

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड कमलेश जयंतभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 54/JP/2024  
निर्धारण वर्ष / Assessment Years : 2017-18

ITO, NCRB Jaipur	बनाम Vs.	Prakash Agarwal 1 Matra Chhya, Khetri House Colony Outside, Chandpol, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AANPA 6859 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Anil Kumar Sharma, CA  
राजस्व की ओर से / Revenue by : Sh. Arvind Kumar, CIT-DR

सुनवाई की तारीख / Date of Hearing : 28/08/2024  
उदघोषणा की तारीख / Date of Pronouncement: 10/10/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present appeal is because the revenue dissatisfied with the order of the National Faceless Appeal Centre, Delhi dated 22/11/2023 [ for short CIT(A) ] for assessment year 2017-18. The said order of the NFAC arise as against the order dated 26.12.2019 passed under section 143(3) of the Income Tax Act [ for short Act] , by ITO, Ward-4(1), Jaipur [ for short AO].

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

*"1. On the facts & in the circumstances of the case and in law the Ld. CIT(A) has grossly erred in deleting the addition of Rs. 79,81,000/- made as unexplained cash deposits under section 68 r.w.s 115BBE of the IT. Act without appreciating the fact that the assessee has failed to furnish supporting documentary evidences to explain the source of these cash deposits during the assessment proceedings.*

*2. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has grossly erred in deleting the disallowance of expenditure u/s 40A(3) of the IT. Act amounting to Rs. 6,48,20,559/- made by the AO without appreciating the fact that the assessee has failed to furnish supporting documentary evidences to substantiate his claim during the assessment proceedings."*

3. Succinctly, the fact as culled out from the records is that the assessee is engaged in trading of FMCG Goods as a retailer and wholesaler. The assessee is Proprietor of M/s. Bansal Sales Corporation. The assessee filed its return of income for the above A.Y. 2017-18 on 26.09.2017 with a taxable income of Rs 5,50,970/- It was noted that during demonetization period i.e 09.11.2016 to 31.12.2016, the assessee deposited cash to the tune of Rs. 78,82,290/- in his HDFC Bank account. Hence, the case was selected for manual scrutiny and notices u/s 143(2) and 142(1) were issued. Ld. AO after considering the details and submission made by the assessee completed the assessment u/s 143(3) of the IT Act on 26.12.2019 by assessing the total income at Rs.7,33,52,530/. While completing the assessment, the AO has made an addition u/s 68 r.w.s. 115BBE of the Act to the tune of Rs.79,81,000/- as unexplained cash

deposits and disallowance of expenditure u/s 40A(3) of the Act to the tune of Rs.6,48,20,559/-.

4. Aggrieved from the order of Assessing Officer, assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised by the assessee the relevant finding of the Id. CIT(A) is reiterated here in below:

“4.9 This reply submitted after repeated reminder is not acceptable. The AO is objecting admission of additional evidences. However, in this case the details provided by the appellant were not at all additional evidences. The appellant has demonstrated that all these submissions were made before AO and in this regard, he has even downloaded the e-filing screen shot and submitted as part of his compliance. The AO is writing that no specific comments were called for. It is also not correct. The letter addressed to Addl. CIT was self-explanatory.

4.10. Hence, it is presumed that all the written submissions filed by the appellant during the course of appeal proceedings was made available to the AO whereas the AO failed to examine these details and added Rs.79,81,000/- arbitrarily without examining the submissions made by the appellant. As the evidences are very much available in the e-filing portal where the appellant has proved that he had participated, those details submitted has to be considered as per principles of natural justice. From the evidences available on record, the following facts are noticed:

- (1) The appellant filed return of income and got his books audited u/s 44AB of the Act as his turnover was Rs. 7,45,96,081/-.
- (2) The appellant has responded to the notices by giving all the details requested by the AO. The Banker's certificate revealed a fact that out of total cash deposits of Rs.78,78,000/-, the old currency was only Rs. 10,85,000/-
- (3) There was no substantial hike in the cash sales and cash deposited noticed from Annexure-IV reproduced above.
- (4) The daily opening and closing balance given for the month of October, November and December 2016 in Annexure VI was also not having any abnormal deviation.
- (5) The appellant also uploaded Cash Book that was claimed to have been submitted before the AO.

(6) The cash deposited during FY 2016-17 and the corresponding previous year cash deposits also did not show any huge variation.

4.11 In view of the above, the addition of Rs.79.81,000/- made by the AO as unexplained cash is not acceptable as the appellant sufficiently demonstrated the sources with all the documents called for by the AO. Hence, the AO is directed to delete the addition. The grounds taken by the appellant on this issue are allowed.

5.1 While completing the assessment, the AO found that the appellant is making payments of Rs.20,000/- or more in cash regularly which is in contravention of Sec. 40A(3) of the Act. The AO issued a notice dated 14.12.2019 and the relevant portion of the notice is at Page No.3 of the assessment, where he posted some of the examples of those cash payments. This issue was discussed further in Para 2 of the assessment order by reproducing the copies of those cash payment details from April, 2016 to December, 2016. As per the AO, such cash payment details for January, 2017 to March, 2017 was not available and he has taken average 9 months (April, 2016 to December, 2016) and quantified the sum into Rs. 6.48.20,559/-

5.2. In this regard, the appellant has furnished details in his written submissions. For the sake of convenience, the relevant portion of the written submissions is reproduced hereunder:

Ground No. 2:

Under the facts and circumstances of the case the AO is not justified in making the addition of Rs 64820559/- towards cash payments including the cash deposited in to the Bank holding the same in violation of the limits prescribed u/x 40A(3) of the Act.

1. The assessee vide online letter dated 14.11.2019 submitted the Extract of Cash Book showing day to day Op. Balance, Receipts, cash Payment (including the Cash deposited in to the Bank) and closing Balance for the period 01.04.2016 to 31.12.2016 as reproduced on Page No. 5 to 13 of the assessment order.

2. The assessee vide online reply dated 10.12.2019 explained that the payment column of cash book mostly includes cash deposited in to the Bank along with petty Expenses of business and submitted the Date and amount wise details of cash deposited in to the Bank. (Annexure-111) of letter dated 14.12.2019,

3.The AO ignoring without perusing the details available on record towards cash deposited in to the Bank which is included in consolidated payments shown in extract of cash Book, held the relevant payments as cash payments made for Expenses exceeding Rs.20000/- in violation of section 40A(3) of IT Act 1961.

4. The further in addition to the payments for the period 01.04.2016 to 31.12.2016 calculated such payments for the further period 01.01.2017 to 31.03.2017 on average presumptive Basis.

5. Thus the AO made disallowance of Rs.64820559/- towards alleged cash payments in excess of Rs.20000/- which is mostly represents the cash deposited in to the Bank and balance Petty Expenses of business not being in excess of limits prescribed u/s 40A(3) of the Act and amount worked out on presumptive basis..

6. The books of accounts of the assessee are subject to audit u/s 44 AB of IT Act 1961 and auditors have not pointed any payment in excess of limits prescribed u/s 40A(3) of the Act. (Copy of Audit report in Form No.3CD is annexed herewith.)

7. The assessee further rely on detailed Cash Book attached herewith as additional Evidence along with application for admission of additional Evidences.

8. The relevant addition of Rs.64820559/- towards disallowance of alleged cash payments in excess of limits prescribed u/s 40A(3) of IT Act which comprises Cash deposited in to the Bank and petty Expenses of business to a limited extent is without perusing the the details documents/evidences available on record and wholly unjustified and arbitrary.

5.3 Upon receipt of the details, it is noticed that whatever cash deposited into the bank was treated as expenditure incurred by cash in violation of Sec.40A(3) of the Act. The details of notices issued to the AO and the Range Head and their non- compliance is discussed in Para 4.8 and 4.9 of this appeal order. From the detailed written submissions, the following facts are noticed

(a) The AO called for the details of Cash Book with day to day opening and closing balance for various months. The appellant uploaded the same and it was reproduced in the previous paragraphs in Annexure VI.

(b) The appellant was into the business of sale of FMCG products and daily cash sales and the opening balance deposited into the bank account was mentioned as payments.

(c) The AO, without having any common understanding considered these cash deposits into the bank account as cash payments made in violation of 40A(3) of the Act. Out of total purchases of Rs.7.45,96,081/ a sum of Rs 6,48,20,559/ was disallowed and added back. No prudent assessee incur expenditure in cash like this regularly and submit such ledger to the AO in a tax audit case.

(c) The AO has computed the quantum of disallowance by taking the figures from the ledger for initial 9 months. For the last three months i.e. from January, 2017 to March, 2018, he has disallowed some expenses on estimate basis by quantifying

average of earlier nine months deposits/payments. Disallowance of expenses u/s 40A(3) of the IT Act by estimating the sum on the basis of previous month expenditure is beyond scope of legislation.

(d) The action of the AO is not only in accordance with law but also against the facts on record. Hence, the disallowance of Rs.6,48,20,559/- has to be deleted as it was done on incorrect assumption of facts. The grounds taken on this issue are allowed.

6. In the result, the appeal is allowed.”

5. The Id DR is heard who relied on the findings recorded in the order of the assessing officer and has vehemently argued that during the assessment proceeding Id. AO on dated demand the information which the assessee did not furnish even though the almost 10 dates were fixed for providing the information. The assessee was asked to furnish the details of the SBN and legal tender money deposited into the bank account but the assessee failed to furnish those information. Ld. AO specifically given the show cause for invoking the provision of section 145(3) and 144 of the Act but the assessee did not furnish to that specific information called for. Ld. AO thus, in the absence of cash book, stock record, journal, ledger, Purchase bills, Sales bills and other relevant books of account. Therefore, Id. AO in the absence of information added a sum of Rs. 79,81,000/- u/s. 68 of the Act. Ld. AO on perusal of records also noted that the assessee is making the cash payment in contravention of provision of section 40A(3) of

the Act and therefore, addition was made for an amount of Rs. 6,48,20,559/- was made. To support further to the contention so raised in the order of the assessment Id. DR also filed the written submission vide submission dated 29.05.2024 and the same reads as follows :

“In this case, the assessee is engaged in trading of FMCG Goods as a retailer and wholesaler. The assessee is Proprietor of M/s Bansal Sales Corporation. The assessee filed his return of income for the AY 2017-18 on 26.09.2017 declaring income of Rs. 5,50,970/- Subsequently, assessment was completed u/s 143(3) of the IT Act on 26.12.2019 by assessing the total income at Rs 7,33,52,530/-. While completing the assessment, the AO has made an addition u/s 68 of the Act to the tune of Rs 79,81,000/- as unexplained cash deposits and disallowance of cash payment u/s 40A(3) of the Act to the tune of Rs. 6,48,20,559/-.

Aggrieved by the above order, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) vide his order dated 22.11.2023 allowed the appeal of the assessee and deleted both the additions made by the AO.

1. Both the issues are discussed as below:

Issue-1: Addition on account of unexplained cash deposits u/s 68 of Rs. 79,81,000:- The Ld. CIT(A) allowed the appeal of the assessee on this ground and deleted the addition made by the AO of Rs. 79,81,000/- holding that all the written submissions filed by the appellant during the course of appeal proceedings were made available to the AO whereas the AO failed to examine these details and added Rs. 79,81,000/- arbitrarily without examining the submissions made by the appellant. The CIT(A) has given following findings:

(a) The appellant filed return of income and got his books audited u/s 44AB of the Act as his turnover was Rs.7,45,96,081/-.

(b) The appellant has responded to the notices by giving all the details requested by the AO. The Banker's certificate revealed a fact that out of total cash deposits of Rs. 78,78,000/-, the old currency was only Rs.10,85,000/-

(c) There was no substantial hike in the cash sales and cash deposited.

(d) The daily opening and closing balance given for the month of October, November and December, 2016 was also not having any abnormal deviation.

(e) The appellant also uploaded Cash Book that was claimed to have been submitted before the AO.

(f) The cash deposited during FY 2016-17 and the corresponding previous year cash deposits also did not show any huge variation.

However, the CIT(A) has failed to appreciate the fact that during the assessment proceeding the assessee in support of his return of income as well as cash deposits made during the year under consideration has filed only basic details such as computation of income Trading P&L account, Balance sheet and audit report etc. The assessee had not produced other relevant documents of Cash book as such Stock register, Journal, Ledger, Purchase Bills, Sales Bills, Receipts from debtors and other relevant books of accounts and the assessee has also failed to furnish copy of purchase bills, sales bills, expenses vouchers etc. for examination during the year under consideration. Therefore, no sales and cash book, bills/vouchers, mode of receipt of payment, details of purchasers were verifiable during the assessment proceedings. Hence, in view of above, genuineness of the purchase and sales declared by the assessee in his Trading & P&L account were not proved as well as the sources of cash deposits made by the assessee during the demonetization period 09-11-2016 to 31-12-2016. Further, the assessee has failed to furnish the copy of bank deposit slips and bank certificate despite being given sufficient opportunity for verification of deposit of old currency and legal currency, deposit in bank account. Therefore, the cash deposit of Rs. 79,81,000/-, was unverifiable in the absence of bank deposit slips and bank certificate during the demonetization period. Hence the AD treated unexplained cash credit of Rs. 79,81,000/- and added to the total income of the assessee of the 1.1. Act.

Issue 2 Disallowance of cash payments/40431 of 6.48.29.58 The LIT (CITIA) allowed the appeal of the assessee on the ground and deleted the addition made by the AD of Rs. 6,48,20,559/- by giving following findings.

(a) The AO called for the details of Cash Book with day to day opening and closing balance for various months. The appellant uploaded the same.

(b) The appellant was into the business of sale of FMCG products and daily cash sales and the opening balance deposited into the bank account was mentioned as payments.

(c) The AO, without having any common understanding considered these cash deposits into the bank account as cash payments made in violation of 40A(3) of the Act. Out of total purchases of Rs. 7,45,96,081/- a sum of Rs.6,48,20,559/- was disallowed and

added back. No prudent assessee incurs expenditure in cash like this regularly and submit such ledger to the AO in a tax audit case.

(d) The AO has computed the quantum of disallowance by taking the figures from the ledger for initial 9 months. For the last three months i.e. from January, 2017 to March 2018, he has disallowed some expenses on estimate basis by quantifying average of earlier nine months deposits/payments. Disallowance of expenses u/s 40A(3) of the IT Act by estimating the sum on the basis of previous month expenditure is beyond scope of legislation.

(e) The action of the AO is not only in accordance with law but also against the facts on record. Hence, the disallowance of Rs.6,48,20,559/- has to be deleted as it was done on incorrect assumption facts. The grounds taken on this issue are allowed.

However, the CIT(A) has failed to appreciate the fact that assessee was making usually cash payment more than Rs.20,000/ which was found in contravention of section 40A(3) of the I.T. Act, 1961. Further, details of the cash payment for the month of January, 2017 to March, 2018 are not available on record. The assessee has failed to produce supporting documents of cash book, quality wise and value wise stock register, journal ledger, purchase bills sales bills copy of purchase bills, sales bills, expenses vouchers bills/vouchers, mode of receipt of payment, details of cash payment, details of purchasers etc. Further, the assessee has not produced the books of accounts for examination. Therefore, in view of the above facts, genuineness of cash purchase /sales and cash payment and expenses claimed by the assessee were not verifiable. Therefore, considering the facts of the case, the assessee has made the cash payment of Rs, 6,48,20,559/- during the year under consideration, which in terms of contravention of section 40A(3) of the Act, therefore, the AO disallowed expenditure of Rs. 6,48,20,559/- and added the same to the total income of the assessee.

In this case, further, it is submitted that:-

2.1 The assessee has submitted paper book containing written application for admission of additional evidence before Id. CIT (A) u/r 46A(1)(c) of the 1. T. Rules, 1962 at page no. 9 of paper book. In this application, following submission has been made by assessee before CIT (appeals):

"In connection with the subject cited above it is humbly submitted that the relevant assessment proceedings before the AO were going on in E-proceeding mode, therefore the assessee under the bonafide that he is not required to do so, did not produced the relevant Books of Accounts physically before the AO and submitted the requisite details/information/extract of Books of Accounts electronically in E-proceedings through online mode.

Therefore the copy of Cash Book is attached herewith as additional Evidences.

Therefore, Your honour is requested to admit the additional evidences and place the same on record for disposal of relevant grounds of appeal."

Therefore, it is clear that the assessee did not produce relevant documents during the course of assessment proceedings before the AO. However, even if as per claim of the assessee he was submitting other documents then the above mentioned relevant extracts of books could also had been submitted as required by the AO. This proves that the notices were not being complied with and the relevant books of accounts were later on submitted with Id. CIT(A) as additional evidence.

Further, it is also submitted that as per u/r 46A(1) of the 1. T. Rules 1962, the appellant shall not be entitled to produce before the Commissioner (Appeals) any evidence other than the evidence produced by him during the course of proceedings before the AD except in the following circumstances, namely

1. Where the AO has refused to admit evidence which out to have been admitted or
2. Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the AO or
3. Where the appellant was prevented by sufficient cause from producing before the AO any evidence which is relevant to any ground of appeal or
4. Where the AO has made the order appealed against without giving sufficient opportunity to the appellate to adduce evidence relevant to any ground of appeal.

Hence, the additional evidences produced before the Id. CIT (A) by the assessee were not covered in any of the above mentioned circumstances and therefore, must not had been entertained by the Id. CIT(A). Also, the AO had categorically mentioned the same in his remand report, but the same was not accepted by the Id. CIT(A) simply mentioning that reply submitted after repeated reminder is not acceptable' in the order.

2.2 Also, While deleting the additions, the Id. CIT(A) in his order has offered following arguments:-

"4.9 This reply submitted after repeated reminder is not acceptable. The AD objecting admission of additional evidences. However, in this case the details provided by the appellant were not at

all additional evidences. The appellant has demonstrated that all these submissions were made before AO and in this regard, he has even downloaded the e-filing screen shot and submitted as part of his compliance. The AD is writing that no specific comments were called for. It is also not correct. The letter addressed to Addl. CIT was self-explanatory.

4.10 Hence, it is presumed that all the written submissions filed by the appellant during the course of appeal proceedings was made available to the AD whereas the AD failed to examine these details and added Rs. 79,81,000/- arbitrarily without examining the submissions made by the appellant. As the evidences are very much available in the e filing portal where the appellant has proved that he had participated, those details submitted has to be considered as per principles of natural justice"

The Ld. AR had submitted screenshots during first appellate proceedings which had been reproduced at Pg. 21 of the Id. CIT(A) order, citing history of replies furnished by the assessee. However, on perusal of screenshots, it can be seen that the screenshots are nothing but, summary of notices received by the assessee. Moreover, it cannot be inferred that the required replies to these very notices were completely submitted from these screenshots. The acknowledgements issued by the department of these replies were also not found either in the screenshots (on Pg. 21 of id. CIT[A]) or in the voluminous paper book submitted before the Hon'ble bench by the id. A/R

2.3 As per id. CIT(A)'s own order, the AO furnished his reply in the remand proceedings on 10.11.23 requesting the id. CIT(A) to clarify as to what was required at his end. But instead of clarifying as to what details were being sought from the AO, Id. CIT(A) passed his order just after 12 days from the date of submission of AO in remand proceedings on 22.11.23. The Id. CIT(A) proceedings are not time bound and once the AO had started communication in remand proceedings, the Id. CIT(A) should have clarified the issues, the AO had asked for. There was no reason to pass the order hurriedly. For the sake of justice Id. CIT(A) should had given another opportunity to AO and clarified to the AO as to what specific comments were required by the CIT(A).

2.4 It is also important to note that it is the assessee, who has submitted before the Hon'ble ITAT at Page no. 9 of paper book an application to Id. CIT(A) for admission of additional evidence was filed. It means that the assessee himself admits he had never submitted books of account including cash book before the AO and is now submitting these documents for the first time before Id. CIT(A), whereas the Id. CIT(A) has categorically mentioned at Page no. 26 of his order that these documents were not at all additional evidences. This act of Id. CIT(A) demonstrates that the order was passed hurriedly without appreciating the facts and circumstances of the case.

2.5 A report has been called from AO and is also enclosed for your kind perusal highlighting the chain of events and details of notices issued.

2.6 Further, following relevant case laws are submitted as follows in support of above arguments.-

S. No.	Particulars	Page No.
1	JMJ Essential Oil Company vs. CIT, Shimla [2018] 100 taxmann.com 181 (Himachal Pradesh) High Court of Himachal Pradesh	1-7
2	Vaishnavi Bullion (P.) Ltd. vs. ACIT [2022] 145 taxmann.com 197 (Hyderabad-Trib.) In the ITAT Hyderabad Bench 'B'	8-53
3	Income tax Officer, Ward-1, Murshidabad vs. Kenaram Saha & Subhash Saha [2009] 116 ITD 1 (Kolkata) (SB) In the ITAT Kolkata Bench (Special Bench)	54-78
4	C. Shaji vs. Income Tax Officer, ITA No. 505/Coch/2017, Income Tax Appellate Tribunal-Cochin.	79-89

6. On the other hand Id. AR of the assessee relied upon the detailed finding recorded in the order of the Id. CIT(A). To support the contentions recorded in the order of the Id. CIT(A) the assessee has filed the following papers / evidences:

S.No.	Paper/document	Page No.
1.	Written Submission dated 31.08.2023 before Id. CIT(A)	1-9
2.	Letter dated 13.11.2019 before the AO.	10-11
3.	Details of Cash Deposited in to the Bank	12-12
4.	Details of Monthly Opening cash in hand, cash sales, cash deposited in to the Bank, and Closing cash in hand	13-13
5.	Details of both credit and cash Sales made during the period 01.11.2016 to 08.11.2016 (up to date of Demonetization)	14-18
6.	Extract of Cash Book showing day to day Op. Balance,	19-22

	Receipts, cash Payment and closing Balance.	
7.	Other Details/documents annexed to Letter dated 13.1.2019	23-53
8.	Letter dated 26.11.2019 before the AO, along with Annexure thereof.	54-58
9.	Letter dated 14.12.2019 before the AO.	59-59
10.	Bank Certificate for deposit of demonetized currency	60-60
11.	Details of cash collection against cash sales and collection from debtors/retailers during the period 01.11.2016 to 08.11.2016.	61-65
12.	The Date and amount wise details of cash deposited in to the Bank during the relevant F.Y.2016-17.	66-77
13.	Other Details/documents annexed to Letter dated 14.12.2019	78-78
14.	Letter dated 16.12.2019 before the AO.	79-79
15.	Copy of Audit report in Form No.3CD.	80-90
16.	Copy of Cash Book for the relevant F.Y.2016-17.	91-158

6.1 The Id. AR of the assessee also filed a detailed written submission in support of the contentions recorded in the order of the Id. CIT(A) which reads as follows:

1. The assessee is a Registered Dealer of certain Well-known/reputed manufactures and thus engaged in Trading of FMCG Products since several preceding years.
2. The assessee sales goods to various retailers both in cash and on credit. The credit sales to retailers is realized both in cash and cheques /Drafts/online payments etc.
3. The daily cash sales and collection from retailers after meeting the routine and petty expenses is deposited in to the Bank Account of the assessee.
4. The assessee is maintaining regular books of accounts, Bills, Vouchers, Receipts etc. and other relevant records.

5. The daily Sales, realization from Debtors, payments for Expenses and Creditors both whether in cash or through Bank Accounts is recorded in such Books of Accounts on day to day basis.

6. The assessee is having Turnover of Rs. 74596081/- during the relevant previous year against that of Rs.67752922/- in preceding year.

7. The assessee got his books of accounts audited u/s 44AB of IT Act 1961 and filed return of Income declaring Net Profit of Rs. 717527/- against that of Rs.718251/-in preceding year.

8. The AO held that the assessee has failed in submitting the requisite information/details and made relevant additions to returned Income i.e.

