

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

**BEFORE: DR. S. SEETHALAKSHMI, JM  
&  
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

**ITA Nos. 10/Jodh/2022  
(ASSESSMENT YEAR- 2017-18)**

Sushil Kumar Jhabak Near Arunoday vidhya Mandir, New Lane Gangashahar Karnani Mohalla, Bikaner.	Vs	NFAC, Delhi/ ITO, Ward-2(1), Bikaner.
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. AENPJ 8633 B</b>		

(Virtual hearing)

<b>Assessee By</b>	Shri Virendra Kumar Jain- Adv.
<b>Revenue By</b>	Shri S.M. Joshi, JCIT-DR
<b>Date of hearing</b>	03/07/2023
<b>Date of Pronouncement</b>	04/08/2023

**ORDER**

**PER: Dr. S. Seethalakshmi, JM**

The assessee has filed an appeal against the order of the National Faceless Appeal Centre, Delhi [herein after “NFAC/Ld.CIT(A)”] dated 30.12.2021 for the assessment year 2017-18.

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

*“1. On the fact and circumstances of the case Worthy Appellate authority has erred in confirming the action of ld. AO of making addition on account of cash deposits during the period of*

*demonetization Rs. 5,50,000/- All the course of cash deposits were submitted before the AO with all supporting evidence but Ld. AO ignored while relevant facts so the addition made by AO for treating the cash deposit Rs. 5,50,000/- unexplained and charged Tax at a special rate which was not ought to so it is deserve to be deleted.*

*2. On the fact & circumstances of the case Ld. AO has erred in charging interest u/s 234B & 234C.*

*3. The appellant prays for justice and relief.*

*4. The Appellant may please be permitted to raise any additional or alternative ground sat or before the hearing.”*

3. Brief facts of the case are that the assessee is an individual and partner in M/s Karni Food Products, Bikaner situated at Karni Nagar, Bikaner. Due to heavy loss the firm has completely closed its business. During the relevant assessment year the assessee filed its income tax return declaring total an income of Rs. 1,23,770/-. After that a notice was served upon the assessee u/s 143 of the Act and after hearing the case was finalized with addition of Rs. 5,50,000/- being the amount deposits in bank account during demonetization period.

4. Aggrieved, from the said order of assessment the assessee has filed an appeal before the Id. CIT(A). The Id. CIT(A) after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

“3.5 During the course of assessment proceedings, the AO issued show cause notice to the appellant requiring the appellant to show cause as to why the drawings made from the firm M/s. Kami Food Products of Rs.5,50,000/- should not be added to the total income. In response to the show cause notice, the appellant furnished its reply. However, since the source of the cash deposits were not verifiable, the appellants reply was not acceptable to the AO and hence, the AO proceeded to make an addition of Rs.5,50,000/- as unexplained cash deposits u/s. 69A of the Act to the total income of the appellant. The AO also observed that the appellant had manipulated the firms cash book for the drawings made from the firm M/s. Kami Food Products amounting to Rs.5,50,000/-. The AO, however, has considered the source of drawings made in cash of Rs.2,00,000/- and Rs.2,50,000/- from SB Account.

3.6 The submissions of the appellant have been perused and found to be not acceptable due to the fact that the firm M/s. Karni Food Products had effectively no business as mentioned by the appellant himself. Also, the inference drawn by the AO that the cash book of the firm has been manipulated is found to be correct. Further, the judicial pronouncements relied upon by the appellant also have no relevance to the facts of the case of the appellant. Hence, the addition made by the AO of Rs.5,50,000/- is hereby confirmed and this ground of the appeal raised by the appellant is hereby dismissed.

4. The Ground No. 2 of the present appeal is against levying of Interest u/s 234B and 234C by the Assessing Officer. Charging of interest u/s. 234B & 234C of the Act is consequential in nature and hence, not adjudicated. Hence, the same is dismissed COME TAX DEPARTM

5. The Ground No.3 is residuary in nature which has not been availed and hence, the same is dismissed.”

5. As the assessee not received any favour from the appeal filed before Id. NFAC/ CIT(A). The present appeal filed against the said order of the Id. NFAC dated 30.12.2021 before this tribunal on the grounds as reiterated in para 2 above. To support the grounds so raised the Id. AR appearing on behalf

of the assessee has placed their written submission which is extracted herein below:-

“Respected Sir,

With reference to above it is faithfully submitted that before I submit my submission I would like to narrate the brief facts of the case and here they are :-

The assessee being an individual person and partner in M/S Karni food Products, Bikaner situated at Karni Nagar Bikaner at present. Due to heavy loss the firm has completely closed its business. During the relevant AY the assessee filed its ITR by declaring an income of Rs. 1,23,770 /-. After that a notice was served upon the assessee u/s 143 and after some hearing the case was finalized with some following additions to income :-

Returned Income	1,23,770/-
Add: Addition on a/c of Cash Deposit During the time of demonetization (Tobe taxed U/S 115BBE)	5,50,000/-
<b>Total Income</b>	<b>6,73,770/-</b>

On before I appeal the CIT(A) NAFC confirm the order of AO and being aggrieved to the said order I have filed an appeal before your office. Now your office has awarded me the honor to submit my reply :-

**GOA No. 1 Addition u/s 69 A on a/c of Cash deposits was Unfare**

Worthy CIT(A) has erred in confirming this addition u/s 69A made by ld. AO on account of cash deposit during the period of demonetization Rs. 5,50,000/- out of total cash deposited Rs. 10,30,000/- and taxed it u/s 115BBE . During the demonetization period the assessee had deposited Rs. 10,30,000/- in old banned currency.

Ld. AO had made addition u/s 69A of Rs. 5,50,000/- out of total cash deposited Rs. 10,30,000/- and taxed it u/s 115BBE in this matter it is submitted here again as submitted before ld. AO :-

During the period of demonetization the assessee deposited Rs 10,30,000/- in his OBC OD Account. As far as source of the deposit is concern it is submitted that the money withdrawn earlier was deposited back to same bank account because there was no other way rather than to deposit in the OBC OD A/C. The assessee made drawings in cash from the same bank account Rs. 2,00,000/- on dated 16/09/2016 & Rs. 2,50,000/- on dated 17/10/2016. Except to the cash drawings made from SB A/C .The assessee made drawings Rs. 5,50,000/- from the firm M/S Karni Food Products, Bikaner. All the drawings was made for the purpose of construction of his house. At that time construction of the house was in progress so for that he had made drawings from bank account as well as from firm. Construction work at home was carrying out by the assessee so for that purpose the money withdrawn earlier was deposited back to

same bank account because there was no other way rather than to deposit in the OBC OD A/C. The assessee made drawings Rs. 5,50,000/- from the firm M/S Karni Food Products, Bikaner. Karni food products was a partnership firm in which assessee is a partner, was also in a heavy loss therefore right from the beginning of the Fin year 2016-2017 all efforts was made to collect all the money from its debtors so that we may wind up the business. So the cash collection of the firm was made and his debt and creditors were paid and some of drawings were made by the assessee. At that time construction of the house was in progress so for that he had made drawings from bank account and from cash book of the firm.

After above submission the AO again issued a notice u/s 142(1) for submitting clarification :-

आपकेद्वारा demonetization Period (नोटबंदी ) केदौरानजमा 10,30,000/- केजमाकेस्रोतकेबारेमेंबतायागयाकि –

“The assessee made drawings cash from the same bank account Rs. 2,00,000/- on dated 16/09/2016 & Rs. 2,50,000/- on dated 17/10/2016. Except to the cash drawings made from SB A/c The assessee made Drawings Rs. 5,50,000/- from the firm M/s Karni Food Products, Bikaner all the drawings was made for the purpose of construction of his house.,,

1. कृपया स्पष्ट करें कि आपके पास रूपए 2,00,000/- नगदी रखी थी, तो आपको दिनांक 7.10.2016 को रूपए 2,50,000/- की बैंक से नगद नि कासी की आवश्यकता क्यों पड़ी , क्यों नहीं इसे मान लि या जाए कि आप द्वा रा पूर्व में की गई नगद निकासी खर्च हो चुकी थी?

2. कृपया स्पष्ट करें कि आपके द्वारा प्रस्तु त M/s karni Food Products के खाते का वलोकन करने पर पाया गया कि पूर्ण वर्ष के दौरान आप द्वारा सिर्फ एक बार नगद निकासी दिनांक 01.11.2016 को रूपए 5,50,000/- की गई है, न इससे पहले कभी नगद निकासी की गई और न इसके बाद कभी नगद निकासी की गई है, इससे

3. आप द्वारा प्रस्तु त की गई Cash Book की प्रति से प्रतीत होता है, कि उक्त जमा राशि का स्रोत स्पष्ट करने के लि ए Cash Book में हेर-फेर कि या गया है। उक्त बिन्दू ओं के अनुसार यही प्रतीत होता है कि आपके द्वा रा demonetization Period (नोटबंदी ) के दौरान जमा 10,30,000/- के जमा का कोई स्पष्ट स्रोत प्रस्तुत नहीं कि या गया, कृपया स्पष्ट करें कि क्यों न इसे आपकी अन्य साधनों से आय मानते हुए, आपकी कुल आय में जोड़ दि या जाए?

“In response to the above notice it was humbly submitted before him that As far as drawings Rs. 5,00,000 made on 01.11.2016 from M/S Karni food products is concern it is submitted that The assessee was a partner in this firm. The

firm was having huge secured unsecured loans & sundry creditors in the firm and the firm business was not doing well enough to repay the loans. In the beginning of Financial year 2016 wherein the assessee was badly injured in a car accident on NH 89, His one leg and hand was fractured and some deep trauma was also treated therefore he was strictly warned by the doctors to take full rest for 5-6 months at home. As he was one and only working partner in that firm and during the period of his medical rest business of the assessee badly effected. Sales of the firm declined badly from 2016 and during the relevant year the business suffered from huge loss when he joined the firm in mid of Fin year 2016-17 he tried a lot to lift the business but his namkeen products were not in demands just after it he started to manufacture cold drinks in 2016 but it was also having no response. The firm was having a huge quantity stock of packing materials, rolls, cylinders etc. When the sales was not doing good than to repay the loan, recovery operation of money was moved by the assessee and packing material was start to sell to recyclers of plastic on weight basis. He himself had invested huge investment in the firm during the fin year 2014-15 to 2017-18. The firm booked a loss of Rs. 53,369,644/- in the FY 2016-17 and Rs. 42,71,215/- in FY 2017-18. The assessee had started its house construction from 2015 which had also to be completed due to deadline given in a family settlement any how. Just after a day of amavasya (30.10.2016) his carpenter come to meet him to suggest him that we should take dry 2<sup>nd</sup> old wooden and a lot is there with some person so he advice me to keep more than 7-8 lac Rs. In hand that was the main reason behind drawing cash from firm also even after having some cash in hand in hand but later the negotiation with the sellers of wooden could not be finalized due to rate issue and we purchased wooden thereafter from Bikaner local firm. As I have quoted that due to injured body, I was not fit and my body was not working properly and due to deadline given by families in family settlement I have to complete my house construction therefore I have to keep cash with me at home anytime to buy lots of building material and other necessary work. That was the main reasons behind drawings cash from firm”

So the above reply left no doubt to constitute any base to make addition u/s 69A. When the appellant was saying from beginning that construction of his house was progress so for that reasons he has to keep cash money. He met a car accident and firm was booking huge losses on the other hand the assessee had started its house construction from 2015 which had also to be completed due to deadline given in a family settlement any how. Just after a day of amavasya (30.10.2016) his carpenter come to meet him to suggest him that we should take dry 2<sup>nd</sup> old wooden and a lot is there with some person so he advice me to keep more than 7-8 lac Rs. In hand that was the main reason behind drawing cash from firm also even after having some cash in hand in hand but later the negotiation with the sellers of wooden could not be finalized due to rate issue and we purchased wooden thereafter from Bikaner local firm. As I have quoted that due to injured body, I was not fit and my body was not working

properly and due to deadline given by families in family settlement I have to complete my house construction therefore I have to keep cash with me at home anytime to buy lots of building material and other necessary work. That was the main reasons behind drawings cash from firm so the addition made by ld. AO by not considering the submission of assessee was bad in law hence the addition made u/s 69A is deserve to be deleted.

**As per plain reading following condition must be fulfilled for applicability of section 69A:**

1. Assesse is found to be owner of any money, Bullion, Jewellery etc.
2. Such Money is **not recorded** in the books of accounts, If any maintained by him for any source of income, **AND**
4. Assesse offers no explanation or explanation is found not satisfactory by AO.

As per language of section, Section 69A can be invoked only when the assessee has not recorded such money in the books of accounts **and** offers no explanation or unsatisfactory explanation. Both the condition given in point no 2 and 3 are cumulative and satisfaction of either of condition does not automatically triggers rigours of section 69A.

In other words, **We can say that when the assessee has recorded such money in his books of accounts then no explanation is required to be offered for the purpose of section 69A. Addition u/s 69A can be made only when such money is not recorded in the books of accounts and not offered satisfactory reply.**

When the assessing officer has not doubted the genuineness of purchases or opening stock, and has not rejected the books of accounts u/s 145(3), then the assessing officer cannot deny the source of cash deposit out of cash sales and thus he cannot make any addition u/s. 69 of the Act As I relied upon the decision of Hon'ble Patna High court .

**Lakshmi Rice Mills v. CIT [1974] 97 ITR 258 (PAT.)** Wherein this judgment it was held that Whether when books of accounts of assessee were accepted by revenue as genuine, and cash balance shown therein was sufficient to cover high denomination notes held by assessee, assessee was not required to prove source of receipt of said high denomination notes which were legal tender at that time – Held, yes.

I want to draw your attention towards some latest decision wherein these judgments Hon'ble courts have quashed the addition u/s 69 of the IT Act 1961. In a recent decision the Ld **Delhi Tribunal in the case of Gordhan, Delhi v/s DCIT dated 19/10/2019 held that**“ no addition can be made u/s 68 on the sole reason that there is a time gap of 5 months between the date of withdrawals from bank account and redeposit the same in the bank account , Unless the AO demonstrate that the

amount in question has been used by the assessee for any other purpose. In my view addition is made on inferences and presumptions which is bad in law.”

Like wise I the case of **ACIT vs Baldev Raj Charla 121 TTJ 366 (Delhi)** also held that merely because there was a time gap between withdrawal of cash and cash deposits explanation of the assessee could not be rejected and addition on account of cash deposit could not be made particularly when there was no finding recorded by the assessing officer or the Commissioner that apart from depositing this cash into bank as explained by the assessee, there was any other purposes it is used by the assessee of these amounts. In view of above facts, the ground number 1 of the appeal of the assessee is allowed and orders of lower authorities are reversed.

One can also place his reliance on the decision of Ld. Delhi High Court in the case of **CIT vs Kulwant rai in 291 ITR 36** wherein the honourable Delhi High Court has held as under:-

“ This cash flow statement furnished by the assessee was rejected by the AO which is on the basis of suspicion that the assessee must have spent the amount for some other purposes. The orders of AO as well as CIT(A) are completely silent as to for what purpose the earlier withdrawals would have been spent. As per the cash book maintained by the assessee, a sum of Rs. 10,000 was being spent for household expenses every month and the assessee has withdrawn from bank a sum of Rs. 2 lacs on 4th Dec., 2000 and there was no material with the Department that this money was not available with the assessee. It has been held by the Tribunal that in the instant case the withdrawals shown by the assessee are far in excess of the cash found during the course of search proceedings. No material has been relied upon by the AO or CIT(A) to support their view that the entire cash withdrawals must have been spent by the assessee and accordingly, the Tribunal rightly held that the assessment of Rs. 2.5 lacs is legally not sustainable under s. 158BC of the Act and the same was rightly ordered to be deleted.”

On the basis of these judgement the Ld Delhi tribunal recently deleted the addition made for inordinate delay in cash deposit in the case of **NEETA BREJA v/s ITO (ITA No 524/D/17/25-11-2019)**

So in view of this the addition made by Ld. AO deserve to be deleted because he has made this addition on his sweet will without pointing out any defect in books of account as well as any deficiency. He had completely ignores the facts and submission of the assessee. He had made no independent inquiry before disposing the case. He had made this addition only on the base of his own doubt for depositing the cash money which is hilarious absurd and need to deleted to meet hand in justice so it

is again requested your office to kindly delete the addition of Rs. 5,50,000/- u/s 69 of the IT Act.

GAO No. 2 & 3 are of general nature hence are not pressed.

so in view of above delete the addition made by ld. AO and allow the appeal.”

6. Per contra, the ld. DR relied upon the orders of the lower authorities confirming addition based on that reasoning he argued that the addition is requires to be confirmed.

7. We have heard the both parties and perused the materials available on record. Grounds of appeal No. 2 & 3 are of general in nature hence, they are not required to be adjudicated. The only issue in ground No. 1 the assessee challenged before us, being the cash deposited during demonetization period out of total cash deposited of Rs. 10,30,000/- the ld. AO based on the submission made by the assessee not considered of Rs. 5,50,000/- as explained and thus the same was added u/s 69A of the Act. The action of the ld. AO confirmed by the ld. CIT(A) also. On this issue we note from the submission made by the ld. AR of the assessee that the ld. CIT(A) has failed to consider the documents produced during the assessment proceedings and again issued notice u/s 142(1) of the Act. The ld. AO during the assessment proceedings considered the reply filed by the assessee partly but found not

satisfactorily in full. We note that the assessee in the assessment proceedings replied in response to notice that the assessee made withdrawal in cash from the same bank account Rs. 2,00,000/- on dated 16.09.2016 and Rs. 2,50,000/- on dated 17.10.2016. He further contended that he made drawings of Rs. 5,50,000/- from the firm M/S Karni Food Products, Bikaner where the assessee is a partner. All the drawing was made for the purpose of construction of his house, this explanation of the assessee not doubted. The claim of the assessee for drawings of Rs. 5,50,000/- from firm M/S Karni Food Products, Bikaner is supported by an audited accounts, copy of ledger account and cash flow statement submitted (AAB 1 to 4) by the assessee. From the assessment order, we observed that the Id. AO has considered reply in detailed and the reasons were also recorded in the assessment order. We also note that the Id. CIT(A) has simply followed the findings of the Id. AO and did not give any findings as to the merits of the submission made by the assessee. On going through the evidences produced by the assessee before the lower authorities, we note that the assessee is one of the partner in M/s Karni Food Products and from the ledger account, cash withdrawn is reflected in the account of M/s Karni Food Products. The accounts of that firm are audited, the AO has merely stated in the order that the assessee has many a time made withdrawal from the bank account and therefore, the cash has

already been utilized in construction cannot be considered for deposit of cash as source. Whereas the ld. AR of the assessee referred the case laws and submitted that once the claim of the assessee is supported by an entry in the books of accounts of the said firm and this primary evidence placed on record is not controverted or rejected by the Assessing Officer. Thus, if the same is considered based on the evidences which is not controverted by the Revenue, the source of cash deposited thus stands proved. In the absence of finding that the said cash actually used by the assessee some elsewhere, explanation of the assessee supported by the evidences cannot be disproved. Based on these observations, we hold that no addition can be made u/s 69A of the Act, when the books of accounts of the assessee were accepted by the Revenue as genuine and cash balance shown therein was sufficient to cover the source of cash deposited in the bank account. The orders of the ld. AO as well as ld. CIT(A) are completely silent on the evidence so filed and taken only one reason that the cash available with the assessee might have been used. Considering all this set of fact and discussion so far we do not find force in the arguments of the lower authorities that the assessee has utilized the said cash for other purposes. Once the assessee himself has not sought this cash balance available for any addition in the asset or by way of expenditure, then in that case it is based on these evidences, the cash is available with the

assessee to justify cash deposited in the bank account during the demonetization period. Based on these observation, the addition made by the lower authorities for an amount of Rs. 5,50,000/- is thus vacated.

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

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-

(RATHOD KAMLESH JAYANTBHAI)  
ACCOUNTANT MEMBER

Sd/-

(DR. S. SEETHALAKSHMI)  
JUDICIAL MEMBER

Dated : 04/08/2023

*\*Santosh*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
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Assistant Registrar  
Jodhpur Bench