

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.2438/Del/2022
Assessment Year: 2017-18

The DCIT, Central Circle-29, New Delhi	vs.	M/s. Atulah Contractors and Construction Pvt. Ltd., 10, Local Shopping Centre, Kalkaji, New Delhi 110019 PAN AACCV 3487 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. 2438/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 fact that the assessee company only submitted that the company was a construction contractor and needs cash in hand for making payment for wages etc. The assessee did not produce any documentary evidences of any payment being made for wages etc.*

2. *Whether on the facts and in the circumstances of the case, the Ld.CIT(A) erred in law & on facts, ignoring the fact that the assessee throughout during assessment proceedings even before appellate proceedings only submitted figures/datas in order to establish the source of such cash deposits made by the assessee during assessment proceedings but no documentary evidences relating to the purposes of such cash in hand i.e. expenses such as wages etc was filed by the assessee, done in FY 2016-17, if any, relating to the AY 2017-18 or in any of the earlier AY/AYs.*

3. *Whether on the facts and in the circumstances of the case, the Ld.CIT(A) erred in law & on facts, ignoring Section 68 of the Income-tax Act, 1961 which clearly speaks that the primarily burden of proof lies on the assessee in order to prove the genuineness of the transactions which the assessee failed to do so.*

4. *Whether on the facts and in the circumstances of the case, the Ld.CIT(A) erred in law & on facts, ignoring the Provision of Section 103 of the Evidence Act which clearly states that the burden of proof is on the person who wishes the court to believe in the existence of a particular fact. In this scenario, Burden of proof will never be shifted to the Revenue, it lies on the assessee who is required to prove a fact. When we come within the ambit of Section 68 of the Income-tax Act, 1961, one and the most important limbs i.e. documentary evidences will always come into role automatically w.r.t any such claims made by the assessee during the assessment proceedings.*

5. *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 Atulah Contractors Construction (P) Ltd. was having Cash-in-hand as on 08.11.2016 was 1378181 (as per page nos. 87 to 91) while the same as on 08.11.2016 as per page no. 97-100 was 1298219*

6. *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.*

7. *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.*

8. *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.*

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

3. The Id. Senior DR 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 fact that the assessee company only submitted that the company was a construction contractor and needs cash in hand for making payment for wages etc. The assessee did not produce any documentary evidences of any payment being made for wages etc. it was also submitted that on the facts and in the circumstances of the case, the Ld.CIT(A) erred in law & on facts, ignoring the fact that the assessee throughout during

assessment proceedings even before appellate proceedings only submitted figures/datas in order to establish the source of such cash deposits made by the assessee during assessment proceedings but no documentary evidences relating to the purposes of such cash in hand i.e. expenses such as wages etc was filed by the assessee, done in FY 2016-17, if any, relating to the AY 2017-18 or in any of the earlier assessment years and has grossly erred in ignoring the provision of sec 68 of the Act which clearly provides that the primary burden of proof lies on the assessee in order to prove genuineness of transaction which the assessee failed to discharge.

4. The Id. Senior DR vehemently pointed out that on the facts and in the circumstances of the case, the Ld.CIT(A) erred in law & on facts, ignoring the Provision of Section 103 of the Evidence Act which clearly states that the burden of proof is on the person who wishes the court to believe in the existence of a particular fact. In this scenario, Burden of proof will never be shifted to the Revenue, it lies on the assessee who is required to prove a fact. When we come within the ambit of Section 68 of the Income-tax Act, 1961, one and the most important limbs i.e. documentary evidences will always come into role automatically w.r.t any such claims made by the assessee during the assessment proceedings. Harping on the factual mistakes committed by the Id. CIT(A) the Id. CIT(DR) submitted that 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 Atulah Contractors Construction (P) Ltd. was having Cash-in-hand as on 08.11.2016 was 1378181 (as per page nos. 87 to 91) while the same as on 08.11.2016 as per page no. 97-100 was 1298219.

5. The Senior DR also drawing our attention towards assessment as well as first appellate order submitted 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 and there was no pattern of such huge cash deposit in the preceding assessment year. The Senior DR also submitted that the Id. CIT(A) has ignored and did not discussed the issue of cash in hand as per impounded documents in its whole order rather only considered the data supplied by the assessee for granting relief to the assessee. Therefore impugned first appellate order may kindly be set aside by restoring that of the Assessing Officer.

6. Replying to the above, the Id. counsel of assessee drew our attention towards findings recorded by the Id. CIT(A) in para 5 to 5.3 of first appellate order and submitted that the cash deposited pre & post demonetization period was duly explained by the assessee and amount of cash available as on 08.11.2016 was also fully explained by the assessee. The Id. counsel submitted that the cash balance on the date of demonetization i.e. on 08.11.2016 was created and build up by opening cash balance as on 01.04.2016 and cash withdrawals from the bank account of assessee till 08.11.2016 which has not been disputed as the same also tallies with the cash balance as on 31.03.2016 as per return of income for AY 2016-17 filed before declaration of demonetization, and the same cash balance was brought forward as opening balance on 01.04.2016. The Id. counsel submitted that the Id. CIT(A) has considered stand of the Assessing Officer and explanation of assessee supported by plausible documentary evidence and thereafter deleted the addition by recording sustainable reasoning which requires no interference and thus appeal of revenue may kindly be dismissed.

7. On careful consideration of above rival contention first of all, from the assessment order we note that the Assessing Officer made addition 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.

8. The Id. CIT(A) granted relief to the assessee the following observations & finding:-

5. I have carefully considered the assessment order and submissions of the appellant. Ground nos. 1 to 3 of the appeal are related to the addition of Rs. 2,40,00,000/- on account of unexplained cash deposits. The brief facts of the case are that on 22.11.2016, in the post-demonetization period, the Police intercepted two vehicles carrying cash amounting to Rs. 2,22,76,000/- which was belonging to M/s Omaxe Ltd. The said cash was requisitioned us 132A by the Income Tax Authority and a survey us 133A was also conducted at the office premises M/s Omaxe Ltd, wherein certain

documents were impounded as Annexure A-4 (Page No. 87 to 91 and 97 to 100). The AO has stated that these impounded pages contain notings of cash balances as on 08.11.2016 of various group companies belonging to the Omaxe Group, to which the assessee company also belongs. The AO has reproduced the said relevant pages of the impounded documents in the assessment order. From these impounded pages, the AO has noted that the cash balance available as on 08.11.2016 with the assessee company was Rs. 13,78,181/-, whereas the assessee had deposited cash amounting to Rs. 2,40,00,000/- post-demonetization. The AO asked the assessee for justification/ source of the excess cash so deposited after demonetization. In response, the assessee submitted that the said deposit had been made out of cash available as per cash book balance on 08.11.2016. It was also pointed out that the said cash balance had been built up through cash withdrawals from bank accounts of the assessee. The assessee has also furnished comparative charts for F.Y. 2015-16 and 2016-17 showing month-wise cash balances, withdrawals and deposits, in order to demonstrate that such withdrawals and deposits were a part of routine business exercise of the assessee even in the period prior to the demonetization. In support of the said charts, the assessee also submitted its cash books and bank account statements. The assessee also stated that it was engaged in the real estate business and needed to maintain sufficient cash balances for various exigencies at various sites. It was further brought to the knowledge of the AO that the impounded documents contain cash balances available at site offices of the assessee and did not incorporate the cash balances as per the main cash book maintained at the corporate headquarters. It was stated that the balances as per various cash books as on 08.11.2016 were as follows:

1.	Main Cash Book	Rs. 2,25,17,139
2.	Imprest Madanpur	Rs. 8,620
3.	Imprest Lalit Sharma	Rs. 4,00,500
4.	Imprest Ravinder Sharma	Rs. 16,15,000
5.	As Per impounded documents	<u>Rs.13,78,181</u>
	Total	Rs. 2,45,41,259

5.1. After considering the submissions, the AO has not accepted the explanation of the assessee regarding the cash availability as per books as on 08.11.2016, on the basis of the following reasons:

1 The cash withdrawals made by the assessee are not near the dates of cash deposits. If the assessee had withdrawn cash for wage payments/ deals, it is not understandable as to why such expenses were not incurred. The assessee company being a running concern, could not have mounted cash for so long.

2 The assessee has prepared cash books in such a way that nearby cash withdrawals can be shown as cash deposited during demonetization.

3 On analysis of the comparative charts of F.Y. 2015-16 and F.Y. 2016-17 it is seen that there was no match of the cash deposits during the demonetization period with the corresponding period of the previous financial year.

4 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.

5 The flagship company, M/s Omaxe Ltd has surrendered a huge amount as unaccounted income. However, the assessee has not disclosed any such unaccounted income.

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. 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 appellant proceedings:

ATULAH CONTRACTORS AND CONSTRUCTIONS PRIVATE LIMITED					
MONTHLY CHART					
FINANCIAL YEAR 2015-16					
Months	Opening Balance	Withdrawal from Bank	Expenditure incurred during year	Deposited into Bank	Closing Balance
Apr-15	1,05,93,793	1,20,70,000	20,00,299	-	2,06,63,494
May-15	2,06,63,494	22,55,000	29,60,189	-	1,99,58,305
Jun-15	1,99,58,305	16,10,000	24,52,030	-	1,91,16,275
Jul-15	1,91,16,275	34,80,000	37,12,167	-	1,88,84,108
Aug-15	1,88,84,108	32,55,000	32,77,328	-	1,88,61,780
Sep-15	1,88,61,780	29,05,000	30,96,157	-	1,86,70,623
Oct-15	1,86,70,623	45,30,000	33,60,260	-	1,98,40,363
Nov-15	1,98,40,363	27,25,000	32,32,858	-	1,93,32,505
Dec-15	1,93,32,505	24,55,000	27,06,593	-	1,90,80,912
Jan-16	1,90,80,912	1,45,06,000	43,21,044	-	2,92,65,868
Feb-16	2,92,65,868	38,95,000	40,25,876	-	2,91,34,992
Mar-16	2,91,34,992	47,93,000	48,82,682	1,20,00,000	1,70,45,310
		5,84,79,000	4,00,27,483	1,20,00,000	

ATULAH CONTRACTORS AND CONSTRUCTIONS PRIVATE LIMITED					
MONTHLY CHART					
FINANCIAL YEAR 2016-17					
Months	Opening Balance	Withdrawal from the Bank	Deposited into the Bank	Expenditure incurred during the year	Closing Balance
Apr-16	1,70,45,310	55,83,000	-	55,69,962	1,70,58,348
May-16	1,70,58,348	30,65,000	-	36,68,056	1,64,55,292
Jun-16	1,64,55,292	32,75,000	10,000	31,93,216	1,65,27,076
Jul-16	1,65,27,076	29,00,000	-	28,51,812	1,65,75,264
Aug-16	1,65,75,264	34,40,000	-	23,34,818	1,76,80,446
Sep-16	1,76,80,446	1,29,70,000	-	25,84,566	2,80,65,880
Oct-16	2,80,65,880	39,45,000	2,000	41,69,672	2,78,39,208
Nov-16	2,78,39,208	6,60,000	2,40,00,000	40,49,964	4,49,244
Dec-16	4,49,244	7,00,000	-	2,71,805	8,77,439
Jan-17	8,77,439	12,60,000	-	3,44,086	17,93,353
Feb-17	17,93,353	41,20,000	-	11,63,477	47,49,876
Mar-17	47,49,876	1,01,28,260	-	25,34,306	1,23,43,830
		5,20,46,260	2,40,12,000	3,27,35,740	

It is pertinent to mention here that similar comparative charts for F.Ys. 2015-6 and 16 and 2016-17 were also submitted during assessment proceedings, with supporting cash books and bank statements. 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:

Atulah Contractors and Constructions 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	10593793				20666254
May-15	20666254			10000000	19961065
Jun-15	19961065				19119035
Jul-15	19119035				18886868
Aug-15	18886868				18864540
Sep-15	18864540				18673383
Oct-15	18673383				19843123
Nov till 8-Nov-15	19843123				20212245
Apr-16	17045310				17058348
May-16	17058348				16455292
Jun-16	16455292				16527076
Jul-16	16527076				16575264
Aug-16	16575264				17680446
Sep-16	17680446				28065880
Oct-16	28065880		2000	10000000	26010258
Nov till 8-Nov-16	26010258				25919440

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. 1,70,45,310/- as on 01.04.2016, which is also corroborated by the cash balance as on 31.03.2016 as per the IT and audit report for A.Y. 2016-17, which was filed on 01.10.2016ie. before demonetization and is therefore not a subject matter of manipulation.

5.2.4. 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 IT filed by the appellant even prior to demonetization, as evident from the cash balance of Rs. 1,05,93,793/- as on 31.03.2015 as seen from the audit report and IT for A.Y. 2015-16. 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. 5,84,79,000/- during F.Y. 2015-16 and the same was Rs. 5,20,46,260/-during F.Y. 2016-17 Similarly cash deposited into bank accounts was Rs. 1,20,00,000/-during F.Y. 2015-16 as compared to cash deposit of Rs. 2,40,12,000/- during F.Y. 2016-17. Therefore, the As observation, that the cash withdrawals and deposits for the two financial years do not match, is incorrect. 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 relatively high 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 is low and that of cash expenses is high. 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 large magnitude 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. 1,20,70,000/- was made in the month of April, 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.

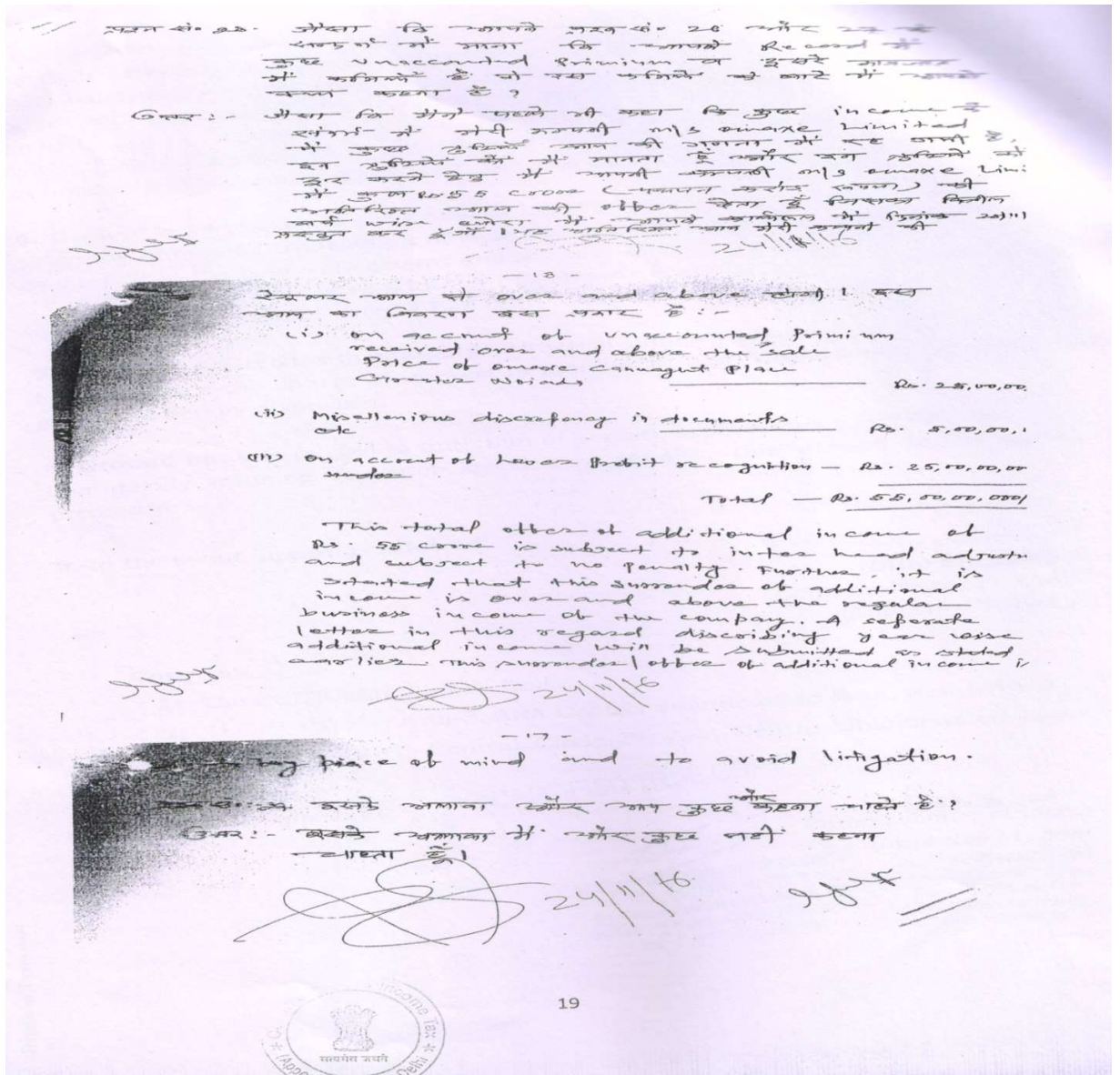
2 lakhs from bank account to buy property and re-deposited cash of Rs. 1,60,000/- from the amount withdrawn after more than 7 months as the deal could not be finalized, principle of preponderance of probability as a test is to be applied and is sufficient to discharge the onus. The case of the assessee 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. 2,45,41,259/-. 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 01.10.2016 i.e. 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. 1,70,45,310/-, which is also the figure of cash in hand as on 31.03.2016 as per the IT for AY. 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 has not shown any meaningful or unusual cash sales in the attempt to explain the cash deposited during demonetization. In fact, the cash sales are NIL for F.Y. 2016-17. Therefore, this argument does not carry any force.

5.2.8. It has also been observed by the AO that the flagship company, M/s Omaxe Ltd has surrendered a huge amount as unaccounted income, however, the assessee has not disclosed any such unaccounted income. The said observation is not rational, firstly since any disclosure made by the flagship company does not automatically translate into any acceptance of tax evasion by the appellant. Secondly, the surrender/disclosure made by the flagship company, M/s Omaxe Ltd, is on account of a totally different issue as evident from the statement of Sh. RohtasGoel, CMD, Omaxe Ltd, the relevant portion of which is extracted below:



5.3 It is therefore evident that the cash deposited post-demonetization is duly explained by the available cash balance as on 08.11.2016, which was in turn build 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 ITR for A.Y. 2016-17 filed on 01.10.2016 i.e. prior to demonetization. Therefore, the addition of Rs. 2,40,000,000/- on account of unexplained cash deposited during demonetization, is untenable and is accordingly deleted. Ground no. 1 to 3 are allowed.

9. On careful consideration of allegation of the Assessing Officer and findings recorded by the Id. CIT(A) while granting relief to the assessee we note that the Id. CIT(A) first of all compared pattern of cash deposits and withdrawals by the assessee by considering comparative chart for both the years alongwith supporting books and bank statement. The Id. CIT(A), thereafter observed that the appellant usually maintain high cash balance which is evident from the opening cash balance as on 01.04.2016 of Rs. 1,70,45,310/- which is also shown in the audit report and income tax return for AY 2016-17 filed on 01.10.2016 before declaring of demonetization order. The Id. CIT(A) further noted that maintaining high cash balance is a subject matter of business prudence 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. 5,84,79,000/- and during FY 2016-17 it was Rs. 5,20,46,260/- and cash deposited during FY 2015-16 was Rs. 1,20,00,000 and during F.Y. 2016-17 cash deposit was Rs. 2,40,12,000/-. Therefore above comparison and figures clearly show that the assessee was consistently maintaining huge cash balance as per his business prudence and there was huge cash withdrawals which are much higher than the amounts of 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 noted by the Id. CIT(A) before granting relief to the assessee.

10. 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. 2,45,41,259/- and the cash deposited to its bank account was created due to huge opening cash balance of Rs. 1,70,45,310/- as on 01.04.2016, 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. 5,20,46,260/- which was higher during immediately preceding FY 2015-16 amounting to Rs. 5,84,79,000/-. 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. 2,40,00,000/- 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.

11. 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: 18th August, 2023.

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi