

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member**

**Sh. Yogesh Kumar US, Judicial Member**

**ITA No. 47/Del/2023 : Asstt. Year: 2017-18**

ACIT, Central Circle 1, Gurugram (APPELLANT)	Vs	M/s. Omaxe Housing & Developers Ltd., 7, Local Shopping Centre, Kalkaji, New Delhi (RESPONDENT)
<b>PAN No. AAACO4960C</b>		

**Assessee by : Sh. Akshit Jain, CA**

**Revenue by : Sh. An Application for Adjournment**

**Date of Hearing: 09.11.2023**

**Date of Pronouncement: 03.01.2024**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-30, New Delhi dated 14.11.2022 for the A.Y. 2017-18.

2. Following grounds have been raised by the Revenue:

*"i) Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) is right in deleting addition of Rs. 75,30,137/- made u/s 68 of the Act ignoring the impounded documents seized from the business premises of M/s Omaxe Limited as Annexure A-4 (Page No. 87 to 91 and 97-100) clearly evidencing that the company M/s Omaxe Housing and Developers Ltd. was having Cash-m-hand as on 08.11.2016 was Rs. 2,66,863/- only (as per page nos. 87 to 91 and as per page no. 97-100)?*

*ii) Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in appreciating the facts that the assessee company failed to produce documentary evidence regarding amount payable*

*on account of wages etc for which cash withdrawal was made?*

*iii) Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) is right in not appreciating the fact that the assessee could not explain the reason for hoarding such cash for a long time despite the fact that company is a running concern and requires frequent cash payment?*

*iv) Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) is right in ignoring that there is no pattern of such huge cash deposits in the preceding year?"*

3. Brief facts of the case that the assessee is a Limited Company incorporated under Companies Act, 1956 and engaged in the business of purchase, sale and development of real estate. The assessee filed return of income on 31.10.2017 declaring income of Rs.1,37,06,470/-.

4. The assessee company had deposited Rs.77,96,000/- during demonetization period in bank account(s) out of cash in hand as on 08.11.2016 of Rs. 78,01,248/-. A survey u/s 133A of the Income Tax Act, 1961 had taken place on Omaxe Limited on 22.11.2016 where certain documents were impounded. These documents showed cash balances as on 08.11.2016 in cash books of some of the companies of the Omaxe Group. As per the aforesaid detail cash balance in cash sheets appearing in the document related to the appellant company was Rs. 2,66,863/-. However, the details of cash books in the impounded document was incomplete.

5. The assessee company had total cash in hand (as per all the cash books) as on 08.11.2016 of Rs. 78,01,248/- i.e.

(Rs.75,34,385 + Rs.2,66,863). The Assessing Officer did not accept the contentions of the assessee and relied upon the report of the DDIT, Investigation and added back a sum of Rs.75,30,137/- (Rs.77,96,000 - Rs.2,66,863) u/s 68 of the Income Tax Act, 1961, assessing the income at Rs. 2,12,36,610/-.

6. Aggrieved, the assessee filed appeal before the Id. CIT(A) who deleted the addition.

7. Aggrieved, the revenue filed appeal before the ITAT.

8. During the hearing before us, the Id. DR relied on the order of the Assessing Officer and the Id. AR relied on the order Id. CIT(A).

9. Heard the arguments of both the parties and perused the material available on record.

10. Before the Id. CIT(A), the assessee reiterated the arguments taken before the Assessing Officer that the AO has stated that these impounded pages contain notings of cash balances as on 08.11.2016 of various group companies belonging to the Omaxe Group, to which the assessee company also belongs. The AO has reproduced the said relevant pages of the impounded documents in the assessment order. From these impounded pages, the AO has noted that the cash balance available as on 08.11.2016 with the assessee company was Rs.2,66,863/-, whereas the assessee had deposited cash amounting to Rs.75,30,137/- post-demonetization.

11. The AO asked the assessee for justification/source of the excess cash so deposited after demonetization. In response, the assessee submitted that the said deposit had been made out of cash available as per cash book balance on 08.11.2016. It was also pointed out that the said cash balance had been built up through cash withdrawals from bank accounts of the assessee. The assessee has also furnished details of cash withdrawals in F.Y. 2015-16 and 2016-17 alongwith cash book and bank statements to demonstrate that such withdrawals and deposits were a part of routine business exercise of the assessee even in the period prior to the demonetization. The assessee also stated that it was engaged in the real estate business and needed to maintain sufficient cash balances for various exigencies at various sites payment of wages and land deals. It was also brought to the knowledge of the AO that the impounded documents contain cash balances available at site offices of the assessee and did not incorporate the cash balances as per the main cash book maintained at the corporate headquarters.

12. It was stated that the balances as per various cash books as on 08.11.2016 were as follows:

1.	MCB Real Estate	Rs. 75,34,385/-
2.	Imprest- Omaxe Sonipat Plaza Comm	Rs.2,66,863/-
	Total	Rs. 78,01,248/-

13. The reasoning given by the AO for making the addition is as under:

- The cash withdrawals made by the assessee are not near the dates of cash deposits. If the assessee had withdrawn cash for wage payments/deals, it is not understandable as to why such expenses were not incurred. The assessee company being a running concern, could not have mounted cash for so long.
- The assessee has prepared cash books in such a way that nearby cash withdrawals can be shown as cash deposited during demonetization.
- On analysis of the comparative charts of F.Y. 2015-16 and F.Y. 2016-17 it is seen that there was no match of the cash deposits during the demonetization period with the corresponding period of the previous financial year.
- Since the assessee is a builder and has stated that all sales are via cheque/RTGS/DD etc, there is no question of accepting cash generation through sales.
- The flagship company, M/s Omaxe Ltd has surrendered a huge amount as unaccounted income. However, the assessee has not disclosed any such unaccounted income.

14. We find that the Id. CIT(A) has considered the financials for the F.Y. 2015-16 and F.Y. 2016-17 with regard to the cash sales, cash withdrawals, cash deposits and cash expenditure. The Id. CIT(A) has also examined the cash balance, ITR, audit

report filed before the demonetization and held that there were no scope for manipulation as the audit report has been filed much before. The Id. CIT(A) held that there were cash withdrawals to the tune of Rs.50,00,000/- in May, Rs.1,00,00/- in July and Rs.3,00,000/- in September which proves that the assessee is always having high levels of cash at hand and there was no unusual trend of cash deposits. The Id. CIT(A) has also held that substantial cash withdrawal of Rs.25,00,000/- was made in the month of July 2015 and the same was not deposited back but carried forward resulting in a high closing balance of Rs.26,00,000/- as on 31.03.2016. The Id. CIT(A) held that the AO has ignored the main cash book of the assessee and has considered only the site cash books in arriving at the figure of cash balance as on 08.11.2016. The Id. CIT(A) held agreed that the existence of the main cash book cannot be denied since most of the bank transactions, whether deposits or withdrawals, have been routed through the main cash book, which is the reason why the main cash book has the bulk of cash balance and the AO has not cited any statement recorded or logical reasoning as to why the main cash book has been ignored.

15. After examination of the details, the Id. CIT(A) logically came to a conclusion that the cash deposited post-demonetization is duly explained by the available cash balance as on 08.11.2016, which was in turn built up by cash withdrawals from bank accounts, which are undisputed, and the opening cash balance at the beginning of the year, which is also undisputed since the same tallies with the cash balance as on

31.03.2016 as per the ITR for A.Y. 2016-17 filed on 12.10.2016 i.e. prior to demonetization. Hence, we decline to interfere with the order of the Id. CIT(A).

16. In the result, the appeal of the Revenue is dismissed.  
Order Pronounced in the Open Court on 03/01/2024.

**Sd/-**  
**(Yogesh Kumar US)**  
**Judicial Member**

**Sd/-**  
**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 03/01/2024**

\*Subodh, Sr. PS/NV, Sr. PS\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**  
**ITAT, DELHI**