

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

BEFORE

DR. BRR KUMAR, ACCOUNTANT MEMBER

AND

MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 2439/Del/2022

Asstt. Year: 2017-18

DCIT, Central Circle-29, New Delhi.	Vs.	Pancham Realcon Pvt. Ltd. 10 Local Shopping Center Kalkaji, New Delhi -110019 PAN AAEC7196D
(Appellant)		(Respondent)

Assessee by:	Shri Akashat Jain, Advocate
Department by:	Shri Vivek Vardhan, Sr. DR
Date of Hearing:	30.08.2023
Date of pronouncement:	07.11.2023

ORDER

PER ASTHA CHANDRA, JM

This appeal filed by the Revenue is directed against the order dated 15.07.2022 of the Ld. Commissioner of Income Tax (Appeals)-31, New Delhi (**"CIT(A)"**) pertaining to Assessment year (**"AY"**) 2017-18.

2. The Revenue has taken the following grounds of appeal:-

- "1. Whether on the facts & in the circumstances of the case and law, 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 Pancham Realcon Pvt. Ltd. was having Cash-in-hand as on 08.11.2016 was Rs. 3,87,270/- (as per page nos. 87 to 91 and 97-100).*

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.*
7. *Whether the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or during the course of hearing of the appeal.”*

3. Briefly stated, the assessee company is engaged in the business of real estate. For AY 2017-18, it e-filed its return of income on 15.10.2017 declaring income of Rs. 1,18,30,950/-. Its case was picked up for complete scrutiny under CASS. Statutory notice(s) were issued/ served upon the assessee along with questionnaire which were duly responded to.

3.1 The Ld. Assessing Officer (**“AO”**) noticed 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 holding company of the assessee. The said cash was requisitioned under section 132A of the Income Tax Act, 1961 (**the “Act”**) by the Income Tax Authority and a survey under section 133A was also conducted at the office premises of M/s. Omaxe Ltd. wherein certain documents were impounded as Annexure A-4 (page No. 87 to 91 and 97 to 100) which contained notings of cash balances as on 8.11.2016 of various group companies belonging to Omaxe group to which the assessee also belonged.

3.2 From the said impounded pages the Ld. AO found that the cash balance available as on 8.11.2016 with the assessee company was Rs. 3,87,270/- whereas the assessee had deposited cash amounting to Rs. 2,80,00,000/-, post demonitization.

3.3 The Ld. AO required the assessee to prove the source of excess cash so deposited after demonitization. The assessee submitted explanation that the said deposit had been made out of cash available as per cash book balance on 8.11.2016. It was further explained that the said cash balance had been built up through cash withdrawals from bank accounts of the assessee. The assessee also furnished comparative charts for F.Y 2015-16 and F.Y 2016-17 showing monthwise cash balances, withdrawals and deposits in order to demonstrate that such withdrawals and deposits were part of routine exercise of the assessee even in the period prior to demonitization. In support of the said charts, the assessee also submitted before the Ld. AO its cash book and bank account statements. It was also submitted that the nature of assessee's business needed sufficient cash balances for meeting various exigencies at the sites. It was also brought to the knowledge of the Ld. AO that the impounded documents contained 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 before the Ld. AO that the balances as per various cash books as on 8.11.2016 aggregated in all to Rs. 3,19,48,225/-.

4. The explanation offered by the assessee was not acceptable to the Ld. AO who held that the assessee failed to furnish satisfactory explanation of the source of cash of Rs. 2,80,00,000/- deposited during the demonitization period and treated the same as unexplained cash credit under section 68 of the Act and added it to the income of the assessee. Accordingly, the Ld. AO completed the assessment on total income of Rs. 3,98,30,950/- on 23.12.2019 under section 143(3) of the Act.

5. Aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who deleted the impugned addition by recording the finding in para 5.3 of his appellate order as under:-

"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 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 ITR for A.Y. 2016-17 filed of Rs. on 12.10.2016 i.e.. prior to demonetization. Therefore, the addition 2,80,00,000/- on account of unexplained cash deposited during demonetization, is untenable and is accordingly deleted. Ground nos. 1 to 3 are allowed."

6. The Revenue is dissatisfied and is before the Tribunal and all the grounds relate thereto.

7. The main thrust of the Revenue's case as adverted to by the Ld. DR is on the impounded documents seized from the office of the assessee's holding company, namely M/s. Omaxe Limited depicting that on 8.11.2016 the assessee had cash in hand of Rs. 3,87,270/- only and that no documentary evidence has been produced by the assessee in support of its claim that the impounded documents contained cash balance available at site offices maintained at the corporate headquarter for various exigencies. The Ld. DR supported the order of the Ld. AO that the source of the impugned cash deposit is not satisfactorily explained.

8. The Ld. AR supported the order of the Ld. CIT(A). He placed on record the decision dated 18.08.2023 of co-ordinate Bench in Revenue's appeal in the case of M/s. Omaxe Forest SPA And Hills Developers Ltd. in ITA No. 2/Del/2023 for A.Y. 2017-18 a group case in which similar issue has been decided in favour of the assessee. In yet another group case the co-ordinate bench in Revenue's appeal in M/s. Atulah Contractors & Construction Pvt. Ltd. in ITA No. 2438/Del/2022 decided on 18.08.2023 for AY 2017-18 upheld the order of the Ld. CIT(A) deleting identical addition. The Ld. AR pointed out that the assessee is regularly withdrawing and depositing cash which is established from the set of comparative charts furnished during

assessment proceedings extracted by the Ld. CIT(A) in para 5.2.2 of the appellate order. He urged that the appeal of the Revenue is not sustainable.

9. We have given our careful thought to the rival submissions of the parties and perused the records. It is observed that the Ld. CIT(A) has looked into each ground on the basis of which the Ld. AO did not accept the explanation offered by the assessee before him. In para 5.1 of the appellate order the Ld. CIT(A) enumerated five reasons given by the Ld. AO. As regards the observation of the Ld. AO that cash withdrawals made by the assessee are not near the dates of cash deposit and if the assessee had withdrawn cash for wage payments/deals, why such expenses were not incurred, the Ld. CIT(A) considered the following chart submitted during the appellate proceedings which were before the Ld. AO as well with supporting cash books and bank statements:

OMAXE PANCHAM REALCON PRIVATE LIMITED						
MONTHLY CHART FOR FINANCIAL YEAR 2015-16						
Month	Opening Balance	Cash Sales	Cash Withdrawal	Cash Deposited	Cash Expenses	Closing Balance
April, 2015	86,39,336	-	59,77,600	50,00,115	9,63,068	86,53,753
May, 2015	86,53,753	-	33,85,000	-	18,67,093	1,01,71,660
June, 2015	1,01,71,660	-	50,75,500	-	44,70,908	1,07,76,252
July, 2015	1,07,76,252	-	13,00,000	-	2,840	1,20,73,412
August, 2015	1,20,73,412	-	1,19,10,000	-	15,81,548	2,24,01,864
September, 2015	2,24,01,864	-	11,50,000	4,00,000	4,57,206	2,26,94,658
October, 2015	2,26,94,658	-	12,00,000	-	1,23,690	2,37,70,968
November, 2015	2,37,70,968	-	20,50,000	-	21,85,165	2,36,35,803
December, 2015	2,36,35,803	-	32,57,100	-	26,96,547	2,41,96,356
January, 2016	2,41,96,356	-	42,00,000	-	13,76,845	2,70,19,511
February, 2016	2,70,19,511	-	19,50,000	29,00,000	5,51,411	2,55,18,100
March, 2016	2,55,18,100	-	22,70,000	-	11,35,030	2,66,53,070
		-	4,37,25,200	83,00,115	1,74,11,351	

OMAXE PANCHAM REALCON PRIVATE LIMITED							
MONTHLY CHART FOR FINANCIAL YEAR 2016-17							
Month	Opening Balance	Cash Sales	Cash Withdrawal	Imprest from Dream Tower	Cash Deposited	Cash Expenses	Closing Balance
<i>April, 2016</i>	<i>2,66,53,070</i>	-	<i>8,53,500</i>	-	-	<i>5,79,646</i>	<i>2,69,26,924</i>
<i>May, 2016</i>	<i>2,69,26,924</i>	-	<i>84,24,500</i>	-	-	<i>9,08,455</i>	<i>3,44,42,969</i>
<i>June, 2016</i>	<i>3,44,42,969</i>	-	<i>1,05,000</i>	-	<i>12,56,112</i>	<i>7,61,546</i>	<i>3,25,30,311</i>
<i>July, 2016</i>	<i>3,25,30,311</i>	-	<i>9,18,000</i>	-	-	<i>15,04,750</i>	<i>3,19,43,561</i>
<i>August, 2016</i>	<i>3,19,43,561</i>	-	<i>26,75,000</i>	-	-	<i>58,79,084</i>	<i>2,87,39,477</i>
<i>September, 2016</i>	<i>2,87,39,477</i>	-	<i>23,54,000</i>	-	<i>15,06,000</i>	<i>8,87,910</i>	<i>2,86,99,567</i>
<i>October, 2016</i>	<i>2,86,99,567</i>	-	<i>2,10,000</i>	<i>32,55,000</i>	-	<i>2,23,918</i>	<i>3,19,40,649</i>
<i>November, 2016</i>	<i>3,19,40,649</i>	-	<i>8,00,000</i>	-	<i>2,80,00,000</i>	<i>43,25,083</i>	<i>4,15,566</i>
<i>December, 2016</i>	<i>4,15,566</i>	-	<i>7,50,000</i>	-	-	<i>3,94,966</i>	<i>7,70,600</i>
<i>January, 2017</i>	<i>7,70,600</i>	-	<i>5,50,000</i>	-	-	<i>2,11,735</i>	<i>11,08,865</i>
<i>February, 2017</i>	<i>11,08,865</i>	-	<i>8,00,000</i>	-	-	<i>4,20,846</i>	<i>14,88,019</i>
<i>March, 2017</i>	<i>14,88,019</i>	-	<i>10,50,000</i>	-	-	<i>10,03,432</i>	<i>15,34,587</i>
			- 1,94,90,000	32,55,000	3,07,62,112	1,71,01,371	

9.1 In para 5.2.2 of his appellate order, the Ld. CIT(A) extracted the set of comparative chart furnished during assessment proceedings as under:-

Month	Opening cash in hand	cash sales	cash deposit in bank	cash withdrawal from bank	Closing cash in hand
<i>Apr-15</i>	<i>8639336</i>		<i>5000000</i>	<i>5900000</i>	<i>8653753</i>
<i>May-15</i>	<i>8653753</i>			<i>2975000</i>	<i>9685273</i>
<i>Jun-15</i>	<i>9685273</i>			<i>5260000</i>	<i>10289865</i>
<i>Jul-15</i>	<i>10289865</i>			<i>1300000</i>	<i>11587025</i>
<i>Aug-15</i>	<i>11587025</i>			<i>11910000</i>	<i>22401864</i>
<i>Sep-15</i>	<i>22401864</i>		<i>400000</i>	<i>1150000</i>	<i>22694658</i>
<i>Oct-15</i>	<i>22694658</i>			<i>800000</i>	<i>23770968</i>
<i>Nov till S-Nov-15</i>	<i>23770968</i>			<i>600000</i>	<i>23618404</i>

Apr-16	26653070			700000	26926924
May-16	26926924			8150000	34442969
Jun-16	34442969		1256112		32530311
Jul-16	32530311			628000	31943561
Aug-16	31943561			2675000	28739477
Sep-16	28739477		1506000	1954000	28699567
Oct-16	28699567				
Nov till 8-Nov-16	31592649			500000	31948225

9.2 From the aforesaid charts the Ld. CIT(A) made the following observations and recorded his findings as follows:-

“ 5.2.3.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. 86,39,336/- as on 01.04.2015, which is also corroborated by the cash balance as on 31.03.2015 as per the ITR 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 was of Rs. 2, 66 ,53,070/ as corroborated by the cash balance as on 31.03.2016 as per the ITR and audit report for A.Y. 2016-17, which was filed on 12.10.2016 i.e. before demonetization and is therefore not a subject matter of manipulation. 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. 84,24,500/- in May, 2016 and Rs. 26,75,000/- in August, 2016 and Rs. 23 ,54,000/- in September, 2016. 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 high for the two financial years under consideration. The cash withdrawal from bank accounts of the appellant was Rs. 4,37,25,200/- during F.Y. 2015-16 and the same was Rs. 1,94,90,000/-during F.Y. 2016-17. Similarly cash deposited into bank accounts was Rs. 83,00,115/- during F.Y. 2015-16 as compared to cash deposit of Rs. 3,07,62,112/- (normalized to Rs. 27,62,112 after adjusting for the forced deposit of Rs. 2,80,00,000 due to demonetization) during F.Y. 2016-17 which needs to be considered alongwith the high opening cash balance of Rs. 2,66,53,070/- as on 01.04.2016. 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 relatively high level of cash expenses as seen from the comparative charts for both the years. 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 NIL. A similar trend is observed in the preceding year also wherein the level of cash sales is negligible and level 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 high 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 AO'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 ITRs 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. 1,19,10,000/- was made in the month of August 2015 and the same was not effectively deposited back into the bank accounts till the month of March, 2016, resulting in a high closing balance of Rs. 2,66,53,070/- as on 31.03.2016."

9.3 Regarding the observation of the Ld. AO that the assessee has prepared cash books in such a way that nearby cash withdrawals can be shown as cash deposited during demonitization, the Ld. CIT(A) held it to be untenable by recording the following observation and findings:

"5.2.6. ... 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. 3,19,48,225/-. The said cash balance has mostly 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 ITR for A.Y, 2016-17 filed on

12.10.2016 Le. 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. 2,66,53,070/-, which is also the figure of cash in hand as on 31.03.2016 as per the ITR 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."

9.4 As regards the Ld. AO's observation that the assessee being a builder and all sales are reportedly via cheque /RTGS/DD etc., so question of cash generation through sales does not arise, the Ld. CIT(A) noted that the assessee itself has not shown unusual cash sales to explain the cash deposited during demonetization. In fact cash sales are nil for FY 2016-17. He did not find any force in this argument of the Ld. AO.

9.5 The observation of the Ld. AO that the assessee has not disclosed any unaccounted income though the flagship company M/s. Omaxe Ltd. surrendered huge amount has been countered by the Ld. CIT(A) by observing thus:

"5.2.8. ... 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. Rohtas Goel, CMD, Omaxe Ltd "

and extracted the relevant portion thereof.

10. It would thus be seen that the Ld. CIT(A) has given cogent reasons with facts available in the records and legal backing to negate the observations and findings of the Ld. AO. The Revenue could not dismantle them by bringing on record any material which has not been considered or analysed by the Ld. CIT(A). The contentions raised by the Revenue in ground No. 1 to 6 and reiterated by the Ld. DR before us have no factual and/or

legal basis. Endorsing the findings of the Ld. CIT(A) and following the decisions (supra) of the Co-ordinate Benches of the Tribunal, we dismiss the appeal of the Revenue.

11. Ground No. 7 is regarding additional ground etc. which has not been taken.

12. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 7th November, 2023.

**Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

**sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 7/11/2023
Veena

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	30.10.2023
Date on which the typed draft is placed before the dictating Member	30.10.2023
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	