

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.533/Nag./2024**  
(Assessment Year : 2017-18)

Sandip Dohare  
APMC Market Yard, APMC Market  
Gondia 441 601 PAN – ABHPD8764E

..... Appellant

v/s

Income Tax Officer  
Ward-1, Gondia

..... Respondent

Assessee by : None  
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 05/02/2025

Date of Order – 21/03/2025

**ORDER**

**PER K.M. ROY, A.M.**

The aforesaid appeal filed by the assessee is against the impugned order dated 06/08/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2017-18.

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

*"1. The order passed by Hon'ble CIT(A) is illegal invalid and bad in law. The Hon'ble CIT(A) erred in sustaining the action of the Ld. AO on total addition of Rs. 1,16,22,557/- is incorrect, unjustifiable, excessive and should be quashed.*

*2. The Hon'ble CIT(A) erred in sustaining the action of Ld. AO towards addition of difference in credit in bank account and turnover disclosed u/s. 68 of the Income Tax Act, 1961 of Rs. 1,16,22,557/-. The Ld. AO & CIT(A) could instead of making entire amount as addition should have treated the deposits as business receipt and only profit must be added.*

*3. The above grounds of appeal are without prejudice and notwithstanding each other. Any consequential relief, to which the appellant may be entitled under the law in pursuance of the aforesaid grounds of appeal, or otherwise, may thus be granted. The appellant craves leave to add to or alter, by deletion, substitution or otherwise, any or all of the above grounds of appeal and the factual and legal arguments against the addition by the Ld. CIT (A)/ Ld. AO at the time or before the course of appellate proceedings in the interest of natural justice."*

3. There is no representation from the side of the assessee. In the absence of any adjournment application, the matter is take up for adjudication qua the assessee–appellant after hearing the learned Departmental Representative and on the basis of material available on record.

4. Brie facts of the case are that assessee is proprietor of M/s Sandip Kumar Anantram Dohare, engaged in the business of trading in potato, onion, garlic, etc. The assessee, for the year under consideration, filed its return of income declaring total income at ₹ 3,73,020. On perusal of bank statement, the Assessing Officer noticed that assessee deposited an amount of ₹ 2,43,83,485 by cash and through banking channel in the bank account during the year. Hence, the Assessing Officer asked the assessee to explain the source of deposits made in the bank account, in response to which the assessee submitted copy of Profit & Loss Account, Balance Sheet, etc. On perusal of Profit & Loss Account, the Assessing Officer noticed that assessee has shown sales/turnover of ₹ 1,27,60,928 for the financial year 2016-17 relevant to the assessment year 2017-18. During the course of assessment proceeding, on 09/12/2019, statement of assessee was recorded under section 131 of the Income Tax Act, 1961 ("*the Act*"). In the statement recorded, the assessee replied that during the demonetization period (i.e.,

from 09/11/2016 to 30/12/2016), he received huge cash from debtors. The debtors have paid their liability in old currency (₹ 1,000 and ₹ 500). The assessee further stated that amount recovered from debtors in old currency was deposited in bank account. The assessee was further asked to furnish list of debtors containing name and address of the person from whom he received the amount during demonetization period. In response, the assessee stated that list of debtors and their address will be submitted by 10/12/2019. However, the assessee could not furnish any such details till the date of passing assessment order. The assessee, vide notice under section 142(1) dated 20/12/2019, was specifically asked to explain the source of excess deposits of ₹ 1,16,22,557 [₹ 2,43,83,485 (-) Rs.1,27,60,928]. Vide above show cause notice, the assessee was also asked to explain as to why an amount of ₹ 1,16,22,557, should not be treated as unexplained cash credit under section 68 of Act and added to total income. However, neither the assessee nor his Authorised Representative attended or filed any written submission in response to the said show cause notice. In view of prolonged non-corporation and non-availability of documentary evidence with regard to deposit of ₹ 1,16,22,557, made in the bank account of the assessee remained unexplained and, therefore, treated as unexplained cash credit under section 68 of the Act which was added to total income of the assessee. Consequent upon passing of the assessment by the Assessing Officer, the assessee being aggrieved carried the matter before the first appellate authority.

5. Before the learned CIT(A), the furnished reply during the first appellate authority and explained the source of excess deposit of ₹ 1,16,22,557 as

'debtors realization' during demonetization period. However, on perusal of the return of income filed for immediate preceding year i.e. F.Y. 2015-16, it was seen that the amount of sundry debtors outstanding as on 31/03/2016, was ₹ 80,100 only. Thus, the contention raised by the assessee and facts available on record are contrary to each other. Therefore, the assessee, vide this office letter dated 07/11/2023, was asked to submit his comment on the said issue. Relevant portion of said letter is reproduced as under:-

*"Subject: Appellate proceedings in the case of Sandip Dohare (PAN ABHPD8764E) for A.Y. 2017-18-reg*

*The appeal for A.Y. 2017-18 had been filed against the order dated 28.12.2019 passed u/s 143(3) of the I.T. Act, 1961.*

*In context of above, please find enclosed herewith copy of remand report dated 27. 10.2023 received from assessing officer in your case. In this regard you are requested to submit your counter comments on the issue discussed in remand report.*

*Also refer your reply dated 02.04.2023 wherein you have explained the source of excess deposits of Rs. 1,16,22,557/- (Rs.2,43,83,485/- (-) Rs. 1,27,60,928/-) as 'debtor realization during demonetization period. However on perusal of ITR filed for the immediate previous year i.e. (A.Y. 2016-17) it is seen that amount of sundry debtors as on 31.03.2016 was reflected at Rs.80,100/-only? Please submit your comment?*

*Also state whether you were authorized to accept demonetized currency during the demonetization period? If yes refer the relevant circular/notification issued by Govt in this regard.*

*Please submit your reply latest by 23.11.2023 failing with which it will be presumed that you have nothing to say in the matter and the appellate proceedings will be finalized as per materials available on record."*

6. However, the assessee failed to make compliance in response to above notice. Again, a reminder letter was issued on 19/06/2024, requesting the assessee to offer his comment. However, the assessee remained non-compliant and failed to submit any clarification on the said issue. The learned

CIT(A) confirmed the assessment order passed by the Assessing Officer holding as under:-

*"7.3 The issue has been examined. Appellant had total credit of Rs.2,43,83,485/- in his bank account maintained with Bank of India during F.Y. 2016-17 relevant to A.Y. 2017-18. These credits include cash deposits of Rs.85,47,600/- made during demonetization period. Appellant filed return of income for A.Y.2017-18 declaring sales/turnover of Rs.1,27,60,928/- Considering the above facts, during the assessment proceeding AO asked the appellant to explain the difference of Rs. 1,16,22,557/- ie credit in bank account and sale/turnover shown in profit & Loss account (Rs.2,43,83,485 Rs. 1,27,60,928/-). Appellant replied that during the demonetization period, substantial amount of cash was received from debtors who paid their old liability in demonetized currency though appellant failed to furnish documentary evidence substantiating said claim and accordingly AO made addition u/s 68 of I.T. Act.*

*7.3.1 In appellate proceeding, appellant stated that during the demonetization period, he received huge cash from debtors. The debtors paid their liability to appellant in old currency notes. Appellant further stated that the amount recovered from debtors in old currency notes were deposited in the bank account on next working day. Appellant also alleged that list of debtors from whom old currency notes were received, was submitted to as and when demanded but AO did not accept the evidence produced and not made enquiry with respect of identity, credit worthiness of debtors and genuineness of transaction and made addition. Appellant's contention was confronted to the AO and AO in his remand report categorically denied the allegation made by the appellant. In the remand report submitted, AO stated that appellant is making false claim before CIT(A) regarding production of list of debtors at the time of assessment proceeding. In his report, AO mentioned that during the course of assessment proceeding, statement of the assessee was recorded u/s 131 of the Income tax Act, 1961 on 09.12.2019 wherein he was specifically asked at Q. No.9 to explain the source of cash deposits of Rs.85,47,600/- during the period of demonetisation; to which the assessee replied that these relates to the amounts received against the debtors and list of such debtors including names and addresses shall be produced by 10.12.2019. However, assessee had not produced such list of debtors till the date of passing of order u/s. 143(3) on 28.12.2019 as mentioned in para 5 of the assessment order. Remand report received from the AO was confronted to the appellant. However, appellant did not file any reply/rejoinder to said report which shows that appellant agrees with the facts stated by the AO regarding production of list of debtors.*

7. The learned CIT(A) further noticed that the return of income was filed declaring profit of ₹ 5 lakh on presumptive basis on sale/turnover of ₹ 5.20 lakh. In the said return of income, the assessee has shown figure of sundry debtors as on 31/03/2016 at ₹ 80,100. In the said return of income, the

assessee has shown figure of sundry debtors as on 31/03/2015, at ₹ 75,600.

Keeping this in view, the learned CIT(A) dismissed the appeal filed by the assessee for the reasons stated below:—

"7.4 .....

*On careful consideration of ITR filed for A.Y. 2015-16 & 2016-17, it was observed that in both the years, appellant has shown sale/turnover in the range of Rs.5.15 lacs to Rs.5.20 lacs. Sundry debtors as on 31.03.2015 & 31.03.2016 were shown at Rs.75,600 & Rs 80,100/- In view of above facts, appellant's explanation regarding source of excess deposit (Rs.1,16,22,557/-) as 'debtors' realization' does not seems true.*

*7.4.1 Appellant has shown sales/turnover of Rs.1,27,60,928/- in the return of income filed for year under consideration (F.Y 2016-17 relevant to A.Y. 2017-18). Though, there has been total credits of Rs.2,43,83,485/- in the bank account of the appellant during the year. Out of which cash deposits of Rs.85,47,600/- were made only in demonetization period. If for a moment, it is assumed that entire sale consideration was realized during the year itself, appellant at the best can explain source of deposits of Rs. 1,27,60,928/-made in the bank account. As regard, balance deposits of Rs. 1,16,22,557/- made in the bank account, appellant has no genuine explanation. As discussed above, appellant's contention of realizing old debts during demonetization period is nothing but merely an afterthought to convince the AO and that is why he could not produce list of such debtors before the AO.*

*7.5 Reference is made to decision of Karnataka High Court in the case of Suersh Kumar T Jain VS ITO (2019) (101 Taxmann.com 164) wherein court upheld the addition made u/s 68 as assessee failed to prove that amount deposited in bank was in fact loan taken from various creditors. Likewise, in the instant case, appellant failed to explain as to how could balance amount (i.e Rs. 1,16,22,557/-) deposited in bank account be the amount received from old debtors as debtors of Rs. 80,100/- only was outstanding at the beginning of financial year. No evidence adduced to show genuineness of amount claimed to have received from old debtor's realization. Appellant neither produced ledger account of these debtors' parties and nor furnish details of year in which sales were made to those parties. As discussed above, realization of sales made during current year has been taken consideration. It can only be sales made in earlier years. However, ITR filed for earlier year's shows no such debtors were outstanding at the beginning of year.*

*7.6 In grounds of appeal, appellant contended that he took the advantage of demonetization and bad debts which were outstanding for many years were paid off by parties giving old notes which were deposited in bank either on same day or next day.*

*Appellant's said contention has no merit as debtors of only Rs. 80,100/- was shown outstanding at the beginning of year. Moreover, appellant was not authorized to collect old notes in demonetized currency during demonetization*

period. There is no evidence placed on record which could substantiate appellant's claim that debtors of Rs. 1,16,22,557/- were outstanding in his books. Appellant neither furnished ledger a/c, PAN/ITR of such parties nor filed confirmation letters of debtors accepting transaction with appellant.

7.6.1 Despite being specifically asked, appellant failed to furnish explanation regarding outstanding old debts as contention raised in grounds of appeal and facts available in appellant's ITR filed for earlier years, are contradictory to each other. Thus, the appellant failed to satisfactorily explain the source of deposits including cash deposits in demonetization period with credible evidence to support the grounds of appeal. Thus, the burden of proof of explaining the nature and source of the deposits has not been discharged by the appellant.

7.7 In view of above, i am of the considered view that appellant has not been able to substantiate the source of excess amount deposited in bank account and therefore, the action of Assessing Officer in treating the deposits amounting to Rs.1,16,22,557/- as unexplained credit u/s 68 of the Act is hereby upheld and ground of appeal are hereby dismissed.

8. In the result, the appeal is dismissed.”

The assessee being aggrieved, once again filed appeal before the Tribunal.

8. We have perused the written submissions furnished by the assessee forming part of the Paper Book, Bank Statement of Bank of India, Agrasen Marg Branch, as well as copy of APMC License. It is pertinent to extract the written submissions filed by the assessee in verbatim, which are as under:–

“Ground No. 1 & 2

*That the business activity of the assessee was relating to trading in onion, potato, garlic, ginger & other agriculture produces. The assessee used to sale the goods to various vegetable vendors, hotels & restaurants and consumers on credit basis as well as on cash basis. The amount receipt from the customers were against the sale of goods which were deposited into bank account and the assessee make payment to the various parties / persons from whom the assessee purchased the goods. The said practice or modus of depositing the amount in the bank account was done by the assessee and the assessee is still carrying out the same activity in the same manner. The assessee is attaching herewith the copy of bank statement & APMC license for your honors kind perusal and records.*

*The assessee being not much educated, had provided the documents alongwith the bank statement & other details as desired by the professional for compliances to done & filing of the income tax return. The assessee was not aware of disclosing the less turnover in the audited balance sheet by the professional as pointed out by the Ld. AO by way of excess credit entries in the bank account to the tune of Rs. 1,16,22,557/-. During the assessment & appeal the assessee submitted that the amount receipt & deposited was from the debtors against the sale of goods, however the assessee inadvertently had not clarified before the Ld. AO as well as Hon'ble CIT(A) that the receipt was against sale of previous year as well as current year as such the addition made by the Ld. AO & sustained by Hon'ble CIT(A) is correct to some extent. The lower authorities should have made addition to the extent of profit earned by the assessee on the excess credit amount instead of making addition of the entire credit entries. The assessee has offered all the reasonable explanation. The deposits were according to his trade practices and therefore, without bringing anything contrary, the Ld. AO was unjustified in making the addition*

*u/s 68 of the Act. The appellant had deposited the sale consideration realized in cash with the banks and hence it cannot be considered as unexplained income. The gross profit earned during the relevant assessment year was 7.69% & net profit was 4.10% as such it is requested before this Honorable Bench to restrict the addition on the profit earned from the unrecorded sales transaction. In addition to above it is humbly submitted that the amount deposited against sale proceeds / recovery from debtors was paid to the creditors as such during the year the peak balance in the bank account was Rs. 9,05,784/- on 11/11/2016 as such at the most the income of the assessee could be Rs. 9,05,784/- on the basis of peak theory concept.*

*The addition in the facts & circumstances of the case before this Hon'ble Bench may please be restricted to the gross profit on the unrecorded sales. The reliance in this matter is placed on the judgement of this Hon'ble Bench i.e. Nagpur bench in the case of Dy. Commissioner of Income Tax Central Circle-1(3), Nagpur vs. Radhika Vegetable Oils Pvt. Ltd (ITA No. 236/Nag/2023) wherein in your honor held as under:*

*"We have gone through order of the learned CIT(A) as well as judgment cited by the assessee supporting the case of the assessee. We find that the Assessing Officer has held that the entire undisclosed sales is undisclosed income of the assessee. The learned Departmental Representative strongly argued by relying upon the order of the Assessing Officer stating that the entire sale is the income of the assessee, which is a well settled proposition. We find nothing from the order passed by the Assessing Officer which shows that the Assessing Officer pointed out purchases and expenses relating to undisclosed sales which were booked in the Profit & Loss Account. Hence, the basis of such ground relating to this effect which has been raised by the Revenue is beyond our comprehension. Under these circumstances, we do not find any infirmity in the impugned order passed by the learned CIT(A) and confirmed the addition of gross profit @11.65%, which is average of last three years' gross profit on unrecorded sales of 3,16,16,703. Considering these facts, the learned CIT(A) has rightly and fairly calculated the gross profit @11.65% and we uphold the order passed by the learned CIT(A) by dismissing the grounds no.1, 2 and 3. raised by the Revenue"*

Further it is requested before the Hon'ble bench to kindly consider only the profit element on the excess credit in bank account the same being against the sale of goods by the assessee. Reliance is also placed on the judgement of the Income Tax Appellate Tribunal, Surat "SMC" Bench, Surat in the case of Yogesh Kumar Chandrakant Jariwala vs. Income Tax Officer, Ward-1(2)(5), Surat (ITA No. 631/SRT/2024) dt. 28/11/2024 wherein the Hon'ble Bench held in para 10 as under:

"10. Though, I find that the assessee is engaged in the business of textile and grey and is filing return of income for many years. The cash sales in the business of assessee, is a usual practice. Thus, considering the overall facts and circumstances of the case, entire cash deposit during demonetization period cannot be treated as unexplained credit, for a businessman having turnover of more than Rs. 1.00 crore. Further considering the fact that the assessee is not able to substantiate the source of entire cash deposit, similarly entire cash deposit cannot be treated as income. Therefore, a reasonable addition out of total cash deposit will be sufficient to avoid the possibility of revenue leakage. Thus, considering the facts of the present case, 20% of total cash deposit of Rs. 26.09 lacs are upheld and remaining additi

The Hon'ble Income Tax Appellate Tribunal 'B' Bench, Chennai in the case of Ms.Asokan Meena vs. The Income Tax Officer, Ward-2, Villupuram (ITA No. 680/Chny/2022) wherein in para 9 the Hon'ble Bench held as under:

9. Having said so, let us examine reasons given by the AO to reject the arguments of the assessee while making additions towards cash deposits into bank account during demonetization period. The AO never disputed the fact that the assessee was trading in paddy and predominantly it was in cash. In fact, the main business activity of the assessee was in cash in the impugned assessment year as well as for the immediately preceding assessment year. The AO accepted these facts. However, rejected the arguments of the assessee for source for cash deposits only on the ground that the assessee has declared more cash sales for the AY 2017-18 when compared to previous AY 2016-17. The Ld. Counsel for the assessee filed month-wise purchase and sales for two Financial Years and argued that for the FY 2015-16 relevant to the AY 2016-17, it is the first year of operations of the business of the assessee and the assessee has commenced business activity in the month of October, 2015. The total sales achieved by the assessee for the FY 2015-16 was at Rs.59,08,400/- and the month-wise average sales works out to Rs.9.85 lakhs per month. The assessee has achieved a turnover of Rs.74,25,360/- for FY 2016-17 and monthly average sales works out to Rs.6.19 lakhs per month. From the above, it is very clear that the observation of the AO is nothing, but a suspicion, because as claimed by the AO, the sales declared by the assessee for the AY 2017-18, is not increased when compared to last Financial Year. Therefore, in our considered view, the reasons given by the AO to make additions towards cash deposits is incorrect. Thus, we are of the considered view that neither the assessee proved its arguments for source for cash deposits nor the AO reached to a conclusion that the explanation offered by the assessee is not genuine. Under these facts and circumstances of the case, the only possible solution is to resolve the dispute by estimation of profit on cash deposits made during demonetization period. The assessee is in the business of trading in paddy and the assessee has declared 11.17% gross profit for the AY 2016-17. The gross-profit declared by the assessee for the AY

*2017-18 has worked out by the AO is at 58.92%. If you go by gross-profit declared by the assessee for the immediately preceding assessment year and gross profit worked out by the AO for the impugned assessment year, there is a huge gap. However, if you take average gross-profit, it works out to 35%. Therefore, considering the nature of the business of the assessee and also average gross profit for the last two assessment years, we are of the considered view that estimation of profit on cash deposits would meet end of the justice. Therefore, we direct the AO to estimate 30% net profit on total cash deposits of Rs.24,66,500/- made during demonetization period and delete the balance additions made u/s.69A of the Act."*

*That the cash deposit was out of cash generated in the business, the same cannot be taxed at higher rate prescribed under Section 115BBE of the Act. The enhanced rate of tax was brought into statute in December, 2016, the assessee made cash deposit prior to said amendment. There are series of decisions which have held that enhanced rate of tax under Section 115BBE is not applicable for A.Y. 2017-18. To support this assessee relies on the following case laws:*

*R.B. Jessaram Fatehchand vs CIT 75 ITR 33 (Bom)  
R.S. Diamond Ltd. Vs ACIT 145 taxmann.com 545 (Mum)  
CIT Vs Vishal Exports Over*

*Without prejudice to above the Ld. AO had also not rejected books of accounts even though he had considered the excess credit in the bank account which is part of the books of accounts as such the Ld. AO was incorrect in making addition without rejecting the books of accounts. In this context the reliance is place on the judgement of the Hon'ble Supreme Court in the case of Lalchand Bhagat Ambica Ram vs. CIT (1959) 37 ITR 288, wherein the Hon'ble court has held that when entries in books of account in regard to cash balances were held to be genuine, there was no escape from conclusion that assessee had offered reasonable explanation as to source of all high denomination notes which it encashed on 19th January 1946 and it was not open to ITAT to accept genuineness of those books and accept assessee's explanation in part and reject same in regard to balance sum. It was observed that the ITAT in arriving its conclusion indulged in suspicions, conjectures and surmises and acted without any evidence or upon a view of facts which could not reasonably be entertained or finding was perverse which could not be sustained and Supreme Court was entitled to interfere with such findings and therefore the addition was deleted.*

*From perusal of above treating the cash deposit as unexplained cash on basis of books of account without rejecting the same is legally not permissible as per ratio of judgment in Lalchand Bhagat Ambica Ram's case as submitted in aforesaid para."*

9. It is excruciating to note that the assessee has completely taken a diametric opposite stand and has now come up with an explanation that deposits represent cash sales. He has relied on certain case laws which are

distinguishable on facts. The assessee is trying to shift his stand which cannot be countenanced. Before the Assessing Officer, he submitted that it was collection from old debtors. After his case was discussed by the learned CIT(A) on the self same issue, he is connecting deposit with sales. Not a single evidence has been adduced before us to explain the nature and source of deposit. Even the grounds are not germane to the facts of the case. Accordingly, we decline to interfere with the well-reasoned impugned order passed by the learned CIT(A), which is hereby upheld by dismissing the grounds raised by the assessee.

10. In the result, assessee's appeal stands dismissed.

Order pronounced in the open Court on 21/03/2025

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**NAGPUR, DATED: 21/03/2025**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur