

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 2437/DEL/2022 (A.Y 2017-18)

DCIT Central Circle-29, Room No. 327, E-2, ARA Centre Jhandewalan Extension, New Delhi (APPELLANT)	Vs.	Omaxe New Chandigarh Developers Pvt. Ltd. 10, Local Shopping Centre Kalkaji, New Delhi PAN No. AABCO2751Q (RESPONDENT)
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I.T.A. No. 2436/DEL/2022 (A.Y 2017-18)

DCIT Central Circle-29 Room No. 327, E-2, ARA Centre Jhandewalan Extension, New Delhi (APPELLANT)	Vs.	Omaxe India Trade Centre Pvt. Ltd. 10, Local Shopping Centre, Kalkaji, . New Delhi PAN No. AACCV3487B (RESPONDENT)
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Assessee by :	Sh. Akshat Jain, CA & Sh. Rajat Jain, CA
Department by:	Sh. Jatender Kumar Kale, Sr. DR

Date of Hearing	01.08.2024
Date of Pronouncement	13.09.2024

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

Both the above captioned Appeals filed by the Department of Revenue aggrieved by the order dated 06/07/2022 for the Assessment Year 2017-18 in respect of the captioned Assessee respectively.

2. Since the common grounds of Appeal has been raised by the respective assesses and the issues involved in both the appeals are identical emerging from the same seized documents, both the appeals are heard together and decided in this common order.
3. For the sake of convenience Grounds of appeal in the case of Omaxe New Chandigarh Developers (P) Ltd. are reproduced as under: -

“1. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) erred in law & on facts, ignoring the fact that the assessee company only submitted that the company was a construction contractor and needs cash in hand for making payment for wages etc. The assessee did not produce any documentary evidences of any payment being made for wages etc.

2. *Whether on the facts and in the circumstances of the case, the Ld.CIT(A) erred in law & on facts, ignoring the fact that the assessee throughout during assessment proceedings even before appellate proceedings only submitted figures/datas in order to establish the source of such cash deposits made by the assessee during assessment proceedings but no documentary evidences relating to the purposes of such cash in hand i.e. expenses such as wages etc was filed by the assessee, done in FY 2017-18, if any, relating to the AY 2016-17 or in any of the earlier AY/AYs.*

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

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

5. *Whether on the facts and in the circumstances of the case, the Ld.CIT(A) erred in law & on facts, ignoring the impounded documents seized from the registered address of M/s Omaxe Limited as Annexure A-4 (Page No. 87 to 91 and 97-100) which brought into light the fact that the company M/s Omaxe India Trade Centre Private Limited*

was having Cash-in-hand as on 08.11.2016 as per page nos. 87 to 91) and also as per page no. 97-100 was 31,00,111/-.

6. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) erred in law & on facts, ignoring that there is no pattern of such huge cash deposits in the year previous to the relevant previous year.

7. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) erred in law & on facts, ignoring that the assessee only submitted that the impounded documents containing cash balance available at site offices maintained at the corporate headquarter for various exigencies but again the assessee did not produce any documentary evidences in order to establish its claim. It is not acceptable that such a

going on concern i.e. company/flagship company does not maintain or keep record of such details of cash alongwith its purposes for each of the company sites separately.

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

9. Whether the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.

10 Whether the grounds of appeal are without prejudice to each other.”

4. The brief facts of the case pertaining to Omaxe New Chandigarh Development P. Ltd. has been taken into consideration for the sake of convenience. The Police team of Hodal, Haryana intercepted two vehicles which were carrying cash amounting to Rs. 2,22,76,000/- in bags on 22/11/2016. The Police have subsequently informed to the Department of Income Tax and based on the statement of a person holding the cash in the vehicle, the Department found that the cash found was belongs to M/s Omaxe Ltd. Thereafter a survey u/s 133A of the Income Tax Act, 1961 ('Act' for short) was conducted on M/s Omaxe Ltd. Kalkaji, New Delhi, Shop No, 19B, first Floor, Omaxe Celebration Mall, Sector 48, Gurgaon, and Omaxe Residency 2, Gomti Nagar Extension, Amar Shaheed Path, Lucknow, on 22/11/2016. The cash amounting to Rs. 2,22,76,000/- was also seized under Sec132A of the Act.

5. During the course of survey operation at registered address of Omaxe Ltd. certain documents were impounded as Annexure A-4, and as per the impounded material, as on 08/11/2016 of Rs. 31,00,111/- cash in hand has been reflected in respect of the

Assessee. The Assessee has deposited cash of Rs. 4,73,00,000/- during the period of demonization, therefore, the A.O. issued a show cause notice while the cash of Rs. 4,41,99,889/- (4,73,00,000/- - Rs. 31,00,111/-) deposited by the Assessee during the relevant Assessment Year 2017-18 during the period of demonization be treated as unexplained and added to the income of the Assessee. In reply, the Assessee produced the bank statements, copy of the cash book from where the cash has been deposited showing the balance as on 08/11/2016 and contended that the Assessee Company is into real estate business and needs cash in hand for making payments for wages etc. and cash deposits were out of the withdrawals made earlier from the bank accounts. The explanation of the Assessee has not been accepted by the A.O., accordingly made an addition of Rs. 4,73,00,000/- u/s 68 of the Act as unexplained cash deposit.

6. Even in the case of Omaxe India Trade Centre Pvt. Ltd. based on the very same impounded Annexure-A4 made an addition of Rs. 1,68,86,000/- u/s 68 of the Act on account of deposit of cash

during demonization period. Aggrieved by the respective additions made against the Assessee, the Assessee has preferred respective Appeals before the CIT(A). The Ld. CIT(A) vide order dated 06/07/2022 allowed the Appeals of the Assessee by deleting the addition made by the A.O. Aggrieved by the orders of the Ld. CIT(A), the Department of Revenue preferred the captioned Appeals on the Grounds mentioned.

7. The Ld. DR vehemently submitted that the Assessee has not produced any documents before the CIT(A) to prove that the Assessee company needs cash in hand for payment of wages, the Assessee has not produced any documentary evidence to establish the source of the cash deposits, the Assessee has failed to prove the preliminary burden cast upon the Assessee u/s 68 of the Act, the Ld. DR relying on the Assessment Orders, sought for allowing the Appeal.

8. Per contra, the Ld. Assessee's Representative, relying on the orders of the CIT(A) submitted that, the cash deposited post demonization has been duly explained before the CIT(A) based on

the available cash balance as on 08/11/2016, which in turn built up by cash withdrawals from bank accounts, which are undisputed and the opening cash balance at the beginning of the year, which is also undisputed since the same tallies with the cash balance as on 31.03.2016 as per the ITR for A.Y 2016-17. The Ld. Counsel submitted that in identical Appeals, the Co-ordinate Bench of the Tribunal has dismissed the Appeals filed by the different Assessees, which were emerged out of very same survey operation and the additions has been made based on the very same impounded document Annexure A-4. The Ld.AR relied on the following Orders of the Co-ordinate bench of the Tribunal: -

- i) DCIT Vs. Pancham Realcon Pvt. Ltd. In ITA No. 2439/Del/2022 order dated 07.11.2023
- ii) ACIT Vs. M/s Omaxe Housing & Developers Ltd. In ITA No. 47/Del/2023 order dated 03.01.2024
- iii) ACIT Vs. M/s Omaxe Forest SPA and Hills Developers Ltd. In ITA No. 2/Del/2023
- iv) DCIT Vs. Jagdamba Contractors and Builders Ltd. In ITA No. 204/Del/2023
- v) DCIT Vs. M/s Bhanu Infrabuild Pvt. Ltd. In ITA No. 2433/Del/2022.

9. We have heard the Ld. DR and the Ld. AR, perused the material available on record and our findings are as under in respective Appeal.

Omaxe New Chandigarh Development Pvt. Ltd. ITA No. 2437/Del/2022

10. The Ld. CIT(A) while deleting the addition held as under: -

“5.2. I have carefully considered the assessment order and the submissions of the appellant as well as the assessment records. The findings regarding various observations made by the AO leading to the impugned addition of the amount of cash deposited post-demonetization, are as follows:

5.2.1. The AO has observed that cash withdrawals made by the assessee are not near the dates of cash deposits, and further that if the assessee had withdrawn cash for wage payments/deals, it is not understandable as to why such expenses were not actually incurred. The AO has observed that the assessee company being a running concern, could not have mounted cash for so long. In this regard, it is important to consider the following comparative charts incorporating monthly opening cash balance, cash sales, cash withdrawals, cash deposits, cash expenses and monthly closing cash balance as per the cash books of the appellant for F.Ys. 2015-16 and 2016-17 submitted during the appellate proceedings:

OMAXE NEW CHANDIGARH EXTENSION PRIVATE LIMITED						
MONTHLY CHART FOR FINANCIAL YEAR 2015-16						
Month	Opening Balance	Cash Sales	Cash Withdrawal	Cash Deposited	Cash Expenses	Closing Balance
April, 2015	99,03,939	37,14,994	3,00,000	70,00,000	5,92,334	63,26,599
May, 2015	63,26,599	96,753	1,07,83,000	-	8,76,545	1,63,29,807
June, 2015	1,63,29,807	1,51,604	3,50,000	20,00,000	11,43,278	1,36,88,133
July, 2015	1,36,88,133	1,94,409	13,22,000	-	13,79,887	1,38,24,655
August, 2015	1,38,24,655	59,444	2,04,97,000	-	7,55,753	3,36,25,346
September, 2015	3,36,25,346	74,586	7,00,000	1,30,00,000	20,19,591	1,93,80,341
October, 2015	1,93,80,341	97,285	5,00,000	10,00,000	8,37,412	1,81,40,214
November, 2015	1,81,40,214	28,423	7,00,000	-	9,63,474	1,79,05,163
December, 2015	1,79,05,163	1,83,988	3,00,000	20,00,000	6,01,925	1,57,87,226
January, 2016	1,57,87,226	74,375	3,34,00,000	-	11,28,954	4,81,32,647
February, 2016	4,81,32,647	1,20,701	4,00,000	2,39,00,000	8,25,898	2,39,27,450
March, 2016	2,39,27,450	1,02,476	8,05,000	2,25,00,000	9,22,301	14,12,625
		48,99,038	7,00,57,000	7,14,00,000	1,20,47,352	

OMAXE NEW CHANDIGARH EXTENSION PRIVATE LIMITED						
MONTHLY CHART FOR FINANCIAL YEAR 2016-17						
Month	Opening Balance	Cash Sales	Cash Withdrawal	Cash Deposited	Cash Expenses	Closing Balance
April, 2016	14,12,625	36,011	3,55,50,000	34,50,000	6,63,116	3,28,85,520
May, 2016	3,28,85,520	1,48,654	-	1,98,00,000	6,02,870	1,26,31,304
June, 2016	1,26,31,304	48,394	3,00,000	74,00,000	6,91,925	48,87,773
July, 2016	48,87,773	61,694	3,05,00,000	30,00,000	7,02,707	3,17,46,760
August, 2016	3,17,46,760	16,053	2,02,00,000	1,69,19,600	7,22,856	3,43,20,357
September, 2016	3,43,20,357	36,090	2,00,00,000	5,04,74,800	8,70,775	30,10,872
October, 2016	30,10,872	89,213	5,00,00,000	30,00,000	13,84,035	4,87,16,050
November, 2016	4,87,16,050	59,253	5,00,000	4,73,00,000	4,96,174	14,79,129
December, 2016	14,79,129	54,500	14,50,000	-	2,80,841	27,02,788
January, 2017	27,02,788	59,785	10,00,000	-	2,05,539	35,57,034
February, 2017	35,57,034	1,24,936	31,55,000	-	7,24,904	61,12,066
March, 2017	61,12,066	1,29,198	18,00,000	10,00,000	11,36,233	59,05,031
		8,63,781	16,44,55,000	15,23,44,400	84,81,975	

5.2.2 It is pertinent to mention here that similar comparative charts for F.Ys. 2015- 16 and 2016-17 were also submitted during assessment proceedings, with supporting cash books and bank statements. There are however some minor differences between the two sets of comparative charts viz. charts submitted during

assessment proceedings are only upto 8.11.2015 and 8.11.2016 and further incorporate only the major cash withdrawals from bank and cash deposits into bank. However, the month wise opening and closing cash in hand are accurately calculated in both sets of comparative charts. The set of comparative charts furnished during assessment proceedings is extracted below:

Omaxe New Chandigarh Developers Private Limited					
Detail of cash Required					
Month	Opening cash in hand	cash sales	cash deposit in bank	cash withdrawal from bank	Closing cash in hand
Apr-15	9903939.39	3714994	7000000		6326599.81
May-15	6326599.81	96753		10000000	16329807.81
Jun-15	16329807.81	151604	2000000		13688134.04
Jul-15	13688134.04	194409			13824656.06
Aug-15	13824656.06	66403		20000000	33625346.84
Sep-15	33625346.84	74586	13000000		19380341.84
Oct-15	19380341.84	97285	1000000		18120836.24
Nov till 8-Nov-15	18120836.24	4000			18159027.81
Apr-16	1412625.45	36011	3450000	35000000	32885520.45
May-16	32885520.45	148653	19800000		12631304.35
Jun-16	12631304.35	56039	7400000		4887773.44
Jul-16	4887773.44	61694	3000000	30000000	31746760.19
Aug-16	31746760.19	16053	14919600	20000000	34320357.27
Sep-16	34320357.27	36090	50474800	20000000	3010871.91
Oct-16	3010871.91	89213	3000000	50000000	48415050.18
Nov till 8-Nov-16	48415050.18	11287			47946135.68

5.2.3. I have considered the comparative charts as submitted during appellate as well as assessment proceedings. On the basis of the following observations, I am not in agreement with the reasons given by the AO to treat the cash deposited post- demonetization as unexplained. From the comparative charts for complete financial years 2015-16 and 2016-17, it is observed that the appellant usually maintains a high cash balance in the books of account. This is evident from the opening cash balance of Rs. 99,03,939/- as on 01.04.2015, which is also corroborated by the cash balance as on 31.03.2015 as per the ITR and audit report for A.Y. 2015-16, which was filed much before demonetization and is therefore not a subject matter of manipulation.

5.2.4. It is also observed from the chart for F.Y. 2016-17 that the opening cash balance as on 01.04.2016 of Rs. 14,12,625/- was enhanced to Rs. 3,28,85,520/ that on 30.04.2016 by making a cash

withdrawal of Rs. 3,55,50,000/- during that month, Thereafter, the cash balance has been maintained at similar levels upto the month of August, 2016 and thereafter in the month of October, 2016 three cash withdrawals aggregating to Rs. 5,00,00,000/- have been made from the bank accounts which has led to the cash balance of Rs. 4,87,16,050/- as on 31.10.2016 just prior to the date of demonetization. The wisdom behind maintaining such high level of cash balance cannot be a subject matter of finger-pointing by the AO, and is best left to the business prudence of the assessee. However, the fact remains that high levels of cash balance have been shown in ITR filed by the appellant even prior to demonetization, as observed above, Further, the levels of cash withdrawals from bank accounts and cash deposits into bank accounts are also comparable for the two financial years under consideration. The cash withdrawal from bank accounts of the appellant was Rs. 7,00,57,000/- during F.Y. 2015-16 and the same was Rs. 16,44,55,000/- during F.Y. 2016-17. Similarly cash deposited into bank accounts was Rs. 7,14,00,000/- during F.Y. 2015-16 as compared to cash deposit of Rs. 15,23,44,400/- (Rs. 10,50,44,400 if normalized for the forced deposit of Rs. 4,73,00,000/- due to demonetization) during F.Y. 2016-17. The AO's observation, that the cash withdrawals and deposits for the two financial years do not match, is not particularly relevant, since such deposits and withdrawals are bound to differ in different years due to different opening cash balances as well as different cash requirements across various years. Infact, substantial cash withdrawals as well as deposits into the bank accounts is very much a regular feature of the business of the appellant and hence there is nothing unusual in either the cash withdrawals or the cash deposits made during the year under consideration. It is also observed that the appellant has a low or negligible level of cash receipts through sales and also a moderate level of cash expenses in both the years as seen from the comparative charts. In this regard, it is noteworthy that the assessee has not tried to explain the post-demonetization cash deposits by showing cash sales, which are at a miniscule level. A similar trend is observed in the preceding year also wherein the level of cash sales is low and that of cash expenses is moderate. The AO has remarked in a generalized manner that cash is normally withdrawn for immediate expenses such as wage payments, which have not been shown by the appellant. The said observation is not well-founded since some amount of cash expenses have been shown by the appellant and more importantly the AO has not established that wage payments or any other expenses of meaningfully higher magnitude were being made in cash earlier and have now not been shown. Such

generalized allegations without marshaling appropriate facts are not proper. It is thus seen that there was no unusual trend in cash withdrawals, cash deposits, cash sales, cash expenses and level of cash balances during the year under consideration as compared to the preceding year. The AO's observation that the assessee company being a running concern, could not have mounted cash for so long amounts to mere surmises since the fact of maintenance of high cash balances across extended period of several months is duly established from the ITRs and audit reports as well as cash withdrawals of the appellant from its bank accounts, both of which are a matter of record and are not subject to manipulation. It is an established principle that business prudence behind such practices is not subject to questioning.

5.2.5. As regards the time gap of a few months between cash withdrawal and cash deposit into the bank accounts, similar trend is observed in the preceding year also, thereby establishing that such time gap too was a normal feature of the assessee's business. E.g. substantial cash withdrawal of Rs. 1,07,83,000/- and Rs. 2,04,97,000/- were made in the months of May and August 2015 respectively and the same were effectively deposited back into the bank accounts in the months of September 2015 and February, 2016.

The decisions of the jurisdictional High Court cited by the appellant in the cases of Kulwant Rai (supra) and Jaya Aggarwal (supra) are also in support of these findings. In the case of Kulwant Rai, the assessee had cited withdrawal of a sum of Rs. 2 lakhs from his bank account as the source for cash found during search and the same was not accepted by the AO on the assumption that such withdrawn amount may have been spent for some other purposes. The court held that in the absence of any material in support of the view that withdrawals were spent for some other purpose, the Tribunal was right in treating the withdrawals as source of cash found. Similar is the case of the assessee where cash withdrawals from bank accounts are the source of subsequent cash deposits into such bank accounts. Further, in the case of Jaya Aggarwal, the jurisdictional Court held that where the assessee withdrew cash of Rs. 2 lakhs from bank account to buy property and re-deposited cash of Rs. 1,60,000/- from the amount withdrawn after more than 7 months as the deal could not be finalized, principle of preponderance of probability as a test is to be applied and is sufficient to discharge the onus. The case of the assessee is also similar since cash withdrawals from bank are shown as source for subsequent cash re-deposit even if made at a gap of a few months.

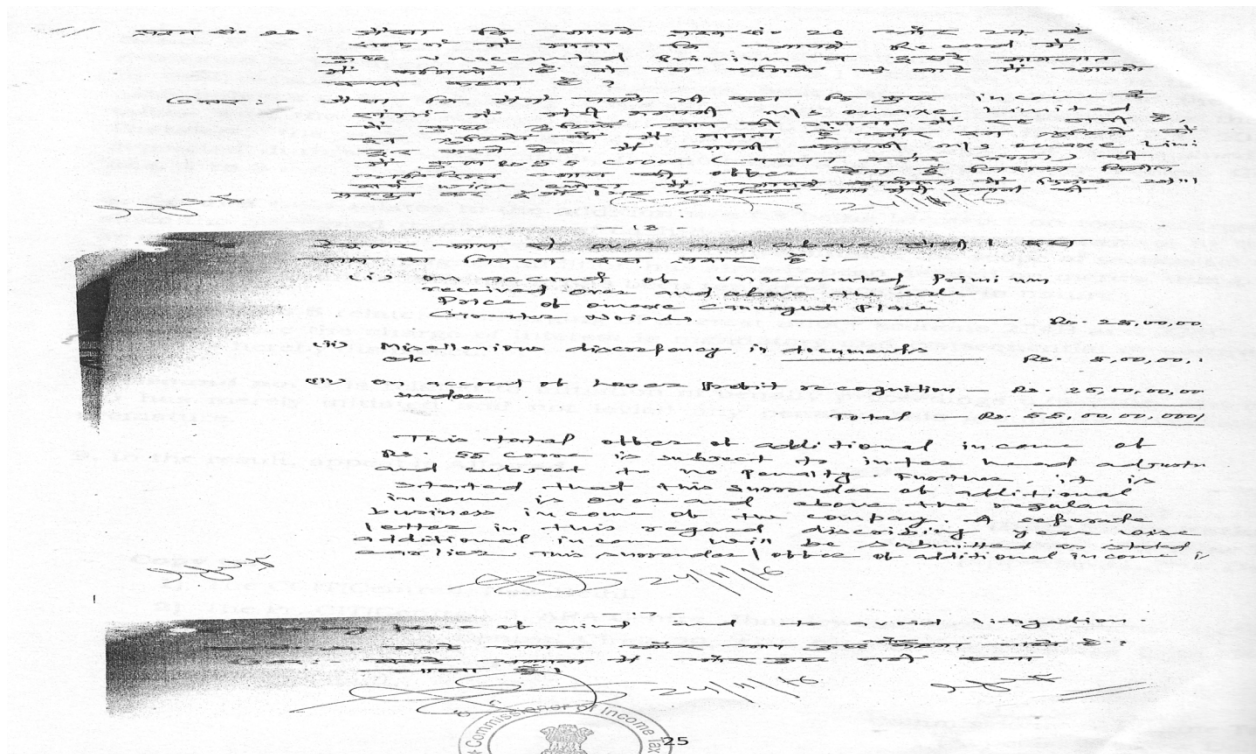
It is therefore held that holding substantial cash balances for extended periods of time and re-deposit of such cash into bank accounts was a routine business practice of the appellant company and there was nothing unusual about the same considering the nature of the business as well as trends in the preceding year.

5.2.6. The AO has further observed that the assessee has prepared cash books in such a way that nearby cash withdrawals can be shown as cash deposited during demonetization. In this regard, it is a matter of fact that the bank withdrawals on deposits are reflected in the bank accounts statements as well as cash book and cannot be manipulated in any manner. The appellant has duly given the site cash books as well as main cash book whose total cash balance as on 08.11.2016 is Rs. 4,79,46,136/-. The said cash balance has been built up by cash withdrawals from bank accounts, which are undisputed, and the opening cash balance at the beginning of the year, which is also undisputed since the same tallies with the cash balance as on 31.03.2016 as per the ITR for A.Y. 2016-17. The AO has ignored the main cash book of the assessee and has considered only the site cash books in arriving at the figure of cash balance as on 08.11.2016. The appellant has stated that the existence of the main cash book cannot be denied since most of the bank transactions, whether deposits or withdrawals, have been routed through the main cash book, which is the reason why the main cash book has the bulk of cash balance. It is further submitted by the appellant that cash in hand as on 01.04.2016 as per the sum total of all cash books, including the main cash book, comes to Rs. 14,12,625/-, which is also the figure of cash in hand as on 31.03.2016 as per the ITR for A.Y. 2016-17. I have examined the above contentions and find that the AO's action in ignoring the main cash book is incorrect due to reasons cited by the appellant, since major bank withdrawals and deposits have been routed through the main cash book and if the said cash book is ignored, it would amount to ignoring the cash withdrawals made from bank accounts as well as cash deposits therein. Further, the AO has not cited any statement recorded or logical reasoning as to why the main cash book has been ignored. Therefore the observation of the AO that the cash book has been constructed in such a manner so as to explain the cash deposits, is untenable. It is further observed in the case of the appellant that as per submissions dated 04.11.2019 submitted during assessment proceedings and reproduced by the AO at page 15 of the assessment order, the appellant has drawn his attention to three major withdrawals made from bank on 15.10.2016, 17.10.2016 and 18.10.2016 aggregating to Rs. 5,00,00,000/-, which itself was sufficient to explain the cash availability of Rs.

4,79,46,136/- as on 08.11.2016, being only a few days away from the cash withdrawals.

5.2.7. The AO has further observed that since the assessee is a builder and has stated that all sales are via cheque/RTGS/DD etc, there is no question of accepting cash generation through sales. Regarding this observation, it is noted that the appellant itself has not shown any meaningful or unusual cash sales in the attempt to explain the cash deposited during demonetization. Infact, the cash sales are of Rs. 8,63,780/- only for F.Y. 2016-17. Therefore, this argument does not carry any force.

4. It has also been observed by the AO that the flagship company, M/s Omaxe Ltd. has surrendered a huge amount as unaccounted income, however, the assessee has not disclosed any such unaccounted income. The said observation is not rational, firstly since any disclosure made by the flagship company does not automatically translate into any acceptance of tax evasion by the appellant. Secondly, the surrender/disclosure made by the flagship company, M/s Omaxe Ltd, is on account of a totally different issue as evident from the statement of Sh. Rohtas Goel, CMD, Omaxe Ltd., the relevant portion of which is extracted below:



5.2.8. It is therefore evident that the cash deposited post-demonetization is duly explained by the available cash balance as on 08.11.2016, which was in turn built up by cash withdrawals from bank accounts, which are undisputed, and the opening cash balance at the beginning of the year, which is also undisputed since the same tallies with the cash balance as on 31.03.2016 as per the ITR for A.Y. 2016-17) Therefore, the addition of Rs. 4,73,00,000/- on account of unexplained cash deposited during demonetization, is untenable and is accordingly deleted. Ground nos. 1 to 3 are allowed.”

11. It can be seen from the order of the CIT(A), the Ld. CIT(A) has verified the comparative charts for the complete Financial Year 2015-16 and 2016-17 and found that the Assessee maintains a high cash balance in the books of account. The same has been corroborated from the opening cash balance of Rs. 99,03,939/- as on 01/04/2015 and the cash balance as on 31/03/2015, which has been corroborated by the cash balance as on 31/03/2015 as per ITR and audit report for Assessment Year 2015-16, which was filed much before demonization and the same cannot be doubted or manipulated by the Assessee. The Ld. CIT(A) has also observed from the chart for Financial Year 2016-17 that the opening cash balance as on 01/04/2016 of Rs. 14,12,625/- was enhanced to Rs. 3,28,85,520/- as on 30/04/2016 by making a cash withdrawal of Rs. 3,55,50,000/- during that month and the cash balance has

been maintained at similar level up to the month of August, 2016, and thereafter in the month of October, 2016 three cash withdrawals aggregating to Rs. 5,00,00,000/- have been made from the bank accounts which has led to the cash balance of Rs. 4,87,16,050/- as on 31/10/2016, which is just prior to the date of demonization. It is well settled law that the wisdom behind maintaining such cash balance cannot be subject matter of finger pointing by the A.O. and it is best left to the business prudence of the Assessee. The Ld. CIT(A) found that the withdrawal from the bank accounts and cash deposits into bank accounts are also comparable for the two financial years under consideration. The cash withdrawal from bank account of the Assessee was Rs. 7,00,57,000/- during Financial Year 2015-16 and Rs. 16,44,55,000/- during Financial Year 2016-17. Similarly, cash deposited into bank account was Rs. 7,14,00,000/- during Financial Year 2015-16 as compare to cash deposit of Rs. 15,23,44,400/- (Rs. 10,50,44,400/- if normalized for the forced deposit of Rs. 4,73,00,000/- due to demonization) during Financial Year 2016-17.

12. It was the case of the A.O. that the flagship company, Omaxe Ltd. has surrendered a huge amount as unaccounted income, however, the Assessee has not disclosed such unaccounted income. The Ld. CIT(A) found that the said observation of the A.O. not rational, first since any disclosure made by the flagship company does not automatically translate into any acceptance of tax evasion by the Assessee. Secondly, the surrender/disclosure made by the Flagship Company i.e. M/s Omaxe Ltd. is on account of totally different issue as per the statement of Sh. Rohtas Goyal, CMD, Omaxe Ltd. The Ld. CIT(A) after appreciating the evidence found that the cash deposited post demonization has been duly explained by the available cash balance as on 08/11/2016, which was in turn built up by cash withdrawal from the bank accounts, which are undisputed and opening balance at the beginning of the year, which is also undisputed since the same tallies with the balance as on 31/03/2016 as per ITR Assessment Year 2016-17, therefore, deleted the addition made on account of cash deposit during the demonization. In the absence of any material contrary to the above findings of the CIT(A), we find no reason to interfere

with the reasoning and conclusion made by the Ld. CIT(A). Finding no merit in the Grounds of appeal of the Department, we dismiss the same.

13. In the result, Appeal filed by the Department in ITA No. 2437/Del/2022 is dismissed.

Omaxe India Trade Center Pvt. Ltd. ITA No.2436/Del/2022

14. The Ld. CIT(A) Deleted the Addition made by the A.O. in following manners: -

“5. I have carefully considered the assessment order and submissions of the appellant. Ground nos. 1 to 3 of the appeal are related to the addition of Rs. 1,68,86,000/- on account of unexplained cash deposits. The brief facts of the case are that on 22.11.2016, in the post-demonetization period, the Police intercepted two vehicles carrying cash amounting to Rs. 2,22,76,000/- which was belonging to M/s Omaxe Ltd. The said cash was requisitioned u/s 132A by the Income Tax Authority and a survey u/s 133A was also conducted at the office premises M/s Omaxe Ltd, wherein certain documents were impounded as Annexure A-4 (Page No. 87 to 91 and 97 to 100). The AO has stated that these impounded pages contain notings of cash balances as on 08.11.2016 of various group companies belonging to the Omaxe Group, to which the assessee company also belongs. The AO has reproduced the said relevant pages of the impounded documents in the assessment order. From these impounded pages, the AO has noted that the cash balance available as on 08.11.2016 with the assessee company

was Rs. 8,165/-, whereas the assessee had deposited cash amounting to Rs. 1,68,86,000/- post-demonetization. The AO asked the assessee for justification/source of the excess cash so deposited after demonetization. In response, the assessee submitted that the said deposit had been made out of cash available as per cash book balance on 08.11.2016. It was also pointed out that the said cash balance had been built up through cash withdrawals from bank accounts of the assessee. The assessee has also furnished comparative charts for F.Y. 2015-16 and 2016-17 showing month-wise cash balances, withdrawals and deposits were a part of routine business exercise of the assessee even in the prior to demonstrate that such withdrawals and deposits were a part of routine business exercise of the assessee even in the period prior to the demonetization. In support of the said charts, the assessee also submitted its cash books and bank account statements. The assessee also stated that it was engaged in the real estate business and needed to maintain sufficient cash balances for various exigencies at various sites. It was further brought to the knowledge of the AO that the impounded documents contain cash balances available at site offices of the assessee and did not incorporate the cash balances as per the main cash book and Imprest cash book maintained at the corporate headquarters. It was stated that the balances as per various cash books as on 08.11.2016 were as follows:

1. Main Cash Book	Rs. 1,51,82,702
2. Imprest Cash	Rs. 16,95,144
3. India Trade Centre	Rs. 8,165
Total	Rs. 1,68,86,011

5.1. After considering the submissions, the AO has not accepted the explanation of the assessee regarding the cash availability as per books as on 08.11.2016, on the basis of the following reasons:

1. *The cash withdrawals made by the assessee are not near the dates of cash deposits. If the assessee had withdrawn cash for wage payments/deals, it is not understandable as to why such expenses were not incurred. The assessee company being a running concern, could not have mounted cash for so long.*
 2. *The assessee has prepared cash books in such a way that nearby cash withdrawals can be shown as cash deposited during demonetization.*
 3. *On analysis of the comparative charts of F.Y. 2015-16 and F.Y. 2016-17 it is seen that there was no match of the cash deposits during the demonetization period with the corresponding period of the previous financial year.*
 4. *Since the assessee is a builder and has stated that all sales are via cheque/RTGS/DD etc, there is no question of accepting cash generation through sales.*
 5. *The flagship company, M/s Omaxe Ltd has surrendered a huge amount as unaccounted income. However, the assessee has not disclosed any such unaccounted income.*
- 5.2. *I have carefully considered the assessment order and the submissions of the appellant as well as the assessment records. The findings regarding various observations made by the AO leading to the impugned addition of the amount of cash deposited post-demonetization, are as follows:*
- 5.2.1. *The AO has observed that cash withdrawals made by the assessee are not near the dates of cash deposits, and further that if the assessee had withdrawn cash for wage payments/deals, it is not understandable as to why such expenses were not actually incurred. The AO has observed*

that the assessee company being a running concern, could not have mounted cash for so long. In this regard, it is important to consider the following comparative charts incorporating monthly opening cash balance, cash sales, cash withdrawals, cash deposits, cash expenses and monthly closing cash balance as per the cash books of the appellant for F.Ys. 2015- -16 and 2016-17 submitted during the appellate proceedings.

OMAXE INDIA TRADE CENTRE PRIVATE LIMITED						
MONTHLY CHART FOR FINANCIAL YEAR 2015-16						
Month	Opening Balance	Cash Sales	Cash Withdrawal	Cash Deposited	Cash Expenses	Closing Balance
April, 2015	87,27,614	2,46,663	-	60,00,000	44,305	29,29,972
May, 2015	29,29,972	8,84,403	500	-	2,73,941	35,40,934
June, 2015	35,40,934	13,900	-	-	22,690	35,32,144
July, 2015	35,32,144	-	-	-	59,055	34,73,089
August, 2015	34,73,089	-	-	-	35,660	34,37,429
September, 2015	34,37,429	-	-	13,42,156	5,778	20,89,495
October, 2015	20,89,495	-	-	-	63,532	20,25,963
November, 2015	20,25,963	-	20,000	-	43,961	20,02,002
December, 2015	20,02,002	2,650	-	-	30,042	19,74,610
January, 2016	19,74,610	-	50,00,000	-	24,393	69,50,217
February, 2016	69,50,217	-	-	-	22,032	69,28,185
March, 2016	69,28,185	2,162	-	50,00,000	1,852	19,28,495
		11,49,778	50,20,500	1,23,42,156	6,27,241	

OMAXE INDIA TRADE CENTRE PRIVATE LIMITED						
MONTHLY CHART FOR FINANCIAL YEAR 2016-17						
Month	Opening Balance	Cash Sales	Cash Withdrawal	Cash Deposited	Cash Expenses	Closing Balance
April, 2016	19,28,495	-	50,00,000	-	2,600	69,25,895
May, 2016	69,25,895	-	-	-	-	69,25,895
June, 2016	69,25,895	-	-	-	16,034	69,09,861
July, 2016	69,09,861	-	-	-	12,255	68,97,606
August, 2016	68,97,606	1,065	-	-	3,009	68,95,662
September, 2016	68,95,662	4,200	1,00,00,000	-	13,250	1,68,86,612
October, 2016	1,68,86,612	-	-	-	600	1,68,86,012
November, 2016	1,68,86,012	-	3,24,000	1,60,00,000	-	12,10,012
December, 2016	12,10,012	-	4,50,000	8,86,000	-	7,74,012
January, 2017	7,74,012	-	4,50,000	-	-	12,24,012
February, 2017	12,24,012	-	-	-	-	12,24,012
March, 2017	12,24,012	-	-	-	-	12,24,012
		5,265	1,62,24,000	1,68,86,000	47,748	

1.2.2. It is pertinent to mention here that similar comparative charts for F.Ys. 2015-16 and 2016-17 were also submitted during assessment proceedings, with supporting cash books and bank statements. There are however some minor differences between the two sets of comparative charts viz. charts submitted during assessment proceedings are only upto 8.11.2015 and 8.11.2016 and further

5.2.2. *It is pertinent to mention here that similar comparative charts for F.Ys. 2015- 16 and 2016-17 were also submitted during assessment proceedings, with supporting cash books and bank statements. There are however some minor differences between the two sets of comparative charts viz. charts submitted during assessment proceedings are only upto 8.11.2015 and 8.11.2016 and further incorporate only the major incorporate only the major cash withdrawals from bank and cash deposits into bank. However, the month wise opening and closing cash in hand are accurately calculated in both sets of comparative charts. The set of comparative charts furnished during assessment proceedings is extracted below:*

Omaxe India Trade Centre Private Limited					
Detail of cash Required					
Month	Opening cash in hand	cash sales	cash deposit in bank	cash withdrawal from bank	Closing cash in hand
Apr-15	8727613.79	245662	6000000		2930471.29
May-15	2930471.29	884403			3540933.29
Jun-15	3540933.29	13900			3532143.29
Jul-15	3532143.29				3473088.29
Aug-15	3473088.29				3437428.29
Sep-15	3437428.29				2089494.29
Oct-15	2089494.29				2045962.29
Nov till 8-Nov-15	2045962.29				2034962.29
Apr-16	1928494.29			5000000	6925894.29
May-16	6925894.29				6925894.29
Jun-16	6925894.29				6909860.29
Jul-16	6909860.29				6897605.29
Aug-16	6897605.29	1065			6895661.29
Sep-16	6895661.29	4200		10000000	16886611.29
Oct-16	16886611.29				16886011.29
Nov till 8-Nov-16	16886011.29				16886011.29

5.2.3. *I have considered the comparative charts as submitted during appellate as well as assessment proceedings. On the basis of the following observations, I am not in agreement with the reasons given by the AO to treat the cash deposited post- demonetization as unexplained. From the comparative charts for complete financial years 2015-16 and 2016-17, it is observed that the appellant usually maintains a high cash balance in the books of account. This is evident from the opening cash balance of Rs. 87,27,614/- as on 01.04.2015, which is*

also corroborated by the cash balance as on 31.03.2015 as per the ITR and audit report for A.Y. 2015-16, which was filed much before demonetization and is therefore not a subject matter of manipulation.

5.2.4. It is also observed from the chart for F.Y. 2016-17 that the opening cash balance as on 01.04.2016 of Rs. 19,28,494/- was enhanced to Rs. 69,25,894/- as on 30.04.2016 by making a cash withdrawal of Rs. 50,00,000/- during that month. Thereafter, the cash balance has been maintained at similar levels for the remaining F.Y. upto August, 2016 and thereafter a cash withdrawal of Rs. 1,00,00,000/- has been made in the month of September, 2016, taking the cash balance to Rs. 1,68,86,611/- as on 30.09.2016. The wisdom behind maintaining such high level of cash balance cannot be a subject matter of finger-pointing by the AO, and is best left to the business prudence of the assessee. However, the fact remains that high levels of cash balance have been shown in ITR filed by the appellant even prior to demonetization, as observed above. Further, the cash withdrawal from bank accounts of the appellant was Rs 50,20,500 during FY. 2013-18 and the same was Rs. 1,62,24,000/- during FY 2018-17. Similarly cash deposited to bank accounts was Rs. 1,23,42,13n during F.Y. 2015-16 as compared to cash deposit of Rs. 1,68,86,000 during FY. 2016-17. The AO's observation, that the cash withdrawals and deposits in the two financial years do not match, is not particularly relevant since such withdrawals and deposits are bound to be different years due to differences in opening cash balance and different cash requirements across various years. In fact, substantial cash withdrawals as well as deposits into the bank accounts is very much a regular feature of the business of the appellant and hence there is nothing unusual in either the cash withdrawals or the cash

deposits made during the year under consideration. It is also observed that the appellant has a low or negligible level of cash receipts through sales and also a low level of cash expenses as seen from the comparative charts. In this regard, it is noteworthy that the assessee has not tried to explain the post-demonetization cash deposits by showing cash sales, which are at a miniscule level. A similar trend is observed in the preceding year also wherein the level of cash sales and cash expenses is low. The AO has remarked in a generalized manner that cash is normally withdrawn for immediate expenses such as wage payments, which have not been shown by the appellant. The said observation is not well-founded since some amount of cash expenses have been shown by the appellant and more importantly the AO has not established that wage payments or any other expenses of meaningfully higher magnitude were being made in cash earlier and have now not been shown. Such generalized allegations without marshaling appropriate facts are not proper. It is thus seen that there was no unusual trend in cash withdrawals, cash deposits, cash sales, cash expenses and level of cash balances during the year under consideration as compared to the preceding year. The AO's observation that the assessee company being a running concern, could not have mounted cash for so long, amounts to mere surmises since the fact of maintenance of high cash balances across extended period of several months is duly established from the ITRs and audit reports as well as cash withdrawals of the appellant from its bank accounts, both of which are a matter of record and are not subject to manipulation, It is an established principle that business prudence behind such practices is not subject to questioning.

5.2.5. As regards the time gap of a few months between cash withdrawal and cash deposit into the bank

accounts, similar trend is observed in the preceding year also, thereby establishing that such time gap too was a normal nature of the assessee's business. E.g. substantial cash withdrawal of Rs. 50,00,000/- was made in the month of January, 2016 and the same was effectively deposited back into the bank accounts in the month of March, 2016. The decisions of the jurisdictional High Court cited by the appellant in the cases of Kulwant Rai (supra) and Jaya Aggarwal (supra) are also in support of these findings. In the case of Kulwant Rai, the assessee had cited withdrawal of a sum of Rs. 2 lakhs from his bank account as the source for cash found during search and the same was not accepted by the AO on the assumption that such withdrawn amount may have been spent for some other purposes. The court held that in the absence of any material in support of the view that withdrawals were spent for some other purpose, the Tribunal was right in treating the withdrawals as source of cash found. Similar is the case of the assessee where cash withdrawals from bank accounts are the source of subsequent cash deposits into such bank accounts. Further, in the case of Jaya Aggarwal, the jurisdictional Court held that where the assessee withdrew cash of Rs. 2 lakhs from bank account to buy property and re-deposited cash of Rs. 1,60,000/- from the amount withdrawn after more than 7 months as the deal could not be finalized, principle of preponderance of probability as a test is to be applied and is sufficient to discharge the onus. The case of the assessee is also similar since cash withdrawals from bank are shown as source for subsequent cash re-deposit even if made at a gap of a few months. It is therefore held that holding substantial cash balances for extended periods of time and re-deposit of such cash into bank accounts was a routine business practice of the appellant company and there was nothing unusual about the same considering the

nature of the business as well as trends in the preceding year.

5.2.6. The AO has further observed that the assessee has prepared cash books in such a way that nearby cash withdrawals can be shown as cash deposited during demonetization. In this regard, it is a matter of fact that the bank withdrawals or deposits are reflected in the bank accounts statements as well as cash book and cannot be manipulated in any manner. The appellant has duly given the site cash books as well as main cash book whose total cash balance as on 08.11.2016 is Rs. 1,68,86,011/-. The said cash balance has been built up by cash withdrawals from bank accounts, which are undisputed, and the opening cash balance at the beginning of the year, which is also undisputed since the same tallies with the cash balance as on 31.03.2016 as per the ITR for A.Y. 2016-17 filed on 12.10.2016 i.e. prior to demonetization. The AO has ignored the main cash book and Imprest cash book of the assessee and has considered only the site cash books in arriving at the figure of cash balance as on 08.11.2016. The appellant has stated that the existence of the main cash book and Imprest cash book cannot be denied since most of the bank transactions, whether deposits or withdrawals, have been routed through the main cash book, which is the reason why the main cash book has the bulk of cash balance. It is further submitted by the appellant that cash in hand as on 01.04.2016 as per the sum total of all cash books, including the main cash book, comes to Rs. 19,28,494/-, which is also the figure of cash in hand as on 31.03.2016 as per the ITR for A.Y. 2016-17 filed prior to demonetization. I have examined the above contentions and find that the AO's action in ignoring the main cash book and Imprest cash book is incorrect due to reasons cited by the appellant, since major bank withdrawals and deposits have been routed through the

main cash book and if the said cash book is ignored, it would amount to ignoring the cash withdrawals made from bank accounts as well as cash deposits therein. Further, the AO has not cited any statement recorded or logical reasoning as to why the main cash book and Imprest cash book have been ignored. Therefore the observation of the AO that the cash book has been constructed in such a manner so as to explain the cash deposits, is untenable.

5.2.7. The AO has further observed that since the assessee has stated that all sales are via cheque/RTGS/DD etc, there is no question of accepting cash generation through sales. Regarding this observation, it is noted that the appellant itself has not shown any meaningful or unusual cash sales in the attempt to explain the cash deposited during demonetization. In-fact, the cash sales are only Rs. 5,265/- for F.Y. 2016-17. Therefore, this argument does not carry any force. 5.2.8.

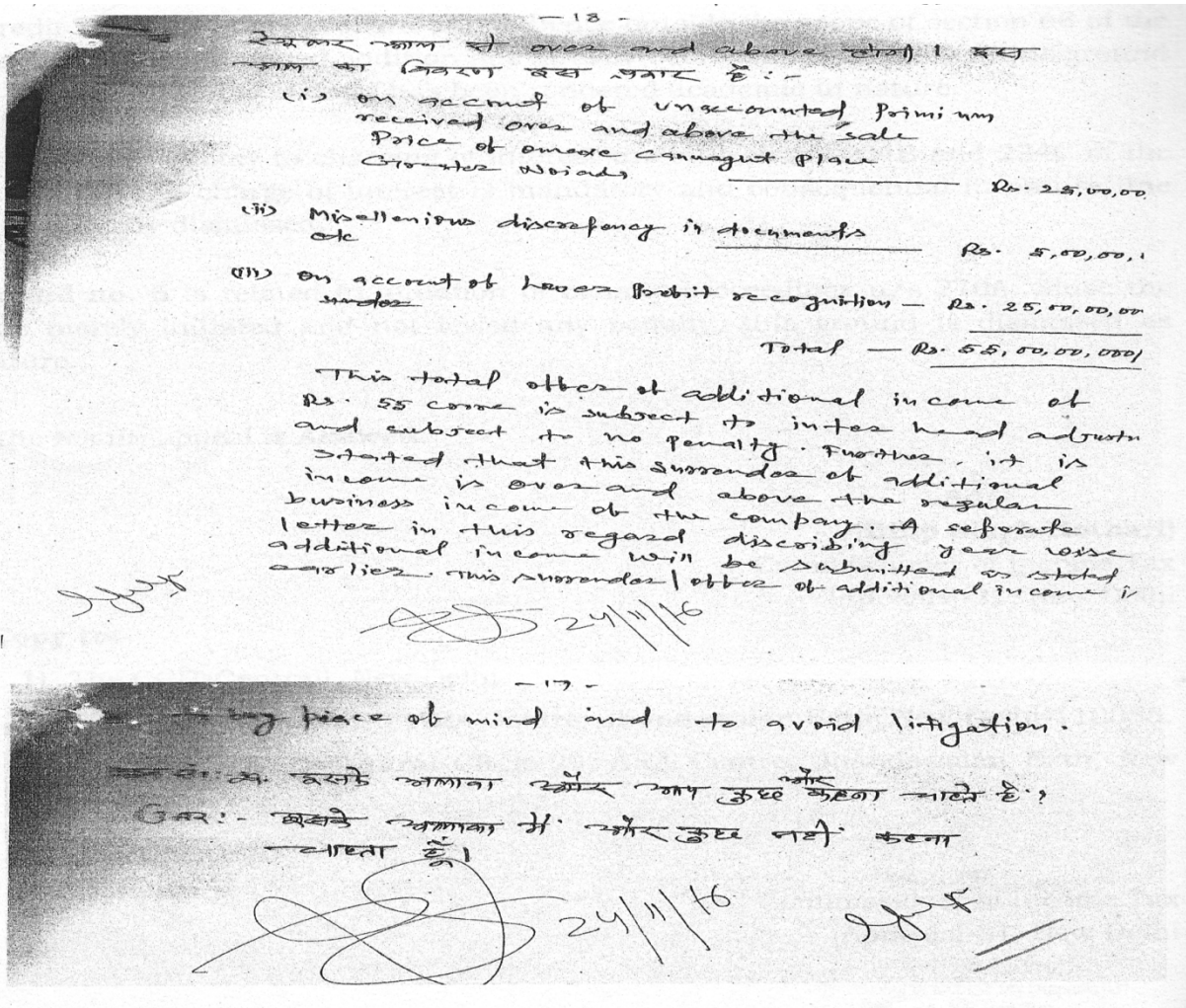
5.2.8. It has also been observed by the AO that the flagship company, M/s Omaxe Ltd has surrendered a huge amount as unaccounted income, however, the assessee has not disclosed any such unaccounted income. The said observation is not rational, firstly since any disclosure made by the flagship company does not automatically translate into any acceptance of tax evasion by the appellant. Secondly, the surrender/disclosure made by the flagship company, M/s Omaxe Ltd, is on account of a totally different issue as evident from the statement of Sh. Rohtas Goel, CMD, Omaxe Ltd, the relevant portion of which is extracted below:

प्रश्न सं० २४. जैसा कि आपने प्रश्न सं० २६ और २७ के सन्दर्भ में माना कि आपके Record में कुछ unaccounted premium व दूसरे मागजात में कमियाँ हैं जो इस कमिमें के बारे में आपसे बतलाना चाहिए ?

उत्तर:- जैसा कि मैंने पहले भी कहा कि कुछ income व संपत्ति में मेरी कंपनी m/s omaxe Limited में कुछ गुरुत्वों आप की उगता में रह जायी है, इन गुरुत्वों को मैं मानता हूँ और इन गुरुत्वों को दूर करने हेतु मैं अपनी कंपनी m/s omaxe Limi में कुल ₹ 55,00,000 (पचास करोड़ रुपये) की आतिरिक्त आप की भेज देता हूँ जिसका विवरण वर्ष 2012-13 में आपके कार्यालय में प्रिजिंक 23/11 प्रस्तुत कर दूँगा। यह आतिरिक्त आप मेरी कंपनी की

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5.2.9. It is therefore evident that the cash deposited post-demonetization is duly explained by the available cash balance as on 08.11.2016, which was in turn built up by cash withdrawals from bank accounts, which are undisputed, and the opening cash balance at the beginning of the year, which is also undisputed since the same tallies with the cash balance as on 31.03.2016 as per the ITR for A.Y. 2016-17 filed on 12.10.2016 i.e. prior to demonetization. Therefore, the addition of Rs. 1,68,86,000/- on account of unexplained cash deposited during demonetization, is untenable and is accordingly deleted. Ground nos. 1 to 3 are allowed.”

15. The Ld. CIT(A) has considered the comparative charts for Financial Year 2015-16 and 2016-17 submitted by the Assessee during the appellate as well as assessment proceedings and found that the Assessee usually maintains a high cash balance in the books of accounts which has been corroborated from the opening cash balance of Rs. 87,27,614/- as on 01/04/2015, which has been corroborated by the cash balance as on 31/03/2015 as per ITR and audit report for Assessment Year 2015-16, which was filed before the demonization, thus, the same cannot be subject matter to any manipulation. The Ld. CIT(A) has also observed from the chart that the opening cash balance as on 01/04/2016 of Rs. 19,28,494/- was enhanced to Rs. 69,25,894/- as on 30/04/2016 by making a cash withdrawal of Rs. 50,00,000/- during that month thereafter the cash balance has been maintained at similar levels for remaining Financial Year up to August, 2016 and thereafter a cash withdrawal of Rs. 1,00,00,000/- has been made in the month of September, 2016 taking the cash balance to Rs. 1,68,86,611/- as on 30/09/2016. It is well settled law that the

wisdom behind maintaining high level of cash balance cannot be a subject matter of finger-Pointing by the A.O. and is best left to business prudence of the Assessee. The facts remains that high level of cash balance has been shown in ITR filed by the Assessee even prior to the demonization. Similarly, there was cash withdrawal from the bank account in the Financial Year 2015-16 of Rs. 50,20,500/- and Rs. 1,62,24,000/- during Financial Year 2016-17. Similarly cash deposit into bank account was Rs. 1,23,42,156/- during Financial Year 2015-16 as compared to cash deposit of Rs. 1,68,86,000/- during Financial Year 2016-17. The Ld. CIT(A) has considered the above aspects and came to a conclusion that cash deposited post demonization is duly explained by the available cash balance as on 08/11/2016, which was in turn built up by cash withdrawals from the bank accounts which are undisputed and the opening cash balance at the beginning of the year which is also not disputed since the same tallies with the cash balance as on 31.03.2016 as per ITR for Assessment Year 2016-17 filed on 12/10/2016 i.e. prior to demonization. The order

of the Ld. CIT(A) being well reasoned and since there is no contrary material to the findings of the Ld. CIT(A) emerges from the material available on record, we find no reason to interfere with the order of the CIT(A) in deleting the addition. Finding no merit in the Grounds of appeal of the Revenue, the Grounds of appeal of the Revenue are dismissed.

16. In the result, the Appeal in ITA No. 2436/Del/2022 of the Revenue is dismissed.

Order pronounced in the open court on 13th September, 2024.

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Dated: 13 /09/2024

*R.N, Sr. PS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

Sd/

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

ASSISTANT REGISTRAR
ITAT NEW DELHI