S. No.	Nature of Additions	Amount
1.	Cash deposited in to the Bank during the period of <i>demonetization</i> 09.11.2016 to 31.12.2016, holding the same unexplained income from undisclosed sources u/s68	7981000/ -
2.	Disallowance of alleged cash payments in excess of limit Prescribed u/s 40A(3)of ITAct 1961.	6482055 9/-
	Total Additions to returned Income	7280155 9/-

7. In Face Less Appellate proceedings before Id. CIT(A) the assessee submitted the details of Date and Notice wise Submission made before the AO through E-proceeding tab as available on web portal of the Department.

8. The assessee along with his written submission before Id. CIT(A) uploaded the copy of details/documents submitted before the AO in response to each and every Notice u/s 142(1) issued during the course of assessment proceedings. (reproduced at Page No.3-10 of Order of Id CIT(A) PB No.1-9.

9. The Id.CIT(A) observed the letter dated Nil along with relevant annexure thereof submitted by the assessee before the AO in response to Notice dated 09.11.2019 (reproduced at Page No.10-30 of Order of Id.CIT(A).

10.The Id.CIT(A) further observed the letter/Certificate dated 02.12.2019 of HDFC Bank towards deposit of old/new currency during the period of demonetization period. (reproduced at Page No.19 of Order of Id.CIT(A).

11.The Id. CIT(A) also observed that E-proceeding history was downloaded and furnished by the appellant before him which reveals the fact that the appellant has furnished response to each notice.(Page No.20 of Order of Id.CIT(A).

12. The Id.CIT(A) Called remand report of the AO and discussed the same in his order.(Page No.23-26 of Order of Id.CIT(A).

13.The Id.CIT(A) after considering the written submission along with relevant details and evidences available on record, remand report of the AO deleted relevant addition of Rs.7981000/-towards cash deposited in to the Bank during the period of demonetization disputed in Ground No1 of the Appeal of the assessee.(Page No.9-27 of Order of Id.CIT(A).

14. In respect of Ground No.2, the Id. CIT(A) observed the written submission of the assessee along with details and documents available on record.(reproduced at page No.28-29 of Order of Id.CIT(A) .

15. The Id.CIT(A) after considering the written submission along with relevant details and evidences available on record, remand report of the AO deleted relevant addition of Rs.64820559/-towards alleged cash payments in excess of limits prescribed u/s 40A(3) of IT Act 1961.(Page No.29-30 of Order of Id.CIT(A)

Written submission of Id. D/R:

16.The Id.D/R vide his written submission filed before this Hon. Bench has submitted that the assessee has filed only basic details and other necessary details/documents have not been submitted.

17.The Id. CIT(A) has given categorical findings: “As the evidences are very much available in the e-filing portal where the appellant has proved that he had participated, those details submitted has to be considered as per principles of natural justice.” (Para 4.10, Page No.26 of Order of Id.CIT(A).)

“In view of the above, the addition of Rs.79,81,000/- made by the AO as unexplained cash is not acceptable as the appellant sufficiently demonstrated the sources with all the documents called for by the AO.” (Para 4.11, Page No.26 of Order of Id.CIT(A).)

“The AO called for the details of Cash Book with day to day opening and closing balance for various months. The appellant uploaded the same and it was reproduced in the previous paragraphs in Annexure VI. (Para 5.3(a) Page No.29 of Order of Id.CIT(A).)

(b) The appellant was into the business of sale of FMCG products and daily cash sales and the opening balance deposited into the bank account was mentioned as payments. (Para 5.3(b) Page No.29 of Order of Id.CIT(A).)

(c) The AO, without having any common understanding considered these cash deposits into the bank account as cash payments made in violation of 40A(3) of the Act. Out of total purchases of Rs.7,45,96,081/ a sum of Rs.6,48,20,559/ was disallowed and added back. No prudent assessee incur expenditure in cash like this regularly and submit such ledger to the AO in a tax audit case.(Para 5.3(c) Page No.29 of Order of Id.CIT(A).)

Additional Evidences before Id.CIT(A).

18. Though extract of Cash Book and other details submitted before the Id. CIT(A) were submitted before the AO in compliance of the notice issued u/s 142(1) of the Act from time to time as available on E-proceeding Tab of the assessee on Web Portal of the Department.

19. However to fill up any possible/technical lacuna the assessee submitted the detailed Cash Book before Id. CIT(A) along with Application for admission of additional Evidences.

20. The Id. CIT(A) deleted the relevant additions on the basis of Extract of cash Book and other relevant details already submitted before the AO and thus available on record, without taking in to account the Cash Book submitted by the assessee as additional Evidence.

21. The Id. CIT(A) has passed his order after calling remand report of the AO and the AO has not found any defect in Details/documents submitted before the Id. CIT(A).

22. The AO has not denied the submission of details/documents during the course of assessment proceedings as available on E-proceeding Tab of the assessee on Web Portal of the Department.

23. Thus Id. D/R has no substance in disputing the submission of relevant details and documents during the course of Assessment proceedings duly available on E-proceeding Tab of the assessee.

24. The case law relied by Id. D/R are clearly distinguishable on facts and not applicable to present case of the assessee.

25. The assessee reiterate on submission/details/documents submitted before the Id. CIT(A) and rely on the Order of Id. CIT(A).

26. The Appeal of the Department is devoid of merits and liable to be dismissed.  
”

6.2 The Id. AR of the assessee in addition vehemently argued that the assessee has participated in the assessment proceeding and has submitted all the details that has been asked for even the details of the SBN and legal tendered money deposited into the bank account as supported by the bank certificate was placed on record. The Id. CIT(A) has considering the submission and facts of the case that the same made was available on the portal he has given reminders to the AO but AO did not submit the remind report, when the matter was brought the higher officer he has submitted that the assessee has submitted additional evidence and that should not be accepted rather than to submit the comments on the merits of the case. Ld. CIT(A) has in detailed given the finding on all the aspect of the matter and therefore, that order be sustained.

7. We have heard the rival contentions and perused the material placed on record. Present appeal is filed by the revenue. Revenue has taken two grounds of appeal.

Ground no. 1 relates to the action of the Id. CIT(A) deleting the addition of Rs. 79,81,000/- being the amount of the money deposited into

the bank account by the assessee. The assessee submitted a certificate of the bank that out of the money so deposited into the bank account by the assessee Rs. 67,93,000/- is the legal tender money and Rs. 10,85,000/- is Old demonetized currency notes. The assessee also submitted that the source of this cash deposited into the bank account is the sales receipt which is already forming part of the audited books of accounts of the assessee. The Id. CIT(A) has based on the remand report deleted the addition on merits of the case. Before us Id. AO through Id. DR did not bring anything contrary that the cash deposited by the assessee is not forming of the sales recorded in the books of account of the assessee. Ld. CIT(A) has after detailed deliberation directed to the delete the addition of Rs. 79,81,000/-. We do not find any infirmity in that finding of the Id. CIT(A) and therefore, ground no. 1 raised by the revenue has no merit and thereby dismissed.

Ground no. 2 raised by the revenue challenges the action of the Id. CIT(A) in deleting the addition of Rs. 6,48,20,559/- made by the Id. AO as per provision of section 40A(3) of the Act. On this aspect of the matter we note that the assessee has produced the cash book before us, before the Id. CIT(A) in the remand proceedings. Ld. AO while challenging the finding of the Id. CIT(A) before us did not bring to our notice as to quantum of

payment made by the assessee in violation of section 40A(3) of the Act. Ld. CIT(A) has deleted that addition after giving due opportunity to the assessing officer who has not availed that opportunity even before us and therefore, we do not find any merits in the contentions so raised and we do not find any infirmity in the findings recorded by the Id. CIT(A). Based on these observations ground no. 2 raised by the revenue stands dismissed.

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

Order pronounced in the open court on 10/10/2024.

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

Sd/-  
( राठौड कमलेश जयंतभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:-10/10/2024

\*Ganesh Kumar, Sr. PS

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

1. The Appellant- ITO, NCRB Jaipur
2. प्रत्यर्थी / The Respondent- Prakash Agarwal, 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. 54/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar