

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 539/JP/2024
निर्धारण वर्ष / Assessment Years : 2017-18

Sh. Sanjay Godha, 750, Achariyon Ka Rasta, Kishan Pole Bazar, Jaipur	बनाम Vs.	ACIT, Circle-01, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABAPG 1328 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. P. C. Parwal, FCA
राजस्व की ओर से / Revenue by : Sh. Anoop Singh, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 05/08/2024
उदघोषणा की तारीख / Date of Pronouncement: 29/08/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

Because the assessee was dissatisfied with the finding so recorded in the order of the Commissioner of Income Tax (Appeals)-4, Jaipur dated 26/02/2024 [here in after Id. CIT(A)] for assessment year 2017-18, the present filed before this tribunal. The said order of the Id. CIT(A) arises because the assessee preferred an appeal before him against the order dated 20/11/2019 passed under section 143(3) of the Income Tax Act, by ACIT, Circle-01, Jaipur.

2. In this appeal, the assessee has raised following grounds: -

“1. The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.55,30,000/- u/s 69A of the Act by treating the cash deposit during demonetization period as unexplained by not accepting the explanation of assessee regarding source of such cash deposit and by making various incorrect and irrelevant observations.

2. The Ld. CIT(A) has erred on facts and in law in taxing the above additions u/s 115BBE @ 60% instead of taxing the same @ 30% by ignoring that section 115BBE substituted by Taxation Laws (Second Amendment Act), 2016 which received the assent of President on 15.12.2016 and made applicable from 01.04.2017 is not applicable to AY 2017-18.

3. The appellant craves to alter, amend and modify any ground of appeal.

4. Necessary cost be awarded to the assessee.”

3. Succinctly, the fact as culled out from the records is that the assessee Shri Sanjay Godha filed his returns of income on 30.10.2017 declaring total income of Rs. 10,92,550/- for the year under consideration. Further, the case was manually selected for scrutiny assessment as per guidelines of CBDT, New Delhi and notice u/s 143(2) of the IT Act, 1961 was issued on 26.09.2018 through ITBA-portal which was duly served upon the assessee. In response, the assessee acknowledged the receipt on 03.10.2018. The assessee is one of the partners in the firm M/s Eros Crafts engaged in the business of gems stones. The assessee is also one of the partners of various LLPs. The assessee earned income from business or profession and other sources.

3.1 During the assessment proceedings, various notices u/s 142(1) of the Act have been issued on 14.05.2019, 06.09.2019, 16.09.2019, 31.10.2019, 06.11.2019 & 12.11.2019. In response, the assessee filed submission on various occasions on 23.09.2011, 04.11.2019 & 07.11.2019, which have been placed on record by the Id. AO. On going through the submission of the assessee as well as information available with the Id. AO he noticed that the assessee deposited banned Specified Bank Notes (SBNs) amounting to Rs. 55,00,000/- in the Savings bank account bearing No. "12860100001932" so maintained in Bank of Baroda. He also have deposited SBNs amounting to Rs. 30,000/- in the Current bank account bearing No. "12860200000498" so maintained in Bank of Baroda during demonization period, i.e. from 09.11.2016 to 30.12.2016. Since the assessee deposited SBNs during demonetization period, therefore, to verify the source of such deposits a notice u/s 142(1) of the Act annexing specific questionnaire regarding cash deposits during demonetization period has been issued to the assessee on 06.09.2019 fixing the date for furnishing submission by 11.09.2019. In response, the assessee filed submission on 04.11.2019, which has been placed on record by the Id. AO. The relevant observation of the AO on this aspect is as under:

"5. I have gone through the submission so made by the assessee and it has been found that it is not tenable as the assessee is only trying to distract from the

facts of the case. On examination of Cash accounts of the assessee from 01.04.2013 to 31.03.2018, it has been noticed that the opening balance of cash accounts as on 01.04.2013 of Rs. 14,78,783/-, thereafter, cash withdrawn amounting to Rs. 2,00,000/-, 25,00,000/-, 20,00,000/- & 10,00,000/- on 29.04.2013, 18.06.2013, 01.07.2013 & 02.07.2013 respectively and after approximately four years, the assessee deposited cash amounting to Rs. 55,00,000/- on 13.12.2016 in the bank account so maintained in Bank of Baroda whereas the remaining amount of Rs. 30,000/- has not been mentioned in the cash accounts of the assessee.

6. In view of the preceding para, it has been noticed that the cash balance as on 01.04.2013 is of Rs. 14,78,783/- and cash balance added of Rs 2,00,000/- on 29.04.2013. Thereafter, the cash balance added in the month of June & July, 2013 as discussed in the Para No. 5. Amidst the period, a Search & Seizure operation u/s 132 of the Act had been carried out by the Investigation Wing, Jaipur on 23.05.2013 in the residence and business premises of the assessee. In the premises at 750, Achariyon ka Rasta, Kishanpole Bazar, Jaipur, Cash amounting to Rs. 1,08,82,500/- was found as per regular books of account and the cash balance as on the date of search is only Rs. 8,10,500/-. Thus, the Search team had seized Cash amounting to Rs. 1,02,00,000/- leaving remaining balance of Rs. 6,82,500/- whereas on perusal of cash accounts of the assessee the cash balance shown of Rs. 16,78,783/-, which is mismatch between them. It means that the assessee furnished incomplete cash accounts, which is not reliable.”

3.2 Since, the assessee furnished in complete cash accounts where mismatch of cash balance as well as missing of cash deposits of Rs. 30,000/-, a notice u/s. 142(1) of the Act dated 06.11.2019 pointing out that fact and the reply of the assessee was sought. Since the assessee did not file the reply a reminder to that letter was issued to on 14.11.2019 against which the assessee sought time and thereafter the assessee did not comply to the notice and has not filed reply. Thus, Id. AO noted from the records that the assessee kept the cash amount of Rs. 55 lacs from June

2013 to December 2016 and after a period of four year, the assessee deposited the cash and that too in the form of SBNs. The contention of the assessee not found tenable and therefore, the cash deposited of Rs. 55,30,000/- is completely unexplained and was treated as unexplained money u/s. 69A of the Act. To support this contention the Id. AO also noted that the assessee is a partners of various firms / LLPs and it is quite possible that the assessee did not book any entry of cash transactions in his cash account and therebefore, the cash account submitted was considered as colorable device to distract from the facts of the case. Considering that aspect of the matter and the considering the decision relied in the order by the Id. AO he has made an addition of Rs. 55,30,000/- the amount deposited into the bank account as undisclosed income of the assessee as per section 69A of the Act.

4. Aggrieved from the above order of the assessing officer, assessee preferred and an appeal before the Id. CIT(A). A propose to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

“4.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contention/submissions of the appellant are being discussed and decided as under:-

The facts of the case is that the Ld. AO observed that during the demonetization period, the appellant has deposited Specified Bank Notes (SBNs) amounting to

Rs.55,00,000/- in his savings bank account and Rs.30,000/- in his current bank account. The appellant explained that he has deposited this cash from earlier bank withdrawals and in support of the same, provided cash accounts and bank statements. The Ld. AO, thereafter held that in search of the appellant on 23.05.2013 cash of Rs. 1,08,82,500/- was found whereas cash balance as per books was only Rs.16,78,783/-. This shows that appellant has furnished incomplete cash accounts and therefore the same is not reliable. There is time gap of 4 years in cash withdrawals and the deposit and the appellant might have used the same for household expenses. The appellant is one of the partners of various firms/LLPs and it is quite possible that the appellant entered in the cash transaction with the firms whereas the appellant did not book any entry of cash transaction in his cash accounts so furnished. Accordingly the AO treated the cash deposit of Rs.55,30,000/- as unexplained and made addition for the same u/s 69A of the Act.

The Ld. AR of the appellant argued that during the demonetization period the appellant made cash deposit of Rs.55,30,000/-. This cash deposit was made out of the cash balance as per the cash book. The source in the cash books is out of cash withdrawals made by the appellant in 2013 from his account maintained with Bank of Baroda. This cash balance remained with the appellant till the deposit of cash in the bank account in the year under consideration. In support of the same, cash book from 01/04/2013 to 31/03/2018 (PB 7-9) was filed in assessment proceeding. From this cash book the appellant has also prepared the cash flow statement and filed before the Ld. AO.

The learned AR argued that from the above cash flow statement the availability of the cash balance for making deposit in the bank account is fully established. The Ld. AO has not pointed out any instance of payment wherein this cash has been utilised.

The Ld. AR further argued that the assessment for AY 2016-17 was also completed u/s 143(3). During the course of assessment proceeding for AY 2016-17 the Ld. AO required the appellant to file the personal statement of affairs. In response to the same the appellant vide letter dated 02/05/2018 filed the copy of the personal statement of affairs. As per this statement of affairs the appellant has shown cash balance of Rs.63,01,786/ as on 31/03/2016 (PB 16). This includes cash balance of Rs.62,90,786/- as per the cash book filed before the Ld. AO. After considering these details the Ld. AO completed the assessment at returned income of Rs.6,11,070/- (PB 12-13).

On perusal of the overall facts, it has been noticed that the appellant deposited banned Specified Bank Notes (SBNs) amounting to Rs. 55,00,000/- in the Savings bank account bearing No. "12860100001932" so maintained in Bank of Baroda on 13-12-2016 and also deposited SBNs amounting to Rs. 30,000/- in the Current bank account bearing No. 12860200000498".

In the assessment proceedings the appellant replied that, he has deposited cash of Rs. 55,30,000 in his bank A/c and that Assessee has deposited this cash. from earlier bank withdrawals. Copy of cash account from 01.04.2013 to 31.03.2017 was enclosed and details of cash withdrawn from bank which is claimed as a source of the cash deposit during the demonetisation period as submitted during the assessment is as under:-

Date	Amount
18.06.2013	25,00,000
01.07.2013	20,00,000
02.07.2013	10,00,000

From the facts recorded in the assessment order, cash balance as on 01.04.2013 is of Rs. 14,78,783/- and cash balance of Rs. 2,00,000/- was added on 29.04.2013. A Search & Seizure operation u/s 132 of the Act had been carried out by the Investigation Wing, Jaipur on 23.05.2013 in the residence and business premises of the assessee. In the premises at 750, Achariyon ka Rasta, Kishanpole Bazar, Jaipur, Cash amounting to Rs. 1,08,82,500 was found whereas the cash balance as per books on the date of search was only Rs. 8,10,500. Thus, the Search team had seized cash amounting to Rs. 1,02,00,000 leaving remaining balance of Rs. 6,82,500. In this regard the appellant has submitted that in respect of mismatch in the cash balance as per cash book and as found in search, excess cash was found which has been offered for tax. This shows that the appellant has the unaccounted sources of cash.

During the assessment proceedings show cause notice was issued to the appellant fixing a date of 8-11-2019 however in response to show cause notice, neither the appellant nor his AR filed reply. Thereafter, notice u/s 142(1) of the Act annexing reminder letter has been issued to the appellant on 12.11.2019 fixing the date for furnishing submission against the show cause notice by 14.11.2019. In response, the appellant only applied for adjournment on 14.11.2019, therefore, the case has been adjourned to 18.11.2019. But, neither the appellant nor his AR filed submission against the show cause notice. No application for additional evidence has been filed.

As per the appeal of the appellant 55 lakhs which were withdrawn in June and July 2013 were kept with the appellant as it is in hard cash till Dec 2016 which is a period of three years and five/four months. Whereas during this period the appellant made various householding expenses which was definitely incurred out of cash withdrawal amount as well as the appellant also incurred various other expenses, as and when required, which was also made out of such cash withdrawal.

The appellant has furnished copy of the cash account of the appellant for the period 1-4-2013 to 31-03-2017. In this cash statements for each year there are only 45 entries in total. The appellant has shown drawings only once in the year

on the last day of the financial year. Further the appellant has also shown cash payments for the land and building for the registry etcetera. This cash book is not from the audited books of accounts. Further such cash book for the respective years was not furnished in any income tax proceedings before the announcement of demonetisation. The appellant has also not filed copies of such similar cash book which would have been filed or shown at the time of the search and seizure action which took place in May 2013 in the course of the assessment of the years covered by the search and seizure action including the financial year 13-14/assessment years 14-15 if any such thing was filed before the announcement of demonetisation.

Further regarding the argument of submitting personal balance sheet to the Id. A.O. in earlier year, and the cash flow statement submitted by the appellant, the appellant has not been able to show that whether an enquiry or investigation was done on such cash flow statement before the announcement of the demonetisation. Further regarding the claim of the appellant that the personal affairs balance sheet was filed before the learned assessing officer in the assessment proceedings of the earlier year the appellant has not shown that the balance of cash reflected in the same was examined and verified by the learned assessing officer during assessment proceedings. In the scrutiny proceedings number of details are furnished by the assessee however the verification is done on sampling basis or test check basis. If any issue has not been examined during assessment proceedings. it cannot be said that the same has been accepted. Further more, the scope of the assessment and the perspective of the enquiry in the earlier year proceedings would be different in terms of relevance and the enquiry may not have been required on the issue of cash balance. The books of accounts with the personal affairs of the appellant are not audited and such personal affairs were not filed online in the income tax return by the appellant before the announcement of the demonetisation whereas the appellant is also claiming gems business in his proprietorship.

Regarding the purpose for which the cash was withdrawn and kept by the appellant, the appellant has submitted that "The main reason for keeping the cash in hand is that search and seizure operation was carried out in the case of the assessee in May 2013. After the search, the assessee was in fear that there may be possibility of attachment of bank accounts by the department which may result in problem in the business. Therefore to avoid any such coercive measures and adverse consequence on the business, assessee had withdrawn the amount from bank and the kept in liquid form at home. After the announcement of demonetization, the assessee by force deposited the amount in his bank accounts".

The appellant has claimed that the cash was withdrawn and kept in liquid form at home as there was a fear and possibility of attachment of bank accounts which could result into the problem in the business. However in this regard, the appellant has not shown that cash was withdrawn and kept in the partnership firm

also in similar manner and of similar amounts. The appellant is a partner in 11 partnership firms having share of 50% to 75%. Further in his own name the appellant is not having the size and scale of business which would require an amount of 55 lakhs in an emergency situation and that such amount could not be arranged by the appellant from anywhere else including the drawings from several partnership firms in which the appellant is partner.

Further the appellant has not submitted the documentary submissions to show the amount of demand raised in the income tax proceedings and the date of raising of such demand as only after the raising of the demand the question of attachment of the bank account could arise.

Further there are due procedures and provisions under the law regarding the stay of the demand and there are CBDT instructions on the same. The appellant also had the option of applying for the stay of demand before the appellate authorities and the constitutional remedy of the writ petition was also available.

Further this ground made up by the appellant is only an afterthought as during assessment proceedings the appellant did not reply to the show cause notices and the notices thereafter. As apparently this argument has been made only during the appeal itself.

Another important aspect is that the cash was deposited in SBNs on the date of on 13-12-2016 which is after a period of one month and five days after the announcement of demonetisation. Coupled with the facts discussed in earlier paragraphs, the long gap taken by the appellant in depositing the cash in the bank account even after announcement of demonetization further leads to the inference that such cash which was deposited in bank account was not actually available with the appellant on the date of announcement of demonetisation.

Thus the ground of the possibility of the bank account attachment and further the possibility of the adverse impact on the business is too far-fetched and beyond human abilities and is not justified in view of the legal remedies available and is also not substantiated by the appellant with the dates of raising of tax demand and amount of such demand etc, and status of same till December 2016 and the correlation of the same with the amount withdrawn and kept by the appellant as claimed and is also not justified in view of the large amount of unaccounted cash found in the course of search action which was an admitted by the appellant as income which shows that the appellant has unaccounted sources of cash income.

- The Hon'ble Supreme Court in the case of Sreelekha Banerjee v. CIT [1963] 49 ITR 112 has observed as under:-

x

x

x

x

In the present case also the appellant has shown withdrawal of cash and the dates of 26 February 2014, 11 August 2014, 8 October 2014 etc. whereas as per the admitted claim of the appellant he was already having a sum of 55 lakhs in hand. Thus in view of the ratio of the above judgement, the earlier withdrawn amount cannot be deemed to be unutilised in view of the subsequent withdrawals made by the appellant.

The source of cash deposits being SBNs in the bank accounts of the appellant has not been explained, which should have been done only by the appellant as the primary onus for explaining source of cash deposits being SBNs during demonetization period lies only over the appellant. It is binding on the appellant to prove the genuineness and correctness of sources of unexplained money so deposited in bank accounts in the savings account as well as current bank account.

The Hon'ble Supreme Court of India pronounced order in the case of Commissioner of Income Tax, Salem Vs. K. Chinnathamban bearing appeal No. [2007] 162 Taxman 459 (SC)/[2007] 292 dated 24.07.2007 had held that:

"Whether onus of proving source of deposit primarily rests on persons in whose names deposit appears in various banks Held, Yes;

Whether since assessee had failed to show that amount in question did not represent his income, Department was justified in treating same as assessee's income under section 69A Held - Yes."

The Hon'ble High Court of Kerala pronounced in the case of K. V.Mathew Vs. Income Tax Officer, Ward-2(3), Range-2, Ernakulam bearing Order No. [2014] 42 taxmann.com 571 (Kerala) Appeal No. 95 of 2012 dated 04.10.2013 had held that:

"A huge amount was found deposited in savings bank account of assessee, which he claimed to have been received from his sister in Italy-He, however, failed to furnish any proof-No cash flow statement was filed Whether since amount in savings bank account of assessee remained unexplained, Assessing Officer was justified in making addition under section 69A Held, Yes [Para 4] In favour of Revenue)."

In the case of Manoj Aggrawal Vs. DCIT (ITAT, SB-Del) 113 ITD 377, the ITAT, Delhi held that:

"Cash deposit in bank should be explained by assessee, otherwise it is unexplained money u/s 69A Held - Yes."

The judgements cited by the appellant on the issue of there is time gap in withdrawals from bank and its utilisation, the availability of the cash can't be doubted, are not in the context of the deposit of cash during the period of demonetization and in case of the demonetisation the onus is even greater on the appellant. It is not the case that any amount of time gap for example 5 years or 10

year) and onwards (A.Y 2017-18 and onwards) i.e. the rate of tax of 60% is applicable w.e.f 1.4.2017 (01.04.2017 of the assessment year (A.Y 2017-18 and onwards).

Accordingly, this ground of appeal is hereby dismissed.”

5. As the assessee did not find any favour, from the appeal so filed before the Id. CIT(A), the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds so raised by the assessee, the Id. AR has filed the written submissions in respect of the various grounds raised by the assessee and the same is reproduced herein below:

1. The assessee is a partner of M/s Eros Crafts engaged in the business of gems stones. He is also engaged in selling the gem stones in his personal capacity. He filed the income tax return on 30.10.2017 declaring total income of Rs.10,92,550/-.

2. The AO observed that assessee has made deposit of Specified Bank Notes (SBNs) amounting to Rs.55,00,000/- in his savings bank account and Rs.30,000/- in his current bank account during the demonetization period. The assessee explained that the cash deposit was made out of the withdrawals made from the bank account in earlier years which was available as cash in hand and in support of the same furnished copy of cash book and bank statements. However, the AO did not accepted the explanation of the assessee by making the following observations:-

(i) The cash account provided by the assessee shows only the deposit of Rs.55,00,000/-. The remaining deposit of Rs.30,000/- is not mentioned in the cash account.

(ii) A Search and seizure operation was conducted in the residence and premises of the assessee on 23.05.2013. In search cash of Rs.1,08,82,500/- was found whereas cash balance as per books was only Rs.16,78,783/-. This shows that assessee has furnished incomplete cash accounts and therefore the same is not reliable.

(iii) The explanation of the assessee that he held cash of Rs. 55,00,000/- from June 2013 to December 2016 and after approximately 4 years, he deposited the amount in bank is not justifiable. During these 4 years, the assessee made various household and other expenses which were definitely incurred out of cash withdrawal amount. Thus the cash deposited amount cannot be out of the cash withdrawals.

(iv) The assessee is one of the partners of various firms/LLPs and it is quite possible that the assessee entered in the cash transaction with the firms whereas the assessee did not book any entry of cash transaction in his cash accounts so furnished. Thus, it clearly establishes that the cash accounts are fully colorable device for distracting from the facts of the case.

Accordingly, the AO treated the cash deposit of Rs.55,30,000/- as unexplained and made addition u/s 69A of the Act.

3. Before the Ld. CIT(A) assessee filed detailed submission. However, the Ld. CIT(A) at Page 11 to 14 of the order observed that the search carried on the assessee on 23.05.2013 shows that assessee has unaccounted sources of cash. The cash account furnished for the period 01.04.2013 to 31.03.2017 shows that in each year there are only four/five entries, drawing is shown only on the last day of the financial year, it is not audited and such cash book was not furnished in any income tax proceedings before the date of demonetization. The personal balance sheet and the cash flow submitted to the AO in earlier years, the same were not examined and verified by the AO during the assessment proceedings. The assessee claimed that cash was withdrawn and kept in liquid form due to possibility of attachment of the bank account is not based on any documentary evidence to show the amount of demand raised in the income tax proceedings. The cash was deposited on 13.12.2016 i.e. after a period of one month & five days from the date of announcement of the demonetization which leads to a inference that such cash was actually not available with the assessee on the date of demonetization. Accordingly relying on the decision of Hon'ble Supreme Court in case of Shreelekha Banarjee Vs. CIT 49 ITR 112 and CIT Vs. K. Chinnathamban 162 Taxmann 459, Kerala High Court in case of K.V. Mathew Vs. ITO 42 Taxmann.com 571 and decision of ITAT Delhi Bench in case of Manoj Agarwal Vs. DCIT 113 ITD 377 held that under the preponderance standard burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true which is

not there in the present case. Accordingly, he confirmed the addition of Rs.55,30,000/- made by the AO.

Submission:

1. It is submitted that assessee made cash deposit of Rs.55,30,000/- during the demonetization period source of which is out of the cash amount withdrawn from the bank in earlier years as under:-

Date	Amount (Rs.)
29.04.2013	2,00,000
18.06.2013	25,00,000
01.07.2013	20,00,000
02.07.2013	10,00,000
26/02/2014	3,00,000
26/02/2014	2,00,000
Total	62,00,000

2. In support of the same assessee filed the cash book from 01/04/2013 to 31/03/2018 (**PB 14-16**) during the assessment proceeding. The summary of the cash transection recorded in the cash book is tabulated as under:-

Financial Year	Opening Balance	Cash received	Cash withdrawals	Drawings	Other expenses	Cash deposits	Closing Balance
2013-14	14,78,783	-	62,00,000	3,00,000	34,500	-	73,44,283
2014-15	73,44,283	-	10,00,000	3,80,000	13,79,497	-	65,84,786
2015-16	65,84,786	1,00,000	-	3,50,000	44,000	-	62,90,786
2016-17	62,90,786	-	3,49,000	2,55,000	15,000	55,00,000	8,69,786

3. It is submitted that during the course of assessment proceedings for A.Y. 2016-17 where the AO required the assessee to file the personal statement of affairs, the same was submitted vide letter dated 02.05.2018 (PB 21-25) which shows cash balance of Rs.63,01,786/- as on 31/03/2016 (PB 23). This includes cash balance of Rs.62,90,786/- as per the cash book filed before the AO. After

considering these details the AO completed the assessment at returned income of Rs.6,11,070/- (PB 19-20). Thus, the fact of assessee having cash in hand of Rs.63,01,786/- as on 31.03.2016 has been disclosed to the department and accepted by the AO.

4. The various observations made by the lower authorities are not only incorrect but only on assumptions, presumptions, surmises & conjectures. The same is explained as under:-

(i) It is observed by Ld. CIT(A) that in search dt.23.05.2013 cash of Rs.1,08,82,500/- was found whereas cash as per books was only Rs.8,10,500/-. The search party seized cash of Rs.1,02,00,000/- leaving the remaining balance of Rs.6,82,500/- which shows that assessee has the unaccounted sources of the cash. This observation has no relevance to the amount deposited during demonetization period rather it supports the case of the assessee that assessee keeps large cash in hand. Further the AO has observed that as per the cash book furnished the cash balance as on 23.05.2013 is Rs.16,78,783/- whereas the search party has only left Rs.6,82,500/- on that date and thus the cash account filed is not reliable. In making such observation it is ignored that at the time of search, the search party has not considered the cash balance available with the assessee in the personal hand. This was explained to the AO vide letter dt.19.11.2019 (PB 17-18). In any case the variation is only of Rs.9,96,283/- (16,78,783- 6,82,500) and if the same is reduced, still the cash balance is in positive. Hence, such small variation would not make the cash account submitted by the assessee unreliable when during the course of proceedings for A.Y. 2016-17, the assessee has furnished his statement of affair according to which cash balance as on 31.03.2016 was Rs.63,01,786/-.

(ii) It is observed that in the cash statement there are only four/five entries in a year, it is not audited, the household withdrawal is shown on the last day of the financial year and the statement of the affairs as on 31.03.2016 was not examined by the AO. It is submitted that in the cash book whatever transactions are made in cash, the same are recorded. It is a personal cash account which does not require any audit. The monthly household withdrawal made is recorded in this cash account at the end of the year but even if it is recorded on monthly basis, the cash balance is not affected. The personal statement of affairs as on 31.03.2016 was submitted to the AO vide letter dt.02.05.2018 (PB 21-23) in course of the assessment proceedings for A.Y. 2016-17 which shows cash balance of Rs.63,01,786/- and therefore the observation of the CIT(A) that the same is not examined and accepted by the AO is fanciful.

(iii) It may be noted that a search was carried out on the assessee on 23.05.2013. Due to this the assessee has withdrawn the cash from his bank account and kept the same in hand. The major cash withdrawal of Rs.55,00,000/- was between 18.06.2013 to 02.07.2013. Even if there was no demand raised during this period but if due to fear psychology after the search, the assessee

has withdrawn this amount from the bank account, it cannot be presumed that in the absence of any evidence of the demand raised by the Income Tax department, the cash is not available with the assessee is farfetched.

(iv) The assessee has deposited the cash in the bank account after one month and five days of the date of the demonetization. This cannot lead to any inference that the cash was not available with the assessee on the date of demonetization as observed by the Ld. CIT(A). It may be noted that the entire amount of SBN's was deposited in the bank on 13.12.2016 after the rush which was at the bank due to the demonetization settled down. Hence, such observation by CIT(A) is only on surmises & conjectures.

(v) It may be noted that the fact of having cash deposit of Rs.55,30,000/- in the saving bank account and in the current account maintained with Bank of Baroda was also disclosed in the return filed for the year under consideration (PB 12). The cash deposit of Rs.55,00,000/- in the saving bank account is verifiable from the cash book whereas cash deposit of Rs.30,000/- in the current account is out of the business income of Rs.3,82,112/- disclosed u/s 44AD of the Act.

5. The Ld. CIT(A) has observed that under the preponderance standard, the burden of proof would be met if the assessee convinces that there is greater than 50% chance that the claim of the assessee is true. In the present case assessee has furnished the evidence that the claim of the assessee is 100% true in as much as cash deposited during demonetization period is supported by the cash book and also from the personal statement of affairs as on 31.03.2016 submitted to the AO in course of the assessment proceedings for A.Y. 2016-17. The lower authorities have not brought on record any evidence that such cash was not available with the assessee but has been spent/ utilized elsewhere.

6. It is submitted that in various cases it has been held that once the assessee has explained that source of cash deposit in the bank account is out of the earlier withdrawals made from the same bank account, the burden of proof is on the department to establish that cash has been utilized elsewhere if the explanation of assessee is not to be accepted. Reliance in this connection is placed on the following case laws:-

CIT vs. Kulwant Rai 291 ITR 0036 (2007) (Delhi HC) (Case laws compilation PB 1-6)

The relevant Para 16 is reproduced as under:

"16. This cash flow statement furnished by the assessee was rejected by the AO which is on the basis of suspicion that the assessee must have spent the amount for some other purposes. The orders of AO as well as CIT(A) are completely silent as to for what purpose the earlier withdrawals would have been spent. As per the cash book maintained by the assessee, a sum of Rs. 10,000 was being spent for household expenses every month and the assessee has withdrawn from bank a sum of Rs. 2 lacs on 4th Dec., 2000 and there was no material with the Department that this money was

not available with the assessee. It has been held by the Tribunal that in the instant case the withdrawals shown by the assessee are far in excess of the cash found during the course of search proceedings. No material has been relied upon by the AO or CIT(A) to support their view that the entire cash withdrawals must have been spent by the assessee and accordingly, the Tribunal rightly held that the assessment of Rs. 2.5 lacs is legally not sustainable under s. 158BC of the Act and the same was rightly ordered to be deleted.”

Neeta Breja Vs. ITO ITA No. 524/Del/2017 order dt. 25.11.2019 (Del.) (Trib.)
(Case laws compilation PB 7-10)

The Hon'ble bench at Para 12 of its order held as under:-

“12. In the present case also the learned assessing officer or the learned CIT A did not show that above cash was not available in the hands of the assessee or have been spent on any other purposes. Further the coordinate bench in ACIT vs Baldev Raj Charla 121 TTJ 366 (Delhi) also held that merely because there was a time gap between withdrawal of cash and cash deposits explanation of the assessee could not be rejected and addition on account of cash deposit could not be made particularly when there was no finding recorded by the assessing officer or the Commissioner that apart from depositing this cash into bank as explained by the assessee, there was any other purposes it is used by the assessee of these amounts. In view of above facts, the ground number 1 of the appeal of the assessee is allowed and orders of lower authorities are reversed.”

DCIT Vs. Veena Awasthi (2018) ITA No.215/LKW/2016 order dt. 30.11.2018
(Lucknow) (Trib.) (Case laws compilation PB 11-20)

The Hon'ble ITAT at Para 8 of its order held as under:-

“8. We have perused the case record and heard the rival contentions. We find that addition has been made by the Assessing Officer, as is evident from his order, on the ground that he has come to the conclusion that cash deposits were from some other source of income which is not disclosed to the Revenue. Assessing Officer nowhere in his order has brought out any material on record to show that assessee is having any additional source of income other than that disclosed in the return nor Assessing Officer could spell out in his order that cash deposits made by the assessee was from some undisclosed source. All throughout Assessing Officer has raised suspicion on the behavioural pattern of frequent withdrawal and deposits by the assessee. There is no law in the country which prevents citizens to frequently withdraw and deposit his own money. Documentary evidences furnished before the Revenue clearly clarifies that on each occasion at the time of deposit in her bank account, assessee had sufficient availability of cash which is also not disputed by the Revenue. Entire transaction of withdrawals and deposits are duly reflected in the bank account of the assessee and are verifiable from relevant records. Assessing Officer himself admitted that assessee had sufficient cash balance on each occasion at the time of deposit in her bank account on different dates during the assessment year under consideration. We have also examined the order of Id. CIT(A) and we find that his decision is based on facts on record and is supported by adequate reasoning and, therefore, we do not want to interfere with the

order of Id. CIT(A) and accordingly we uphold the findings of the Id. CIT(A) sustaining relief granted to the assessee."

Muon Computing (P) Ltd. Vs. ITO ITA No. 7606/Del/2019 order dt. 04.08.2021 (Del.) (Trib.) (Case laws compilation PB 21-25)

Para 9 of this decision is reproduced as under:-

"9. There is no dispute with regard to the fact that Revenue has not brought any material suggesting that the withdrawal made by the assessee were utilized for making payments. It is also not brought on record that the amounts so withdrawn from the bank account was utilized for any other undisclosed purposes. Further, it is noticed that learned CIT(A) observed that despite having sufficient cash in hand, the assessee withdraw the amount. It is correct that the assessee has withdrawn higher amounts than the immediate preceding years but that cannot be sole reason for making addition purely on the basis of suspicion. Further, I failed to understand the reasoning of the AO that the amount was withdrawn to justify the cash deposits during demonetization period i.e., between 9th Nov., 2016 to 30th Dec., 2016. It is also seen that the cash was withdrawn much prior to such event. So far observation regarding sharp increase in payable expenses is concerned, there is no finding by the AO that such expenses are bogus. Therefore, in my considered view, the addition has been made purely on the basis of suspicion. Such action of authorities below cannot be affirmed. I, therefore, direct the AO to delete the impugned addition. Thus, ground raised by the assessee in this appeal is allowed."

Nand Kumar Taneja & Anr. Vs. ITO (2019) 55 CCH 0705 (Del.) (Trib.) (Case laws compilation PB 26-29)

Para 6 & 7 of this decision is reproduced as under:-

"6. Apart from that, the details of; opening cash, cash withdrawal, cash deposited, cash expenditure; closing cash in hand and increase cash in hand, in case of both the assesseees were given before the authorities below, which has been incorporated above in para 3 and 3.1 No discrepancy or any inquiry has been done by Assessing Officer to disapprove the cash disclosed in the books of account and balance sheet. The sole reason for disbelieving the assessee's explanation is that, firstly, no prudent person after withdrawing the cash will keep at home; and secondly, if there was an OD account having negative balance on which interest is being charged, then there was no need to keep such huge cash in hand at home. Such reasoning dehors any contrary material on record that the cash disclosed in the books of accounts has been invested somewhere else, then on mere surmise assessee's explanation cannot be discarded. If assesseees have genuine sources of income which are received through banking channels, out of which cash has been withdrawn and have been disclosed in the income tax return and in the balance sheet as cash-in-hand, then I am unable to apprehend how the provision of section 69A is applicable. Because the section can only be invoked where in any financial year the assessee is found to be the owner of any money, etc., which has not been recorded in the books of accounts and assessee offers no explanation. Here in these cases, Assessee's cash in hand duly stands recorded and source has been explained from the income deposited in the bank account and withdrawal, then in my opinion deeming provision of section 69A cannot be invoked. The reasoning given by the

AO and Ld. CIT (A) is vague and based on surmise as to what a prudent person should have done. Once assessee has explained that being of senior citizen they have maintained such liquidity of cash out of their own disclosed income with them for certain contingencies, then without any material to controvert such an explanation, addition cannot be sustained. Assessee before the lower authorities have filed following documents to substantiate the cash in hand with them:-

- a. Income Tax Return with computation of total income.*
- b. Balance Sheets for FY 2013-14, 2014-15 and FY 2015-16.*
- c. Comparative Chart of cash movement FY 2013-14, 2014-15 and FY 2015-16.*
- d. Cash book maintained by the assessee.*
- e. Kotak Mahindra Bank Statement bearing A/c No. 6311509485*
- f. Standard Chartered Bank: Statement of account.*
- g. Bank: Book of Kotak Mahindra Bank.*
- h. Bank Book of Standard Chartered Bank.*
- i. Copy of all medical treatment documents.*

7. All these documents have neither been rebutted nor there is any finding that cash-in-hand disclosed in the balance sheet was beyond the scope of their income or are not substantiated from the bank account. Simply because after the period of demonetization, that is, 08.11.2016, certain amount of cash has been deposited in the bank account, it does not mean that the cash-in-hand as on 31.3.2015 and 31.03.2016, duly shown in the balance sheet and disclosed to the department in the respective income tax return filed much earlier, is unexplained. Accordingly, in view of the above reasoning, addition made by the AO and sustained by the Ld. CIT (A) is directed to be deleted.”

Krishna Agarwal Vs. ITO (2021) 63 CCH 0048 (Jodh.) (Trib) (Case laws compilation PB 30-41)

Para 14 of the decision is reproduced as under:-

“14. In this regard, it is noted that the assessee has explained that out of earlier year's cash withdrawals from her bank account which were available as cash balance as on 01/04/2016, the assessee had deposited a sum of Rs. 68,95,000/- in her bank account during the year under consideration. It has been submitted that the assessee has sold a property, transferred in her name after the death of her husband, for a consideration of Rs 1,31,45,200/- during the financial year 2015-16 and the sale consideration has been received in installments during the financial year 2014-15 and financial 2015-16 directly in her bank account which has been subsequently withdrawn from time to time and due to non-fulfillment of purpose for which the cash was withdrawn, it was again re-deposited in the bank account during the year under consideration. In this regard, it is noted that the assessee in her return of income for A.Y 2016-17 has disclosed sale consideration on sale of plot of land for Rs 1,31,45,200/- and offered capital gains to tax. The plot has been sold through a registered deed and the valuation has been determined at Rs 1,31,45,200/- by the stamp duty authority. Thus, the sale consideration equivalent to stamp duty value has been duly disclosed by the assessee and there is no finding that the assessee has received any amount over and above the declared sale consideration. Therefore, given that the sale consideration has been received directly in the assessee's bank account, the source of cash withdrawals in the earlier two years has been clearly demonstrated by the assessee and we see no reason but to accept the said explanation

which is clearly demonstrated through the sale documentation and tax filings by the assessee”.

7. The Ld. CIT(A) has incorrectly observed that the judgement cited by the assessee are on issue of time gap in withdrawals from the bank and its utilization whereas the decisions relied by the assessee is on the issue that if it is not proved by the department that the cash available with the assessee has been utilized/invested elsewhere, the deposit of the same in the bank account cannot be considered as unexplained.

8. The decisions relied by the Ld. CIT(A) is that onus of proving source of deposit primarily rests on the person in whose name deposit appears in the bank account and if the explanation is unconvincing and one deserves to be rejected, then inference can be drawn that amount represents income from undisclosed sources. These cases are not applicable on the facts of the assessee in as much as the assessee has discharged its primary onus of explaining the source of deposit backed by evidences and the explanation of the assessee is not unconvincing so that the same can be out rightly rejected. In fact the Ld. CIT(A) has only reproduced that portion of the decision of the Hon'ble Supreme Court in case of Shreelekha Banarjee which suits him and not the entire para which is reproduced as under:

“It seems to us that the correct approach to questions of this kinds in this. If there is an entry in the account books of the assessee which shows the receipt of a sum on conversion of high denomination notes tendered for conversion by the assessee himself, it is necessary for the assessee to establish, if asked, what the source of that money is and to prove that it does not bear the nature of income. The Department is not at this stage required to prove anything. It can ask the assessee to bring any books of account or other documents or evidence pertinent to the explanation if one is furnished, and examine the evidence and the explanation. If the explanation shows that the receipt was not of an income nature, the Department cannot act unreasonably and reject that explanation to hold that it was income. If, however, the explanation is unconvincing and one which deserves to be rejected the Department can reject it and draw the inference that the amount represents income either from the sources already disclosed by the assessee or from some undisclosed source. The Department does not then proceed on no evidence, because the fact that there was receipt of money is itself evidence against the assessee. There is thus, prima facie, evidence against the assessee which he fails to rebut, and being unrebutted, that evidence can be used against him by holding that it was a receipt of an income nature. The very words "an undisclosed source" show that the disclosure must come from the assessee and not from the Department. In cases of high denomination notes, where the business and the state of accounts and dealings of the assessee justify a reasonable inference that he might have for convenience kept the whole or a part of a particular sum in high denomination notes the assessee prima facie discharges his initial burden when he proves the balance and that it might reasonably have been kept in high denomination notes. Before the Department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence which it has in its possession. The Department cannot by merely rejecting unreasonably a good explanation, convert good proof into no proof. It is within the range of these principles that such cases have to be

decided. We do not think that the Allahabad view puts no burden upon the assessee and throws the entire burden on the Department. The case itself does not bear this out. If it does, then, it is not the right view."

Thus, even the Hon'ble Supreme Court has held that the department cannot reject the evidence unless it shows the inherent weakness in the explanation or rebut it by bringing on record information or evidence which is in its possession. The department cannot reject unreasonably a good explanation and convert a good proof into no proof. In the present case the lower authorities have not brought on record any evidence to prove that the explanation of the assessee is fanciful or not backed by the evidence and therefore the explanation of the assessee cannot be rejected on surmises and conjectures.

In view of the above, the source of the cash deposit in the bank account during the demonetization period is fully explained and therefore the addition of Rs.55,30,000/- made by AO u/s 69A and confirmed by the Ld. CIT(A) be deleted.

Ground No.2

The Ld. CIT(A) has erred on facts and in law in taxing the above additions u/s 115BBE @ 60% instead of taxing the same @ 30% by ignoring that section 115BBE substituted by Taxation Laws (Second Amendment Act), 2016 which received the assent of President on 15.12.2016 and made applicable from 01.04.2017 is not applicable to AY 2017-18.

Facts & Submission:-

The lower authorities have taxed the alleged unexplained cash deposit in the bank account @ 60% u/s 115BBE. It is submitted that substituted section 115BBE by Taxation Laws (Second Amendment Act), 2016 received the assent of President on 15.12.2016. The section is made applicable w.e.f. 01.04.2017. Hon'ble ITAT, Jabalpur Bench in case of ACIT Vs. Sandesh Kumar Jain ITA 41/JAB/2020 order dt. 31.10.2022 at Para 4.2 of the order while interpreting the amendment made in section 115BBE which received the assent of President on 15.12.2016 held as under:-

4.2 As regards the assessee's second, without prejudice, argument, i.e., qua nonretrospectivity, we find considerable force therein. Section 1(2) of the Amending Act provides that save as otherwise provided therein, it shall come into force „at once“. The same only conveys the intent for, except where a later date is specified, the legislation to take immediate effect, i.e., as soon the assent of the Hon'ble President of India is received, by signing the same. The words „at once“ convey an urgency, so that the same represents the earliest point of time at which the same is to take effect, i.e., 15/12/2016 itself, and which also explains the same being enacted during the course of the fiscal year, tax rates for which stand already clarified at the beginning of the year per the relevant Finance Act (FA, 2016). The said words „at once“ would lose significance if the provisions of the Act are to, as stated by the Id. CIT(A), be read as effective 01/04/2017, implying AY 2018-19. The same, for substantive amendments, as in the instant case, represents the first day of the assessment year, i.e., AY 2017-18, which

explains the assessee's grievance of it being thus effective for fy 2016-17 or, w.e.f. 01/4/2016. Enacting it mid-year and, further, making it applicable „at once□, becomes meaningless if the same is to take effect retrospectively, or is made effective from a later date (01/4/2017), which could in that case be by Finance Act, 2017. True, the amendment, where so read, does give rise to a peculiar situation inasmuch as two tax rates would obtain for the current year, i.e., one from 01/04/2016 to 14/12/2016, and another from 15/12/2016 to 31/03/2017, but, then, that is no reason to read retrospectivity where the applicable date is clear and, further, there is nothing to suggest retrospectivity. Further, extraordinary and supervening circumstance of the Demonetization Scheme, 2016, brought out by the Government of India in November, 2016, explains the urgency in bringing an amendment mid-year. Further, the tax rate being in respect of incomes which are imputed with reference to a transaction/s, it is possible to administer the same, another aspect of the matter that stands considered by us. That is, a tax rate for transactions made up to 14/12/2016, and another for those thereafter. Subsequent mention of the applicability of the amended provisions of ss. 271AAB and 271AAC with reference to the date on which the Presidential assent to the Act is received, further corroborates this view, which is based on the clear language of the Amending Act, as well as the principle that a substantive amendment is to be generally prospective. We draw support from the decision in Vatika Township Pvt. Ltd. (supra), reiterating the settled law of the rule against retrospectivity. The tax rate applicable to the impugned income would, therefore, be at 30%, i.e., the rate specified in sec. 115BBE as on 30/11/2016, the date of the surrender of income per statement u/s 133A (PB-1, pgs.35-44). This, it may be noted, is also consistent with our view that the income is liable to be assessed u/s. 69B (see para 4.1).

The Ld. CIT(A) has relied on the decision of Kerala High Court and ITAT Chennai Bench but in these cases the law as laid down by Jabalpur bench is not discussed. Hence, these decisions cannot be applied as such. In the present case also, the amount deposited in the bank account is prior to 15.12.2016 and therefore the decision of Jabalpur Bench is squarely applicable and therefore even if it is held that amount is taxable u/s 69A of the Act, tax rate applicable u/s 115BBE would be 30% and not 60%.

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

S. No.	Particulars	Pg No.	Filed before AO/CIT(A)
1.	Copy of submission filed before Ld. CIT(A)	1-6	CIT(A)
2.	Copy of Index of Paper Book filed before Ld. CIT(A)	7	CIT(A)
3.	Copy of acknowledgment of return along with computation of total income	8-12	Both
4.	Copy of reply dt.04.11.2019 filed before AO	13	Both
5.	Copy of cash book of assessee from 01.04.2018 to 31.03.2018	14-16	Both

6.	Copy of reply dt.19.11.2019 filed before AO	17-18	Both
7.	Copy of assessment order u/s 143(3) dt.03.12.2018	19-20	Both
8.	Copy of reply dt.02.05.2018 filed before AO for A.Y. 2016-17 along with capital account, statement of affairs & list of sundry creditors	21-25	Both

Case laws relied upon:

S. No.	Particulars	Pg No.
1.	Copy of decision of Hon'ble Delhi High Court in case of CIT Vs. Kulwant Rai 291 ITR 0036 dt.13.02.2007	1-6
2.	Copy of decision of Hon'ble ITAT Delhi Bench in case of Neeta Breja Vs. ITO ITA No. 524/Del/2017 order dt. 25.11.2019	7-10
3.	Copy of decision of Hon'ble ITAT Lucknow Bench in case of DCIT Vs. Veena Awasthi (2018) ITA No.215/LKW/2016 order dt. 30.11.2018	11-20
4.	Copy of decision of Hon'ble ITAT Delhi Bench in case of Muon Computing (P) Ltd. Vs. ITO ITA No. 7606/Del/2019 order dt. 04.08.2021	21-25
5.	Copy of decision of Hon'ble ITAT Delhi Bench in case of Nand Kumar Taneja & Anr. Vs. ITO (2019) 55 CCH 0705	26-29
6.	Copy of decision of Hon'ble ITAT Jodhpur Bench in case Krishna Agarwal Vs. ITO (2021) 63 CCH 0048	30-41

7. The Id. AR of the assessee submitted that the lower authority did not appreciate the fact that the source of cash deposited into the bank account is the withdrawal made by the assessee. This aspect of the matter has been explained of having cash balance by the assessee has been explained in the copy of the reply filed by the assessee in earlier year proceeding i.e. A. Y. 2016-17 wherein the assessee submitted the capital account, statement of affairs and list of sundry creditors at page 23 the statement of affairs of the assessee was filed as on 31.03.2016 wherein the

cash balance was shown for an amount of Rs. 63,01,786/- and the same was accepted by the revenue. The observations made by the Id. AO and that of the Id. CIT(A) are based on the surmises and conjectures and has been made without appreciating the material placed on record. The available cash found is in fact suggest the assessee is in habit of maintaining the high cash on hand. Since the assessee has placed all the relevant material so as to justify the cash deposited is from the known sources and the revenue could not controvert these facts placed on record. To drive home to the contention so raised the Id. AR of the assessee relied upon the judgement filed in the paper book.

8. The Id DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. CIT(A). The Id. DR submitted that the preponderance of probabilities are in the favors the revenue. The search conducted at premises of the assessee and the heavy amount was seized. There is no reasons as to why the assessee shows such a high value of cash on hand for more than four years. Therefore, considering the apex court decision in the case of Durga Prasad more the preponderance of probability the reasons advanced by the assessee are not convincing and the assessee is

using the colorable device to cover up the undisclosed money as from disclosed source. The assessee is partner in firm and LLPs and the cash so withdrawn should have been invested in these firms and there is no reasons to hold such value of cash by the assessee. As regards the cash flow statement the Id. AO has already pointed out various defects the same are not repeated and therefore based on these averments Id. DR relied upon the order of the lower authority.

9. We have heard the rival contentions, perused the material placed on record and gone through the submissions made along with the oral arguments advanced at the time of hearing of the present appeal. The brief facts related to the disputes are that the assessee filed his returns of income on 30.10.2017 declaring total income of Rs. 10,92,550/- for the year under consideration.

The case was manually selected for scrutiny assessment as per guidelines of CBDT. The assessee is one of the partners in the firm M/s Eros Crafts engaged in the business of gems stones. The assessee is also one of the partners of various firms and LLPs. The assessee earned income from business or profession and other sources.

In the assessment proceedings the Id. AO noted that the assessee deposited banned Specified Bank Notes (SBNs) amounting to Rs. 55,00,000/- in the Savings bank account bearing No. "12860100001932" so maintained in Bank of Baroda.

He also has deposited SBNs amounting to Rs. 30,000/- in the Current bank account bearing No. "12860200000498" so maintained in Bank of Baroda during demonization period, i.e. from 09.11.2016 to 30.12.2016.

Since the assessee deposited SBNs during demonetization period, therefore, to verify the source of such deposits a notice u/s 142(1) of the Act annexing specific questionnaire regarding cash deposits during demonetization period has been issued to the assessee on 06.09.2019 fixing the date for furnishing submission by 11.09.2019. In response, the assessee filed submission on 04.11.2019, which has been placed on record by the Id. AO. The Id. AO noted that the opening balance of cash accounts as on 01.04.2013 of Rs. 14,78,783/-. The assessee after that date made withdrawal of Rs. 2 lac, 25 lac, 20 lac and 10 lac on 29.04.2013, 18.06.2013, 01.07.2013 & 2.7.2013 respectively and after approximately four years, the assessee claimed to have deposited the money of Rs. 55 lacs on 13.12.2016 in the Bank of Baroda. The balance amount of Rs. 30,000/- deposited was not mentioned in the cash accounts of the

assessee. Therefore, assessee was given a show cause notices based on these observations on 06.11.2019. While issuing the said show cause notice the Id. AO noted that amidst the period, a search & seizure operation had been carried out by the investigation wing, Jaipur on 23.05.2013. In that search cash amounting to Rs. 1,02,00,000/- was found and consequently was seized leaving cash of Rs. 6,82,500/- only. The entry of such cash seizure was not reflected / mentioned in the cash book filed. In the search proceeding cash as per books of accounts was found to have been at Rs. 6,82,500/- only whereas as per the cash book submitted cash shown at Rs. 16,76,783/-. The assessee was asked to justify these observations. The assessee did not demonstrate the purpose of keeping such cash which was withdrawn for such a long time.

The assessee explained that he held cash of Rs. 55,00,000/- from June 2013 to December 2016 and after approximately 4 years and the withdrawal of Rs. 60,00,000/- made after the date of search. That withdrawal and its sources has not been doubted by the revenue.

10. On the other hand, Id. AO noted that the amount deposited in the bank account from that withdrawal is not justifiable. During these 4 years, the assessee made various household and other expenses which were

incurred out of cash withdrawal amount. Thus, he hold that the cash deposited amount cannot be out of the cash withdrawals. Ld. AO further went on the observation that the assessee is one of the partners of various firms / LLPs and it is quite possible that the assessee entered in the cash transaction with the firms whereas the assessee did not book any entry of cash transaction in his cash accounts so furnished. Thus, it clearly establishes that the cash accounts are fully colorable device for distracting from the facts of the case and thus he considered the cash deposit of Rs.55,30,000/- as unexplained and made addition u/s 69A of the Act.

Before the Ld. CIT(A) assessee filed detailed submission. However, the Ld. CIT(A) at Page 11 to 14 of the order observed that the search carried on the assessee on 23.05.2013 shows that assessee has unaccounted sources of cash. The cash account furnished for the period 01.04.2013 to 31.03.2017 shows that in each year there are only four/five entries, drawing is shown only on the last day of the financial year, it is not audited, and such cash book was not furnished in any income tax proceedings before the date of demonetization. The personal balance sheet and the cash flow submitted to the AO in earlier years, the same were not examined and verified by the AO during the assessment proceedings. The assessee claimed that cash was withdrawn and kept in

liquid form due to possibility of attachment of the bank account is not based on any documentary evidence to show the amount of demand raised in the income tax proceedings. The cash was deposited on 13.12.2016 i.e. after a period of one month & five days from the date of announcement of the demonetization which leads to a inference that such cash was actually not available with the assessee on the date of demonetization. Accordingly relying on the decision of Hon'ble Supreme Court in case of Shreelekha Banarjee Vs. CIT 49 ITR 112 and CIT Vs. K. Chinnathamban 162 Taxmann 459, Kerala High Court in case of K.V. Mathew Vs. ITO 42 Taxmann.com 571 and decision of ITAT Delhi Bench in case of Manoj Agarwal Vs. DCIT 113 ITD 377 held that under the preponderance standard burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true which is not there in the present case. Accordingly, he confirmed the addition of Rs.55,30,000/- made by the AO.

11. Aggrieved with that finding the assessee is in appeal before this tribunal. The bench noted that the search in this case was conducted on the 23.05.2013. In that search cash of Rs. 1,02,00,000/- was found and from the cash so found Rs. 6,82,500/- being the amount as per books were

left and balance was seized. Thereafter, the assessee made withdrawn from the bank which is listed as under:

Date	Amount (Rs.)
18.06.2013	25,00,000
01.07.2013	20,00,000
02.07.2013	10,00,000
26/02/2014	3,00,000
26/02/2014	2,00,000
Total	60,00,000

This withdrawal and source of this amount withdrawn is not in disputed. Even the assessee claimed that the revenue did not proved in the assessment proceeding subsequent to the search the utilization of the said cash so withdrawn from the bank account. The belief of the assessee after the search to have the demand and to avoid recovery of those demand he has made withdrawal of cash from the bank account. This explanation of the assessee was rejected merely based on the surmises and conjecture and the evidence so filed was rejected based on these assumptions and presumptions. The bench also noted that the assessee in the assessment proceeding for A.Y. 2016-17 where the AO required the assessee to file the personal statement of affairs, the same

was submitted vide letter dated 02.05.2018 (PB 21-25) which shows cash balance of Rs.63,01,786/- as on 31/03/2016 (PB 23). This includes a cash balance of Rs.62,90,786/- as per the cash book filed before the AO. After considering these details the AO completed the assessment at returned income of Rs.6,11,070/- (PB 19-20). Thus, the fact of assessee having cash in hand is also get strengthen of Rs.63,01,786/- as on 31.03.2016.

12. We note that Id. CIT(A) observed that in a search carried out on 23.05.2013 cash of Rs.1,08,82,500/- was found, whereas cash as per books cash was only Rs.8,10,500/-. The search party seized cash of Rs.1,02,00,000/- leaving the remaining balance of Rs.6,82,500/- which shows that assessee has the unaccounted sources of the cash. This observation has no relevance to the amount deposited during demonetization period. Rather it supports the case of the assessee that assessee in habit of keeping large cash in hand. Further Id. AO has observed that as per the cash book furnished the cash balance as on 23.05.2013 is Rs.16,78,783/- whereas the search party has only left Rs.6,82,500/- on that date. Thus the cash account filed is not reliable as contended by Id. AO is not correct because he has ignored that at the time of search, the search party has not considered the cash balance

available with the assessee in the personal hand. This was explained to the AO vide letter dt.19.11.2019 (PB 17-18). In any case the variation is only of Rs.9,96,283/- (16,78,783- 6,82,500) and if the same is reduced, still the cash balance remains available with the assessee to justify the source of the amount deposited into the bank account.

13. Hence, variation would not make the whole amount as unaccounted money in the hands of the assessee when during the course of proceedings for A.Y. 2016-17, the assessee has furnished his statement of affair according to which cash balance as on 31.03.2016 was Rs.63,01,786/-. As regards the observation that the cash statement there are only four / five entries in a year, it is not audited, the household withdrawal is shown on the last day of the financial year and the statement of the affairs as on 31.03.2016 was not examined by the AO. It is submitted that in the cash book whatever transactions are made in cash, the same are recorded. It is a personal cash account which does not require any audit. The monthly household withdrawal made is recorded in this cash account at the end of the year but even if it is recorded on monthly basis, the cash balance remains unaffected.

14. The personal statement of affairs as on 31.03.2016 was submitted to the AO vide letter dt.02.05.2018 (PB 21-23) in course of the assessment proceedings for A.Y. 2016-17 which shows cash balance of Rs.63,01,786/-. The assessee also supports the contention that a search was carried out on 23.05.2013, as fear of demand he has made withdrawn the cash from his bank account and kept the same in hand. The major cash withdrawal of Rs.55,00,000/- was between 18.06.2013 to 02.07.2013. Even if there was no demand raised during this period but if due to fear psychology after the search, the assessee has withdrawn this amount from the bank account, it cannot be presumed that in the absence of any evidence of the demand raised by the Income Tax department, the cash is not available with the assessee.

15. As regards the contention that cash in the bank account was deposited after one month and five days of the date of the demonetization. This observation cannot lead to any inference that the cash was not available with the assessee on the date of demonetization as observed by the Ld. CIT(A). It may be noted that the entire amount of SBN's was deposited in the bank on 13.12.2016 after the rush which was at the bank due to the demonetization settled down. Hence, such

observation by CIT(A) is only on surmises & conjectures and against the evidence placed on record.

16. The bench also noted that the assessee having cash deposit of Rs.55,30,000/- in the saving bank account and in the current account maintained with Bank of Baroda was also disclosed in the return filed for the year under consideration (PB 12). The cash deposit of Rs.55,00,000/- in the saving bank account is verifiable from the cash book whereas cash deposit of Rs.30,000/- in the current account is out of the business income of Rs.3,82,112/- disclosed u/s 44AD of the Act.

Looking to the facts and evidences suggests that the preponderance standard, the burden of proof is discharged by the assessee in the present case assessee. Even the Id. AO through the Id. DR did not bring on record any evidence that such cash was not available with the assessee but has been spent / utilized elsewhere.

17. Thus, once the assessee explained that source of cash deposit in the bank account is out of the earlier withdrawals made from the same bank account, the burden of proof is on the department to establish that cash has been utilized elsewhere if the explanation of assessee is not to be accepted. We get support of this view from the decision of CIT vs.

Kulwant Rai 291 ITR 0036 (2007) (Delhi HC) wherein the high court held that;

The relevant Para 16 is reproduced as under:

“16. This cash flow statement furnished by the assessee was rejected by the AO which is on the basis of suspicion that the assessee must have spent the amount for some other purposes. The orders of AO as well as CIT(A) are completely silent as to for what purpose the earlier withdrawals would have been spent. As per the cash book maintained by the assessee, a sum of Rs. 10,000 was being spent for household expenses every month and the assessee has withdrawn from bank a sum of Rs. 2 lacs on 4th Dec., 2000 and there was no material with the Department that this money was not available with the assessee. It has been held by the Tribunal that in the instant case the withdrawals shown by the assessee are far in excess of the cash found during the course of search proceedings. No material has been relied upon by the AO or CIT(A) to support their view that the entire cash withdrawals must have been spent by the assessee and accordingly, the Tribunal rightly held that the assessment of Rs. 2.5 lacs is legally not sustainable under s. 158BC of the Act and the same was rightly ordered to be deleted.”

Based on the discussion so recorded herein above ground no. 1 raised by the assessee is allowed.

Ground no. 3 & 4 being general the assessee has not placed any arguments and therefore, the same are not required to be adjudicated. Ground no. 2 being the charge of tax at special rate on the addition so made since we have on merits directed to delete that addition charge of tax at higher rate on that amount becomes educative in nature.

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

Order pronounced in the open court on 29/08/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 29/08/2024

*Ganesh Kumar, Sr. PS

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

1. The Appellant- Sh. Sanjay Godha, Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Circle-01, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 539/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar