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

श्री संदीप गोसाई, न्यायिक सदस्य एवं डा0 मीठा लाल मीना, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & DR MITHA LAL MEENA, AM

आयकर अपील सं./ITA No. 32/JP/2024
निर्धारण वर्ष/Assessment Year : 2017-18

Arvind Kumar Nehra S-397, Scheme-4S, Loja Mandi Road Macheda, Sikar Road, Jaipur	बनाम Vs.	The ITO Ward 7(1) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AFQPN 2653 H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri S.L. Jain ,Adv
Shri Ashok Kumar Gupta, Adv
Shri Shrawan Kumar Gupta, Adv

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

सुनवाई की तारीख/Date of Hearing : 14/02/2024
उदघोषणा की तारीख/Date of Pronouncement: 10 /04/2024

आदेश/ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 27-12-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2017-18 raising therein following grounds of appeal.

> 1.1 The impugned assessment order u/s 144/143(3) dated 23.12.2019 as well as the notice issued are bad in law and on facts of the case, for want of jurisdiction, barred by limitation, without proper approval or

satisfaction and various other reasons and hence the same may kindly be quashed

1.2. The ld. AO has grossly erred in law as well as on the facts of the case order in passing the Ex-party order u/s 144 without providing the adequate and reasonable opportunity of being heard to the assessee in gross breach of law and are bad in law, invalid, illegal and on facts of the case, and hence the same may kindly be quashed and the resultant addition may kindly be deleted in full.

2. The ld. CIT(A) has grossly erred in law as well as on the facts of the case in passing exparte order without providing adequate and reasonable opportunity of being heard in the gross breach of law. Hence the additions so made by the Id. AO may kindly be quashed and delete.

3. Rs.50,00,000/-: The ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs.50,00,000/- made by the Id AO on account of alleged of covering the possibility of unexplained cash credit, without invoking any provisions of the act. The Ld. AO and CIT(A) both have also erred in not considering the vital facts and material available on record in their true perspective and sense. Hence the addition so made by the Id. AO and confirmed by the ld. CIT(A) is also being contrary to the real facts of the case and not according to the provision of law, hence the same may kindly be deleted in full.

4. The ld. AO has also grossly erred in law as well as on the facts of the case invoking the provisions of Sec. 115BBE for taxing the income at the higher rate, without issue any show cause notice and also not applicable in the present case. The Ld. AO has also erred in not considering the vital facts and material available on record in their true perspective and sense. Hence the provisions of Sec. 115BBE so invoked are also being contrary to the real facts of the case and not according to the provision of law, hence the same is illegal, bad in

law, against the principle of natural justice the same may kindly be deleted in full.

5. The ld. AO has grossly erred in law as well as on the facts of the case in charging the interest u/s 234A,B,C. The interest so charged is being totally contrary to the provisions of law and on facts of the case and hence same may kindly be deleted in full.''

2.1 As regards the Ground No. 2, the Bench noted that the ld CIT(A) has explicitly dealt with the issue which does not require any adjudication. Hence, the same are dismissed.

2.2 As regards the Ground No. 1, 3 & 4, the ld. CIT(A) has dismissed the appeal of the assessee by observing as under:-

7.0 ANALYSIS and DECISION:

7.1 I have carefully considered the issue under dispute and examined the same in the light of the facts and circumstances of the case as emanating from the impugned assessment order u/s. 143(3/144) of the Act and relevant provisions of the statute

7.2 Ground Nos. 1 and 2 are raised against the AO's action in treating the amount of Rs.50,00,000/- as unexplained cash.

The assessee is dealing in petroleum products, running a fuel station in the name and style M/s Nehra Filling station Filling Station which is authorized by private petroleum company.

On perusal of the material available on record, the AO found that the assessee has made cash deposit of Rs. 1,40,18,010/- during the demonetization period, taken un secured loan of Rs. 44,80,000/- and introduced capital of Rs. 30,46,460/- during the year under

consideration. The AO further mentioned that the Assessee was also not eligible to made sales in old currency during the demonetization period according to Notification No. 3408(E) dated 08-11-2016. Therefore, vide final show cause notice dated 08-12-2019, theassessee was asked to furnish sources along with the documentary evidence but assessee did not respond. In absence of reply from the assessee, considering the nature of trade, the AO considered it reasonable to make a lump sum addition of Rs. 50,00,000/- for covering the possibility of un-explained cash credit and completed the assessment u/s 144 of the Act.

Further, even during the course of present appellate proceedings, the assessee did not respond to the notices and did not furnish any details or documentary evidence with regard to the source of the cash credits. Under the circumstances, in the absence of any details or documentary evidence forthcoming from the assessee, I am of the considered opinion that the AO rightly made the impugned addition of Rs.50,00,000/-warranting no interference of the appellate authority. Thus, the Ground No.1 and 2 raised by the assessee on this issue are dismissed.

7.3 Ground No. 3 is raised against the AO's action in not following the principles of natural justice during the assessment proceedings.

As seen from the assessment order, during the assessment proceedings, the assessee was given sufficient opportunity of being heard by issuing notices including show cause notice. Further, the assessee was given sufficient time and multiple opportunities during the present appellate proceedings. However, the assessee did not respond to the notices issued. Therefore, the contention of the assessee is not tenable. Thus, Ground No. 3 raised by the assessee on this issue is dismissed.

7.4 …….

8.0 In the result, the appeal filed against the order u/s.144 of the Act for the AY 2017-18 is dismissed

2.3 During the course of hearings, the ld. AR of the assessee has filed the following written submission praying therein to delete the addition so made by the ld.AO and confirmed by the ld. CIT(A) amounting to Rs. 50,00,000/-

" 1. Assessment was passed in gross breach of principal of natural justice: *At the very outset it is submitted the ld. AO has passed the assessment order in gross breach of principal of natural justice. As the ld. AO has issued the notice issued the Show Cause Notice u/s 142(1) dt. 16.12.2019 at. 11.06 AM on dt. 17.12.2019 (Tuesday) Vide Page 1-3 of Annexre-1 asking the assesee to file the reply till 17.12.2019 at 2.36 PM. And it is not possible that immediately delivered on the email of the assessee. In this regard it is submitted that this notice is illegal, invalid and void ab-initio and issued in gross breach of law and against the principal of natural justice without following proper procedures and time as per law. Hence liable to be dropped. However despite this the ld.AO has passed the order u/s 144 on dt23.12.2019 and even the ld. AO has not considered our replies filled earlier time to time with the details vide our paper book and e-proceedings. It means the ld. AO predetermined to make the addition.*

Thus the order passed is void ab –initio and against violation of principal of natural justice .

This Honble Tribunal in the case of ***Sh. Ashutosh Bhargav v/s Pr. CIT, Jaipur in ITA No.20/Jp/2021 dt.06.01.2022*** *the Honble ITAT it has been held that*

> *"After hearing the parties on this issue, we have perused the notice of hearing which is at page No. 46 of the paper book and according to the said notice of hearing which was issued by the office of the Pr.CIT to the assessee. The said notice is dated 18/03/2021 wherein the matter for final hearing was fixed on 24/03/2021 at 6.04 PM. However, on 24/03/2021, the assessee requested for seeking some more time for engaging and for submitting documents. However, the ld. Pr.CIT, did not consider the request of the assessee and passed order on 31/3/2021 itself. Thus, considering the said facts, we are of the view that right to fair hearing is guaranteed right to an assessee and thus granting of effective opportunity is sine qua non in Section 263 of the Act for setting aside a statutory order. Thus, in our view, it was the duty of the ld. Pr.CIT to provide the assessee an effective and reasonable opportunity of hearing so as to enable him to substantiate its claim. In any case, it is one of the fundamental principles of natural justice that no person can be condemned unheard i.e audi alteram partem, the impugned order was thus passed in violation of the principles of natural*

justice in absence of any effective/reasonable opportunity of hearing provided to the assessee. Although, the ld. CIT-DR has relied upon the decision in the case of ***Deniel Merchants P. ltd. & Anr. Vs ITO & Anr in Special Leave Petition No. 23976/2017 dated 29/11/2017,*** *however, the facts of the present case are altogether different from the facts of case as relied by the ld. CIT-DR as in that case, the issue was receipt of share application money whereas the facts of the present case are altogether different. The said case, as relied by the ld. CIT-DR, is not found application in the facts of the case under consideration. In our view, it is mandatory to apply the principles of natural justice irrespective of the fact as to whether there is any statutory provision or not. As per facts of the present case, the assessee was not afforded opportunity much less sufficient opportunity to give the reply to the show cause notice. Therefore it is clear that the ld. Pr. CIT in a hurriedly manner without affording opportunity of hearing to the assessee, had passed impugned order by violating principles of audi alteram partem. Thus, keeping in view the principles laid down by the Coordinate Bench of Cuttak ITAT in the case of* ***Jaidurga Minerals v/s Pr. CIT (supra)*** *and in the case of* ***Jagnnath Prasad Bhargva vs Lal Nathimal AIR 1943 All 17*** *and in view of the above factual position, the ld. Pr.CIT has committed a gross error in not providing effective/reasonable opportunity of being heard to the assessee before passing the order. Accordingly, the revisional proceedings framed U/s 263 of the Act by the ld. Pr.CIT stands quashed."*

In the case of ***Inderpal Singh Sayan v/s Assessment Unit Income Tax Department & Ors 293 Taxman 0731(DelHC).*** *Held as under*

" 11.2 In this context, Ms Bansal has drawn our attention to Annexure-P appended on page 123 of the case file. A perusal of the said Annexure shows that a show cause notice was issued on 17.02.2023, which required a response to be filed by 23.02.2023.

11.3 The petitioner, evidently, made a request for accommodation on 23.02.2023 to seek time up until 07.03.2023. We are told that the reason given for seeking accommodation was that the petitioner had to gather the material relevant for his defence.

12. It appears that without dealing with the request for accommodation, the AO passed the impugned assessment order dated 03.03.2023.

13. Clearly, the petitioner was not heard in support of his stand. There is, therefore, if nothing else, a breach of principles of natural justice, as the AO, without dealing with the request for accommodation, proceeded to pass the impugned assessment order dated 03.03.2023.

14. Therefore, on this singular ground, we are inclined to set aside the impugned assessment order dated 03.03.2023 and the order dated 31.03.2022 passed under Section 148A(d) of the Act. It is ordered accordingly."

Here also the same position and liable to be quashed the assessment order. Further the case of the assessee is on much strong footing because in the notice the time is given only 3.00 hour as the notice digitally signed at 11.06 AM on dt. 17.12.2019 and the time is given for reply at 02.36PM on dt.17.12.2019 on same date and there is time gap only about three hour which also take the time in uploading seeing etc. Here even one day time not given hence how it is possible to make an request.

The allegation of the ld. AO has also wrong that no details filed when we had already filed all the details as required. In support we are enclosing herewith full e-proceedings vide annexure-2 and also furnishing the details and reply filed to the ld. AO.

Also refer ***Zenith Processing Mills v/s CIT 219 ITR 721(Guj.)***

Prayer: *Thus in view of the above facts, circumstances and the legal position of law the proceedings so initiated and assessment so passed may kindly be quashed.*

2. No Show Cause for 115BBE: 2.1 *Further the ld. AO has not issued any show cause notice before invoking the provision of Sec. 115BBE for taxing the income on higher rate. It was mandatory on the part of the ld. AO to issue the specific show cause notice to this effect asking to the assessee as to why the income should not be taxed under the sec. 115BBE before doing so. It is very settled legal position that a person(assessee) is entitled to opportunity through show cause as to why not the income of the assessee is determined and charged or taxed in the manner as proposed by the Assessing Officer but in the instant case no such type notice had been issued.Hence the addition so made may kindly be deleted and the ld. AO may kindly be directed not to tax the income as per provisions of Sec. 115BBE. But the ld. AO has failed to do so, which is against the principal of natural justice and against the law. Thus how the ld. AO can tax the income under u/s 115BBE. Hence, the entire addition is liable to be deleted in full kindly refer Sanghi Brothers (Indore)Limited v/s Inspecting ACIT 122 CTR 19(MP), Malik Packaging v/s CIT 284 ITR 374 (All), T.C.N. Menon v/s ITO 96 ITR 148(Ker).*

2.2 *This sec. 115BBE is charging of tax at the higher rate and it cannot be applied directly without giving any show cause notice when the issues are disputed that whether the higher rate of taxes applicable or not on the alleged income or the nature of income falls u/s 68/69 and 115BBE. Enven in the present case the ld. AO has not applied the provision of Sec. 68/69. Then what to talk of taxing the income at higher rate u/s 115BBE. Hence it was mandatory on the part of the ld. AO to issue show cause before invoking the provisions u/s 115BBE, inabsance of the same the rate cannot be charged more than to normal rate of tax, if the addition if any sustained.*

2.3 *Recently the Honble ITAT Jodhpur Bench Jodhpur in the case of* ***Smt. Suraj Kanwar Devraa v/s ITO Ward 2(2) Udaipur in ITA No.50/Jodh/2021 dt.23.11.2021,*** *It has been held that "the AO has not issued any show cause notice before invoking the provision of Sec. 115BBE for taxing the income on higher rate. It was mandatory on the part of the AO to issue the specific show cause notice to this effect asking to the assessee as to why the income should not be taxed under sec. 115BBE before doing so. It is very settled legal position that a person (assessee) is entitled to opportunity to show cause as to why not the income of the assessee is determined and charged or taxed in the manner as proposed by the A.O. but in the instant case no such type of opportunity had been provided but the AO has failed to do so, which is against the principal of natural justice and against the law. This sec. 115BBE is charging of tax on a higher rate and it cannot be applied directly without giving any show cause notice when the issue are disputed that whether the higher rate of tax applicable or not on the alleged income or the nature of income falls u/s 68/69 and 115BBE. Hence it was mandatory on the part of the AO to issue show cause before invoking the provisions u/s 115BBE, in absence of the same the rate cannot be charged more than to normal rate of tax, if the addition if any sustained.*

3.1 No provisions has been applied by the ld. AO: *The ld. AO made the lum sum addition for covering the possibility of un-explained cash credit as income from other sources but he has not invoked or applied any provisions of law. The ld. AO has not stated under what provision of law he has made addition whether, under business or trading income as assessee is running the petrol pump business, or u/s 56 or u/s 68 or 69. Thus the addition so made without any provision of is also against the law and liable to be deleted on this ground alone.*

3.2 *When the ld. AO has not invoked any provision of law then also how the ld.AO can charged the tax u/s 115BBE. When in the law and in the Act for each and every offence specific provisions are given to held any person as victim defaulter, then without applying any provision for that a person cannot be taxed and penalized. When the ld. AO himself has not stated that under what provision the assessee liable to be taxed or penalized or under what provision his offence falls then how the addition can be made.*

4. Reply and details not considered: *The ld. AO para 1at page 2 of the assessment order has stated that "to complete the assessment, show cause notice dt. 08.12.2019 was issued fixing the case for hearing on 09.12.2019 but again no compliance was made by the assessee". In this regard it is submitted that the allegation of the ld. AO absolutely incorrect and wrong because firstly the ld. AO has given only one day time. However the assessee has submitted the reply with details on dt.14.12 .2019 and 16.12.2019(PB2-5A) also vide e-proceedings PB….. of Annexure-3. And on this date the assessee has also requested to the ld. AO give personal hearing. Despite this the ld. AO has not given opportunity of being heard rather ignored the details filed by the assessee and also alleged that no details filed as the assessee had filed the confirmations of unsecured*

loans, cash book, bank statements, cash deposited details account etc. vide our reply and paper book enclosed.

5. No basis of lump Sum addition: *The order shows that the ld. AO has made addition blindly and has not given the basis of lum sum addition of Rs.50.00 and without giving any basis no addition can be made. The ld. AO has not stated that what amount of trading addition, what amount of unsecured loan, what amount of capital introduced is genuine or in-genuine, without specify no addition can be made in air.*

6. Notification is also applicable to the assessee: *Further regarding the observation of the ld. AO on the issue that assessee was not eligible to made sales in old currency during the demonetization period according the Notification No.3408(E) dt. 08.11.2016. In this regard it is submitted that as the assesee is a authorized of Essar Oli Ltd. Now the issue is covered by the decision of* ***ITO Ward 1(1)(3) Ahmedabad v/s M/s. Ashapura Petrochem Marketing Pvt. Ltd in ITA No. 511/Ahd/2020 dt. 18.10.2023*** *copy is enclosed, the same kindly be considered also treat this order as our WS before your honor.*

7. Correct facts: *At the very outset it is submitted we want to bring the correct facts on record despite available on record which has not been considered by the ld. AO despite available on record. That in this year first time the assessee has started the petrol pump business of Essar Company. During the demonetization the assessee has accepted the demonetized currency. As the Govt. has allowed/ permitted to the petrol pump owner to accept the SBN notes of Rs.1,000/- and Rs.500/-. And this being the first year the assessee is not understand the difference mentioned in the notification (being the assessee 10th failed) as the other Petrol Pump of Essar Company or other private company were accepting the same, and the assessee was also under bonfide belief that he can accept the same. And in some other Petrol Pump owner no action has been taken, which may be verified through the ld. AO and may kindly be directed to verify the same. However now the matter is covered vide above para-6. This type of business is cash rich in nature, and large number of customers deals in different currency dimensions on daily basis. The amount collected from customers need to be deposited into our bank account so that timely payment can be made to our suppliers to ensure timely supply of petrol and diesel*

8. No addition is liable to be made for, unsecured loan, cash credit and capital introduced: *Further the ld. AO has made addition as alleged unexplained cash credit. Both the place the ld. AO is wrong and invalid addition made. Further the has declared all the sales in the sales has not been doubted rather accepted and the Vat/GST department has also accepted the sales.*

For our above submissions and plea kindly refer a direct recent decision of the ***In the case of ACIT & ANR. vs. HIRAPANNA JEWELLERS & ANR. May 12, 2021 (2021) 62 CCH 0123 VisakhapatnamTrib*** *it has been held that Income—Cash credits—Assessee*

a firm with two partners engaged in business of jewellery trading has filed its return of income—A survey u/s 133A, was conducted in business premises of assessee and found that assessee had deposited sum in high denominations of specified bank notes post demonetization—Since, Managing Partner was unable to produce details to support sales increase, DDIT(Inv.) viewed that assessee has taken shelter of sales to divert black money of assessee as well as his friends—AO believed that sales consisting of 270 bills are nothing but unexplained cash credits representing unaccounted money brought in to business in guise of jewellery sales and paper work was done, merely to give colour of authenticity of sales and accordingly made addition u/s 68 r.w.s.115BBE—CIT(A) deleted addition—Held, Assessee had explained source as sales, produced sale bills and admitted same as revenue receipt—Assessee is engaged in jewellery business and maintaining regular stock registers—Both DDIT (Inv.) and AO have conducted surveys on different dates, independently and no difference was found in stock register or stocks of assessee—Purchases, sales and Stock are interlinked and inseparable—Every purchase increases stock and every sale decreases stock—To disbelieve sales either assessee should not have sufficient stocks in their possession or there must be defects in stock registers/ stocks—Once there is no defect in purchases and sales and same are matching with inflow and outflow of stock, there is no reason to disbelieve sales—Assessing officer accepted sales and stocks—AO has not disturbed closing stock which has direct nexus with sales—Movement of stock is directly linked to purchase and sales—Audit report u/s 44AB, financial statements furnished in paper book clearly shows reduction of stock position and matching with sales which goes to say that cash generated represent sales—Assessee has furnished trading account, P& L account and reduction of stock is matching with corresponding sales and assessee has not declared exorbitant profits—Though certain suspicious features were noticed by AO as well as DDIT (Inv.), both authorities did not find any defects in books of accounts and trading account, P&L account and financial statements and failed to disprove condition of assessee—Once, assessing officer accepts books of accounts and entries in books of accounts are matched, there is no case for making addition as unexplained—Assessee has established sales with bills and representing outgo of stocks—Sales were duly accounted for in books of accounts and there were no abnormal profits—In spite of conducting survey AO did not find any defects in sales and stock—Therefore there is no reason to suspect sales merely because of some routine observation of suspicious nature such as making sales of 270 bills in span of 4 hours, non availability of KYC documents for sales, non writing of tag of jewellery to sale bills, non-availability of CCTV footage for huge rush of public etc—Contention of assessee that due to demonetization, public became panic and cash available with them in old denomination notes becomes illegal from 09.11.2016 and made investment in jewellery, thereby thronged jewellery shops appear to be reasonable and supported by newspaper clippings—It is observed from newspaper clippings that there was undue rush in various jewellery shops immediately after announcement of demonetization through country—Cash receipts represent sales which assessee has rightly offered for taxation—There was sufficient stock to effect sales and there is no defect in stock as well as sales—Since, assessee has already admitted

sales as revenue receipt, there is no case for making addition u/s 68 or tax same u/s 115BBE again—Revenue's appeal dismissed.

In the case of ***Ramilaben b. Patel vs. ITO (2019) 174 ITD 0694 (Ahmedabad-Trib.) : (2019) 71 ITR (Trib) 0048 (Ahmedabad)*** *It has been held Income—Unexplained cash credits—Assessee filed return of income declaring salary income, interest income from other sources and LTCG—During assessment proceeding, AO noted that assessee had deposited cash in her bank account—Assessee explained source of such cash deposit out of cash withdrawn from bank—AO observed that there was no documentary evidence furnished by assessee in support of her contention—AO completed assessment after making addition by treating same as undisclosed income—CIT(A) restricted addition made by AO—Held, certain credit entries were reflecting cash deposit in bank account of assessee—Assessee failed to substantiate his claim for source of such cash deposit—Therefore, same was treated as undisclosed income and added to total income of assessee—CIT(A) subsequently confirmed view taken by AO—CIT(A) rejected assessee's contention that cash was deposited out of cash withdrawal from bank without adducing cogent reasons—Cash withdrawal was not doubted by lower authorities, and nothing was brought on records suggesting that cash withdrawn from bank was incurred either as revenue expenses or capital expenses—In absence of any documentary evidence, it can be safely presumed that cash withdrawn from bank was available with assessee which was subsequently deposited with bank and same could not be treated as undisclosed income of assessee—ITAT in Rameshbha iSomabhai Patel held that bank statement was not considered as books of accounts—Therefore, any sum found credited in bank passbook could not be treated as an unexplained cash credit—*

In the case of ITAT in ***RameshbhaiSomabhai Patel Vs. ITO in ITA No. 1864/AHD/2014*** *has held that the bank account of the assessee is not considered as part of the books of accounts.*

(ii)*Further the assessee has offer the explanation and not denied the same. As the assessee has stated the cash deposit in the bank account was from the sale of oil product which has been shown in the cash book as well as in the trading account and in the books of account and these facts or explanation has never been denied by the ld. AO which are supported by the documentary evidences or books of account which have also not been rejected. The ld. AO has made addition on the ground of Violation or* breach of *Notification No. S.O. 3408(E) dt. 08.11.2016 issued by the Department of Economic Affairs according to that only the Petrol Pumps who worked under the Public Sector Oil Marketing Company were allowed to sale their petro product on old currency. For that we have already submitted in para No.4Hence looking to these facts how it can be said that the ld. AO has righty invoked the provision of Sec. 68. Hence also no addition can be made.*

9. No violation or breach of law of Income Tax Act by the assessee rather the ld. AO has referred the other Acts: *Further it is submitted that any addition or disallowance can be made under income tax, only if there is any violation or breach of law of income tax act. In the present case the ld. AO has made addition only on account of breach of Notification No. S.O. 3408(E) dt. 08.11.2016 issued by the Department of Economic Affairs according to that only the Petrol Pumps who worked under the Public Sector Oil Marketing Company were allowed to sale their petro product on old currency.*

In this regard we have to submit that for an income tax assessment the ld. AO has to requires to see or to apply the provision of income tax laws in substance, not to requires to touch and go in other laws until and unless it has not been provided in the income tax laws in that chapter. And breach or violation of other laws cannot be basis to make any disallowance under the income tax act and when the case of assessee was on much strong footing because the ld. AO has not brought any proof or evidence or material on record that the other laws or department have taken any action against assessee for which the ld. AO has alleged or referred. It was the subject matter of those related department not of the ld. AO.

The issue arises that whether on nonfulfillment of certain conditions under other Act can lead to make the addition under sec. 68. It is an establishment of law that under the income tax Act, the income can be charged under particular heads of income on fulfilment of certain conditions depending upon on the nature of the income. If there is a dispute regarding accepting the SBN by the assessee than prescribed conditions under notification issued by the Department of Economic Affairs is to be examined in light of act and punishment under that Act. The nonfulfillment of condition under ***some other Act*** *cannot impact on the sale of the assessee under the income tax. If some violation has been done by the appellant related to some other Act, then action for such violation can be taken under that Act only. In the present case the AO has not pointed out any violation of any condition regarding declaring the sales from the petrol pump.*

In the case of appellant, the assessee made sale of oil products to which has been made to the customers. There is no dispute regarding this. The appellant is also the owner of the Petrol pump as per the license given by the Essar Pvt. Ltd and there is no dispute regarding this. The appellant has accepted the SBN Notes of Rs.1,000/- or 500/- due to some misunderstanding. Against this the assessee has sold the oil product and thereafter he deposited the same in to Bank account and also made payment to the Essar Company against the purchase from this very Bank account. The Company has never informed to the assessee that he is not entitled to accept the SBN note, when this was the onerous duty

of the company to clarify or intimate to their dealer. Thus, it can be seen that the income or sale was correctly shown by the assessee.

However if there was any breach the same cannot be questioned by the AO/Income Tax Department or not the subject matter of ld. AO. The same can be objected only by the concerned department or law. When there was no objection then how the ld. AO can question the same. Despite if there is any objection by the concerned department then also the sale cannot be denied and the ld. AO has also not denied the same. If the assessee is fulfilling the conditions under the income tax.

***10.** The ld. AO has nowhere disputed the facts that the assessee is running a petrol pump, nowhere stated that the sale has not made, the income is not in the nature of sale, sale declared in the trading account, cash entered in the cash book, same cash deposited in the bank account etc. only and only notification of the other department has been relied upon by him. First when we have not declared any defaulter by the concerned department or law and no addition can be made under income tax.*

*On this preposition kindly refer a recent decision of Honble ITAT in the case of **Smt. Saroj Sharma in ITA No. 1292/Jp/2019 dt.24.03.2021**, wherein it has been held that*

" 6.1However, now the question which arises before us is to see as to whether on non-fulfillment of certain conditions under other Act can lead to change the head of income'. We are of the view that it is an established law under the Income Tax Act that income can be charged under particular head of income on fulfillment of certain conditions depending upon the nature of income. However, non-fulfillment of condition under some other Act cannot impact the decision regarding charging of income under particular head of income and if some violations have been done by the assessee related to some other Act, then in that eventuality, the action for such violation can be taken under that Act only.

6.2 Since in the present case/ the A.O. has failed to pin point any violation of any condition regarding chargeability of income under the head "income from house property". Therefore, in our view, the A.O. was not competent to treat the income earned by the assessee from rentals to be considered under the head "income from other sources". More particularly when the assessee had fulfilled all basic conditions for treating the income under the head "income from house property" as enumerated in Section 22 of the Act."

The ratio laid down in principal is also applicable in the present case.

11. Contradictory approach: *In the cash book every details has been given. One side the ld. AO doubted the cash deposited in the bank account and other side he has accepted the source of cash from sales and, which shows contradictory approach of the ld. AO. We are producing herewith complete cash books and relevant pages for your kind perusal.*

Further sales details also filed and the ld. AO when has accepted our sales and he has not stated that where this sales amount has been utilized or invested by the assesseee other than to cash deposited in the bank accounts.

12. Notice u/s 143(2) is invalid: *At the very out-set it is submitted that the ld. AO has issued the notice u/s 143(2) dt. 29.09.2018 vide Annexure-4 by stating that return of income filed by you for A.Y. 2017-18 on 28.10.2017 is selected for scrutiny". But the ld. AO has not provided the reason for scrutiny for what reason it has been selected, whether limited scrutiny or complete scrutiny or other reason. While it was mandatory on the part to mention or write the reason in the notice of 143(2) vide CBDT instruction no. 20/2015 and 05/2016. Vide para* ***14 of instruction which states "*** *As far as the returns selected for scrutiny through CASS-**20**15 are concerned, two type of cases have been selected for scrutiny in the current Financial Year-- one is 'Limited Scrutiny' and other is 'Complete Scrutiny'. The assessees concerned have duly been intimated about their cases falling either in Limited Scrutiny' or 'Complete Scrutiny' through notices issued under section 143(2) of the Income-tax Act, 1961 ('Act'). The procedure for handling 'Limited Scrutiny' cases shall be as under:*
ndling 'Limited Scrutiny' cases shall be as under:14

For this preposition kindly refer ***Dev Milk Foods Pvt. Ltd. vs. Add. CIT12th June, 2020 (2020) 59 CCH 0104 DelTrib****Assessment—Conversion of limited scrutiny into complete scrutiny—Assessee company's main source of income was freight income and long term capital gains—Return of income was filed—Case was selected for limited scrutiny through CASS—Assessing Officer noted that assessee's case was selected for limited scrutiny with respect to long term capital gains but it was noticed that assessee had claimed a short term capital loss which had been adjusted against long term capital gains—As per Assessing Officer, loss claimed by assessee appeared to be suspicious in nature primarily due to reason that loss could possibly have been created to reduce incidence of tax on Long Term Capital Gains shown by assessee—In order to verify this aspect, approval of Principal Commissioner of Income Tax (PCIT) was taken to convert case from limited scrutiny to complete scrutiny and that assessee was also intimated about change in status of case—Assessing Officer went on to hold that purchase of shares from four brokers against whom there was detailed investigation by Investigation Wing of Income Tax Department in cases of entry operators/shares brokers did not take place and transactions were sham in view of documentary evidences, circumstantial evidences, human conduct and preponderance of probabilities—AO completed assessment after making addition on account of disallowance of short term capital loss, for alleged*

unexplained expenditure on commission and Rs.1,93,20,000/- on account difference in computation of long term capital gains—CIT (A) upheld disallowance of short term capital gains but deleted addition on account of long term capital gains—Held, there is not an iota of any cogent material mentioned by Assessing Officer which enabled him to have reached conclusion that this case was a fit case for conversion from limited scrutiny to complete scrutiny—If proposal of Assessing Officer and approval of Pr. Commissioner of Income Tax are examined on anvil of paragraph 3 of CBDT Instruction No.5/2016, it is very much clear that no reasonable view is formed as mandated in said CBDT Instruction No.5/2016 in an objective manner and secondly merely suspicion and inference is foundation of view of Assessing Officer—There is no direct nexus brought on record by Assessing Officer in said proposal and, therefore, it is very much apparent that proposal of converting limited scrutiny to complete scrutiny was merely aimed at making fishing enquiries—Pr. Commissioner of Income Tax has accorded approval in a mere mechanical manner which is in clear violation of CBDT Instructions No.20/2015—Co-ordinate bench of ITAT at Chandigarh in case of PayaKumari in ITA No.23/Chd/2011, vide order dated 24.02.2011, has held that even Section 292BB cannot save infirmity arising from infraction of CBDT Instructions dealing with subject of scrutiny assessments where assessment has been framed in direct conflict with guidelines issued by CBDT—Therefore, on an overall view of factual matrix as well as settled judicial position, instant conversion of case from limited scrutiny to complete scrutiny cannot be upheld as same is found to be in total violation of CBDT Instructions No.5/2016—Assessee's appeal allowed.

13. *Further the ld. AO has stated that assessee has failed to prove source of deposit of Rs 1,40,18,010/- demonetization period, which were wrongly reported by bank. The actual amount of cash deposit was Rs 1.26 Crore. To justify this deposit during demonetization and to prove the source of cash deposit, we have provided following details to AO*

1) *Monthly sales statement*
2) *VAT Returns*
3) *Audited Financial Statements*
4) *Cash deposit summary along with monthly sale & purchases details has been provided to AO.*
5) *Copies of Bank Statements were provided.*

But AO didn't consider our reply and issued his order without considering our genuine reply.

Further during the A.Y. 2017-18, the Gross turnover of assessee Business stood for Rs. 6,52,13,086/-, so it is very normal for us to deposit huge amount of cash in the bank account to make timely payment to our supplier. This deposit of Rs. 1.26 Crores was in

tune with audited books of accounts and part of our turnover which we have been deposited in bank accounts, hence the same could not be treated as unexplained.
aw.

Further the assessee filed complete details of Purchase register, Sales register, Cash Book, Bank statement, Month-wise details of purchase and sales, Copies of VAT returns etc. However the Ld. A.O. is not able to find any defect in the books of accounts. Though the A.O. has doubted the sales made during the year, he is not doubted the purchases made or stock maintained by the assessee during the year. Further the assessee also demonstrated the fluctuations in the sales during the entire period and there is no drastic increase in sales during the period of demonetization. It is further noticed that it is the month of Sept & October 2016 sales reported at 66.64 & 80.56 lacs respectively. Similarly, in the month of November & December 2016 (demonetization period), the sales is reported at 69.69 & 65.30 lacs which is not found to be drastic higher figure

Even during period of demonetization business of petrol pump was running well and assessee were receiving cash regularly from sale of fuel which was deposited into bank.

Aassessee made Proper and detailed replies to A.O. time to time to AO on following dates
Vide e-proceedings enclosed. Assessee also submitted Following attachments/Supporting were made along with above replies

- *Denomination wise deposit of cash summary*
- *Monthly sale and purchase*
- *Monthly sale and cash deposit comparison*
- *Bank statements*
- *ITR & Computation, audited accounts*
- *VAT Returns*
- *Cash Book*
- *Stock Register*
- *Confirmations*

However the ld. AO has blindly ignored these vital evidences.

Even he has not mentioned in the Assessment Order and therefore completely ignored by AO.

***Procurement of Unsecured Loan** –Our business of Petrol pump commenced in Financial Year 2016-17. Since it was very first year of operation, we were in need of finance, to carry out our business efficiently we procured Unsecured Loan. The AO while passing assessment order has suspected these loans obtained from various persons amounting to Rs 44,80,000/-. These loans are genuine in nature and well disclosed in Audit Report. Further confirmation certificate from relevant lenders were obtained and produced to*

AO. Since these loans were procured through banking mode, hence the same is in tune with provisions of Income Tax Rules and provisions.Since procurement of unsecured loan is well substantiated with adequate documents, In our reply dated 29 Nov 2019 we have produced following documents to prove the genuine procurement of Unsecured Loan-

- *Confirmation letter signed by lenders*
- *Bank statements to confirm the credit of Unsecured loans*
- *Audit Report - Point No. 31A specifies the name of Lenders and mode of receipt of Loan.*

Introduction of Capital in Business – *AO in his assessment order has also suspected Capital Contribution of Rs 30,46,460/-, For this we served our reply as on 29 Nov 2019, but the same was not considered by AO. During the year under consideration, the assesssee has started Petrol Pump in the name of Nehra Filling Stations. Before commencement of Nehra Filling Station, the assesse run business in the name of Nehra Enterprises for which shop license was obtained as on 29-07-2011. Capital introduced was out of closer receipts of Nehra Enterprises & accumulation of his income of earlier years. While starting Nehra Filling Station in the year of 2016-17 the age of proprietor was 48 years, and he was regularly filing ITR since A.Y. 2006-2007 onwards.*

14. *Hence in view of the above facts, circumstance, submission and legal position of law the assessment order may kindly be quashed and the addition may also kindly be deleted in full and oblige."*

2.4 On the other hand, the ld. DR supported the order of the ld CIT(A).

2.5 We have heard both the parties and perused the material available on record. Brief facts of the case are that the assessee is dealing in petroleum products and running a fuel station in the name and style of M/s. Nehra Filling Station which is authorized by private petroleum company in the year under consideration. It is noted that the AO while making assessment in the case of the assessee as per information available on records noted that the assessee had deposited cash of Rs.1,40,18,010/- during the demonetization period and he remained failed to prove

the source of deposits. It is noted that during the assessment proceedings the AO with a view to completing the scrutiny assessment asked for various details/ documents from the assessee for which the assessee submitted the part reply and thus failed to prove the sources of deposit, sources to introduce capital and other issues. Hence in this situation, the AO had no other alternative except to complete the case on the basis of material available on records. The AO further observed that as per provisions of Section 144(1)(b) of the Act, if the assessee fails to comply with the terms of a notice issued u/s 142(1), the AO is to gather relevant material and to make the assessment of the total income to the best of his judgement and determined the sum payable by the assessee on the basis of such assessment. It is noted that the AO provided number of opportunities to the assessee to file his reply in relation to various queries raised therein but none of these had been complied with . Hence, the AO had no other option except to complete the assessment u/s 144 of the Act. Further, the AO on perusal of the materials available on record found that the assessee made cash deposit of Rs.1,40,18,010/- during the demonetization period, taken unsecured loan of Rs.44,80,000/- and introduced the capital of Rs.30,46,460/-. Hence the AO observed that according to Notification No. 3408(E) dated 08-11-2016AO, the assessee was not eligible to make sales in old currency during the demonetization period. In spite of the notice by the AO, the assessee failed to provide any details / documents. The AO noted that in

absence of proper submission/documents, possibility of any unexplained cash credit cannot be denied and thus he made a lumpsum addition of Rs.50,00,000/- in the hands of the assessee. In first appeal, the ld. CIT(A) has confirmed the action of the AO holding that *…in the absence of any details or documentary evidence forthcoming from the assessee, I am of the considered opinion that the AO rightly made the impugned addition of Rs.50,00,000/- warranting no interference of the appellate authority. Thus the Ground No. 1 and 2 raised by the assessee on this issue are dismissed.''* Now we have gone through the material documents available before us and observed on perusal of the assessment orders and various details in the form of paper books where the following documents were submitted by the ld. AR of the assessee

1.	Copy of reply to AO	1-5A
2.	Copy of IT return with computation of total income with Audited accounts .	6-15
3.	Copy of capital A/c.	16
4.	Copy of stock summary	17-19
5.	Copy of debtors list.	20
6.	Copy of details of cash deposited during demonetization.	21-27
7.	Copy of details o unsecured loans and confirmations.	28-38
8.	Copy of Vat return.	39-43

It is also noted from the submissions of the ld. AR of the assessee furnishing the following annexures

‘’Annexre-1 containing the SCN dt.16.12.2019 digitally signed on dt. 17.12.2019 at 11.06 AM with e-proceedings note sheet.

Annexure -2 Computation sheet

Annexure 3-4 containing the Notice u/s 142(1) dt. 08.12.2019 and notice u/s 143(2) dt. 29.09.2018. ‘’

On perusal of the record it is clear that the assessee has responded the notices earlier and filed various details as above. The AO has issued the Show cause notice on dated 17.12.2019 at 11.06AM (Annexure -1, page 3) asking the assessee to file the reply on the same date i.e on dt. 17.12.2019 till 2.36 PM. The AO has given only 2.30 hours to the assessee which shows injustice to the taxpayer and it also proves that the AO has violated the Principal of natural justice . It is also noted from the records that AO has not taken into considerations various documents filed by the assessee during assessment proceedings. To this effect, we rely on the Tribunal order *in the case of* ***Sh. Ashutosh Bhargav v/s Pr. CIT, Jaipur in ITA No.20/Jp/2021 dt.06.01.2022*** *(Supra) in which it was held that “the ld. Pr.CIT has committed a gross error in not providing effective/reasonable opportunity of being heard to the assessee before passing the order. Accordingly, the revisional proceedings framed U/s 263 of the Act by the ld. Pr.CIT stands*

quashed". Further, we also rely on Judgments of Honble Delhi High Court in the case of ***Inderpal Singh Sayan v/s Assessment Unit Income Tax Department & Ors 293 Taxman 0731(DelHC) wherein the Honble High Court has held as under:-***

> *''13. Clearly, the petitioner was not heard in support of his stand. There is, therefore, if nothing else, a breach of principles of natural justice, as the AO, without dealing with the request for accommodation, proceeded to pass the impugned assessment order dated 03.03.2023.*
>
> *14. Therefore, on this singular ground, we are inclined to set aside the impugned assessment order dated 03.03.2023 and the order dated 31.03.2022 passed under Section 148A(d) of the Act. It is ordered accordingly."*

It is also noteworthy to mention from the entire conspectus of the case that the AO has also not invoked any provisions of IT Act while making the lump Sum addition of Rs.50,00,000/- for cash deposits in the bank account during the Demonetization Period, Unsecured Loan & capital introduced. Hence, in our view lump-sum addition cannot be made under these accounts. The AO must have referred the specific amount with specific details and documents which he has not provided and as to what basis lump sum addition has been made and also failed to mention that on which account and as to what amount of addition consists of. It is also noted that the AO has not stated under which provisions or section he has made the lump-sum addition either u/s 68 or 69 or 69A or trading or u/s 56 i.e. other sources.

It may be worthwhile to mention that when in the Act for every additions, the provisions or section has been provided by the legislature, otherwise there shall be no meaning of the Act. Hence the addition is wrongly made against the Act . It is also noted that when the AO has not invoked any provisions of the Act then how he can charge the tax by referring the Sec. 115BBE which is invalid , illegal and liable to be deleted in the eyes of law. The Bench further noted that the AO has nowhere rejected the books of accounts of the assessee and rather accepted that he has not found any defects in the trading accounts, sales purchase, closing stock. Hence, no addition can be made for the cash deposited in the bank account being cash sales of the assessee and the same has not been disproved by the AO while making assessment. We also noted from the records that the assessee had also filed the confirmation of unsecured loans etc. which has also not been disproved by the AO. Hence it appears from the material available on record that the AO has ignored various materials/ details, documents available on record and also failed to comply with the provisions of the Act which now does not require any correction on the part of the AO as it is an open failure on the part of the AO and for this fault no fresh inning can be given to AO Officer to correct the mistake in application of provisions and to reconsider the material available on record. The ld. D/R has also not brought before us any contrary material in his support. It is also noted that the ld. A/R has also drawn our attention of the Co-Ordinate Bench

decision in the case *ITO Ward 1(1)(3) Ahmedabad v/s M/s. Ashapura Petrochem Marketing Pvt. Ltd in ITA No. 511/Ahd/2020 dt. 18.10.2023* and on going through the same we are of the view that the same is also applicable in the case of assessee. Hence, in view of the facts, circumstances of the case and the case laws cited above, we do not concur with the findings of the lower authorities and thus the assessment order is quashed by deleting the addition made by the AO

3.0 In the result, the appeal of the assesee is partly allowed

Order pronounced in the open court on 10 /04/2024.

Sd/- Sd/-

(डा॰ मीठा लाल मीना) (संदीप गोसाई)
(Dr. Mitha Lal Meena) (Sandeep Gosain)
लेखा सदस्य / Accountant Member न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 10/04/2024

*Mishra

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

1. The Appellant- Arvind Kumar Nehra, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward-7(1) ,Jaipur
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.32/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar