

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

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष  
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 867/JP/2024  
निर्धारण वर्ष / Assessment Year : 2017-18

M/s. G.N. Buildev Private Ltd 127, Keshav Vihar Gopalpura Bypass, Jaipur	बनाम Vs.	The ITO Ward 6(2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACO 8408 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Tanuj Agarwal Adv.  
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 23/07/2024  
उदघोषणा की तारीख / Date of Pronouncement: 31/07/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 07-11-2024, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2017-18 raising following grounds of appeal.

“That on the facts and circumstances of the case and in law the ld.CIT(A) grossly erred in sustaining an addition of Rs.25,66,068/- by treating the cash deposits in bank account during demonetization period as unexplained and further erred in upholding rejection of books of account.

2.1 During the course of hearing, the Bench noticed that there is delay of 158 days in filing the appeal for which the assessee has filed an application for condonation of delay on the ground that the assessee neither received intimation of order passed through Mobile SMS nor through email nor physically and thus the appellate passed remained unnoticed. Further, the grand father of the counsel engaged Shri Tauj Agarwal expired on 28-05-2024 and thus such delay took place in filing the appeal which may kindly be condoned. To this effect, the assessee has filed an affidavit deposing the above facts.

2.2 On the other hand, the ld.DR objected to such delay but submitted that the Court may decide the issue as deem fit and proper in the case.

2.3 After hearing both the parties and perusing the materials available on record, the Bench noted that there is a merit in the submission of the assessee. Thus the delay is condoned.

2.4 The only ground raised by the assessee is against the sustaining of additions of Rs.25,66,068/- by treating the cash deposit in the bank account has unexplained

2.5 I have heard the counsel for both the parties and have also gone through the orders passed by the revenue authorities and document placed on record and the judgements cited by both the parties. From the records I noticed that as per the facts of the present case the assessee is in the business of carrying on works contract. The assessment was completed determining the total income of Rs.

39,17,388/- as against the returned income of Rs. 13,51,320/-. While doing so, the AO by invoking provisions of section 145 (3) of the Act rejected the books of accounts maintained by the appellant and assumed that the cash deposited in the bank during demonetization has been deposited out of undisclosed income under section 69a of the Income Tax Act and thus made additions. However from the records I noticed that during the course of assessment proceedings the AO asked the appellant for the documents required for carrying out assessment and the appellant duly provided all the information and documents which are content in paper book page number 14 to 39 with proper response in questionnaire. I also noticed that from the very beginning the assessee has taken a specific stand that he was having sufficient cash in hand which has already been duly reflected in the books of account regularly maintained which were also audited. In order to support his version the AR also drawn my attention to the documents submitted before both the revenue authorities that is cash book, cash flow statement, audit report along with audited financial statements, bank account statements, sales tax assessment order, PF and ESI assessment order therefore from the cash book I can easily conclude and it is amply evident that assessee was having sufficient cash balance to deposit in bank in the form of specified banknotes during demonetization. I have also considered the fact that since during the demonetization period, the remaining cash balance had lost its validity of being

classified as a legal tender pursuant to announcement of demonetization policy by the Government of India therefore the assessee had no choice but to deposit the cash available with him in the designated bank account in specified banknotes during the demonetization period. Therefore all cash that has been deposited in specified Bank notes during the demonetization period cannot be classified as unexplained income of the assessee. In my view in such a scenario what is to be seen is as to whether the assessee had sufficient cash balance in his books for making the said deposits in the bank account or not. However in the instant case the assessee had sufficient cash balance in it's books which is evident from the cash book as there is no negative cash balance on any day. Apart from this on the other hand the AO failed to establish the utilisation of cash elsewhere or that the cash in hand as per cash book was not available with the assessee at the time of deposit of cash in the bank account during demonetization. On this preposition I rely upon the judgement in the case of Jet Freight Logistics Ltd. vs CIT(A) (ITA No. 683/Mum/2022 decided on 23-09-2022 wherein unexplained cash deposit addition was deleted by ITAT Mumbai Bench by observing at para 4.6 as under:

“Accordingly, we hold that the entire cash deposits made by the assessee during the period 01-11-2016 to 31-12-2016 in Specified Bank Notes in the sum of Rs.2,48,87,000/- stood properly explained by the availability of cash balance in its books and hence, no addition thereon could be made u/s 68 of the Act. We direct the ld. AO to delete the said addition.

Accordingly, the Ground No. 2 raised by the assessee is allowed.’’

2.6 On further going through the facts of the present case I also notice that the allegation of the AO that monthly cash expenses were reduced by the appellant in order to maintain higher cash balance is arbitrary as the said findings of the AO are based only on the basis of suspicion and in my view the suspicion would always remain suspicion unless the same is established and can never take place of reality. And in this regard Reliance is being placed on the judgement of Honorable Supreme Court in the case of the Dhakeshwari cotton mills Limited 26 ITR 775 wherein it was held that no assessment can be made on the basis of suspicion or guess work without any reference to any material on record. I also noticed that AO has grossly erred in ignoring the most vital facts to the effect that turnover decreased drastically from 16.93 crores during FY 2015-16 to 6.28 crores during FY 2017-18 i.e. around 269.49% which consequently also led to reduction in monthly expenditure. Wages and salaries to permanent staff mostly paid by cheque and remaining temporary labours were paid through contractors which allow credit period of around 6 to 7 months. Moreover, PF, ESI and TDS was deducted on such payments. Copy of the replies submitted to the AO during the assessment proceedings are furnished at paper book page no. 20 to 39. I have also considered

the various judgement relied upon by the Appellant and same or discussed here in below.

S.No.	Judgement	Held
1.	Shri M. Prabhakar ITA 1727/Hyd/2014 dated 11.11.2016 (ITAT Hyderabad Bench)	AO concluded that there is no possibility of keeping such huge No. amount in cash by the assessee being a NRI but AO has not brought on record that why he cannot keep so much of cash in hand. AO has made the addition merely on conjectures/surmises/suspicion and no proper reasons were given why he cannot keep the cash in hand except he remark of being an NRI. The Hon'ble ITAT, Hyderabad Bench relied on the judgment of Hon'ble Supreme Court in the case of Dhakeshwari Cotton Mills Ltd. wherein it was held by the Hon'ble Apex Court that the AO cannot complete the assessment purely on guess and without any reference to evidence or any material at all
2.	Dhakeshwari Cotton Mills Ltd. 26 ITR 775 Supreme Court	A suspicion remains a suspicion unless the same is established and can never take place of reality. Assessment cannot be made on guesswork without any reference to any material on record.
3.	Smt. Krishna Agarwal Vs. ITO (ITAT, Jodhpur)ITA No 53/JODH/2021 dated 07.09.2021	Addition for cash deposits of Rs.68,95,000/- in bank account was deleted holding that cash withdrawals in earlier two years have not been disputed by the revenue and only reason why the explanation of the assessee has not been accepted is that keeping huge cash at home for such a long period is beyond any imagination. Mere absence of supporting documentation cannot be a reason enough to allege any malafide in the explanation so submitted especially where the assessee has explained and duly disclosed the source of deposits in the bank account out of which the withdrawals have been made and has thus established the necessary linkage and availability of cash in hand. Mere time gap between withdrawals and deposits cannot be a sole basis for rejecting the explanation of the assessee regarding availability of cash in hand where there is no material that amount so withdrawn has been utilized somewhere else. (Para 15)
4.	Anshu Sharma Vs ITO, ITA No 45/JP/2023 dated 30-03-2023 ITAT, Jaipur	It was held that cash in hand was available and the revenue has not established that it was utilized elsewhere. Hence cash deposits in bank account cannot be treated as unexplained.

Therefore keeping in view the facts and circumstances as discussed by me above and also taking into consideration the legal propositions as mention above I am of the view that assessee had sufficient cash balance in hand at the time of depositing cash into his bank account therefore additions made by the AO are unsustainable and thus directed to be deleted.

3.0 In the result, the appeal of the assessee stands allowed with no orders as to costs.

Order pronounced in the open court on 31 /07/2024.

Sd/-  
(संदीप गोसाईं)  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:- 31/07/2024

\*Mishra

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

1. The Appellant- M/s. G.N. Buldev Private Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 6(2), Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 867/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar