

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष

BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JM &
HON'BLE SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 618/JP/2023
निर्धारण वर्ष / Assessment Year : 2017-18.

Mothers Education Hub C/o Kalani & Company, Chartered Accountants, 5 th Floor, Milestone Building, Gandhinagar Turn, Tonk Road, Jaipur.	बनाम Vs.	ACIT Circle-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAUFM 7596 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal, CA

राजस्व की ओर से / Revenue by : Shri A.S. Nehra, Addl.CIT

सुनवाई की तारीख / Date of Hearing : 08/11/2023

उदघोषणा की तारीख / Date of Pronouncement: 30/11/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 30.08.2023 of Id. CIT (A), National Faceless Appeal Centre, Delhi passed under section 250 of the IT Act, 1961 for the assessment year 2017-18. The assessee has raised the following grounds :-

1. The Id. CIT (A) NFAC has erred on facts and in law in confirming the disallowance of Rs. 46,36,775/- u/s 40A(2)(b) of IT Act, 1961.
2. The Id. CIT (A) NFAC has erred on facts and in law in treating the entire cash deposit during demonetization period as unexplained cash credit u/s 68 of the Act and thereby enhancing the addition to

Rs. 53,62,500/- as against Rs. 5 lacs made by the AO. It has further erred in taxing this amount u/s 115BBE @ 60% instead of taxing the same @ 30% by ignoring that section 115BBE substituted by Taxation Laws (Second Amendment Act), 2016 which received the assent of President on 15.12.2017 is not applicable to AY 2017-18.

3. The appellant craves to alter, amend & modify any ground of appeal.
4. Necessary cost be awarded to the assessee.

2. The brief facts of the case are that the assessee firm Mothers Education Hub filed its return of income on 28.10.2017 declaring total income at Rs. 30,66,880/- for the year under consideration. The case of the assessee was selected for complete scrutiny under CASS. Notice under section 143(2) of the Act was issued on 13.08.2018 through ITBA portal, which was duly served upon the assessee. During the course of assessment proceedings, notices under section 142(1) along with questionnaire have been issued to the assessee on various dates. In compliance to the said notices, the assessee filed its submissions on various dates which have been placed on record. The assessee is mainly engaged in business in education and earned income from business or profession. Assessee is providing computer training and educational and coaching services for various competitive exams. It is having its branches at Gopalpura, Ambabari, Jhotwara, Mansarovar, Alwar, Bikaner, Jodhpur and Delhi. The Delhi branch was opened in the year under consideration. The gross receipt of the assessee for the year is Rs.12,90,60,870/- as against gross receipt of Rs.6,86,30,448/- declared in the last year. Thus the gross receipt has increased by almost 88% from the last year. In course of assessment proceedings AO observed that assessee has made payment of salary to following persons specified u/s 40A(2)(b):-

S. No.	Name of the related person	Relation	Amount (in Rs.)
1.	Amit Kumar	Brother of Partner	11,73,550/-
2.	Madan Singh	Father of Partner	11,60,000/-
3.	PawanRao	Brother of Partner	11,70,000/-
4.	Priyanka	Wife of Partner	11,60,000/-
5.	Sandeep Nehra	Brother of Partner	11,40,000/-
6.	Suman	Wife of Partner	11,40,000/-
7.	Kamlesh	Wife of Partner's Brother	11,70,000/-
8.	Sushila Devi	Wife of Partner's Brother	11,60,000/-
Total			92,73,550/-

The AO held that education qualification of these persons are quite less as compared to the salary. The salary so paid is unreasonable and exceptionally excessive having regard to the fair market value of such services. The excessive salary was paid with the object of reducing the tax liability. Accordingly he disallowed 50% of the salary so paid u/s 40A(2)(b) of the Act. On appeal filed by the assessee, the Id. CIT(A) held that assessee did not file any evidence to show that actual services were rendered by these persons and also failed to substantiate that how the amount paid is a reasonable amount. Further salary paid to Suman Rao is in line with salary paid to Sushila Devi whereas function carried out by Suman Rao are fees collection and to look after banking operations which is a low end function vis-à-vis teaching function carried out by Sushila Devi. Accordingly, the Id. CIT (Appeals) confirmed the addition made by the AO.

Now the assessee is in appeal before us.

3. Before us, the Id. A/R of the assessee submitted his written submissions as under :-

" The AO has made disallowance invoking provisions of section 40A(2)(b) of the Act. For this purpose it would be relevant to refer to section 40A(2)(a) of the Act which reads as under:-

"(2)(a) Where the assessee incurs any expenditure in respect of which payment has been or is to be made to any person referred to in clause (b) of this subsection, and the Assessing Officer is of opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made or the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to him therefrom, so much of the expenditure as is so considered by him to be excessive or unreasonable shall not be allowed as a deduction.

From the plain reading of the section it can be noted that for making any disallowance under this section, AO has to first determine that the expenditure is excessive or unreasonable by bringing some material on record. It cannot be at the whims and fancy of AO. In the present case, AO has not brought any evidence or comparable instances on record to establish that the payment of salary to these persons is excessive. As against this the assessee vide letter dt. 05.12.2019 (**PB 12A-13A**) has filed justification for the payment of salary which is reproduced at Para 4.2 of the assessment order. Thereafter the AO without specifying as to how the salary so paid is unreasonable or excessive, made the disallowance which is against the provisions of section 40A(2)(a). For this reliance is placed in the following cases:-

**Upper India Publishing House (P.) Ltd. Vs. CIT 117 ITR 569(SC)
(Case laws compilation PB 1)**

The question whether a particular expenditure is excessive & unreasonable or not is essentially a question of fact & unless it is first held that such expenditure was excessive or unreasonable, the question of applicability of section 40(A)(2)(a) becomes academic.

**CIT Vs. Consulting Engineering Group Ltd. (2014) 365 ITR 284
(Raj.) (HC)(Case laws compilation PB 2-8)**

Rajesh Bajaj Vs. DCIT (2021) 201 DTR 310 (All.) (Trib)(Case laws compilation PB 9-15)

It is submitted that the salary paid to specified persons is reasonable considering their work responsibility, work experience and educational qualification. The explanation as to the reasonableness of salary paid to these persons is as under:-

Name of the related person	Amount (in Rs.)	Remarks
Amit Kumar	11,73,550/-	He is Bachelors in Arts. He is having teaching experience of almost 6 years. He is affiliated with the assessee since 2014. He is a well-known faculty for English. He looks after the entire administrative work of Gopalpura centre of the assessee. He is an income tax payer and the remuneration given to him is considered in his return of income (PB 1-4) and accepted by the department.
Madan Singh	11,60,000/-	He is Bachelors in Arts and is an ex-army employee. He is affiliated with the assessee after his retirement in 2014. He looks after the entire administrative work of Alwar centre of the assessee. The total receipt of this centre is Rs.68 lakhs which is managed by him. He is an income tax payer and the remuneration given to him is considered in his return of income (PB 5-8) and accepted by the department.
Pawan Rao	11,70,000/-	He is Bachelors in Science and is having 7 years of experience in teaching. He is a well-known faculty for Maths and is providing lectures in most of the branches of assessee. He is an income tax payer and the remuneration given to him is considered in his return of income (PB 9-12) and accepted by the department.
Priyanka Devi	11,60,000/-	She has done Masters in Science and B.Ed. She is working as an HR Manager and looks after the recruitment activities and staff management. Assessee firm is having more than 80 plus staff. She is an income tax payer and the remuneration

		given to her is considered in her return of income (PB 13-16) and accepted by the department.
Sandeep Nehra	11,40,000/-	He is affiliated with the assessee since 2015. He is a branch manager at Ambabari centre of the assessee. He is managing the administrative work and all the activities related to students for this branch. The total receipt of this branch is Rs.64 lakhs. He is an income tax payer and the remuneration given to him is considered in his return of income (PB 17-20) and accepted by the department.
Suman Rao	11,40,000/-	She has done Masters in Art and B.Ed. She is affiliated with the assessee since 2012 and is working as a fund manager. She handles the receipt collection from the students and banking activities. She is an income tax payer and the remuneration given to her is considered in her return of income (PB 21-23) and accepted by the department.
Kamlesh	11,70,000/-	He has done Masters in Technology. He looks after the IT related activities. He is an income tax payer and the remuneration given to him is considered in his return of income (PB 24-27) and accepted by the department.
Sushila Devi	11,60,000/-	She has done Masters in Art and B.Ed. She is a well-known faculty for English. The entire payment has been made through bank and tax has been deducted at source. The remuneration given to him is considered in his return of income (PB 28-31) and accepted by the department.

From the above table it is evident that the salary paid to each of the person is reasonable. AO, in the absence of any material on record, cannot put himself in the shoe of the businessman to decide what is unreasonable u/s 40A(2)(a). **Hon'ble Supreme Court in case of CIT Vs. Dhanrajgirji Raja Narsinghiriji 91 ITR 544(PB 106-109)** held that it is not open to the department to prescribe in what circumstances he should incur that expenditure. Every businessman knows his best interest. Hence without pointing out any comparable instance, disallowance of 50% of the salary is unjustified and not as per law.

The finding of Ld. CIT(A) is contradictory in nature in as much as he observed that assessee did not file evidence to show the actual services rendered by these persons but at the same time stating that salary paid to Suman Rao in respect of low end function is not comparable to the salary paid to Sushila Devi carrying out teaching function. Further he has observed that assessee failed to substantiate that salary paid is reasonable ignoring that assessee has substantiated the reasonableness of the salary paid with reference to the experience, educational qualification and the nature of services provided by these persons but inspite of this AO has not brought any material on record to established that salary so paid is excessive. Thus the Ld. CIT(A) has erred in confirming the disallowance.

In view of above, disallowance confirmed by Ld. CIT(A) be directed to be deleted.”

4. On the other hand, the Id. D/R supported the orders of the revenue authorities.

5. We have heard rival contentions, perused the material on record and gone through the orders of the revenue authorities. From the facts of the present case, we noticed that the assessee is providing computer training and educational and coaching services for various competitive exams. During the course of assessment proceedings, the AO observed that the assessee has made payment of salary to the following persons specified under section 40A(2)(b) :

S. No.	Name of the related person	Relation	Amount (in Rs.)
1.	Amit Kumar	Brother of Partner	11,73,550/-
2.	Madan Singh	Father of Partner	11,60,000/-
3.	PawanRao	Brother of Partner	11,70,000/-
4.	Priyanka	Wife of Partner	11,60,000/-
5.	Sandeep Nehra	Brother of Partner	11,40,000/-
6.	Suman	Wife of Partner	11,40,000/-

7.	Kamlesh	Wife of Partner's Brother	11,70,000/-
8.	Sushila Devi	Wife of Partner's Brother	11,60,000/-
Total			92,73,550/-

As per the AO, the educational qualification of above named 8 (eight) persons are quite less as compared to the salary which are being paid to them and, therefore, the AO concluded that the salary so paid to the above persons is unreasonable and exceptionally excessive having regard to the fair market value of such services. As per the AO, the excessive salary was paid by the assessee with the object of reducing the tax liability and accordingly disallowed 50% of the said salary. During the appellate proceedings, the Id. CIT (A) also held that the assessee has not filed any evidence to show that actual services were rendered by these persons and also failed to substantiate that the amount paid is reasonable amount. Accordingly, the Id. CIT (A) also confirmed the addition so made by the AO.

5.1 Before deciding the merits of this ground, it is necessary and imperative to refer to the relevant section i.e. 40A(2)(b) of the IT Act which reads as under :-

" (2)(a) Where the assessee incurs any expenditure in respect of which payment has been or is to be made to any person referred to in clause (b) of this sub-section, and the Assessing Officer is of opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made or the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to him therefrom, so much of the expenditure as is so considered by him to be excessive or unreasonable shall not be allowed as a deduction."

From the above referred section 40A(2)(b), we noticed that for making any disallowance under this section, the AO is under obligation to determine that the

expenditure made is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made, thus the AO was duty bound to bring some material on record. However, in the present case, the AO has not brought any evidence or comparable instances on record to establish that the payment of salary to these persons is excessive. As against this, the assessee filed letter dated 05.12.2019, copy of which is placed on record at Paper Book page 12A-13A, wherein the assessee had filed justification for the payment of salary which is reproduced at para 4.2 of the assessment order. Therefore, in such a situation, the AO without specifying as to how the salary so paid is unreasonable or excessive had made disallowance, which according to us is against the spirit of provision of section 40A(2)(b) of the Act as it has been specifically and candidly mentioned in section 40A(2)(b) of the Act that in case the AO is of the opinion that such expenditure shown by the assessee appears to be excessive or unreasonable, then the AO having regard to the fair market value of the goods, services or facilities for which the payment is made, can make disallowance. In this regard we draw strength from the decisions referred to by the Id. A/R as under :-

“Upper India Publishing House (P.) Ltd. Vs. CIT 117 ITR 569(SC) (Case laws compilation PB 1)

The question whether a particular expenditure is excessive & unreasonable or not is essentially a question of fact & unless it is first held that such expenditure was excessive or unreasonable, the question of applicability of section 40(A)(2)(a) becomes academic.

CIT Vs. Consulting Engineering Group Ltd. (2014) 365 ITR 284 (Raj.) (HC)(Case laws compilation PB 2-8)

The assessee claimed deduction on account of remuneration paid to the chairman-cum-managing director of the assessee-company. The AO disallowed certain amount u/s 40A(2)(a) on the ground that the payment of remuneration was excessive. It was held that it is for an assessee, a businessman, to come to

a conclusion as to what remuneration/salary is to be paid to an employee and reasonableness is to be judged from the angle of a businessman rather than from the angle of the AO who may not be aware of the realities and peculiarities of the business. It was found that the said director was the sole influential person in getting the business for the assessee and receipts of the assessee had increased due to his competence. Further, the assessee being a public company, increase in the remuneration was approved after passing a proper resolution in an extraordinary general meeting of the shareholders. The salary paid to the director has been offered to tax at maximum rate in his individual capacity and thus there is hardly any loss to the revenue. Therefore, the salary paid to the director could not be said to be excessive or unreasonable and disallowance be deleted.

Rajesh Bajaj Vs. DCIT (2021) 201 DTR 310 (All.) (Trib)(Case laws compilation PB 9-15)

The relevant finding of Hon'ble ITAT at Para 8, 9 & 10 reads as under:-

8. As regards the issue of excess/unreasonable payment to the specified person, it is evident from the assessment order that the AO has made a disallowance on the basis of comparative rent paid by the assessee in the preceding year and in the year under consideration without determining the fair market rent of the properties in question. It is settled proposition of law that in order to make a disallowance under s. 40A(2)(b), the AO has to first determine the fair market value/price and then compare the same with the actual expenditure incurred and payment made by the assessee to the specified person. In case the payment made by the assessee to the specified person is excessive and unreasonable having regard to the fair market value/price, the amount found to be excess or unreasonable is liable to be disallowed under s. 40A(2) of the IT Act. Therefore it is precondition for making the disallowance under s. 40A(2) that the AO has to arrive to the conclusion that the amount paid by the assessee is excessive or unreasonable in comparison to the fair market value/price. In the case in hand, the AO has not carried out such exercise to first determine the fair market rent of the properties in question by bringing any comparable instance/case but the AO has just compared the quantum of the rent paid by the assessee in the preceding year and the rent paid during the year under consideration. Further, the quantum of rent cannot be considered in absolute terms as to whether it is excess or unreasonable without considering the rate of rent paid by the assessee in terms of per square feet or per square meter. Further, the comparison of the rent paid by the assessee also depends upon various factors being the locality of each property if the same are not situated at one place and therefore, there cannot be a standard criteria of fair market rent to be applied for all the properties without considering the criteria such as locality, nature of property and other advantage or disadvantage attached to a particular property. Hence, the fair market rent required to be determined by considering all these factors and by bringing on record the comparable cases for each of the property as per their location, category and advantage or disadvantage attached to them. The

AO failed to conduct the minimum enquiry to ascertain the fair market rent of these properties. The Hon'ble jurisdictional High Court in the case of CIT vs. Modi Xerox (supra) has considered this issue in paras 17 to 19 as under:

.....

9. Thus, once the transaction of payment of rent is not found to be bogus or ingenuine, then the disallowance of the expenditure under s. 40A(2)(b) is not warranted in the absence of a definite finding that the payment made by the assessee is excessive or unreasonable in comparison to the fair market rent. In the case of MotilalLaxmichandSanghavi vs. Asstt. CIT (supra) the Mumbai Benches of the Tribunal has considered and decided this issue in para 9 as under:

"9. We have considered rival submissions and perused the material on record. A reading of the provision of section 40A(2) of the Act as a whole makes it clear that if in the opinion of the Assessing Officer, the expenditure claimed by the assessee in respect of payment made to any related party/associated concern is excessive or unreasonable having regard to the fair market value, disallowance has to be made under the said provision. Therefore, before making any disallowance under the said provision, two conditions have to be satisfied. Firstly, the payment in respect of which deduction has been claimed must have been made to a related party and secondly, such payment must be excessive and unreasonable having regard to the market rate. Therefore, the Assessing Officer must form an opinion objectively on the basis of material brought on record to demonstrate that the payment made by the assessee is excessive and unreasonable having regard to the market rate. No doubt, in the facts of the present case, the first condition of section 40A(2) of the Act has been fulfilled as the assessee has made the payment to the related parties. However, as regards the second condition relating to unreasonableness of the payment made, on a perusal of the impugned assessment order it is noticed that the Assessing Officer has not brought any material on record to demonstrate that the payment made is excessive and unreasonable having regard to the market rate. Simply stating that the rate of interest paid on unsecured loan is higher than the fixed deposit interest rate, the Assessing Officer has restricted the rate of interest on unsecured loans to 12% per annum. The Assessing Officer has not brought any comparable case to demonstrate that the market rate of interest on unsecured loan is 12%. The Assessing Officer cannot equate the rate of interest on bank fixed deposit with unsecured loan as unsecured loans are without any security, hence, the lender always carries the risk of not being able to recover the money. Therefore, the rate of interest is always little higher compared to the rate of bank interest. The decisions cited by the learned Authorised Representative also support this view. Therefore, in the facts of the present case, in our considered opinion, the payment of interest @ 15% per annum on unsecured loans availed from

related parties cannot be considered to be excessive or unreasonable to invoke the provisions of section 40A(2)(b) of the Act. Accordingly, we delete the disallowances made by the Assessing Officer in all the assessment years under appeal."

10. A similar view has been taken by this Tribunal in a series of decisions including the decision relied upon by the learned Authorised Representative of the assessee. No contrary decision has been brought to the notice of the Tribunal. Accordingly, in the facts and circumstances of the case, when the AO has not conducted any enquiry to determine the fair market rent so as to hold that the payments made by the assessee on account godown/shop rent is excessive or unreasonable, the disallowance made by the AO is contrary to the provisions of s. 40A(2) of the IT Act. Following the decision of the Hon'ble jurisdictional High Court as well as the decisions of the Co-ordinate Benches of the Tribunal, this issue is decided in favour of the assessee and disallowance made by the AO is deleted."

Apart from this, the Id. A/R has also submitted that the salary paid to specified persons is reasonable considering their work responsibility, work experience and educational qualifications and in this regard a detailed chart has been given wherein the experience, reasonableness of the salary paid to these persons has been explained as under :-

Name of the related person	Amount (in Rs.)	Remarks
Amit Kumar	11,73,550/-	He is Bachelors in Arts. He is having teaching experience of almost 6 years. He is affiliated with the assessee since 2014. He is a well-known faculty for English. He looks after the entire administrative work of Gopalpura centre of the assessee. He is an income tax payer and the remuneration given to him is considered in his return of income (PB 1-4) and accepted by the department.
Madan Singh	11,60,000/-	He is Bachelors in Arts and is an ex-army employee. He is affiliated with the assessee after his retirement in 2014. He looks after the entire administrative work of Alwar centre of the assessee. The total receipt of this centre is Rs.68 lakhs which is managed by him. He is an income tax payer and the remuneration given to him is considered in his return of income (PB 5-8) and accepted by the department.
PawanRao	11,70,000/-	He is Bachelors in Science and is having 7 years of

		experience in teaching. He is a well-known faculty for Maths and is providing lectures in most of the branches of assessee. He is an income tax payer and the remuneration given to him is considered in his return of income (PB 9-12) and accepted by the department.
Priyanka Devi	11,60,000/-	She has done Masters in Science and B.Ed. She is working as an HR Manager and looks after the recruitment activities and staff management. Assessee firm is having more than 80 plus staff. She is an income tax payer and the remuneration given to her is considered in her return of income (PB 13-16) and accepted by the department.
Sandeep Nehra	11,40,000/-	He is affiliated with the assessee since 2015. He is a branch manager at Ambabari centre of the assessee. He is managing the administrative work and all the activities related to students for this branch. The total receipt of this branch is Rs.64 lakhs. He is an income tax payer and the remuneration given to him is considered in his return of income (PB 17-20) and accepted by the department.
Suman Rao	11,40,000/-	She has done Masters in Art and B.Ed. She is affiliated with the assessee since 2012 and is working as a fund manager. She handles the receipt collection from the students and banking activities. She is an income tax payer and the remuneration given to her is considered in her return of income (PB 21-23) and accepted by the department.
Kamlesh	11,70,000/-	He has done Masters in Technology. He looks after the IT related activities. He is an income tax payer and the remuneration given to him is considered in his return of income (PB 24-27) and accepted by the department.
Sushila Devi	11,60,000/-	She has done Masters in Art and B.Ed. She is a well-known faculty for English. The entire payment has been made through bank and tax has been deducted at source. The remuneration given to him is considered in his return of income (PB 28-31) and accepted by the department.

Considering the above table and the details mentioned by the Id. A/R before us as well as before the lower authorities, we find that the AO has not controverted the specific assertions made by the assessee and has not collected any material or placed on record any comparable instances to establish that the payment of salary to these persons is excessive and in this regard the Hon'ble Supreme Court has also

given a dictum that the AO in the absence of any material on record cannot put himself in the shoe of businessman to decide what is unreasonable under section 40A(2)(b) and in this regard we follow the decision of Hon'ble Supreme court in the case of CIT vs. Dhanrajgirji Raja Narsinghirji, 91 ITR 544 (SC), wherein it was held that *" it is not open to the department to prescribe in what circumstances he should incur that expenditure. Every businessman knows his best interest. Hence without pointing out any comparable instance, disallowance of 50% of the salary is unjustified and not as per law."*

5.2 Moreover, the Id. CIT (A) in his finding has contradicted with the finding of the AO wherein he has mentioned that the assessee has not filed any evidence to show that actual services rendered by these persons, but at the same time Id. CIT (A) stated that the salary paid to Suman Rao in respect of low end function is not comparable to the salary paid to Sushila Devi carrying out teaching function. Further, the Id. CIT (A) also ignored the fact that as per provision of section 40A(2)(b) the onus was on the AO to brought on record any material to establish that the salary so paid by the assessee is excessive, but even inspite of specific provision, the AO has not brought any material on record to establish that the salary so paid was excessive. Further, the Id. D/R vehemently argued that the issue now raised by the Id. A/R of the assessee has not been raised before the Id. CIT (A) or before the AO. The Id. D/R also argued that based on the return of income in the case of Amit Kumar whose date of Birth mentioned is 20.01.1992 has completed his BA degree in 2010 at the age of 18 years is also contradictory as Amit Kumar seems to be a minor in the year under consideration and, therefore, the salary paid to him is not justified. This aspect has also not been dealt with by the Id. CIT (A). The Id.

D/R also argued that all the teachers to whom salary is paid are only BA/ B.Sc. and have no teaching experience. They are not even holding B.Ed. Degree. Therefore, considering the scale of salary prevailing for the Government teachers, the salary paid to the teachers of the assessee institution is higher and is also not in accordance with the educational qualification. Looking to this aspect of the matter, we feel that this issue needs a re-look based on the arguments advanced by the Id. D/R before us. Therefore, Ground No. 1 raised by the assessee is restored back to the file of Id. CIT (A) for fresh adjudication.

Ground no. 2 :

6. In respect of this ground, the brief facts of the case are that during the year under consideration assessee has made cash deposits of Specified Banking Notes (SBN) during demonetization period in the following banks:-

Bank Name	Cash deposit
Vijaya Bank, Mansarovar	Rs.5,70,500/-
Axis Bank (916020022578398)- Ambabari Branch	Rs.4,19,000/-
Axis Bank(915020032731362)- Jhotwara Branch	Rs.5,62,500/-
Axis Bank(915020005681573)- Alwar Branch	Rs.1,10,000/-
Axis Bank(915020018045705)- GopalpuraBranch	Rs.37,00,500/-
Total	Rs.53,62,500/-

The AO observed that assessee has not furnished details in the prescribed format and therefore exact source of cash deposit during demonetization period cannot be ascertained. Further on examination of details filed, it is observed that cash received from several students are not supported by documentary evidence. Accordingly he made lump sum addition of Rs.5 lacs u/s 68 of the Act. On appeal before the Id. CIT

(A), the Ld. CIT(A) vide show cause notice dated 11.08.2023 (**PB 8A-9A**) required the assessee to furnish the details of the source of cash deposit of Rs.53,62,500/- along with supporting evidences otherwise proposed to treat the entire amount as unexplained. The assessee vide letter dated 18.08.2023 (**PB 10A-11A**) again filed the cash book, complete details of student-wise & date-wise fees receipts and statement of month-wise cash fees receipts & amount deposited in the bank account as furnished to AO vide letter dated 16.12.2019. The Ld. CIT (A) at Para 6.14 observed that cash receipt no. are not in serial number-wise and assessee has not provided copy of even a single receipt issued to the students for verification purpose. Further, in Para 6.15 he observed that in cash book center-wise cash receipt of fees is recorded and not student-wise. Accordingly, he treated the entire amount of Rs.53,62,500/- as unexplained cash credit and thus made addition for the same.

Now the assessee is in appeal before us.

7. Before us, the Id. A/R for the assessee has reiterated the submissions as made before the Id. CIT (A) and furnished the written submissions as under :-

"It is submitted that the lower authorities have incorrectly held that assessee has not filed evidence in support of the fees collected from the students. In fact assessee vide letter dt. 16.12.2019 (**PB 32**) has filed the cash book, source of cash deposited during demonetization period, details of students from whom the fees was received in cash which was deposited during demonetization period from 09.11.2016 to 05.12.2016 and month wise fees received in cash and deposit in the bank account. From the cash book it can be noted that as on 08.11.2016 (**PB 68**) the cash balance of assessee was Rs.60,17,560/- (10,37,11,494-9,76,93,935)(**PB 89**). Even the cash balance as on 01.11.2016 was Rs.65,84,044/- (**PB 89**). The main source of

cash deposit is fees received at various branches for which assessee has furnished the statement of date wise cash fees collected from the students **(PB 90-105)**. This apart assessee has furnished statement of month wise cash received and cash deposited in the bank. The lower authorities have not found any discrepancy in the cash book so filed. Thus the source of cash deposit during demonetization period in SBN is out of the cash in hand available as per the cash book.

The Ld. CIT(A) has incorrectly noted that receipt no. issued are not in seriatim. In holding so he ignored that each branch maintain the separate cash receipt book and in the details furnished **(PB 90-105)**, the fees has been shown branch wise giving the receipt no. For instance, as highlighted by CIT(A) in its order, receipt no.77 **(PB 91)** issued on 30.09.2016 is of Jhotwara branch **(PB 129)** whereas receipt no.293 & 294 **(PB 90)** issued on 28.09.2016 is of Gopalpura branch **(PB 129)**. Similarly receipt no.1 **(PB 91)** is of Delhi branch but in the details its date is incorrectly mentioned as 29.09.2016 instead of 29.10.2016. Further from the detailed cash book for November, 2016 **(PB 110-121)** it can be noted that fees is recorded in cash book giving the name of branch from which it is received and it is supported by the student wise fees received **(PB 122-128)**. Therefore, the Ld. CIT(A) has erred in holding that entire cash deposit of Rs.53,62,500/- in SBN during demonetization period is unexplained cash credit.

Without prejudice to above, it is submitted that lower authorities have made the addition u/s 68 of the Act. Section 68 can be invoked when any sum found credited in books of accounts is not explained to the satisfaction of AO. In the present case, the amount credited in the books of accounts is in respect of fees received. The fees so received have duly been considered by the assessee in its income and also accepted by the AO. Thus again making addition u/s 68 results in double addition. Further in case it is held that the addition is made u/s 69A on account of cash deposit in the bank account, then also when the source of such cash deposit is out of the fees received

from the students duly recorded in the books of accounts, source of cash deposit is fully explained. Hence addition cannot be made either u/s 68 or u/s 69A of the Act.

Reliance is placed on the following cases where it is held that cash received on cash sales deposited in the bank account, duly recorded in the books of accounts cannot be added either u/s 68 or u/s 69A of the Act.

ACIT Vs. Hirapanna Jeweller (2021) 202 DTR 337/ 189 ITD 608 (Visakha) (Trib.)(Case laws compilation PB 16-22)

Assessee having accounted the high denomination notes deposited in bank as cash sales in its books of accounts and produced the sales bills for the same and the AO having accepted the sales & the stock and found no defect in the purchases or sales which match with the inflow/outflow of stock, addition u/s 68 could not be made in respect of the same amount.

PCIT Vs. Agson Global (P) Ltd. (2022) 210 DTR 225 (Del.) (HC)(Case laws compilation PB 23-33)

Having regard to the extensive material which has been examined by the Tribunal, in particular, the trend of cash sales and corresponding cash deposited by the assessee with earlier years, the Court is of the view that there was nothing placed on record which could have persuaded the Tribunal to conclude that the assessee had in fact earned unaccounted income i.e., made cash deposits which were not represented by cash sales. Therefore, the Tribunal correctly found in favour of the assessee and deleted the addition made by CIT(A) u/s 68.

CIT Vs. Kailash Jewellery House ITA No. 613/2010 order dt. 09.04.2010 (Delhi) (HC)(Case laws compilation PB 34-35)

In the facts of above case cash of Rs.24,58,400/- was deposited in bank account. The Assessing Officer made the addition on the ground that nexus of such deposit was not establish with any source of income. The assessee claimed that it was duly recorded in the books on account of cash sales and was considered in the Profit and Loss Account. The Assessing Officer had verified the stock and cash position as per books and had accepted the same. Complete books of account and cash book were submitted to the Assessing Officer and no discrepancy was pointed out. On this basis CIT(A) deleted the addition. Tribunal also observed that it is not in dispute that sum of Rs.24,58,400/- was credited in the sale account and had been duly included in the profit disclosed by the assessee in its return. Therefore, cash sales could not be treated as undisclosed income and no

addition could be made once again in respect of the same. The Hon'ble High Court dismissed the appeal filed by the Department.

New Pooja Jewellers Vs. ITO ITA No.1329/Kol/2018 order dt.26.02.2020 (Kol.)(Trib.)(Case laws compilation PB 36-43)

The relevant Para 15 of the order reads as under:-

" 15. Be it as it may, in the normal course, we would have restored the issue to the file of the AO for fresh verification of the claim of the assessee that it had received advances from customers on the occasion of Ramnavami Nayakhata. In other words, we would have given the AO more time to conduct enquiries and investigation. In this case we find that these advances have subsequently been recorded as sales of the assessee firm and that these sales have been accepted as income by the AO during the year. He has not disturbed the sales of the assessee. When a receipt is accounted for as income, no separate addition of the same amount as income of the assessee under any other Section of the Act can be made as it would be a double addition. In the result, we delete the addition made and allow its claim of the assessee."

It is further submitted that the lower authorities have taxed the alleged unexplained cash deposit in the bank account @ 60% u/s 115BBE. It is submitted that substituted section 115BBE by Taxation Laws (Second Amendment Act), 2016 received the assent of President on 15.12.2016. The section is made applicable w.e.f. 01.04.2017. **Hon'ble ITAT, Jabalpur Bench in case of ACIT Vs. Sandesh Kumar Jain ITA 41/JAB/2020 order dt. 31.10.2022 (Case laws compilation PB 44-56)** at Para 4.2 of the order while interpreting the amendment made in section 115BBE which received the assent of President on 15.12.2016 held as under:-

4.2 As regards the assessee's second, without prejudice, argument, i.e., qua non-retrospectivity, we find considerable force therein. Section 1(2) of the Amending Act provides that save as otherwise provided therein, it shall come into force „at once“. The same only conveys the intent for, except where a later date is specified, the legislation to take immediate effect, i.e., as soon the assent of the Hon'ble President of India is received, by signing the same. The words „at once“ convey an urgency, so that the same represents the earliest point of time at which the same is to take effect, i.e., 15/12/2016 itself, and which also explains the same being enacted during the course of the fiscal year, tax rates for which stand already clarified at the beginning of the year per the relevant Finance Act (FA, 2016). The said words „at once“ would lose significance if the provisions of the Act are to, as stated by the Id. CIT(A), be read as effective 01/04/2017, implying AY 2018-19. The same, for substantive amendments, as in the instant case, represents the first day of the assessment year, i.e., AY 2017-18,

which explains the assessee's grievance of it being thus effective for fy 2016-17 or, w.e.f. 01/4/2016. Enacting it mid-year and, further, making it applicable „at once“, becomes meaningless if the same is to take effect retrospectively, or is made effective from a later date (01/4/2017), which could in that case be by Finance Act, 2017. True, the amendment, where so read, does give rise to a peculiar situation inasmuch as two tax rates would obtain for the current year, i.e., one from 01/04/2016 to 14/12/2016, and another from 15/12/2016 to 31/03/2017, but, then, that is no reason to read retrospectivity where the applicable date is clear and, further, there is nothing to suggest retrospectivity. Further, extraordinary and supervening circumstance of the Demonetization Scheme, 2016, brought out by the Government of India in November, 2016, explains the urgency in bringing an amendment mid-year. Further, the tax rate being in respect of incomes which are imputed with reference to a transaction/s, it is possible to administer the same, another aspect of the matter that stands considered by us. That is, a tax rate for transactions made up to 14/12/2016, and another for those thereafter. Subsequent mention of the applicability of the amended provisions of ss. 271AAB and 271AAC with reference to the date on which the Presidential assent to the Act is received, further corroborates this view, which is based on the clear language of the Amending Act, as well as the principle that a substantive amendment is to be generally prospective. We draw support from the decision in Vatika Township Pvt. Ltd. (supra), reiterating the settled law of the rule against retrospectivity. The tax rate applicable to the impugned income would, therefore, be at 30%, i.e., the rate specified in sec. 115BBE as on 30/11/2016, the date of the surrender of income per statement u/s 133A (PB-1, pgs.35-44). This, it may be noted, is also consistent with our view that the income is liable to be assessed u/s. 69B (see para 4.1).

In the present case also, the amount deposited in the bank account is prior to 15.12.2016 and therefore, even if it is held that amount is taxable u/s 68 of the Act, tax rate applicable u/s 115BBE would be 30% and not 60%.

In view of above, addition confirmed by Ld. CIT(A) be directed to be deleted.”

8. On the other hand, the Id. D/R supported the orders of the revenue authorities.

9. We have heard the rival contentions, perused the material on record and gone through the orders of the revenue authorities. On perusal of the order of the AO and the details furnished by the assessee, we find that the AO had made the lump sum addition on the ground of non-furnishing of the required information/details. During the appellate proceedings also, the required details/evidences requisitioned by the Id. CIT (A) in respect of student-wise collection of fees though furnished by the assessee but as per the Id. CIT (A) there were discrepancies in respect of serial number of the Receipt and the Date of receipt as mentioned by the Id. CIT (A) in para 6.14. The Id. CIT (A) has also observed in para 6.15 that in respect of cash book, daily center-wise cash receipt of fees has been recorded in the books of accounts and not student-wise and thus it could not be verified from the students' recorded provided by the appellant, and accordingly made the addition. Thus taking into consideration the above facts, we restore ground no. 2 of the assessee to the file of Id. CIT (A) for fresh adjudication after affording an opportunity of being heard to the assessee to submit its case effectively. The assessee is directed to furnish all documentary details along with evidences before the Id. CIT (A) so as to enable the Id. CIT (A) to verify the same.

10. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 30/11/2023.

Sd/-
(राठौड़ कमलेश जयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 30/11/2023.

Das/

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

1. अपीलार्थी / The Appellant- Mothers Education Hub, Jaipur.
2. प्रत्यर्थी / The Respondent- The ACIT, Circle-1, Jaipur.
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. 618/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

