

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: H: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.2433/Del/2022  
Assessment Year: 2017-18

The DCIT, Central Circle-29, New Delhi	vs.	M/s. Bhanu Infrabuild Pvt. Ltd., 10, Local Shopping Centre, Kalkaji, New Delhi 110019 <b>PAN AADCB 3312 J</b>
(Appellant)		(Respondent)

For Revenue:	Shri Amit Katoch, CIT(DR)
For Assessee :	Shri Akshat Jain, CA

Date of Hearing :	20.07.2023
Date of Pronouncement :	18.08.2023

**ORDER**

**PER CHANDRA MOHAN GARG, J.M.**

This appeal has been filed against the order of CIT(A)-31, New Delhi dated 06.07.2022 for A.Y. 2017-18.

2. The grounds raised by the revenue in ITA No. 2433/Del/2022 are as under:-

*1. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) erred in law & on facts, ignoring the impounded documents seized from the registered address of M/s Omaxe Limited as Annexure A-4 (Page No. 87 to 91 and 97-100) which brought into light the fact that the company M/s Bhanu Infrabuild Private Limited was having Cash-in-hand as on 08.11.2016 as per page no. 97-100 was 7055.*

*2. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) erred in law & on facts, ignoring that there is no pattern of such huge cash deposits in the year previous to the relevant previous year.*

*3. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) erred in law & on facts, ignoring that the assessee only submitted that the impounded documents containing cash balance available at site offices maintained at the corporate headquarter for various exigencies but again the assessee did not produce any documentary evidences in order to establish its claim. It is not acceptable that such a going on concern i.e. company/flagship company does not maintain or keep record of such details of cash alongwith its purposes for each of the company sites separately.*

*4. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) erred in law & on facts, ignoring and did not discuss on the Cash in hand as per impounded documents in its whole order rather involved himself only in the commensuration of the data of the assessee for both the FYs.*

*5. Whether the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.*

*6. Whether the grounds of appeal are without prejudice to each other.*

3. The Id. Senior DR pressing into service grounds of assessee submitted that the Id. CIT(A) has erred on the facts and in the circumstances of the case, the Ld.CIT(A) erred in law & on facts, ignoring the impounded documents seized from the registered address of M/s Omaxe Limited as Annexure A-4 (Page No. 87 to 91 and 97-100) which brought into light the fact that the company M/s Bhanu Infrabuild Private Limited was having Cash-in-hand as on 08.11.2016 as per page no. 97-100 was 7055. He further submitted that the Id. CIT(A) has ignored a very vital fact that there was not pattern of such huge cash deposit in the year previous to relevant financial period and there was not reason to keep such huge cash in hand for the assessee. He vehemently pointed out that on the facts and in the circumstances of the case, the Ld.CIT(A) erred in law & on facts, ignoring that the assessee only submitted that the impounded documents containing cash balance available at site offices maintained at the corporate headquarter for various exigencies but again the assessee did not produce any documentary evidences in order to establish its claim. It is not acceptable that such a going on concern i.e. company/flagship company does not maintain or keep record of such details of cash alongwith its purposes for each of the company sites separately.

4. The Id. Senior DR supporting the assessment order submitted that the Id. CIT(A) has also erred in ignoring glaring factual position against the assessee and granted relief to the assessee without discussing the cash in hand as per impounded documents in the first appellate order rather accepted the explanation of assessee without any verification and examination. Therefore the Id. Senior DR submitted that the impugned first appellate order may kindly be set aside by restoring that of the Assessing Officer.

5. Replying to the above, the Id. counsel of assessee took us through the relevant part of first appellate order and submitted that the Id. CIT(A) after considering the stand of the Assessing Officer and explanation of assessee supported by sustainable documentary evidence rightly concluded that the assessee has explained source of cash deposit by showing cash balance as on 08.11.2016 which was created and build up out of opening cash as on 01.04.2016 and cash withdrawals till 08.11.2016 from the bank accounts of assessee which were clearly discernable from the audited books, bank

statements return of income for AY 2016-17 and side cash book as well as main cash book maintained in the central office of assessee. Finally the Id. counsel submitted that the appeal of revenue may kindly be dismissed.

6. On careful consideration of above rival contention first of all, from the assessment order we note that the Assessing Officer made addition of Rs. 1,24,50,000/- u/s. 68 of the Act by observing that the assessee has failed to explain the source of cash deposited during demonetization period. The contention of Assessing Officer are precisely that the cash withdrawals by the assessee are not near to the dates of cash deposits and when the cash was withdrawal for wages payments & other purposes then there is no reason why such expenses were not incurred and a running concern could not have huge cash for long period. The Assessing Officer also alleged that the assessee has prepared cash book in such a way showing cash withdrawals and cash deposits during demonetization period which is after thought and self serving. He also alleged that comparative figure of earlier to preceding year are not matching with the cash deposit and there is no question of accepting cash generation through sales. We also noted that the flagship company M/s Omexe Ltd. has surrendered huge amount of unaccounted income but assessee has not disclose any such income.

7. Further from the relevant operative part of first appellate order we note that the Id. CIT(A) granted relief to the assessee with following observations and findings:-

*5.2. I have carefully considered the assessment order and the submissions of the appellant as well as the assessment records. The findings regarding various observations made by the AO leading to the impugned addition of the amount of cash deposited post-demonetization, are as follows:*

*5.2.1. The AO has observed that cash withdrawals made by the assessee are not near the dates of cash deposits, and further that if the assessee had withdrawn cash for wage payments/ deals, it is not understandable as to why such expenses were not actually incurred. The AO has observed that the assessee company being a running concern, could not have mounted cash for so long and hence the assessee cannot be given favour in a case where the cash is withdrawn long time back. In this regard, it is important to consider the following comparative charts incorporating monthly opening cash balance, cash sales, cash withdrawals, cash deposits, cash expenses and monthly closing cash balance as per the cash books of the appellant for F.Ys. 2015-16 and 2016-17 submitted during the appellate proceedings:*

BHANU INFRABUILD PRIVATE LIMITED						
MONTHLY CHART FOR FINANCIAL YEAR 2015-16						
Month	Opening Balance	Cash Sales	Cash Withdrawal	Cash Deposited	Cash Expenses	Closing Balance
April, 2015	60,42,510	-	1,00,000	50,00,000	34,279	11,08,231
May, 2015	11,08,231	-	-	-	63,633	10,44,598
June, 2015	10,44,598	14,600	51,00,000	-	58,314	61,00,884
July, 2015	61,00,884	2,260	50,000	-	68,987	60,84,157
August, 2015	60,84,157	-	-	-	27,473	60,56,684
September, 2015	60,56,684	30,020	50,000	-	84,404	60,52,300
October, 2015	60,52,300	800	50,000	-	30,096	60,73,004
November, 2015	60,73,004	3,220	50,000	-	1,01,206	60,25,018
December, 2015	60,25,018	2,050	-	-	25,265	60,01,803
January, 2016	60,01,803	-	1,00,000	-	43,577	60,58,226
February, 2016	60,58,226	-	50,000	-	60,011	60,48,215
March, 2016	60,48,215	-	-	50,00,000	22,925	10,25,290
		52,950	55,50,000	1,00,00,000	6,20,170	

  

BHANU INFRABUILD PRIVATE LIMITED						
MONTHLY CHART FOR FINANCIAL YEAR 2016-17						
Month	Opening Balance	Cash Sales	Cash Withdrawal	Cash Deposited	Cash Expenses	Closing Balance
April, 2016	10,25,290	-	50,50,000	-	72,863	60,02,427
May, 2016	60,02,427	-	1,00,00,000	-	56,960	1,59,45,467
June, 2016	1,59,45,467	20,000	50,000	-	56,687	1,59,58,780
July, 2016	1,59,58,780	-	50,000	45,00,000	59,954	1,14,48,826
August, 2016	1,14,48,826	80,000	-	20,00,000	59,809	94,69,017
September, 2016	94,69,017	18,390	90,000	-	59,596	95,17,811
October, 2016	95,17,811	7,020	1,00,00,000	70,00,000	56,413	1,24,68,418
November, 2016	1,24,68,418	40,000	1,50,000	1,00,00,000	-	26,58,418
December, 2016	26,58,418	-	2,50,000	24,50,000	-	4,58,418
January, 2017	4,58,418	-	5,60,000	-	36,526	9,81,892
February, 2017	9,81,892	20,000	-	-	21,500	9,80,392
March, 2017	9,80,392	27,000	1,10,000	-	1,11,619	10,05,773
		2,12,410	2,63,10,000	2,59,50,000	5,91,927	

5.2.2. It is pertinent to mention here that similar comparative charts for F. Ys. 2015-16 and 2016-17 were also submitted during assessment proceedings, with supporting cash books and bank statements. At para 6.4. of the assessment order, the AO has observed that the assessee had not produced comparative charts with earlier years. However, from the assessment record I find that such charts have been submitted and are kept on assessment record. Further, the AO has himself given an extract of comparative figures of the two years at the table at para 6 of the assessment order. Therefore, the assessee has duly complied in furnishing details. There are however some minor differences between the two sets of comparative charts viz. charts submitted during assessment proceedings are only upto 8.11.2015 and 8.11.2016 and further incorporate only the major cash withdrawals from bank and cash deposits into bank. However, the month

wise opening and closing cash in hand are accurately calculated in both sets of comparative charts. The set of comparative charts furnished during assessment proceedings is extracted below:

Bhanu Infrabuild Private Limited					
Detail of cash Required					
Month	Opening cash in hand	cash sales	cash deposit in bank	cash withdrawal from bank	Closing cash in hand
Apr-15	6042510	-	5,000,000.00	-	1108231
May-15	1108231	-	-	-	1044598
Jun-15	1044598	14,600.00	-	5,000,000.00	6100884
Jul-15	6100884	2,260.00	-	-	6084157
Aug-15	6084157	-	-	-	6056684
Sep-15	6056684	30,020.00	-	-	6052300
Oct-15	6052300	800.00	-	-	6073004
Nov till 8-Nov-15	6073004	-	-	-	6048560
Apr-16	1025290	-	-	5,000,000.00	6002427
May-16	6002427	-	-	10,000,000.00	15945467
Jun-16	15945467	20,000.00	-	-	15958780
Jul-16	15958780	-	4,500,000.00	-	11448826
Aug-16	11448826	80,000.00	2,000,000.00	-	9469017
Sep-16	9469017	18,390.00	-	-	9517811
Oct-16	9517811	7,020.00	7,000,000.00	10,000,000.00	12468418
Nov till 8-Nov-16	12468418	-	-	-	12468418

5.2.3. I have considered the comparative charts as submitted during appellate as well as assessment proceedings. On the basis of the following observations, I am not in agreement with the reasons given by the AO to treat the cash deposited post-demonetization as unexplained. From the comparative charts for complete financial years 2015-16 and 2016-17, it is observed that the appellant usually maintains a high cash balance in the books of account. This is evident from the opening cash balance of Rs. 60,42,510/- as on 01.04.2015, which is also corroborated by the cash balance as on 31.03.2015 as per the IT and audit report for A.Y. 2015-16, which was filed much before demonetization and is therefore not a subject matter of manipulation.

5.2.4. It is also observed from the chart for F.Y. 2016-17 that the opening cash balance as on 01.04.2016 of Rs. 10,25,290/- was enhanced to Rs. 60,02,427/- as on 30.04.2016 by making a cash withdrawal of Rs. 50,50,000/- during that month. Thereafter, the cash balance has been maintained at further higher levels for the remaining F.Y. upto the date of demonetization, by making further major cash withdrawals of Rs. 1,00,00,000/- in May, 2016 and Rs. 1,00,00,000/- in October, 2016 on 17.10.2016 i.e. a few days prior to demonetization. The wisdom behind maintaining such high level of cash balance cannot be a subject matter of finger-pointing by the AO, and is best left to the business prudence of the assessee. However, the fact remains that high levels of cash balance have been shown in ITR filed by the appellant even prior to demonetization, as observed above. Further, the levels of cash withdrawals from bank accounts and cash deposits into bank accounts are also comparable for the two financial years under consideration. The cash withdrawal from bank accounts of the appellant was Rs. 55,50,000/- during

*F.Y. 2015-16 and the same was Rs. 2,63,10,000/- during F.Y. 2016-17. Similarly cash deposited into bank accounts was Rs. 1,00,00,000/- during F.Y. 2015-16 as compared to cash deposit of Rs. 2,59,50,000/- (normalized to Rs. 1,25,00,000 after adjusting for the forced deposit of Rs. 1,24,50,000 due to demonetization) during F.Y. 2016-17. Therefore, the trend of cash withdrawal and deposit was similar in both the years. Infact, substantial cash withdrawals as well as deposits into the bank accounts is very much a regular feature of the business of the appellant and hence there is nothing unusual in either the cash withdrawals or the cash deposits made during the year under consideration. It is also observed that the appellant has a low or negligible level of cash receipts through sales and also a low level of cash expenses as seen from the comparative charts. In this regard, it is noteworthy that the assessee has not tried to explain the post-demonetization cash deposits by showing cash sales, which are at a miniscule level. A similar trend is observed in the preceding year also wherein the level of cash sales and cash expenses is low. The AO has remarked in a generalized manner that cash is normally withdrawn for immediate expenses such as wage payments, which have not been shown by the appellant. The said observation is not well-founded since some amount of cash expenses have been shown by the appellant and more importantly the AO has not established that wage payments or any other expenses of meaningfully higher magnitude were being made in cash earlier and have now not been shown. Such generalized allegations without marshaling appropriate facts are not proper. It is thus seen that there was no unusual trend in cash withdrawals, cash deposits, cash sales, cash expenses and level of cash balances during the year under consideration as compared to the preceding year. The A's observation that the assessee company being a running concern, could not have mounted cash for so long, amounts to mere surmises since the fact of maintenance of high cash balances across extended period of several months is duly established from the ITs and audit reports as well as cash withdrawals of the appellant from its bank accounts, both of which are a matter of record and are not subject to manipulation. It is an established principle that business prudence behind such practices is not subject to questioning.*

*5.2.5. As regards the time gap of a few months between cash withdrawal and cash deposit into the bank accounts, similar trend is observed in the preceding year also, thereby establishing that such time gap too was a normal feature of the assessee's business. E.g. substantial cash withdrawal of Rs. 51,00,000/- was made in the month of June, 2015 and the same was effectively deposited back into the bank accounts in the month of March, 2016.*

*The decisions of the jurisdictional High Court cited by the appellant in the cases of Kulwant Rai (supra) and Jaya Aggarwal (supra) are also in support of these findings. In the case of Kulwant Rai, the assessee had cited withdrawal of a sum of Rs. 2 lakhs from his bank account as the source for cash found during search and the same was not accepted by the AO on the assumption that such withdrawn amount may have been spent for some other purposes. The court held that in the absence of any material in support of the view that withdrawals were spent for some other purpose, the Tribunal*

*was right in treating the withdrawals as source of cash found. Similar is the case of the assessee where cash withdrawals from bank accounts are the source of subsequent cash deposits into such bank accounts. Further, in the case of Jaya Aggarwal, the jurisdictional Court held that where the assessee withdrew cash of Rs. 2 lakhs from bank account to buy property and re-deposited cash of Rs. 1,60,000/-from the amount withdrawn after more than 7 months as the deal could not be finalized, principle of preponderance of probability as a test is to be applied and is sufficient to discharge the onus. The case of the assessee is also similar since cash withdrawals from bank are shown as source for subsequent cash re-deposit even if made at a gap of a few months. It is therefore held that holding substantial cash balances for extended periods of time and re-deposit of such cash into bank accounts was a routine business practice of the appellant company and there was nothing unusual about the same considering the nature of the business as well as trends in the preceding year.*

*5.2.6. The AO has further observed that the assessee has prepared cash books in such a way that nearby cash withdrawals can be shown as cash deposited during demonetization. In this regard, it is a matter of fact that the bank withdrawals or deposits are reflected in the bank accounts statements as well as cash book and cannot be manipulated in any manner. The appellant has duly given the site cash books as well as main cash book whose total cash balance as on 08.11.2016 is Rs. 1,24,68,418/-. The said cash balance has been built up by cash withdrawals from bank accounts, which are undisputed, and the opening cash balance at the beginning of the year, which is also undisputed since the same tallies with the cash balance as on 31.03.2016 as per the IT for A.Y. 2016-17 filed on 12.10.2016.. prior to demonetization. The AO has ignored the main cash book of the assessee and has considered only the site cash books in arriving at the figure of cash balance as on 08.11.2016. The appellant has stated that the existence of the main cash book cannot be denied since most of the bank transactions, whether deposits or withdrawals, have been routed through the main cash book, which is the reason why the main cash book has the bulk of cash balance. It is further submitted by the appellant that cash in hand as on 01.04.2016 as per the sum total of all cash books, including the main cash book, comes to Rs. 10,25,290/-, which is also the figure of cash in hand as on 31.03.2016 as per the IT for A.Y. 2016-17 filed prior to demonetization. I have examined the above contentions and find that the AO's action in ignoring the main cash book is incorrect due to reasons cited by the appellant, since major bank withdrawals and deposits have been routed through the main cash book and if the said cash book is ignored, it would amount to ignoring the cash withdrawals made from bank accounts as well as cash deposits therein. Further, the AO has not cited any statement recorded or logical reasoning as to why the main cash book has been ignored. Therefore the observation of the AO that the cash book has been constructed in such a manner so as to explain the cash deposits, is untenable.*

*5.2.7. The AO has further observed that since the assessee is a builder and has stated that all sales are via cheque/RTGS/ DD etc, there is no question of accepting cash generation through sales. Regarding this observation, it is noted that the appellant itself*



*withdrawals from bank accounts, which are undisputed, and the opening cash balance at the beginning of the year, which is also undisputed since the same tallies with the cash balance as on 31.03.2016 as per the IT for A.Y. 2016-17 filed on 12.10.2016 i.e. prior to demonetization. Therefore, the addition of Rs. 1,24,50,000/- on account of unexplained cash deposited during demonetization, is untenable and is accordingly deleted. Ground nos. 1 to 3 are allowed.*

8. From the assessment order we note that the sole basis for making addition in the hands of assessee u/s. 68 of the Act taken by the Assessing Officer is that the cash balance is available as on 08.11.2016 was Rs. 7,055/- and the assessee had deposited cash amount of Rs. 1,24,50,000/- post demonetization period. In response to notice of the Assessing Officer the assessee submitted that the said deposit had been generated out of cash available as per cash book balance as on 08.11.2016 and the same was created through cash withdrawals from the banks during pre-demonetization period and opening cash balance as on 01.04.2015 which is also corroborative by the balance sheet, audited financial statements and Income Tax return for AY 2015-16 which was filed much prior to the demonetization declaration. We also note that the Id. CIT(A) also noted that the maintaining of high cash balance is a subject matter of business prudence and proagative of assessee which cannot be disputed by the Assessing Officer. The Id. CIT(A) also evaluated the patterns of cash withdrawals from bank account and noted that during FY 2015-16 cash withdrawals were Rs. 55,50,000/- and during FY 2016-17, relevant to AY 2017-18 under consideration, it was Rs. 2,63,10,000/- and cash deposited during FY 2015-16 was Rs. 1 crore and during 2016-17 cash deposit was Rs. 2,59,50,000/- including cash deposit of Rs. 1,24,50,000/- during demonetization period. Therefore, from the above comparison and figures, we note that the financial statements of assessee clearly show that the assessee was consistently maintaining huge cash balance as per his business prudence and there was opening cash balance as well as huge cash withdrawals from 01.04.2016 till declaration of demonetization period amounting to Rs. 2,63,10,000/- which are much higher than the amounts of Rs. 1,24,50,000/- i.e. cash deposited by the assessee to its bank account during pre & post demonetization period and we are unable to see any discrepancy defect or perversity therein. It is pertinent to mention that the Id. Senior DR did not dispute above noted factual position and figures noted by the Id. CIT(A), based on audited financial statements, balance sheet and bank statements of assessee, before granting relief to the assessee.

9. We further observe that the Id. CIT(A) after considering the cash withdrawals from the banks as per bank statements and cash book noted that the same cannot be manipulated in any manner. In view of above, we are in agreement with the conclusion drawn by the Id. CIT(A) that the appellant has duly given the site cash books as well as main cash book showing cash balance of Rs. 1,24,68,418/- and the cash deposited to

its bank account was created due to huge opening cash balance of Rs. 10,95,290/- as on 01.04.2016, which was enhanced to Rs. 60,02,427/- after inclusion of cash withdrawal Rs. 50,50,000/- and deduction of some expenses during April 2016. We are also in agreement with the conclusion of Id. CIT(A) that as per audited books and return of income filed by the assessee before demonetization declaration, and amount of cash withdrawals from 01.04.2016 to till demonetization period amounting to Rs. 2,63,10,000/- which was higher than the cash withdrawals during immediately preceding FY 2015-16 amounting to Rs. 55,50,000/-. Keeping in view above noted factual position which has not been controverted by the Assessing Officer or by the Id. Senior DR we are inclined to agree with the conclusion drawn by the Id. CIT(A) that the assessee has successfully demonstrated source of cash deposit of Rs. 1,24,50,000/- to its bank account during demonetization period and hence not addition is called for. We are unable to see any ambiguity perversity or any valid reason to interfere with the findings arrived by the Id. CIT(A) and thus we uphold the same. Accordingly, grounds of revenue are dismissed.

10. In the result, the appeal of revenue is dismissed.

Order pronounced in the open court on 18.08.2023.

Sd/-  
(DR. B.R.R. KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

Dated:18<sup>th</sup> August, 2023.

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi