

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI  
(DELHI BENCH 'C' NEW DELHI)**

**BEFORE SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No. 204/Del/2023 (A.Y. 2017-18)**

DCIT Central Circle-29 Room No. 322 E-2, ARA Centre Jhandewalan Extension New Delhi	Vs.	Jagdamba contractors and Builders Ltd. 12, Local Shopping Centre, Kalkaji, New Delhi <b>PAN: AABCE6780F</b>
<b>Appellant</b>		<b>Respondent</b>

Assessee by	Shri Akshat Jain, CA
Revenue by	Mr. Waseem Arshad, CIT DR
Date of Hearing	08/04/2024
Date of Pronouncement	23/04/2024

**ORDER**

**PER YOGESH KUMAR, U.S. JM:**

This appeal is filed by the Revenue against the order of Learned Commissioner of Income Tax (Appeals) New Delhi ["Ld. CIT(A)" for short], dated 14.11.2022 for the Assessment Year 2017-18.

2. Grounds of the Revenue is as under:-

*"1. Whether on the facts & in the circumstances of the case and law, the Ld.CIT(A) erred in law & on facts, ignoring the fact that the assessee company only submitted that the company was in real estate business*

*and nature of business demand to keep cash in hand to show the worthiness and land buying capacity to the sellers. The assessee did not produce any documentary evidences w.r.t the source of generation of such accumulated Cash as on 08.11.2016.*

*2. Whether on the facts & in the circumstances of the case and law, the Ld.CIT(A) erred in law & on facts, ignoring Section 68 of the Income-tax Act, 1961 which clearly speaks that the primarily burden of proof lies on the assessee in order to prove the genuineness of the transactions which the assessee failed to do so.*

*3. Whether on the facts & in the circumstances of the case and law, the Ld.CIT(A) erred in law & on facts, ignoring the Provision of Section 103 of the Evidence Act which clearly states that the burden of proof is on the person who wishes the court to believe in the existence of a particular fact. In this scenario, Burden of proof will never be shifted to the Revenue, it lies on the assessee who is required to prove a fact. When we come within the ambit of Section 68 of the Income-tax Act, 1961, one and the most important limbs i.e. documentary evidences will always come into role automatically w.r.t any such claims made by the assessee during the assessment proceedings.*

*4. Whether on the facts & in the circumstances of the case and law, the Ld.CIT(A) erred in law & on facts, ignoring the impounded documents seized from the registered address of M/s Omaxe Limited as Annexure A-4 (Page No. 87 to 91 and 97-100) which brought into light the fact that the company M/s Jagdamba Contractors & Builders Limited was having Cash-in-hand as on 08.11.2016 was 11175337 (as per page nos. 87 to 91) while the same as on 08.11.2016 as per page no. 97-100 was 11171358.*

*5. Whether on the facts & in the circumstances of the case and law, the Ld.CIT(A) erred in law & on facts, ignoring that there is no pattern of such huge cash*

*deposits was noticed between 09.11.2015 to 31.12.2015 relating to the FY 2015-16 while Rs. 9,09,98,000/- was deposited during demonetization period i.e. 09.11.2016 to 31.12.2016 relating to FY 2016-17 i.e. AY 2017-18.*

6. *Whether on the facts & in the circumstances of the case and law, the Ld.CIT(A) erred in law & on facts, ignoring that the assessee only submitted that the impounded documents containing cash balance available at site offices maintained at the corporate headquarter for various exigencies but again the assessee did not produce any documentary evidences in order to establish its claim. It is not acceptable that such a going on concern i.e. company/flagship company does not maintain or keep record of such details of cash alongwith its purposes for each of the company sites separately.*

7. *Whether on the facts & in the circumstances of the case and law, the Ld.CIT(A) erred in law & on facts, ignoring and did not discuss on the Cash in hand as per impounded documents in its whole order rather involved himself only in the commensuration of the data of the assessee for both the FYs.*

8. *Whether on the facts & in the circumstances of the case and law, the Ld.CIT(A) has given relief to the assessee on the basis of comparison chart for F.Y. 2015-16 and F.Y. 2016-17 ignoring the fact that during the F.Y. 2015-16, the cash withdrawal was only 5 cr Rs., but during the F.Y. 2016-17, it was 13 cr Rs. which is exceptionally high considering the business of the assessee.*

9. *Whether on the facts & in the circumstances of the case and law, the Ld.CIT(A) has given relief to the assessee, without verifying exceptionally high cash withdrawal from assessee's bank accounts, and only on the basis of chart submitted by the assessee.*

*10. The order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.*

*11. The grounds of appeal are without prejudice to each other.*

*12. The appellant craves to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”*

3 Brief facts of the case are that, the Assessee a limited company, engaged in the business of purchase sale and development of real estate. The Assessee filed its return of income for the AY 2017-18 on 30-10-2017 declaring income of Rs.3,33,74,570/-. Case was selected for scrutiny under CASS. The Assessee had deposited Rs. 9,09,98,000 during demonetization period in bank account/(s) out of cash in hand as on 08.11.2016 of Rs. 10,03,92,951/- (including of imprest of Rs. 1 Crore). A survey u/s 133A of the Income Tax Act, 1961 ('Act' for short) had taken place on Omaxe Limited on 22.11.2016 where some documents were impounded. Those documents showed cash balances as on 08.11.2016 in some 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 Assessee was Rs. 1,11,75,337. It was the case of the Assessee that the details of cash

books in the impounded document was incomplete and the Assessee company had total cash in hand (as per all the cash books) as on 08.11.2016 of Rs. 10,03,92,951/- (including imprest of Rs.1 Crore). 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. 9,09,98000/- under section 68 of the Act, assessing the income at Rs. 12,43,72,570/- vide Assessment Order dated 21/12/2019.

4. Aggrieved by the assessment order dated 21/12/2019, the assessee preferred an Appeal before the CIT(A), the Ld. CIT(A) vide order dated 14/11/2022 allowed the Appeal filed by the assessee. As against the order of the Ld. CIT(A), the Department of Revenue preferred the present Appeal on the grounds mentioned above.

5. The Ld. Departmental Representative addressing on the Grounds of Appeal, vehemently submitted the assessee has not proved the primary burden to prove the genuineness of the transaction as required under Section 68 of the Income Tax Act ('Act' for short), but the Ld. CIT(A) has not appreciated the said fact. Further submitted that, the Ld. CIT(A) has also ignored that

there is no pattern of such huge cash deposits was noticed between 09/11/2015 to 31/12/2015 relating to the Financial Year 2015-16 while Rs. 9,09,98,000/- was deposited during the demonetization period, though the Assessee has not produced any documentary evidence with respect to the source of generation of such accumulated cash as on 08/11/2016, the Ld. CIT(A) committed error in deleting the addition. The Departmental Representative relying on the findings of the A.O., sought for intervention by the Tribunal.

6. Per contra, the Assessee's Representative submitted that the assessee has duly explained the source of cash deposit as cash in hand as on 08/11/2016 built up from cash withdrawals from the bank account of the assessee and also submitted evidences such as copy of cash book, copy of bank statements, copy of response filed on Income Tax Portal in response to cash transaction queries and information related to cash transaction, but the same has not considered/believed by the A.O. Further submitted that the Ld. CIT(A) has given detailed findings on the each of the allegations made by the A.O and deleted the addition. The Assessee's

Representative by relying on the order of the Ld. CIT(A), sought for dismissal of the Appeal filed by the Revenue. The Assessee's Representative has also relied on the following cases of group companies involving identical issue arising out of same impounded documents and survey of same flagship company which were decided in the favour Assessee therein:-

(i) The DCIT, Central Circle 29, New Delhi vs. M/s Atulah Contractors and Construction Private Limited (ITA No. 2438/DEL/2022, A.Y. 2017-18)

(ii) The DCIT, Central Circle 29, New Delhi vs. M/s Bhanu Infrabuild Private Limited (ITA No. 2433/DEL/2022, A.Y. 2017-18)

(iii) The ACIT, Central Circle 1, Gurugram vs. M/s Omaxe Forest SPA and Hills Developers Limited (ITA No. 2/DEL/2023, A.Y. 2017-18)

(iv) The ACIT, Central Circle-1, Gurugram vs. M/s Omaxe Housing and Developers Limited (ITA No. 47/DEL/2023, A.Y. 2017-18).

7. We have heard both the parties and perused the material available on record. In the present case on 22.11.2016 the police

intercepted two vehicles carrying cash amounting to Rs.2,22,76,000/- which belongs to M/s Ornaxe Limited. Consequently, a survey was conducted on 22.11.2016 at office of M/s Omaxe Limited at (1) Kalkaji, New Delhi, (2) Shop No-19B, 1st Floor, Omaxe Celebration Mall, Sector-48, Gurugaon and (3) Omaxe Residency 2 Gomti Nagar Extension, Amar Shaheed Path, Lucknow. During the course of survey at registered office of M/s Omaxe Limited, the cash in hand as on 08.11.2016 and cash deposited during the demonetization were impounded.

8. During the assessment proceedings, a show-cause notice dated 16.12.2019 was issued to the Assessee to explain the closing cash balance as per pages impounded and to explain the source of cash deposit. In response, assessee submitted that the impounded pages contain cash balances of Rs. 1,11,75,337/- as on 08.11.2016 of various site office of the assessee but, does not contain cash balance as on 08.11.2016 of New Imprest-Real Estate MCB Rs.7,91,77,139/-, Imprest Bhogal Godown Rs.40,475/- and Sandeep Mangla- Imprest (Separate Ledger) Rs.1,00,00,000/- and also submitted the summary of cash books / imprest maintained by

the assessee showing cash balances as on 08.11.2016. Further the assessee has stated that the total cash balance as on 08.11.2016 available with the assessee including all cash books was Rs. 10,03,92,951/- out of which Rs.9,13,00,000/- was deposited and explained that the cash in hand as on 08.11.2016 as source of cash deposit. It is the case of the Assessee that the source of cash deposit is out of earlier cash withdrawals from the bank and submitted relevant bank statement showing cash withdrawals, cash deposit, entire cash book for the period 01.04.2016 to 30.12.2016 and comparative charts for the year under consideration and preceding year.

9. Ld. AO rejected the explanation and documents submitted by the assessee and proceeded with the addition of Cash deposit during the demonetization period of Rs.9,09,98,000/- for following reasons:-

(i) Cash withdrawal must be utilized and assessee could not mount cash for so long.

(ii) Cash book is prepared in such a way that nearby cash withdrawal can be shown as cash deposit.

(iii) On comparing charts of FY 2015-16 and FY 2016- 17, there was no match of the cash deposits with the corresponding period of the previous year.

(iv) All the sale are through Cheque/RTGS/DD therefore, no question of cash sale.

(v) M/s Omaxe Limited has surrender a huge amount of unaccounted income, whereas the assessee has not disclosed the such income.

10. During the appellate proceedings while deleting the above said addition, Ld. CIT(A) has given detailed finding on all the allegations made by the assessing officer. As regard allegation of cash withdrawal must be utilized and mounting of cash for a long period, the Ld. CIT(A) observed that the said allegation of assessing officer is not well founded as the A.O. has not established that the expenses of higher magnitude were being made in cash earlier and has now not been shown. As regards allegation of mounting of cash for a long period, the Ld. CIT(A) held that its mere surmise since the facts of maintenance of high cash balances across extended period of several months is supported by ITR, Audit reports, cash

withdrawals from its bank account are matter of records and not subject to manipulation. Ld CIT(A) also held that wisdom behind maintaining higher cash balance cannot be subject matter of finger pointing by the AO and is to be left to the business prudence of the assessee.

11. Ld CIT(A) as regards allegation of 'cash book is prepared in such a way that nearby cash withdrawal can be shown as cash deposit' held that cash withdrawals or deposit are reflected in the bank statements as well as cash book and same cannot be manipulated. Ld. CIT(A) has also held that Ld. AO has ignored the main cash book and considered only the site cash books for arriving at cash balance as on 08.11.2016, whereas the existence of main cash book cannot be denied since most of the cash deposits or withdrawals have been routed through main cash book. Therefore, the observation of Ld. AO that cash book is prepared in such a way that nearby cash withdrawal can be shown as cash deposit is not tenable.

12. As regards allegation of Ld. AO on comparing charts of FY 2015-16 and FY 2016- 17, there was no match of the cash deposits

with the corresponding period of the previous year, Ld. CIT(A) has held that cash withdrawals and deposits are high and similar for both the financial years. Ld. CIT(A) also held that substantial cash withdrawals as well as deposits is very much regular feature of the business of the assessee. Therefore, the trend of cash withdrawals and deposits were similar and not unusual in both the years.

13. As regards allegation of Ld. AO that all the sale are through Cheque/RTGS/DD therefore, no question of cash sale, Ld. CIT(A) has held that as a matter of fact the assessee has not shown any meaningful or unusual cash sales to explain the cash deposit during demonetization.

14. As regards allegation of Ld. AO that the flagship company, M/s Omaxe Limited has surrendered a huge amount of unaccounted income, whereas the assessee has not disclosed such income. Ld. CIT(A) has held that the surrender made by the flagship company does not automatically translate into any acceptance by the Assessee. Ld. CIT(A) also held that the surrender made by the flagship company is totally on different basis and not co-related to the addition made in the case of assessee.

15. Lastly the Ld. CIT(A) has held that cash deposit during post demonetization is duly explained by cash balance available as on 08.11.2016, which was built up by cash withdrawals which are undisputed and opening cash in hand which is undisputed as the same tallies with the cash balance as on 31.03.2016 as per the ITR for A.Y. 2016- 17.

16. It is seen from the record that during the course of assessment proceedings, in order to explain the source of cash deposit as cash in hand on 08/11/2016 the assessee produced evidences such as copy of cash books, copy of bank statement, copy of response filed on income tax portal in response to the cash transaction queries and information related to cash transaction in the format prescribed by the Ld. AO. The assessee has also explained the source as well as the reason of withdrawing cash along with the supporting evidence. Further in response to the show cause notice, the assessee has also explained that in the impounded documents contains cash balance as on 08.11.2016 of certain sites only and cash balance as on 08.11.2016 of New Imprest - Real Estate MCB, Imprest Bhogal Godown and Imprest Sandeep Mangla were not

mentioned and in support of said contention the assessee submitted summary of all the cash books which shown the cash balance as on 08.11.2016.

17. It is also pertinent to notice that the books of the assessee are audited, Ld AO has not pointed any defect in the cash book of the assessee nor he rejected its book of account and only on the basis of assumption that the cash withdrawal have been utilized without corroborating the same. The Ld. CIT(A) has considered all the documents produced by the assessee and proceeded to delete the addition after countering each and every allegation made by the A.O. by appreciating material available on record. Further in the case of group companies involving identical issue arising out of same impounded documents and survey of same flagship company, the Co-ordinate Bench of the Tribunal decided the issue in the favor of the Assessee thereon, which are as under:

➤ The DCIT, Central Circle - 29, New Delhi vs. M/s Atulah Contractors and Construction Private Limited (ITA No. 2438/DEL/2022, A.Y. 2017-18)

- The DCIT, Central Circle 29, New Delhi vs. M/s Bhanu Infrabuild Private Limited (ITA No. 2433/DEL/2022, A.Y. 2017-18)
- The ACIT, Central Circle - 1, Gurugram vs. M/s Omaxe Forest SPA and Hills Developers Limited (ITA No. 2/DEL/2023, A.Y. 2017-18).
- The ACIT, Central Circle - 1, Gurugram vs. M/s Omaxe Housing and Developers Limited (ITA No. 47/DEL/2023, A.Y. 2017-18).

Considering the above facts and circumstances, and the orders of the Coordinate Bench of the Tribunal (supra), in our opinion, the Ld. CIT(A) has committed no error in deleting the additions made by the A.O. In view of the above discussion, we find no merit in the Grounds of appeal of the Revenue, accordingly, we dismiss the Grounds of Appeal of the Revenue.

18. In the result, the Appeal of the Department is dismissed.

**Order pronounced in the open court on 23<sup>rd</sup> April, 2024**

Sd/-

**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

*Date:- 23 .04.2024*

Sd/-

**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

\*R.N, Sr.P.S

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5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI