

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B' CHANDIGARH

BEFORE: SHRI A.D.JAIN, VICE PRESIDENT AND
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 858/CHD/2023

निर्धारण वर्ष / Assessment Year : 2017-18

Shri Rachit Aggarwal (Prop.), Ashok Kumar Gupta & Co., Kesar Ganj Mandi, Ludhiana.	बनाम VS	The ITO, Ward II(2), Ludhiana.
स्थायी लेखा सं./PAN /TAN No: AKRPA2438B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

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S.A 2/CHD/2024 in

आयकर अपील सं./ITA No. 858/CHD/2023

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निर्धारिती की ओर से/Assessee by : Shri S.Krishnan, Advocate &
Shri Rajnish Aggarwal, CA

राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr.DR

तारीख/Date of Hearing : 14.03.2023

उदघोषणा की तारीख/Date of Pronouncement : 22.04.2023

HYBRID HEARING

आदेश/ORDER

PER A.D.JAIN, VICE PRESIDENT

This is assessee's appeal for assessment year 2017-18 against the order passed by the ld. CIT(Appeals) NFAC Delhi [in short 'ld. CIT(A)'] dated 04.12.2023.

2. The assessee has raised the following grounds of appeal:

That on the facts and in the circumstances of the case and in law the Ld. NFAC erred in confirming the following actions of the Assessing Officer:-

- 1. passing order u/s 144 of the Income Tax Act, 1961 without providing reasonable and adequate opportunity of hearing;*
- 2. making an addition of Rs. 87,95,000/- being the amount of cash deposited in bank out of business receipts invoking section 68 r.w.s. 115BBE of the Act on surmises and conjectures and ignoring the documents and details tax audit report submitted on record;*
- 3. initiating proceedings u/s 271AAC of the Act;*
- 4. charging interest u/s 234B, C and D of the Act.*

3. The facts of the case are that the assessee deals in wholesale trade of karyana goods and food items, mainly sugar and jaggery. The business is very old and as a trend of the trade, the assessee in routine and every year receives cash against cash sales. The same is deposited in current account with bank and the amount in bank is used for paying off the creditors. The assessee received cash against cash sales in the assessment year 2017-18 also and the same was deposited in the current account of the firm.

4. As per the Assessing Officer (in short 'the AO'), in response to all the notices issued u/s 142(1) assessee failed to file complete information. On 25.08.2019 and 22.11.2019, assessee filed part information but again did

not file complete information. Considering the non compliance on the part of the assessee, a show cause notice was issued on 04.12.2019 for 09 12.2019, requiring the assessee to file the information already called and also requiring

him to show cause as to why in case of his further non compliance, his case may not be decided u/s 144 on merits and as per the material on record. This notice was duly served the assessee through email on 05.12.2019. Further, on 09/12/2019 assessee filed response on the official email which was again incomplete. Hence, the assessee failed to file complete information as called vide notice u/s 142(1) dated 19/11/2108, 09/07/2019 and 28/09/2019.

4.1 The AO observed that the above non compliance of the statutory notices and show cause were sufficient to prove that the assessee did not wish to come forward and say anything in the matter or he had no explanation to offer in support of his claim. In view of the aforementioned facts on record, the Assessing Officer completed the assessment proceedings as ex-parte u/s 144(1)(b) of the Income Tax Act. In order to complete the assessment, the

bank accounts of the assessee were analyzed and it was found that the following cash deposits had been made in the year under consideration, i.e., during the Financial Year 2016-17 (relevant to assessment year 2017-

18):

Sr. No.	Bank Name	Account No.	Name of the Account	Total cash deposits from 9 th Nov to 13 th Dec
1	HDFC Bank	50200021780231	Ashok kumar Gupta	72,95,000/-
2.	HDFC Bank	13202320000562	-do-	1500,000/-
			Total	87,95,000/-

4.2 From the data on record, the AO observed that the assessee had been filing ITR-1 prior to A.Y 2017-18. Also, the assessee had failed to file complete information as was called vide notices u/s 142(1). The AO observed that thus, it was reasonably possible that left with no other option, the assessee had deposited his unaccounted money in his bank account during the demonetization.

4.3 The AO observed that The Hon'ble Supreme Court, in the case of "Smt. Srilekha Banerjee and others Vs CIT, Bihar & Orissa", reported in 1964 AIR 697, dated 27/03/1963, held that "*the source of money not having been satisfactorily proved, the Department was justified in holding it to be assessable income of the assessee from some undisclosed source*"; that the

Hon'ble Supreme Court further held in the case of “Smt. Srilekha Banerjee and others” (supra), that “*the Department was justified in holding that Rs 51,000/- was assessable income of the assessee from some undisclosed source. It was not correct that the assessee was not required to prove anything and that the burden was entirely upon the department to prove that the amount received from the encashment of high denomination notes was income. The correct position is as follows. If there is an entry which shows the receipt of a sum or conversion of the notes by the assessee by himself, it is necessary for the assessee to establish, if asked, what the source of that money was and to prove that it did not bear the nature of income. The department is not at this stage required to prove anything. The fact that there was receipt of money or conversion of notes is itself prima facie evidence against the assessee on which the Department can proceed in absence of good explanation*”.

4.4 The AO held that the assessee, thus, had failed to give any explanation about the nature and source of deposits of Rs.87,95,000/- in his bank account, which thus remained unexplained. Accordingly, the value of Rs. 87,95,000/- was deemed to be unexplained cash credit u/s 68 of the Income

Tax Act, 1961 and added to the total Income of the assessee.

This income assessed was taxed u/s 115 BBE of the Act.

5. By virtue of the impugned order, the ld. CIT(A) confirmed the assessment order, holding as follows :

“5. In this case, the addition has been made by the Assessing Officer worth Rs. 87,95,000/- u/s. 68 of the Income Tax Act on account of cash deposits made during demonetization period. The appellant filed written submission along with the additional evidence before me in the appellate proceedings, which were sent to the Assessing Officer for Remand proceedings. The Remand Report the Assessing Officer had not considered the written submission forwarded and the additional evidence filed.

5.1 In the written submission, the appellant has stated that it is involved in the trading of kirana goods. The appellant submitted that it had got turnover of Rs.11.65. crores. The appellant has stated that cash deposits is out of kirana cash sales. The appellant has provided the monthly deposit table of cash. On perusal of the table it is seen that the cash has deposited in various months is around Rs.18 lakhs to Rs.30 lakhs, but in October and November the appellant had deposited Rs.44,67,266/- and Rs.66,90,338/-. The appellant had not provided any reason of rise in sales in October and November. Hence it is clear that the appellant had deposited cash from undisclosed sources in the month of October and November. Hence I agree with the contention of the Assessing Officer that cash deposited worth Rs.87,95,000/- during demonetization period is from undisclosed sources. Hence the addition of the Assessing Officer is confirmed and appeal of the appellant is dismissed.”

6. The ld. Counsel for the assessee has contended that the Ld. CIT(Appeals) has erred in passing a non-speaking order in a summary manner by confirming the addition of Rs. 87,95,000/- made on account of cash deposited in the current bank accounts of the assessee without distinguishing between the demonetized and non-demonetized currency, ignoring the nature of the assessee's

kiriyana business, sales & purchases made during the year under reference vis-a-vis its quantitative details furnished as statutorily required in the Tax Audit Report submitted u/s 44AB of the Act and the cash deposited during October 2016, the month immediately preceding the date of demonetization of currency made on 9th November 2016, which is arbitrary, illegal, invalid & void-ab-initio and against the principles of natural justice; that the Ld. CIT(Appeals) has erred in confirming the addition made by Assessing Officer u/s 68 of the Act alleging that the nature and source of cash of Rs. 87,95,000/- deposited in bank accounts during the demonetization period starting from 08th November 2016 till 31st December 2016 has remained unexplained and thereby taxing the same u/s 115BBE of the Act, which is arbitrary, unjustified, based mere conjectures and surmises, illegal, invalid and bad in law; that the Ld. CIT(Appeals) confirmed the addition made u/s 68 of the Act in an order passed u/s 144 without considering the replies submitted by the assessee during the course of hearing and without giving sufficient time in the Show Cause Notice before making the addition u/s 68 of the Income Tax Act, which is arbitrary, unjustified, illegal, invalid and bad in law; that the Ld.

CIT(Appeals) has erred in confirming the addition of Rs.87,95,000/- made by the Assessing Officer u/s 68 of the Act, deposited during the demonetization period alleging it to be unexplained cash credit, the nature and source of which remained unexplained and thereby taxing it u/s 115BBE of the Act, which is arbitrary, unjustified, invalid & void-ab-initio; that the Ld. CIT(Appeals), while confirming the addition made u/s 68 of the Act, has erred in considering the cash of Rs.44,67,266/- deposited in the assessee's bank in October 2016 and Rs. 66,90,738/- in November 2016, whereas the demonetization period started from 9th November, 2016, ending on 31st December, 2016, ignoring the fact that the assessee deposited demonetized currency amounting to Rs. 52,00,000/- from 10th November 2016 till 20th November 2016 out of kiriyana sale made by the assessee duly recorded in his books of account; that therefore, confirming the addition made u/s 68 as unexplained cash credit is arbitrary, unjustified, illegal, invalid and void-ab-initio; that the Ld. CIT(Appeals), NFAC has erred in confirming the addition made by the Assessing Officer wrongly applying the ratio of the Hon'ble Supreme Court's decision in the case of "Smt. Srilekha Banerjee and

others Vs CIT, Bihar & Orissa”, 1964 AIR 697 which is arbitrary, unjustified, illegal, invalid & bad in law.

7. The ld. DR, on the other hand, has placed strong reliance on the impugned order.

8. It has been contended that the assessee has not been able to rebut the categorical finding of the ld. CIT(A) that the assessee had deposited cash from undisclosed sources in the months of October and November, since the assessee has remained unable to provide any reason for the rise in sales in six months.

8.1 We have heard the parties and have perused the material on record. The question is as to whether there is a reason provided by the assessee for the rise in sales in the months of October and November. The details of monthly cash deposited by the assessee in the year under consideration have been tabulated as follows :

Financial Year 2016-17	Cash Deposited in bank out of realization from trade debtors and cash sales (Rs.)	Remarks (Mode of Deposit)
April, 2016	27,03,124	Old Currency
May, 2016	18,41,283	Old Currency
June, 2016	19,41,807	Old Currency
July, 2016	33,17,719	Old Currency
August, 2016	18,10,977	Old Currency

September,2016	32,99,581	Old Currency
October,2016	44,67,266	Old Currency before announcement of demonetization
November,2016	66,90,738	(i) Cash deposit from 1.11.2016 to 08.11.2016: Rs. 10,35,738/- (ii) Deposit of Demonetized Currency 09.11.2016 to 25.11.2016 Rs. 52,50,000/- (iii) Deposit of Non- Demonetized Currency from 9 th November 2016 till 30 th November 2016: Rs. 4,05,000/-
December,2016	35,70,000	Deposit of Non-Demonetized Currency
January,2017	36,84,000	Deposit of Non-Demonetized Currency
February, ,2017	21,80,777	Deposit of Non-Demonetized Currency
March, ,2017	22,24,355	Deposit of Non-Demonetized Currency

8.2 From the above, it can be seen that cash deposit in bank on account of cash sales and cash realizations from debtors was a normal feature of the assessee's business and that the cash deposit figures of October,2016 & November,2016 were a little higher due to cyclic variations, mainly on account of festivals and marriage season in Northern India during that time.

8.3 As a result of higher cash sales & higher realizations from trade debtors in October 2016, the opening cash in hand as on 1st November 2016 was Rs. 75,65,401 and as on the morning of 9th November 2016, the opening cash in hand was Rs. 75,44,135, out of which, the assessee deposited Rs. 56,55,000 in two current bank accounts from 9th November, 2016 till 25th November,2016 - Rs.52.50 Lakh in

demonetized currency notes of Rs. 500 & 1000, and the balance Rs.4,05,000/- in non-demonetized currency/new currency.

8.4 Similarly, the assessee deposited Rs. 35,70,000 in the two bank accounts in the Month of December 2016 only in non-demonetized currency out of cash sales/realization from trade debtors in the months of November and December 2016. All these figures were duly established by the assessee by furnishing details of sales, purchases along with complete cash book and bank accounts as duly supported by the quantitative tally of stock in the tax audit report during the course of assessment proceedings and the Assessing officer had also accepted the trading results declared by the assessee as he could not point out any defect in the figures.

8.5 However, despite having accepted the books of account and the trading results, the Assessing Officer still took a detour from the well-established accounting and legal norms, by adding the cash (received by the assessee on account of realizations made from trade debtors and out of cash sales) deposited in the bank again to the income of the assessee as 'unexplained credits' under section 68 in total disregard of

the fact that an amount cannot be considered twice in computing the income. Moreover, it was not understandable as to how the cash deposited out of realizations made from trade debtors and cash sales, both recorded in the books of account and, thereafter, deposited in bank accounts, can be treated as '*unexplained cash credit*' under section 68 of the Act. Thereby, the addition made u/s 68 in respect of unexplained cash credits is indeed illegal, bad in law and void-ab-initio as rightly alleged. The addition deserved to be knocked down on this ground itself.

8.6 It is a trite law that when the reliability of books is not in question and all the transactions including sales and purchases and the ensuing effect of this trading have been accepted, then the embedded facets flowing from the trading transitions -generation, retention & rotation of funds- can also not be doubted. It also needs to be appreciated that no manipulation, an unfounded and an unexpressed apprehension behind the addition in the assessment order, is possible in respect of the figures of purchases, sales, quantitative tally of stock and cash deposits in the bank which were brought before the Assessing Officer and Id.

CIT(A). Therefore, when the cash deposited in the bank is already recorded as part of sales or sales realizations and the same is not found to be incorrect, it is legally not permissible to add the same to the income of the assessee as unexplained cash credit u/s 68 for two reasons : firstly, it is not a credit, in the sense used in section 68, at all, what to talk of "unexplained credit", and, secondly, the action amounts to double addition (firstly as sales and secondly as unexplained cash credit) of the same amount in the hands of the assessee.

9. It is seen that though the assessee had made an application for additional evidence before the ld. CIT(A), the documents filed had, in fact, been already filed before the AO in the assessment proceedings and that as such, actually, no additional evidence whatsoever was filed. This is evident from the Remand Report furnished by the AO before the CIT(A), which Remand Report has been reproduced at pages 8 to 10 of the CIT(A)'s order, and the assessee's Rejoinder to the Remand Report, as reproduced at pages 10 to 17 of the impugned order. For convenience of ready reference, the said Remand Report dated 09.11.2023 of the AO and the

Rejoinder of the assessee are being reproduced hereunder by scanning the same :

AO's Remand Report

"Kindly refer to the subject cited above, the remand report in this case was called through ITBA by CIT(A)(NFAC). The remand report on the above case is submitted as under for your kind approval so that the same may be manually uploaded on the system for the perusal of CIT(A)(NFAC).As desired, the requisite report is submitted as under:-

In this case, the assessment u/s 144 of the IT. Act was completed on 10/12/2019 at assessed income of Rs. 92,45,180/- against the return income of Rs. 4,50,180/- by making addition Rs. 87,95,000/- u/s 68 of I.T.Act on account of unexplained cash credit during the A.Y. 2017-18.

Now, the assessee is producing the additional evidence u/s 46A. In this regard, it is submitted that as per section 46A, additional evidences may be accepted in the following circumstances:-

- 1. "Where the Assessing Officer has refused to admit evidence which ought to have been admitted; or*
- 2. Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer; or*
- 3. Where the appellant was prevented by sufficient cause from producing the Assessing Officer and evidence which is relevant to any ground of appeal; or*
- 4. Where the Assessing Officer has made the order appealed against without giving the sufficient opportunity to the appellant to adduce evidence relevant to any group of appeal.*

Keeping in view the above facts of the case, it is evident that the additional evidence submitted by the assessee does not fall under any category as mentioned under Rule 46A and as such the additional evidence as claimed by the assessee at this stage of appeal is not acceptable. However, the brief facts and comments are submitted herewith on merits.

Brief facts of the case are as under-

Considering the facts of the case and materials in shape of notices issued by the department and submissions given by the assessee during assessment proceedings as well as before the Appellate Authority, it is observed that the assessee's proprietorship concern is engaged in the business of " wholesale trading in karyana goods, specifically sugar, khandsari, jiggery, cereals etc" but did not file his ITR in provision of section 139(1) of the Income Tax Act, 1961. Further, the assessee failed to prove the source of cash deposit in bank as mentioned in the said assessment order. During the assessment proceedings, the assessee was given plenty of opportunities to explain the source of cash deposit in the bank but he was failed to do so and could not furnished the requisite evidences/documents/explanation accordingly. Comments of the A.O.I have gone through the written submission filed by the counsel of the assessee before your Honour during the course of appellate proceedings and forwarded to this office for submissions of comments on the same. The comments on the submissions are as per following discussion:-

- 1. The assessee was failed to file complete information in response of notice u/s 142(1) of I.T.Act. Further, on 25.08.2019, 22.11.2019, the assessee was filed part information vide which he could not establish the source of cash credit amounting to Rs. 87,95,000/- as evident in para no. 2 of the assessment order passed u/s 144 of the Act.*
- 2. The assessee has accepted that cash credit was made in HDFC bank during the assessment year but failed to supply its source in details even though he was given various opportunities.*
- 3. During the assessment proceedings, a show cause notice was also issued on 04.12.2019 to file the information already called and also requiring him as to why the said cash credit may not be treated as unexplained cash credit u/s 68 of I.T.Act, 1961 but was again failed to file complete information called vide notice u/s 142(1) dated 19.11.2018, 09.07.2019 and 28.09.2019.*
- 4. The assessee has not submitted the explanation as desired mentioned in the above mentioned statutory notices despite giving multiple opportunities, he was failed to provide the details before the then Assessing Officer during the assessment proceedings. At this stage, the condition of admissibility of additional submission or any other statement does not qualify as per rule 46A of the I.T.Rules. So, the submission is not accepted at this stage.*
- 5. The assessment was completed by the then A.O. on the basis of fact during the assessment proceedings.*

From the above, it is clear that the evidences/statement submitted by the assessee may not be considered at this stage as the assessee was allowed sufficient opportunities to adduce necessary evidence but all in vain. The evidences/replies filed by the assessee may not be considered.

Keeping in view the facts above, it is request that the documents/replies submitted by the assessee may not be entertained in view of the provision of Rule 46A of I.T. Rules. However, the appeal of the assessee maybe decided on merits."

Assessee's Rejoinder to the AO's Remand Report

"On the captioned subject we wish to submit as under:

That the assessment for A.Y. 2017-18 was completed by the Id. Income Tax Officer, Ward-II(2), Ludhiana vide order u/s 144 dated 10-12-2019 by making additions to the returned income of Rs.450180/- as detailed below:

(i) Addition of Rs. 8795000/- u/s 68 on account of cash deposits in current account.

That the addition of Rs. 8795000/- has been made without any basis, without recording any concrete facts or material evidence on file, without pointing any defects in sales and books of accounts of the assessee, without considering assessee's submissions & evidence on record, without providing any proper opportunity to the assessee, and made in a hurried fashion on presumptive basis with preoccupied notions by abuse of powers and wrong interpretation of provisions of law.

Further, the Id. Assessing officer has submitted his remand report in this appeal dated 09-11-2023, which is again without any basis, made on presumptions, without considering the records available on file and without considering the submissions in appeal and made in a blind fashion.

Foremost, the Id. Assessing Officer has pointed out for producing additional evidence u/r 46A. Just like the assessment order was Non-speaking and baseless, again the Id. ^Assessing Officer has not mentioned in his remand report as to which details or documents he is considering as additional evidence, because, there might be difference in presentation but all the details and documents submitted in appeal were already submitted during assessment proceeding. The assessee submitted his response and details on the online portal 6-7 times during assessment proceedings, which included his complete business details, cash

book, purchase book, sales book, bank statements, expense accounts, unsecured loan accounts, debtors-creditors accounts, GP rate comparative data, written submissions and other details. The copy of relevant screenshots from the online portal evincing the above stated submissions were duly annexed while filing the appeal for your kind perusal. The Id. assessing officer during assessment proceedings failed to report that in what manner all these details were incomplete and inconclusive, and now again has not been able to establish as to in what manner these details contribute as additional evidence.

The appeal submissions by the assessee are based on financial statements, bank statements, cash book, etc which were already submitted during assessment proceedings and thus, there is no additional evidence submitted by the assessee. The contention of the Id. Assessing Officer regarding submission of addition evidence is requested for not to be considered as it is presumptive, baseless and not supported by any facts.

Regarding comments by the Id. AO. in his remand report, the assessee prays to submit as under:

COMMENTS BY LD. A.O.	SUBMISSIONS BY ASSESSEE
<p>1. The assessee was failed to file complete information in response of notice u/s 142(1) of I.T.Act. Further, on 25.08.2019, 22.11.2019, the assessee was filed part information vide which he could not establish the source of cash credit amounting to Rs. 87,95,000/- as evident in para no. 2 of the assessment order passed u/s 144 of the Act.</p>	<p>The details submitted during assessment proceedings comprised of complete business details, cash book, purchase book, sales book, bank statements, expense accounts, unsecured loan accounts, debtors-creditors accounts, GP rate comparative data, written submissions and other details. The evidence regarding their submission during assessment proceedings is already annexed to very first written submissions in appeal at page no. 14-22. The assessee had duly submitted detailed response and nature of cash deposits during assessment proceedings and the same is already annexed to very first written submissions in appeal at page no. 22. As such, the contention by the Id. Assessing Officer that source of cash deposits amounting to Rs.87,95,000/- was not established is baseless, presumptive and by overlooking the</p>

	<p>facts on file, and clearly indicate that the assessment proceedings were completed in hurried fashion without recording any concrete facts or evidence.</p>
<p>2. The assessee has accepted that cash credit was made in HDFC bank during the assessment year but failed to supply its source in details even though he was given various opportunities.</p>	<p>Regarding, the financial statement, bank statements, cash book, written submissions, sale book including details of cash sales were already submitted & available on record during assessment proceedings, but the Id. Assessing officer proceeded in a hurried fashion to complete the assessment proceedings without considering these details & submissions and without pointing any defect in these submissions.</p> <p>Also, the assessment proceedings covered the period of whole financial year and the Id. Assessing Officer has failed to establish as to how the cash deposits pertaining to demonetisation period only were ingenuine and without any source. It is only his preoccupied presumption that these cash deposits are unexplained.</p> <p>The Id. Assessing officer has not pointed any defect in the cash deposits of remaining part of the year and thus, has accepted that owing to trend of trade, cash sales & deposits are</p>

	<p>inseparable part of assessee's business.</p> <p>In a hurried fashion, the Id. Assessing Officer has simply proceeded to make addition of cash deposited during demonetisation period without pointing any defect in its nature and source.</p> <p>The cash sales and deposits are regular trend of assessee's trade and have always been accepted in earlier assessments also.</p> <p>As such, the Id. Assessing Officer has accepted assessee's details regarding cash deposit and their source for whole year but has ignored the cash deposits during demonetisation period on presumptive basis only, without recording any concrete evidence or facts in his order.</p>
<p>3. During the assessment proceedings, a show cause notice was also issued on 04.12.2019 to file the information already called and also requiring him as to why the said cash credit may not be treated as unexplained cash credit u/s 68 of I.T.Act, 1961 but was again failed to file complete information</p>	<p>The Id. Assessing officer vide notice dated 04-12-2019 enquired the source of cash deposits of Rs.5.06 crores made during whole year i.e. from 01-04-2016 to 31-03-2017.</p> <p>The assessee submitted his reply, complete cash book and many other details in submission on date 09-12-2019. The cash book contained details of all the cash deposits and they were made against receipts from debtors and against cash sales.</p>

<p>called vide notice u/s 142(1) dated 19.11.2018, 09.07.2019 and 28.09.2019.</p>	<p>However, the Id. Assessing Officer without pointing any defect or concrete facts on record, accepted a part of the explanation and presumptively made addition of remaining Rs.87,95,000/- deposited during demonetisation period.</p> <p>The hurriedness of Id. Assessing Officer for completing the assessment proceedings is evincible from the fact that the notice dated 04-12-2019 enquires cash deposit in HDFC bank account no. 50200021780231 for cash deposits during whole financial year for Rs. 5.06 crores including <u>Rs.77.25 lakhs</u> deposited from 09/11/2016 to 31/12/2016 i.e. demonetisation period. Whereas the assessment order dated 6 days after i.e. 10-12-2019 states cash deposits in same bank account no. 50200021780231 during demonetisation period i.e. from 09-11-2016 to 31-12-2016 at <u>Rs.72.95 Lakhs.</u></p> <p>Thus, the whole assessment order is framed on presumptive basis, by oversight of details, in a hurried fashion, without considering the facts and details on file.</p>
<p>4. The assessee has not submitted the explanation</p>	<p>The assessee had duly submitted his cash book for the whole financial year</p>

<p>as desired mentioned in the above mentioned statutory notices despite giving multiple opportunities, he was failed to provide the details before the then Assessing Officer during the assessment proceedings. At this stage, the condition of admissibility of additional submission or any other statement does not qualify as per rule 46A of the I.T.Rules. So, the submission is not accepted at this stage.</p>	<p>in response to assessment proceedings. The Id. Assessing officer has accepted cash deposits for whole financial year excluding demonetisation period without pointing any defect therein. He has also failed to mention in his notice as well in assessment order as to what other sort of explanation was desired by him apart from the submissions by assessee, as the cash book and sale book amply reflected that the cash deposits in bank are already covered in the audited financial statements.</p> <p>The assessee in appeal has submitted the same cash flows as were available on file during assessment proceedings in form of cash book and there is no new evidence being submitted in this appeal.</p>
<p>5. The assessment was completed by the then A.O. on the basis of fact during the assessment proceedings.</p>	<p>The assessment was completed in a hurried fashion without providing proper opportunity to the assessee. The assessment was completed on presumptive basis, without considering the facts and detils submitted by assessee and available on record. The assessment order is non-speaking.</p> <p>The Id. Assessing officer has mentioned in his order that;</p>

	<p><i>"Thus it is <u>reasonably possible</u> that left with no other option, the assessee has deposited his unaccounted money in his bank account during the demonetization period."</i></p> <p>He has clearly failed to distinguish the cash deposits during demonetisation period from similar cash deposits during other periods, running across several financial years.</p> <p>His approach to "reasonable possibility" clearly evinces his presumptive state of mind and lack of concrete evidence. He has not pointed even a single fact in support of his contention in the entire assessment order.</p>
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10. As evincible from the above, in the Remand Report, the AO did not state as to which details furnished by the assessee by way of additional evidence, were not available before him, i.e., the AO, during the assessment proceedings. In the Rejoinder to the Remand Report, the assessee categorically stated that there might be difference in presentation, of the details and documents submitted in the appeal were already submitted before the AO by the assessee during the assessment proceedings; that the assessee submitted his response and details on the online portal 6/7 times during the assessment proceedings; that this included

the complete business details of the assessee, Cash Book, Purchase Book, Sales Book, Bank Statements, Expense Accounts, Unsecured Loan Accounts, Debtors-Creditors Accounts, GP Rate Comparative Data, written submissions and other details. It was stated that copies of the relevant screen shots from the online portal, supporting the contentions of the assessee were annexed while filing the appeal before the Id. CIT(A). It was stated that the AO failed to report as to in what manner all these details were incomplete and inconclusive; and that again, in the Remand Report, the AO had not been able to establish as to in what manner, these details contributed as additional evidence. The assessee stated that the submissions made by the assessee during the appeal were based on Financial Statements, Bank Statements and Cash Book, etc., which had already been submitted during the assessment proceedings, and that thus, there was no additional evidence submitted by the assessee. The assessee submitted that he had already furnished detailed report and nature of the cash deposits during the assessment proceedings. He submitted that the assessment proceedings covered the period of the whole financial year and the AO had failed to establish as to

how the cash deposits pertaining to the demonetization period only were in-genuine and without any source; that the AO had not pointed out any defect in the cash deposits of the remaining part of the year and thus, the AO had accepted that it was owing to the trend of the trade that cash sales and deposits were an inseparable part of the assessee's business; that the AO had not pointed out any defect in the nature and source of the cash deposit during the demonetization period; that the cash sales and deposits are a regular trend of the assessee's trade and have always been accepted in the earlier assessments; that as such, the AO had accepted the assessee's details regarding cash deposits and their source for the whole year, but had ignored the cash deposits during the demonetization period only on the basis of presumptions, without recording any concrete evidence or facts; that vide notice dated 04.12.2019, the AO had enquired the source of the cash deposits of Rs.5.06 Cr made during the whole year, i.e., from 01.04.2016 to 31.03.2017; that in reply, the assessee had submitted the complete cash book and many other details in submission, on 09.12.2019; that the cash book contained details of all the cash deposits and they were made against receipts from

debtors and against cash sales; that however, the AO did not point out any defect or concrete facts on record and proceeded to accept only a part of the explanation and presumptively made addition of the remaining amount of Rs.87,95,000/- deposited during the demonetization period; that the enquiry by the AO vide notice dated 04.12.2019 included enquiries about the cash deposits of Rs.77.25 lacs, made from 09.11.2016 to 31.12.2016, i.e., the demonetization period; that as per the assessment order, the cash deposits during the demonetization period were of Rs.72.95 lacs, evincing that the assessment order was a result of merely presumption and oversight of details; and that the assessment order was passed in a hurried fashion, without considering the facts and details on the file.

10.1 The assessee stated that he had duly submitted his Cash Book for the whole Financial Year in response before the AO in the assessment proceedings; that the AO had accepted the cash deposits for the whole Financial Year, excluding the demonetization period without pointing out any defect; that the AO had also failed to mention as to what other sort of explanation was desired, apart from the

submissions made by the assessee, as the Cash Book and the Sale Book amply reflected that the cash deposits in the bank were already covered in the audited financial statements; that in appeal, the assessee had submitted the very same cash flows as were available on the file during the assessment proceedings, in the form of cash book and there was no new evidence which was being submitted in the appeal.

10.2 The assessee further stated that the AO had observed that it was reasonably possible that left with no other option, the assessee had deposited his unaccounted money in his bank account during the demonetization period; that while observing so, the AO had clearly failed to distinguish the cash deposits made during the demonetization period from similar cash deposits during other periods, running across several financial years; that the AO had not pointed out even a single fact in support of his observations that it was “reasonably possible” that the assessee had been left with no other option and he had deposited his unaccounted money in his bank account during the demonetization period.

11. It is seen that the ld. CIT(A) has not entered any comment on the above elaborate submissions made by the assessee in his Rejoinder to the Remand Report submitted by the AO. Thus, as rightly contended, the Remand Report was on the same lines as those on which the assessment order was passed, the observations/findings of the AO remaining totally unsubstantiated. The observations of the AO have not at all rebutted the submissions made by the assessee. No fresh evidence is shown to have been filed by the assessee by way of additional evidence in the appellate proceedings. All the relevant details and documents were duly submitted by the assessee in the assessment proceedings before the AO and these submissions and details were furnished by the assessee by way of his 6/7 replies filed before the AO, which details/documents have remained entirely unrebutted at the hands of the AO, either in the assessment proceedings, or in the Remand Proceedings. In the Remand Report, the AO stated that the assessee had failed to file complete information in response to the notice issued u/s 142(1) of the Act. As to how this is so, remains un-established, whereas the assessee has shown to have furnished all the requisite documents and details, firstly before the AO in the

reassessment proceedings, and then before the CIT(A). Further, the AO has wrongly observed that the assessee failed to supply the source of the cash deposits made in HDFC Bank during the assessment year, whereas the assessee has given complete details before both the authorities. Even in response to the Show Cause dated 04.12.2019, the assessee, vide submissions dated 09.12.2019, had given complete cash book and many other details, including the details of all the cash deposits made, against receipts from debtors and against cash sales. Likewise, the AO had wrongly observed that details were not provided by the assessee in response to the statutory notices, whereas without the response of the assessee, it was not possible for the AO to have accepted the cash deposits for the whole assessment year excluding the demonetization period. In fact, no defect was pointed out by the AO in the details furnished by the assessee, particularly when the Cash Book and the Sale Book clearly reflected the cash deposits in the bank which were covered in the audited financial statements of the assessee.

12. Therefore, from the above discussion, it is clearly evident that the Id. CIT(A) has gone wrong in confirming the addition wrongly made by the AO.

13. In this regard, on a similar matrix of facts, the Hon'ble Delhi High Court, in the case of “Pr. CIT (Central 3) Vs. Agson Global Pvt. Ltd.” (ITA 68/2021& CM NO (9319/2021), by its decision dated 19.01.2022, in para 17.6 on page 46 of the judgement, held as under:

“Para 17.6 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, we are 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, in our opinion, the Tribunal correctly found in favour of the assessee and deleted the addition made by CIT(A) of Rs.73.13 crores, under Section 68 of the Act.”

13.1 Similarly, the ITAT Visakhapatnam in “ACIT Vs. Hirapanna Jewellers”, ITA No. 253(Viz) of 2020 [2021] 128 taxmann.com 291, in para 9 on page 17 of the judgement held as under :

“Para 9. In view of the foregoing discussion and taking into consideration of all the facts and the circumstances of the case, we have no hesitation to hold that the cash receipts represent the sales which the assessee has rightly offered for taxation. We have gone through the trading account and find that there was sufficient stock to effect the sales and we do not find any defect in the stock as well as the sales. Since, the assessee has

already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. This view is also supported by the decision of Hon'ble Delhi High Court in the case of Kailash Jewellery House (Supra) and the Hon'ble Gujarat High Court in the case of Vishal Exports Overseas Ltd. (supra), Hence, we do not see any reason to interfere with the order of the Ld.CIT(A) and the same is upheld.

13.2 The ITAT Ahmedabad in “ITO v. Rajeshkumar Chhanalal Patel”, [TS-209-ITAT-2023(Ahd) observed that all cash deposits in the Jalgaon bank account had already been accounted for as income through sales in the assessee's books of account. The sales and purchases made were shown to match quantitatively. Therefore, the ITAT concluded that none of the cash deposits could be treated as unexplained income for the assessee and dismissed the Department's appeal. The order was delivered on 21st April 2023 and pertained to the assessment year 2012-13.

14. In sum, it is an undisputed fact that the opening stock, closing stock, purchases, direct expenses, sundry debtors, sundry creditors of the assessee have been accepted by the department. The assessee had also produced books of account incorporating all the above accounts with supporting vouchers for verification at the time of assessment and the AO didn't point out any defect in the said record. Therefore,

the finding of unexplained credit given in the assessment order is simply a product of surmises and conjectures not backed by any evidence which could dislodge the preponderant documentary evidence brought on record by the assessee to explain the sources of the cash and it is, therefore only a perverse finding.

14.1 Then, the addition of Rs. 87.95 Lakh made is also otherwise not factually correct. As seen from the summery of cash deposits, out of realization from trade debtors / cash sales, the assessee has made cash deposits in his two bank accounts totalling to Rs. 66,90,738 in November 2016 and Rs. 35,70,000 in December 2016.

14.2 Further, the assessee deposited cash from 9th November till 18th November 2016 amounting to Rs.52,50,000/-, comprising of demonetized currency, as seen from the summery given on pages 8 to 9 of the paper book. After that, the cash deposit comprises only of non-demonetized currency/new currency. Therefore, the addition made in respect of cash of Rs.35,70,000/- deposited during the month of December 2016 is to be excluded from the addition of Rs.87,95,000/- made by the Assessing Officer for

the alleged unexplained cash deposited during the demonetization period from 9th November till 31st December 2016.

14.3 Further, the assessee's cash in hand and cash balances also support the cash deposit in the banks and justifies the amount of Rs. 52,50,000/- deposited in the two current bank accounts from 9th of November 2016 to 25th November 2016. From the extracts of the Cash Book, as at pages 12 to 19 of the paper book, it can be seen that the cash deposits in November 2016 mainly come from the opening cash in hand of Rs. 77,94,958 as on 01.11.2016, which is duly supported by the fact that the assessee throughout the year maintained corresponding cash in hand balances on every first day of the preceding months of the financial year.

14.4 Moreover, the cash deposit of Rs. 44.67 lakh in the two current bank accounts in the immediately preceding month, i.e., October 2016, also establishes that the cash deposit of Rs.52.50 lakh in demonetized currency in November 2016 was in accordance with the trend of cash sales/ realizations from trade debtors in view of the festive

and marriage seasons in North India in the months of October and November 2016. Therefore, the addition of the balance of Rs. 52.50 lakh under section 68 is not supported by any historical trend clearly discernible from the Cash Book of assessee.

14.5 Hence, the addition of Rs. 87.95 lakh made under section 68 is found to be illegal, invalid and void-ab-initio, as the cash deposits made in the current bank accounts of the assessee in the months of November & December 2016 are :

- i) the cash sales/ cash realisation from trade debtors shown in tax audited accounts and return of income;
- ii) the cash sales backed by purchases, sales & quantitative tally;
- iii) already accounted for as revenue and taxed on the profit element embedded therein;
- iv) sales on which normal net profit has accrued;
- v) preceded by similar cash deposits in the previous and succeeding months of the financial year;
- vi) not abnormal, considering the cash deposits of Rs. 44.67 lakh in the immediately preceding month of October 2016, when the demonetized had not started.

15. In view of the above, the grievance sought to be raised by the assessee is found to be justified and it is accepted as

such. The order under appeal is, found to be a result of complete misreading and non-reading of material and cogent unrebutted documentary evidence brought on record before the AO and reiterated before the ld. CIT(A). The impugned order is, therefore, reversed and the addition of Rs.87,95,000/- confirmed by the ld. CIT(A) is cancelled. Accordingly, nothing further survives for adjudication, nor was anything else argued.

16. In the result, appeal of the assessee is allowed.

S.A. 2/CHD/2024

17. Since we have decided the appeal of the assessee on merits, the Stay Application filed by the assessee becomes infructuous. Hence, the same is dismissed as such.

18. In the result, the appeal is allowed and the Stay Application is dismissed.

Order pronounced on 22.04.2024.

Sd/-

(VIKRAM SINGH YADAV)
ACCOUNTANTMEMBER

Sd/-

(A.D.JAIN)
VICE PRESIDENT

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

1. अपीलार्थी/ The Appellant
2. .प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar