

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "B" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 968/Ahd/2023  
Assessment Year 2017-18**

New Arbuda Builders 601C, Sahajanand Complex, Shahibaug Road, Shahibaug, Ahmedabad-380004 Gujarat  <b>PAN: AABFN7229H (Appellant)</b>	Vs	The ACIT, Circle-1(2), Ahmedabad  <b>(Respondent)</b>
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**Assessee Represented: Shri Mehul K. Patel, Advocate  
Revenue Represented: Shri Hrishikesh Hemant  
Patki, Sr.D.R.**

Date of hearing : 16-07-2024  
Date of pronouncement : 09-10-2024

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Assessee as against the appellate order dated 31.10.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2017-18.

2. The brief facts of the case is that the assessee is a firm engaged in the business of civil construction contract awarded by National Dairy Development Board (NDDB). For the Asst. Year 2017-18, assessee filed its Return of Income on 31.08.2017 admitting total income of Rs.1,20,92,670/-. The return was taken for scrutiny assessment on account of

(a) Abnormal increase in cash deposits during demonetization period as compared to pre-demonetization period.

(b) Higher Turnover reported in Service Tax Return as compared to ITR.

2.1. The assessing officer found that the appellant firm deposited Rs.9,00,000/- and Rs.30,00,000/- on 10-11-2016 & 11-11-2016 totaling Rs.39,00,000/- during demonetization period. After examining the bank account, the A.O. given credit to the tune of Rs.20,75,000/- namely cash withdrawn on 26.10.2016 and 21.10.2016. Thus the balance cash deposit of Rs.18,25,000/- was added as unexplained cash deposit u/s. 68 of the Act.

2.2. Similarly, the Assessing Officer made addition of Rs.91,28,993/- being the difference between the Service Tax Return and Income Tax Return and added as unexplained income u/s. 68 of the Act.

3. Aggrieved against the assessment order, assessee filed an appeal before Ld. CIT(A) who confirmed the addition of Rs.18,25,000/- being the cash deposit made during demonetization period. However he deleted the addition of Rs.91,28,993/- being the difference between the Service Tax Return and ITR.

5. Aggrieved against the same, the assessee is in appeal before us raising the solitary ground of appeal:

(1) That on facts, in law, and on evidence on record, the learned National Faceless Appeal Centre (NFAC) has grievously erred in confirming the addition of Rs. 18,25,000/- made U/s. 68 of the Act in respect of cash deposited in bank account of appellant.

(2) That on facts, in law, and on evidence on record, the learned National Faceless Appeal Centre (NEAC) ought to have deleted the entire addition as prayed for.

(3) That on facts, in law, and on evidence on record, the learned AO and National Faceless Appeal Centre (NFAC) has grievously erred in confirming the charging of tax u/s 115BBE of the Act.

(4) The appellant craves leave to add, alter, amend any ground of appeal.

6. Ld. Counsel Mr. Mehul Patel appearing for the assessee submitted the cash deposits and withdrawal during the demonetization period as follows:

<b>Particulars</b>	<b>Date</b>	<b>Amount</b>	<b>Amount</b>
<b>Total Cash deposited during demonetization period</b>			<b>39,00,000</b>
<b>Less:</b>			
<b>Cash withdrawal from bank during three weeks preceding of demonetization period</b>	26/10/2016	2,75,000	
	21/10/2016	9,00,000	
	21/10/2016	9,00/000	20,75,000
<b>Addition made u/s. 68</b>			<b>18,25,000</b>

6.2. The Ld. Counsel submitted the Bank statement, Bank Book Register and Cash Book from 01-09-2016 to 31-12-2016. The Ld.

A.O. has made addition simply on an assumption that cash withdrawal or from immediate expenses and has considered withdrawal of only three preceding weeks as cash in hand, but the assessee firm was having surplus money on hand as on 09-11-2016 which was also deposited in its bank account as the Public are Prohibited from receiving the Specified Bank Note currencies of Rs.500/- and Rs.1000/- as not a legal tender. The contention of the A.O. that cash withdrawal of immediate expense is only an assumption, whereas the assessee had incurred all legitimate expenses in periodical manner. Further the total cash expenditure ratio with work done by the assessee firm for the financial year 2014-15 to 2016-17 are worked out as follows:

<i>F.Y.</i>	<i>Total Cash Expenditure (Rs.)</i>	<i>Total work done Amount (Rs.)</i>	<i>Cash Expenditure ratio to work done Amount (%)</i>
2014-15	18,93,131.00	33,75,69,737.58	0.56
2015-16	18,12,529.00	25,35,53,593.76	0.71
2016-17	14,63,081.00	17,96,77,445.00	0.81

6.3. From the above table preceding years cash expenses ratio is in confirmatory with the current year's ratio. If the assessee had deferred the cash expenditure the ratio would have fallen from 0.81%. Similarly the assessee shown the cash expenditure vs work done for the Financial Year 2016-17 before demonetization period, during demonetization period and after demonetization period as follows:

<b>Period</b>	<b>Total cash Expenditure (Rs.)</b>	<b>Total work Done Amount (Rs.)</b>	<b>Cash expenditure ratio to work done Amount (%)</b>
01/04/2016 To 08/11/2016 <b>Before Demonetization</b>	11,36,962.00	13,71,33,281.00	0.83
09/11/2016 TO 31/12/2016 <b>During Demonetization</b>	1,72,965.00	-	Nil
01/01/2017 To 31/03/2107 <b>After Demonetization</b>	1,53,154.00	4,25,44,164.00	0.36

6.4. From the above table, it could be verified that in the period of demonetization, assessee firm has no work done even though cash expenses are incurred. Thus the assessee had not deferred any expenditure and all legitimate business expenditure have been paid in respective time. Since the assessee was having cash on hand, out of bank account withdrawals and same was not necessitated to hold on as there was no work-in-progress during the demonetization period, therefore the same was re-deposited in the bank account. The Ld. CIT(A) failed to appreciate the above facts and confirmed the addition of Rs.18,25,000/- made by the A.O. which is liable to be deleted.

7. Per contra Ld. Sr. D.R. appearing for the Revenue supported the orders passed by the Lower Authorities and requested to uphold the same.

8. We have given our thoughtful consideration and perused the materials available on record. It is seen from Page No. 18 of the Paper Book namely the reply submitted by the assessee during the

course of assessment proceedings before the assessing officer, the assessee submitted details of cash withdrawn from its two bank account namely Bank of India and Bank of Baroda, just two months preceding the demonetization period as follows:

Date	Name of Bank	Account Number	Amount
03/09/2016	Bank of India	202327110000225	1,70,000
06/09/2016	Bank of India	202327110000225	1,00,000
12/09/2016	Bank of India	202327110000225	30,000
16/09/2016	Bank of India	202327110000225	1,50,000
23/09/2016	Bank of India	202327110000225	2,40,000
28/09/2016	Bank of India	202327110000225	2,00,000
29/09/2016	Bank of India	202327110000225	1,80,000
05/10/2016	Bank of India	202327110000225	1,25,000
07/10/2016	Bank of India	202327110000225	7,00,000
13/10/2016	Bank of India	202327110000225	1,30,000
21/10/2016	Bank of Baroda	3300400000032	9,00,000
21/10/2016	Bank of India	202327110000225	9,00,000
26/10/2016	Bank of India	202327110000225	2,75,000
Total Cash Withdrawn during two months preceding			41,00,000

8.1. The assessee also submitted source of cash deposited as out of cash withdrawal from bank. However Ld. A.O. has considered only preceding three weeks cash withdrawal of Rs. 20,75,000/- and balance amount of Rs. 18,25,000/- was added as the unexplained income of the assessee, on the sole reason that there is a time gap of five months from the date of withdrawal from bank account and redeposit the same. Whereas the time gap between the bank account withdrawal and cash redeposit is only two months and 10 days.

8.2. On identical issue, the Co-ordinate Bench of the Delhi Tribunal in the case of ACIT Vs. M/s. Omaxe forest SPA And Hills Developers Ltd. in ITA No. 2/Del/2023 dated 18.08.2023 held as follows:

“7. After noting above factual position of trend of deposits and withdraws by the assessee from its bank account the Id. CIT(A) further observed that the assessee has prepared cash book in the manner showing that nearby cash withdrawals can be seem shown or seem as cash deposited during demonetization period and the fact that the bank withdrawals or deposits duly reflected in the bank accounts, statements as well as cash book which cannot be manipulated by the assessee in any manner. The Id. CIT(A) noted that the side cash books as well as main cash books clearly show balance of Rs. 2,07,23,542/- as on 08.11.2016. The Id. CIT(A) went in detail and gathered that the AO has ignored main cash books of assessee and has considered only the side cash books of assessee in arriving at the cash balance as on 08.11.2016 which is not a correct approach. Since the assessee company, as per the AO is in the business of real estate, then the keeping cash on sites of construction and keeping main cash books in the central office is a normal practice to be adopted by such company therefore ignoring main cash book is a vital omission on the part of AO which was resulted into difference in the amount of cash deposit and cash balance only based on site cash books ignoring the main cash book.

8. The Id. CIT(A) has relied on the judgment of Hon'ble jurisdictional High Court of Delhi in the case of Kulwant Rai and Jaya Aggarwal observed that when the assessee has shown cash withdrawals during pre demonetization period more than the cash deposited during demonetization then the source cannot be disputed merely on the assumption that such withdrawn amount may have spent by the assessee for some other purpose without any adverse positive material showing such facts. The Hon'ble jurisdictional High Court held that in absence of any material in support of the view that withdrawals were spent for some other purpose, the conclusion of Tribunal has to be held has right in treating the cash withdrawals from the bank as source of cash found. In the present case said preposition rendered by the Hon'ble High Court of Delhi supports the conclusion of Id. CIT(A) that the source of cash deposited during demonetization period by the assessee was opening cash balance and cash withdrawals during pre demonetization period which are higher than the amount of cash deposited by the assessee. As we have noted above, the AO has ignored main cash book while disputing the source of cash and making addition and the Id. CIT(A) considered entire facts and circumstances in the right prospective and thereafter considering the totality of facts and circumstances and prepositions rendered by Hon'ble jurisdictional High Court of Delhi (supra) granted relief to the assessee. Thus, we are unable to see any ambiguity perversity or any valid reason to interfere with the findings arrived by the Id.

CIT(A) and hence we uphold the same. Accordingly, grounds of revenue being devoid of merits are dismissed.”

9. It is undisputed fact that during the demonetization period, there were no works carried out by the assessee firm. Hence the cash in hand was re-deposited by the assessee firm in its bank account being old demonetization Specified Bank Notes namely Rs.500/- and Rs.1000/- which is not a legal tender. Thus the addition made mainly on the presumption by the Ld. A.O. is not sustainable in law. Therefore the addition is liable to be deleted and the grounds raised by the assessee is hereby allowed.

10. In the result, the appeal filed by the Assessee is hereby allowed.

Order pronounced in the open court on 09 -10-2024

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 09/10/2024**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद