

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE: SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 584/Ahd/2024

(निर्धारण वर्ष / Assessment Year : 2017-18)

Pramukh Metal Quarry 704 Imperial Heights, Nr. Kalali Crossing, Sun Pharma Road, Atladra, Vadodara - 390012	बनाम/ Vs.	Income Tax Officer Ward 1(2)(3), Vadodara
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAJFP5189N		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Ms. Kinjal Shah, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Rignesh Das, Sr. DR

Date of Hearing	24/04/2025
Date of Pronouncement	16/06/2025

(आदेश)/ORDER

PER SMT. ANNAPURNA GUPTA, AM:

The present appeal has been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), (hereinafter referred to as “CIT(A)”), National Faceless Appeal Centre (hereinafter referred to as “NFAC”), Delhi dated 19.02.2024 passed under Section 250 of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) and relates to Assessment Year (A.Y.) 2017-18.

2. Initially the assessee had raised grounds of appeal which were argumentative in nature and he was, therefore, directed to file concise grounds of appeal which was subsequently filed before us on 07.04.2025 and which read as under:

"I. The CIT(A) has erred both in Law and in Fact in confirming the applicability of Sec.68 of the Act and thereby upholding addition of Rs.46,32,000/-being cash deposited the Bank during demonetization period which was duly explained and hence addition be deleted.

II. (a) Your Appellant submits that he has been maintaining Regular Books of Accounts duly Audited on during course of business of the Appellant had made withdrawal and had maintained cash as per books of accounts for purposes of business and the amount of Rs.44,12,071/- was cash balance available with him on 8-11-2016 and therefore not liable to be added.

(b) Your Appellant submits that in view of nature of business and for any be emergency arises cash was maintained as per his business practice followed from year to year.

In view of facts and circumstances of the case, and transaction by through Banking Chanel it is submitted that Rs.46,32,000/- (Rs.44,12,071+Rs.2,19,929/-) is not liable to be added as unaccounted cash credit during demonetarization period."

3. A perusal of the above would reveal that the solitary issue in the present appeal relates to addition made to the income of the assessee on account of the cash deposited in the bank account of the assessee during monetization period amounting to Rs.46,32,000/-, the source of which remained unexplained. The orders of the authorities below reveal that though the assessee justified the source of cash deposits as from explained sources by furnishing his cash book revealing the source, the same, however,

was disbelieved by the AO with respect to the cash deposit made during demonetization period for the reason that:

- the assessee was noted to have made huge cash withdrawals without incurring corresponding expenses out of the same
- the entire deposit during the demonetization period was noted to be in specified bank notes (SBNs) which allegedly was made out of balance available as at the beginning of demonetization i.e. on 08.11.2016. It was found unbelievable that all cash in hand on the said date was in SBN's.
- There was a difference between the availability of cash as on 08.11.2016 to that deposited during the demonetization period, approximating Rs.2,50,529/-. Since the assessee could not have legally taken SBNs after the commencement of demonetization, the explanation of the assessee was disbelieved.
- Also noting the fact that despite entire cash being available in hand at the beginning of demonetization, it was however deposited in small tranches during the entire period of demonetization. This, as per the AO, was unusual and illogical behavior and, therefore, he was not convinced with the reply of the assessee that the cash deposited during demonetization period was out of cash in hand available as at the beginning of demonetization which was attributed to the withdrawals made from his banks.

4. The Ld. CIT(A) confirmed the order of the AO and his findings are recorded in Para 6.2 to 6.6 of his order as under:

“6.2 The submissions of the appellant, as above, has been carefully considered. The appellant had made cash deposits totaling to Rs.46,32,000/- during the period of demonetization from 9th November to 30th December 2016. It is to be noted that the entire cash deposits made during the period of demonetization was in SBNs (Specified Bank Notes of Rs.500 and Rs.1000 demonetised). It is claimed that the appellant was in possession of cash in hand of Rs.44,12,071/- on 08-11-2016 and the deposits were made out of this cash balance. It is seen that the cash deposit has been made during the demonetization period on the following dates.

Month	Date	Amount
November	10.11.2016	2,50,000
		4,60,000
	11.11.2016	2,00,000
		30,000
		2,00,000
	12.11.2016	5,00,000
	14.11.2016	3,00,000
	19.11.2016	5,00,000
	24.11.2016	3,24,000
	25.11.2016	4,00,000
December		
	05.12.2016	2,00,000
	07.12.2016	4,99,000
	13.12.2016	3,69,000
	20.12.2016	2,50,000

From the above pattern of cash deposits, it is quite apparent that the appellant had been depositing the cash on various dates in spaced out intervals during the entire period of demonetisation of close to two months. During the period of demonetisation, there was a specific ban on acceptance of demonetised currency. Business houses were prohibited from accepting demonetised currency after the announcement of demonetisation. The only recourse available for anybody in possession of demonetised currency was to deposit the same into their bank account or exchange for legal currency with the bank upto a certain limit. In the instant case, it is seen that the entire cash deposit during the period of demonetisation has happened in SBNs. Considering the fact that there was a general prohibition for acceptance of SBNs for business transactions during the period of demonetisation, it has to be presumed that the entire deposit of SBNs was already in possession of the appellant as on 08-11-2016. The appellant was in possession of only Rs.44,12,071/- as cash balance as on 08-11-2016 however, it has made a total cash deposit of Rs.46,32,000/- into his bank account during period of demonetisation

in SBNs. Even it were to be accepted that the cash deposits have been made out of the cash balances as on 08-11-2016, it is highly improbable that the entire cash balance of the appellant as on 08/11/2016 was in SBNs. Further, the appellant has deposited these SBNs during the period of demonetisation in a staggered manner. Though the appellant was holding three bank accounts, it has resorted to depositing the SBNs in a staggered manner during the entire period of demonetisation of close to two months. Such staggered deposit of cash representing SBNs is against the normal human conduct. This clearly shows that the cash balance as on 08-11-2016 has been manipulated and concocted in the books of accounts so as to accommodate the cash deposits during the period of demonetisation, in this context, the decision of the Hon'ble High Court of Delhi in the case of Shashi Garg Vs. Pr.CIT reported in 113 taxmann.com 92 (Delhi) is worth considering. In this case, the High Court upheld the Hon'ble Tribunal's Order holding that withdrawal of money from bank accounts on different dates in a staggered manner would not form the source for subsequent cash deposits, it is to be noted that SLP against this decision has also been dismissed by the Hon'ble Supreme Court in 113 taxmann.com (93).

6.3. Further, as could be seen from the pattern of cash deposits, the deposits have not happened in one stroke immediately after the announcement of demonetisation. Normally, it is accepted that any person in possession of SBNs and holding three bank accounts would immediately deposit the SBNs in his possession into his bank account. However, it has happened in a staggered manner over a period of forty days. This further strengthens the argument that the cash balance and the cash book has been manipulated to show an enhanced cash balance as on 08-11-2016 to accommodate the cash deposits.

6.4. The Assessing Officer has analysed the cash books submitted by the appellant and has observed that the cash withdrawals made from the bank account have been allowed to accumulate in the cash book without making any cash expenditure. This is an improbable human conduct where it is important to consider that a prudent man would not withdraw cash and keep with himself at the risk of security. Further, keeping cash with himself which would have earned interest had the money been kept in the bank. Further, the time gap between the withdrawals and the redeposit is quite huge which places the onus to explain that the cash deposit is linked to the earlier cash withdrawals rests on the assessee. The delay in redeposit of the cash withdrawal is against the theory of human probability as propounded by the Hon'ble High Court in the cases of CIT Vs. Durgaprasad Morey 1971 (82) ITR 540 SC and Sumati Dayal Vs. CIT (1995) (80)

taxmann 89 (SC). In the ordinary case, a person will not keep cash idle with him without any purpose and further will deposit the cash immediately on a single day in one stroke after it ceased to be a legal tender and not in piecemeal on various occasions, as done in the instant case.

6.5. Further, the appellant has furnished the cash balance in its books of accounts on various dates as under:

Sr.#	Assessment Year	Return Filing Date	Gross Turnover	Profit before Int & Rem to Partner and Tax	Cash on Hand
1	2017-18	06.11.2017	7,37,94,121	44,13,503	66,572
2	2016-17	17.10.2016	5,37,19,445	24,88,522	20,24,154
3	2015-16	31.10.2015	4,58,73,506	29,00,358	78,721
4	2014-15	29.11.2014	4,34,95,690	33,96,800	1,06,783
5	2013-14	01.10.2013	4,12,21,966	35,23,924	3,46,350
6	2012-13	28.09.2012	3,28,71,124	14,93,659	80,620

From the above, it can be seen that the appellant has not kept huge cash balances on hand. However, it is claimed by the appellant that he has held Rs.44,12,071/- as cash in hand on 08-11-2016. This is against the history of the appellant as could be seen from the cash balance in the previous six assessment year.

6.6. *Considering the above facts, the Assessing Officer has drawn a correct conclusion that the cash on hand shown as on 08-11-2016 was not genuine and therefore, the cash deposits made during period of demonetisation represented the unexplained income of the appellant u/s 68 of the Act. Since cash deposits on various dates as mentioned in the table I have been recorded in the cash book maintained as part of the books of accounts of the appellant and the sources of such cash deposits have remained unexplained, the addition made by the Assessing Officer u/s 68 of the Act is found to be in order and hence, confirmed."*

5. The contention of the Ld. Counsel for the assessee before us is that the assessee had discharged his onus of explaining the source of cash deposited in the bank account by furnishing his cash book, and the entire case of the Revenue only on

presumptions and assumptions which were also explained satisfactorily by the assessee.

6. In this regard, he drew our attention first to the explanation furnished by the assessee to the authorities below which is reproduced at Page Nos. 30 to 34 of the order as under:

“2. The second ground of appeal is in respect of addition of Rs. 46,32,000/-made on account of cash deposited during the demonetisation period.

The brief facts of the case is that during the demonetisation period, the appellant has deposited cash amounting to Rs. 46.32,000/-in to the Current Bank Accounts held with the State Bank of India, Bank of Baroda and Bank of India. The case was deposited out of the cash on hand on 08.11.2016 and receipt from parties. The addition made is without properly appreciating the submission made during the course of assessment proceeding

The brief cash flow for the A.Y. is as under;

Sr.#	Particulars	F.Y. 2016-17 Amount Rs.	F.Y. 2015-16 Amount Rs.
<i>Details of Cash Inflow/Receipts</i>			
1	Opening Balance	20,24,154/-	78,721/-
2	Business Receipts	68,54,517/-	41,41,033/-
3	Amount withdrawn from Bank	1,69,80,500/-	2,36,57,900/-
	Total Rs.	2,58,59,171/-	2,78,77,654/-
<i>Details of Cash Outflow/Payments</i>			
1	Business Expenses	78,52,999/-	70,31,300/-
2	Cash Deposited into Bank	1,79,39,600/-	1,88,22,200/-
3	Closing Cash Balance	66,572/-	20,24,154/-
	Total Rs.	2,58,59,171/-	2,78,77,654/-

As seen from the above, it is clear that the appellant has not deposited any cash out of undisclosed sources.

The ld. AO has made addition of Rs. 46,32,000/- out of the total cash deposited of Rs. 1,79,39,600/- during the year i.e. the addition is made only in respect of cash deposited into bank during the

demonetisation period only and note for the whole year thereby accepted the cash deposited in to the bank account during the period other than demonetisation period. As such the ld. AO has accepted the books of accounts and cash book maintained by the appellant. Further the ld. AO has not demonstrated clearly in the Assessment Order that addition made is on what basis and on what reason. The ld. AO failed to appreciate the fact that the appellant is doing business and having cash receipt from the business as well as cash withdrawn from time to time from banks and erred in making addition of total cash deposited during the demonetisation period.

The Brief details of Gross Turnover, Returned Income and Cash on hand for last several years are as under;

<i>Sr.</i>	<i>Assessment Year</i>	<i>Return Filing Date</i>	<i>Gross Turnover</i>	<i>Profit before Int & Rem to Partner and Tax</i>	<i>Cash on Hand</i>
<i>1</i>	<i>2017-18</i>	<i>06.11.2017</i>	<i>7,37,94,121</i>	<i>44,13,503</i>	<i>66,572</i>
<i>2</i>	<i>2016-17</i>	<i>17.10.2016</i>	<i>5,37,19,445</i>	<i>24,88,522</i>	<i>20,24,154</i>
<i>3</i>	<i>2015-16</i>	<i>31.10.2015</i>	<i>4,58,73,506</i>	<i>29,00,358</i>	<i>78,721</i>
<i>4</i>	<i>2014-15</i>	<i>29.11.2014</i>	<i>4,34,95,690</i>	<i>33,96,800</i>	<i>1,06,783</i>
<i>5</i>	<i>2013-14</i>	<i>01.10.2013</i>	<i>4,12,21,966</i>	<i>35,23,924</i>	<i>3,46,350</i>
<i>6</i>	<i>2012-13</i>	<i>28.09.2012</i>	<i>3,28,71,124</i>	<i>14,93,659</i>	<i>80,620</i>

Merely the cash in the books has changed form from hard cash to cash in bank by way of deposit of demonetised currency notes into the bank account. Further mere cash deposit in bank account after the date of demonetization, i.e., 08.11.2016 does not mean that the cash-in-hand held as on 08.08.2016 though duly shown in the books of accounts becomes unexplained money. The ld AO has to demonstrate the same with the evidence that the same is undisclosed Income. As such the provision of the section 68 is not applicable at all to the appellant's case.

It is submitted that neither the sum recorded as cash sales of receipt for sales in the books were doubted nor the books of account are rejected by the ld. AO. Further the profit element was already offered to the Thus, the addition made under section 68 of the Act is not justified. Further the assessing officer has not brought on record any cogent material so as to remotely demonstrate that the underlying sum is not out of cast on hand on the date of demonetisation of currency notes on 08.11.2016.

The Ld. Assessing Officer on page no.2 (para 3.1) of the assessment order had stated that the appellant has made huge withdrawals during the year on the other hand it was seen that the assessee has

incurred less cash expenses, the cash withdrawals made by the appellant were without any cogent reasons. The Ld. Assessing Officer further observed that in previous year i.e. in F.Y. 2015-16 the appellant has made huge cash withdrawals and as compared to the withdrawals there was no cash expenses the cash withdrawals of the appellant was without any justification.

In this regard it is submitted that your appellant is having office at Vadodara and mines & plant at Jambugoral, Tal. Desari, Dist. Vadodara which is about 70 km away from Vadodara. Your appellant was maintaining bank accounts at Vadodara only. Your appellant is engaged in the quarry business and extracting the hard rock from the mines with the help of drilling and explosive blasting and crushing it into various sizes used as building materials like Kapchi, Grets, Metal etc. The activities of drilling and blasting is very risky jobs. Even a small accident can be dangerous for life of workers. In the situation your appellant is required to keep good amount of cash on hand to meet any such urgent requirements. As such the observation of the ld. AO that the cash withdrawals were without any cogent reasons is not correct.

The Ld. Assessing Officer on page no.2 (para-3.2) of the assessment order had stated that the appellant has deposited cash on different dates i.e. between 10th of November 2016 to 20th of December 2016. Considering that the appellant had shown cash on hand as on 08.11.2016 to the extent of Rs. 44,12,071/-, however, the cash was deposited on various dates in small amounts, this also indicates the appellant has not shown genuine cash on hand on 08.11.2016. Further the ld. AO at page no. 10 (Para-8) of the assessment order had stated that: had there been cash on hand on 08.11.2016 to the tune of Rs. 44,12,071/- then why appellant would deposit cash in small amounts despite maintaining three bank accounts.

In this regard it is submitted that there was stiff shortage of cash of valid denomination and the old notes (SBN) were valid for certain transactions including for medical facilities. Further there were also restrictions for withdrawals of cash from banks. In the circumstances and for the sake of convenience, the cash were deposited in phased manner. Here it is pertinent to mention that the Deposits of SBN in phased manner were never restricted by the RBI. As such the allegation of the ld. AO that the appellant has not shown genuine cash on hand on 08.11.2016 is baseless and not correct and is on presumption basis only.

The Ld. Assessing Officer on page no.9 (last portion of para-5) of the assessment order had alleged that it is a case of utilization of cash

for some other purpose. Hence, cash on hand shown by the appellant as on 08.11.2016 is not genuine. Further at para 9 on page 10 of the assessment order the ld. AO stated that the cash on hand shown by the appellant as on 08.11.2016 is not genuine and that the appellant has deposited cash from undisclosed sources.

In this regard it is submitted that the above observation of the id. AO is based on the holding of cash by your appellant and regularly withdrawals of cash from bank accounts though there is cash on hand. The holding of cash on hand and withdrawals from bank accounts from time to time is for the reason to meet an untoward emergency in case of accident at plant. The plant is situated at around 70Km from Vadodara and generally working 24 hours in a day. Further banks are working only for limited hours and closed on Holidays including Saturday and Sunday.

Further here it is pertinent to note that it is the appellants prerogative as to how he should manage his Business Affair and the Assessing Officer is not concerned with it. The ld. AO has not given any details regarding source of undisclosed income and merely stated that your appellant has deposited cash from undisclosed sources which is without any basis and arbitrary.

The ld. AO has neither doubted any entry in the cash book nor pointed out any adverse findings in the cash book. The ld. AO has made addition only on the basis of analysis of the data of cash deposit, cash withdrawal and cash expenses and without any evidence. It is submitted that from the above findings recorded, it clearly appears that the ld. AO proceeded merely on suspicion or on the basis of whims and surmise. A suspicion remains a suspicion unless the same is established and can never take the place of reality and for making addition/ assessment of the alleged income, it is for the AO to prove beyond all reasonable doubts which is completely missing in the appellant's case."

7. Referring to the above, he pointed out that:

- the assessee had submitted its cash book as also a cash flow for the impugned year pointing out the source of cash deposits in the bank and had demonstrated the financials in this regard to be inconsonance with the preceding year also.

- That the assessee had explained that huge cash withdrawals was a regular feature considering the nature of business in which the assessee was involved which required him to keep substantial cash in hand so as to meet any business exigency. He contended that it was pointed out to the authorities below that the assessee was involved in the business of quarrying hard rocks by blasting and further crushing them which was carried out in remote areas and to meet emergencies of accidents occurring with the labours employed, cash in hand of substantial amount was always kept by the assessee by withdrawing from bank.
- That the reasons for depositing cash in tranches was explained as so as to enable some cash to be available with the assessee to meet medical emergencies for which use of SBN was allowed, since there was restriction on withdrawal of cash during demonetization.
- That the assessee had met all the doubts raised by the authorities below and the Revenue had chosen to doubt only the cash deposited during demonetization period while the cash book furnished by the assessee showed repeated cash withdrawn and deposited in every month of the impugned year and also in the preceding year.
- The allegation of the department that the assessee had accepted SBNs during the demonetization period was, he contended, also of no consequence as far as the income tax proceedings were concerned and action against the assessee could at best be taken under the demonetization law.

8. Ld. Counsel for the assessee pointed out that despite the assessee explaining the source of cash deposit and meeting all doubts raised, the Ld.CIT(A) upheld the findings of the AO without pointing any infirmity in the explanation of the assessee and by merely reiterating the surmises and conjectures of the AO.

9. Ld. DR, however, relied on the orders of the authorities below.

10. We have heard the contentions of both the parties and we find merit in the contention of the Ld. Counsel for the assessee that the addition made in the present case of cash deposited in the bank account of the assessee of Rs.46,32,000/- is merely on assumptions and presumption.

11. It is an admitted fact that the assessee had furnished his entire books of account, including his cash book explaining the source of cash deposit in the bank account during the demonetization period. Details of cash flow/ cash book of the preceding year was also filed and these details clearly reflected a pattern of huge withdrawals made by the assessee every month and the same being deposited in the bank account of the assessee. Moreover, the assessee has given the reason for keeping huge cash in hand every month pointing out that it is in the business of quarrying mines and since, it works in remote areas in difficult conditions, it requires cash in hand to meet any medical or other emergency of which there is always a huge risk.

12. The Revenue authorities have pointed no infirmity in the Books of accounts maintained by the assessee nor the reasons given by the assessee for keeping huge cash balance. There is no question therefore of doubting the source of cash deposited in bank.

13. Moreover, undisputedly the Revenue has only doubted the source of cash deposited during demonetization, despite the records revealing cash deposit to be a regular feature throughout the year by the assessee. We agree with the Ld.Counsel for the assessee, that without any cogent reason the Revenue cannot cherry pick transactions for doubting the same.

14. As for the fact that the assessee chose to deposit the cash in hand during the demonetization in tranches, the assessee, we have noted, had explained reason for the same also, as since its business requirement of cash in hand remaining and with the restrictions in place on cash withdrawals from bank during demonetization period, the assessee did not deposit all SBN notes available as on 08-11-16 in one go but in tranches. The assessee also pointed out that there was no bar under the demonetization law of meeting medical expenses with SBN's. That therefore assessee chose to keep SBN's in hand during demonetization period, depositing them only in tranches. Again, we agree with the Ld.Counsel for the assessee, the Revenue has failed to point out any infirmity in the aforestated explanation of the assessee. In the absence of the

same, the Revenue cannot hold the cash deposits as suspicious for the said reason.

15. Also, the discrepancy noted of the entire cash in hand available as on 08.11.2016 being deposited during demonetization period all being by way of SBNs which the Revenue authorities have found to be highly improbable, we do not find any merit in the same. We see no reason to doubt entire amount available with the assessee as on 08.11.2016 to be in specified bank notes. Moreover, the short fall of the cash deposited in bank during the demonetization to the balance available as on 08.11.2016 leading to the interference by the Revenue that the assessee had taken SBNs during the demonetization period against the provisions of law, we agree with the Ld. Counsel for the assessee, cannot lead to any doubt being expressed about the source of cash deposits in the bank account of the assessee. The assessee may have been debarred by law from accepting SBNs but the fact that the assessee did accept SBNs and deposit it in the bank account, thus, flouting the demonetization law, is not highly improbable. As rightly pointed out by the Ld. Counsel for the assessee, the consequence of the same lay under the demonetisation law and not under the Income Tax Act.

16. In the light of the same, the assessee, we hold, had duly discharged its onus of explaining the source of cash deposit in its bank account during demonetization period and the findings of the Revenue treating the same as non-genuine are merely on

presumption and assumption. The addition made, therefore, we hold of cash deposited during the demonetization period of Rs.46,32,000/- u/s 68 of the Act is not sustainable in law and is directed to be deleted.

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

This Order pronounced on 16/06/2025

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 16/06/2025

S. K. SINHA

True Copy

आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad