

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ ITA. No. 585/JPR/2023  
निर्धारण वर्ष/ Assessment Years : 2017-18

Ram Dev Chandel S/o Shri Neera Lal Chandel Village Karwar, Tehsil- Nainwan, Bundi.	बनाम Vs.	Income Tax Officer, Ward, Bundi
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AGHPC 6443 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar (Adv.)  
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 01/11/2023  
उदघोषणा की तारीख / Date of Pronouncement : 28/11/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi [Here in after referred as (NFAC)] for the assessment year 2017-18 dated 17.07.2023, which in turn arises from the order passed by the AO, passed under Section 143(3) of the Income tax Act, 1961 (in short 'the Act') dated 20.12.2019.

2. The assessee has marched this appeal on the following

grounds:-

“1. In the facts and circumstances of the case the learned CIT(A) has erred in confirming the addition of Rs. 14,18,000/- made by the learned AO u/s 68 of the IT Act, 1961 on account of cash deposited in the bank during the demonetization period without considering the submission of the assessee.

2. *In the facts and circumstances of the case the Learned CIT(A) has erred in confirming the addition of Rs. 9,43,028/- made by the learned AO by applying the 8 percent NP rate by assuming the turnover of Rs. 2,07,22,500/- on the basis of total credits in all bank accounts.*

3. *The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing.”*

2.1 In this appeal the assessee also raised the prayer for the additional grounds and additional grounds raised are as under :-

“Additional Ground No. 1

In the facts and circumstances of the case, the learned CIT(A) has erred in confirming the addition of Rs. 14,18,000/-, which was made by the learned Assessing Officer by invoking provisions of Section 68 despite that books of account have not been maintained by the assessee.

Additional ground No. 2

In the facts and circumstances of the case, the learned CIT(A) has erred in upholding addition of Rs. 9,43,028/- made by the Learned Assessing Officer by way of rate application and increasing the gross receipts whereas the case was selected only for limited scrutiny for “cash deposit during the year”.

Additional Ground No. 3

The learned CIT(A) has erred in holding that the issue of “cash deposit” and “gross receipts” being intimately associated to each other and accordingly erred in confirming the addition of Rs. 9,43,028/-.”

3. At the outset of the hearing, the Bench observed that there is delay of 4 days in filing the present appeal by the assessee. The

Id. AR of the assessee relied on an application for condonation of delay with following prayers:

“Respected Sir,

In this case the Learned CIT(A) has passed the order u/s 250 of the Income Tax Act 1961 on 17/07/2023 which was served to the assessee online. The assessee requested to file appeal against the order to his counsel's office. The office of the counsel was busy due to audit season and the personal responsible forgot to file the appeal. When the assessee again contacted on 18/09/2023 in the counsel's office then the appeal was prepared and filed. Therefore, the delay of 3 days was due to mistake of counsel's office. So you are requested to condone the delay of 3 days which was bonafide and not intentional.

It is settled position of law that where the delay was bonafide and there is no malafide or intentional delay for delay in filing appeal the delay must be condone by the appellate authority specially when it is necessary for rendering the substantial justice to the assessee. The following case laws are quoted in support: -

(i) Vijay Vishan Meghani vs. DCIT (Bombay High Court) (2017) 398 ITR 250

High Court condoned delay of 2984 days in filing appeals-Assessee's Appeals allowed.

(ii) Just Steels vs. DCIT (2012) DTR (MA)v 86

Appeal could not be filed in time before the ITAT because the order of CIT(A) was misplaced. The firm stood dissolved and was recurring into losses. Delay to be condoned.

(iii) Oracle India Pvt Ltd vs. Deputy Commissioner of Income Tax (2008) 13 DTR 371 that "condonation of delay - reasonable cause-delay of 1297 days in filing appeal being on account of lapse on the part of consultant and not being malafide, there was valid reason warranting condonation of delay and admission of appeal".

(iv) Improvement Trust vs. Ujagar Singh (Supreme Court) CIVIL APPEAL NOS. 2395 of 2008 dated 26.06.2010 Unless mala fides are writ large, delay should be condoned. Matters should be disposed of on merits and not technicalities.

In the circumstances it is submitted that it was because of the bonafide mistake on the part of the assessee that he has no knowledge about the completion of the CIT(A)'s order ex-parte and he did not inquire about the service of judgment. The appeal could not be filed in time. It

is submitted that for something which happened due to inadvertence and beyond the control. Hence it is the prayer of the assessee as well as of the counsel that the Hon'ble Bench may kindly condone the delay and admit the appeal.”

3.1 During the course of hearing, the Id. DR objected to assessee's application for condonation of delay and prayed that Court may decide the issue as deem fit and proper.

3.2 Heard the parties, perused the materials available on record. The prayer as mentioned above by the assessee for condonation of delay of 4 days has merit as the Id. AR of the assessee fairly admits that the delay is not on account of in action on part of the assessee. But the same has been beyond his control. Considering the prayer, we concur with the submission of the assessee. Considering the said reasons, the bench feels that the assessee has sufficient reasons for bringing this appeal. Thus, considering that aspect of the matter, the delay is hereby condoned and the appeal is admitted for adjudication.

4. The fact as culled out from the records is that the assessee has e-filed his return of income on 09.03.2018 vide ack No. 433729340090318 showing total income of Rs. 6,58,230/- which was processed under section 143(1) of the Act. The case was

selected for limited scrutiny through CASS for the reason cash deposit during the year. Therefore, a notice u/s 143(2) of the Income Tax Act, 1961 was issued on 12.08.2018 through online e-proceedings required the assessee to produce or cause to produce any evidence on or before 28.08.2018 which was served upon the assessee through e-mail as well as through notice server. A notice under section 142(1) of the Act was issued to the assessee on 13.12.2018 along with detailed questionnaire to furnish the information called for on or before 02.01.2019 but no compliance was made from the assessee. During assessment proceedings, information as called for from the Bank of Baroda, Karwar Distt. Bundi under section 133(6) of the Act which was received from them. On examination of bank account, the Id. AO found that the assessee has made cash deposit in bank account regularly, which includes cash deposited in SBN during demonetization period. In the ITR in form-3 the assessee declared taxable income of Rs. 6,58,230/- under presumptive income Rs. 4,78,228/- under section 44AD of the I.T. Act, 1961 and Rs. 1,80,000/- under section 44AE of the Act.

4.1 As the case of the assessee was selected for limited scrutiny to examine the cash deposited during the year. During assessment

proceedings, various notices under section 142(1) of the Act were issued to the assessee along with questionnaire requiring him to furnish complete details and documents to explain the source of cash deposited during demonetization. In response to that, the assessee furnished his written submission along with copies of bank statements, computation of total income, receipt & payment A/c, balance sheet & Depreciation chart. In the written submission assessee also submitted that :

- (i) My source of income is from running of color machine, JCB and Tractor plying and from running of pickup. I am doing my business from village Karwar.
- (ii) As required by your honor copies of all bank accounts maintained by the are enclosed herewith.
- (iii) I have not maintained any books of account and I have declared my income 44AE income tax act, 1961.
- (iv) As required by your honor copy of receipt and payment a/c. and statement of along with computation of total income are enclosed herewith.
- (v) I have deposited in my bank accounts out of income shown w/s.44AE.

4.2 The Id. AO considered the submission, details and documents furnished by the assessee but not found acceptable on the following reasons:-

- a. Assessee has continuously failed to file any reply to the notices issued u/s 143(2) & 142(1) of the I. T. Act, 1961 without giving any

reason, which shows that he has no justification for cash deposited during demonetization.

b Reply of the assessee is not supported by any documentary evidence which prove the source of cash deposited during the period of demonetization.

c. Assessee's say that he received advance in cash was not acceptable for want of supporting documentary evidence Its assessee's onus to prove the advances received by him, but he totally failed to do so.

d. After issue of final show cause notice, assessee's say that he received advance from various persons was only cooked up story made by the assessee. No confirmation, no reasons for advance amount received in cash inspite of banking channel i.e. through account payee cheque or NEFT/RTGS. Hence explanation of the assessee is not acceptable.

e. To explain the cash deposited on various dates in bank account during demonetization assessee has stated that bank was not accepting big amount and due to safety point. The contention of the assessee is not accepted as the banks were received SBN notes irrespective of any limit.

f. Reply of the assessee is general and routine in nature. No supporting evidences were furnished.

For the reasons mentioned above, the contention of the assessee not accepted. As the assessee deposited cash of Rs.16,18,000/- in his bank accounts during the period of demonetization i.e. 9.11.2016 to 30.12.2016 in SBN currency (Rs. 1000/- and Rs.500/- old notes) on various dates, credit of Rs. 2,00,000/- was considered to have been available for the business and balance of Rs. 14,18,000/- was considered as unexplained and added u/s 68 of the Act. The Id. AO found that the assessee has disclosed gross

turnover of Rs. 89,34,650/- as against Rs. 2,07,22,500/- ( 2,21,40,500- 14,18,000). Based on these observations, the Id. AO noted that the assessee has declared receipt u/s 44AE and in the return of income so filed as the assessee did not advance documentary evidence the Id. AO considered the receipt at Rs. 2,07,22,500/- and applied 8% on it u/s 44AD of the Act. This amount comes to Rs. 9,43,026/- on the turnover which has considered as additional income.

5. Aggrieved from the said action of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A)/NFAC. Apropos to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:-

“18. Regarding the issue of difference in disclosure of gross receipts. The appellant has shown only receipts from Transportation business and not from explosives business of Rs.61,57,850/- i.e. it has shown less gross receipts u/s 44AD and could not furnish any supporting documentary evidences to prove the business transactions with regard to total credit in the bank account. The appellant had shown only one tractor and the pickup vehicle's earnings in the ITR u/s 44AE computation whereas it has shown 3 tractors in the balance sheet. No evidence of any registration with the RTO for commercial use was furnished. After excluding the addition of Rs.14,18,000/- made by the AQ on account of demonetization period cash deposit, out of credit of Rs.2,21,40,500/-, the balance comes to Rs. 2,07,22,500/-. The appellant has declared receipts u/s 44AE at Rs.29,56,800/- and out of balance credited amount of Rs.1,77,65,700/-, the other receipts u/s

44AD of only Rs.59,77,850/- were declared in the ITR. This difference was rightly held as undeclared gross receipts whose nature and source could not be established by the appellant. Thus, the case laws cited are not related to facts in the instant appeal.

19. The appellant has to prove beyond doubt the capacity of persons who have allegedly given advance and the genuineness of the transactions and in the absence of which, the genuineness of cash deposits remain unexplained and liable to be added u/s 68 and consequently, the invocation of section 115BBE was justified. In this regard, reliance is placed on rationale held in the cases of:-

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20. Further, mere submission of PAN details does not discharge the onus of the appellant to prove the said advances as held in the case of PCIT Vs Bikram Singh [2017] 85 taxmann.com 104 (Delhi)/[2017] 250 Taxman 273 (Delhi)/[2017] 399 ITR 407 (Delhi) wherein it was held that even if a transaction of loan is made through cheque, it cannot be presumed to be genuine in the absence of any agreement, security and interest payment. Mere submission of PAN Card of creditor does not establishes the authenticity of a huge loan transaction particularly when the ITR does not inspire such confidence. Mere submission of ID proof and the fact that the loan transactions were through the banking channel, does not establish the genuineness of transactions. Loan entries are generally masked to pump in black money into banking channels and such practices continue to plague Indian economy.

21. The appellant is not correct in contending that approval of higher authorities is to be sought for making addition as the case was selected for the reason 'cash deposit during the year' and both the issues are incidental and intimated associated to each other i.e., cash deposit and gross receipts and hence, the AO was justified in limiting to both these issues only. The AO has rightly excluded the net profit @ 8% of gross receipts to the extent shown by the appellant and hence, the AQ is not correct in stating that if section 68/69A is applicable, then profit is to be re-determined and amount is to be excluded from the sales/ turnover.

Accordingly, in view of above discussion, both the grounds of appeal are dismissed.

22. In the result, the appeal is dismissed.”

6. As the assessee did not receive any favor from the appeal so filed before the Id. CIT(A), the assessee prefers the present appeal. The Id. AR appearing on behalf of the assessee has placed on record his written submission and same is reiterated here in below:-

“BRIEF FACTS OF THE CASE: -

The assessee is an individual, deriving income from running of JCB, color machine, plying of tractor and running of pickup. Return was e-filed on 09.03.2018 vide acknowledgement No. 433729340090318 showing total income of Rs.6,58,230/-. Copy of computation of income & receipt and payment account is available on Paper Book Page No. 1-5. The return of income was selected for limited scrutiny through CASS for the reason "cash deposits during the year". This fact is mentioned in the first para of the assessment order. The Learned Assessing Officer has completed assessment on 20.12.2019 determining total income at Rs. 30,19,258/- by making the following additions –

- (i) Addition of Rs. 14,18,000/- u/s 68 of the IT Act 1961 on account of cash deposited in SBN during demonetization period with Bank of Baroda (A/c No.06330200000120).
- (ii) Addition of Rs. 9,43,028/- on account of business income on assumed turnover.

Aggrieved with the order of the Learned Assessing Officer the assessee preferred appeal before the Learned CIT(A). The Learned CIT(A), NFAC, Delhi, vide appeal order dated 17/07/2023, has confirmed the additions made by the Learned Assessing Officer and dismissed the appeal of the assessee.

The assessee is aggrieved with the order of the Learned CIT(A) inasmuch as the Learned CIT(A) has not considered the submissions made by the assessee and the documentary evidences filed. The Learned CIT(A) confirmed the additions without appreciating the facts of the case and submissions of the assessee. Therefore, the assessee has preferred appeal before the Hon'ble Tribunal.

The assessee, while filing of appeal before the Hon'ble Tribunal, due to inadvertence, could not take grounds of appeal which go to the root of the matter. Separate application has been filed for admitting the additional

grounds. It is submitted that the additional grounds arise out of the order of the Learned Assessing Officer/CIT(A) and do not require any additional evidence. The same are first taken for discussion.

Additional Ground No.1

In the facts and circumstances of the case, the Learned CIT(A) has erred in confirming the addition of Rs.14,18,000/-, which was made by the Learned Assessing Officer by invoking provisions of Section 68 despite that books of accounts have not been maintained by the assessee.

It is submitted that during the course of assessment proceedings, the Learned Assessing Officer found that the assessee had deposited SBN currency of Rs. 1000/- and Rs. 500/-, totaling to Rs. 16,18,000/-, the details of which are mentioned by the Learned Assessing Officer on page 2 of the assessment order. The assessee explained that the cash deposits in bank account during demonetization period was out of various sources of income, such as running of JCB, color machine, plying of tractor, running of pick up, trading of explosives etc and also income from agricultural activities and advances received in connection with the business. The assessee did not maintain books of accounts and had declared income under section 44 AD & 44 AE of the Income Tax Act, 1961. The assessee explained that the cash deposits in the bank account during demonetization period were made out of his income from business and advances received from customers, for which affidavits were also filed. However, the learned Assessing Officer did not accept the submission of the assessee and evidences filed in support of the cash deposits made in the bank account. The learned AO has mentioned in the assessment order that the assessee is found to have been regularly depositing money in his bank account prior to demonetization period also. Therefore, a credit of Rs. 2,00,000/- was given out of the total deposits of Rs. 16,18,000/- and remaining amount of Rs. 14,18,000/- was added under section 68 of the Income Tax Act, 1961.

In appeal proceedings before the Learned CIT(A), the assessee filed detailed submission, challenging the addition made by the Learned Assessing Officer and submitted that the assessee had income from various sources, such as transportation business, sale of explosives, agricultural income etc. and he had also received back amounts given to debtors and had also received advances from various customers. It was out of his income from various sources and from recovery from debtors and advances from customers that the cash deposits were made in the bank account maintained with Bank of Baroda. The details in this regard along with affidavits of the concerned persons, which were filed before the Learned Assessing Officer, were furnished in the paper book. It was also contended that the addition made by the Learned Assessing Officer by invoking Section 68 was illegal, unlawful and unjust as Section 68 was not applicable in the case of the assessee. However, the Learned CIT(A) did not appreciate the facts of the case on a proper footing and confirmed the addition made by the learned Assessing Officer.

In this regard, it is submitted that the addition made by the Learned Assessing Officer by invoking provisions of Section 68 of the Income Tax Act is illegal, unlawful and unjust. The provisions of Sec 68 of the IT Act, 1961 are quoted as under :-

"Cash credits.

68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:

It is submitted that the Hon'ble Supreme Court of India has held as under in the case of CIT Vs. P. Mohanakala (2007) 291 ITR 278 that the provisions of Sec. 68 stipulates as under and shall be applicable on fulfilling the following conditions :-

- (i) There has to be a credit entry in the books of accounts of the assessee ;
- (ii) The books of account have to be of the previous year ;
- (iii) No explanation is submitted or explanation furnished is not found satisfactory.

In the case of the assessee, the provisions of Sec. 68 are not applicable because for the relevant assessment year, no books of account were maintained by the assessee. This fact was brought to the notice of the Learned Assessing Officer while submitting reply, which has been quoted by the Learned Assessing Officer on page 4 of the assessment order. The reply of the assessee was " I have not maintained any books of account and I have declared my income u/s 44 AE Income tax Act, 1961". This specifically establishes that during the year under consideration, assessee did not maintain any books of accounts. In view of this, there were no credit entries in the books of accounts which could have been considered by the Learned Assessing Officer. It is also relevant to add that in the para 2.2. to 4.4. of the assessment order, which is related to addition u/s 68, the Learned Assessing Officer has also not referred that the credit entries in the books of accounts of the assessee were unexplained. The Learned Assessing Officer is directly referring to the bank account of the assessee. It is further relevant to add that the Courts have held that bank account or bank pass book is not books of account of the assessee. The following case-laws are quoted in support :-

- (1) RAMILABEN B. PATEL vs. INCOME TAX OFFICER**  
IN THE ITAT AHMEDABAD BENCH 'C'  
(2019) 174 ITD 0694 (Ahmedabad-Trib.), (2019) 71 ITR (Trib) 0048  
(Ahmedabad)

Bank statement is not considered as books of accounts thus, any sum found credited in the bank passbook cannot be treated as an unexplained cash credit u/s 68.

- (2) SATISH KUMAR vs. INCOME TAX OFFICER**  
IN THE ITAT JALANDHAR  
(2019) 175 DTR 0121 (Asr)(Trib), (2019) 198 TTJ 0114 (Asr)

A bank statement cannot be considered to be a 'book' maintained by assessee for any PY, as understood for purpose of s. 68.

- (3) CIT Vs. Bhaichand H. Gandhi**  
Bombay High Court  
141 ITR 67

The pass book supplied by the bank to its constituent is only a copy of the constituent's account in the books maintained by the bank. It is not as if the pass book is maintained by the bank as the agent of the constituent, nor can it be said that the pass book is maintained by the bank under the instructions of the constituent. Therefore, the pass book supplied by the bank to the assessee in the present case could not be regarded as a book of the assessee, nor a book maintained by the assessee or under his instructions. As such, addition under s. 68 of the amount entered only in the bank pass book was not justified.

- (4) Vishan Swaroop Gupta Vs. ITO**

ITAT, Jaipur

I.T.A No.13/JP/2020 (order dt. 28/01/2021)

We thus are of the considered view that in the backdrop of the aforesaid settled position of law, the addition made by the A.O in respect of the cash deposits of Rs.7,13,000/- in the bank accounts of the assessee by invoking Section 68 has to fail, for the very reason that as per the judgment of the Hon'ble Bombay High Court in the case of CIT Vs. Bhaichand N. Gandhi (1983) 141 ITR 67 (Bombay), a bank pass book or bank statement cannot be considered to be a 'book' maintained by the assessee for any previous year for the purpose of Section 68 of the Act. Therefore, on this count itself the impugned addition made and sustained deserves to be deleted and we direct to delete the same.

In view of the aforesaid submissions, it is established that in the case of the assessee, provisions of Sec.68 were not applicable as the

assessee was not maintaining books of accounts whereas these provisions of Sec. 68 are applicable only in cases where books of accounts are maintained. In view of this, the Learned Assessing Officer erred in making the addition invoking the provisions of Section 68. The Learned CIT(A) also erred in confirming the same. The addition deserves to be deleted.

### Conclusion

It is submitted that in view of the parameters laid down by the Supreme Court in respect of the provisions of Sec. 68, as cited supra, the Learned Assessing Officer was not justified in invoking the provisions of Sec. 68. The addition made u/s 68 are most unjustified and deserve to be deleted.

### Additional Ground No.2

In the facts and circumstances of the case, the Learned CIT(A) has erred in upholding addition of Rs. 9,43,028/- made by the Learned Assessing Officer by way of rate application and increasing the gross receipts whereas the case was selected only for limited scrutiny for "cash deposit during the year"

And

### Additional Ground No.3

The Learned CIT(A) has erred in holding that the issue of "cash deposit" and "gross receipts" being intimately associated to each other and accordingly erred in confirming the addition of Rs. 9,43,028/-.

It is submitted that the case of the assessee was selected for "limited scrutiny" through CASS for the reason "cash deposit during the year". This fact is mentioned in para 1 of the assessment order, where the Learned Assessing Officer has observed that "the case was selected for limited scrutiny through CASS for the reason "cash deposits during the year". The same fact has also been reiterated in the first line in page 3 of the assessment order, where also the Learned Assessing Officer has again observed "the case of the assessee was selected for limited scrutiny to examine the cash deposited during the year". Therefore, the authority of the Learned Assessing Officer was restricted only to examine the issue for which the case was selected for "limited scrutiny" under CASS, i.e. cash deposits during the year. The Learned Assessing Officer was precluded from examination of any other issue as the case was selected only for "limited scrutiny" and not for complete scrutiny. The CBDT, vide Instruction F.No.225/402/2018 /ITA.II dated 28/11/2018 has laid down the scope of inquiry in

limited scrutiny cases selected under CASS, which is reproduced hereunder :-

*F. No. 225/402/2018/ITA.II*

*Government of India Ministry of Finance*

*Department of Revenue (CBDT)*

*North Block,*

*New Delhi, the 28th of November, 2018*

*To All Principal Chief-Commissioners of Income-tax/*

*All Principal Director-Generals of Income-tax*

*Sir/Madam,*

*Subject: Scope of enquiry in Limited Scrutiny cases selected under CASS cycles 2017 and 2018 in the context of information provided by any law-enforcement/ intelligence/regulatory authority or agency – regd.-*

*Under CASS cycles 2017 and 2018, some of the cases were selected for scrutiny as a 'Limited Scrutiny' case. In 'Limited Scrutiny' cases, Assessing Officer cannot travel beyond the issue(s) for which the case was selected. The idea behind such a stipulation is to enforce checks and balances upon powers of an Assessing Officer to do fishing and roving enquiries in cases under 'Limited Scrutiny'.*

*2. In this regard, several representations have been received in the Board from the field authorities that in several cases under 'Limited Scrutiny', information pointing out specific tax-evasion for the relevant year, given by any law-enforcement/intelligence/regulatory authority or agency is available with the concerned Assessing Officer, however, in view of the restrictive nature of enquiry/investigation which can be made in 'Limited Scrutiny' cases, the same presently cannot be acted upon.*

*3. The matter has been considered by the Board. In order to enable proper enquiry/ investigation in pending 'Limited Scrutiny' cases which were selected through CASS cycles of 2017 and 2018, where credible material or information has been/is provided by any law-enforcement/intelligence/regulatory authority or agency regarding tax-evasion by an assessee, it has been decided by the Board that issues arising from such information can also be examined during the course of conduct of assessment proceedings in such 'Limited Scrutiny' cases with prior administrative approval of the concerned Pr. CIT/CIT.*

*4. It is pertinent to mention that unlike CASS 2015 and 2016 cycles, where consideration of any additional issue lead to the conversion of case to 'Complete Scrutiny' as laid down in Instruction No. 5/2016 dated 14.07.16, the pending 'Limited Scrutiny' cases of CASS 2017 and 2018 cycles would not be taken up for 'Complete Scrutiny' as the present directive is only to facilitate consideration of those issues wherein specific information of tax-evasion has been furnished by any law-*

*enforcement/intelligence/regulatory authority or agency. Therefore, in such 'Limited Scrutiny' cases, Assessing Officer shall not expand the scope of enquiry/investigation beyond the issue(s) on which the case was flagged for 'Limited Scrutiny' & issue arising from nature of information mentioned in para 2 and 3, above.*

*5. The following procedure shall be adopted while examining the additional issue:*

*i. The Assessing Officer shall duly record the reasons for expanding the scope of 'Limited Scrutiny' to the extent mentioned in para 2 and 3, above;*

*ii. The same shall be placed before the Pr. CIT/CIT concerned and upon his approval, further issue can be considered during the assessment proceeding;*

*iii. The Assessing Officer shall issue an intimation to the assessee concerned that additional issue would also be considered during the course of pending assessment proceeding;*

*iv. To ensure proper monitoring in these cases, provisions of section 144A of the Income-tax Act, 1961 may be invoked in suitable cases. Further, to prevent fishing and roving enquiries in these cases, it is desirable that these cases are invariably picked up for Review/Inspection by the administrative authorities.*

*6. The above directive shall be applicable from the date of its issue and shall apply to the pending 'Limited Scrutiny' cases which were selected under the CASS 2017 and 2018 cycles. It is reiterated that the grounds mentioned in para 3 above are the only grounds on which a 'Limited Scrutiny' case of CASS 2017 and 2018 cycles can be expanded in its scope and that too only to the extent of the issues referred to by the law-enforcement/intelligence/regulatory authority or agency .*

*7. It may be brought to the notice of all for necessary compliance.*

*(Rohit Garg) Director (ITA.II), CBDT*

*Copy to:- Chairman, CBDT & All Members, CBDT CIT (Database Cell) for uploading on the departmental website*

From the aforesaid instruction issued by the CBDT, it is abundantly clear that in "limited scrutiny cases", the Assessing Officer cannot normally travel beyond the issue(s) for which the case was selected. Where credible material or information has been provided by any law-enforcement/intelligence/regulatory authority or agency regarding tax-evasion by an assessee, the issue(s) arising from such information can also be examined during the course of conduct of assessment proceedings in such 'Limited Scrutiny' cases with prior administrative approval of the concerned Pr. CIT/CIT.

In the case of the assessee, there is no dispute that the case was selected for limited scrutiny to examine the issue of "cash deposits during the year". That being so, the Learned Assessing Officer was empowered to examine this limited issue only. However, the Learned Assessing Officer travelled beyond this issue and made addition of Rs.9,43,028/- by way of application of net profit rate of 8%. The action

of the Learned Assessing Officer in making such addition by application of net profit rate is unlawful and illegal and against the instructions and procedure for extending the scope of scrutiny issued by the CBDT as mentioned above. The Learned Assessing Officer did not obtain the prior approval of the Pr.CIT/CIT for extending the scope of scrutiny and, therefore, the addition made by way of application of net profit rate is arbitrary and uncalled for and beyond the jurisdiction of "limited scrutiny". The Learned CIT(A) also grossly erred in confirming the addition so made by the learned Assessing Officer on the ground that both the issues are incidental and intimated associated to each other, i.e. cash deposit and gross receipts. The finding of the Learned CIT(A) is not in order. The Learned CIT(A) has not given any detailed reasons as to how the cash deposits are related with gross receipts. The Learned CIT(A) has erred in confirming the addition made by the Learned Assessing Officer by way of rate application. The action of the Learned Assessing Officer relates to the business /trading receipts whereas cash deposits is a issue not related with trading account of the assessee. Cash deposits are related to bank account and balance sheet of the assessee. In view of this, examining the trading account and making trading addition by way of rate application is an altogether different issue not at all even distantly connection with cash deposits. In view of this, it is the submission of the assessee that the Learned Assessing Officer was precluded from making any trading addition, when this issue was not covered under the limited scrutiny. The Learned CIT(A) further erred in confirming such addition without considering the submission of the assessee. Since the action of the Learned Assessing Officer violated the instruction No. F. No. 225/402/2018/ITA.II dated 28/11/2018, the resultant addition of Rs.9,43,028/- is unlawful, illegal and unjust. The Hon'ble Tribunal is requested to delete the same.

#### Ground No. 1

1. In the facts and circumstances of the case, the Learned CIT(A) has erred in confirming the addition of Rs. 14,18,000/- made by the learned Assessing Officer under section 68 of the IT Act, 1961 on account of cash deposited in the bank during demonetization period without considering the submission of the assessee.

The assessment in this case has been selected for limited scrutiny under CASS for examining "cash deposits during the year". In view of this, during the course of assessment proceedings, the Learned Assessing Officer noticed that during the period of demonetization, the assessee deposited Rs. 16,18,000/- in his bank account with Bank of Baroda within the period of 11/11/2016 to 28/12/2016. As the assessee was found

depositing cash in the bank account on regular basis, the Learned Assessing Officer gave benefit of Rs. 2,00,000/- and made addition of the balance amount of Rs. 14,18,000/- (16,18,000 – 2,00,000) under section 68 of the IT Act. The addition made by the Learned Assessing Officer is unlawful, illegal and unjust. The same is assailed as under :-

(a) Section 68 is not applicable

While discussing the additional ground No.1, the assessee has submitted that the provisions of Sec. 68 were not applicable in the case of the assessee as the assessee was not maintaining books of accounts. The primary condition for applicability of Sec. 68 is that there has to be credits in the books of accounts of the assessee. In this case, the Learned Assessing Officer has made addition not with reference to credits in the books of accounts, but with reference to credits in the bank account maintained by the assessee. The assessee has also submitted that Courts have held that a bank account is not books of accounts. Keeping these facts in view, it has been submitted by the assessee that addition made u/s 68 is unlawful and deserves to be deleted. Besides this legal ground, the addition does not hold good even on facts submitted below.

(b) Bank deposits are covered by advances from customers

The Learned Assessing Officer has made addition of Rs. 14,18,000/- with reference to the deposits made from 11/11/2016 to 28/12/2016. During the course of assessment proceedings, it was submitted by the assessee that in connection with the business of plying of various machines, advances are received during the course of business. Various customers took the services of the assessee in connection with blasting and digging of tube wells. The following advances were received by the assessee :-

S.No	Name of the customer with address	Date of deposit	Amount deposited (Rs)	Remarks
1	Shri Shankar Lal Rabari, Indergarh	07/11/2016	4,70,000	Affidavit furnished
2	Shri Ram Prasad Meena	08/11/2016	5,10,000	Affidavit furnished
3	Shri Pritam Meena	06/11/2016	4,15,000	Affidavit furnished

4	Shri Bhojraj Banjara	07/11/2016	5,00,000	Affidavit furnished
5	Shri Jagmohan Meena	08/11/2016	4,00,000	Affidavit furnished
			22,95,000	

In support of the above deposits, assessee had furnished affidavits of the deposits before the Learned Assessing Officer. Copies of these affidavits are available on Paper Book Page No. 6-15. The Learned Assessing Officer summarily rejected the affidavits without assigning any reason. It is submitted that it is settled position of law that an affidavit furnished during the course of assessment proceedings cannot be rejected unless the deponent is examined. In the case of the assessee, none of the persons who furnished the affidavits were examined by the Learned Assessing Officer. The Id Assessing Officer did not require the assessee to produce these depositors. In view of this, without examining the deponents, the Learned Assessing Officer was precluded in rejecting the affidavits. The following case laws are quoted in support :-

- (1) *MEHTA PARIKH & CO. vs. COMMISSIONER OF INCOME TAX*

*SUPREME COURT OF INDIA*

(1956) **30 ITR 0181**

*No further documents or vouchers in relation to those entries were called for, nor was the presence of the deponents of the three affidavits considered necessary by either party. The appellants took it that the affidavits of these parties were enough and neither the AAC, nor the ITO, who was present at the hearing of the appeal before the AAC, considered it necessary to call for them in order to cross-examine them with reference to the statements made by them in their affidavits. Under these circumstances, it was not open to the Revenue to challenge the correctness of the cash entries or the statements made by those deponents in their affidavits.*

- (2) *L. SOHAN LAL GUPTA vs. COMMISSIONER OF INCOME TAX*

*HIGH COURT OF ALLAHABAD*

(1958) **33 ITR 0786**

*After the assessee had filed the affidavit, he was neither cross-examined on that point, nor was he called upon to produce any documentary evidence. Consequently, the assessee was*

*entitled to assume that the IT authorities were satisfied with the affidavit as sufficient proof on this point. If it was not to be accepted as a sufficient proof either by the ITO or by the AAC or by the Tribunal, the assessee should have been called upon to produce documentary evidence, or, at least he should have been cross-examined to find out how far his assertions in the affidavit were correct.*

In view of the discussion made above, the addition of Rs.14,18,000/- made by the Learned Assessing Officer and sustained by the Learned CIT(A) deserves to be deleted.

(c) Business receipts are more than the deposits

It is submitted that the assessee had various sources of income, such as, running of JCB, color machine, plying of tractor, running of pick up, trading of explosives etc and also income from agricultural activities during the year under consideration. In the return of income, the assessee had shown business receipts of Rs.89,34,650/-. On these receipts, the assessee had disclosed income of Rs. 6,58,228/-. The Learned Assessing Officer was required to give benefit of the income earned by the assessee at least on pro rata basis. The deposits in the month of November have been treated as unexplained and by the end of November, on pro rata basis, the income of the assessee works out to Rs.4,38,816/-. (658228/12X8). The Learned Assessing Officer was required to give benefit of this income against the deposits in the bank. It is submitted that this an alternative plea of the assessee for explaining the deposits, otherwise, the same are fully explained with reference to the advances received by the assessee in the previous para.

Ground No. 2

In the facts and circumstances of the case, the learned CIT(A) has erred in confirming the addition of Rs. 9,43,028/- made by the learned Assessing Officer by applying 8 per cent NP rate by assuming the turnover of Rs. 2,07,22,500/- on the basis of total credits in all bank accounts.

While discussing additional ground No.2 above, the assessee has submitted that the case of the assessee was selected for "limited scrutiny" through CASS for the reason "cash deposit during the year". This fact is mentioned in para 1 of the assessment order, where the Learned Assessing Officer has observed that "the case was selected for limited scrutiny

through CASS for the reason "cash deposits during the year". The same fact has also been reiterated in the first line in page 3 of the assessment order, where also the Learned Assessing Officer has again observed "the case of the assessee was selected for limited scrutiny to examine the cash deposited during the year". Therefore, the authority of the Learned Assessing Officer was restricted only to examine the issue for which the case was selected for "limited scrutiny" under CASS, i.e. cash deposits during the year. The Learned Assessing Officer was precluded from examination of any other issue as the case was selected only for "limited scrutiny" and not for complete scrutiny. The CBDT, vide Instruction F.No.225/402/2018 /ITA.II dated 28/11/2018 has laid down the scope of inquiry in limited scrutiny cases selected under CASS, which has already been reproduced above. In the said instruction, the CBDT has laid down that in cases selected for "limited scrutiny, the Assessing Officers cannot travel beyond the issue(s) for which the case was selected for "limited scrutiny. Where credible material or information has been provided by any law-enforcement/intelligence/regulatory authority or agency regarding tax-evasion by an assessee, the issue(s) arising from such information can also be examined during the course of conduct of assessment proceedings in such 'Limited Scrutiny' cases with prior administrative approval of the concerned Pr. CIT/CIT.

There is no dispute that the case of the assessee has been selected for "limited scrutiny" on the issue of "cash deposits during the year", which fact is clearly mentioned in the assessment order by the Learned Assessing Officer. Therefore, the Learned Assessing Officer had no jurisdiction to travel beyond the issue of "cash deposits during the year" for which the case selected under CASS for limited scrutiny. In the case of the assessee, no credible material or information has been provided by any law-enforcement/intelligence/regulatory authority or agency regarding tax-evasion by an assessee. Further, the Learned Assessing Officer has not obtained the prior approval of the PCIT/CIT as mandated in the CBDT instruction quoted above for extending the scope of limited scrutiny beyond the limited issue of "cash deposits during the year", for which the case was selected for limited scrutiny. It is further submitted that the entire deposits in the bank account of an assessee cannot be his income. The receipts in the bank account also includes secured and unsecured loans taken by the assessee, trade advances, receipts which are exempt from tax (such as agricultural income etc). In the case of the assessee, the deposits in bank account also included business advances received from various persons, agricultural income

etc. In such a situation, the Learned Assessing Officer was not justified in making addition by applying NP rate on the entire receipts. Thus, the action of the Learned Assessing Officer in making addition of Rs.9,43,028/- by way of application of net profit rate is unlawful and illegal and against the instructions and procedure for extending the scope of scrutiny issued by the CBDT as mentioned above. The Learned Assessing Officer did not obtain the prior approval of the Pr.CIT/CIT for extending the scope of scrutiny and, therefore, the addition made by way of application of net profit rate is arbitrary and uncalled for and beyond the jurisdiction of "limited scrutiny".

The Learned CIT(A) also grossly erred in confirming the addition so made by the learned Assessing Officer on the ground that both the issues are incidental and intimated associated to each other, i.e. cash deposit and gross receipts. The finding of the Learned CIT(A) is not in order. The Learned CIT(A) has not given any detailed reasons as to how the cash deposits are related with gross receipts. The Learned CIT(A) has erred in confirming the addition made by the Learned Assessing Officer by way of rate application. Since the action of the Learned Assessing Officer is in violation of the CBDT Instruction F. No. 225/402/2018/ITA.II dated 28/11/2018, quoted above, the resultant addition of Rs.9,43,028/- is unlawful, illegal and unjust. The Hon'ble Tribunal is requested to delete the same.

### Ground No. 3

The assessee craves your indulgence to add, amend or alter all or any grounds of appeal before or at the time of hearing.

It is requested that the additional grounds taken by the assessee may kindly be considered.

The Hon'ble Tribunal is requested to decide the appeal in favour of the assessee by considering the above submission and oblige."

7. The Id. AR of the assessee under Rule 11 of the Income Tax Appellate Tribunal Rules, 1963 raised additional ground and the application for raising the additional ground is reiterated here in below :

“In this case, appeal for assessment year 2017-18 stands filed on 19.09.2023. However, while filing the appeal, due to inadvertence, following grounds could not be taken. These grounds are purely of legal nature and arise out of the order of the learned Assessing Officer/learned CIT(A). These go to the root of the matter. These additional grounds do not require any additional evidence. Therefore, the Hon'ble Tribunal may kindly give permission for taking the additional grounds, which are as under:-

“Additional Ground No. 1

In the facts and circumstances of the case, the learned CIT(A) has erred in confirming the addition of Rs. 14,18,000/-, which was made by the learned Assessing Officer by invoking provisions of Section 68 despite that books of account have not been maintained by the assessee.

Additional ground No. 2

In the facts and circumstances of the case, the learned CIT(A) has erred in upholding addition of Rs. 9,43,028/- made by the Learned Assessing Officer by way of rate application and increasing the gross receipts whereas the case was selected only for limited scrutiny for “cash deposit during the year”.

Additional Ground No. 3

The learned CIT(A) has erred in holding that the issue of “cash deposit” and “gross receipts” being intimately associated to each other and accordingly erred in confirming the addition of Rs. 9,43,028/-.”

The additional grounds noted above arise out of the order of the learned CIT(A)/Assessing Officer and do not require support of any additional evidence, hence, the same deserve to be admitted by the Hon'ble Bench.

The following decisions are quoted in support -

(i) National Thermal Power Co. Ltd. Vs. CIT (1998) 229 ITR 383 (SC)

The view that the Tribunal is confined only to issues arising out of appeal before the CIT(A) takes too narrow a view of the powers of the Tribunal. Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings such a question should be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.

(ii) Ravindra Arora vs. Assistant Commissioner of Income Tax (2018) 404 ITR 452 (Rajasthan High Court)

ITAT is bound to accept additional ground if facts are on record.

(iii) Sharwan Beniwal Vs. Income Tax Officer Bikaner ITA No. 292/JU/2008 dated 14.01.2009.

ITAT can admit additional ground of appeal later on in case the issue raised is legal and goes to the root of the matter.

(vi) Jora Singh Vs. ITO (2010) 42 DTR 409 (Lucknow)

Admissibility of additional ground validity of assessment. Notice u/s 148 issued even when time limit of issuing notice u/s 143(2) was available. A pure question of law additional ground is admitted.

(v) CIT Vs. Kerala State Co-operative Marketing Federation Learned. (1992) 193 ITR 624 (Ker)

An appellant before the Tribunal can raise any new or additional point for the first time in appeal before the Tribunal.

(vi) Mahindra & Mahindra Ltd. Dy. CIT (2009) 122 TTJ 577 (Mub)(SB)

Appeal (Tribunal)-Additional ground-Question of limitation-Special Bench having been constituted for deciding the question of limitation on the request of Revenue, the objection as to raising of additional ground by assessee is not maintainable now Further, there can be no embargo on any party to raise a legal ground for the first time before the Tribunal provided the relevant material for deciding that question already exists on record and no further investigation of facts is required-Question of limitation goes to the very jurisdiction of the matter-It is not only the right of the parties but also the duty of the Tribunal to consider the question of limitation notwithstanding the fact that it is not raised before it-Additional ground admitted.

(vii) Sunil Kumar Pugalia (HUF) VS. ITO (2009) 120 TTJ 1001 (Jodh)

Appeal (Tribunal)- Additional ground-Admissibility-Ground challenging jurisdiction of AO to initiate reassessment proceedings not raised before AO or CIT(A)-Being a pure question of law can be raised before the Tribunal for the first time.”

The Id. AR of the assessee in support of the application relied upon the decision National Thermal power Co. Ltd. vs. CIT (1998) 229 ITR 383(SC) and various other judgments as quoted in his application. The Id. AR of the assessee also prayed that the additional ground are technical in nature and are relevant for

deciding the issue on hand and no further investigation of fact is required. Therefore, bench is empowered to admit these additional grounds. To support this contention, the Id. AR of the assessee relied upon various judgments including judgment of the Honble Apex Court in case of NTPC vs. CIT (Supra) considering the specific prayer of the assessee and Id. DR did not raise any objection to this prayer we admit the prayer of raising the additional grounds.

8. The Id. AR of the assessee on merits submitted that the case was flagged under limited scrutiny on account of deposit of cash into bank account for which the addition has already been made for an amount of Rs. 14,18,000/-. So, making the addition of Rs. 9,43,028/- is without jurisdiction and was not subject matter of the limited scrutiny. The Id. AO without taking prior approval of higher authority cannot go into decide the other aspect of the matter. Therefore, the addition of Rs. 9,43,028/- made considering the other receipts in the bank account cannot be considered as the said matter was not a subject matter of scrutiny and the addition based on that set of facts is without jurisdiction. In support of this contention, he relied upon the instruction No. F-No. 224/2018 IT. II

dated 18.11.2018 wherein the Board has specifically given a detailed guideline for scope of enquiry in limited scrutiny to the assessing officers. The Board has also specified procedure to be adopted when the Assessing Officer intend to enlarge the scope of enquiry/investigation beyond the issue on which the case was flagged for limited scrutiny. The Id. CIT(A) has not dealt with this issue and has merely stated that the contention of the assessee is not correct [ para 21 of the Id. CIT(A)]. Thus, the finding of the Id. CIT(A) is also not correct and this is against the guidelines of limited scrutiny prescribed by the Board. Based on these argument he submitted that the addition is required to be deleted which is not a subject matter of the assessment. As the Id. AO has not discussed or not undertaken the procedure as prescribed in that instruction the order passed is against the instruction of the Board and is required to be quashed. The Id. AR of the assessee submitted that the assessee is engaged in various contractual activity in that course of business the assessee has received advances from the following parties:-

S.No	Name of the customer with address	Date of deposit	Amount deposited (Rs)	Remarks

1	Shri Shankar Lal Rabari, Indergarh	07/11/2016	4,70,000	Affidavit furnished
2	Shri Ram Prasad Meena	08/11/2016	5,10,000	Affidavit furnished
3	Shri Pritam Meena	06/11/2016	4,15,000	Affidavit furnished
4	Shri Bhojraj Banjara	07/11/2016	5,00,000	Affidavit furnished
5	Shri Jagmohan Meena	08/11/2016	4,00,000	Affidavit furnished
			22,95,000	

In support of the above advances so received the assessee furnished affidavit to the Id. AO. The content of the affidavit has not been controverted. Thus, based on the decision of the Hon'ble Apex Court in the case of Mehta Parikh & Co. vs. CIT 30 ITR 181 if the content of the affidavit is not challenged then addition ignoring the content of the affidavit cannot be made. The Ld. AO has already accepted that the assessee has deposited cash on various dates of the currency in pieces and since that the assessee already explained the source of cash on hand to the extent of Rs. 16,18,000/- in the bank account during the demonetization period. Thus considering the detailed written submission, the Id. AR of the assessee submitted that both the addition sustained by the Id. CIT(A) is required to be deleted.

9 The Id. AR of the assessee relied upon the following evidences in support of the contentions so raised:-

Sr. No.	Particulars	Page No.
1.	Computation of total income along with Receipt & Payment A/c and Balance Sheet.	1-5
2.	Copy of affidavit of persons from whom the assessee received advance for work of blasting/digging of tubewell etc.	6-15

10. Per contra, the Id. DR, representing the Revenue submitted that in the assessment proceedings five opportunity were provided to the assessee. The assessee did not respond to it fully. The assessment is completed u/s 144 of the Act. As regards the advances received from the 5 parties merely an affidavit is submitted and no details giving the nature of work capacity of the persons submitted. Therefore, it is a mere story, to escape from the real source of cash deposited in the bank account. The assessee instead of receiving cash might have received the money from the normal banking channel. Before the Id. CIT(A) two remand report which is reproduce at page 12 of the order of the Id. CIT(A) are relied upon and thus Id. DR supported the action of the lower authorities as the assessee fail to explain the rational behind to

accept the cash. The assessee has not submitted any proof of having tractor and doing business, therefore, the story of business of section 44AE and 44AD is also not supported with the evidences. The Id. DR representing the Revenue submitted that there is no whisper of filing of affidavit of the assessee in the order of the lower authorities. He relying on the judgment of in case of Sudhir Kumar Sharma vs. CIT and Sanjay Kapur vs. ACIT and thereby heavily supported the order of the lower authorities.

10.1 In the rejoinder the Id. AR of the assessee submitted that it is stated by the Id. DR is on different fact and or not applicable to the fact of the assessee as regards the affidavit the Id. AR of the assessee submitted that he has filed a copy of the paper book in advance on 19.10.2023 whereas the hearing of the case of the appeal is taking place on 01.11.2023. Till the date of hearing the Id. AO through the Id. DR did not raise any objection and Id. AR of the assessee is senior counsel has certified that the copy of affidavit were placed before the Assessing Officer.

11. We have heard the rival contentions, perused the material placed on record and gone through the judicial precedent cited by both the parties to drive home their respective contentions. It is not

under dispute that the case of the assessee was selected for limited scrutiny to examine the cash deposited into bank account. The case of the assessee thus was selected for limited scrutiny and the Id. Assessing Officer also made addition based on the submission of the assessee.

11.1 Ground No. 1 raised by the assessee relates to the addition of Rs. 14,18,000/- made by the Assessing Officer. To justify the deposit of cash into the bank account the assessee submitted that he has received advances for his blasting and digging of tube wells work from the following parties. The details of the sum received are as under:-

S.No	Name of the customer with address	Date of deposit	Amount deposited (Rs)	Remarks
1	Shri Shankar Lal Rabari, Indergarh	07/11/2016	4,70,000	Affidavit furnished
2	Shri Ram Prasad Meena	08/11/2016	5,10,000	Affidavit furnished
3	Shri Pritam Meena	06/11/2016	4,15,000	Affidavit furnished
4	Shri Bhojraj Banjara	07/11/2016	5,00,000	Affidavit furnished
5	Shri Jagmohan Meena	08/11/2016	4,00,000	Affidavit furnished
			22,95,000	

In support of the advances so received for an amount of Rs. 22,95,000/- the assessee submitted an affidavit of this parties dealing with executed before the Executive Magistrate on stamp paper in original before the Id. AO and Id. CIT(A). Out of that sum of Rs. 22,95,000/- Id. AO disputed an amount of Rs. 14,18,000/- and added that amount as unexplained cash credit u/s 68 of the Act. The bench noted that Id. AO has considered the part of the amount based on the same set of evidence and there is no evidence brought on record for an amount of Rs. 14,18,000/-, but merely considered that the sum is deposited into the bank account after the demonetization. Thus, once the part of the cash is considered and the part cannot be considered as violative of provision of section 68 of the Act when the part of the amount is considered as explained balance cannot be denied. Similarly, the Id. AO merely based on the fact that the balance amount of sum is deposited into the bank account after demonetization period by the assessee in piecemeal. The bench on the citation relied in the case of Mehta Parikh & Co. (supra) where in the apex court held that ***once an affidavit is furnished, it should be presumed to be a correct statement of facts. If these facts are to be controverted, either the deponent must be examined or***

***evidence contrary to facts must be led. In the absence of these the affidavits could not be ignored.*** Here we note that based on the affidavit out of a sum of Rs. 22,95,000/- only a sum of Rs. 14,18,000/- cannot be disbelieved merely the sum is deposited after demonetization and the same is deposited into the bank account in piecemeal. Since the Revenue has not challenged the content of the affidavit and the Revenue has already accepted out of a sum of Rs. 22,95,000/- only disputed an amount of Rs. 14,18,000/- is not correct and therefore, we hold that the addition made by the Assessing Officer is without looking into the fact placed on record and the evidence cannot be accepted in part it should either be accepted in full or it should be denied in full. Based on this observation we hold that ground No. 1 raised by the assessee is allowed we vacate the addition of Rs. 14,18,000/-. Since we have dealt with the ground of the assessee on merit the other ground raised in form of additional ground to the extent not decided by the Bench are considered as academic.

11.2 In the ground no. 2 the Id. AR of the assessee has challenged the addition of Rs. 9,43,028/- made by the learned AO by applying the 8 percent NP rate by assuming the turnover of Rs. 2,07,22,500/- on the basis of total credits in all bank accounts. On

this issue the bench noted that the case of the assessee was flagged for limited scrutiny of cash deposited into the bank account and the Id. AO has examined that issue and action of the Id. AO estimating the turnover and that of the income of Rs. 9,43,028/- was not subject matter of scrutiny. Thus, the bench persuaded the detailed guideline of the board on the scope of limited scrutiny vide instruction No. 225/404/2018/ITA.II dated 28.11.2018 wherein the Board has categorically directed the lower authorities that where the consideration of any additional issue is involved the Id. AO must undertake certain formality to enlarge the scope of the assessment. The relevant guideline of the board on the scope of the assessment is discussed here in below :

*3. The matter has been considered by the Board. In order to enable proper enquiry/ investigation in pending 'Limited Scrutiny' cases which were selected through CASS cycles of 2017 and 2018, where credible material or information has been/is provided by any law-enforcement/intelligence/regulatory authority or agency regarding tax-evasion by an assessee, it has been decided by the Board that issues arising from such information can also be examined during the course of conduct of assessment proceedings in such 'Limited Scrutiny' cases with prior administrative approval of the concerned Pr. CIT/CIT.*

*4. It is pertinent to mention that unlike CASS 2015 and 2016 cycles, where consideration of any additional issue lead to the conversion of case to 'Complete Scrutiny' as laid down in Instruction No. 5/2016 dated 14.07.16, the pending 'Limited Scrutiny' cases of CASS 2017 and 2018 cycles would not be taken up for 'Complete Scrutiny' as the present directive is only to facilitate consideration of those issues wherein specific information of tax-evasion has been furnished by any law-enforcement/intelligence/regulatory authority or agency. Therefore, in such 'Limited Scrutiny' cases, Assessing Officer shall not expand the scope of enquiry/investigation beyond the issue(s) on which the case*

*was flagged for 'Limited Scrutiny' & issue arising from nature of information mentioned in para 2 and 3, above.*

*5. The following procedure shall be adopted while examining the additional issue:*

*i. The Assessing Officer shall duly record the reasons for expanding the scope of 'Limited Scrutiny' to the extent mentioned in para 2 and 3, above;*

*ii. The same shall be placed before the Pr. CIT/CIT concerned and upon his approval, further issue can be considered during the assessment proceeding;*

*iii. The Assessing Officer shall issue an intimation to the assessee concerned that additional issue would also be considered during the course of pending assessment proceeding;*

*iv. To ensure proper monitoring in these cases, provisions of section 144A of the Income-tax Act, 1961 may be invoked in suitable cases. Further, to prevent fishing and roving enquiries in these cases, it is desirable that these cases are invariably picked up for Review/Inspection by the administrative authorities.*

Thus, based on these set of instructions the Id. AO should have followed the procedures as laid here in below by the board, which we from the order of the lower authority have not been followed and there is no discussion in the order. Even the revenue could not controvert this argument advanced by the assessee and therefore, on this issue we note that determination of the turnover of the assessee was not subject matter of scrutiny. Thus, considering that specific instruction of the Board we find that the Id. AO has extended the scope of enquiry from the cash deposit to total turnover by the assessee in the bank account and thereby

extending the scope of enquiry without following procedure as laid down in the above instruction of the Board. Therefore, we are of the considered view that the addition of Rs. 9,43,028/- made by the Id. AO without any jurisdiction and without following proper procedure of converting the case of the assessee from limited scrutiny to general and other aspects of the scrutiny and thus, ground No. 2 raised by the assessee is allowed.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 28/11/2023.

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 28/11/2023

\*Santosh

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Ram Dev Chandel, Bundi.
2. प्रत्यर्थी / The Respondent- ITO, Ward, Bundi.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 585/JPR/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar