IN THE INCOME TAX APPELLATE TRIBUNAL JODHPUR BENCH, JODHPUR.

BEFORE: DR. MITHA LAL MEENA, ACCOUNTANT MEMBER &

DR. S. SEETHALAKSHMI, JUDICIAL MEMBER

I.T.A. No. 800/Jodh/2024
Assessment Year: 2017-18

Islauddin Teliyon Ka Bas, Dhanari Kalla Tehsil-Osian, Jodhpur.	Vs.	ITO, Phalodi
PAN/GIR No.: AAXPI7041L		
Appellant		Respondent

Appellant by	Sh. Rajendra Sisodia, Adv.
Respondent by	Sh. Karni Dan, Addl.CIT (Sr.DR

Date of Hearing	08/05/2025
Date of Pronouncement	29/05/2025

ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

The assessee has filed this appeal challenging the impugned order dated 21.02.2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short *ld. CIT(A)/NFAC*], for the assessment year 2017-18.

2. The assessee has raised following grounds:–

"1. The Ld.CIT(A) erred in law as well as on facts in sustaining the addition made by the AO u/s 69A of the Income tax Act, 1961, in respect of cash deposited in bank.

2. The Ld.CIT(A) erred in law as well as on facts in sustaining the addition of Rs.20,00,000/- made by the AO, ignoring the written submission filed by the assessee and passing a non-speaking order. "

3. Succinctly, the facts as culled out from the records are that the appellant is engaged in trading of agricultural equipments, PVC pipes, hardware and electrical goods, in the name of M/s M. K. Enterprises. He also enjoys agricultural and rental income. He had filed return for AY 2017-18 declaring an income of Rs.1,74,540/-. In the relevant year, the assessee has deposited cash of Rs.29,80,000/- in his current account. Out of the total cash deposits, an amount of Rs.20,00,000/- was deposited on 29.11.2016. The AO went on to add Rs.20,00,000/- deposited by the appellant as unexplained u/s 69A and completed the assessment at an income of Rs.21,74,540/-.

4. Aggrieved from the order of Assessing Officer, the assessee preferred an appeal before the CIT(A) challenging the addition made by the AO. The assessee pleaded before the CIT (A) that the cash was deposited out of the cash balance available with him.He provided the same supporting evidence which was also made available to the AO. However, his appeal did not find favor with the CIT(A) who dismissed it observing:-

"5.5 However the above notwithstanding, the issue is also being examined on merits. I have considered the facts of the case and whatever material available on record. Further, the AO asked the assessee to explain all these facts with supportive document. In this regard, the assessee failed to produce proper documentary evidence for support of his claim. From the assessment order, assessee failed to furnish any details related to nature and source of above amount credited in his bank account, the same is deemed as unexplained money u/s 69A of the I.T Act, 1961. Finally AO was left with no option but to make addition u/s 69A.

5.6 In view of the discussion made in above paras, I confirm the addition of Rs. 20,00,000/- made by the AO. The ground of appeal is dismissed."

5. Now the assessee is in appeal before the ITAT. While pleading on behalf of the assessee, the ld. AR raised an **additional ground of appeal**, and prayed to admit the same being a legal ground and requiring no new evidence, which read as under-

"The ld. CIT(A), NFAC has erred on facts and in law in taxing the alleged unexplained cash deposit in the bank account u/s 115BBE @ 60% instead of taxing the same @ 30% by ignoring that section 115BBE substituted by Taxation Laws (Second Amendment Act), 2016 which received the assent of President on 15.12.2016 and made applicable from 01.04.2017 is not applicable to AY 2017-18."

The issue being purely legal and going to the root of the matter,the same was admitted for adjudication in view of the judgement of Hon'ble Supreme Court in the case of National Thermal Power Corporation Ltd. reported in 229 ITR 383. Being a legal issue which goes to the root of the matter, we take it up for adjudication while addressing the other grounds of appeal.

6. The assessee made the following written submissions:-

Ground No.1 & 2-The Ld.CIT(A) erred in law as well as on facts in sustaining the addition made by the AO u/s 69A of the Income tax Act, 1961, in respect of cash deposited in bank. The Ld.CIT(A) erred in law as well as on facts in sustaining the addition of Rs.20,00,000/- made by the AO, ignoring the written submission filed by the assessee and passing a non-speaking order - The assessee maintains complete books of accounts. Each and every sale is vouched by sale bill. As is customary in case of this trade, the clients are mostly farmers from nearby rural areas. The assessee sells goods mostly on credit basis, against which cash is realized in due course. This cash keeps on accumulating and is deposited in the bank account as per the convenience of the assessee. The assessee also receives cash from sale of his agricultural produce. Out of the cash balance of earlier year, the assessee had also accommodated his friends and relatives. Complete books of accounts including Sales register, purchase register and supporting bills/vouchers are maintained by the assessee. The assessee has shown his business income under presumptive tax scheme. Cash deposited in bank account has been generated out of daily cash sales and realization from debtors, and is verifiable from the sales register and cash book and the corresponding bills. It is an undisputed fact that the Ld.AO has not doubted the opening stock, purchases or sales of the assessee. Neither has he rejected the books of accounts of the assessee, which implies that the books have been accepted. The only allegation of the AO is that the amount realized from the debtors is not genuine.The assessee has filed the confirmation of the debtors, along with copies of their Aadhar cards as proof of identity. If the AO had any doubts about the genuineness in respect of cash realized from debtors, he could have issued summons and examined them. As a matter of fact, the AO himself was not sure as on the basis of cash deposits in bank during FY 2015-16, he has drawn a conclusion that *if the debtors shown in the ITR as on 31.03.2016 are genuine, the source of cash deposit during FY 2015-16 remains questionable.* The ITR of the assessee for the AY 2016-17 has been accepted by the department. So, it is now not open to the AO to doubt the authenticity of debtors. Had he any doubts about the genuineness of the debtors shown by the assessee, he could have initiated proceedings u/s 147 for AY 2016-17, which he chose not to do, for reasons best known to him.

It is an undisputed fact that the closing balance of debtors as on 31.03.2016 is Rs.18,00,000/- The balance sheet of the assessee vouches this fact. This figure is further corroborated by the figure of debtors shown by the assessee in the ITR filed by him (Schedule BS). The AO has disbelieved this figure on assumptions and presumptions. He has no material to contradict the genuineness of these debtors. Cash from these debtors has been received on different dates, which has been deposited in the bank on

29.11.2016, out of the accumulated cash balance. The assessee had provided the names and addresses of the debtors and copy of their confirmations. The AO never raised any further query in this regard. He never asked to produce any other evidence. Further, if he weren't satisfied with the genuineness of the cash received from the debtors, he could have issued summons to them. While finalizing the assessment, the AO's reasoning was-

On one hand the assessee has shown gross sale of Rs.19.20 lakhs during FY 2015-16 and also claimed debtors of Rs.18 lakhs but on the other hand, on perusal of the bank statement relevant to FY 2015-16, there was a cash deposit of Rs.17.45 lakhs during the year.

It is clear that foundation of addition by the AO for this assessment year rests on the figures of FY 2015-16 and not on the basis of figures of the current financial year, i.e. FY 2016-17. The AO seems to be confused. He is presuming the source of cash deposits to be only out of sales made during FY 2015-16 (Rs.19,20,000/-). He is perhaps not taking into consideration – (i) the debtors of FY 2014-15 realised during the year (Rs.13,37,552/-); (ii) cash received from sale of agricultural produce during the year (Rs.10,69,442/-); and (iii) the rental receipts (Rs.1,20,000/-). If all these figures are clubbed, the assessee has availability of funds aggregating Rs.44,46,994/- which are sufficient to cover the cash deposits of Rs.17.45 lakhs (deposited in bank) and the figures of outstanding debtors shown of Rs.18 lakhs. Thus, it is apparently clear that the cash received and deposited in the bank account has been generated out of debtors and cash sales only, and the conclusion of the AO is based on a wrong premise. All purchases and corresponding sales made are recorded in the books of the assessee, and no doubts whatsoever have been expressed in this regard by the AO.

Another gross mistake committed by the AO is that on one hand he is disbelieving the opening balance of debtors of Rs.18 lakhs while on the other hand, he is making an addition of Rs.20 lakhs. If only the Ld.AO doubted the debtors and consequently the cash received from them, he ought to have made an addition of Rs.18 lakhs only. The Ld.AO ignoring the balance available with the assessee as per his cash book, went on to add the cash deposited by the assessee into his bank account on 29.09.2016. So, even the addition to the extent of Rs.2 lakhs is erroneous and unfounded. The Ld.AO doubting the cash received from debtors, without pointing out any specific defect in the books of accounts, in respect of purchases/sales, went on to make addition of the cash deposited in bank account on 29.11.2016 u/s 69A, which had generated out of cash sales/cash realized from debtors.In this regard, it would be apt to refer to the definition of Section 69A of Income Tax Act, which is reproduced below:

Section 69A "Unexplained money, etc.- Where in any financial year, the assessee is found to be the owner of any money, bullion, jewelry or other valuable article and such money, bullion, jewelry 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, jewelry or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewelry or other valuable article may be deemed to be the income of the assessee for such financial year."

As per plain reading, the following conditions must be fulfilled for applicability of section 69A:

1. Assesse is found to be owner of any money, Bullion, Jewelry etc.

2. Such Money is not recorded in the books of accounts, if any maintained by him, for any source of income, AND

3. Assesse offers no explanation or explanation is found not satisfactory by AO

As per language of the section 69A, the section can be invoked only when the assessee has not recorded such money in the books of accounts,and the assesseeoffers no explanation or offers an unsatisfactory explanation. Both the conditions given in point no. 2 and 3 are cumulative and satisfaction of either of the condition does not automatically trigger rigors of section 69A.

When the language of a statute is clear and unambiguous, the courts are to interpret the same in its literal sense and not to give a meaning which would cause violence to the provisions of the statute, as held in Britania Industries Ltd. vs. C.I.T. (2005) 278-ITR-546 at 547 (SC). It is a well settled principle of law that the court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intention.

If the construction of a statutory provision on its plain reading leads to a clear meaning, such a construction has to be adopted without any external aid as held in C.I.T. vs. Rajasthan Financial Corp. (2007) 295 ITR 195. Rules of Interpretation of Tax Statutes is to be construed strictly : in a taxing statute one has to look merely at what is said in the relevant provision. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. There is no room for any intendment. There is no equity about a tax. In interpreting a taxing statute the court must look squarely at the words of the statute and interpret them. The provisions of a section have to be interpreted on their plain language and not on the basis of apprehension of the Department. It is cardinal principle of interpretation that a construction resulting in unreasonably harsh and absurd results must be avoided.

The cardinal rule of construction of statutes is to read the statute literally, i.e. by giving to the words used by legislature their ordinary natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same. But if no such alternative construction is

possible, the Court must adopt the ordinary rule of literal interpretation. It is a settled principle of rule of interpretation that the Court cannot read any words which are not mentioned in the Section nor can substitute any words in place of those mentioned in the section and at the same time cannot ignore the words mentioned in the section. Equally well settled rule of interpretation is that if the language of statute is plain, simple, clear and unambiguous, then the words of statute have to be interpreted by giving them their natural meaning as observed in Smita Subhash Sawant vs. Jagdeshwari Jagdish Amin AIR 2016 S.C. 1409 at 1416.

In other words, we can say that when the assesse has recorded such money in his books of accounts, then no explanation is required to be offered for the purpose of section 69A. Addition u/s 69A can be made only whensuch money is not recorded in the books of accounts and no satisfactory reply is offered.The assessee has duly recorded the receipts from debtors and cash sales in his cash book and it is out of the accumulated cash balance appearing in the cash book, that the impugned amount (Rs.20,00,000/-) was deposited in bank.

The invoking of provisions of sec.69A of the I.T. Act by the AO and his making addition of Rs.20,00,000/- are void ab initio and liable to be cancelled particularly on account of the reason that provisions of sec.69A of the I.T. Act can be applied only in those cases 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 accounts, 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 him 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 assessee of such financial year.

That the correct factual position is that the appellant assessee maintains regular books of accounts and the amount of Rs.20,00,000/- mentioned above is duly recorded in the books of accounts (cash book) maintained by the assessee. The figure of debtors of Rs.18,00,000/- was duly reflected in the balance sheet forming part of ITR for the AY 2016-17. The confirmations of the debtors, with their complete addresses along with copy of their AADHAR CARDS were provided. That as the above mentioned amount of Rs. 20,00,000/- is duly recorded in the books of accounts maintained by the assessee and the provisions of sec 69A are not at all applicable in assessee's case and as such additions made u/s 69A of the IT Act by the AO is erroneous and unwarranted.

Books of accounts maintained and addition made u/s 69A for unsatisfactory explanation: In various cases, it is observed that assessee had explained to the AO that amount

deposited during demonetisation period is from cash sales, receipts from debtors etc and such transaction is duly recorded in the books of the assesse but AO has not considered explanation of the assessee satisfactory and made addition u/s 69A.

In such a situation addition is not tenable in the eyes of law because assesse had RECORDED such transaction in his books of accounts and once it is recorded then no explanation is required to be made under section 69A.

In the case of Teena Bethala v/s ITO (ITA No 1383/Bang/2019) dated 28/08/2019, Hon. Bangalore Bench had observed: *On a reading of section 69A (supra), it is clear that the onus is upon the AO to find the assessee to be the owner of any money, bullion, jewelry or valuable article and such money, bullion, jewelry or valuable article was not recorded in the books of account, if any, maintained by the assessee for any source of income. In these circumstances, the AO can resort to making an addition under section 69A of the Act only in respect of such monies / assets / articles or things which are not recorded in the assessee's books of account. In the case on hand, the cash deposits are recorded in the books of account and are reportedly made on the receipt from a creditor. Further, the PAN and address of the creditor as well as ledger account copies of the creditor in the assessee's books of account have also been field before the AO. In these circumstances, it is evident that the AO has not made out a case calling for an addition under section 69A of the Act. Probably, an addition under section 68 of the Act could have been considered; but then that is not the case of the AO. The assessee, apart from raising several other grounds, has challenged the legality of the addition being made under section 69A of the Act. In support of the assessee's contentions, the learned AR placed reliance on the decision of the ITAT – Mumbai Bench in the case of DCIT Vs. Karthik Construction Co. in ITA No.2292/Mum/2016 dated23.02.2018, wherein the Bench at para 6 thereof has held that addition under section 69A of the Act cannot be made in respect of those assets / monies / entries which are recorded in the assessee's books of account. In my considered view, the aforesaid decision of the ITAT – Mumbai Bench (supra) is squarely applicable to the facts of the case on hand, where the entries are recorded in the assessee's books of account. In this view of the matter, I am of the opinion that the addition of Rs.6,30,000/- made under section 69A of the Act is bad in law in the facts and circumstances of the case on hand and therefore delete the addition of Rs.6,30,000/- made there under. The AO is accordingly directed.*

In the case of the assessee, the cash received from the debtors of preceding year has been duly recorded in the cash book. The sales made to these parties stood duly reflected in the books for FY 2015-16. The assessee paid tax for AY 2016-17 on the income comprised in these sales. Taxing the realization made from debtors would amount to double taxation. The source of cash deposits is the accumulated balance as per cash book. Once the monies stand recorded in the books, there arises no occasion to invoke section 69A. No addition thus can be made u/s 69A in view of the decisions of Hon'ble Mumbai and

Bangalore benches, stated *supra.* Therefore, addition u/s 69A on the condition mentioned by the AO is erroneous and ill founded.

Hon'ble Chennai Bench, in a recent decision in the case ofNethravathiDistillaries Pvt. Ltd. vs. ACIT, in ITA No.1057/Chny/2024, rendered on 10.12.2024 held –

8. After collective consideration of above statements, it could be seen that a uninform stand has been taken by both the persons while explaining the source of cash deposits by the assessee. From assessment orders, it could be ascertained that the assessee has undertaken business with these three entities and has carried out sales in earlier years. Such sales have been offered to tax in earlier years and therefore, taxing the same again would amount to double taxation which is impermissible. These three entities had outstanding balance since 31- 03-2013 and the circumstances under which the dues have ultimately been recovered from these three concerns during this year have duly been explained in the recorded statement. It could also be seen that field enquiries have happened in the years 2019 whereas all the three parties deserted the office place since 2013 and therefore, no adverse inference could be drawn against the assessee on this fact. Apart from this fact, there is nothing with lower authorities to sustain the impugned additions. The sum so realized by the assessee has duly been credited in the cash book and corresponding reduction have happened in the amount of sundry debtors. The ledger extracts of the three entities as placed on record duly substantiate the same. In such a case, the provisions of Sec.69A could not be invoked since in our considered opinion, the provisions of Sec.69A could be invoked only where the assessee is found to be the owner of any money or bullion etc. which is not recorded in the books of accounts. The same is not the case here. The assessee has realized debtors during the year which have duly been credited in the cash book. There is no unexplained money within the meaning of Sec.69A. When the cash is sourced out of recorded debtors, the provisions of Sec.69A could not be invoked. Considering the facts and circumstances of the case, the impugned addition of Rs.21.50 Crores is not sustainable in law. Therefore, we delete the same and allow the corresponding grounds as raised by the assessee.

The Ld. AO has erred on facts and in law in not giving cognizance to the ITR filed by the assessee for AY 2016-17, wherein the figures of debtors have been clearly shown – The assessee had filed his ITR u/s 139(1) for AY 2016-17 on 27.04.2016. Consequent to receiving notice for defective return, the ITR was filed after removing the defects on 28.07.2017, which was duly processed on 29.08.2017. The assessee had shown debtors of Rs.18,00,000/- in this return, which had been accepted by the department. Now, the Ld. AO has doubted the figure of the debtors stating the same to be not possible in view of cash deposited by the assessee to the tune of Rs.17,45,000/- whereas the sales for the year being Rs.19,93,963/- only. The AO has overlooked the fact that the assessee also had debtors of Rs.13,37,552/- as on 31.03.2015, in addition to agricultural receipts of Rs. 10,69,442/- and rental receipts of Rs.1,20,000/- The AO has also expressed a doubt that

the return for AY 2016-17 has been revised after announcement of demonetization and the return originally filed did not show any debtors.

In this regard, it may be mentioned that the assessee had been showing business income under presumptive tax scheme (44AD) and paying tax accordingly since 2008-09. The law at that time did not require the balance sheet figures to be filed u/s 44AD. It is only from AY 2016-17, that this requirement was introduced. As the changes were made for the first time in AY 2016-17, the assessee skipped the filing of the required details. Not filing the balance sheet figures was an inadvertent mistake which was made good after receipt of notice of defect from CPC. The assessee, then incorporated the figures of the balance sheet and filed return in response to notice for defects. This ITR was processed on 29.08.2017. Once an ITR is processed and no notice u/s 143(2) for the relevant assessment year is received, the ITR attains finality. The figures mentioned in it become sacrosanct. In that view of the matter, the debtors at a figure of Rs.18,00,000/- can not be doubted, and have to be accepted and given cognizance. Had the AO any doubts about the authenticity of the debtors for that year, he could have very well resorted to action u/s 147 for AY 2016-17. But now, it is not open for him, to doubt the authenticity of debtors for the starting point of his making addition u/s 69A. Reference in this regard may be made to the decision of the ITAT – Mumbai Bench in the case of DCIT Vs. Karthik Construction Co. in ITA No. 2292/Mum/2016 dated 23.02.2018, wherein it has been stated-

6. *Moreover, when the unsecured loans were not taken in the impugned assessment year but were taken in earlier assessment years wherein the genuineness of such loans was never questioned, it cannot be questioned in the impugned assessment year. Therefore, the only thing which requires to be examined in the present appeal is whether the addition made under section 69A of the Act can be sustained. A reading of section 69A of the Act makes it clear, addition can only be made when the assessee is found to be in possession of money bullion jewellery, etc., not recorded in his books of account. It is not the case of the Department that the loan repayment made during the year was not recorded in the books of account or the source of fund utilised in repaying the loan is doubtful. That being the case, the addition under section 69A of the Act cannot be made. Therefore, the decision of the learned Commissioner (Appeals) has to be sustained.*

It would also be pertinent to mention that that the assessee received notice u/s 143(2) for AY 2017-18 on 09.08.2018. Therefore, prior to 09.08.2018, the assessee did not even have an inkling that his case would be picked up for scrutiny assessment. Then how could the assessee for see the future so as to inflate the closing balance of his debtors as on 31.03.2016. Thus, the presumption by the AO that the debtors are fictitious or have been inflated is baseless.

The Ld. AO has erred on facts and in law in arriving at a conclusion only on the basis of ITRs of preceding two years, whereas the assessee had been filing ITRs since AY 2008-09, ignoring the chart showing the position of debtors, cash, etc. since then – During the course of assessment, the assessee filed a chart showing his income from business, agriculture and rent, since AY 2008-09. This chart also depicted the figures of debtors & cash on the last day of the accounting years. It was also explained that the figure of debtors includes trade as well as financial debtors. As a matter of fact, the assessee had accommodated his friends and relatives, which have also been shown as debtors. It from these debtors that the cash was received, which was in turn was deposited into the bank account by the assessee. Copies of balance sheet of earlier years were also made available to the AO which showed that at the end of each accounting year, the assessee had debtors which were realized during the subsequent year(s). The AO, in his wisdom, ignored the ITRs and balance sheet of earlier years and did not even make a remote reference of these documents in his order.

The assessee had provided the copy of ledger accounts of the debtors from whom cash had been received during the year. The AO never asked for any further clarifications. Now, a copy of the ledger accounts of the debtors of the assessee, duly acknowledged by them, mentioning their complete addresses is being provided, which may kindly be admitted as an additional evidence under Rule 46A of the Income Tax Rules.

To sum up, a view may be taken that there was no bar to deposit Specified Bank Notes during the demonetization period, so long as such receipts were duly recorded in the books of accounts of the taxpayer, and Sec.69A of the Act dealing with unexplained money could have no application.

It would not be out of place to mention that CBDT came up with a Standard Operation Procedure Instruction/Internal Guidance Note for assessing officer with regard to handling of cases related to demonetization, vide circular dated 09.08.2019 in F.no.225/145/2019 – ITA.II. It specifically instructed the Assessing Officers to make a comparative analysis of cash sales, cash deposited (year wise and month wise). At the same time, the guidelines also suggested to keep an eye on the special indicators for bogus sales or backdated sales and to further look at the situations described below:

1. Any unusual increase in the cash sales during the period November to December 2016 as compared to previous assessment year.
2. Any sudden deposit of cash to another account or entity, which may seem inconsistent.
3. Any unusual increase in the percentage of cash trails of identifiable persons as compared to previous assessment year.

In the assessee's case, there has been no unusual increase in cash sales during the period November, 2016 to December, 2016 as compared to the previous assessment year. There has been no sudden deposit of cash to another account/entity. The cash has been

deposited in the usual business account of the assessee. Also, no unusual increase in the percentage of cash trails of identifiable persons as compared to previous assessment years, has been pointed out by the AO. The AO even failed to make any comparative analysis of cash deposited. Further, when none of the special indicators as suggested by the CBDT existed in the case of the assessee, simply on the basis of surmises and conjectures, no addition can validly be made.

The books of accounts were produced during the course of assessment proceedings and no defect could be pointed out in the same, however, the assessing officer has made the addition of cash deposited during the demonetization period on the pretext that assessee had fictitious opening balance of debtors from whom cash has been stated to have been received. It was stated that the cash deposited in the bank account, from which payment has been paid to the regular supplier of goods and it is not a case that cash has been withdrawn or transferred to some other account. The assessing officer has simply assumed that the assessee did not have any debtors since past many years and the cash deposited in bank represented his undisclosed income/investment. He has not given any cognizance to the balance sheet of the preceding years (AY 2008-09 to AY 2016-17), in which the debtors were duly being reflected. He has ignored the ITRs which corroborated the financial statements of the assessee.

The arguments may finally be summed up as under-

1. The debtors are duly shown in the balance sheet forming part of ITR of AY 2016-17. Cash during the year has been realized from these debtors which kept on accumulating and was deposited into the bank account on different occasions.
2. Cash in hand cannot be ascribed to bogus debtors/sales without bringing evidence on record, when assessee had filed copy of ledger accounts of the debtors, Sales & Purchase details like Sales Register, Purchase Register, Sales and Purchase Invoices and the AO had not made any further enquiry.
3. When cash deposited is reflected as realization from debtors in books of accounts and if the AO has not rejected the books of accounts u/s 145(3), he cannot make any separate addition for cash deposit.
4. As the sales of Rs.19,93,693/- has been duly accounted for in the return for AY 2016-17, and the resultant profit u/s 44AD, has already been offered to Income tax and the returned income has been accepted, the debtors for the relevant year can not be doubted.
5. When there is sufficient balance in cash book as on date of deposit during demonetization, no addition for cash deposited out of it in the bank can be made, as held by the Bombay High Court in the case of Narendra G. Goradia vs. CIT [1998] 234 ITR 571 (Bombay) (HC)

"Section 68 of the Income-tax Act, 1961 – Cash credits – Assessment year 1979-80 – In relevant period assessee had tendered notes of Rs. 1000 denomination valuing Rs. 2 lakhs for encashment – There was no dispute about source of money nor about fact that there was sufficient balance on date of deposit – Assessing Officer, however, made additions of part of amount for want of details of receipts of some of high denomination notes – Whether there was no justification for adding a portion of amount tendered by assessee for encashment of high denomination notes as income of assessee from undisclosed sources for alleged failure of assessee to furnish source of acquisition of amount in such notes – Held, yes"

6. The very essential condition for invoking section 69A is missing. When money stands duly recorded in the books, no addition for the same can be made. So, on legal grounds too, the addition is not sustainable.
7. Once total sales are accepted, addition of cash which was realised out of debtors as UNEXPLAINED INCOME shall result into Double Taxation of the same amount i.e. Once as Sales (which stands accounted for in P&L account) and again as Unexplained Income. Hence, once sales are accepted, cash deposits out of realization from debtors can not be held as unexplained income, as held by various Tribunals/High Courts in favour of Assessee in the following cases –

- Smt. Harshila Chordia vs ITO (2008) 298 ITR 349 wherein it was held that – *"Addition u/s 68 could not be made in respect of the amount which was found to be cash receipts from the customers against which delivery of goods was made to them"*
- Dewas Soya Ltd, Ujjain V/S Income Tax (Appeal No /Ind/2012) the Ld. Indore Bench held that *"The claim of the appellant that such addition resulted into double taxation of the same income in the same year is also acceptable because on one hand cost of the sales has been taxed (after deducting gross profit from same price ultimately credited to profit & loss account) and on the other hand amounts received from above parties has also been added u/s. 68 of the Act."*
- Shree Sanand Textiles Industries Ltd. V. DCIT vide (ITA No. 1166/AHD/2014) - *We also note that the provisions of section 68 cannot be applied in relation to the sales receipt shown by the assessee in its books of accounts. It is because the sales receipt has already been shown in the books of accounts as income at the time of sale only. We are also aware of the fact that there is no iota of evidence having any adverse remark on the purchase shown by the assessee in the books of accounts. Once the purchases have been accepted, then the corresponding sales cannot be disturbed without giving any conclusive evidence/finding. In view of the above we are not convinced with the finding of the learned CIT(A) and accordingly we set aside the same with the direction to the AO to delete the addition made by him.*

- CIT v. Vishal Exports Overseas Limited (Gujarat High Court) (Tax Appeal No. 2471 of 2009) - *Revenue carried the matter in appeal before the Tribunal. The Tribunal did not address the question of correctness of the C.I.T. (Appeals)'s conclusion that amount of Rs.70 lakhs represented the genuine export sale of the assessee. The Tribunal however, upheld the deletion of Rs.70 lakhs under section 68 of the Act observing that when the assessee had already offered sales realisation and such income is accepted by the Assessing Officer to be the income of the assessee, addition of the same amount once again under section 68 of the Act would tantamount to double taxation of the same income.*
- New Pooja Jewellers v. ITO (Kolkata ITAT) ITA No. 1329/Kol/2018-*In this case we find that these advances have subsequently been recorded as sales of the assessee firm and that these sales have been accepted as income by the AO during the year. He has not disturbed the sales of the assessee. When a receipt is accounted for as income, no separate addition of the same amount as income of the assessee under any other Section of the Act can be made as it would be a double addition. In the result, we delete the addition made and allow its claim of the assessee.*
- Lakshmi Rice Mills v. Commissioner of Income-tax [1974] 97 ITR 258 (PAT.) *Section 69A of the Income-tax Act, 1961 – Unexplained moneys – Assessment year 1946-47 – Whether when books of accounts of assessee were accepted by revenue as genuine, and cash balance shown therein was sufficient to cover high denomination notes held by assessee, assessee was not required to prove source of receipt of said high denomination notes which were legal tender at that time – Held, yes.*

The assessee filed his cash book for the FY 2016-17 during the course of assessment proceedings. The cash book clearly shows the closing cash balance as on 07.11.2016 as Rs.27,28,695/- The assessee out of this cash balance available with him, deposited Rs.20,00,000/- in his bank account with (Current A/c) From the cash book, the source of these debits is clear. No questions to prove anything further in this regard were ever put by the AO. While finalizing the assessment, the AO doubted the incomings from the debtors. So, it is not in dispute that the AO does not have any concrete evidence to establish that the realization from debtors were bogus, which culminated into availability of cash which in turn was deposited in the bank account. It may be mentioned that the burden of proof for establishing that income is from undisclosed source lies on the department.

In view of the above submission and the case laws relied upon by the assessee, the addition made by the AO and confirmed by the Ld.CIT(A) deserve to be deleted.

Additional ground of appeal

The ld. CIT(A), NFAC has erred on facts and in law in taxing the alleged unexplained cash deposit in the bank account u/s 115BBE @ 60% instead of taxing the same @ 30% by ignoring that section 115BBE substituted by Taxation Laws (Second Amendment Act), 2016 which received the assent of President on 15.12.2016 and made applicable from 01.04.2017 is not applicable to AY 2017-18.

- Submission on the additional ground of appeal

  The lower authorities have taxed the alleged unexplained cash deposit in the bank account @ 60% u/s 115BBE. It is submitted that substituted section 115BBE by Taxation Laws (Second Amendment Act), 2016 received the assent of President on 15.12.2016. The section is made applicable w.e.f. 01.04.2017. Hon'ble ITAT, Jabalpur Bench in case of ACIT Vs. Sandesh Kumar Jain ITA 41/JAB/2020 vide order dated 31.10.2022 at Para 4.2 of the order while interpreting the amendment made in section 115BBE which received the assent of President on 15.12.2016 held as under:-

  4.2 As regards the assessee's second ground, without prejudice, argument, i.e., qua nonretrospectivity, we find considerable force therein. Section 1(2) of the Amending Act provides that save as otherwise provided therein, it shall come into force at once. The same only conveys the intent for, except where a later date is specified, the legislation to take immediate effect, i.e., as soon the assent of the Hon'ble President of India is received, by signing the same. The words "at once" convey an urgency, so that the same represents the earliest point of time at which the same is to take effect, i.e., 15/12/2016 itself, and which also explains the same being enacted during the course of the fiscal year, tax rates for which stand already clarified at the beginning of the year per the relevant Finance Act (FA, 2016). The said words "at once" would loose significance if the provisions of the Act are to, as stated by the ld. CIT(A), be read as effective 01/04/2017, implying AY 2018-19. The same, for substantive amendments, as in the instant case, represents the first day of the assessment year, i.e., AY 2017-18, which explains the assessee's grievance of it being thus effective for fy 2016-17 or, w.e.f. 01/4/2016. Enacting it mid-year and, further, making it applicable "at once", becomes meaningless if the same is to take effect retrospectively, or is made effective from a later date (01/4/2017), which could in that case be by Finance Act, 2017. True, the amendment, where so read, does give rise to a peculiar situation inasmuch as two tax rates would obtain for the current year, i.e., one from 01/04/2016 to 14/12/2016, and another from 15/12/2016 to 31/03/2017, but, then, that is no reason to read retrospectivity where the applicable date is clear and, further, there is nothing to suggest retrospectivity. Further, extraordinary and supervening circumstance of the Demonetization Scheme, 2016, brought out by the Government of India in November, 2016, explains the urgency in bringing an amendment mid-year. Further, the tax rate being in respect of incomes which are imputed with reference to a transactions, it is possible to administer the same,

another aspect of the matter that stands considered by us. That is, a tax rate for transactions made up to 14/12/2016, and another for those thereafter.

Subsequent mention of the applicability of the amended provisions of ss. 271AAB and 271AAC with reference to the date on which the Presidential assent to the Act is received, further corroborates this view, which is based on the clear language of the Amending Act, as well as the principle that a substantive amendment is to be generally prospective. We draw support from the decision in Vatika Township Pvt. Ltd. (supra), reiterating the settled law of the rule against retrospectivity. The tax rate applicable to the impugned income would, therefore, be at 30%, i.e., the rate specified in sec. 115BBE as on 30/11/2016, the date of the surrender of income per statement u/s133A (PB-1, pgs.35-44). This, it may be noted, is also consistent with our view that the income is liable to be assessed u/s. 69B (see para 4.1).

The issue stands settled by the order of the Hon'ble High Court of Madras in the case S.MI.L.E Microfinance Limited Vs.The Assistant Commissioner of Income Tax. The relevant extract of the order is reproduced as under:

17. In the aforesaid objects and reasons nowhere it is stated that due to "demonetization" the unaccounted money ought to be charged 60% rate of tax. It only states that step had been taken to curb black money by withdrawing Specified Bank Notes of denomination of Rs.500 and Rs.1000. And also states the people may find illegal ways of converting their black money into black again, hence as per experts advice heavy penalty ought to be levied. From the language of the object "that instead of allowing people to find illegal ways of converting their black money into black again", it is evident that the government is intended to impose the same for future transactions. Especially the use of word "again" in the object would clearly indicate it is for future transactions i.e. from 01.04.2017. Therefore this Court is of the considered opinion that the revenue is empowered to impose 60% rate of tax for the transactions from 01.04.2017 onwards and not prior to the said cut-off date. And for prior transaction the revenue is empowered to impose only 30% rate of tax…"

The issue also stands covered by the recent decision of Hon'ble Jaipur ITAT in the cases-

Sanjay Godha vs. ACIT in ITA No.539/JPR/2024 dated 29.08.2024
Rajni Gupta vs. ACIT in ITA No.45/JP.2024 dated 04.06.2024

In view of the above case laws, tax @ 30% u/s 115BBE could have been levied and therefore, action of the AO in charging tax @60% and the action of the Ld.CIT(A) in upholding the same is erroneous and the appellant prays for relief."

7. Ld. AR of the assessee in support of the contention so raised in the written

submission, placed reliance on the following evidence / records in the form of Paper book :

S.No.	Particulars	Page No.
1.	Extract of ITR for AY 2016-17	1-3
2.	Copy of Cash book of the assessee for the FY 2016-17	4-6
3.	Confirmation of Debtors	7-15

He also provided a chart showing year wise position of **Debtors & Cash** enclosing therewith copies of ITRs of the relevant years.

8. The ld. DR is heard who relied on the findings of the lower authorities and more particularly advanced similar contentions as stated in the order of the ld. AO. He vehemently argued that the assessee had failed show any debtors in the original ITR filed by him and the assessee later revised his return, post announcement of demonetization, as an afterthought, to justify the cash deposit.

9. We have heard the rival contentions and perused the material placed on record, as well as the relevant provisions of law and the case laws cited by the Ld.AR in support of his case. In order to decide the issue in this case, we have to go back to the ITR of AY 2016-17, filed by the assessee. The assessee had filed the ITR for AY 2016-17, u/s 139(1) on 27.04.2016 showing income from Business & Profession u/s 44AD (Column 35 of Schedule-BP). As such, the assessee did not file the details of Balance sheet and P&L Account. The CPC

issued him a notice on 10.07.2017 to remove the defects. In compliance thereof, the assessee filed ITR u/s 139(9) removing the said defects, by incorporating the figures in the Balance sheet and P&L Account. The said return was duly processed by the CPC on 29.08.2017. As per this rectified return, debtors appeared at a figure of Rs.18,00,000/- [Column 3(a)(ii) of Balance sheet] During the assessment proceedings, the AO doubted the genuineness of these debtors and consequently held the realization made from them to be bogus. The AO believed that the assessee had misrepresented the figure of debtors with an intent to justify the source of cash deposited during the FY 2016-17. He held so for the reason that the assessee had corrected the ITR after demonetization period (08.11.2016 to 30.12.2016).

10. We find that the assessee had filed the cash book for the relevant year, which clearly showed the availability of cash balance of Rs.27,58,751/- on the date of depositing it with the Bank. This balance was made up from cash realized from debtors and cash sales made for the period from 01.04.2016 to 19.11.2016. He had also filed confirmations of all the debtors. The AO had the addresses of all the debtors and if he had any doubts about the authenticity of these debtors, nothing prevented him from making inquiries by issuing summons to the debtors and examining them. The cash received from debtors stands corroborated from the confirmations filed by them. The balance of the debtors (Rs.18,00,000/-)

stands corroborated from the records of the department (the ITR processed by CPC) The cash sales are supported by sale bills which have been stated by the AO to have been test checked. The AO has not rejected the books. In such an eventuality, only on the basis of suspicion, the cash of Rs.20,00,000/- deposited by the assessee cannot be held to be unexplained. Accordingly we set aside the orders of the learned Assessing Officer and direct him to delete the addition made by him and to accept the returned income.

11. As we have already deleted the addition made by the AO, the adjudication on the additional ground raised by the asseesee as to the rate applicable u/s 115BBE in respect of the addition made u/s 69A, becomes academic and needs no adjudication.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

; Sd/- Sd/-

(Dr. Mitha Lal Meena)
Accountant Member

(DR. S. Seethalakshmi)
Judicial Member

Dated 29/05/2025
Santosh- Sr. P.S
Copy of the order forwarded to:

(1)The Appellant

(2) The Respondent

(3) The CIT

(4) The CIT (Appeals)

(5) The DR, I.T.A.T.

True Copy
By order