

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री राठौड़ कमलेशजयन्तभाई, लेखा सदस्य एव श्रीनरेन्द्रकुमार, न्यायिकसदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकरअपील सं./ITA No.283/JP/2024
निर्धारण वर्ष/Assessment Years : 2017-18

ACIT, NCRB, Statue Circle	बनाम Vs.	Balvir Singh Tomar, B-4, Govind Marg, Adarsh Nagar, Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.:AAMPT 7282 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. G. M. Mehta, CA
राजस्व की ओर से / Revenue by: Sh. Anil Dhaka, CIT

सुनवाई की तारीख / Date of Hearing : 26/06/2024
उदघोषणा की तारीख / Date of Pronouncement: 16/07/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The captioned appeal has been preferred by the Revenue. The Revenue is feeling dissatisfied by the order of Commissioner of Income Tax (Appeals)-4, Jaipur, passed on 29/12/2023 [here in after (Id. CIT(A))].

Impugned order of the Id. CIT(A) in turn arose from the appeal filed by the assessee-respondent herein challenging order dated 31.12.2019 passed by Assessing Officer-DCIT, Central Circle-01, Jaipu, under section 143(3) of the Income Tax Act, 1961 [here in after referred as Act],

2. At the outset , the Bench noted that as per report of the Registry, this appeal was filed after a delay of 09 days. On this issue, the Id. DR submitted that though the order of the Id. CIT(A) is dated 29.12.2023 but the same was received in the office of the PCIT on 12.01.2024 and that the period of limitation should commence from 12.1.2024. . He further submitted that the Registry considered the date of the order, and not the receipt of the order in the office of PCIT, and actually there is no delay in filing of the appeal.

On the other hand, Id. AR of the assessee did not object to the abovesaid contention raised on behalf of the appellant-applicant. Based on this set of facts, the appeal is admitted and considered for disposal on merits .

3. Revenue has challenged the order of Id. CIT(A) on the following grounds: -

“1 Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(Appeal) is justified in holding that the appellant is showing substantial amount of cash in hand on a regular basis and was maintaining substantial cash in hand on the eve of demonetization by ignoring the fact that cash deposit in the comparable period i.e. November and December in the immediately preceding year is a relevant factor where assessee has not deposited a single penny and assessee has not furnished any explanation or no logical justification for this variation.

2. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) is justified in ignoring the fact that the assessee failed to prove the

genuineness of cash deposited during the demonetization period and deleting the addition made by the AO u/s 68 of the Act on account of income of appellant from undisclosed sources amounting to Rs. 3,80,28,500/-."

4. Brief facts, as emerge from the assessment record, are that the assessee is a doctor and earning income from professional consultancy fees. The assessee filed a return of income for the AY 2017-18 declaring total income at Rs. 7,84,71,260/-. The case of the assessee was taken up for "Complete Scrutiny" u/s. 143(3) of the Act based on Computer Assisted Selection for Scrutiny (CASS) and statutory notice u/s. 143(2) of the Act was issued through ITBA and served upon the assessee. Information called for vide questionnaires issued was submitted by the assessee. The Id. AO noted in the impugned assessment that the information so filed was examined by him.

The assessee is a Doctor and key person of NIMS Group.

4.1 During assessment proceedings, the Id. AO noted that the assessee had deposited cash aggregating to Rs. 3,80,28,500/- during the demonetization period i.e. between 09.11.2016 to 30.12.2016 in the form of Specified Bank Notes (SBNs). The Id. AO called for the comparative chart of the deposit so made by the assessee of the SBNs in the year under consideration and compared the same with that of the previous year for

the same period on the point of deposit of cash. The Id. AO noted from those details that the deposit of cash was on the higher side in the year under consideration. Therefore, a detailed show cause notice was issued to the assessee on 03.12.2019.

In compliance with the said cause notice, assessee filed a detailed written submission on 19.12.2019. Id. AO noted in the assessment order that the submission of the assessee was considered but the same was not acceptable due to the following reasons:

1. On perusal of the submission it is found that, the assessee has shown gross receipts of Rs. 8,01,82,200/- during the year under consideration. However, during the previous year the assessee has declared gross receipts of Rs. 3,04,80,000/-. The assessee has not furnished any justification of such spike in the gross receipts.
2. On perusal of the submission it is found that, the cash deposited during the period of demonetization is unjustified in comparison to the same period in previous year. The assessee has not deposited a single penny in the same period of previous year. Further, the assessee has not furnished any explanation for this variation.
3. The total cash deposit in the F.Y 2016-17 is also 8 times higher than the F.Y. 2015-16.
4. During the entire FY 2016-17, the assessee has deposited cash of Rs. 9,54,18,670/-, out of which Rs. 3,80,28,500/- has been deposited during demonetization only. The assessee has submitted that the source of cash deposit is cash receipts during the year. This means that during the 2 months November and December assessee has received 47% of total cash receipts, whereas during previous year's November and December the assessee has not deposited any cash in the bank account. There is no logical justification for this.
5. The assessee has submitted that he generated cash from his practice and from the cash sales of M/s All care plus pharmacy. The assessee despite repeated opportunities has not given any names, address and particulars of the patients who visited him or who made purchases from the Pharmacy. In order to maintain the records of the in-house patients and the medicine being taken by these patients, atleast basic particulars like name, address of the patient are

maintained by most pharmacies. However, in the case of the assessee no such details are available.

6. Medicine is not a seasonal business, the fact that the receipts of the assessee have increased more than 2 times during the year under consideration casts a serious doubt on the genuineness of these receipts. It is evident that there is no major change in the medicine practice of the assessee that could explain this sudden rise in his receipts.

7. It is highly unlikely that even if the receipts of the assessee from his practice and pharmacy had increased then why did the assessee not deposit high amounts of cash in earlier months.

8. In view of the above facts it is evident that assessee has fabricated whole transaction to make it look real and cash so deposited as discussed above is undisclosed income of the assessee.

9. The assessee has submitted that he has cash balance of Rs. 2,53,63,444/- as on 31.03.2016, however the assessee has and furnish any justification for maintaining such huge cash balance.

10. The submission of the assessee that he has received medical practice fee in cash and declared in the return of income as taxable income of Rs. 7,84,71,260/- is not acceptable. The assessee has deposited his unaccounted income in the bank during the course of demonetization. The assessee was aware about the taxation of black money under operation clean money scheme. Therefore, the assessee has wisely declared the higher cash receipts and paid tax @ 30% to avoid the higher tax rates and penal provisions.

11. The assessee has not furnished any justification for increase of gross receipts by 2.75 times. This clearly show that the assessee has declared bogus cash receipts.

12. During the course of search in NIMS group, evidence had emerged that the entire group was engaged in generating out of books cash from both hospital and medical college. Thus, the assessee had to deposit his unaccounted cash in bank during demonetization and he is now attempting to disguise the same as cash generated from medicine practice.

13. In view of the above facts it is evident that assessee has fabricated whole transaction to make it look real and cash so deposited as discussed above is undisclosed income of the assessee.

Based on the above, Id. AO noted that the cash deposited by the assessee was nothing, but the undisclosed income of the assessee which

was shown under the garb of cash receipts from the medical consultancy. Therefore, the cash deposited by the assessee in SBNs for an amount of Rs. 3,80,28,500/- was added in the total income of the assessee under section 68 of the Act r.w.s. 115BBE of the Act.

5. Aggrieved by the order of the assessment, assessee preferred an appeal before Id. CIT(A). Ld. CIT(A) considered the contention and the evidence produced before him, and observed that the income which was already declared and incorporated by the assessee was deposited in the bank account and therefore, CIT(A) deleted the addition so made. Relevant finding of the Id. CIT(A) is reiterated and same reads as under: :

“Decision

From the analysis of the relevant facts brought on record by the parties it can be seen that the appellant is a doctor and he is also having a retail shop selling the medicines in his own proprietorship name and the appellant is deriving income in cash from these two sources of income. From the details declared in the income tax returns the income of the appellant both from sale of medicines and from the practice income are increasing from year to year. The appellant has maintained the books of accounts and the same are audited and the same are not rejected by the Id. AO.

In the case of ACIT v. Chandra Surana [2023] 104 ITR (Trib) 503 (ITAT Jai]] it is held by the Hon'ble ITAT as under:-

"The Assessing Officer had not rejected the books of account of the assessee as no material was available with him so to do. Section 68 of the Act is not applicable to sale transactions recorded in the books of account as such sales would already be a part of the income credited to the profit and loss account. The Assessing Officer was not justified in making the addition. The addition was rightly deleted by the Commissioner (Appeals)."

The appellant has also submitted the judgements that (1) ACIT Vs Gem Stones (2001) XXVI TAX WORLD 511(IP): No addition can be made without rejecting the books of accounts. (ii) ACIT Vs. Pr. Maheshinder Singh (2015) 169 TTT(Chand) (UO)36 when there is no allegation of specific defects in book of accounts, nor the AO had pointed out such defect in maintenance of books of account, without bringing any material on record, he was not justified in making additions which were rightly deleted by CIT(A).

The personal and identity details of the patients attended in the medical practice and of the customers at the pharmacy shop are stated to be not required to be maintained under any law and adverse inference cannot be drawn for not furnishing the information which is not required to be maintained as per any law or as per established precedence and custom. Appellant has also explained the nature of primary records maintained with respect to the sale of Medicines and attending the patients in practice of the medical profession. In this regard the submission of the appellant that during the search and seizure action the records maintained by the appellant in this regard were accepted and no adverse inference was drawn merits consideration. Further, the increase on both accounts of incomes is declared even in the periods subsequent to the demonetization in the same year and in the subsequent years and resultantly larger amount of cash is deposited in bank in the subsequent years. There is no evidence on the record to reject the increase in turnover and increase in income of the appellant over the years. The appellant has also filed the VAT returns with respect to the sale of medicines.

As held in the case of The Income Tax Officer, Ward-1 & TPS, Shivamogga VS M/S. Manasa Medicals, in ITA No.552/Bang/2022, there is no legal requirement that the Doctors prescriptions and identity of the persons purchasing medicines needs to be kept in record to substantiate the cash sales during demonetisation period. Hon'ble ITAT Bangalore has observed as under:-

“13. From the above it is clear that the AO is not questioning the source of the cash deposit since he has recorded a finding that cash sales during the demonetisation period is brought to tax u/s. 68 which makes it clear that it is admitted fact that sales is the source for cash deposits. The revenue is contending that there is a requirement as per the Circular that the Doctors prescriptions and identity of the persons purchasing medicines needs to be kept in record to substantiate the cash sales during demonetisation period. However, from the plain reading of the said Circular, there is no specific mention as contended by the department. Further, the AO did not reject the books of accounts of the assessee and has not brought anything contrary on record to show that cash sales is not the source for the cash deposited during demonetisation period. We are therefore of the opinion that there is no case here for making the addition as unexplained u/s.68. In view of this discussion, we see no reason to interfere with the order of the CIT(A).

14. In the result, the appeal of the revenue is dismissed".

Further, with respect to the cash deposit, the appellant was having opening cash balance of Rs.2,53,63,444/- which was duly appearing in audited balance sheet as on 31.03.2016 which was submitted online before demonetization. The same thus stood covered by the turnover and income of the immediately preceding year.

In the case of the Assistant Commissioner of Income-tax v. Baldev Raj Charla [2009] 121 TTJ 366 (Delhi) [ITAT], the Hon'ble ITAT has inter-alia observed as under

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

In the case of Gordhan vs. ITO, Ward 1(2), Gurgaon (ITA No. 811/Del/2015 AY: 2011 12), Hon'ble DELHI BENCH 'SMC-2, NEW DELHI ITAT held as under

"11. Applying the proposition as laid down by the Tribunal to the facts of the case, I have to hold that no addition can be made u/s. 68 of the LT. Act on the sole reason that there is a time gap of 5 months between the date of withdrawal from bank account of the cash in question and the redeposit of the same in the Bank Account, unless the AO demonstrates that the amount in question has been used by the assessee for any other purpose. In my view the addition is made on inferences and presumptions, which is bad in law. Hence, the addition in question is deleted and the Appeal of the assessee is allowed."

Further the turnover of the appellant is increasing regularly and the appellant is regularly depositing cash in bank account. Appellant is showing high cash balance in hand even in subsequent years. The cash balance and business income are reflected in the ITRs which are already filed and available with AO. The cash deposited in bank account before and after the period of demonetization has not been doubted in the assessment order. The main contention in the assessment order in this regard is that cash deposited during the period of demonetization is disproportionately high with respect to the cash deposited in earlier period/similar period of last year. The appellant deposited

demonetized currency notes in the period (10.11.2016 to 31.12.2016) amounting to Rs.3,80,28,500 which is 47% of the total cash deposited during the year.

In this regard I am inclined to accept the argument of the appellant that he is showing substantial amount of cash in hand on a regular basis even in subsequent periods and he was having large amount as cash in hand as opening balance and his cash turnover is regularly increasing and considering the facts and circumstances he was maintaining substantial cash in hand on the eve of demonetization which he had to deposit in the bank account after the announcement of demonetization. The cash deposit in post demonetization period is also substantial and reflects the consistency of depositing. The circumstantial factor regarding the comparison of cash deposit during the demonetization period in the year under appeal vis-a-vis the cash deposit in the comparable period in the immediately preceding year is a relevant factor however the same in itself cannot be the sole basis for making the addition and for disbelieving and disregarding all other facts and documents submitted by the appellant. The appellant was mandatorily required to deposit its entire cash in hand to the extent it comprised of old demonetized 500 & 1000 currency notes into the banks.

The addition has been done in the assessment order considering the comparative factor. No evidences from third party enquiries or verification like under section 1334 are on record in the assessment to rebut the submissions of the appellant. At the same time the appellant has submitted circumstantial as well as documentary facts in support of his grounds of appeal which have been discussed in paragraphs above. There are a number of judgements which say that it is trite law that suspicion howsoever strong cannot take place of a legal proof. The Hon'ble Supreme Court in the case of Sreelekha Banerjee vs. CIT (1963) 49 ITR 112 (SC) has held that "The Department cannot by merely rejecting unreasonably a good explanation, convert good proof into no proof".

Further the income which is already included in the business income has been added. u/s 68 as unexplained cash deposit. The Hon'ble Supreme Court in the case of CIT vs Devi Prasad Vishwnath Prasad (1969) 72 ITR 194 (SC) held that "It is for the assessee to prove that even if the cash credit represents income, it is income from a source, which has already been taxed". The assessee has already offered the sales & practice income for taxation which has been accepted in assessment order and the same income cannot be taxed again when deposited in bank. Further, the books of accounts are audited and no fault was found in the same and the same were not rejected in the assessment order.

Considering the totalities of the facts and circumstances, as per material on record, it is found that explanations of the appellant cannot be rejected and are liable to be accepted. Accordingly, the addition made by the Id. AO is hereby deleted."

6. In support of the grounds so raised by the Revenue, Id. DR vehemently submitted that the assessee deposited a huge sum of money i.e. an amount of Rs. 3,80,28,500/- which was in the form of the SBNs. The case was selected for complete scrutiny and based on comparison of the deposit of cash by the assessee with that of the current year being higher the same was correctly considered as unexplained cash credit as per provisions of section 68 of the Act.

Ld. DR further submitted that the Assessing Officer asked the assessee as to why higher cash balance was maintained as on 31.03.2016 and that for an amount of Rs. 2,53,63,444/- the assessee had not given any justified reason.

The Id. AO noted that the merely because the assessee had declared higher income, same did not justify the cash deposited by the assessee.

Id. CIT(A) considered the explanation of the assessee that from next year onward the receipts of the assessee were also on higher side and that this fact could not be considered to justify the income of the year under consideration. The Id. DR submitted that the Id. AO has given as much as 13 reasons as to why the addition should not be made. Same have been relied on by Id. DR. and accordingly he has supported the order of Id. AO.

7. Per contra, Id. AR of the assessee has supported the findings recorded in the order of the Id. CIT(A). Id. AR of the assessee also filed a detailed written submission to support the finding recorded in the order of the Id. CIT(A). Said written submission reads as under :

Brief facts of case:

Beside practice income as medical Doctor, assessee was running proprietorship business of retail sale of medicines under the name and style of M/s. All Care Plus Pharmacy. B/f. cash balance from immediately preceding year (31.03.2016) duly appearing in Return of income for the A.Y. 2016-17 and as per audited statements of a/c. was Rs.2,53,63,444/- which also formed substantial part of demonetized currency notes deposited in bank along with practice income and amount transferred from assessee's proprietorship. The private practice of the assessee has shown increasing trend in succeeding years. Books of account for assessee's own practice income and of proprietorship business are audited under sec. 44AB of Income tax Act and were accepted by Id. AO and no provisions of sec. 145(3) of Act were applied.

GROUND OF APPEAL (Department):

Ground No. (1) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(Appeal) is justified in holding that the appellant is showing substantial amount of cash in hand on a regular basis and was maintaining substantial cash in hand on the eve of demonetization by ignoring the fact that cash deposit in the comparable period i.e. November and December in the immediately preceding year is a relevant factor where assessee had not deposited a single penny and assessee had not furnished any explanation or no logical justification for this variation:

In respect of above ground of appeal taken by the Department, we submit para-wise response as under:

(1) Deposit of cash in bank not in proportion to preceding year:

There is no requirement either under the Income tax Act or under any other laws in India prescribing deposit of cash in bank a/c. in same proportion as was deposited in corresponding periods each year.

(2) Limit of keeping cash in hand:

No law prescribes any limit for the cash which could be kept in hand. The cash in hand declared and accepted by the Id. AO in immediately preceding as well as in

succeeding year was as per following details:

S. No.	Year ended on	Asstt. year	Cash in hand	P.B. Page No.
1.	31 st March 2016	A.Y. 2016-17	2,53,63,444	6 to 8
2.	31 st March 2017	A.Y. 2017-18	97,58,099#	9 to 13
3.	31 st March 2018	A.Y. 2018-19	4,59,30,873*	14 to 18

(# Rs.1,12,84,447/- appearing in I. Tax Return is inclusive of Rs.15,26,348/- with assessee's proprietorship.,* Similarly, cash of Rs.4,60,32,610/- in I.Tax Return is inclusive of cash with assessee's proprietorship)

(3) Deposit of demonetized currency in bank:

It was only when demonetization of currency notes of Rs.1,000/- and Rs.500/- was declared, required assessee to deposit it in bank account otherwise assessee was maintaining substantial cash in hand as per above table.

(4) Cash in hand verses deposit in bank:

Cash in hand with the assessee was Rs.2.54 crore on 01.04.2016 when there was no demonetization. The cash in hand was reduced to Rs.97.58 lakh on 31.03.2017 after depositing Rs.3.80 crore in form of demonetized notes in his bank a/c. whereas it again jumped to Rs.4.59 crore in subsequent year as the same could not be deposited in bank account.

(5) Acceptance of books of a/c. by Id. AO:

Ld. AO required cash book (P.B. page No.19 to 36) on the basis of which regular books of A/c were prepared. It was examined by her with help of supporting material but no mistake or defect was noticed or pointed out and for this very reason provisions of sec. 145(3) of Act were not applied in this case.

(6) Total deposit of cash in bank during year:

Total cash deposited in F.Y. 2016-17 was Rs.9,54,18,670/- (including Rs.3.90 crore in demonetized period), the sources of which are appearing in regular/audited books of account, examined by Id. AO.

(7) Acceptance of all credits in cash book but addition was made of debits:

While accepting the credit entries in cash book (professional and other receipts), the debits in name of bank were treated by Id. AO as unexplained under sec. 68 of I.T. Act whereas only unexplained credits could be taxed under sec. 68 of IT Act.

For the above reasons, the ground No. (1) raised by the Department is without any basis and support of law and therefore, it is liable to be dismissed.

Ground No. (2) Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) is justified in ignoring the fact that the assessee failed to prove the genuineness of cash deposited during the demonetization period and deleting the addition made by the AO u/s. 68 of the Act on account of income of the appellant from undisclosed sources amounting to Rs.3,80,28,500/-

Ld. CIT(A) had examined the cash book, audited statements of account and other documents like amount transferred from proprietorship, bank withdrawal, also b/f. cash balance of Rs. 2,53,63,444/- appearing as B/f. cash in cashbook. After examining them, he found the deposits of total demonetized currency of Rs.3,80,28,500/- as genuinely explained out of explained sources. He has also found the so called thirteen allegations made by the Id. AO {from page 3 bottom to page 5 of order u/s. 143(3)} as without any basis and deleted the additions made by Id.AO. This ground of appeal is based on these allegations for which actual position is as under :

1. Sudden increase in practice income from 3.05 cr. to 8.02 crore:

There was no sudden increase in income of the assessee from practice as a medical doctor. Practice income in subsequent years when there was no demonetization, was much higher as under:

S.No.	Asstt. year	Gross practice	Taxable income	P.B. Page No.
1	A.Y. 2016-17	3,04,80,000	2,82,19,770	37 to 42
2.	A.Y. 2017-18	8,01,82,200	7,84,71.260	43 to 47
3.	A.Y. 2018-19	14,07,45,000	14,92,28,810	48 to 51
4	A.Y. 2019-20	18,27,97,500	19,36,13,540	52 to 55
5.	A.Y. 2020-21	25,53,92,500	24,24,81,440	56 to 59

Taxable part of practice income was already found to be accepted by Id. AO which find place at concluding part of order u/s. 143(3) as "Income declared in Return Rs.7,84,71,260" .

2.Cash deposited in same period of preceding year: No legal requirement exist either in Income tax Act or other law in India that cash deposits in bank should be in same proportion which was deposited in preceding year. Otherwise also depositing cash in bank was work of employees of Assessee. Following cash amount was kept and disclosed by the assessee in his Return of income:

S. No.	Year ended on	Asstt. year	Cash in hand	P.B. Page No.
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1.	31 st March 2016	A.Y. 2016-17	2,53,63,444	6 to 8
2.	31 st March 2017	A.Y. 2017-18	97,58,099*	9 to 13
3.	31 st March 2018	A.Y. 2018-19	4,59,30,873	14 to 18

(*reduced because deposit of demonetized currency notes in bank)

However, in case of assessee's wife (Dr. Mrs. Shobha Tomar, appeal No. ITA 373/JPR/2024 pending hearing before this Hon'ble ITAT)had deposited substantial cash in bank during corresponding period of preceding year but in her assessment u/s. 143(3) for AY 2017-18, total deposit of demonetized currency in her bank a/c. was added u/s. 68 therefore the allegation has not legal basis.

3. Cash deposited in bank higher by 8 times than in AY 2016-17: As submitted in para (2) above, there is no legal requirement that deposit of cash in bank should be in same proportion to that of preceding year. Cash in hand with the assessee was higher in preceding and in succeeding years but when demonetized currency notes were deposited in bank, it was lower in A.Y. 2017-18.

4. Deposit of cash in bank in Nov. & Dec. 2016: After declaration of demonetization, there was no other alternative left with the assessee except to deposit the demonetized currency notes in bank account. Otherwise day to day cash book submitted during hearing, declaring source of deposit in bank was accepted by Id. AO without pointing out any defect or deficiency.

5. Names and address of patients on professional receipts and on sale memo to retail medicine not submitted: Names of patients are very much appearing in computer generated patient register whereas for addresses of patients, like other medical practitioners, no such detail is required nor maintained. After more than 2 years, even if assessee wanted to know the addressed of patients, it was not possible to collect. Same is the position in case of retail sale of medicines in assessee's proprietorship –M/s. All Care Plus Pharmacy. Retail sellers of medicines mention name of patient, name of Doctor prescribing medicine, name of medicine, its rate and expiry date. Neither Medical Counsel of India (MCI)and any other law require the mentioning address of buyers in invoice of retail medicine sale. The sale is cross verifiable from VAT Returns.

6. Sale of medicine not seasonal – receipts increased: Retail sale in assessee's proprietorship did not show any increase in turnover in any particular period but were fully matched with VAT returns. Only on instructions to employees, the demonetized currency notes, already lying were transferred to assessee for deposit in bank.

7. Reason for not depositing cash in bank in earlier months: Rs.25,00,000/- was deposited in bank on 02.11.2016 and again Rs.25,00,000/- on 07.11.2016. Otherwise also when there was no requirement in law prescribing any limit to

keep cash in hand, Id. AO was not justified, without mentioning infringement of law for making such unjustified addition. More so when Id. AO herself had admitted that during the relevant year, assessee had deposited Rs.9,54,18,670/- in his bank account (para 4 at page 4 of Asstt order).

8. Fabrication total transaction to make it a look of real transaction : The allegations so made by Id. AO is without any legal legs to stand with. The very first allegation of intentionally showing higher practice income of Rs.8.01 crore in A.Y. 2017-18 to deposit demonetized currency is incorrect in view of increasing trend in practice income in subsequent years (it was Rs.25.54 crore in A.Y. 2020-21). After depositing demonetized currency in bank, the cash in hand on 31.03.2017 was lower at Rs.97.98 lakh whereas it was higher at Rs.4.59 crore as on 31.03.2018.

9. For cash balance of Rs.2,53,63,544/- as on 31.03.2016, no justification submitted: Cash balance of Rs.2.54 crore was already disclosed in Return for A.Y. 2016-17 (P.B. 6 to 8) but there was no objection from the Deptt. as it was not in violation of any law. Only on depositing demonetized currency notes (10th Nov. 2016 to 31st Dec. 2016), Id. AO required justification again no violation of any law was pointed out as the same was deposited in bank out of explained sources.

10. Declared taxable income: While accepting the declared taxable income, only for making addition of total deposit of currency in demonetized period, Id. AO has alleged that taxable income of Rs.7,84,71,260/- is not acceptable though at the concluding part of order u/s. 143(3) of Act, returned income was accepted as "Income declared in Return of Income",

11. Justification for increase in gross receipts by 2.75 times: Professional income received by assessee was declared in return of income on which he has paid income tax and the same was accepted by Id. AO. Professional receipts were still higher as per figures given at page (3) at para (1 hereinabove).

12. Unaccounted money unearthed during search period: It is true that search and seizure action in this case took place on 30th Oct. 2014. However, without examining the assessment records of the assessee for block period, the Id. AO had made such allegation. In a form of table, the returned income and finally assessed income of the assessee in all the individual period of block years was:

Asstt. year	Returned income	Additions. If any	Final assessed income
2009-10	2,25,000	Nil	2,25,000
2010-11	13,27,560	Nil	13,27,560
2011-12	7,38,590	Nil	7,38,590
2012-13	9,88,780	Nil	9,88,780

2013-14	35,98,210	Nil	35,98,210
2014-15	48,96,420	Nil	48.96.420
2015-16	1,11,05,780	2,45,422*	1,13,51,202

(*Addition of Rs.2,45,422/- sustained by Hon'ble ITAT which was in proportion to 1/5th of value of excess jewellery found and valued together)

13. Fabrication of whole transaction to give it look as real transaction: From para (1) to (12), it is proved beyond doubt that the charges so made by the Id. AO were only to justify her unjustified action for the addition of Rs.3,80,28,500/-, for the deposit of demonetized currency notes in assessee's bank account. Otherwise, the assessee, who is paying high amount of Income tax cannot be considered that he is fabricating his affairs to look them as real.

Assessee gets support from the following judicial pronouncements:

- (1) Anil Verma Vs. Dy. CIT (2019) 201 TTJ (Chand.'A') 608 (P.B. page No. 60 to 73)
- (2) Pr. CIT Vs. Agson Global (P) Ltd. (2022) 325 CTR (Del)1 (P.B.page No. 74 to 91)
- (3) Asstt. CIT Vs. Chandra Surana (2023) 221 TTJ (JP 'A') 515 (P.B. page No.92 to 106)
- (4) Dhanpat Rai Khatri Vs. ITO (2023) 222 TTJ (Jd) 382 (P.B. No. page 107 to 115)
- (5) Mewar hospital (P) Ltd. Vs. ACIT (2024) 227 TTJ (Jd) 145 (P.B. page No.116 to 180)

From facts discussed hereinabove having support of different judicial pronouncements, the second ground of appeal taken by the department is based on misinterpretation of facts of the case and own finding of Id. AO which is liable to be dismissed."

8. To support the contention so raised in the written submission reliance was also placed on the following evidence / records / decisions:

S.No.	Particulars/Short description	P.B.
1.	Written synopsis in support of grounds of appeal	1 to 5
2.	Proof of cash in hand declared in I.Tax Returns at different year	6 to 18
3.	Cashbook of Assessee for the period from 01.04.2016 to	19 to 36
4.	Taxable income and professional income of Assessee for A.Y.	37 to 42
5.	Taxable income and professional income of Assessee for A.Y.	43 to 47
6.	Taxable income and professional income of Assessee for A.Y.	48 to 51

7.	Taxable income and professional income of Assessee for A.Y.	52 to 55
8.	Taxable income and professional income of Assessee for A.Y.	56 to 59
9.	Decision - Anil Verma Vs. Dy. CIT (2019) 201 TTJ (Chad) 608	60 to 73
10.	Decision - Pr. CIT Vs. Agson Global (P) Ltd. (2022) 325 CTR (Del) 1	74 to 91
11.	Decision - ACIT Vs. Chandra Surana (2023) 221 TTJ (Jp) 515	92 to 106
12.	Decision - Dhanpat Rai Khatri Vs. ITO (2023) 222 TTJ (Jd) 382	107 to
13.	Decision- Mewar Hospital (P) Ltd. Vs. ACIT (2024) 227 TTJ (Jd)	116 to
14.	Monthly cash in hand with the Assessee (year ended on	181
15.	Monthly bank deposits	182
16.	Monthly practice income of the Assessee	183
17.	Decision- ITO Vs Sahana Jeweller Exp. P.Ld. (2024) 228 TTJ (Che)	184 to
18.	Decision-ITO Vs. Manasa Medicals, (ITA No. 552/Bang/ 2022)	207 to

9. Id. AR for the assessee submitted that the assessee is a doctor and also runs a pharmacy; that the assessee is a regular tax payers and his income shows higher trend year to year; that the income which is duly recorded in the books of accounts is deposited into the bank account; that the books of accounts are duly audited, but Id. AO without appreciation of that fact, has made the addition and that too of the income which stands already recorded in the books of account. As further contended, Id. AO has not found any defects in the books of account produced and also that without rejecting those books of accounts the addition made u/s. 68 is bad in law as well as on facts of the case.

As regards receipt of the pharmacy business, the assessee submitted record pertaining to deposit of VAT-value added tax in order to justify the turnover of that business. Id. AR for the assessee strongly objected to the

observations of Id. AO that the cash deposited in the previous year for the same period was lower and that of the current year higher, and contended that this observation cannot be compared in all cases and that too without appreciation of the fact. Further,. It has been contended that law does not permit the Id. AO to make the addition merely because the cash deposited in the year is more as compared to previous year. He further argued that the books of accounts and records produced by the assessee were accepted without finding any faults and therefore, the separate addition of cash deposits u/s. 68 amounts to not only the double addition but also incorrect as the receipts recorded in the books of account, as arising out of the disclosed sources, cannot be added again. The 13 allegations / points of the Id. AO have been discussed and explained before the Id. CIT(A) who has appreciated the submission of the assessee and has allowed the appeal of the assessee.

As further submitted, Id. CIT(A) appreciated the income shown as deposit of cash and that there is no law that where cash deposit is higher than 8 times than that of the last year, same can be formed basis of an addition. Id. AR of the assessee submitted that the assessee submitted all the details related to the income and when that income is added there cannot be a separate addition as regards the same income which is

received and deposited into the bank account of the assessee. To drive home the contention so raised, the Id. AR of the assessee relied upon the judgments as referred to in the written submission and the paper book filed. Based on these arguments, the Id. AR of the assessee supported the order passed by the Id. CIT(A).

10. We have heard the rival contentions and perused the material placed on record. Ground no. 1 raised by the revenue is that the assessee was is showing substantial amount of cash in hand on a regular basis and maintaining substantial cash in hand on the eve of demonetization by ignoring the fact that cash deposit in the comparable period i.e. November and December in the immediately preceding year is a relevant factor where assessee has not deposited a single penny and assessee has not furnished any explanation or no logical justification for this variation.

Ground no. 2 raised by the revenue is that the assessee failed to prove the genuineness of cash deposited during the demonetization and thus, the Id. CIT(A) erred in deleting the addition made by the AO u/s 68 of the Act as undisclosed sources amounting to Rs. 3,80,28,500/-.

Brief facts as emerge from the assessment record, are that the assessee is practicing as a doctor and earns income from professional

consultancy fees and retail medicines under the name and styles as M/s. All care Plus Pharmacy. He is key person of NIMS Group. Return of income declaring a total income at Rs. 7,84,71,260/- was filed by the assessee which was selected for “**Complete Scrutiny**” based on computer Assisted Selection for scrutiny (CASS). In the assessment proceeding the Id. AO noted that cash aggregating to Rs. 3,80,28,500/- was deposited by the assessee during the demonetization period i.e. between 09.11.2016 to 30.12.2016 in the form of specified bank notes (SBNs). The Id. AO called for the comparative chart of the deposit so made by the assessee of the SBNs in the year under consideration for comparison with that of the previous year for the same period deposit of cash. He noted that the deposit of cash by the assessee is higher for the year under consideration than that of the previous year. Therefore, a detailed show cause notice was issued to the assessee on 03.12.2019 contending that the assessee contended before the investigation wing that the source of cash was the fees received from patients, but same have not been supported by the details of the patient assessee was directed to substantiate the cash receipt. The business of pharmacy also records the cash sales, no details of the same were filed. The Id. AO also noted that the deposit of cash in the month of November being highest, the assessee was issued show

cause notice to explain as to why the addition of Rs. 3,80,28,500/- should not be made as regards the unexplained cash deposits during the year. In compliance with the said cause notice, assessee filed a detailed written submission on 19.12.2019. The Id. AO noted that the submission of the assessee was considered but the same was not acceptable because the the assessee had shown gross receipts of Rs. 8,01,82,200/- during the year under consideration. However, during the previous year the assessee had declared gross receipts of Rs. 3,04,80,000/-. The sudden spike in the gross receipts had not been explained and same was also unjustified in comparison to the same period in previous year. The assessee did not deposit a single penny in the same period of previous year. Further, the assessee did not furnish any explanation for the sudden spike in the receipts and the cash deposit in the F.Y 2016-17 was also 8 times higher than the F.Y. 2015-16. The total cash of Rs. 9,54,18,670/- was deposited in year under consideration, out of which Rs. 3,80,28,500/- was been deposited during demonetization. The assessee in the months November and December received 47% of total cash receipts and in the previous November and December, the assessee was found to have not deposited any cash in the bank account. The Id. AO also noted that the records of the in-house patients and the medicine being taken by these patients, at least

basic particulars like name, address of the patient are maintained by most pharmacies. However, in the case of the assessee, no such details were available. The AO observed that the nature of business or profession is not a seasonal business and increase in cash casts a serious doubt on the genuineness of these receipts, when sudden rise in his receipts was not explained and if that was so it remained unexplained as to what were the reasons for holding such cash in hand and why did the assessee not deposit high amounts of cash in earlier months. So, AO observed that all these were the reasons suggesting that the assessee fabricated the transactions to make it look real. The reasons for holding of the cash as on 31.03.2016 i.e. an amount of Rs. 2,53,63,444/- was not justified. The assessee was aware of the taxation of black money under operation clean money scheme and that is why, he wisely declared the higher cash receipts and paid tax @ 30% to avoid the higher tax rates and penal provisions, and that income shown at 2.75 times higher was not justified and thus amounted to bogus cash receipts.

Search was carried out in the NIMS group, and evidence emerged that the entire group was engaged in generating out of books cash from both hospital and medical college. Thus, the assessee had to deposit his unaccounted cash in the bank during demonetization and he has been

attempting to disguise the same as cash generated from medicine practice. These reasons substantiate that the cash deposited by the assessee is nothing but the undisclosed income of the assessee which was shown under the garb of cash receipts from the medical consultancy. Therefore, the cash deposited by the assessee in SBNs for an amount of Rs. 3,80,28,500/- was added in the total income of the assessee under section 68 of the Act r.w.s. 115BBE of the Act.

11. The assessee challenged the above said findings of the Id. AO before the Id. CIT(A), who after having considered the arguments and submission of the assessee, directed to delete the addition of Rs. 3,80,28,500/- made under section 68 of the Act r.w.s. 115BBE of the Act. While dealing with the appeal and upon analysis of the relevant facts brought on record, the Id. CIT(A) considered the source of income earned from the practice as well as of sales of medicines in his own proprietorship which amounts were received in cash. These two sources of income were found duly recorded in the regular books of accounts maintained and produced by the assessee. The Id. AO did not point any defect in those set of records produced by the assessee. The Id. AO did not dispute the

opening cash balance available and declared by the assessee in the ITR filed by him. The books of accounts so maintained and produced were also audited by an independent Chartered Accountant. The said books found without any fault therein, were not rejected by Id. AO. If the books of accounts maintained were not rejected, the subject addition of the same income could not be again made . To drive home said point, the Id. CIT(A) relied upon the decision of the Jaipur bench of ITAT in the case of ACIT v. Chandra Surana [2023] [104 ITR (Trib) 503 (ITAT Jaipur)]. Based on the judicial precedent cited before him, Id. CIT(A) also accepted the fact that addition cannot be made without rejecting the books of accounts and when there is no allegation of specific defects in maintenance of books of account, without bringing any material on record, the Id. AO was not justified in making additions. Based on the evidence placed on record, the Id. CIT(A) noted that the personal and identity details of the patients who attended the medical practitioner and of the customers at the pharmacy shop are not required to be maintained under any law. Thus, adverse inference cannot be drawn for not furnishing the information which is not required to be maintained as per any law or as per established precedence and custom.

The assessee explained from the primary records maintained with respect to the sale of Medicines and the patients who attended in practice of the medical profession, which record was sufficient to accept the income disclosed and reflected in the books of accounts of the assessee.

There was a search in the NIMS group. During the search and seizure action, the records maintained by the appellant in this regard were accepted and no adverse inference was drawn against such records. The Id. CIT(A) also noted that the increase on both accounts of incomes was declared even in the period after the demonetization in the same year and in the subsequent years and resultantly larger amount of cash was deposited in bank in the subsequent years too.

There is no evidence on the record to reject the increase in turnover and increase in income of the appellant over the years. The appellant has also filed VAT returns with respect to the sale of medicines in cash. The Id. CIT(A) while so holding relied on the decision of The Income Tax Officer, Ward-1 & TPS, Shivamogga VS M/S. Manasa Medicals, in ITA No.552/Bang/2022, that there is no legal requirement that the Doctors prescriptions and identity of the persons purchasing medicines need to be kept in record to substantiate the cash sales during demonetization period.

The Id. CIT(A) also considered the fact that the assessee was having the opening cash balance of Rs. Rs.2,53,63,444/- and same was disclosed by the assessee while filling the last year ITR, which was duly appearing in audited balance sheet as on 31.03.2016 and the same also disclosed. Before demonetization even that much cash was available with the assessee. The income offered by the assessee in the subsequent year shows increasing trend and assessee has been regularly depositing cash in bank account. The assessee also maintained the high cash balance in subsequent years also. The cash balance and business income are reflected in the ITRs which were filed and were available with AO to justify the hike of cash and income. The cash deposited in bank account before and after the period of demonetization has not been doubted in the assessment order. Said receipts were reflected in the books and same having already been considered the separate addition without rejecting that book results could not be made against the assessee.

The main contention in the assessment order in this regard was that cash deposited during the period of demonetization was disproportionately high with respect to the cash deposited in earlier period/similar period of last year. The appellant deposited demonetized currency notes in the period (10.11.2016 to 31.12.2016) amounting to Rs.3,80,28,500 which is

47% of the total cash deposited during the year. The Id. CIT(A) has accepted that perspective, as the assessee is showing substantial amount of cash in hand on a regular basis even in subsequent periods and he was having large amount as cash in hand as opening balance and his cash turnover was regularly increasing. Thus, there no doubt of the assessee having substantial cash in hand on the eve of demonetization which he had to deposit in the bank account after the announcement of demonetization.

The cash deposit in post demonetization period is also substantial and reflects consistency in depositing the cash out of the income received by the assessee and the same was accepted without any doubt. The circumstantial factor regarding the comparison of cash deposit during the demonetization period in the year under appeal vis-a-vis the cash deposit in the comparable period in the immediately preceding year is a relevant factor. However, same cannot be the sole basis for making the addition. The other circumstantial evidence is also to be seen. In this case when the demonetization was announced, the assessee had no option but to carry that cash and deposit the same into the bank account to the extent it comprised of old demonetized 500 & 1000 currency notes. The only contention raised to make the addition was considering the comparative factor with that of the previous year with any adverse

evidence collected by the Id. AO from third party enquiries or verification like as under section 133(6) are not placed on record in the assessment proceeding to rebut the submissions of the assessee.

As is clear from the records produced and verified by the Id. CIT(A) he noted that the assessee submitted circumstantial as well as documentary evidence in support of the receipts shown. As held in number of cases that suspicion howsoever strong cannot take place of a legal proof. Hon'ble Supreme Court in the case of Sreelekha Banerjee vs. CIT (1963) 49 ITR 112 (SC) has held that the Department cannot by merely rejecting unreasonably a good explanation, convert good proof into no proof". The Id. CIT(A) relying on apex court decision in the case of CIT vs Devi Prasad Vishwnath Prasad (1969) 72 ITR 194 (SC) noted that "It is for the assessee to prove that even if the cash credit represents income, it is income from a source, which has already been taxed".

It is undisputed that the assessee has already offered the sales & practice income for taxation which has been accepted in assessment order. The same was part and parcel of the income already offered and as such same income again cannot be taxed u/s. 68 of the Act, because the same consists of the SBNs deposited in bank account. Further, the books of

accounts are audited, and no fault or defects were pointed out to reject the same.

Thus, based on the discussion and reasons recorded herein above, we see no infirmity in the order of the Id. CIT(A) . The appeal filed by the Revenue raising ground nos. 1 & 2 therefore deserves to be dismissed.

Resultantly, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 16/07/2024.

Sd/-
(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

Sd/-
(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 16 /07/2024

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- ACIT, NCRB, Statue Circle
2. प्रत्यर्थी / The Respondent- Balvir Singh Tomar, Adarsh Nagar, Jaipur
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 283/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar