

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

**Before Dr. B. R. R. Kumar, Accountant Member  
Shri Yogesh Kumar US, Judicial Member**

**ITA No. 440/Del/2022 : Asstt. Year: 2017-18**

Arvind Walia, A-10/5, Ground Floor, Vasant Vihar, New Delhi 110057	Vs	The ACIT, Central Circle-30, Delhi
(APPELLANT)		(RESPONDENT)
<b>PAN No. AAPW 5761 G</b>		

**Assessee by : Sh. Gaurav Jain, Adv.  
Ms. Shweta Bansal, CA  
Revenue by : Sh. Amit Katoch, Sr. DR**

**Date of Hearing: 31.10.2023**

**Date of Pronouncement: 09.01.2024**

**ORDER**

**Per Dr. B. R. R. Kumar:-**

The present appeal has been filed by the assessee against the order of Ld.CIT(A)-30, New Delhi dated 31.01.2022 for the A.Y. 2017-18.

2. The assessee has raised the following grounds of appeal are as under:-

1. *Under the facts and circumstances of the case, the Id. First Appellate Authority has grossly erred in upholding the assessment order passed by the Id. AO in assessing the income of the appellant at Rs. 67,07,160/- as against the returned income of Rs.7,10,160/- which is highly injudicious, against the facts of the case and bad at law.*

2. *Under the facts and circumstances of the case, the assessment order passed by the Id.AO, which have been upheld by Id. First Appellate Authority, has been passed in gross violation of the principles of natural justice without considering the submissions made by the Appellant during the assessment proceedings.*

3. *Under the facts and circumstances of the case, the Id. First Appellate Authority has grossly erred in sustaining the additions of*

*Rs. 59,97,900/- made by the Id. AO under section 69A of the Act on account of cash deposits made during the demonetization period without considering the fact that the Appellant had sufficient cash in hand on 01-04-2016.*

*4. Under the facts and circumstances of the case, the Id. First Appellate Authority has grossly erred in sustaining additions made by the Id. AO under section 69A of the Act amounting to Rs. 59,97,900/- without understanding the facts of the case, based on surmises and conjectures as there are no adverse finding against the Appellant's evidence or explanation.*

*5. Without prejudice, that the CIT(A) erred on facts and in law in not holding that the aforesaid addition was beyond the scope of the provisions of section 69A of the Act, as the Appellant was not maintaining any books of accounts and therefore not satisfying the condition present in section 69A of the Act.*

3. Shri Arvind Walia, the assessee is an individual drawing income from rent, interest, profit on sale of shares of unlisted company and agricultural income. The assessee had filed return of income for AY 2017-18 on 01.08.2017 declaring total income of Rs. 7,10,160/-. The assessment, in this case, was completed u/s 143(3) of the Act vide order dt. 25/12/2019 at Rs. 67,07,160/- by making an addition of Rs. 59,97,000/-u/s 69A of the Act, on account of cash deposited during demonetization period by holding that the assessee did not produce any documents to substantiate such cash in hand. The AO held that, there was no reason for holding such cash in hand in spite of having bank accounts.

4. Aggrieved by the assessment order, the assessee filed an appeal before the Ld. CIT(A). The CIT(A) dismissed the appeal by holding that the assessee did not have any reliable material/evidence to explain the cash deposited in his bank account failing to appreciate the written submissions dt. 05/02/21 and

18/03/21 filed by the assessee before Ld. CIT(A) in proper perspective.

5. Against the aforesaid order of CIT(A), the assessee filed before the Tribunal.

6. Before us, the Id. AR submitted details of source of cash and opening cash balances and reasons for holding such a cash balance alongwith documentary evidences.

7. The Id. DR relied on the orders of the authorities below.

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

9. The source of cash deposit in bank account during demonetization period and reason for holding the same was duly substantiated by the assessee before the Revenue Authorities vide written submissions dt. 16/09/2019, 07/11/2019 and 18/12/2019, enclosed at page 49-63 of paper book, along with the following documentary evidences:

- i) Cash book of the assessee for AY 2015-16, 2016-17 and 2017-18
- ii) Bank statement of the assessee
- iii) Agreement for purchase of agriculture land
- iv) Assessment order for AY 2014-15 and AY 2015-16

10. We have examined different aspects of the deposit of the cash.

**A. Source of cash deposit out of opening cash balance**

11. The source of cash deposit in bank account was duly explained by the assessee which is as under:

AY 2017-18, from 01/04/2016 to 08/11/2016 (Duly appearing in cash book for AY 2017-18 enclosed at page 46-48 of paper book)					
Opening cash as on 01/04/2016	Cash Withdrawals from bank	Other cash receipts	Drawings	Cash Deposit	Closing cash balance
67,62,353 (Pg: 46, PB)	7,00,000 (Pg: 47 & 73, PB)	-	14,06,000 (Pg: 46-47 PB)	59,97,000 (Pg: 47, PB)	59,353 (Pg: 47, PB)

12. In view of the above, it is clear that the source of cash deposit during demonetization was out of opening cash in hand and cash withdrawals from the bank during the year under consideration.

**Source of opening cash balance of Rs. 67,62,353/- as on 01/04/2016**

13. Further, the source of opening cash in hand as on 01/04/2016 is explained as under:

AY 2016-17 (Duly appearing in cash book for AY 2016-17 enclosed at page 43-45 of paper book)					
Opening cash as on 01/04/2015	Cash Withdrawals from bank	Other cash receipts	Drawings	Cash Deposit	Closing cash balance
62,81,703 (Pg: 43, PB)	83,20,000 (Pg: 43-45, PB)	7,85,000 (Pg: 43-45, PB)	14,26,850 (Pg: 43-45 PB)	71,97,500 (Pg: 43-45, PB)	67,62,353 (Pg: 45, PB)

14. From perusal of the above it can be observed that:

i) The source of opening cash during the year under consideration was cash withdrawal of Rs. 83,20,000/- and agriculture income of Rs. 7,85,000/- earned in the preceding year, i.e., AY 2016-17.

ii) The amount of agriculture income earned by the assessee in AY 2016-17 was duly disclosed by the appellant in his income tax return for AY 2016-17. A copy of the ITR acknowledgment for AY 2016-17 was enclosed.

iii) The assessee had sufficient sources of income since past several years which can be gathered from the ITR for last 3 years, i.e., AY 2014-15 to AY 2016-17 wherein total income declared is as under:

Assessment Year	Gross Total Income (in Rs.)
AY 2016-17	3,77,88,220
AY 2015-16	3,80,47,421
AY 2014-15	3,68,27,777

Thus the assessee had sufficient cash balance from which cash was withdrawn and deposited time to time in AY 2016-17 & AY 2017-18

iv) The cash book, also covers drawings in cash made by the assessee for personal purposes.

v) The assessee also deposited an amount of Rs. 71,97,500/- in the preceding year which shows that the cash deposited in the year under consideration amounting to Rs. 59,97,000/- was not an abnormal transaction.

vi) As regarding opening cash balance of Rs. 62,81,703/ - in AY 2016-17 it was submitted that a search and seizure operation was conducted in the case of the appellant on 18/02/2015 (relevant to AY 2015-16). During the course of search, cash amounting to Rs. 17,08,000/- was found, out of which Rs. 10,00,000/- was seized at the time of search. During the course of assessment proceedings for AY 2015-16 u/s 143(3) of the Act, consequent to the search, the appellant submitted a cash book for AY 2015-16 vide written submission dt. 29/02/2016, enclosed at page 28 of the paper book, before the AO to substantiate the aforesaid seized cash in hand. The said cash in hand and cash book were duly accepted by the AO by framing assessment at returned income and no addition was made on account of such cash. A copy of the assessment order for AY 2015-16 enclosed at Page 26-27 of the paper book was perused.

vii) The CBDT vide instruction no. 03/2017 dt. 21/02/2017 clearly stated that if the assessee had filed return of income and had reasonable quantum out of past savings and past income, the cash deposit cannot be considered as unexplained. Relevant extracts are as under:

*"1.3 In case of an individual having no business income, if the cash out of earlier income or savings exceeds the above mentioned threshold, the AO needs to consider the remarks provided by the person under verification and seek further relevant information. During verification, the AO needs to consider the information provided by the person concerned, income earned during past years, source of such income, filing of ROI and income shown therein, cash withdrawals made from accounts etc. before quantifying the undisclosed amount, if any. In case the person under verification has filed return of Income, a reasonable quantum can be considered as explained while quantifying the undisclosed amount, if any".*

15. In view of the above, source of the cash deposit is duly established vide the cash book for AY 2015-16 to AY 2017-18.

16. The Hon'ble Delhi High Court in the case of CIT Vs Kulwant Rai reported at 291 ITR 36 had held that as per accountancy principles where the deposits are as per cash flow statement, the same should be accepted. Relevant extracts are as under:

*"This cash flow statement furnished by the assessee was rejected by the AO which is on the basis of suspicion that the assessee must have spent the amount for some other purposes. The orders of AO as well as CIT(A) are completely silent as to for what purpose the earlier withdrawals would have been spent. As per the cash book maintained by the assessee, a sum of Rs. 10,000 was being spent for household expenses every month and the assessee has withdrawn from bank a sum of Rs. 2 lacs on 4th Dec., 2000 and there was no material with the Department that this money was not available with the assessee. It has been held by the Tribunal that in*

*the instant case the withdrawals shown by the assessee are far in excess of the cash found during the course of search proceedings. No material has been relied upon by the AO or CIT(A) to support their view that the entire cash withdrawals must have been spent by the assessee and accordingly, the Tribunal rightly held that the assessment of Rs. 2.5 lacs is legally not sustainable under s. 158BC of the Act and the same was rightly ordered to be deleted."*

17. Further, it could be found that the AO himself accepted the source of cash balance from the cash book of the appellant comprising details of cash withdrawn from bank in AY 2015-16 in the assessment u/s 143(3) of the Act. Therefore, it can be held that, when the source of cash stands accepted from cash withdrawn from bank in AY 2015-16, the AO erred in not accepting the same in the impugned year simply because the said cash was deposited during demonetisation based on surmises which is not legally sustainable.

18. The Revenue Authorities further mentioned that since the assessee was having bank account, there was no reason to maintain such cash in hand. In response, the following was duly submitted before the Revenue Authorities which they had not appreciated in proper perspective:

*"There were sufficient cash withdrawals to cover cash deposits in question, merely because there was time gap between withdrawal of cash and cash deposits, explanation of assessee could not be rejected and addition on account of cash deposit could not be made."*

19. In the case of ACIT Vs Baldev Raj Chalra; [2009] 121 TTJ 366 (Delhi) it was held that,

*"27. We have heard the rival submissions and perused the material available on record and have gone through the orders of the authorities below. We find that this explanation of the assessee was found correct that against these five deposits on dt. 14th June, 1996, Rs. 31,000; 21st July, 1997, Rs. 1,27,000; 18th Sept., 1997, Rs. 22,000; 4th Oct., 1997, Rs. 26,000 and on 7th Nov., 1997, Rs. 52,000 there were sufficient cash withdrawals from AWI and from SBI, Mayapuri, but this addition has been confirmed by learned CIT(A) on the basis that there is time gap between the assessee's withdrawals from his own partnership M/s AWI or from his own bank. There is finding recorded by the learned AO or by learned CIT(A) that apart from depositing these cash into bank as explained by the assessee, there was any other user by the assessee of these amounts and in the absence of that, simply because there was a time gap, the explanation of the assessee cannot be rejected and hence the addition confirmed by the learned CIT(A) is not correct. We, therefore, delete the same. This ground of the assessee is allowed."*

20. Similar proposition has been held in the case of CIT vs. Kulwant Rai in 291 ITR 36 (Delhi High Court), NEETA BREJA v. ITO [IT Appeal No. 524 (Delhi) 2017, dated 25-11-2019 and Anupama Chaudhary Vs ITO; ITA No. 4155(Del)/ 2009; dt. 27/12/2010.

21. Further, it was also explained that the assessee had history of keeping cash through withdrawal from bank account. Accordingly, the sufficient cash was found during the course of search and the cash balance is constantly appearing in the cash book of the assessee since AY 2015-16 which was accepted by

the AO as explained cash balance. Therefore, no negative inference can be drawn on account of keeping cash during the year under consideration also. The Hon'ble Delhi High Court in the case of *Jaya Aggarwal vs ITO*; [2018] 92 taxmann.com 108 (Delhi), having identical facts with the case of the appellant, decided in favour of the appellant by holding that where assessee withdrew an amount from bank account for purchase of a property but re-deposited a part of said sum in same bank account as purchase deal could not be fructified, additions under section 68 of amount re-deposited was unjustified. Relevant extracts are as under:

*"7. Impugned order holds that no prudent person would keep a huge amount of Rs.2,00,000/- at their residence to negotiate a property deal. There was no bar in withdrawing the money from the bank at any time before deal was finalized to pay earnest money.*

*8. We find it difficult to accept the approach and findings recorded for several reasons. The brief order does not examine and consider the entire explanation and material on record as withdrawal of Rs.2,00,000/- in cash was undisputed. Naturally, the huge withdrawal was for a purpose and objective. From the beginning the explanation given was that withdrawal was to pay earnest money for purchase of immovable property, which deal did not fructify. Explanation given was not fanciful and sham story. It was perfectly plausible and should be accepted, unless there was justification and ground to hold to the contrary. Delay of some months in redeposit of part amount is the sole and only reason to disbelieve the appellant. Persons can behave differently even when placed in similar situations. Due regard and latitude to human conduct and behaviour has to be given and accepted when we consider validity and*

*truthfulness of an explanation. One should not consider and reject an explanation as concocted and contrived by applying prudent man's behaviour test. Principle of preponderance of probability as a test is to be applied and is sufficient to discharge onus. Probability means likelihood of anything to be true. Probability refers to appearance of truth or likelihood of being realised which any statement or event bears in light of the present evidence (Murray's English Dictionary). Evidence can be oral and cannot be discarded on this ground. Assessment order and the appellate orders fall foul and have disregarded the preponderance of probability test.*

*9. In view of the observations recorded above, we would answer the substantial question of law in favour of the appellant-assessee and against the respondent-Revenue, but with an order of remand for deeper examination and consideration by the tribunal. However the amount involved is Rs.1,60,000/-only and the matter is rather old. We would therefore draw curtains and direct that addition of Rs.1,60,000/- should be deleted."*

22. Similar view was taken by Hon'ble Chandigarh High Court in the case of Baljit Singh Vs ITO; [2019] 108 taxmann.com 123 (Chandigarh - Trib.) by holding that Where AO made addition to assessee's income under section 68 in respect of amount deposited in bank, in view of fact that assessee had withdrawn those funds from his bank account four months ago for purchase of a property and, since, transaction relating to purchase of said property did not materialize, he re-deposited funds in question in his bank account, impugned addition was to be deleted.

23. In view of the above, holding of cash by the appellant was duly justified and no negative inference can be drawn in the case of the assessee for holding such cash in hand.

**In the absence of any unexplained income, assets cannot be said to be unexplained:**

24. In para 7.4, the Ld. CIT(A) mentioned that the appellant was holding huge cash since April 15 which was deposited during demonetization cannot be relied upon. In response, it was submitted that this observations of the Ld. CIT(A) is incorrect as the appellant was not holding cash balance outstanding as on 01/04/2015 till the date of demonetization. There were regular cash withdrawals and deposits by the assessee in past two years. In fact, in AY 2016-17, the cash withdrawals of the appellant were Rs. 83,20,000/- and cash deposits were Rs. 71,97,500/- as explained supra. Therefore, the observations of the Ld. CIT(A) that the assessee was holding same cash for a long period is not correct and against the material on record. In para 7.5, the Ld. CIT(A) mentioned that the appellant did not submit the details of his asset and liability in his ITR even though the returned income was more than Rs. 50 lacs. In response, it was submitted that during the year under consideration, the returned income of the appellant was just Rs. 7,10,160/- therefore, he was not liable to disclose his assets and liability in his ITR for the year under consideration.

25. In para 7.6 the Ld. CIT(A) did not appreciate the explanation given by the assessee regarding purchase of agriculture land. In response it is submitted that the assessee had entered into an agreement for purchase of land measuring 4.1175 hectare (10.1745 acre) in Village Tilawali, Tehsil Khetrdi, District Jhunjhunu, Rajasthan with Smt. Usha Devi wife of Sh. Rajendra Singh on 31.03.2015 for purchase transaction of Rs. 1,00,00,000/- and initial token money of Rs. 1,00,000/- was paid in cash in pursuance of the subject agreement. Copy of said agreement was duly filed with the AO. The agreement contains complete detail of the land, name and addresses of both the parties, signature of both the parties and name addresses and signature of two witnesses. The Appellant tried to purchase of agricultural land but the sale deed couldn't be executed as per the documents filed.

26. In view of the above facts and legal prepositions, in extant facts sans valid reasons and evidences addition made by AO as sustained by Ld CIT(A) cannot be affirmed.

27. In the result, the appeal of the assessee is allowed for statistical purpose.

Order Pronounced in the Open Court on 09/01/2024.

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

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

**Dated: 09/01/2024**

\*NV, Sr. PS\*

Copy forwarded to:

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

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