IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW

BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER
AND
SHRI SUBHASH MALGURIA, JUDICIAL MEMBER

I.T.A. No.368/Lkw/2020
Assessment year:2017-18

Shri Jai Singh, R/o 101-A, Govind Apartment, 1-A, Shahnajaf Road, Hazaratganj, Lucknow. PAN:AOLPS3917F	Vs.	Income Tax Officer, Range-2(5), Lucknow.
(Appellant)		(Respondent)

I.T.A. No.443/Lkw/2020
Assessment year:2017-18

Income Tax Officer, Range-2(5), Lucknow.	Vs.	Shri Jai Singh, R/o 101-A, Govind Apartment, 1-A, Shahnajaf Road, Hazaratganj, Lucknow. PAN:AOLPS3917F
(Appellant)		(Respondent)

Assessee by	Ms. Shweta Mittal, C.A.
Revenue by	Shri Sanjeev Krishna Sharma, Addl. CIT (D.R.)

O R D E R

PER ANADEE NATH MISSHRA:A.M.

(A) These cross appeals have been filed by assessee and by Revenue against common impugned appellate order dated 22/09/2020 passed by

learned Commissioner of Income Tax ["CIT(A)" for short]. The grounds of appeal taken by the assessee and by Revenue are as under:

I.T.A. No.368/Lkw/2020 (Assessee's Appeal)

"1. The learned CIT(A) has erred in law and on facts in passing the order, which is unlawful, unjustified and against the principles of natural justice.

2. The Ld. Commissioner of Income-tax (Appeal) has erred in law and on facts in passing the order without giving adequate opportunity of being heard.

3. The Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in sustaining the addition of Rs.5,78,000/- (being part of cash deposited during demonetization period out of cash realized from debtors),only on the basis suspicion, conjecture and surmise which deserves to be deleted.

4. The Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in passing assessment order which is contrary to the facts and law."

I.T.A. No.443/Lkw/2020 (Revenue's appeal)

"1. The learned CIT(A) has erred in law and on facts by deleting the addition of Rs.1,36,00,000/- made by the Assessing Officer on account of unexplained cash credit u/s 69A of the I. T. Act."

(B) In this case assessment order dated 30/12/2019 was passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 ("I. T. Act" for short) whereby the assessee's total income was assessed at Rs.1,55,70,340/-. In the aforesaid assessment order, total addition of Rs.1,41,78,000/- was made, treating specified bank notes ("SBNs" for short), deposited by the assessee, as assessee's unexplained income u/s 69A of the I. T. Act. Out of the aforesaid amount of Rs.1,41,70,000/-, an amount of Rs.1,36,00,000/- was deposited in the assessee's bank account pertaining to proprietary business of travel agent. The remaining amount of

Rs.5,78,000/- was deposited by the assessee din the assessee's savings bank account. The assessee's appeal against the aforesaid assessment order was dismissed by aforesaid impugned appellate order of learned CIT(A) wherein the aforesaid addition amounting to Rs.1,36,00,000/- was deleted and the aforesaid remaining addition of Rs.5,78,000/- was sustained. Thus, the assessee's appeal was partly allowed by the learned CIT(A). The present two cross appeal, before us, have been filed by the assessee and by Revenue against the aforesaid impugned appellate order of the learned CIT(A). In the course of appellate proceedings in Income Tax Appellate Tribunal, a paper book containing the following particulars was filed from the assessee's side:

S.No.	Particulars
1.	Photocopy of list of customers alongwith the complete address provided to the Ld. Assessing Officer during the assessment proceeding
2.	Photocopies of certified order sheet alongwith notices u/s 133(6) of Income-tax Act issued by Ld. Assessing Officer and the corresponding response received from such persons
3.	Photocopy of order of Hon'ble Allahabad High Court in the case of CIT(A) v. Raj Kumar Agarwal in ITA No. 179 of 2008 dated 17.11.2009
4.	Photocopy of order of Hon'ble ITAT, Delhi in the case of Ritu Raj in ITA No. 1981/Del/2021 for the AY 2017-18 dated 21.07.2022.
5.	Hon'ble ITAT, Agra in the case of Smt. Vim la Rani Agarwal in ITA No. 197/Agra/2013 for AY 2009-10 dated 31.01.2014

(C) The aforesaid appeal filed by Revenue vide I.T.A. No.443/Lkw/2020 has been filed beyond the time limit prescribed under section 253(3) of the I. T. Act. An application seeking condonation of delay was filed by Revenue stating the following reasons:

> *"Due to nationwide situation arising out of Covid-19 pandemic and further in view of the decision of Hon'ble Supreme Court vide order dated 23.03.2020 by taking cognizance for extension of limitation in Suo Moto Writ Petition (Civil) No(s.) 03/2020 in the situation arising*

out of the challenge faced by the country on account of Covid-19 pandemic."

(C.1) The learned A.R. for the assessee did not express any objection to condonation of delay. In view of the foregoing and considering the reasons stated by Revenue, in the specific facts and circumstances of the present case, the appeal filed by the Revenue is admitted for hearing on merits.

(C.1.1) On merits, the learned Sr. D.R. for Revenue strongly relied on the assessment order passed by the Assessing Officer. The learned A.R. for the assessee vehemently supported the order of the learned CIT(A) as regards the deletion of aforesaid amount of Rs.1,36,00,000/-. She further submitted that the Assessing Officer made the addition in a pre-meditated manner, and further that his opinion was coloured by the mere fact that the deposits in bank accounts were made in SBNs. She contended that on proper consideration of nature and scale of the assessee's business, common practices in the assessee's line of business (travel agency), past record of the assessee and continuing practice after end of the previous year, relevant to assessment year 2017-18 (to which the appeal pertains), there was no case for any addition in the case of the assessee. She submitted that it was common in assessee's line of business for customers/clients to make payment in cash, and to periodically deposit the same in bank accounts. The learned A.R. for the assessee further submitted that as a result of which there was substantial amount of cash balance. She submitted that it was common practice to deposit accumulated cash in the bank in smaller parts and not larger bulks. She also submitted that the assessee provided the list of customers from whom cash was received as payment against airline tickets. She further submitted that the Assessing Officer had made inquiries u/s 133(6) of the I. T. Act from selected customers from the aforesaid list; and most of such persons had confirmed that payments were made by them

in cash. Despite all these facts and circumstances, she lamented the Assessing Officer made a high pitched assessment, making the addition in the assessment order, causing agony and avoidable litigation for the assessee.

(C.2) We have heard both sides. We have perused the materials on record. The relevant portion of the order of learned CIT(A), as regards the aforesaid amount of Rs.1,36,00,000/-, which is the subject matter of appeal filed by the Revenue, is reproduced as under for the ease of reference:

5. The appellant is engaged in business of travel agency. The ITR was filed on total income of Rs. 13,92,340/-. The AO analysed the figure of cash deposits made by the appellant during the demonetization period and

found that the total cash deposit increased by 847%. The AO analysed the pattern of deposit made by the appellant during the demonetization period and found that he had made deposit throughout the demonetization period on piecemeal manner. The AO contended that the appellant was accepting SBN during this period and the explanation given by the appellant was an afterthought. Thus, the AO added Rs.1,41,78,000/- u/s 69A read with 115BBE. Thus, this is the only issue requiring adjudication which is also evident from the grounds of appeal filed by the appellant. The above grounds of appeal are discussed below.

6. During the appellate proceedings the appellant submitted the following through the electronic mode -

"The facts of the case are that during the year under consideration the appellant earned brokerage/ commission income on ticket booking for various corporate houses and individuals. The modus operandi was that the appellant booked the tickets mainly availing the credit facility provided by various other big players in the same industry such as M/s Travel Business Network, New Delhi / airlines and paid them cash on receiving the same from his customers. To stay in this industry and compete with the big players, the appellant booked tickets for his regular customers on credit as well. During the year under consideration the appellant earned commission/ brokerage of Rs. 25,61,980/- and after deducting the expenses of Rs. 11,49,642/-, income was shown as Rs. 14,22,338/- under the head "Income from Other Sources". The copy of computation of income alongwith acknowledgement of income tax return are enclosed.

Since the appellant had deposited cash amounting to Rs. 1,41,78,000/- (Rs. 1,36,00,000/- in current account out of cash held in fiduciary

capacity on 08.11.2016 and Rs. 5,78,000/- in saving bank account out of prior years' savings) in SBN during demonetization period i.e. 09.11.2016 to 30.12.2016, the appellant's case was selected for scrutiny. During the assessment proceeding the appellant explained his modus operandi and submitted the details of cash received from customers during 01.10.2016 to 08.11.2016. Since the appellant held cash in fiduciary capacity of his principal or the airlines company whose tickets were booked by the appellant, cash deposited in bank cannot be equated to income of the appellant. Further, from the deposit pattern of the cash in bank account by the appellant it is clear that the cash collected on ticket booking was not deposited by the appellant in his own bank account but in the bank account of the principal / airlines company. The same is evident from the following table:

Particular	***FY 2015-16***	***FY 2016-17***
Total cash receipt for ticket booking from 01st April to 08th November	*1,07,93,941*	*2,64,65,465*
Cash deposit between 01st April to 08th November	*13,10,000*	*10,18,000*
Cash deposit between 09th November to 30th December	*1,41,000*	*1,36,00,000*

The copy of cash book from 01.10.2016 to 31.12.2016 is enclosed. The above information was submitted by the appellant to the Ld. Assessing Officer in response to notice u/s 142(1) of Income-tax Act dated 04.10.2019. Therefore, during the year the appellant had to deposit the cash in his current bank account that he held in fiduciary capacity only because it had lost its legal tender on 08th November 2016 and the principal/ airlines refused to accept the same in cash. Since the appellant was habitual of depositing cash in the bank account of principal/ airlines in small denominations, the appellant

deposited the SBN post demonetization in several tranches. Each tranche was kept below five lakhs to minimize the risk of theft while waiting in long queues in front of the bank. Due to said reason the cash was deposited in bits and pieces by the appellant during demonetization period in his current accounts maintained with Kotak Mahindra Bank and ICICI Bank out of cash of Rs. 1,36,01,372/- held by him in fiduciary capacity on Mid Night of 08.11.2016. The detail is as under:

a. *Rs. 78,32,000 in Current Account No. 555011015531 maintained with Kotak Mahindra Bank*
b. *Rs. 57,8,000/- in Current Account No. 628105029630 maintained with ICICI Bank*

The date wise detail of cash deposited in current bank accounts during demonetization is duly reflecting in the cash book submitted above. Further, in this regard it is also submitted that the Government of India had given the period of depositing cash available with its citizen in SBN during the period 09.11.2016 to 30.12.2016. In none of the notifications/ press release it was directed to deposit all the cash available in SBN in one single tranche. Further, the appellant deposited SBN in following saving bank accounts out of his personal savings of earlier years:

c. *Rs. 4,50,000/- in Saving Account No. 015104000071053 maintained with IDBI Bank*
d. *Rs. 1,28,000/- in Saving Account No. 33309920399 maintained with State Bank of India*

The Ld. Assessing Officer disbelieved the contention of the appellant only on the basis of suspicion, conjecture and surmise. He has not come up with an evidence to support his doubts on appellant's version of the facts. The details of persons/ debtors from whom cash was received for ticket booking was provided to the Ld. Assessing Officer during the assessment proceeding. The

detail so submitted with the Ld. Assessing Officer during the assessment proceeding is enclosed. The Ld. Assessing Officer on test basis asked the appellant to provide complete address of 9 such customers to whom notice u/s 133(6) of Income-tax Act were issued. All the aforementioned persons/ debtors responded to the notice and confirmed to give cash to the appellant for ticket booking. They also provided the details of tickets booked by the appellant alongwith the copies of the said booked tickets. The certified copies of the order sheet alongwith notices issued, and response received by the Ld. Assessing Officer from aforementioned 9 persons during the assessment proceeding are enclosed. However, no reference of issuance of notice u/s 133(6) of Income-tax Act to the customers/ debtors of the appellant and receiving their confirmations with details of tickets booked against the cash provided by them was made by the Ld. Assessing Officer in the assessment order. This act of Ld. Assessing Officer goes to show that he had a very sceptic view against the appellant version of facts and he had made up his mind to make the addition with or without the response of the notices send by him to the customers/ debtors of the appellant.

I. MONEY HELD IN FIDUCIARY CAPACITY CANNOT BE CONSIDERED AS ACTUAL INCOME ACCRUED TO THE ASSESSEE

It is a well-known fact that the money held in fiduciary capacity cannot be treated as income by no stretch of imagination. In this regard reliance is placed on the following judgements:

1. ***Judgement of the Hon'ble Apex Court in case of DCIT vs. T. Jayachandran reported in (2018) 406 ITR 1:***

Headnote

S.4: Income chargeable to tax – Diversion of income by overriding title- Acted only broker -For determination of taxable income , written agreement is not relevant, conduct of parties can be considered

accordingly only income that has actually accrued to the assessee is taxable. [S. 5, 145]

Dismissing the appeal of the revenue the Court held that; ***The income that has actually accrued to the Respondent is taxable. What income has really occurred to be decided, not by reference to physical receipt of income, but by the receipt of income in reality. Given the fact that the Respondent had acted only as a broker and could not claim any ownership on the sum of Rs. 14,73,91,000/- and that the receipt of money was only for the purpose of taking demand drafts for the payment of the differential interest payable by Indian Bank and that the Respondent had actually handed over the said money to the Bank itself, we have no hesitation in holding that the Respondent held the said amount in trust to be paid to the public sector units on behalf of the Indian Bank based on prior understanding reached with the bank at the time of sale of securities and, hence, the said sum of Rs. 14,73,91,000/- cannot be termed as the income of the Respondent. In view of the above discussion, the decision rendered by the High Court requires no interference."***

2. ***Hon'ble Punjab & Haryana High Court in the case of PCIT vs. Punjab Police Housing Corporation reported in [2020] 116 taxmann.com 400***

Headnote

Section 4 of the Income-tax Act, 1961 - Income - Chargeable as (Interest) - Assessee was regularly given grants by State Govt. for various purposes including construction of houses for police officials - During relevant year, grant remained un-utilized and money which was parked in bank earned interest - As per Assessing Officer, interest was

exigible to tax - Tribunal held that amount of interest which accrued on any money parked in bank would be deemed to be a further grant for that particular purpose as same can be used only for that purpose and in event cannot be used for that purpose, same has to be refunded back to Government, thus, assessee was not recipient of income arising on account of interest earned on deposits with banks and interest income was not exigible to tax - Whether Tribunal was justified in its decision - Held, yes [Paras 3-10] [In favour of assessee]

II. ***IF THE ASSESSEE'S EXPLANATION IS PROBABLE, THE ONUS WILL SHIFT TO THE REVENUE.***

Further, it is submitted that the appellant provided details of persons/ debtors from whom cash was received and was held by him in fiduciary capacity. The notices were served on 9 such persons for confirmation u/s 133(6) of Income-tax Act. In response to the said notices the said persons confirmed to have provided the appellant cash for ticket booking alongwith the details of tickets booked and their copies. Therefore, the appellant discharged the onus cast upon him to prove that the money deposited during demonetization was held by him in fiduciary capacity and as it lost its legal tender, the appellant had no other option but to deposit the same in his person bank account and not in the bank account of his principal/ airlines agencies. Further, the Ld. Assessing Officer if still doubted the facts narrated by the appellant and confirmations provided by the debtors against the notice u/s 133(6) of Income-tax Act, he could have issued summon u/s 131 of Income-tax Act upon such persons to probe the matter further in depth. He, however, on receiving the response of notices u/s 133(6) of Income-tax Act did not take any further action and as now the onus had shifted upon him to prove that the

contention made by the appellant is incorrect, he did not refer the notices issued u/s 133(6) of Income-tax Act and responses received.

Although satisfaction of the Assessing Officer is the basis of invocation of provisions of Section 69A of IT Act, but such satisfaction must not be based on illusory or imaginary or hypothetical situations. Such satisfaction must have been derived from relevant facts and evidences, and on the basis of enquiry and all material before him.The Law on the subject has been illustrated in a number of decisions. ***Hon'ble Supreme Court in Kale Khan Mohammad Hanif vs. CIT*** *pointed out that the onus on the assessee has to be understood with reference to the facts of each case and proper inference drawn from the facts. The law for Section 68 is not different. If the prima facie inference on the fact is that the assessee's explanation is probable, the onus will shift to the Revenue.*

The appellant further relies on the ***judgement of the Guwahati High Court in the case of Khandelwal Constructions v. Commissioner of Income Tax reported in 227 ITR 900 (Gau)*** *in which it is held that no addition can be made if proper enquiries have not been made. The Guwahati High Court has further held that the satisfaction of the Assessing Officer is on the basis of invocation of powers u/s 68 and the satisfaction must be derived from relevant factors on the basis of proper enquiry. The enquiry envisaged u/s 68 is an enquiry, which is reasonable and just. It was held that, in the facts of the case, the amount of cash credit could not be included in the total income of the assessee because the enquiry was not properly made.*

III. ADDITION MADE MEARLY ON THE BASIS OF PRESUMTIONS, CONJECTURE AND SURMISE IS BAD IN LAW

Further, as stated above the Ld. Assessing Officer has disbelieved the appellant's contention only on the basis of suspicion, surmise and conjecture without any evidence to support his version of belief. Also, the Ld. Assessing Officer did not consider the replies submitted by the parties who had acknowledged the fact that they had given cash to the appellant for ticket booking in response to notice u/s 133(6) of Income-tax Act while framing the assessment, which goes to show that he was biased while making the addition u/s 69A of Income-tax Act. The certified copies of notices u/s 133(6) of Income-tax Act alongwith the replies and order sheet have already been enclosed above. Suspicion can be starting point of an investigation but cannot, at the final stage of assessment take the place of relevant facts, particularly when deeming provisions are to be invoked. Any addition made simply on the basis of assumption, presumptions, conjecture and surmise is bad in law and deserves to be deleted. In this regard reliance is placed on following judgements:

1. ***Hon'ble Punjab & Haryana High Court in the case of CIT vs. Ramesh Bhayana reported in [2008] 296 ITR 101***

Headnote

Section 69 of the Income-tax Act, 1961 - Unexplained investments - [Block Period 1988-89 to 1998-99] - Where addition is sought to be made on basis of materials seized during raid, in case the explanation of the assessee is to be disbelieved, the Assessing Officer should have some material to rebut same, mere conjectures and surmises cannot form basis for making additions.

2. ***Hon'ble ITAT, Chandigarh in the case of ITO vs. Krishna Cold Storage & Ice Mills Reported in [2000] 108 taxman 47 (CHD.) (MAG.)***

Headnote

Section 69 of the Income-tax Act, 1961 - Unexplained investment - Assessment year 1989-90 - Whether addition made being unrelated to any specific rate of rent charged in respect of storing of potatoes in its cold storage or any defect in accounts maintained by assessee, was based on surmises and conjectures and had, thus, to be deleted - Held, yes - Whether, where assessee was not a dealer in potatoes, Assessing Officer's assumption that it had purchased certain potatoes on its own account outside its books of account was based on surmises and conjectures and, therefore, addition made had to be deleted - Held, yes - Whether facts about storage of potatoes by two parties in assessee's cold storage having been established, addition made on that account had to be deleted - Held, yes

3. *Hon'ble ITAT, Mumbai in the case of ACIT vs. Ms. Katrina Rosemary Turcotte in [2017] 87 taxmann.com 116 (Mumbai - Trib.)*

Headnote

Section 69 of the Income-tax Act, 1961 - Unexplained investments (Purchases) - Assessment year 2006-07 - Company Matrix was managing agent of assessee actress - Assessing Officer on basis of documents seized in course of search carried out in case of 'S', an employee of 'Matrix', made addition to assessee's income on account of cash expenditure incurred in purchase of house - However, he had not made any enquiry with house owner to find out the exact amount received by him for selling house to assessee - Moreover, in an affidavit filed on behalf of 'Matrix', it was accepted that no cash was either paid or accepted on behalf of assessee - Whether on facts, in absence of any direct and clinching evidence indicating incurring of cash expenditure

for purchasing house, impugned addition could not be made on mere presumption and surmises - Held, yes. [Para 28] [In favour of assessee]

4. *Hon'ble Kerala High Court in the case of R. Ramachandran Nair v. Deputy Commissioner of Income-tax reported in [2017] 78 taxmann.com 110 (Kerala)*

Headnote

Section 69 of the Income-tax Act, 1961 - Unexplained investment (Immovable property) - Block period 1-4-1986 to 15-10-1996 - In course of block assessment proceedings, Assessing Officer noticed that assessee in his capacity as Vice Chancellor of University, had entered into agreements with different parties for purchase of land - Assessing Officer found that on day when those agreements were entered into, vendors were not actual owners of properties agreed to be sold and vendors acquired said properties much later and for far lower prices - Assessing Officer, thus, opined that differential amount, i.e., difference between agreed sale consideration and actual amount paid by vendor, had reached assessee's hands which constituted his undisclosed income - Tribunal deleted said addition, taking a view that conclusions of Assessing Officer were purely based on surmises and without any evidence - Whether since there was no evidence whatsoever to conclude that differential amount mentioned above actually reached hands of assessee, Tribunal was justified in deleting impugned addition - Held, yes [Paras 16 and 17] [In favour of assessee]

In this regard, further reliance is placed on the following observations made in the Commentary on Income Tax Law by Chaturvedi & Pithisaria (page 4818; Vol.3; fifth edition):

"Assessment based on pure guess is bad-- In making an assessment u/s 143(3), the Assessing Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment u/s143(3) (Dhakeswari Cotton Mills Ltd v. CIT (1954) 26 ITR 775, 782 (SC); Raj Mohan Saha v. CIT (1964) 52 ITR 231 (Assam). Also see CIT v. Gokalidas Hukumchand, (1943) 11 ITR 462,469 (Bom); Ram DattaSita Ram of Basti. In re, (1947) 15 ITR 61,85 (Alld); Narayan Chandra Baidya v. CIT (1951) 20 ITR 287, 292 (Cal.); Gopi Nath Agarwala v. CIT (1955) 28 ITR 753, 762 (Alld); United Patel Construction."

In this regard, further reliance is placed on the following judgments, the gist's of which are also given below:

1. ***Estimation not to be arbitrary, vague and fanciful but must be legal and regular-*** *The law says that ITO shall make the assessment to the best of his judgment, it means that he must make it according to the rules of reason and justice, not according to private opinion, but according to law and not humor, and the assessment is to be not arbitrary, vague and fanciful, but legal and regular-* ***MYSORE FERTILISER Co. v. CIT [1966] 59 ITR 268 (Mad)***

2. ***Arbitary addition and guesswork must be avoided*** *–Even if the ITO considers the material placed before him by the assessee to be unreliable keeping in view the comparative statement of accounts of the previous years, he cannot proceed to make an arbitrary addition and base his conclusion purely on guesswork. He ought to have related his estimate to some evidence*

or material on the record as it is now well-settled that if the profits shown by the assessee in his return are not accepted, it is for the taxing authorities to prove that the assessee has made more profits than returned - ***INTERNATIONAL FOREST Co. v. CIT [1975] 101 ITR 721 (J &K)***

3. ***Basis for estimation and computation must be disclosed by ITO in a speaking order-****If the assessee fails to satisfy the ITO as to the correctness of the profits returned by him, it is open to the ITO to take a higher percentage consistent with the state of trade in the locality or with any special circumstances of the assessee which warrant higher rate of profits. However, the ITO must state the basis and manner of computation and make his order a speaking order-* ***SETH NATHURAM MUNALAL v. CIT [1954] 25 ITR 216 (Nag).***

4. ***Estimation based on both relevant and irrelevant material cannot be sustained even partly -*** *If an estimate is based partly on irrelevant material and partly on relevant material, it is difficult to sustain the estimate because it cannot be said as to what extent and which part of figure of estimate depends upon the irrelevant portion of the matter-* ***SURAJMALCHAMPALAL v. CIT [1967] 66 ITR 396 (Pat).***

In view of aforesaid facts, circumstances of the case and judgements, since the appellant held Rs. 1,36,00,000/- in fiduciary capacity which was deposited in his bank account due to demonetization and remaining Rs. 5,78,000/- was deposited in SBN out of earlier years savings, the addition of Rs. 1,41,78,000/- made by the Ld. Assessing Officer simply on the basis of conjecture and surmise deserves to be deleted".

7. The appellant made further online submission which is reproduced below:-

To,

The Hon'ble Commissioner of Income-tax (Appeals)-I
Lucknow

Respected Sir,

Ref: Jai Singh, Lucknow
PAN: AOLPS3917F
A.Y.: 2017-18
Sub: Supplementary Written Submission

The following written submissions is being made in addition to earlier submission in the aforesaid case in addition to the oral arguments to be made at the time of hearing of the appeal.

As stated in my earlier submission I was holding the money on 08.11.2016 in fiduciary capacity and since it was in SBN the principal airlines agencies refused to accept the same and for this reason I deposited the cash-in-hand of SBN of Rs. 1,36,00,000/- in my account. Later the payments were made to the principal airline agencies. The party-wise detail of payment alongwith copy of relevant pages of bank account statements through which the amount was transferred to aforementioned principal airlines agencies is enclosed.

In view of aforesaid facts, circumstances of the case and judgements, since the appellant held Rs. 1,36,00,000/- in fiduciary capacity which was deposited in his bank account due to demonetization and remaining Rs. 5,78,000/- was deposited in SBN out of earlier years savings, the addition of Rs. 1,41,78,000/- made by the Ld. Assessing Officer simply on the basis of conjecture and surmise deserves to be deleted.

Prayer

It is most respectfully prayed that the Hon'ble Commissioner of Income-tax (Appeals) may kindly be pleased to delete the addition of Rs. 1,41,78,000/- (Rs. 1,36,00,000/- deposited in current accounts and Rs. 5,78,000/- in saving bank accounts) made under the provisions of section 69A of Income-tax Act by the Ld. Assessing Officer.

Thanking you.
Yours faithfully

(Jai Singh)
Appellant

8. A perusal of the submissions of the appellant and assessment order shows that the AO was disbelieved the submissions of the appellant for the reason that deposits were made by him is piecemeal manner.The appellant had submitted that the deposits of Rs.1,36,00,000/- , out of Rs. 1,41,78,000/-,

were made by him out of money realized by him for booking tickets for his clients. Earlier also, the appellant submitted, he used to get cash from customers in lieu of booked tickets which he used to deposit directly in the Airlines' bank accounts. On 08/11/2016 he was holding cash of customers who booked their tickets through the appellant which the appellant was not able to deposit in the bank accounts of these Airlines' Companies after the announcement of demonetization, and thus, he deposited them in several tranches in his current bank accounts. The AO had made verification from some of the clients in this regard by issuing notices u/s 133(6) directly to them and they were asked about the services provide by the appellant to them, payments made by them and other details, as submitted by the appellant. The appellant has submitted certified copies of the notices u/s 133(6) of the Act issued by the AO to the customers of the appellant as evidence to back-up his above submission. It is pertinent to note that almost all the customers submitted their response and have accepted the fact regarding the payment made to the appellant.

9. The appellant has stated that the money held by him was not his own money but the same has held as fiduciary capacity only. The amount received by him pertained to the payment due on the client for tickets booked on their behalf by the appellant. The appellant utilized his credit facility with the airlines to book ticket for his client, who had paid him later on. The same amounting was deposited by him. In his bank account to be transferred later to the airlines after deducting his commission.

10. Though the AO made the above inquiries but the AO failed to mention these inquiries in the assessment order which is not justified. The AO has made the addition only on presumption that the appellant that the above deposits pertained to the unaccounted income of the appellant as the deposits were made during the demonetization period in staggered manner. This whole presumption of the AO is fallacious as the RBI has allowed the

deposit of SBN upto 31.12.2016 for everyone. Thus the deposits made by the appellant cannot be doubted merely for this reason. There can be many reasons for not depositing the amount in lump sum. The AO has not taken them in account before forming his opinion. The appellant has given detailed justification for depositing them in staggered manner and security was the major concern which in my opinion is fair and reasonable.

11. The AO has disallowed the entire deposits made by the appellant during the demonetization period without rejecting the books of account maintained by the appellant u/s 145(3) of the Income Tax Act. Cash Book and ledgers of the Customers, from whom the appellant received cash payments as submitted by him, were part of books of account of the appellant which the AO has not doubted. The AO has also completely ignored the fact that the appellant has made payments to the Airlines Agencies through banking channel as evident from the bank statement of the appellant from the above cash deposited in the bank accounts.

12. The entire addition has been made by the AO on presumption and on 'preponderance of probability' and not on evidence. Though preponderance of probability is an accepted principle to judge reliability of evidences as held by the Hon'ble Courts in plethora of cases but its application in judging the quality evidences should be done in a reasonable manner. The above action of the AO is not reasonable as the AO was not able to point any defect in the books of account or cash books or customers' ledgers. When as per the submission of the appellant amount received from customers were the sources of these cash deposits and when nothing adverse was found after conducting inquiries u/s 133(6) in cases of 9 customers then the above act of addition is not justified. The fact that the appellant subsequently made payments to airlines agencies through banking channel out of the above deposited cash lends credence to the above submission. Hence, the addition

of Rs.1,36,00,000/- made u/s 69A read with 115BBE by the AO is not sustainable and is thus deleted.

(C.2.1) The relevant facts are not in dispute. The business of the assessee is in the nature of commission agents of various business houses dealing in travel & tours, mainly commercial airlines. The assessee books tickets on behalf of the assessee's principal, various commercial airlines and sells travelling tickets on behalf of the assessee's principals to customers. The assessee collects money from the customers and subsequently remits the money to the principals. The assessee gets brokerage/commission from the principals. The payments received by the assessee are partly in cash. The payments received from the customers, by the assessee are deposited by the assessee directly in the airlines' bank accounts. It is regular practice in the business of the assessee to receive payment in cash from the assessee's customers who booked the ticket through the assessee. The Assessing Officer had made verification from some of the selected customers who made payments in cash against purchase of airline tickets, by issuing notice u/s 133(6) directly and such customers were asked to provide information regarding services provided by the assessee, payments made by them to the assessee and some other related details. Almost all the customers, to whom notices were issued u/s 133(6) of the I. T. Act by Revenue, submitted their response and accepted the fact regarding payments made by them to the assessee in cash. The cash so received by the assessee against sale of tickets is not the assessee's own money but the assessee holds in fiduciary capacity, to be transferred to the respective airlines on whose behaves the assessee acts in fiduciary capacity. The Assessing Officer, however, omitted to mention in the assessment order that inquiries were made u/s 133(6) of the I. T. Act, and that almost all the persons, to whom notices were issued, submitted their responses and accepted that the payments were indeed

made to the assessee in cash. Further, the cash book and ledgers of the customers, from whom the assessee received cash payments, were part of the books of account of the assessee, which the Assessing Officer did not doubt. The accounts of the assessee were not rejected u/s 145 of the I. T. Act. The Assessing Officer also completely ignored the fact that the assessee had made payments in the bank accounts of the airlines through banking channel, which was evident from the bank statement of the appellant. In view of the foregoing facts; the submissions made by the learned A.R. for the assessee at the time of hearing before us, and after due consideration of the order of the learned CIT(A), the deletion of addition of Rs.1,36,00,000/- done by learned CIT(A) in impugned order is held to be just and reasonable in the specific facts and circumstances of the present case. It is evident that the addition made by the Assessing Officer was coloured by mere fact that the deposits were made in SBNs. No material has been brought for our consideration by Revenue to persuade us to take a view different from the view taken by the learned CIT(A) regarding the aforesaid amount of Rs.1,36,00,000/-. The Assessing Officer has made the addition merely on the basis of doubts, surmises and suspicions; without giving careful consideration to the submissions made by the assessee, the information collected by the Assessing Officer himself u/s 133(6) of the I. T. Act, and the relevant facts and circumstances. Accordingly, we decline to interfere with the order of learned CIT(A) on the issue of addition amounting to Rs.1,36,00,000/- deleted by the learned CIT(A) in the impugned appellate order. The appeal filed by Revenue vide I.T.A. No.443/Lkw/2020 is dismissed.

(E) The appeal filed by the assessee (I.T.A. No.368/Lkw/2020) is regarding the aforesaid addition amounting to Rs.5,78,000/-, which was

sustained by learned CIT(A). The relevant portion of the order of learned CIT(A) is reproduced below:

13. However, in respect of cash deposits of Rs.5,78,000/- made by the appellant in the saving bank accounts during the demonetization period the appellant failed to furnish any satisfactory explanation except that they were from past savings without submission of any documentary evidences to back-up his above claim. Thus, the addition of Rs.5,78,000/- made by the AO u/s 69A read with 115BBE is sustained.

14. The appellant has further objected to invocation of Section 69A read with 115BBE by the appellant. I have perused the submissions made by the appellant in this regard and found them to be without any merit. A perusal of section 69A of the Act shows that where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, Jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by his is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year, which is exactly the case here. Since the appellant failed to furnish satisfactory explanation of the sources of cash deposits made in his bank accounts hence the AO correctly made addition u/s 69A.

15. Section 115BBE is reproduced below:-

115BBE. (1) Where the total income of an assessee,—

(a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139; or

(b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a),

the income-tax payable shall be the aggregate of—

(i) the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent; and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).]

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance [or set off of any loss] shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) and clause (b) of sub-section (1).

15. Under such circumstances, it is clear that invocation of Section 115BBE is automatic whenever any addition is made u/s 69A.

(E.1) The learned A.R. for the assessee submitted before us that the assessee's explanation that this amount represented past savings should be accepted having regard to nature and scale of assessee's business, financial and social standing of the assessee and the common social practice in Indian households to save some amount in cash every month from out of funds meant for house hold expenses.

(E.2) The learned D.R. for Revenue supported the orders of the Assessing Officer and the learned CIT(A) on this issue.

(E.2.1) We have given our thoughtful consideration to the materials on record and the submissions made by learned A.R. for the assessee. The amount of Rs.5,78,000/-, claimed to be out of past saving, is not an excessive or unreasonable amount having regard to nature and scale of assessee's business, financial and social standing of the assessee and the common social practice in households to save some amount in cash from time to time. The explanation tendered by the assessee regarding this issue and the submissions made by the learned A.R. for assessee are, therefore, found to be reasonable and acceptable in the specific facts and circumstances of the present case. Accordingly, we direct the Assessing Officer to delete the aforesaid addition of Rs.5,78,000/-. Thus, the appeal filed by the assessee vide I.T.A. No.368/Lkw/2020 is allowed.

(G) In the result, the appeal of Revenue is dismissed and the appeal of the assessee is allowed.

(Order pronounced in the open court on 30/12/2024)

Sd/.	Sd/.
(SUBHASH MALGURIA)	**(ANADEE NATH MISSHRA)**
Judicial Member	**Accountant Member**

Dated:30/12/2024
*Singh

<u>Copy of the order forwarded to</u> :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Asstt. Registrar