidences except to say that assessee`s explanations are not acceptable. We note that just to say (by assessing officer) that assessee`s explanations are not acceptable, is not a sufficient scrutiny u/s 143(3) of the Act. The purpose of the scrutiny assessment u/s 143(2)/ 143(3) of the Act, is to examine the documents and evidences submitted by the assessee and to find out the defect/mistake in these documents and evidences and then make addition, if any, in the hands of the assessee, the said exercise has not been done by the Assessing Officer. We note that Assessing Officer did not highlight any mistake in the Profit and Loss account, Balance Sheet, ledger account, copy of confirmation of purchaser's parties. There are no any findings of the Assessing Officer, in his assessment order that these essential documents and evidences, submitted by the assessee, were false and fabricated. We note that Assessing Officer has not refuted or discredited these evidences and documents. The Assessing Officer does not mention why he is not accepting these evidences. On the contrary, the Assessing Officer has just brushed aside these evidences, without even a word on why they are not acceptable. It is a well settled law that when an assessee has all the possible evidence in support of its claim, they cannot be brushed aside

based on surmises. Based on this factual position, we are of the view that Assessing Officer made addition based on guesswork, hence, such addition is not tenable in the eye of law.

16. We also note that assessee`s liquor business is subject to strict control of excise authorities and State Government Rules, and assessee is maintaining day to day stock register. Besides, cash deposit in the bank account to the tune of Rs.2,42,27,350/-, was accepted by the Assessing Officer, as a genuine money earned by the assessee during demonetization period, therefore balance amount of cash deposit by the assessee to the tune of Rs.1,51,54,990/-, should also be considered, as genuine, it should not be given a different treatment, as the Assessing Officer accepted the cash transaction in assessee's business. Neither the Assessing Officer nor ld CIT(A) have proved, with cogent evidence, that this is unaccounted income of the assessee. Moreover, the turnover which belongs to so cash deposited by the assessee at Rs.1,51,54,990/-, in its bank account, has been offered for tax by the assessee, hence there is no loss to the revenue. We note that Coordinate Bench of ITAT in the case of Neena Praful Sawlani, in ITA No.216/SRT/2021, for A.Y. 2017-18, order dated 17.10.2022 on identical facts, held as follows:

"10. We have considered the submissions of both the parties and have gone through the orders of the lower authorities carefully. There is no dispute that assessee made certain cash deposit in her two bank accounts during demonetization year and subsequent period thereto. Before the Assessing Officer, the assessee, in reply to show cause specifically contended that she is engaged in the jewellery designing, has shown labour receipt. We find that the assessee has not shown the income from labour receipt for the first time, similar business receipt/labour receipt was also shown in preceding year which was accepted by the lower authorities. Before the ld. CIT(A), the assessee filed detailed written submissions. The ld. NFAC instead of giving any finding on the various submission as well as on the evidences furnished by assessee concluded that the assessee had not brought any material on record to establish the genuineness of cash receipts. We find that the lower authorities have not considered ratio of similar cash deposit in previous and subsequent financial year. We find that in previous financial year i.e. pre-demonetization year i.e. 01/4/2015 to 31/3/2016, the assessee has shown income from labour charges of Rs. 13,43,585/-. For the year under dispute, the assessee has shown labour receipt/income of Rs. 16,92,935/-. In subsequent financial year i.e. post-demonetization year starting from 01/04/2017 to 31/03/2018, the

assessee has shown labour receipt of Rs. 18,62,837/-. Comparing of such labour receipt shows, there is gradual increase in the labour receipt.

11.We further find that before the ld. CIT(A), the assessee has given complete details/month wise labour receipt and highest labour receipt were shown in the month of August and September, 2016. In the month of November (demonetization declared month), the assessee has shown merely receipt of Rs. 14,100/- and similarly in December, 2016 Rs. 29,350/- and in January, 2017 Rs. 14,685/- only. Such receipts are not disputed. The deposits in bank account also shown that the assessee was regularly making deposit in the bank account. We find that on such labour receipt, the assessee has shown substantial gross profit i.e. @ 25.78%. The assessee has also categorically contended before the ld. CIT(A) that closing the cash in hand as on 31/3/2016 with assessee was Rs. 2,56,472/- and cash in hand as on the date of declaration of prohibition of specified bank note of Rs. 500 and Rs. 1000 as on 08/11/2016, the assessee was having cash in hand of Rs. 12,31,067/-. Such details were not disputed by the ld. NFAC. The ld. NFAC simply held that the assessee has not brought any evidence on record to establish the genuineness of cash receipt. Before us, the ld. AR of assessee vehemently submitted that in response to show cause notice regarding the cash deposit in bank in F.Y. 2015-16 and 2016-17, the assessee furnished complete details showing cash deposit as well as month-wise cash sales and cash deposit, complete details of which is furnished as per page No. 23 to 26 of the paper book (reply filed before the Assessing officer). We find that the Assessing Officer has not given any adverse finding on such details and simply extracted para 1 of reply of assessee in his order. On perusal of such details, we find that overall deposits in bank accounts in preceding financial year and subsequent financial year do not show abnormal differences.

12.We find that the Coordinate Bench (SMC Bench) of Delhi Tribunal in Mr. Atish Singla Vs ITO (supra) had dealing with the similar issue on account of cash deposit in bank account during demonetization year wherein the addition was made under Section 68 of the Act, passed the following order:

"7. I have considered the rival arguments made by both the sides, perused the orders of the A.O. and the Ld. CIT(A), NFAC and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the A.O. in the instant case made addition of Rs.39,60,000/- to the total income of the assessee on the ground that assessee could not explain the source of cash deposit made in the bank account during the demonetization period. I find the Ld. CIT(A), NFAC upheld the action of the A.O, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the Learned Counsel for the Assessee that cash deposited in the bank account represents partly the sale proceeds in cash and partly realization from debtors, for which, complete details were filed before the A.O. as well as the Ld. CIT(A), NFAC and without giving any justifiable reasons, the A.O. has made the addition which has been sustained by the Ld. CIT(A), NFAC and, therefore, the same is not in accordance with law. It is also his submission that when the assessee has opted for presumptive tax under section 44AD and the total sales as declared by the assessee at Rs.90,66,440/- is much more than the cash deposits made in the bank account and when the assessee has realised an amount of Rs.38,32,509/- from the debtors standing recovered as on 01.04.2016, such addition made by the A.O. which has been sustained by the Ld. CIT(A), NFAC is not justified.

I find some force in the above arguments advanced by the Learned Counsel for the Assessee. Admittedly, the assessee has filed its return of income by opting for presumptive tax under section 44AD of the I.T. Act, 1961. Further the gross sales made during the year at Rs.90,66,440/- is not in dispute. The assessee has

closed down its business during the subsequent year and assessee has filed the chart showing name and address and PAN of sundry debtors from whom cash payments were received during the A.Y. 2017-18, copies of which are placed at pages 49-50 of the PB which are not disputed by the lower authorities. Therefore, I am of the considered opinion that the A.O. should not have brushed aside the submission of the Counsel for the Assessee without bringing any other material to rebut the same. I find the assessee has filed copies of ledger account and confirmations received from various debtors and also the chart showing the purchases made during the year along with copies of ledgers of creditors. Therefore, I find merit in the arguments of the Learned Counsel for the Assessee that without bringing any material to rebut the various details furnished by the assessee and considering the fact that assessee has opted for presumptive tax under the provisions of Section 44AD, the A.O. should not have made the addition.

I find the Coordinate Bench of the Tribunal in the case of Kishore Jeram Bhai Khaniya vs., ITO (supra) while deleting the addition under section 68 of the I.T. Act, 1961 made by the A.O. on account of cash deposit has observed as under:

> *"There is another dimension to this issue. The Assessing Officer made addition of Rs. 22.06 lacs u/s 68 of the Act, which contemplates the making of addition where any sum found credited in the books of the assessee is not proved to the satisfaction of the A.O. It is only when such a sum is not proved that the Assessing Officer proceeds to make addition u/s 68 of the Act. We are dealing with a situation in which the assessee has himself offered the amount of cash sales as his income by duly including it in his total sales. Once a particular amount is already offered for taxation, the same cannot be again considered u/s 68 of the Act. In fact, such addition has resulted into double addition."*

Similarly, I find the Indore Bench of the Tribunal in the case of ACIT vs., Dewas Soya Ltd., (supra) has observed as under :

> *"The claim of the appellant that such addition resulted into double taxation of the same income in the same year is also acceptable because on one hand cost of the sales has been taxed (after deducting gross profit from same price ultimately credited to profit & loss account) and on the other hand amounts received from above parties has also been added u/s. 68 of the Act. This view has been held by the Hon'ble Supreme Court in the case of CIT v. Devi Prasad Vishwanath Prasad [1969] 72 ITR 194 that "It is for the assessee to prove that even if the cash credit represents income, it is income from a source, which has already been taxed. The assessee has already offered the sales for taxation hence the onus has been discharged by it and the same income cannot be taxed again."*

I find the Coordinate Bench of the Tribunal in the case of M/s. Singhal Exim P. Ltd., vs., ITO (supra) while deleting the addition made under section 68 of the I.T. Act, 1961 made on account of cash deposit has observed as under:

> *"9. Further, we find the stand of the Assessing Officer to be contradictory. On one hand, he mentioned the high sea sales to be not genuine and on the other, he has accepted the business income disclosed by the assessee. Admittedly, the business income disclosed by the assessee has been worked out after considering the purchases and sales of mobile phones. The sales included the high sea sales also. Once the Assessing Officer has accepted the trading results, he has accepted the sales including high sea sales. Therefore, his stand while making the addition under Section 68 or*

69C is contradictory to his stand taken while accepting the business income which is not permissible in law.

In view of the above, we hold that the Assessing Officer was not right in concluding that the high sea sales are not genuine. Moreover, Section 68 would also not be applicable in respect of recovery of sales consideration. Once the assessee sold the goods, the buyer of the goods becomes the debtor of the assessee and any receipt of money from him is the realisation of such debt and therefore, we are of the opinion that in respect of recovery of sale consideration, Section 68cannot be applied. In view of the above, we find no justification for upholding the addition of Rs.59,51,29,517/-. The same is deleted."

I find the Ahmedabad Bench of the Tribunal in the case of Shree Sanand Textile Industries Ltd., vs., DCIT (supra) while deleting the addition made by the A.O. under section 68 of the I.T. Act, 1961 on account of cash deposit has observed as under:

"9.3. Admittedly, the amount of sale as claimed by the assessee was offered to tax by reflecting the same in the trading and profit and loss account. This fact has not been doubted by the authorities below. However, the existence of the parties was not proved by the assessee based on the documentary evidence during the proceedings. Accordingly, the learned CIT (A) treated the amount received from such parties as unexplained cash credit under section 68 of the Act. In this connection we note that the impugned amount has been taxed twice firstly the same was treated as sales and secondly the same was treated as unexplained cash credit under section 68 of the Act. Even if we assume that the action of the learned CIT (A) is correct i.e. the impugned amount is representing the cash credit as provided under section 68 of the Act. Then, the learned CIT (A) was duty-bound to reduce the same from the amount of sales as the same does not represent the sale but unexplained cash credit. As such, the same amount cannot be held taxable twice as per the wish of the learned CIT (A). In our considered view the action of the learned CIT (A) is erroneous to the extent of treating the same as sale proceeds and the unexplained cash credit simultaneously.

However, we are also conscious to the fact that there is no allegation from the authorities below that the impugned amount represents the unexplained cash credit over and above the sale proceeds. We also find important to refer the provisions of section 68 of the Act which reads as under :

From the above, we note that the provisions of section 68 of the Act can be attracted where there is a credit found in the books of accounts and the assessee failed to offer any explanation or the offer made by the assessee is not satisfactory in the opinion of the assessing officer. The assessee has explained to the authorities below that the impugned amount represents the sale which has not been doubted by the authorities below. Thus in our considered view, the impugned amount cannot be treated as unexplained cash credit under section 68 of the Act merely on the ground that the assessee failed to furnish the details of the existence of the parties. We also note that the provisions of section 68 cannot be applied in relation to the sales receipt shown by the assessee in its books of accounts. It is because the sales receipt has already been shown in the books of accounts as income at the time of sale only.

We are also aware of the fact that there is no iota of evidence having any adverse remark on the purchase shown by the assessee in the books of

accounts. Once the purchases have been accepted, then the corresponding sales cannot be disturbed without giving any conclusive evidence/finding. In view of the above we are not convinced with the finding of the learned CIT(A) and accordingly we set aside the same with the direction to the assessing officer to delete the addition made by him". The various other decisions relied on by the Learned Counsel for the Assessee in the case law compilation and synopsis also support the case of the assessee to the proposition that when the nature and source of old currency notes is fully supported and substantiated, no addition under section 68 of the I.T. Act, 1961 can be made. In this view of the matter, I am of the considered opinion that the Ld. CIT(A), NFAC was not justified in sustaining the addition of Rs.39,60,000/- made by the A.O. on account of cash deposit in the bank account. I, therefore, set aside the order of the Ld. CIT(A), NFAC and direct the A.O. to delete the addition. Grounds raised by the assessee are accordingly allowed.

In the result, appeal of the Assessee is allowed."

13.Considering the aforesaid factual and legal discussion and specifically keeping in view that despite furnishing complete details for previous and subsequent period of demonetization year, the assessee has discharged his onus by showing the magnitude of cash deposit, during demonetisation period was not at much variance, comparative to previous and subsequent period, therefore, the addition made by Assessing Officer does not stand in judicial scrutiny and we direct to delete the addition made."

17. Our view is also fortified by the judgment of the Coordinate Bench of ITAT Surat in the case of K.N. Diamond, in ITA No.104 & 106/SRT/2022 , for AY 2017-18, wherein it was held as follows:

"17.Again adverting to the facts of the present case. As recorded above during the assessment the assessing officer examined the issue in depth as recorded in para -2 (supra). The assessing officer noted that assessee has made cash deposited of Rs.77.00 lakhs in HDFC bank during demonetization period. Show cause notice to explain the deposit of cash was issued to the assessee and was asked to furnish the details regarding source of such huge cash amount during such demonetization period. The assessee in response such show cause notice submitted that cash was deposited from the sales made during the year. We find that the assessee furnished the required details and contended that Rs.29,31,752/- was deposited in cash from the sale in the month of October, 2016 and Rs.49,57,789/-was on account of cash sale from the period of 01.11.2016 to 08.11.2016 respectively. Further, the Assessing Officer compared such details with earlier year and find certain discrepancy. The Assessing Officer issued fresh show cause notice to the assessee to furnish complete details of customers to whom the sales were made in cash from 01.10.2016 to 08.11.2016 and was asked to furnish supportive evidence to explain the genuineness of such sales for such period. The assessee filed its reply, vide reply dated 17.12.2019. The assessee in its reply explained that there is nothing abnormal about cash sales, which took place in the current year, just there was a currency note demonetization during the assessment under consideration should not lead to presumption that this transaction is abnormal and suspicious. The assessee provided the details with date of sales, name of customers, address of customers, description of sales gross weight of jewellery, diamond weight and amount utilized on such sales. The assessee took plea that as per Rule 114B of the Income Tax Rules, 1963, the assessee is not under obligation to obtain PAN of the customers, in case the sale was not exceeding rupee two lakh in any of the case. The assessee stated that

independent inquiry may be made. We find that assessee also provided sales made in the month of October, 2016 VAT returns, filed before VAT authority under statutory obligation, copy of VAT return of the month of October and November, 2016. The assessee also furnished cash book, sale book for the month of October and November, 2016, wherein stock register showing the entries of sales and names and complete address of the customers to whom cash sales were made. The assessee stated that there is no scope of any doubt that assessee has furnished names and addresses of such customers, sales invoices, statutory VAT return. We further find that after considering the material before assessing officer, the assessing officer made addition of 10% of the total cash deposit during the month of October and November 2016. On the basis of aforesaid factual discussions and on the basis of details called for by Assessing Officer, we find that the Assessing Officer after calling the details of cash deposit, while making addition of 10% of cash deposit of Rs. 77.00 lacs, being income component, which is a reasonable addition. The addition made by assessing officer is plausible and legally sustainable view, which cannot be branded as erroneous.

16. The coordinate bench of Rajkot Tribunal in Premji Valji & Sons in ITA NO. 125/Rjt) 2022, while considering the appeal against the order under section 263, wherein the assessment order was revised by ld PCIT on the similar issue of deposits of cash during demonetisation period held that when the assessing officer made inquiries and after considering the material accepted the genuineness of the claim of the assessee, the assessment order is not erroneous. However, the appeal in hand is on better footing, as the assessing officer has made addition of 10% of such deposits to tax the profitability as if such transaction was a result of inflated sales.

17. The Hon'ble Jurisdictional High Court in Aryan Arcade Ltd., Vs PCIT (2019) 412 ITR 277 (Gujarat) held that merely because Commissioner held a different belief that would not permit him to take the order in revision, it if further held that when Assessing Officer made full enquiry, he made up his mind, the notice of revision is not valid. In CIT Vs Nirma Chemical Works (P) Ltd (supra), the Hon'ble High Court also held that when assessing officer after making due inquiries had adopted one of the view and granted partial relief, merely because Commissioner took a different view of the matter, it would not be sufficient to permit commissioner to exercise his powers under section 263. The Hon'ble Court in para 22 of its order on the objection of the revenue that there is no discussion of the issue in the assessment order held that the contention on behalf of the revenue that the assessment order does not reflect any application of mind as to the eligibility or otherwise under section 80-I of the Act requires to be noted to be rejected. An assessment order cannot incorporate reasons for making/granting a claim of deduction. If it does so, an assessment order would cease to be an order and become an epic some. The reasons are not far to seek. Firstly, it would cast an almost impossible burden on the Assessing Officer, considering the workload that he carries and the period of limitation within which an order is required to be made; and, secondly, the order is an appealable order. An appeal lies, would be filed, only against disallowances which an assessee feels aggrieved with.

20. Thus, in view of the aforesaid factual and legal discussions, in our view, the investigation conducted and the view adopted by the assessing officer in the present case, if not accepted by the Ld. PCIT, is nothing but change of opinion. It is settled position in law that no revision of assessment order is permissible on mere change of opinion.

21. As we have already held that on the basis of material before the assessing officer, he took reasonable, plausible and legally sustainable view, which cannot be branded as erroneous. There is no doubt that while accepting the claim in the assessment, there may be some loss of revenue, tax can be levied only with the authority of law, and every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the revenue unless the view adopted by assessing officer permissible in law. Once the assessing officer has taken one view with which the Commissioner does not agree, it

cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the assessing officer is unsustainable in law. In our view the observation of Ld. PCIT held that Assessing Officer passed assessment order without making proper inquiries and verifications and cash sales were not made in accordance with law as per Instruction of Central Board of Direct Taxes Circular No.4/2017 dated 03.03.2017, or the source of cash deposits remained unexplained, is not correct. In the result, the grounds of appeal raised by the assessee is allowed."

18. Therefore, considering the documents and evidences submitted by the assessee, we note that assessee has discharged his onus to prove the genuineness of balance amount of cash deposited by the assessee to the tune of Rs.1,51,54,990/- in his bank account, hence, we are not inclined to accept the contention of the Assessing Officer in any manner and hence the addition so made is deleted. Hence ground No.1 raised by assessee in ITA No.195/SRT/2022 is allowed.

19. The summarized and concise ground No.2 raised by the assessee, in ITA No. 195/SRT/2022, is reproduced below for ready reference:

> *"2. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in making addition of Rs.29,81,883/- on account of estimation of gross profit after rejecting the book result of the assessee."*

20. Succinct facts *qua* the issue are that during the course of assessment proceedings, on perusal of details available on record and audit report for the year under consideration, it was observed by the Assessing Officer that during the year under consideration, the assessee has shown carrying out business activity of sale of liquor in its proprietary concern M/s Ravi Wines. In the year under consideration, the assessee has shown turnover of Rs.19.54 crores and declared gross profit of Rs.28,80,884/- at gross profit margin @ 1.47%. Vide questionnaires issued in this regard by the Assessing Officer, under notice, u/s 142(1) of the Act dated 13.09.2019, it was specifically been asked to assessee to

furnish details of sales, purchases, expenses etc. However, assessee has filed confirmation of purchaser's parties, profit and loss account, balance sheet, ledger account and bank statement of the assessee was obtained by the Assessing Officer from banks. However, the assessee did not furnish details of sales, purchases, expenses etc. before the Assessing Officer, therefore Assessing Officer rejected the books of accounts of the assessee and did estimate of the gross profit margin @ of 3% as against gross profit margin @ 1.47% shown by the assessee. The important findings of the Assessing Officer, (while rejecting books of accounts) are reproduced below:

> *"In such kind of business, as per industry norms, gross profit margin is around in range of 2% to 4% are generally shown by the assessee depending upon the nature and quality of products. As the assessee has failed to furnish day to day stock register, nature & quality of the product of the business as well as failed to furnish complete details of purchases, sales, expenses, VAT details with supporting evidences. In the circumstances, by taking rational approach by taking average of minimum & Maximum G.P. Margin in such industry, it is appropriate to estimate the gross profit margin @ of 3% as against gross profit margin @ 1.47% shown by the assessee, according to which, the gross profit from the business of the assessee is arrived at Rs.58,62,767/- (3 % of turnover of Rs.19,54,25,569/-). The assessee has shown gross profit at Rs.28,80,884/- on the said turnover and therefore the differential amount of such gross profit Rs.29,81,883/- (58,62,767/- - 28,80,884/-) is hereby added to the total income of the assessee under the head business and profession on account of estimation of gross profit after rejecting the book results of the assessee for the year under consideration."*

21. We have gone through the above findings of the Assessing Officer wherein the assessing officer rejected the books of accounts of the assessee and did estimate of the gross profit margin @ of 3% as against gross profit margin @ 1.47% shown by the assessee. However, we note that while making such estimation, the assessing officer did not use any comparative examples and precedents which show that in the business of liquor the gross profit margin @ of 3% on turnover is acceptable, as per industry norms. While doing estimation of gross profit of the assessee,

the Assessing Officer, made a base, of a general statement, which is, (at the cost of repetition), reproduced below for ready reference:

> *"In such kind of business, as per industry norms, gross profit margin is around in range of 2% to 4% are generally shown by the assessee depending upon the nature and quality of products."*

22. From the above, it is abundantly clear that the base adopted by the Assessing Officer to make estimation of gross profit of the assessee is a general statement, without showing any external comparative instances or internal comparative instances. We are of the view that estimation of profit based on the general statement should not be accepted. For the sake of argument, for example, taking the base of general statement, the estimation of gross profit of the assessee, under consideration, may be in the range of 0.01% to 20%. According to us, for making estimation of gross profit of the assessee, there should be some base and such base may be audited books of accounts of the assessee for current year, books of accounts of the assessee for previous years, and an average gross profit, may be considered to find out the estimated profit of the assessee. If it is not available then from external sources, from the same business, the gross profit shown by other assessees` may be considered as a base for estimation of gross profit. However, we note that Assessing Officer has not done this exercise and based on the general statement, the liability of the assessee to pay tax @ of 3% (gross profit margin on turnover) has been fixed by way of a thumb rule, which does not stand in judicial scrutiny. It is trite law that past history of the assessee himself is the best to compare with. In the case of Kansara Bearings Pvt. Ltd. Vs. ACIT 270 ITR 235 (Raj) & Ajay Goyal Vs. ITO (99 TTJ 164) – it was held that past years` profit declared by the assessee is the best guide for application of gross profit and net profit (GP/NP rate).

23. We note that estimation of gross profit may be done keeping in mind the following facts:

(i) The estimate is not opened to be framed in an arbitrary manner.

(ii) The estimate by rule of thumb is absolutely infirm.

(iii) The estimation of rate of profit return must necessarily vary with the nature of the business.

(iv) There cannot be any uniform yardstick.

(v) An assessment to be best of judgement can only be based on the material available on record and past records, current records and considering the totality of the facts.

(vi) Only real income and neither notional income nor astronomical income, can be taxed under the Income Tax Act, 1961.

24. Therefore, we note that the method to be adopted, for estimation of gross profit, must be, which is approximately nearer to the truth, having regard to the facts and circumstances of the case. Accordingly, we hereby estimate the gross profit margin (G.P.) of assessee @ 2% on turnover, as against gross profit margin @ 1.47%, shown in the audited books of accounts of the assessee. Therefore, in our opinion the ends of justice would be met, if a gross profit rate of 2% is adopted on turnover, since the same would take care of the inconsistencies of the books of accounts of the assessee and various expenses shown by the assessee in the books of accounts. From the above discussion, the gross profit from the business of the assessee is arrived at Rs.39,08,511/- (2 % of turnover of Rs.19,54,25,569/-). Since the assessee has shown gross profit at Rs.28,80,884/- on the said turnover and therefore we direct the Assessing Officer to tax the differential amount of such gross profit of Rs.10,27,627/- (Rs.39,08,511 – Rs. 28,80,884/-), in the hands of the assessee.

25. We make it clear that we have adopted this method of estimation of gross profit, on the peculiar facts of assessee`s case and having regard to the issue involved and the same criteria should not be construed on universal application.

26. In the result, the summarized and concise ground No.2 raised by the assessee, in ITA No.195/SRT/2022, is partly allowed, in above terms.

27. The summarized and concise grounds Nos. (iii) & (v) raised by the assessee in lead case in ITA No.195/SRT/2022 are reproduced below for adjudication and for ready reference:

> *(iii) Ground No.3 raised by the assessee, in ITA No. 195/SRT/2022, is as follows:*
>
> *3. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in making addition of Rs.15,60,000/- on account of disallowance of salary and bonus expenses.*
>
> *(v) Ground No.5 raised by the assessee, in ITA No. 195/SRT/2022, is as follows:*
>
> *"5. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in making addition of Rs.2,00,005/- on account of cash payment of purchases as per provisions of section 40A(3A) of the Act, 1961.*

The summarized and concise grounds Nos. (iii) and (v) above, raised by the assessee, are based on disallowance of expenses. We note that since the Assessing Officer has rejected the books of accounts of the assessee, therefore, Assessing Officer cannot make other line by line addition on account of other expenses. We note that Hon`ble Punjab and Haryana High Court in the case of Gian Chand Labour contractors, 316 ITR 0127, held as follows:

> *"Where the assessing officer is not satisfied with the correctness or completeness of books, he may reject the same and estimate the income to the best of his judgment in accordance with the provisions of s. 144. When an*

estimate is made to the best judgment of an assessing officer, he substitutes the income that is to be computed under s. 29. Once best judgment assessment is made by fixing a rate of net profit, the assessee's claim for deduction on account of expenses cannot be deemed to have been ignored. The net profit rate is applied after taking into consideration all factors and it accounts for all the deductions which are referred to under s. 29 and are deemed to have been taken into consideration while making such an estimate. Additionally, if the contention of the assessee is accepted, the net profit in that situation would be reduced to a substantially low figure and looking to the normal net profit rate which is applicable to the case of civil construction contracts, the effective rate of profit on gross receipts would work out to less than 1 per cent which would be extremely low and not practical. Moreover, once books of account are rejected then it cannot be said that it shall be good for one purpose and not for other and, therefore, no separate deduction on account of freight charges as claimed by the assessee can be allowed."

28. From the above judgment of Hon`ble Punjab and Haryana High Court in the case of Gian Chand Labour Contractors (supra), it is vivid that once books of accounts were rejected by the Assessing Officer then other line by line addition on account of various expenses cannot be made. Based on this factual position we allow Ground No.3 raised by the assessee, in ITA No. 195/SRT/2022, and Ground No.5 raised by the assessee, in ITA No. 195/SRT/2022.

29. Summarized and concise ground no.(iv) is reproduced below for ready reference:

"(iv) Ground No.4 raised by the assessee, in ITA No. 195/SRT/2022, is as follows:

4. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in making addition of Rs.1,53,862/- on account of disallowance of deduction claimed under Chapter VI-A."

So far above ground is concerned in ITA No. 195/SRT/2022, we note that assessee has explained with cogent evidence that assessee is entitled to claim deduction under Chapter VI-A, of Rs.1,53,862/-, hence we

delete the addition. Thus, ground No.4 raised by the assessee, in ITA No. 195/SRT/2022, is allowed.

30. Summarized and concise ground (vi) is reproduced below:

(vi) Ground No.6 raised by the assessee, in ITA No. 195/SRT/2022, are as follows:

"*6. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in calculating tax rate as per the rate specified u/s. 115BBE of the Act."*

So far summarized and concise ground (vi) above concerned, we note that as per para No11 of the assessment order, the Assessing Officer stated as follows:

"11.The total income assessed Rs.2,20,55,580/- u/s 143(3) of the I.T.Act. Calculate tax/surcharge/cess as applicable as per the rate specified for the year consideration u/s 115BBE of the Act in respect of addition for unexplained cash credit and normal tax rate in respect of other deductions"

31. Since, we have deleted the addition made by the Assessing Officer on account of unexplained cash credit, u/s 68 of the Act, therefore the question of applicability of section 115BBE of the Act, does not arise, hence we allow ground No.6 raised by the assessee.

32. In the result, assessee`s appeal in ITA No. 195/SRT/2022, is partly allowed in above terms.

33. **Now we shall take Summarised and concise Grounds of appeal raised by the assessee, in ITA No.193/SRT/2022, and in ITA No.194/SRT/2022, where books of accounts of assessee were not rejected by the Assessing Officer u/s 145(3) of the Act. Summarised and concise Ground No.(i) is reproduced below for ready reference:**

(i). Ground No.2 raised by the assessee in ITA No.194/SRT/22 and Ground No.4 raised by the assessee in ITA No.193/SRT/22, are as follows:

On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in making addition on account of disallowance of salary and bonus expenses. (disallowance in ITA No.193/SRT/22 at Rs.10,10,630/- and disallowance in ITA No194/SRT/22 at Rs.9,88,000/-)

34. Succinct facts *qua* the issue are that during the course of assessment proceedings, on perusal of profit and loss account, it was observed by the Assessing Officer that assessee has claimed salary and bonus expenses in the year under consideration. In the course of assessment proceedings, as per Assessing Officer, the assessee has failed to furnish any detail and evidences regarding the said expenses, therefore Assessing Officer made the addition.

35. On appeal, the ld CIT(A) has confirmed the action of the Assessing Officer, therefore assessee is in further appeal before us.

36. We have heard both the parties. Learned Counsel for the assessee, argued before us that average turnover of the assessee is Rs,19 crores. To achieve such big turnover, the assessee needs manpower. The salary and bonus expenses have been shown by the assessee in its audited profit and loss account. The books of accounts of the assessee is audited therefore genuineness of the expenses cannot be doubted.

37. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity. We note that assessing officer has not rejected the books of

accounts of the assessee for assessment year 2015-16 and assessment year 2016-17 under consideration. Just because, the assessee has not submitted salary register before the Assessing Officer, does not mean that assessee's claim of salary and bonus expenses are bogus. The Assessing Officer has accepted the turnover of the assessee and we note that to manage such huge turnover, the assessee needs employees. We note that considering the size of the turnover, the salary and bonus expenses incurred by the assessee are not excessive or bogus. Moreover, in preceding years the similar expenses were incurred, which were not disallowed by Assessing Officer, hence we delete the addition.

38. In the result, Ground No.2 raised by the assessee in ITA No.194/SRT/22 and Ground No.4 raised by the assessee in ITA No.193/SRT/22, are allowed.

39. Summarised and concise Ground No.(ii) is reproduced below for ready reference:

> (ii) Ground No.3 raised by the assessee in ITA No.194/SRT/22, are as follows:
>
> *On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in making addition of Rs. 1,54,950 /- on account of disallowance of deduction claimed under Chapter-VI-A.*

40. Succinct facts *qua* ground No.(ii) are that during the course of assessment proceedings, on perusal of computation of income for the year under consideration, it was observed by the Assessing Officer that the assessee has claimed deduction under Chapter-VIA. In the course of assessment proceedings, the assessee has failed to furnish any details regarding deduction claimed under Chapter-VIA, therefore Assessing

Officer made addition of Rs. 1,54,950 /- on account of disallowance of deduction claimed under Chapter VI-A.

41. On appeal, ld CIT(A) confirmed the addition made by the assessing officer, therefore assessee is in appeal before us. The ld Counsel argued that LIC premium and Mediclaim expenses were duly reflected in the computation of income of the assessee. Moreover, in the previous year`s assessment such deduction was allowed. On the other hand, ld DR relied on the stand taken by the assessing officer. We have heard both the parties. We note that assessee is making investment, consistently in LIC and medicliam etc, and such claim was allowed by the assessee in previous year, therefore genuineness of the claim is not doubted, hence we delete the addition.

42. In the result, Ground No.3 raised by the assessee in ITA No.194/SRT/22, is allowed.

43. Summarised and concise Ground No.(iii) is reproduced below for ready reference:

> (iii) Ground No.7 raised by the assessee in ITA No.194/SRT/22, and Ground No.3 raised by assessee in ITA No.193/SRT/22 are as follows:
>
> *On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in making addition on account of cash payment of purchases as per provisions of section 40A(3A) of the Act, 1961. (disallowance in ground no.7 in ITA No.194/SRT/22 at Rs.38,000/- and Ground No.3 in ITA No.193/SRT/22 at Rs.11,88,236/-)*

44. Succinct facts *qua* the issue (lead case ITA No.194/SRT/2022) are that during the assessment proceedings, assessee has submitted

confirmation of account of creditor M/s Silver Star Distillery. On verification of ledger account, it was observed by the assessing officer that assessee had made payments in cash to the party in a single day exceeding Rs.20,000/- which is in violation of provision of section 40A(3) of the Act. The assessee has made two payments of Rs.19,000/- each to the party on 09.09.2015 which aggregate to Rs.38,000/-. Therefore, assessing officer held that assessee has violated the provisions contained in section 40A(3) of the Act, and therefore, the amount of Rs.38,000/-was disallowed.

45. On appeal, ld CIT(A) confirmed the addition made by the Assessing Officer, therefore assessee is in appeal before us. The ld Counsel argued that each payment was below Rs. 20,000/-. Besides, considering the nature of the business (liquor business) the cash transaction is inherent, therefore addition made by the Assessing Officer may be deleted. On the other hand, ld DR relied on the stand taken by the assessing officer. We have heard both the parties. The ld Counsel submits that each payment is below Rs.20000/- hence provisions of section 40A(3) of the Act, do not attract. We note that Coordinate Bench of ITAT Delhi, in the case of Shakti Singh Gulia , vide ITA No.6115/Del/2018 & 4618/Del/2019, for assessment years 2014-15 and 2015-16, order dated 15.06.2023, has deleted the addition on identical facts, and held as follows:

> *"5. Briefly stated, the assessee is engaged in the business of trading of liquor and also deriving income from salary/pension from Haryana Government. The assessee filed return of income at Rs.13,21,210/- which was subjected to scrutiny assessment. In the course of scrutiny assessment, the Assessing Officer inter alia observed that the assessee has made cash payments in excess of Rs.20,000/- against purchases to certain parties. The cash payment aggregating to Rs.56,51,900/- was found to be in contravention of provisions of Section 40A(3) of the Act. The Assessing Officer accordingly disallowed*

the expenses to the aforesaid extent by resorting to Section 40A(3) of the Act……..

10. We have carefully considered the rival submissions and perused the assessment order as well as the first appellate order and also the material referred to and relied upon in the course of hearing and the case law cited.

10.1 The applicability of Section 40A(3) towards cash purchases of the liquor from suppliers is in controversy. The provisions of Section 40A(3) read with Section 40A(3A) of the Act seeks to disincentivise the cash transactions in cash beyond prescribed unit (Rs.20000 limit for the AYs in question). The Assessing Officer has thus disallowed the expenses incurred on purchases of liquor etc. where payments have in found to be made in cash in breach of prescribed limit under Section 40A(3) of the Act.

10.2 It is the case of the assessee that he is engaged in a very peculiar business of liquor trading where to meet the sudden demand, the assessee is called upon to make payment in cash to get uninterrupted supplies from the distillery companies. It is further case of the assessee that the business operates in a highly government regulated environment where the distillery companies are licensed suppliers as also its customers including the assessee who is also a permit holder for purchase of liquor bottles. Coupled with this, the assessee being a new entrant in the business, does not enjoy the goodwill needed for supplies on credits and without actual transfer of funds. The assessee is thus perforce required to make cash payments on certain occasions to obtain immediate supplies. The assessee further submits that the supplies were received from existing parties. Both cash payments as well as in cheque payments were equally subjected to TCS provisions. All transactions are thus identifiable and on the record of the Income Tax Department. This being so, the propriety of cash transaction is beyond any aspersion nor has the Assessing Officer disbelieved the cash transactions carried out with identified parties although a part of total payment was reimbursed in cash.

10.3 To appreciate the facts in its perspective, the assessee has provided tabular statement of transaction with parties in both the assessment years in question as reproduced hereunder……..

10.4 On a perusal of the party-wise details tabulated hereinabove, it is seen that the cash payments made to the parties are comparatively low and the majority of transaction appears to have been carried out through banking channel. This notwithstanding, tax on liquor purchases have been collected on all the party-wise purchases and reflected in the Annual Information Statement (AIS) prepared by the Income Tax Department. Thus, the transactions carried out in cash are duly reported and made available under the lens of the Income Tax Department.

10.5 At this juncture, we may reckon that terms of Section 40A(3) r.w.s. 40A(3A) are not absolute. Consideration of business expediency and other relevant factors are not excluded from the ambit of these provisions. Genuine and bona fide transactions are not taken out of the sweep of such provisions.

In the light of nature of business, the assessee has sufficiently demonstrated that strict adherence to payment through banking channel is, at times, not practicable and has the potential to severally hamper the ongoing business. No mala fide, in our view, can be attributed to the action of the assessee where he is new entrant and the demand of liquor in such business is generally asymmetric. No evasion of tax through cash payment can be envisaged in the present case owing to such transactions. The Revenue on its part has not attempted to discover any evasion by making enquiries from the parties and has merely applied the provisions of Section 40A(3) summarily as a matter of course based on data provided by assessee. To our mind, the disallowances are not justified in the totality of facts and circumstances placed before us.

10.4 The Co-ordinate Bench of the Tribunal in the case of ITO vs. Suresh Kumar (2021) 124 taxmann.com 563 (Delhi Tribunal) and Geo Connect Ltd. vs. DCIT, 2896/Del/2018 has taken note of judgment delivered by the Hon'ble Supreme Court and various High Courts on the schematic interpretation of provisions of Section 40A(3) of the Act and observed that the considerations of business expediency and other relevant factors embedded in provisions of Section 40A(3) and Section 40A(3A) are not diluted by the amendment in Rule 6DD of the IT Rules which is merely a delegated legislation. The Co-ordinate Bench discharged the assessee from the clutches of Section 40A(3) where the business expediency to make payment in cash was found to be reasonably established. In the instant case, the circumstances narrated on behalf of the assessee provide reasonable ground to show-case considerations of business expediency and existence of relevant factors which warranted cash payments in the wisdom and perspective of a businessman. Be that as it may, the cash transactions, in any case, have been subjected to TCS collections etc. and are thus duly made chargeable to tax in the hands of the recipient. No enquiries have been made on behalf of the Revenue to dislodge the bona fides of the cash purchases. Nonetheless, the suppliers and recipients of cash are identified parties and well regulated.

10.5 Thus in totality, we find merit in the case made out on behalf of the assessee for exoneration from the clutches of Section 40A(3) in the peculiar facts of the present case. The action of the CIT(A) is thus set aside and the additions made by the Assessing Officer under Section 40A(3) are thus reversed and cancelled "

From the above judgment of Co-ordinate Bench of ITAT Delhi, in the case of Shakti Singh Gulia(supra), it is vivid that the business expediency to make payment in cash should be reasonably established by the assessee. Consideration of business expediency and other relevant factors are not excluded from the ambit of these provisions. It is the case of the assessee that he is engaged in a very peculiar business of liquor trading where to meet the sudden demand, the assessee is called upon to make

payment in cash to get uninterrupted supplies from the distillery companies. It is further case of the assessee that the business operates in a highly government regulated environment where the distillery companies are licensed suppliers as also its customers including the assessee who is also a permit holder for purchase of liquor bottles. The assessee`s facts under consideration is identical, therefore respectfully following the judgment of Co-ordinate Bench of ITAT Delhi, in the case of Shakti Singh Gulia (supra), we allow the ground raised by the assessee.

46. In the result, Ground No.7 raised by the assessee in ITA No.194/SRT/22, and Ground No.3 raised by assessee in ITA No.193/SRT/22 are allowed.

47. Summarised and concise Ground No.(iv) is reproduced below for ready reference:

> "(iv) Ground No.1 raised by the assessee, in ITA No. 194/SRT/2022, and ground No. 2 raised by the assessee, in ITA No.193/SRT/2022, are as follows:
>
> *"On the facts on the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in making the addition of Rs.3,60,152/- on account of alleged bogus purchases. (Similar disallowance in ITA No.193/SRT/2022 at Rs.1,62,163/-)*

48. Succinct facts qua the issue (lead case ITA No.194/SRT/22) are that as per 26AS statement, it was noted by assessing officer that assessee has made purchase of Rs.22,78,94,477/-. In return of income, assessee had shown purchases of Rs.22,13,01,118/- only and assessee was asked to explain the discrepancy.

In response, assessee has submitted reconciliation of purchases and stated that total purchase recorded in its books of account are of

Rs.22,82,66,724/- including scheme and discount of Rs.14,37,805/- and credit notes of Rs.55,27,801/- and submitted copy of audited profit and loss account. Thus, Assessing Officer noted that assessee has shown purchases in excess of Rs.3,72,247/- than the actual purchase recorded in books of account. However, the assessee has submitted copy of confirmation of account of M/s K.W. Enterprise to establish the purchase made from the party. However, the remaining difference of Rs.3,60,152/- (372348 – 12096) has not been explained by the assessee. Therefore, Assessing Officer made addition to the tune of Rs.3,60,152/-.

49. On appeal, ld CIT(A) confirmed the addition made by the Assessing Officer, therefore assessee is in appeal before us. The ld Counsel argued that assessee has submitted correct reconciliation of purchases. However, assessing officer did typographical error and made addition to the tune of Rs.3,60,152/-, which is not acceptable. On the other hand, ld DR relied on the stand taken by the assessing officer. We have heard both the parties. We note that as per reconciliation submitted by the assessee, before the Assessing Officer, no any difference would arise. The correct figures are as follows: (Rs.22,82,66,724- Rs.22,13,01,118- Rs.14,37,805- Rs.55,27,801). Hence, based on this factual position we delete the addition.

50. Hence, ground No.1 raised by the assessee, in ITA No. 194/SRT/2022, and ground No. 2 raised by the assessee, in ITA No.193/SRT/2022, are allowed.

51. Summarised and concise Ground No.(v) is reproduced below for ready reference:

(v) Ground No.1 raised by the assessee, in ITA No. 193/SRT/2022, is as follows:

"On the facts on the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs.49,302/- on account of alleged unexplained creditor."

52. Succinct facts *qua* the issue (facts as per ITA No.193/SRT/22) are that during the course of assessment proceedings, it was observed by the assessing officer that assessee has shown amount of Rs.49,302/-, as outstanding against the creditor M/s Damania stores bar and restaurant. The assessing officer sent notices u/s 133(6) of the Act to the creditor. However, the creditor did not give response, therefore Assessing Officer made addition to the tune of Rs.49,302/-. On appeal, ld CIT(A) confirmed the addition made by the Assessing Officer, therefore assessee is in appeal before us. The ld Counsel argued that the creditor, M/s Damania stores bar and restaurant, is a genuine creditor, shown in the books of accounts since previous year, therefore addition should not be made. Learned DR for the Revenue submitted that the assessee has agreed during the assessment stage that the addition made by the Assessing Officer to the tune of Rs.49,302/- is correct and accepted the addition. Therefore, addition made by the Assessing Officer may be sustained. We have heard both the parties. We note that object of the scrutiny assessment u/s 143(3) of the Act, is to determine the correct income of the assessee and correct tax thereon. Just because, the assessee has accepted any particular addition by mistake, does not mean that assessee is liable to pay tax, which is not payable by assessee as per law. Before us, assessee has explained the difference of Rs.49,302/-, stating that amount belong to previous year, hence genuineness of the opening balance should not be doubted, therefore, we delete the addition.

53. Hence, ground No.1 raised by the assessee, in ITA No. 193/SRT/2022, is allowed.

54. Summarised and concise Ground No.(vi) is reproduced below for ready reference:

> (vi) Ground No.4 raised by the assessee, in ITA No. 194/SRT/2022, is as follows:
>
> *"On the facts on the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in making the addition of Rs.4,31,479/- on account of alleged unexplained investment to the fixed assets."*

55. Succinct facts *qua* the issue (facts as per ITA No.194/SRT/22) are that during the year under consideration, assessee has made addition of Rs.4,31,479/- to the fixed assets. The assessee has been asked to submit the details of assets with supporting evidences but assessee failed to submit the details. Therefore, the amount of Rs.4,31,479/- was treated as income of the assessee from unexplained sources which has been invested and added to the total income of the assessee for the year under consideration. Further the depreciation of Rs.32,361/- claimed on the asset is also disallowed and added to the total income of the assessee.

56. On appeal, ld CIT(A) confirmed the addition made by the assessing officer, therefore assessee is in appeal before us. The ld Counsel argued that details were submitted by the assessee during the assessment stage, by way of fixed assets schedule, which is part of profit and loss account and balance sheet and relevant evidence was submitted. On the other hand, ld DR relied on the stand taken by the Assessing Officer. We have heard both the parties. We note that fixed assets schedule, which is part of profit and loss account and balance sheet along

with relevant evidence were submitted before the assessing officer. We note that Assessing Officer has not examined these evidences, which were before him. Moreover, books of accounts of the assessee were not rejected by Assessing Officer, hence based on this factual position we delete the addition.

57. Hence, ground No.4 raised by the assessee, in ITA No. 194/SRT/2022, is allowed.

58. Summarised and concise Ground No.(vii) is reproduced below for ready reference:

(vii) Ground No.5 raised by the assessee, in ITA No. 194/SRT/2022, is as follows:

"On the facts on the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in making the addition of Rs.32,361/- on account of disallowance of depreciation."

59. We have heard both the parties. We note that the amount of Rs.4,31,479/- was treated as income of the assessee from unexplained sources which has been invested and added to the total income of the assessee for the year under consideration, on account of fixed assets. Since we have deleted the addition Rs.4,31,479/-, made by the assessing officer on account of fixed assets, therefore addition pertains to depreciation of Rs.32,361/-, does not have any leg to stand, hence we delete the same.

60. Hence, ground No.5 raised by the assessee, in ITA No. 194/SRT/2022, is allowed.

61. Summarised and concise Ground No.(viii) is reproduced below for ready reference:

> (viii) Ground No.6 raised by the assessee, in ITA No. 194/SRT/2022, is as follows:
>
> *"On the facts on the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in making the addition of Rs.51,460/- on account of disallowance of various expenses claimed in profit and loss account"*

62. Succinct facts *qua* the issue (facts as per ITA No.194/SRT/22) are that during the assessment proceedings, the Assessing Officer observed that in profit and loss account, the assessee had claimed various expenses of Rs.16,39,532/-. The Assessing Officer, vide his questionnaire, asked the assessee to submit the details of all indirect expenses exceeding Rs.20,000/-, but no details have been submitted by the assessee. Thereafter, a show cause notice has been issued to the assessee on 09.02.2018. Para 6 of the show cause notice is reproduced in assessment order page No.6. In response to the show cause notice, no details have been submitted by the assessee therefore it was held by the Assessing Officer that the expenses claimed in the profit and loss account are not genuine. The Salary expenses, out of the above expenses, has been dealt with in separate in ***para No.5 and 5.1*** of the assessment order hence disallowance out of salary is not considered by the Assessing Officer. Apart from the salary, remaining expenses of Rs.1,71,532/- (16,39,532 – 1,71,532) are dealt in by the Assessing Officer. As no details of expenses were submitted by the assessee, therefore @ 30% of the above expenses of Rs.1,71,532/- being Rs.51,460/- was disallowed and added to the total income of the assessee.

63. On appeal, ld CIT(A) confirmed the addition made by the Assessing Officer, therefore assessee is in appeal before us. The ld Counsel argued that details were submitted by the assessee during the assessment stage, however Assessing Officer ignored the said details. On the other hand, ld DR relied on the stand taken by the Assessing Officer. We have heard both the parties. We note that the Assessing Officer could have ventured into estimation only after rejecting the books of accounts of the assessee u/s 145(3) and thereafter by best judgment assessment u/s 144 of the Act. Here in this case, the assessing officer has not passed any order u/s 144 of the Act. The Assessing Officer thus without rejecting the books of account of the assessee has gone for estimation on suspicion and conjectures that the assessee may be inflating its expenses. While scrutinizing the expenditure if the expenses claimed are not having any nexus to the business of the assessee or if there is deficiency in the vouchers or there is no bills supporting the incurrence of an expenditure, at the most expenses to the extent that are not supported by the vouchers can be held to be non-genuine and can be disallowed by the Assessing Officer; and item-wise the Assessing Officer could have disallowed the expenditure rather than going for *ad hoc* disallowance of percentage basis of the expenses claimed by the assessee which action of the Assessing Officer is arbitrary in nature and cannot be sustained. Therefore, the addition is directed to be deleted.

64. Hence, ground No.6 raised by the assessee, in ITA No. 194/SRT/2022, is allowed.

65. Grounds raised by the assessee, which do not require adjudication:

> *"Ground No.7 raised by the assessee, in ITA No. 195/SRT/2022, in respect of initiating of penalty proceedings u/s.271AAC(1) of the Act, and ground No.8*

in respect of initiating penalty proceedings u/s 270A of the Act and Ground No.8 in ITA No. 194/SRT/2022, in respect of initiating penalty proceedings u/s 271(1)(c) of the Act."

66. We have heard both the parties and noted that above mentioned grounds of appeals raised by the assessee are premature in nature, therefore do not require adjudication.

67. In combined result, appeal filed by the assessee, in ITA No.195/SRT/2022 is partly allowed, *whereas* appeals filed by the assessee in ITA No. 193 and 194/SRT/2022 are treated as allowed.

Registry is directed to place one copy of this order in all appeals folder / case files.

Order is pronounced on 31/07/2023 in the open court.

Sd/-	**Sd/-**
(PAWAN SINGH)	**(Dr. A.L. SAINI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

सूरत /Surat
दिनांक/ Date: 31/07/2023
SAMANTA/ DKP

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS
ITAT, Surat